

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Higher Education

BILL: SB 68

INTRODUCER: Senator Evers

SUBJECT: Licenses to Carry Concealed Weapons or Firearms

DATE: October 19, 2015 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cellon</u>	<u>Cannon</u>	<u>CJ</u>	Favorable
2.	<u>Scott</u>	<u>Klebacha</u>	<u>HE</u>	Favorable
3.	_____	_____	<u>JU</u>	_____
4.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 68 eliminates the statutory prohibition against carrying a concealed weapon or firearm by concealed carry licenseholders into any college or university facility.

Current law specifically includes these facilities among the places where a concealed weapon or firearm license does not authorize the licensee to “openly carry a handgun or carry a concealed weapon or firearm.”¹ The bill does not create an exemption from s. 790.053, F.S., which expressly prohibits the open carry of any weapon or firearm, nor does current law or the bill authorize a person licensed to carry a concealed weapon or firearm to disregard such prohibition.²

The bill provides an effective date of July 1, 2016.

II. Present Situation:

Florida Carry, Inc. v. University of North Florida

In December 2013, the Florida First District Court of Appeal (First DCA) decided the case of *Florida Carry, Inc. v. University of North Florida*.³ The issue of statutory construction before the court was whether the University of North Florida (UNF or university) violated the Legislature’s

¹ Section 790.06(12)(a)13., F.S.

² It is unlawful for any person to openly carry any firearm or electric weapon or device, except as otherwise provided by law or for purposes of lawful self-defense. s. 790.053(1) and (2), F.S.

³ 133 So.3d 966 (Fla. 1st DCA 2013). A comprehensive analysis of the court’s 12-3 decision in which the judges issued seven separate opinions is available at <http://www.floridaappellatereview.com/constitutional-litigation/fl-university-cant-prohibit-students-from-keeping-guns-in-their-cars-1st-dca/>, posted December 20, 2013 (last visited September 21, 2015).

preemption of the “whole field of regulation of firearms”⁴ by adopting policies and regulations prohibiting storing a weapon in a vehicle located on UNF’s property.⁵

The university’s position was that the regulation was authorized under s. 790.115(2)(a), F.S., which provides that firearms may not be possessed on school property⁶ except when securely encased within a vehicle, but that “school districts” may adopt policies to waive the “within a vehicle” exception.⁷ The judges all agreed that UNF did not meet the definition of “school district” and, therefore, the university could not waive the “within a vehicle” exception.⁸ This finding by the court settled the matter under dispute which opened the door for firearms and weapons being stored in vehicles on postsecondary school property.

The court went beyond the resolution of the matter of statutory construction, however, taking up the question of whether state universities have the power, under Article IX, Section 7⁹ of the Florida Constitution, to implement a regulation that conflicts with a statutory provision.¹⁰

The court found that the Legislature had preempted UNF’s independent regulation of firearms in s. 790.33(1), F.S.,¹¹ but the court also acknowledged that:

If the issue in this case involved the right of a student to carry a firearm in the classroom or at a sporting event, our analysis would be different. There are certain places where firearms can be legally prohibited, but the legislature has recognized that a citizen who is going to be in one of these places should be able to keep a firearm securely encased within his or her vehicle.¹²

⁴ Section 790.33(1), F.S.

⁵ *Florida Carry, Inc.*, 133 So.3d at 972.

⁶ “A person shall not possess any firearm, electric weapon or device, destructive device, or other weapon as defined in s. 790.001(13), including a razor blade or box cutter, except as authorized in support of school-sanctioned activities, at a school-sponsored event or on the property of any school, school bus, or school bus stop; however, a person may carry a firearm:

1. In a case to a firearms program, class or function which has been approved in advance by the principal or chief administrative officer of the school as a program or class to which firearms could be carried;
2. In a case to a career center having a firearms training range; or
3. In a vehicle pursuant to s. 790.25(5); except that school districts may adopt written and published policies that waive the exception in this subparagraph for purposes of student and campus parking privileges.

For the purposes of this section, “school” means any preschool, elementary school, middle school, junior high school, secondary school, career center, or postsecondary school, whether public or nonpublic.”

⁷ *Id.* at 969.

⁸ *Id.* at 971.

⁹ This section of the Constitution establishes a system of governance for the state university system.

¹⁰ *Florida Carry, Inc.*, 133 So.3d at 973.

