

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 Rules

BILL: CS/SB 616

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Steube

SUBJECT: Concealed Weapons or Firearms

DATE: April 24, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Stallard</u>	<u>Cibula</u>	<u>JU</u>	Favorable
2.	<u>Ferrin</u>	<u>Ferrin</u>	<u>GO</u>	Fav/CS
3.	<u>Stallard</u>	<u>Phelps</u>	<u>RC</u>	Pre-meeting

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 616 defines the term “courthouse,” and authorizes a person who has a concealed weapons and firearms license to carry a concealed weapon or firearm into a courthouse for as long as it takes him or her to report to courthouse security or management. Then, the licensee must follow security or management personnel’s instructions for removing, securing, and storing the item, or the licensee must surrender the item until the licensee is leaving the courthouse. As such, the bill does not permit anyone to carry a concealed weapon or firearm throughout a courthouse or into a courtroom.

The bill also states that any local ordinance, administrative rule, administrative order, or regulation that conflicts with the stated definition of courthouse or the right to carry a weapon or firearm into a courthouse, as permitted by this bill, is preempted to the Legislature. Further, the bill subjects a person or entity that enacts or enforces a preempted ordinance, rule, order, or regulation to penalties including, but not limited to fines and removal from office by the Governor.

The bill is effective upon becoming a law.

II. Present Situation:

Concealed Carry of Firearms, Weapons, or Electric Weapons or Devices

Lawful Concealed Carry of Weapons or Firearms

Chapter 790, F.S., regulates who can carry weapons and firearms and where and how a person may carry them. In general, this chapter prohibits a person from carrying a concealed firearm unless the person has a concealed weapon or firearm license.¹

Florida's concealed carry licensing scheme is set forth in s. 790.06, F.S. The license only permits the concealed carry of handguns and certain non-firearm weapons.² Currently, there are roughly 1.7 million Floridians holding a standard concealed carry license.³

To obtain a license, one must submit an application to the Department of Agriculture and Consumer Services, and the Department *shall* grant the license to each applicant who:⁴

- Is a resident of the United States and a citizen of the United States or a permanent resident alien of the United States, as determined by the United States Bureau of Citizenship and Immigration Services, or is a consular security official of a foreign government that maintains diplomatic relations and treaties of commerce, friendship, and navigation with the United States and is certified as such by the foreign government and by the appropriate embassy in this country;
- Is 21 years of age or older;
- Does not suffer from a physical infirmity which prevents the safe handling of a weapon or firearm;
- Is not ineligible to possess a firearm 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 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;
- Desires a legal means to carry a concealed weapon or firearm for lawful self-defense;
- Demonstrates competence with a firearm;⁵
- Has not been adjudicated an incapacitated person in a guardianship proceeding, unless 5 years have elapsed since the applicant's restoration to capacity by court order;

¹ See ss. 790.01 and 790.06, F.S.; *but see* s.790.25(3), F.S., which provides that the prohibition against carrying a concealed weapon and the licensure requirement do not apply in certain circumstances.

² "For the purposes of this section, concealed firearms and concealed weapons are defined as a handgun, electronic weapon or device, tear gas gun, knife, or billie, but the term does not include a machine gun as defined" elsewhere in statute. Section 790.06(1), F.S.

³ As of February 28, 2017, 1,721,862 Floridians held a standard concealed carry license. Fla. Dept. of Ag., *Number of Licensees by Type*, http://www.freshfromflorida.com/content/download/7471/118627/Number_of_Licensees_By_Type.pdf (last visited March 2, 2017).

⁴ Section 790.06(2), F.S. Accordingly, Florida is referred to as a "shall-issue" state, as opposed to a "may-issue" state. Also, the Department must deny a license to an applicant who meets criteria set forth in s. 790.06(3), F.S.

⁵ See s. 790.06(2)(h), F.S., for the list of courses and other means of demonstrating competency, and for the required documentation that one must present to the state relative to this provision.

- Has not been committed to a mental institution, unless the applicant produces a certificate from a licensed psychiatrist that he or she has not suffered from disability for at least 5 years before the date of submission of the application;
- Has not had adjudication of guilt withheld or imposition of sentence suspended on any felony, or any misdemeanor crime of domestic violence, unless 3 years have elapsed since probation or any other conditions set by the court have been fulfilled, or expunction has occurred;
- 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.

The licensing statute strongly implies that licensees may carry concealed throughout Florida, as a general matter.⁶ However, the statute also expressly states that the license does not permit a licensee to carry a concealed weapon or firearm into any:⁷

- *Courthouse*;
- *Courtroom*;⁸
- Place of nuisance, such as a brothel or place where criminal gang activity takes place repeatedly;
- Police, sheriff, or highway patrol station;
- Detention facility, prison, or jail;
- Polling place;
- Meeting of the governing body of a county, public school district, municipality, or special district;
- Meeting of the Legislature or a committee of the Legislature;
- School, college, or professional athletic event not related to firearms;
- Elementary or secondary school facility or administration building;
- Career center;
- 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;
- 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;
- Airport's passenger terminal and sterile area, provided that no person shall be prohibited from carrying any legal firearm into the terminal, which firearm is encased for shipment for purposes of checking such firearm as baggage to be lawfully transported on any aircraft; or
- Place where the carrying of firearms is prohibited by federal law.

