

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 209 Carrying Concealed Weapon or Concealed Firearm

**SPONSOR(S):** Fitzenhagen and others

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 296

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 1 N	Cunningham	Cunningham
2) Economic Development & Tourism Subcommittee	9 Y, 3 N, As CS	Collins	West
3) Judiciary Committee			

### SUMMARY ANALYSIS

Section 790.01, F.S., makes it a first degree misdemeanor for a person to carry a concealed weapon or electric weapon or device on or about his or her person. Carrying a concealed firearm is a third degree felony. These criminal penalties do not apply to:

- A person licensed to carry a concealed weapon or firearm; or
- A person carrying the following in a concealed manner for purposes of lawful self-defense:
  - Self-defense chemical spray; or
  - A nonlethal stun gun or dart-firing stun gun or other nonlethal electric weapon or device that is designed solely for defensive purposes.

The bill creates an additional exception in s. 790.01, F.S., specifying that the statute's criminal penalties do not apply to:

- A person who carries a concealed weapon or a person who may lawfully possess a firearm and who carries a concealed firearm on or about his or her person while complying with a mandatory evacuation order issued during a state of emergency declared by the Governor.

On January 30, 2014, the Criminal Justice Impact Conference determined that this bill will have an insignificant positive prison bed impact on the Department of Corrections. The bill may also have a positive jail bed impact.

The bill is effective July 1, 2014.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

Section 790.01, F.S., makes it a first degree misdemeanor<sup>1</sup> for a person to carry a concealed weapon<sup>2</sup> or electric weapon or device<sup>3</sup> on or about his or her person. Carrying a concealed firearm<sup>4</sup> is a third degree felony.<sup>5,6</sup> These criminal penalties do not apply to:

- A person licensed to carry a concealed weapon or firearm pursuant to s. 790.06, F.S.;<sup>7</sup> or
- A person carrying the following in a concealed manner for purposes of lawful self-defense:
  - Self-defense chemical spray;<sup>8</sup> or
  - A nonlethal stun gun or dart-firing stun gun<sup>9</sup> or other nonlethal electric weapon or device that is designed solely for defensive purposes.<sup>10</sup>

##### Effect of the Bill

The bill creates an additional exception in s. 790.01, F.S., specifying that the statute's criminal penalties do not apply to:

- A person who carries a concealed weapon or a person who may lawfully possess a firearm and who carries a concealed firearm on or about his or her person while complying with a mandatory evacuation<sup>11</sup> order issued during a state of emergency declared by the Governor pursuant to ch. 252, F.S.<sup>12</sup>

The bill does not alter any laws relating to when a person may lawfully use force or where a person may lawfully carry a weapon or firearm.

#### B. SECTION DIRECTORY:

Section 1. Amends s. 790.01, F.S., relating to carrying concealed weapons.

Section 2. Provides an effective date of July 1, 2014.

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<sup>1</sup> A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Sections 775.082 and 775.083, F.S.

<sup>2</sup> Section 790.001(3)(a), F.S., defines "concealed weapon" as any dirk, metallic knuckles, slungshot, billie, tear gas gun, chemical weapon or device, or other deadly weapon carried on or about a person in such a manner as to conceal the weapon from the ordinary sight of another person.

<sup>3</sup> Section 790.001(14), F.S., defines "electric weapon or device" as 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.

<sup>4</sup> Section 790.001(2), F.S., defines "concealed firearm" as any firearm which is carried on or about a person in such a manner as to conceal the firearm from the ordinary sight of another person. Section 790.001(6), F.S., defines "firearm" as any weapon (including a starter gun) which will, 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; any destructive device; or any machine gun. The term "firearm" does not include an antique firearm unless the antique firearm is used in the commission of a crime.

<sup>5</sup> A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

<sup>6</sup> Section 790.01(2), F.S.

<sup>7</sup> Section 790.06, F.S., sets forth the requirements for obtaining a concealed weapon and concealed firearms license.

<sup>8</sup> Section 790.001(3)(b), F.S., defines "self-defense chemical spray" as 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.

<sup>9</sup> Section 790.001(15), F.S., defines "dart-firing stun gun" as any device having one or more darts that are capable of delivering an electrical current.

<sup>10</sup> Section 790.01(3) and (4), F.S.

<sup>11</sup> As part of his or her emergency management powers, the Governor is authorized to direct and compel the evacuation of all or part of the population from any stricken or threatened area within the state if she or he deems this action necessary for the preservation of life or other emergency mitigation, response, or recovery. Section 252.36(5)(e), F.S.

<sup>12</sup> Section 252.36(2), F.S., provides that a state of emergency shall be declared by executive order or proclamation of the Governor if she or he finds an emergency has occurred or that the occurrence or the threat thereof is imminent. The state of emergency shall continue until the Governor finds that the threat or danger has been dealt with to the extent that the emergency conditions no longer exist and she or he terminates the state of emergency by executive order or proclamation, but no state of emergency may continue for longer than 60 days unless renewed by the Governor.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The bill does not appear to have any impact on state revenues.

#### 2. Expenditures:

On January 30, 2014, the Criminal Justice Impact Conference determined that this bill will have an insignificant positive prison bed impact on the Department of Corrections.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

The bill does not appear to have any impact on local government revenues.

#### 2. Expenditures:

Section 790.01, F.S., makes it a first degree misdemeanor for a person to carry a concealed weapon or electric weapon or device on or about his or her person. The bill creates an additional exception to this statute, which could have a positive jail bed impact.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

#### 2. Other:

None.

### B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 5, 2014, the House Economic Development & Tourism Subcommittee adopted an amendment which clarified that the exemption provided by the bill pertaining to persons carrying concealed firearms would only apply to those who are lawfully permitted to possess a firearm.

The analysis has been updated to reflect the amendment.