¹¹ “Except as expressly provided by the State Constitution or general law, the Legislature hereby declares that it is occupying the whole field of regulation of firearms and ammunition, including the purchase, sale, transfer, taxation, manufacture, ownership, possession, storage, and transportation thereof, to the exclusion of all existing and future county, city, town, or municipal ordinances or any administrative regulations or rules adopted by local or state government relating thereto. Any such existing ordinances, rules, or regulations are hereby declared null and void.”

¹² *Id.* at 976.

Since the *UNF* opinion was issued, Florida Carry, Inc. has prevailed in getting similar policies changed at other Florida postsecondary educational institutions, in keeping with the current law as interpreted by the First DCA.¹³

Florida Carry, Inc. v. University of Florida

In January 2014, Florida Carry, Inc. filed a lawsuit against the University of Florida (UF) in the Eighth Judicial Circuit Court in Alachua County which raised the issue of UF's compliance with the *UNF* ruling.¹⁴ The *UF* case raised the question of the interplay between the statutory ban of firearms on university property found in s. 790.115(2)(a), F.S., and s. 790.25(3)(n), F.S., which authorizes the possession of firearms at home regardless of open carry and concealed carry laws. The circuit court granted UF's Motion for Summary Judgment relating to Florida Carry, Inc.'s claim that UF violated Florida law by prohibiting the possession of firearms in housing located on university property.¹⁵ The circuit court did not find an exception for dorms or residence halls in s. 790.115, F.S., and that matter is being appealed by Florida Carry, Inc.¹⁶

Oral arguments were heard in the First DCA on July 14, 2015.¹⁷ At the time of the writing of this bill analysis, no opinion has been handed down by the court.

Other States - Firearms and Postsecondary School Campuses

As of June 2015, 19 states banned carrying a concealed weapon on a college campus.¹⁸

In 23 states the decision to ban or allow concealed weapons on campus is the prerogative of the state university system.¹⁹

Due to court rulings and legislation, 8 states allow carrying concealed weapons on public postsecondary campuses.²⁰

The Colorado Supreme Court and the Oregon Court of Appeals overturned firearm bans in 2012 and 2011, respectively.²¹ In both cases the rulings were based upon the court finding that it is

¹³ For current and past litigation, see <http://www.floridacarry.org/litigation> (last visited September 21, 2015).

¹⁴ *Florida Carry, Inc. v. University of Florida*, Case No. 01-2014-CA-000142 (Fla. 8th Cir. Ct.)

¹⁵ Order Partially Granting and Partially Denying Motion to Dismiss; Summary Judgment of Dismissal of Motor Vehicle Claim; and Summary Judgment for Defendants on Housing Claims, pp. 4-5, *Florida Carry, Inc. vs. University of Florida*, Case No. 01-2014-CA-000142 (Fla. 8th Cir. Ct. July 30, 2014).

¹⁶ *Id.*

¹⁷ *Florida Carry, Inc. v. University of Florida*, Case No. 1D14-4614 (Fla. 1st DCA).

¹⁸ National Conference of State Legislatures (NCSL), Guns on Campus: Overview, <http://www.ncsl.org/research/education/guns-on-campus-overview.aspx> (last visited September 21, 2015).

¹⁹ *Id.* Utah statutes specifically name public colleges and universities as public entities that do not have the authority to ban concealed carry.

²⁰ *Id.* See also, 2014 State Firearms Legislation Overview, <http://smartgunlaws.org/2014-state-firearms-legislation-overview> (last visited September 21, 2015). These states are: Colorado, Idaho, Kansas, Mississippi, Oregon, Utah, Wisconsin and, most recently, Texas.

²¹ *Id.* It should be noted that in Oregon, the Board of Higher Education retained the authority to create internal policies for some areas of campus. The Board has banned firearms in campus buildings. As a condition of purchasing a ticket to an athletic event, a concert, or a performance at the University of Colorado at Boulder even concealed carry licensees agree not to bring a weapon into the venue. See <http://police.colorado.edu/services/weapons-campus> (last visited September 21, 2015).

within the exclusive power of the Legislature, not the higher education system, to regulate firearms in those states.

