

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 Judiciary

BILL: SB 1330

INTRODUCER: Senator Stargel

SUBJECT: Weapons and Firearms

DATE: March 21, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stallard	Cibula	JU	Pre-meeting
2.			ED	
3.			RC	

I. Summary:

SB 1330 modifies the Florida Statute that prohibits, subject to exceptions, possessing a weapon or firearm on the property of any career center or any school, public or private, elementary through postsecondary, restricting its application to public schools.

By limiting the application of the statute to public schools, the possession of weapons and firearms at private schools are governed by the statutes that generally apply elsewhere in the state. One such statute is the concealed weapon licensing statute along with its restrictions on where a concealed weapon or firearm may be carried under the authority of the license. This licensing statute provides that the license does not authorize the holder of a concealed weapon or firearm license to possess a concealed weapon or firearm at school athletic events and school facilities and administration.

Other firearm regulations that continue to apply to private schools are set forth in federal law.

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 generally prohibits a person from possessing a firearm on school property if the firearm has moved in interstate commerce or otherwise affects interstate or foreign commerce. 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, or at most school events.

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 a host of exceptions.¹

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. The license also does not authorize a person to carry a concealed firearm into any school, college, or professional athletic event not related to firearms.²

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*.³ 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.⁴

¹ 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.

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

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

⁴ 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.

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:⁵

- 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.

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.⁶

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.⁷ However, this prohibition does not apply to a person who is licensed to carry a concealed weapon or firearm.⁸

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.⁹ This 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.”¹⁰

III. Effect of Proposed Changes:

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. And school is defined to include preschools through colleges and universities, public or private, as well as career centers. Under the bill, this section no longer applies to private schools. However, the effect of this change is limited by other state and federal laws regulating weapons and firearms.

⁵ Section 790.115(2)(a)1.-3., F.S.

⁶ Section 790.115(1), F.S.

⁷ 18 U.S.C. §922(q)(2)(A).

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

⁹ *See*, 20 U.S.C. § 7961.

¹⁰ 20 U.S.C. § 7961(g).

School Zones

Federal law, subject to exceptions, prohibits carrying firearms in any “school zone,” which is essentially public or private school property and the non-private property within 1000 feet of the school property. This law, however, does not prohibit a person who has a concealed weapon or firearm license from carrying in a school zone.

Florida’s concealed weapon licensing scheme does not authorize licensees to carry a concealed weapon or firearm onto into any elementary or secondary school facilities or administration buildings, into college or university facilities, or any school, college, or professional athletic event not related to firearms.¹¹ The licensing statute does not specify that these prohibitions pertain only to public institutions. As such, the bill appears to permit a person who holds a concealed weapon or firearm license to carry a concealed weapon or firearm on the property of a private school but not into an athletic event or school facility or administration building.¹²

Penalty for a Licensee Who Carries and Weapon or Firearm at a Public School

Under current law, the statute that broadly prohibits carrying a firearm at a school (s. 790.115, F.S.) also states that a person who unlawfully discharges a firearm at school commits a second degree felony, punishable by up to 15 years in prison, 15 years of probation, and a \$10,000 fine. Under the statute, the intent of the person who discharged the firearm is generally irrelevant. The bill revises the statute to require that the discharge of the firearm by a concealed carry licensee be willful before the criminal penalty applies.

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

The Florida Constitution declares that every person has the right to “acquire, possess, and protect property.”¹³ The right to exclude others is “one of the most essential sticks in the bundle of rights that are commonly characterized as property.”¹⁴

A person who enters the property of another without authorization commits the crime of trespass to property. This elements of the crime 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

¹¹ See s. 790.06(12), F.S., for a list of all of the places that a license does not authorize a licensee to carry into.

¹² Nothing in the bill, however, restricts the authority of a private school to exclude those who do not comply with the school’s policies over weapons or firearms.

¹³ FLA. CONST. art. I, s. 2.

¹⁴ *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,¹⁵ punishable by up to 5 years in prison¹⁶ and a fine not to exceed \$5,000.¹⁷ Therefore, it appears that a private school may exclude from its campus any person possessing a weapon or firearm.

Effective Date

The bill takes effect October 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.

¹⁵ Section 810.08(2)(c), F.S.

¹⁶ Section 775.082(3)(e), F.S.

¹⁷ Section 775.083(1)(c), F.S.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 790.115, 435.04, and 1012.315.

This bill reenacts the following sections of the Florida Statutes: 921.0022, 790.251, 943.051, 985.11, 985.25, 985.255, and 985.557.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

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