⁶ The licensing statute expressly states that licensees are not subject to the statute that criminalizes concealed carry. The licensing statute also expressly states that the license does not authorize carrying into a list of places. Thus the licensing statute strongly implies, though nowhere expressly states, that licensees may carry generally throughout Florida.

⁷ Section 790.06(12)(a), F.S. (Emphasis added)

⁸ "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." Section 790.06(12)(a)5., F.S. Note that this provision does not refer to *firearms*, but only *weapons*.

A licensee who carries a concealed weapon or firearm into a courthouse or other prohibited place commits a second degree misdemeanor, which is punishable by up to 60 days in jail and a fine not to exceed \$500.⁹

Preemption of Firearms and Ammunition Regulations

The Joe Carlucci Uniform Firearms Act (Act), codified as s. 790.33, F.S., became law in 1987.¹⁰ The policy and intent of the Act is stated as follows:

It is the intent of this section to provide uniform firearms laws in the state; to declare all ordinances and regulations null and void which have been enacted by any jurisdictions other than state and federal, which regulate firearms, ammunition, or components thereof; to prohibit the enactment of any future ordinances or regulations relating to firearms, ammunition, or components thereof unless specifically authorized by this section or general law; and to require local jurisdictions to enforce state firearms laws.¹¹

The Act accomplished its stated purpose by “occupying the whole field of regulation of firearms and ammunition,” as stated in subsection (1) of the Act:

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 are hereby declared null and void.¹²

Additionally, the Act requires the court to impose civil fines of up to \$5,000 against certain government officials who willfully enact or cause an improper ordinance, regulation, or rule to be enforced. The offending government official may not use public funds to pay the fine. And the government official may be removed from office by the Governor.¹³

There are limited exceptions to the preemption provisions included in the Act, which does not prohibit:¹⁴

- Zoning ordinances that encompass firearms businesses along with other businesses, provided that they are not designed to restrict or prohibit the sale, purchase, transfer, or manufacture of firearms or ammunition;
- Regulations pertaining to firearms and ammunition issued to law enforcement agencies;
- Regulations prohibiting the carrying of firearms and ammunition by an employee of a local jurisdiction during and in the course of his or her official duties;

⁹ Section 790.06(12)(d), F.S. See also ss. 775.082(4)(b), F.S. and 775.083(1)(e), F.S.

¹⁰ Chapter 87-23, Laws of Fla.

¹¹ Section 790.33(2)(a), F.S.

¹² Section 790.33(1), F.S.

¹³ Section 790.33(3), F.S.

¹⁴ Section 790.33(4), F.S.

- A court or administrative law judge from hearing and resolving any case or controversy or issuing any opinion or order on a matter within the jurisdiction of that court or judge; or
- The Florida Fish and Wildlife Conservation Commission’s regulation of the use of firearms or ammunition to take wildlife or on shooting ranges managed by the commission.

Despite the provisions of the 1987 Joe Carlucci Act and a Florida appellate court opinion upholding the Act,¹⁵ local governments have enacted or considered enacting ordinances that required trigger locks, prohibited concealed carry permit holders from lawfully carrying their firearms on municipal or county property, required special use permits for certain sporting goods stores, and banned recreational shooting.

III. Effect of Proposed Changes:

The bill defines the term “courthouse” as a building, or that portion thereof, in which hearings and trials are conducted on a regular basis and houses judicial chambers. The bill authorizes a person who has a concealed weapons and firearms license to carry a concealed weapon or firearm into a courthouse for as long as it takes him or her to report to courthouse security or management. Then, the licensee must:

- Follow the security or management personnel’s direction for removing, securing, and storing such weapon or firearm, or
- Temporarily surrender the weapon or firearm to the security or management personnel, who shall store the weapon or firearm in a locker, safe, or other secure location and return the weapon or firearm to the licensee when he or she is exiting the courthouse.

As such, the bill does not permit carrying a firearm past the entryway of most courthouses,¹⁶ and clearly does not authorize a licensee to carry into any courtroom.

The bill also provides that a local ordinance, administrative rule, administrative order, or regulation that conflicts with this section of law and the right to carry is preempted to the Legislature, and the person or entity that enacts or enforces a preempted ordinance, order, rule, or regulation is subject to penalties set forth in 790.33, F.S. including, but not limited to civil fines and removal from office by the Governor.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Article VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

¹⁵ *National Rifle Association v. City of South Miami*, 812 So. 2d 504 (Fla. 3d DCA 2002).

¹⁶ However, some courthouses have no security checkpoints at their entrances.

C. Trust Funds Restrictions:

None.

V. **Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Courthouses may need to purchase lockers to store handguns for persons who have a concealed weapon or firearm license.

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.)

CS by Governmental Oversight and Accountability on March 22, 2017:

- The amendment provides that for the purposes of this section, the term “courthouse” means a building, or that portion thereof, in which hearings and trials are conducted on a regular basis and houses judicial chambers.
- The amendment also provides that a local ordinance, administrative rule, administrative order, or regulation that conflicts with this section of law and the right to carry is preempted to the Legislature, and the person or entity that enacts or enforces a preempted ordinance, order, rule, or regulation is subject to penalties set forth in 790.33, F.S. including, but not limited to civil fines and removal from office by the Governor.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