Other states' statutes have dealt with the matter of firearms on college campuses in several ways:

- Wisconsin colleges and universities must allow concealed carry on *campus grounds*, but if signs are posted at every entrance to a *building* stating that weapons are prohibited, firearms are not allowed within the building.²²
- In Idaho, persons who possess an “*enhanced carry permit*” may carry weapons and firearms on campus *but not* in dorms or buildings of a public entertainment facility housing more 1,000 people.²³
- Kansas law contains a provision that colleges and universities cannot ban concealed carry on campus, but may prohibit weapons inside buildings that have “*adequate security measures*” (defined by statute) and post signs to that effect.²⁴
- A 2015 Texas law (Senate Bill 11) allows private and independent colleges the ability to opt out of campus carry entirely while public university presidents may enact “reasonable” rules designating some areas on campus as gun-free zones.²⁵

Reported Crimes on Postsecondary Campuses

Postsecondary education institutions that participate in federal student financial aid programs under Title VI of the Higher Education Act are required to report campus crimes and safety policies and to collect and disseminate campus crime data.²⁶ Among the types of crimes reported in 2012, burglaries made up 61 percent of all incidents, while reported forcible sex offenses constituted 13 percent, and grand theft of motor vehicles was 10 percent of reported incidents.²⁷ Data has been reported since 1999 by institutions through the Campus Safety and Security Survey.²⁸

Governance of the Florida State University System and College System

Authority of the Board of Governors

The Board of Governors (BOG) has the authority to operate, regulate, control, and is fully responsible for the management of the publicly funded State University System (SUS) pursuant

²² NCSL, Guns on Campus: Overview, <http://www.ncsl.org/research/education/guns-on-campus-overview> (last visited September 21, 2015).

²³ Idaho Senate Bill 1254 (2014) available at <http://www.legislature.idaho.gov/legislation/2014/S1254.pdf>.

²⁴ NCSL, Guns on Campus: Overview, <http://www.ncsl.org/research/education/guns-on-campus-overview> (last visited September 21, 2015).

²⁵ The New York Times, *Texas Lawmakers Pass a Bill Allowing Guns at Colleges*, http://www.nytimes.com/2015/06/03/us/texas-lawmakers-approve-bill-allowing-guns-on-campus.html?_r=1 (last visited September 21, 2015).

²⁶ 20 U.S.C. s. 1092(f), Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (1990), also known as the “Clery Act.” See 34 C.F.R. 668.46 for implementing regulations.

²⁷ National Center for Education Statistics, *Indicators of School Crime and Safety: 2014*, see Indicator 22, Criminal Incidents at Postsecondary Institutions, available at <http://nces.ed.gov/pubs2015/2015072.pdf>. The data reports the number of arrests for illegal weapons possession (1,000 in 2012) but does not indicate when a weapon or firearm was used in the commission of the crimes reported to have occurred on campus.

²⁸ *Id.* Data collected in the survey is published by the U.S. Department of Education, Office of Postsecondary Education, on the Campus Safety and Security Statistics website, <http://ope.ed.gov/security/> (last visited September 21, 2015).

to s. 7(d), Article IX of the State Constitution and the Florida Statutes, subject to the appropriation of funds by the Legislature.²⁹ The BOG must exercise its authority in a manner that supports, promotes, and enhances a K-20 education system.³⁰

The BOG may develop procedures for adopting regulations to implement its constitutional duties and responsibilities, which include, but are not limited to:³¹

- Defining the distinctive mission of each state university.
- Defining the articulation of each state university in conjunction with the Legislature’s authority over public schools and the Florida College System institutions.
- Ensuring the well-planned coordination and operation of the SUS.
- Adopting strategic plans for the SUS and each state university.
- Complying with, and enforcing applicable local, state, and federal laws for state universities.

The BOG may delegate its constitutional or statutory powers and duties to the university boards of trustees as designee, including the authority to adopt rules or regulations.³² Generally, the BOG is responsible for developing guidelines and procedures relating to the organization and operation of state universities, expenditures, strategic and accountability plans, and property.³³ However, university boards of trustees are authorized to develop guidelines and procedures, including, but not limited to, technology and student conduct, and to administer programs for the maintenance and construction of facilities.³⁴

Authority of the State Board of Education

The Legislature created the Florida College System consisting of institutions³⁵ governed by boards of trustees.³⁶ The State Board of Education (SBE) prescribes the minimum standards, definitions, and guidelines for Florida College System (FCS) institutions which must ensure the quality of education, coordination among the FCS institutions and state universities, and efficient progress toward accomplishing the FCS institution mission.³⁷ The SBE is responsible for, among other duties:³⁸

- Approving plans for cooperating with other public agencies in the development of rules and in the enforcement of laws.
- Reviewing plans for cooperating with appropriate nonpublic agencies for the improvement of conditions relating to the welfare of schools.
- Adopting cohesive rules within its statutory authority.
- Enforcing systemwide education goals and policies.

