

FINAL BILL ANALYSIS

BILL #: CS/CS/SB 234

FINAL HOUSE FLOOR ACTION:

99 Y's 17 N's

SPONSOR: Sen. Evers (Rep. Dorworth)

GOVERNOR'S ACTION: Approved

COMPANION BILLS: CS/CS/HB 517

SUMMARY ANALYSIS

CS/CS/SB 234 was passed by the House on May 4, 2011. The bill was approved by the Governor on June 17, 2011, chapter 2011-145, Laws of Florida, and became effective on that date.

Generally, it is unlawful for a person to openly carry a firearm. The bill specifies that it is not a crime for a concealed firearm permit holder, who is lawfully carrying a firearm in a concealed 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 necessary in self-defense.

The bill also repeals s. 790.28, F.S., which limits Florida residents to the purchase of rifles and shotguns in contiguous states. As a result, Florida residents will be permitted to purchase rifles and shotguns in any state (not just contiguous states) so long as federal requirements are met, which include:

- The transferee meets in person with the transferor to accomplish the transfer; and
- The sale, delivery, and receipt fully comply with the legal conditions of sale in both such states.

This bill does not appear to have a fiscal impact.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Current Situation

Open Carrying of Weapons / Firearms - General Prohibition

Section 790.053, F.S., makes it a 2nd degree misdemeanor¹ for a person to openly carry on or about his or her person any firearm or electric weapon or device. There is no exception for persons who have concealed firearm permits; however, the statute does specify that it is not a crime for a person to openly carry, for purposes of lawful self-defense:

- A self-defense chemical spray.
- A nonlethal stun gun or dart-firing stun gun or other nonlethal electric weapon or device that is designed solely for defensive purposes.²

Certain persons under particular circumstances are exempt from the open carry of weapons limitations in s. 790.053, F.S. These persons and circumstances include:

- Members of the Militia, National Guard, Florida State Defense Force, Army, Navy, Air Force, Marine Corps, Coast Guard, organized reserves, and other armed forces of the state and of the United States, when on duty, when training or preparing themselves for military duty, or while subject to recall or mobilization;
- Citizens of this state subject to duty in the Armed Forces under s. 2, Art. X of the State Constitution, under chapters 250 and 251, F.S., and under federal laws, when on duty or when training or preparing themselves for military duty;
- Persons carrying out or training for emergency management duties under ch. 252, F.S.;
- Sheriffs, marshals, prison or jail wardens, police officers, Florida Highway Patrol officers, game wardens, revenue officers, forest officials, special officers appointed under the provisions of ch. 354, F.S., and other peace and law enforcement officers and their deputies and assistants and full-time paid peace officers of other states and of the Federal Government who are carrying out official duties while in this state;
- Officers or employees of the state or United States duly authorized to carry a concealed weapon;
- Guards or messengers of common carriers, express companies, armored car carriers, mail carriers, banks, and other financial institutions, while actually employed in and about the shipment, transportation, or delivery of any money, treasure, bullion, bonds, or other thing of value within this state;
- Regularly enrolled members of any organization duly authorized to purchase or receive weapons from the United States or from this state, or regularly enrolled members of clubs organized for target, skeet, or trap shooting, while at or going to or from shooting practice; or regularly enrolled members of clubs organized for modern or antique firearms collecting, while such members are at or going to or from their collectors' gun shows, conventions, or exhibits;
- A person engaged in fishing, camping, or lawful hunting or going to or returning from a fishing, camping, or lawful hunting expedition;
- A person engaged in the business of manufacturing, repairing, or dealing in firearms, or the agent or representative of any such person while engaged in the lawful course of such business;

¹ A second degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. ss. 775.082 and 775.083, F.S.

² Section 790.053(2), F.S.

