

**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.)

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Prepared By: The Professional Staff of the Committee on Education

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BILL: CS/SB 1330

INTRODUCER: Judiciary Committee and Senator Stargel

SUBJECT: Concealed Weapons and Firearms on Private School Property

DATE: March 31, 2017

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Stallard</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
2.	<u>Androff</u>	<u>Graf</u>	<u>ED</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>RC</u>	_____

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**I. Summary:**

CS/SB1330 provides that a person who is licensed to carry a concealed weapon or firearm under Florida law is not prohibited from carrying a concealed weapon or firearm on private school property during non-school hours if a religious institution is located on the property.

The bill takes effect July 1, 2017.

**II. Present Situation:**

**Overview**

Possessing firearms or weapons on the property of any elementary or secondary school, or any college or university, whether public or private, is generally prohibited under Florida law. There are several exceptions to this prohibition. Federal law also prohibits a person from possessing a firearm on school property. One exception to this federal prohibition is that it does not apply to those licensed to carry a firearm by the state. But, Florida's concealed carry license does not authorize licensees to carry weapons or firearms into school facilities.

**Carrying Weapons and Firearms**

Carrying a concealed weapon or firearm, as well as openly carrying a firearm, is generally illegal in this state. However, these prohibitions are subject to exceptions.<sup>1</sup>

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<sup>1</sup> Many of these exceptions are set forth in s. 790.25, F.S. Florida's licensed concealed carrying program, set forth at s. 790.06, F.S., is another exception.

### ***Lawful Concealed Carry of Weapons and Firearms***

A license to carry a concealed weapon or firearm appears to authorize a licensee to carry a concealed firearm in most places in the state. In general, a person will qualify for a license if he or she is at least 21 years of age, has qualifying training, does not chronically and habitually consume alcohol or other substances to the point of impairment, and has no recent criminal history.

A license, however, does not authorize a person to carry a concealed firearm into several places, including any college or university facility, any career center, or any elementary or secondary school facility or administration building. A license also does not authorize a person to carry a concealed firearm into any school, college, or professional athletic event not related to firearms.<sup>2</sup>

As used in the licensing statute, the terms referring to schools, colleges, and universities are not defined. As such, the statute makes no distinction between public and private schools.

Additional exceptions to the general prohibition against carrying a concealed firearm or openly carrying a firearm are created by s. 790.25(3), F.S. This statute authorizes an unlicensed individual to openly possess a firearm or carry a concealed firearm in a manner described in the statute. The statute, for example, authorizes law enforcement officers to carry firearms while on duty. The statute also authorizes those engaged in hunting, fishing, or camping to carry a firearm while engaging in those activities or traveling to and from them. A person may also possess a firearm at his or her home or place of business.

### **Prohibited Possession of Weapons and Firearms at School or Related Location**

In general, s. 790.115, F.S., prohibits a person from possessing any firearm, electric weapon or device, destructive device, or other weapon on the property of any school, school bus, or school bus stop. Unlike the statute authorizing the issuance of concealed weapon or firearm licenses, this statute expressly and broadly defines the term “school.” Under the definition, a school means any preschool through postsecondary school, *whether public or private*.<sup>3</sup> The penalty for violating the ban on weapons varies depending on the weapon possessed and whether the violator has a concealed weapons and firearms license.<sup>4</sup>

However, the statute includes several exceptions to the ban on possessing a weapon at a school. Specifically, the statute allows a person to possess any of the banned weapons “as authorized in support of school-sanctioned activities.” Additionally, a person may “carry” a firearm in:<sup>5</sup>

- A case to a firearms program, class, or function, if approved by school authorities;
- A case to a career center having a firearms training range; or
- A vehicle if the firearm is not accessible for immediate use, unless, in the case of a school district, the school district has opted out of this allowance.

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<sup>2</sup> See s. 790.06(12), F.S., for a list of the places that a license does not authorize a licensee to carry into.

<sup>3</sup> It also means any career center. Section 790.115(2)(a), F.S.

<sup>4</sup> A non-licensee possessing a firearm or other weapon commits a third degree felony, punishable by up to 5 years in prison and a fine not to exceed \$5,000. *See*, ss. 790.115(b)-(c), 775.082(9)(a)3.d. and 775.083(1)(c), F.S. However, licensees who commit this crime are guilty of a lesser charge, a second degree misdemeanor, punishable by up to 60 days in jail and a fine not to exceed \$500. *See*, ss. 790.115(2)(e), 790.06(12)(d), 775.082(4)(b), and 775.083(1)(e), F.S.

<sup>5</sup> Section 790.115(2)(a)1.-3., F.S.