²⁹ Sections 20.155 and 1001.70-706, F.S. See s. 1001.705(1)(a) and (d), F.S., defining the terms “Board of Governors” and “state universities” as used in the Florida K-20 Education Code.

³⁰ Section 1001.70(3), F.S.

³¹ Sections 1001.705(2) and 1001.706(2), F.S.

³² Art. IX, s. 7(c) Fla. Const.; s. 1001.706(2)(b), F.S.

³³ Section 1001.706(3)-(7), F.S.

³⁴ *Id.*

³⁵ See s. 1000.21(3), F.S., for a definition and list of each “Florida College System institution.” Such institutions constitute political subdivisions of the state operated by boards of trustees. See ss. 1004.67 and 1001.61-.64, F.S.

³⁶ Sections 1001.60, 1001.61(1) and (2), and 1001.64(2), F.S. See s. 2, ch. 2008-52, L.O.F. See also, s. 20.15(7), F.S.

³⁷ Art. IX, s. 2, Fla. Const.; ss. 20.15(1), (2), and (5); and 1001.02(1), (6), and (8), F.S.

³⁸ Section 1001.02(2), F.S.

- Adopting criteria and implementation plans for future growth issues, such as new FCS institutions and campus mergers.

Each local board of trustees is responsible for:³⁹

- Cost-effective policy decisions consistent with the FCS institution’s mission;
- The implementation and maintenance of high-quality education programs within law and rules of the SBE;
- The measurement of performance;
- The reporting of information; and
- The provision of input regarding state policy, budgeting, and education standards.

Each local board of trustees governs its respective FCS institution in accordance with the rules of the SBE.⁴⁰ A local board of trustees has the power to take action without a recommendation from the FCS institution president and may adopt rules consistent with the laws and rules adopted by the SBE.⁴¹ Each board of trustees is specifically authorized to adopt rules, procedures, and policies related to its:⁴²

- Mission and responsibilities;
- Governance;
- Personnel;
- Budget and finance;
- Administration;
- Programs;
- Curriculum and instruction;
- Buildings and grounds;
- Travel and purchasing;
- Technology,
- Students;
- Contracts and grants; or
- College property.

Prohibitions Against the Concealed Carrying of a Firearm or Weapon

Section 790.01, F.S., prohibits the carrying of a concealed firearm and punishes a violation of the law as a third degree felony unless the person carrying the concealed firearm is licensed under s. 790.06, F.S.⁴³ The carrying of a weapon in a concealed manner by a person who is not licensed to do so under s. 790.06, F.S., is a first degree misdemeanor.⁴⁴

³⁹ Section 1001.64(1), F.S.

⁴⁰ *Id.* at (2).

⁴¹ *Id.* at (3) and (4).

⁴² *Id.*

⁴³ Section 790.01(2) and (3), F.S. “Concealed firearm” is defined in s. 790.001(2), F.S.

⁴⁴ Section 790.01(1) and (3), F.S. “Concealed weapon” is defined in s. 790.001(3), F.S.

Limitations on the Concealed Carrying of a Firearm or Weapon for Licensees

Persons who hold a valid license to carry a concealed weapon or firearm are statutorily authorized to carry a handgun,⁴⁵ electronic weapon or device,⁴⁶ tear gas gun,⁴⁷ knife,⁴⁸ or billie in a concealed manner.⁴⁹

However, s. 790.06(12), F.S., sets forth the following limitations on the concealed carry statutory authorization. It should be noted that concealed carry by a licensee is not specifically limited unless the firearm or weapon is carried *into* the listed places.