- A person firing weapons for testing or target practice under safe conditions and in a safe place not prohibited by law or going to or from such place;
- A person firing weapons in a safe and secure indoor range for testing and target practice;
- 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;
- A person while carrying a pistol unloaded and in a secure wrapper, concealed or otherwise, from the place of purchase to his or her home or place of business or to a place of repair or back to his or her home or place of business;
- A person possessing arms at his or her home or place of business; and
- Investigators employed by the public defenders and the capital collateral regional counsel, while actually carrying out official duties.³

Concealed Weapons Licensure

Section 790.06, F.S., authorizes the Department of Agriculture and Consumer Services (DACS) to issue licenses to carry concealed weapons or concealed firearms to qualified applicants.⁴ The statute defines concealed weapons or concealed firearms as a handgun, electronic weapon or device, tear gas gun, knife, or billie, but not a machine gun^{5, 6}.

According to the FY 2009-2010 statistics, DACS received 167,240 new licensure applications and 91,963 requests for licensure renewal during that time period.⁷

Section 790.06(4), F.S., specifies that in order to obtain a concealed weapons license, a person must complete, under oath, and submit to DACS, an application that includes:

- The name, address, place and date of birth, race, and occupation of the applicant;
- A statement that the applicant is in compliance with the criteria contained in ss. 790.06(2) and (3), F.S.;
- A statement that the applicant has been furnished with a copy of ch. 790, F.S., and is knowledgeable of its provisions;
- A conspicuous warning that the application is executed under oath and that a false answer to any question, or the submission of any false document by the applicant, subjects the applicant to criminal penalties; and
- A statement that the applicant desires a concealed weapon or firearm license as a means of lawful self-defense.

Section 790.06(5), F.S., also required the applicant to submit to DACS the following:

- A nonrefundable license fee not to exceed \$85 (if the applicant has not previously been issued a statewide license) or \$70 (for renewal of a statewide license);
- A full set of fingerprints administered by a law enforcement agency;
- Documented proof of completion of a firearms safety and training course; and

³ Section 790.25(3), F.S.

⁴ Section 790.06(1), F.S.

⁵ Section 790.001(9), F.S., defines the term "machine gun" as any firearm which shoots, or is designed to shoot, automatically more than one shot, without manually reloading, by a single function of the trigger.

⁶ *Id.*

⁷ Concealed Weapon or Firearm License Reports, Applications and Dispositions by County, July 01, 2009 – June 30, 2010. (http://licgweb.doacs.state.fl.us/stats/07012009_06302010_cw_annual.pdf) (last accessed March 14, 2011).

- A full frontal view color photograph of the applicant which must be taken within the preceding 30 days.

Section 790.06(2), F.S. requires DACS to issue a license to carry a concealed weapon or firearm, if all other requirements are met, and 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, 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 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 is 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 by completing a specified firearms safety and training course;
- 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;
- 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.

DACS must deny the application 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.⁸

DACS must revoke a concealed weapons or firearms 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.⁹

DACS must, upon notification by a law enforcement agency, a court, or the Florida Department of Law Enforcement and subsequent written verification, suspend a concealed weapons or firearms license or the processing of an application for such license if the licensee or applicant is arrested or formally charged with a crime that would disqualify such person from having a license under s. 790.06, F.S., until final disposition of the case.¹⁰ DACS must suspend a concealed weapons or firearms license or the processing of an application for such 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.¹¹

In addition, DACS is required to suspend or revoke a concealed license 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 another state; or
- Is committed to a mental institution under ch. 394, F.S., or similar laws of another state.¹²

Licensees must carry their license and valid identification any time they are in actual possession of a concealed weapon or firearm and display both documents upon demand by a law enforcement officer.¹³ Failure to have proper documentation and display it upon demand is a noncriminal violation punishable by a penalty of \$25, payable to the clerk of the court.¹⁴

Section 790.06(12), F.S., specifies that a concealed weapon or firearm license does not authorize a person to carry a concealed weapon or firearm into:

⁸ Section 790.06(3), F.S.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² Section 790.06(10), F.S.

¹³ Section 790.06(1), F.S.

¹⁴ *Id.*

- Any place of nuisance as defined in s. 823.05, F.S.;
- Any police, sheriff, or highway patrol station;
- Any detention facility, prison, or jail;
- Any courthouse;
- 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;
- Any polling place;
- Any meeting of the governing body of a county, public school district, municipality, or special district;
- Any meeting of the Legislature or a committee thereof;
- Any school, college, or professional athletic event not related to firearms;
- Any school administration building;
- 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;
- Any elementary or secondary school facility;
- Any career center;
- 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;
- Inside the passenger terminal and sterile area of any airport, 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
- Any place where the carrying of firearms is prohibited by federal law.

