

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 1236

INTRODUCER: Senators Baxley and Steube

SUBJECT: School Safety

DATE: February 19, 2018

REVISED: _____

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

I. Summary:

SB 1236 authorizes school principals to designate one or more persons who meet the qualifications in the bill to carry a concealed weapon or firearm in school buildings; school district superintendents may make the same designation as to administrative buildings. Additionally, the bill increases the safety and security measures that school districts must take, which include consulting with law enforcement agencies every three years and establishing emergency procedures for active-shooter and hostage situations.

Under current law, as a general matter, only law enforcement officers are exempt from the ban on possessing a weapon or firearm on the property of a school. This includes public and private schools from preschool to the postsecondary level, as well as career centers. The bill authorizes school authorities to designate one or more persons to carry a concealed weapon or firearm on school property. But to qualify as a designee a person must:

- Be a former or current law enforcement officer or specified member of the military who did not have a firearms-related discipline incident while serving;
- Be licensed to carry a concealed weapon or firearm;
- Complete extensive training, and undergo continuing annual training, as specified in the bill; and
- Pass a level 2 background screening, which involves a search of state and federal databases for evidence of whether a person has committed any of a long list of serious crimes, including those involving violence and sexual misconduct.

II. Present Situation:

Overview

The law broadly bans the possession of a weapon or firearm on the property of a school. For the purpose of this ban, schools include public or private schools from preschool to the

postsecondary level, and also include career centers. Although this prohibition applies even to persons who have a concealed weapon or firearms license, it does not apply to full-time or part-time law enforcement officers.

Also, school districts must prescribe policies and procedures for emergency drills and actual emergencies, and they must establish model emergency management and preparedness procedures related to weapon-use and hostage situations.

Prohibited Possession of a Weapon or Firearm at a School or Related Location

In general, s. 790.115, F.S., prohibits a person other than a law enforcement officer from knowingly and willfully possessing any firearm, electric weapon or device, destructive device, or other weapon on the property of any school. This statute expressly defines the term “school” as any preschool through postsecondary school, whether public or private, including a career center.¹ The penalty for violating the ban on weapons and firearms varies depending on whether the violator has a license to carry a concealed weapon or firearm.²

Where the statute exempts “law enforcement officers” from the ban on possessing a weapon or firearm on school property, it specifies that this term includes the following persons, as they are defined in s. 943.10, F.S.:

- Law enforcement officer;
- Correctional officer;
- Correctional probation officer;
- Part-time law enforcement officer;
- Part-time correctional officer;
- Auxiliary law enforcement officer; and
- Auxiliary correctional officer.³

Another statute authorizes school district boards to commission one or more school safety officers, who must be certified law enforcement officers, as defined in s. 943.10(1), F.S.⁴

Beyond the exemption of law enforcement officers from the ban, the statute permits persons to possess a weapon or firearm “as authorized in support of school-sanctioned activities,” or to “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.⁶

¹ Section 790.115(2)(a), F.S.

² A non-licensee possessing a firearm or other weapon commits a third degree felony, which is generally 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, a licensee who commits this crime is guilty of a lesser crime, 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.

³ Section 790.115(3), F.S.

⁴ *See* s. 1006.12, F.S.

⁵ Section 790.115(2)(a)1.-3., F.S.

⁶ However, a school district may opt out of permitting firearms that are stored in vehicles.

School Safety Policies and Procedures

School district boards must “provide for the proper accounting for all students, for the attendance and control of all students at school, and for proper attention to health, safety, and other matters relating to the welfare of students”⁷ This includes creating various rules, procedures, and codes related to student safety, discipline, and welfare. As part of these requirements, school district boards must formulate and prescribe policies and procedures for emergency drills and actual emergencies, including fires, natural disasters, and bomb threats for all K-12 public schools. Moreover, school district boards must establish model emergency management and emergency preparedness procedures for a variety of life-threatening emergencies, including emergencies involving weapon-use and hostage situations.⁸

Lawful Concealed Carry of Weapons or Firearms

Although carrying a concealed weapon or firearm is generally illegal in this state, the prohibition is subject to several exceptions.⁹

The most significant exception to the prohibition on the carrying of concealed weapons and firearms may be the licensed carrying of these items. The license authorizes a licensee to carry a concealed weapon or firearm in most places in the state. To obtain a license, one must submit an application to the Department of Agriculture and Consumer Services, and the Department must grant the license to each applicant who:¹⁰

- 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 that prevents the safe handling of a weapon or firearm;
- Is not ineligible to possess a firearm by virtue of having been convicted of a felony;
- Has not been committed for the abuse of a controlled substance;
- Has not been found guilty of a crime 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;
- Desires a legal means to carry a concealed weapon or firearm for lawful self-defense;
- Demonstrates competency in the use of a firearm;¹¹

⁷ Section 1006.07, F.S.

⁸ Section 1006.07(4), F.S.

⁹ Many of these exceptions are set forth in s. 790.25, F.S.

¹⁰ Section 790.06(2), F.S. However, the Department must *deny* a license to an applicant who meets any criterion set forth in s. 790.06(3), F.S, which also sets forth criteria for the mandatory revocation of a license.

¹¹ See s. 790.06(2)(h), F.S., for the list of courses and other means of demonstrating competency, and for the required documentation that one must present to the state relative to this provision.