A license issued under this section does not authorize any person to openly carry a handgun or carry a concealed weapon or firearm *into*:

1. Any place of nuisance as defined in s. 823.05;
2. Any police, sheriff, or highway patrol station;
3. Any detention facility, prison, or jail;
4. Any courthouse;
5. Any courtroom, except that nothing in this section would preclude a judge from carrying a concealed weapon or determining who will carry a concealed weapon in his or her courtroom;
6. Any polling place;
7. Any meeting of the governing body of a county, public school district, municipality, or special district;
8. Any meeting of the Legislature or a committee thereof;
9. Any school, college, or professional athletic event not related to firearms;
10. Any elementary or secondary school facility or administration building;
11. Any career center;
12. Any portion of an establishment licensed to dispense alcoholic beverages for consumption on the premises, which portion of the establishment is primarily devoted to such purpose;
13. Any college or university facility unless the licensee is a registered student, employee, or faculty member of such college or university and the weapon is a stun gun or nonlethal electric weapon or device designed solely for defensive purposes and the weapon does not fire a dart or projectile;
14. The inside of the passenger terminal and sterile area of any airport, provided that no person shall be prohibited from carrying any legal firearm into the

⁴⁵ “Handgun” means a firearm capable of being carried and used by one hand, such as a pistol or revolver. s. 790.0655(1)(a), F.S.

⁴⁶ “Electric weapon or device” means any device which, through the application or use of electrical current, is designed, redesigned, used, or intended to be used for offensive or defensive purposes, the destruction of life, or the infliction of injury. s. 790.001(14), F.S.

⁴⁷ “Tear gas gun” or “chemical weapon or device” means any weapon of such nature, except a device known as a “self-defense chemical spray.” “Self-defense chemical spray” means a device carried solely for purposes of lawful self-defense that is compact in size, designed to be carried on or about the person, and contains not more than two ounces of chemical. s. 790.001(3)(b), F.S.

⁴⁸ “Knife” is defined as what it is *not* in s. 790.001(13), F.S.: “Weapon” means...or other deadly weapon *except* ... a common pocketknife, plastic knife, or blunt-bladed table knife.

⁴⁹ Section 790.06(1), F.S.

terminal, which firearm is encased for shipment for purposes of checking such firearm as baggage to be lawfully transported on any aircraft; or
 15. Any place where the carrying of firearms is prohibited by federal law.⁵⁰
 (emphasis added)

Concealed Carry Licensure

The Department of Agriculture and Consumer Services (DACS) *issues a license* to carry concealed weapons or firearms if the applicant:

- Is a resident of the United States and a citizen of the United States or a permanent resident alien of the United States or is a consular security official of a foreign government and is certified as such by the foreign government and by the appropriate embassy in this country;
- Is 21 years of age or older;⁵¹
- Does not suffer from a physical infirmity which prevents the safe handling of a weapon or firearm;
- Is not ineligible to possess a firearm pursuant to s. 790.23, F.S., by virtue of having been convicted of a felony;
- Has not been committed for the abuse of a controlled substance or been found guilty of a crime under the provisions of ch. 893, F.S., or similar laws of any other state relating to controlled substances within a 3-year period immediately preceding the date on which the application is submitted;
- Does not chronically and habitually use alcoholic beverages or other substances to the extent that his or her normal faculties are impaired. It shall be presumed that an applicant chronically and habitually uses alcoholic beverages or other substances to the extent that his or her normal faculties are impaired if the applicant has been committed under ch. 397, F.S., or under the provisions of former ch. 396, F.S., or has been convicted under s. 790.151, F.S., or has been deemed a habitual offender under s. 856.011(3), F.S., or has had two or more convictions under s. 316.193, F.S., or similar laws of any other state, within the 3-year period immediately preceding the date on which the application is submitted;
- Desires a legal means to carry a concealed weapon or firearm for lawful self-defense;
- Demonstrates competence with a firearm;
- Has not been adjudicated an incapacitated person under s. 744.331, F.S., or similar laws of any other state, unless 5 years have elapsed since the applicant's restoration to capacity by court order;
- Has not been committed to a mental institution under ch. 394, F.S., or similar laws of any other state, unless the applicant produces a certificate from a licensed psychiatrist that he or she has not suffered from disability for at least 5 years prior to the date of submission of the application;
- Has not had adjudication of guilt withheld or imposition of sentence suspended on any felony or misdemeanor crime of domestic violence unless 3 years have elapsed since probation or any other conditions set by the court have been fulfilled, or the record has been sealed or expunged;

⁵⁰ Section 790.06(12)(a), F.S.