Any person who willfully carries a concealed weapon or firearm into any of the above-listed locations commits a 2nd degree misdemeanor.¹⁵

Firearms in Vehicles

Section 790.25(5), F.S., permits 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 encased or is otherwise not readily accessible for immediate use. The same is true for a legal long gun, without the need for secure encasement, when it is carried in the private conveyance for a lawful purpose.¹⁶

“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.¹⁷ The term “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.¹⁸

¹⁵ Section 790.06(12), F.S.

¹⁶ Section 790.25(5), F.S.

¹⁷ Section 790.001(17), F.S.

¹⁸ Section 790.001(16), F.S.

In 2008, s. 790.251, F.S., was created.¹⁹ The statute addressed the lawful possession of firearms in vehicles within the parking lots of businesses, and was commonly known as the “Guns at Work” law. The law was challenged quickly after its passage.²⁰ Although the court recognized the Legislature’s authority to protect a worker who had a concealed carry license and kept a firearm in a vehicle at work from employment discrimination, the court found a problem, based upon the statutory definitions of employer and employee, in the application of the law to customers.²¹

Because of the wording of the definitions, a business, which happened to employ a person with a concealed weapon license who kept a firearm secured in his or her vehicle in the parking lot at work, would have been prohibited from expelling a customer who had a firearm in his or her car. A business without such an employee would have been free to expel such a customer. The court found that there was no rational basis for treating two similarly situated businesses differently just because one happened to employ someone with a concealed weapons license.²² Therefore, the state was enjoined from enforcing the part of the law that applied to customers.²³

Florida Residents Purchasing Shotguns and Rifles in Other States

In 1968, the Federal Gun Control Act (GCA) was enacted.²⁴ Among its many provisions was a section that made it unlawful for a licensed importer, manufacturer, dealer, or collector²⁵ to sell or deliver any firearm²⁶ to any person who the licensee knew or has reasonable cause to believe did not reside in the state in which the licensee’s place of business was located.²⁷ The GCA specified that this prohibition did not apply to the sale or delivery of a rifle²⁸ or shotgun²⁹ to a resident of a state contiguous to the state in which the licensee’s place of business was located if:

- The purchaser’s state of residence permits such sale or delivery by law;
- The sale fully complies with the legal conditions of sale in both such contiguous states; and

¹⁹ Ch. 2008-7, L.O.F.

²⁰ *Florida Retail Federation v. Attorney General*, 576 F.Supp.2d 1281 (N.D.Fla. 2008).

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ Pub. L. No. 90-618 (codified at 18 U.S.C. §§ 921-928).

²⁵ The term “importer” means any person engaged in the business of importing or bringing firearms or ammunition into the United States for purposes of sale or distribution. The term “manufacturer” means any person engaged in the business of manufacturing firearms or ammunition for purposes of sale or distribution. The term “dealer” means any person engaged in the business of selling firearms at wholesale or retail; any person engaged in the business of repairing firearms or of making or fitting special barrels, stocks, or trigger mechanisms to firearms; or any person who is a pawnbroker. The term “collector” means any person who acquires, holds, or disposes of firearms as curios or relics, as the Attorney General shall by regulation define. To be “licensed,” an entity listed above must be licensed under the provisions of 18 U.S.C. Ch. 44. *See* 18.U.S.C. § 921.

²⁶ 18 U.S.C. § 921 defines the term “firearm” as any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; or any destructive device. Such term does not include an antique firearm.

²⁷ 18 U.S.C. § 922(b)(3) (1968).

²⁸ 18 U.S.C. § 921 defines the term “rifle” as a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of an explosive to fire only a single projectile through a rifled bore for each single pull of the trigger.

²⁹ 18 U.S.C. § 921 defines the term “shotgun” as a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of an explosive to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger.