## **Prohibited Exhibition of a Weapon or Firearm at a School or Related Location**

The ban on possessing weapons on school property applies only to such weapons as firearms, bombs, brass knuckles, knives, and the like. However, criminal penalties apply to a person who exhibits a sword, sword cane, box cutter, or common pocketknife in an angry or threatening manner.<sup>6</sup>

### **Federal Law**

The federal Gun-Free School Zones Act prohibits possessing a firearm that has moved in or otherwise affects interstate or foreign commerce at a place the individual knows, or has reasonable cause to believe, is a school or is within 1,000 feet of a school.<sup>7</sup> However, this prohibition does not apply to a person who is licensed to carry a concealed weapon or firearm.<sup>8</sup>

Another federal law, the Gun-Free Schools Act, is more-narrowly focused on prohibiting students from possessing firearms at or near schools. This prohibition is also subject to exceptions.<sup>9</sup> The act expressly states that it does not apply to a firearm “that is lawfully stored inside a locked vehicle on school property, or if it is for activities approved and authorized by the local educational agency and the local educational agency adopts appropriate safeguards to ensure student safety.”<sup>10</sup>

### **III. Effect of Proposed Changes:**

CS/SB1330 provides that a person who is licensed to carry a concealed weapon or firearm under Florida law is not prohibited from carrying a concealed weapon or firearm on private school property during non-school hours if a religious institution is located on the property.

#### **Carrying Weapons and Firearms at Private Schools**

Under current law, section 790.115, F.S., prohibits carrying a firearm or weapon on any school property, subject to exceptions in the statute. This statute defines school to include preschools through colleges and universities, public *or private*, as well as career centers. Also, Florida’s concealed weapons and firearms licensing statute lists elementary and secondary facilities and administration buildings, college and university facilities, and career centers as places where the license does not authorize a person to carry.

The bill expressly states that section 790.115, F.S., and the concealed weapons and firearms licensing statute do not prohibit concealed carry licensees from carrying on private school property during non-school hours, if a religious institution is located on the property. As such, the bill appears effectively to authorize licensees to carry concealed weapons and firearms in these places.<sup>11</sup>

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<sup>6</sup> Section 790.115(1), F.S.

<sup>7</sup> 18 U.S.C. § 922(q)(2)(A).

<sup>8</sup> *See*, 18 U.S.C. § 922(q)(2)(B)(ii).

<sup>9</sup> *See*, 20 U.S.C. § 7961.

<sup>10</sup> 20 U.S.C. § 7961(g).

<sup>11</sup> Federal law generally prohibits possessing a firearm at or within 1,000 feet of any school’s property.

The bill adopts the definition of “religious institution” from elsewhere in the Florida Statutes:<sup>12</sup>

“Religious institution” means a church, ecclesiastical or denominational organization, or established physical place for worship in this state at which nonprofit religious services and activities are regularly conducted and carried on and includes those bona fide religious groups that do not maintain specific places of worship. The term also includes a separate group or corporation that forms an integral part of a religious institution that is exempt from federal income tax under s. 501(c)(3) of the Internal Revenue Code and that is not primarily supported by funds solicited outside its own membership or congregation.

As such, “religious institution” can mean several different things. It can mean a place, or it can mean a group of people, such as a congregation. Accordingly, the times and places covered by the bill—i.e., “nonschool hours” at a “private school property” on which is located at “religious institution”—would *clearly* include, for example, any nonschool hour of any day at a private Jewish school that has on its campus a synagogue building that houses an active congregation.

The times and places covered by the bill *may* include, for example:

- Any nonschool hour of any day at a private Christian school that does not have a dedicated church building on its property, but hosts a congregation of worshipers in its auditorium on Sunday mornings.
- Friday evening at a private secular high school while it is hosting a Muslim congregation in its gymnasium.

### **Private School’s Right to Exclude Anyone Possessing a Weapon or Firearm**

It appears that a private school may exclude from its campus any person possessing a weapon or firearm. The Florida Constitution declares that every person has the right to “acquire, possess, and protect property.”<sup>13</sup> The right to exclude others is “one of the most essential sticks in the bundle of rights that are commonly characterized as property.”<sup>14</sup>

A person who enters the property of another without authorization commits the crime of trespass to property. The elements of trespass are set forth in s. 810.08(1), F.S., which states:

Whoever, without being authorized, licensed, or invited, willfully enters or remains in any structure or conveyance, or, having been authorized, licensed, or invited, is warned by the owner or lessee of the premises, or by a person authorized by the owner or lessee, to depart and refuses to do so, commits the offense of trespass in a structure or conveyance.

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<sup>12</sup> The bill references s. 775.0861, F.S., which defines “religious institution” by reference to s. 496.404(23), F.S.

<sup>13</sup> FLA. CONST. art. I, s. 2.

<sup>14</sup> *Nollan v. Cal. Coastal Comm’n*, 483 U.S. 825, 831 (1987) (quoting *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 433 (1982)).

Trespassing with a firearm is a third degree felony,<sup>15</sup> punishable by up to 5 years in prison,<sup>16</sup> 5 years of probation, and a fine not to exceed \$5,000.<sup>17</sup>

**Effective Date**

The bill takes effect July 1, 2017.

**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.

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.

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<sup>15</sup> Section 810.08(2)(c), F.S.

<sup>16</sup> Section 775.082(3)(e), F.S.

<sup>17</sup> Section 775.083(1)(c), F.S.

**VIII. Statutes Affected:**

This bill substantially amends section 790.115 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 by Judiciary on March 22, 2017:**

The underlying bill made certain statutory provisions regulating weapons and firearms at schools, colleges, universities, and career centers apply only to public entities. The committee substitute replaced the substance of the underlying bill with a simpler concept. The committee substitute provides that two statutes that prohibit a person from possessing a concealed weapon or firearm at a school do not apply to private school property during nonschool hours if a religious institution is located on the property.

- B. **Amendments:**

None.