⁵¹ The minimum age requirement is waived if the applicant otherwise qualifies and is either a service member as defined in s. 250.01, F.S., or a veteran of the U.S. Armed Forces who was discharged under honorable conditions. s. 790.062, F.S.

- Has not been issued an injunction that is currently in force and effect and that restrains the applicant from committing acts of domestic violence or acts of repeat violence; and
- Is not prohibited from purchasing or possessing a firearm by any other provision of Florida or federal law.⁵²

DACS shall *deny a concealed carry license* if the applicant has been found guilty of, had adjudication of guilt withheld for, or had imposition of sentence suspended for one or more crimes of violence constituting a misdemeanor, unless 3 years have elapsed since probation or any other conditions set by the court have been fulfilled or the record has been sealed or expunged.⁵³

DACS shall *revoke* a license if the licensee has been found guilty of, had adjudication of guilt withheld for, or had imposition of sentence suspended for one or more crimes of violence within the preceding 3 years.⁵⁴

Upon notification by a law enforcement agency, a court, or the Florida Department of Law Enforcement and subsequent written verification, DACS shall *suspend* a license or the processing of an application for a license if the licensee or applicant is arrested or formally charged with a crime that would disqualify such person from having a license under this section, until final disposition of the case.⁵⁵ DACS is also required to *suspend* a license or the processing of an application for a license if the licensee or applicant is issued an injunction that restrains the licensee or applicant from committing acts of domestic violence or acts of repeat violence.⁵⁶

A license already issued must be *suspended or revoked* by DACS if the licensee:

- Is found to be ineligible under the criteria set forth in s. 790.06(2), F.S.;
- Develops or sustains a physical infirmity which prevents the safe handling of a weapon or firearm;
- Is convicted of a felony which would make the licensee ineligible to possess a firearm pursuant to s. 790.23, F.S.;
- Is found guilty of a crime under the provisions of ch. 893, F.S., or similar laws of any other state, relating to controlled substances;
- Is committed as a substance abuser under ch. 397, F.S., or is deemed a habitual offender under s. 856.011(3), F.S., or similar laws of any other state;
- Is convicted of a second violation of s. 316.193, F.S., or a similar law of another state, within 3 years of a previous conviction of such section, or similar law of another state, even though the first violation may have occurred prior to the date on which the application was submitted;
- Is adjudicated an incapacitated person under s. 744.331, F.S., or similar laws of any other state; or
- Is committed to a mental institution under ch. 394, F.S., or similar laws of any other state.⁵⁷

⁵² Section 790.06(2)(a)-(m), F.S.

⁵³ Section 790.06(3), F.S.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ Section 790.06(10), F.S.

The concealed carry license issued by DACS, along with valid identification, must be carried at all times the licensee is in actual possession of a concealed weapon or firearm and must be displayed upon demand of a law enforcement officer.⁵⁸

Section 790.015, F.S. – Reciprocity for Nonresident Concealed Carry Licensees

Nonresidents of Florida who are concealed carry licenseholders from states that honor Florida concealed carry licenses may carry a weapon or firearm in a concealed manner in Florida. The nonresident must have a valid license in his or her immediate possession and must abide by Florida concealed carry laws.⁵⁹

Open Carrying of a Firearm Generally Prohibited

Section 790.053, F.S., prohibits the open carrying of a firearm or electric weapon or device. The offense is punished as a second degree misdemeanor.⁶⁰

It is not a violation of the open carry prohibition for a person to openly carry a self-defense chemical spray or a nonlethal stun gun, dart-firing stun gun, or other nonlethal electric weapon, if the weapon is carried for purposes of lawful self-defense.⁶¹

Non-Criminal Open and Concealed Carry in Florida

Section 790.25, F.S., contains an exception to the requirement that a person possess a valid concealed carry license in order to lawfully carry in a concealed manner *if* the person is engaged in certain listed activities. Likewise, a person engaged in those activities may lawfully carry a firearm or weapon openly.

Section 790.25, F.S. states in part:

790.25 Lawful ownership, possession, and use of firearms and other weapons.—

(2) USES NOT AUTHORIZED.—

(a) This section *does not authorize* carrying a concealed weapon without a permit, as prohibited by ss. 790.01 and 790.02. . . .