- The purchaser and the licensee have, prior to the sale of the rifle or shotgun, complied with federal requirements applicable to intrastate firearm transactions that take place at a location other than at the licensee's premises.³⁰

Subsequent to the enactment of the GCA, several states, including Florida, enacted statutes that mirrored the GCA's provisions that allowed a licensee to sell a rifle or a shotgun to a resident of a state contiguous to the state in which the licensee's place of business was located.³¹ Florida's statute, s. 790.28, F.S., entitled "Purchase of rifles and shotguns in contiguous states," was enacted in 1979, and currently provides the following:

A resident of this state may purchase a rifle or shotgun in any state contiguous to this state if he or she conforms to applicable laws and regulations of the United States, of the state where the purchase is made, and of this state.

In 1986, the Firearm Owners' Protection Act (FOPA) was enacted.³² FOPA amended the GCA's "contiguous state" requirement to allow licensees to sell or deliver a rifle or shotgun to a resident of any state (not just contiguous states) if:

- The transferee meets in person with the transferor to accomplish the transfer; and
- The sale, delivery, and receipt fully comply with the legal conditions of sale in both such states.³³

Subsequent to the enactment of FOPA, many states revised or repealed their statutes that imposed a "contiguous state" requirement on the interstate purchase of rifles and shotguns. Florida has not revised or repealed its statute.

Effect of the Bill

Open Carrying of Firearms

The bill amends s. 790.053, F.S., to specify that it is not a crime for a concealed firearm permit holder, who is lawfully carrying a firearm in a concealed 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 necessary in self-defense.

Concealed Weapons Licensure

The current definitions, limitations, and requirements of the concealed carry license law are not otherwise amended by the bill except to authorize DACS to administer a concealed license applicant's fingerprints.

The bill also adds provisions to s. 790.06(12), F.S. specifying that:

- Concealed weapon or firearm license-holders are not prohibited from carrying or storing a firearm in a vehicle for lawful purposes.

³⁰ 18 U.S.C. § 922(b)(3) (1968).

³¹ *See, e.g.*, O.C.G.A. § 10-1-100 (2011), specifying that residents of the state of Georgia may purchase rifles and shotguns in any state of the United States, provided such residents conform to applicable provisions of statutes and regulations of the United States, of the state of Georgia, and of the state in which the purchase is made.

³² Pub. L. No. 99-308.

³³ 18 U.S.C. §922(b)(3) (1986). Federal-licensed firearms dealers, importers and manufacturers are required by the Federal Government to collect and submit identifying information from prospective firearm purchasers to the National Instant Criminal Background Check System before transferring a firearm.

- The subsection does not modify the terms or conditions of s. 790.251(7), F.S.

The bill specifies that a person who openly carries a handgun or carries a concealed weapon or firearm into one of the prohibited locations set forth in s. 790.06(12), F.S., or who prohibits a licensee from carrying or storing a firearm in a vehicle for lawful purposes, commits a 2nd degree misdemeanor if they do so *knowingly* and willfully.

Florida Residents Purchasing Shotguns and Rifles in Other States

The bill repeals s. 790.28, F.S., which limits Florida residents to the purchase of rifles and shotguns in contiguous states. As a result, Florida residents will be permitted to purchase rifles and shotguns in any state (not just contiguous states) so long as:

- The transferee meets in person with the transferor to accomplish the transfer; and
- The sale, delivery, and receipt fully comply with the legal conditions of sale in both such states.

Section 790.065(1), F.S., requires licensed importers, manufacturers, and dealers, prior to selling a firearm to a person, to verify with the Florida Department of Law Enforcement (FDLE) that a person attempting to purchase the firearm is eligible to do so. The bill amends s. 790.065(1), F.S., to provide that the subsection does not apply to the purchase, trade, or transfer of rifles or shotguns by a resident of Florida when the resident makes such purchase, trade, or transfer from a licensed importer, licensed manufacturer, or licensed dealer in another state. Licensed importers, manufacturers, and dealers in other states who sell a rifle or shotgun to a Florida resident will still be required, pursuant to federal law, to ensure that the purchase complies with Florida law, but will not be required to verify with FDLE that the Florida resident is eligible to purchase a firearm.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.