

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 Fiscal Policy

BILL: CS/CS/SB 130

INTRODUCER: Community Affairs Committee; Criminal Justice Committee; and Senator Richter

SUBJECT: Discharging a Firearm

DATE: November 18, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cellon</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Stearns</u>	<u>Yeatman</u>	<u>CA</u>	<u>Fav/CS</u>
3.	<u>Jones</u>	<u>Hrdlicka</u>	<u>FP</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 130 prohibits the recreational discharge of a firearm in areas that are primarily residential. Violation of this prohibition is a first degree misdemeanor punishable by up to a year in jail and a \$1,000 fine.

The bill provides exemptions for the lawful defense of life or property, the accidental discharge of a firearm, or the performance of official duties that require the discharge of a firearm. Additionally, the penalties do not apply if, under the circumstances, the discharge does not pose a reasonably foreseeable risk to life, safety, or property.

II. Present Situation:

Legislative Preemption of the Field of Firearm and Ammunition Regulation

In 1987 the Florida Legislature created s. 790.33, F.S., which provides:

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.¹

Section 790.33, F.S. accomplished its stated purpose by “occupying the whole field of regulation of firearms and ammunition,” with the following provision:

PREEMPTION.—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.²

Despite s. 790.33, F.S., and a Florida appellate court opinion upholding the statute,³ local governments enacted, considered enacting, or attempted to enforce existing ordinances that required trigger locks, prohibited concealed carry permit holders from lawfully carrying their firearms on municipal or county property, and banned recreational shooting.⁴

Recent Legislative Change

The Legislature amended s. 790.33, F.S., in 2011 to create a civil fine of up to \$5,000 for a knowing and willful violation of the preemption law by any elected or appointed local government official or agency head. The amendment also created injunctive relief against the enforcement of any ordinance, regulation, or rule by local governmental entities that violated s. 790.33, F.S.⁵

Subsequent to the 2011 amendment to s. 790.33, F.S., local governments began to examine, reevaluate, and repeal local ordinances related to firearms or ammunition.⁶

¹ Section 790.33(2)(a), F.S.

² Section 790.33(1), F.S.

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

⁴ See FL AGO 2000-42 (“May a municipality enact an ordinance requiring the use of locking devices on firearms stored within the city?”); FL AGO 2005-40 (“May a county pass an ordinance prohibiting the discharge of a firearm in proximity to persons or property when such discharge endangers the health, welfare, and safety of the citizens of such county?”). Similarly, note that s. 790.333, F.S., provides preemption of “the whole field of regulation of firearms and ammunition use at sport shooting and training ranges, including the environmental effects of projectile deposition at sport shooting and training ranges.” In FL AGO 2008-34, the question “May a county enforce its land development code to prohibit a shooting range in a residential land use district in light of section 790.333(8), Florida Statutes?” was addressed. The Attorney General opined: “To read the preemption provision in section 790.333, Florida Statutes, as a total ban on the application of any zoning or land use regulation upon an existing or proposed sports shooting range would render section 823.16(7), Florida Statutes...of no use or consequence. ...it is my opinion that a county clearly may impose existing zoning and land use regulations upon the siting of a proposed sports shooting range; however, no newly created or amended zoning or land use regulations may be enforced against existing ranges.”

⁵ Chapter 2011-109, L.O.F.

⁶ FL AGO 2011-17 (“May [a] county regulate the recreational discharge of firearms in residentially zoned areas in light of section 790.33, Florida Statutes?”).

Discharging a Firearm

Prior to 2012, s. 790.15(1), F.S., did not address discharging a firearm on private property except that it was a first degree misdemeanor to knowingly discharge a firearm over any occupied premises.⁷

In 2012, the Legislature amended s. 790.15(1), F.S., to prohibit “recklessly or negligently discharging a firearm” outdoors on any property used primarily as the site of a dwelling as defined in s. 776.013, F.S., or zoned exclusively for residential use.⁸

Backyard Gun Ranges

Recently, there have been reports of persons constructing “gun ranges” in their backyards.⁹ Many of the persons using backyard gun ranges live in residential neighborhoods, which cause their neighbors to be concerned for their own safety. In December 2013, a man in Volusia County was struck and killed by a stray bullet fired from a neighbor’s yard.¹⁰ According to the news reports, some local law enforcement and their legal counsel found the language “recklessly or negligently discharges a firearm,” in s. 790.15(1), F.S., to be subjective and vague.¹¹ This interpretation of the language seems to have inhibited law enforcement from taking a proactive approach in the reported circumstances.¹²

III. Effect of Proposed Changes:

Section 1 amends s. 790.15, F.S., to prohibit the recreational discharge of a firearm outdoors, including for target shooting or celebratory shooting, in an area that the person knows or reasonably should know is primarily residential in nature and that has a residential density of one or more dwelling units per acre. A violation of this law is a first degree misdemeanor punishable by up to a year in jail and a \$1,000 fine.

The bill provides exemptions for the lawful defense of life or property, the accidental discharge of a firearm, or the performance of official duties that require the discharge of a firearm. Additionally, the penalties do not apply if, under the circumstances, the discharge does not pose a reasonably foreseeable risk to life, safety, or property.

⁷ Section 790.15(1), F.S., also provides that it is a first degree misdemeanor to knowingly discharge of a firearm in any public place or on the right-of-way of any paved public road, highway, or street or over the right-of-way of any paved public road, highway, or street.

⁸ Chapter 2012-108, L.O.F. The term “dwelling” is defined in s. 776.013, F.S., as a building or conveyance of any kind, including any attached porch, whether the building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, and is designed to be occupied by people lodging therein at night.

⁹ See, e.g., Charles Billi, *Backyard gun range concerns St. Pete neighbors*, WTSP 10 News Tampa Bay Sarasota, (February 3, 2015), available at <http://www.wtsp.com/story/news/local/2015/02/02/man-builds-gun-range-in-his-yard-neighbors-concerned/22777421> (last visited November 16, 2015); Cammy Clark, *Fla. law allows backyard shooting ranges*, Miami Herald, Herald-Tribune, (February 1, 2014), available at <http://www.heraldtribune.com/article/20140201/WIRE/140209997> (last visited November 16, 2015).

¹⁰ Cammy Clark, *Fla. law allows backyard shooting ranges*, Miami Herald, Herald-Tribune, (February 1, 2014), available at <http://www.heraldtribune.com/article/20140201/WIRE/140209997> (last visited November 16, 2015).

¹¹ *Id.*

¹² *Id.*

Section 2 provides that the bill takes effect upon becoming a law.

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:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 790.15 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Community Affairs on October 6, 2015:

Provided an exemption for the accidental discharge of a firearm.

CS by Criminal Justice on September 16, 2015:

Changed the effective date of the bill from “July 1, 2016” to “upon becoming a law.”

B. Amendments:

None.

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