(3) LAWFUL USES.—The provisions of ss. 790.053 and 790.06 *do not apply* in the following instances, and, despite such sections, it is lawful for the following persons to own, possess, and lawfully use firearms and other weapons, ammunition, and supplies for lawful purposes:⁶²

⁵⁸ Section 790.06(1), F.S.

⁵⁹ Section 790.015, F.S. See the Florida Department of Agriculture and Consumer Services website, <http://www.freshfromflorida.com/Divisions-Offices/Licensing/Consumer-Services/Concealed-Weapon-License/States-Recognizing-Florida-License>, which indicates that non-Florida residents from 34 states currently fit this reciprocity criteria (last visited September 21, 2015).

⁶⁰ It is not a violation of s. 790.053, F.S., for a person who is licensed to carry a concealed firearm under s. 790.06(1), F.S., and who is carrying the firearm in a lawful manner to briefly and openly display the firearm to the ordinary sight of another person, unless the firearm is intentionally displayed in an angry or threatening manner, not in self-defense.

⁶¹ Section 790.053(2), F.S.

⁶² The categories listed here represent a partial list of those found in s. 790.25(3)(a)-(p), F.S.

(h) A person engaged in fishing, camping, or lawful hunting or going to or returning from a fishing, camping, or lawful hunting expedition; ...

(l) A person traveling by private conveyance when the weapon is securely encased or in a public conveyance when the weapon is securely encased and not in the person's manual possession; ...

(n) A person possessing arms at his or her home or place of business; ...

(5) POSSESSION IN PRIVATE CONVEYANCE.—Notwithstanding subsection (2), it is lawful and is not a violation of s. 790.01 for a person 18 years of age or older to possess a concealed firearm or other weapon for self-defense or other lawful purpose within the interior of a private conveyance, without a license, if the firearm or other weapon is securely encased⁶³ or is otherwise not readily accessible for immediate use.⁶⁴ Nothing herein contained prohibits the carrying of a legal firearm other than a handgun anywhere in a private conveyance when such firearm is being carried for a lawful use. Nothing herein contained shall be construed to authorize the carrying of a concealed firearm or other weapon on the person. This subsection shall be liberally construed in favor of the lawful use, ownership, and possession of firearms and other weapons, including lawful self-defense as provided in s. 776.012. (emphasis added)

Florida courts and the Florida Attorney General have interpreted and applied some of the various exceptions found in s. 790.25, F.S., as follows:

- [T]he possession of a concealed weapons license does not authorize a person to openly carry a weapon. However, to the extent that a weapon is carried openly for the specified lawful uses set forth in s. 790.25(3), F.S. (1990 Supp.), or as otherwise authorized by statute, such conduct is lawful.⁶⁵
- A person, in defense of his home or place of business, is permitted to conceal his possession of a firearm.⁶⁶
- The trial court erred when it instructed the jury that carrying a concealed weapon in one's home in the presence of other people is illegal.⁶⁷
- The defendant was not "at his home" for purposes of the exception found in s. 790.25(3)(n), F.S. He was not on his own property nor was he on property to which he had the exclusive right of possession because he was standing with a group of people in the parking lot of his apartment complex, 25-30 feet from the building in which he resided.⁶⁸

⁶³ "Securely encased" means in a glove compartment, whether or not locked; snapped in a holster; in a gun case, whether or not locked; in a zippered gun case; or in a closed box or container which requires a lid or cover to be opened for access. s. 790.001(17), F.S.

⁶⁴ "Readily accessible for immediate use" means that a firearm or other weapon is carried on the person or within such close proximity and in such a manner that it can be retrieved and used as easily and quickly as if carried on the person. s. 790.001(16), F.S.

⁶⁵ 1991 Fla. Op. Atty. Gen. 114, Fla. AGO 91-36, May 17, 1991.

⁶⁶ *Peoples v. State*, 287 So.2d 63 (Fla. 1973)

⁶⁷ *Santiago v. State*, 77 So.3d 874 (Fla. 4th DCA 2012).

⁶⁸ *Sherrod v. State*, 484 So.2d 1279 (Fla. 4th DCA 1986); *see also McNair v. State*, 354 So.2d 473 (Fla. 3d DCA 1978) where defendant was not "at his home," but rather 30-35 feet from his apartment; *Brant v. State*, 349 So.2d 674 (Fla. 3d DCA 1977) where the defendant was in the hallway of a hotel; but *see also Collins v. State*, 475 So.2d 968 (Fla. 4th DCA 1985) where the "at his home" concealed carry exception applied in the defendant's driveway and yard.