- Has not been, or is deemed not to have been, adjudicated an incapacitated person in a guardianship proceeding;
- Has not been, or is deemed not to have been, committed to a mental institution;
- Has not had adjudication of guilt withheld or imposition of sentence suspended on any felony, or any misdemeanor crime of domestic violence, unless 3 years have elapsed since probation or any other conditions set by the court have been fulfilled, or expunction has occurred;
- Has not been issued an injunction that is currently in force and effect which 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.

Although the license generally authorizes a person to carry a concealed weapon or firearm throughout the state, it 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.¹² 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 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 to carry a concealed firearm in any of the manners described in the statute. The statute, for example, authorizes law enforcement officers to carry firearms while on duty. Additionally, the statute authorizes a person to carry a firearm while engaged in hunting, fishing, or camping or while traveling to and from these activities. A person may also possess a firearm at his or her home or place of business or in any of the other circumstances set forth in statute.

Federal Law

The federal Gun-Free School Zones Act prohibits the possession of 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.¹³ However, this prohibition is subject to several exceptions, including that it does not apply to possession of a firearm:

- By a law enforcement officer acting in his or her official capacity;
- By a person who is licensed to carry a concealed weapon or firearm;
- That is unloaded and in a locked container or rack in a motor vehicle; or
- By an individual for use in a program approved by a school.¹⁴

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

¹³ 18 U.S.C. § 922(q)(2)(A).

¹⁴ See 18 U.S.C. § 922(q)(2)(B).

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.¹⁵ 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.”¹⁶

Other States’ Authorization of Firearms and Weapons on School Property

Laws regarding weapons and firearms at schools in other states vary widely, including in terms of who may carry and at what educational level. Texas is one state that authorizes certain school employees to carry a concealed handgun on school property. There, a school district or charter school may appoint one or more “school marshals,” who may carry a concealed handgun. The law specifies that the marshal must be an employee of the school district or charter school, have completed 80 hours of training, have passed a mental health screening, and be authorized by the governing authority of a school district or charter school.¹⁷ The marshal must carry his or her concealed handgun in accordance with regulations promulgated by the authorities. However, if the marshal has “regular, direct” contact with students, he or she must keep his or her gun locked up until there is a situation in which deadly force would be justified.¹⁸

Meanwhile, several states permit general licensed carry on college and university campuses, according to the National Conference of State Legislatures (NCSL). These states include Arkansas, Colorado, Georgia, Idaho, Kansas, Mississippi, Oregon, Texas, Utah, and Wisconsin.¹⁹

III. Effect of Proposed Changes:

Overview

The bill authorizes school principals to designate one or more persons who meet the qualifications in the bill to carry a concealed weapon or firearm in school buildings; school district superintendents may make the same designation as to administrative buildings. Additionally, the bill increases the safety and security measures that school districts must take. Particularly, schools must consult with law enforcement agencies every three years and develop emergency notification and preparedness policies and procedures for active-shooter and hostage situations.

Armed Security Designees

Under the bill, qualified persons who are designated by school authorities are not subject to the general ban on possession of weapons and firearms on the property of any public or private preschool, elementary school, secondary school, postsecondary school, or career center.

¹⁵ See 20 U.S.C. § 7961.

¹⁶ 20 U.S.C. § 7961(g).

¹⁷ TEX. OCCUPATIONS CODE § 1701.260.

¹⁸ See TEX. EDUC. CODE § 37.0811, regarding school marshals in general.

¹⁹ NCSL, *Guns on Campus: Overview* (May 5, 2017) <http://www.ncsl.org/research/education/guns-on-campus-overview.aspx#2> (last visited Feb. 16, 2018).

There are three components to qualification as a designee who is exempt from the ban. First, a person must be a current or honorably discharged law enforcement officer or military member, or he or she must have a valid license to carry a concealed weapon or firearm. More specifically, the person must be:

- An honorably discharged veteran of the U.S. Armed Forces;
- An active duty member of the U.S. Armed Forces, the Florida National Guard, or the U.S. Reserves;
- A current or former law enforcement officer; or
- A person licensed to carry a concealed weapon or firearm under this state's licensing statute.

However, in order to qualify under the bill, a current or former law enforcement officer or member of the armed forces must not have been found to have committed a firearms-related disciplinary infraction during his or her time of service.

The second requirement for qualification as a designee under the bill is adequate training. The bill specifies that a school principal or district superintendent may only designate a person who "provides proof of completion of training as created by the Criminal Justice Standards and Training Commission and administered and certified by the Criminal Justice Training Center." Moreover, a designee must submit proof that he or she completed 40 hours of a school safety program and must annually complete 8 hours of active shooter training and 4 hours of firearm training as these trainings and programs are defined by the Department of Law Enforcement.

The third requirement to qualify as a designee under the bill is passing a level 2 background screening pursuant to s. 435.04, F.S. This screening involves using a person's fingerprints to search various databases to ensure that a person has not been found guilty of, pled nolo contendere or guilty to, or been adjudicated delinquent of any of a long list of serious crimes involving violence, sexual misconduct, and other especially bad acts.

Security Policies and Procedures

The bill requires school districts to formulate and prescribe policies and procedures for drills and actual emergencies related to active shooter and hostage situations. Finally, the bill requires district school boards or private school principals or governing boards to allow law enforcement agencies or first responders to tour each school campus every 3 years. The school district or private school principal must document safety and emergency issues recommended by law enforcement based on these tours.

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.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 790.115, 1006.07, and 1006.12.

This bill makes conforming changes to the following sections of the Florida Statutes: 435.04, 790.251, 921.0022, and 1012.315.

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.