- The “place of business” exception not only applies to a business owned by the defendant himself, but extends to employees of a business.⁶⁹

III. Effect of Proposed Changes:

The bill amends s. 790.06(12)(a), F.S., to remove the prohibition against concealed weapon and firearm licensees carrying weapons and firearms into any college or university facility.

Current law reads as follows:

790.06 License to carry concealed weapon or firearm. –
 (12)(a) A license issued under this section does not authorize any person to openly carry a handgun or carry a concealed weapon or firearm into:
 13. Any college or university facility⁷⁰ unless the licensee is a registered student, employee, or faculty member of such college or university and the weapon is a stun gun or nonlethal electric weapon or device designed solely for defensive purposes and the weapon does not fire a dart or projectile;

Section 790.06(12), F.S., as part of the concealed weapon or firearm licensure statute, appears to be clarifying in nature by stating what the license *does not* authorize. The effect of the bill, therefore, is to create the possibility of concealed carry licensees being able to carry concealed weapons or firearms *into any college or university facility* so long as that possibility is not prohibited by other laws. Regardless, s. 790.053, F.S., which is *not* amended by the bill, expressly prohibits *any person* from *openly* carrying a weapon or firearm whether or not the person possesses a concealed carry license.⁷¹

College or university facilities would likely include classroom buildings, residence halls, dining halls, libraries, laboratories, auditoriums, and sports or entertainment arenas. Section 790.06(12)(a)9., F.S., which is *not* amended by the bill, contains a specific concealed carry prohibition into any school, college, or professional athletic event not related to firearms. Even though a person who possesses a valid concealed carry license would be statutorily authorized by the bill to carry a concealed weapon or firearm into any college or university facility, it appears that a school, college, or professional athletic event should not be taking place at the facility at that time.

The bill does not address the prohibition of the possession of weapons and firearms on “school property” set forth in s. 790.115, F.S.⁷²

⁶⁹ *State v. Little*, 104 So.3d 1263 (Fla. 4th DCA 2013); *Curry-Pennamon v. State*, 40 Fla. L. Weekly D110 (Fla. 1st DCA 2015); and *see State v. Anton*, 700 So.2d 743 (Fla. 2d DCA 1997) which interpreted the “place of business” exception to encompass property surrounding the business, including parking lots.

⁷⁰ “Educational facilities” means the buildings and equipment, structures, and special educational use areas that are built, installed, or established to serve primarily the educational purposes and secondarily the social and recreational purposes of the community and which may lawfully be used as authorized by the Florida Statutes and approved by boards. s. 1013.01(6), F.S.

⁷¹ The open-carry prohibition in s. 790.053, F.S., does not apply to certain persons and situations, including, but not limited to: members of the armed forces, sheriffs, police officers, or persons engaged in lawful hunting. s. 790.25(3), F.S.

⁷² The definition of “school” includes any postsecondary school whether public or nonpublic. s. 790.115(2)(a), F.S.

Because s. 790.115, F.S., does not contain an exception for college or university facilities, it appears that the practical effect of the bill may rest upon a change to the statutory blanket “school property” prohibition⁷³ or further expansion or interpretation by the courts.

The bill provides an effective date of July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

According to the Florida Board of Governors, implementation of the bill will result in an indeterminate increase in recurring and non-recurring administrative costs, including increased litigation costs.⁷⁴

In its 2015 Legislative Bill Analysis for SB 176 (2015), the Florida Department of Education stated that the bill may have an indeterminate fiscal impact on insurance premiums paid by colleges and universities.⁷⁵

⁷³ Except for parking lots, as decided by *Florida Carry, Inc. v. University of North Florida*, 133 So.3d 966 (Fla. 1st DCA 2013).

⁷⁴ Board of Governors, State University System of Florida, *2016 Legislative Bill Analysis*, p. 3, received September 15, 2015 (on file with the Committee on Higher Education).

⁷⁵ Florida Department of Education, *2015 Agency Legislative Bill Analysis*, p. 3, received January 27, 2015 (on file with the Committee on Higher Education). SB 68 (2016), which is the subject of this Senate staff analysis, is identical to SB 176 (2015).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 790.06 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.