

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 1242

INTRODUCER: Senator Steube

SUBJECT: Carrying of Weapons and Firearms

DATE: January 17, 2018

REVISED: _____

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

I. Summary:

SB 1242 adds two broad categories of persons to the statutory list of those who may carry a weapon or firearm without the need for further authorization, such as a concealed weapon or firearms license. One such category is that of persons “engaged in, traveling to, or returning from a lawful outdoor activity, including, but not limited to,” the many activities listed in the bill. These activities range widely, from sporting activities such as cast netting, falconry, or riding an all-terrain vehicle, to leisure activities such as bird watching, picnicking, or dog walking. Additionally, the bill permits a person to carry a firearm or a concealed weapon when traveling to or returning from a motor vehicle, a residence, any place of shelter, or “any other place at which a firearm or weapon may be lawfully possessed.”

II. Present Situation:

Overview

The Florida Statutes generally prohibit a person from carrying a firearm,¹ whether concealed or unconcealed, or from carrying a concealed weapon.² However, exceptions to these bans are set forth in two statutes. One of these statutes is s. 790.06, F.S., which authorizes a person who has a license to carry a concealed weapon or firearm to carry these items throughout the state, except for the few places listed in the statute, such as police stations, courthouses, prisons, and schools. Another statute, s. 790.25, F.S., sets forth other exceptions to the general bans on carrying a

¹ “Firearm” is defined at section 790.001(6), F.S., 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.”

² A “weapon” is defined at section 790.001(13), F.S., as, “any dirk, knife, metallic knuckles, slungshot, billie, tear gas gun, chemical weapon or device, or other deadly weapon except a firearm or a common pocketknife, plastic knife, or blunt-bladed table knife.”

firearm or concealed weapon. This statute authorizes several categories of persons to carry a firearm or concealed weapon without further authorization, such as a concealed carry license. These categories of persons include specified military and law enforcement personnel, certain persons whose occupations relate to firearms, and persons traveling to, engaged in, or returning from fishing, hunting, or camping.

General Prohibitions on Carrying a Firearm or Concealed Weapon

State law generally prohibits carrying a concealed firearm, openly carrying a firearm, or carrying a concealed weapon by classifying these acts as serious crimes. A person who openly carries a firearm³ commits a second degree misdemeanor, punishable by up to 60 days in jail and a fine not to exceed \$500.⁴ A person who carries a concealed weapon commits a first degree misdemeanor, punishable by up to 1 year in jail and a fine not to exceed \$1,000.⁵ And a person who carries a concealed firearm commits a felony of the third degree, punishable by up to 5 years in prison and a fine not to exceed \$5,000.⁶

Lawful Carrying of Firearms or Weapons

Lawful Unlicensed Carry

Section 790.25(3), F.S., sets forth a long and intricate list of persons who may lawfully carry concealed or unconcealed firearms or weapons regardless of whether they have a concealed weapon or firearms license.⁷ Many of the persons on the list are specified military and law enforcement personnel, including:

- Members of the armed forces, organized reserves, when on duty, when training or preparing themselves for military duty, or while subject to recall or mobilization;
- Sheriffs, marshals, prison or jail wardens, police officers, Florida highway patrol officers, game wardens, revenue officers, forest officials, special officers appointed under the provisions of chapter 354, F.S., and other peace and law enforcement officers and their deputies and assistants and full-time paid peace officers of other states and of the Federal Government who are carrying out official duties while in this state; and
- On-duty investigators employed by public defenders' or state attorneys' offices, and who meet the other criteria set forth in statute.

³ "Electric weapon or device" means "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." Section 790.001(14), F.S.

⁴ See ss. 790.053, 775.082(4)(b), and 775.083(1)(e), F.S.

⁵ See ss. 790.01(1), 775.082(4)(a), and 775.083(1)(d), F.S.

⁶ See ss. 790.01(2), 775.082(3)(e), and 775.083(1)(c), F.S. However, see s. 775.084, F.S., regarding the possibility of an additional prison term under certain circumstances, such as when the court finds that the criminal is a "violent career criminal."

⁷ Although s. 790.25(3), F.S., is not perfectly clear that it authorizes the unlicensed concealed or unconcealed carry of a firearm, especially when read in light of s. 790.25(2), F.S., the courts have nonetheless stated that it does. See, e.g., *State v. Little*, 104 So. 3d 1263, (Fla. 4th DCA 2013) (holding that a union secretary carrying a concealed firearm at the union hall parking lot was exempt from the general ban on concealed carry in s. 790.01, F.S., by virtue of section 790.25(3)(n), F.S.); *Norman v. State*, 215 So. 3d 18, 22 (Fla. 2017) (stating that "pursuant to chapter 790, Florida law provides sixteen exceptions to Florida's Open Carry Law . . ." and that s. 790.25(3), F.S., provides "a list of sixteen statutory exceptions to the [law prohibiting the open carry of a firearm].")

Other persons on the list include those whose employment relates to firearms, such as:

- Guards or messengers of common carriers, armored car carriers, banks, and other specified organizations, while actually employed in and about the shipment, transportation, or delivery of any money, treasure, bullion, bonds, or other thing of value within this state; and
- A person engaged in the business of manufacturing, repairing, or dealing in firearms, or the agent or representative of any such person while engaged in the lawful course of such business.

Yet other persons on the list include those who are using firearms during outdoor recreation, such as:

- A person engaged in fishing, camping, or lawful hunting or going to or returning from a fishing, camping, or lawful hunting expedition; and
- A person firing weapons for testing or target practice under safe conditions and in a safe place not prohibited by law or going to or from such place.

Finally, the list includes the following persons who are traveling or who are at their homes or places of business:

- A person traveling by private conveyance when the weapon is securely encased or in a public conveyance when the weapon is securely encased and not in the person's manual possession;
- A person while carrying a pistol unloaded and in a secure wrapper, concealed or otherwise, from the place of purchase to his or her home or place of business or to a place of repair or back to his or her home or place of business; and
- A person possessing arms at his or her home or place of business.

Concealed Weapon or Firearm License

Beyond the authorization set forth in s. 790.25(3), F.S., a person may carry a concealed weapon or firearm if he or she has a concealed weapon or firearms license. The concealed weapon or firearms license authorizes a licensee to carry a concealed weapon or firearm throughout most of the state.⁸ The license, however, does not authorize a person to carry a concealed firearm into several categories of places, such as school facilities, courthouses, legislative meetings, and bars.

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 meets each of the long list of criteria set forth in statute. Under these criteria, an applicant must be 21 years, a legal resident of the United States, and able to use a firearm. Moreover, an applicant is disqualified under these criteria if he or she has a specified mental health issue, significant criminal history, or substance abuse problem.⁹

⁸ As of December 31, 2017, 1,836,954 Floridians held a standard concealed carry license. Fla. Dept. of Ag., *Number of Licensees by Type*, http://www.freshfromflorida.com/content/download/7471/118627/Number_of_Licensees_By_Type.pdf (last visited January 12, 2018).

⁹ See 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.

III. Effect of Proposed Changes:

This bill adds two broad categories of persons to the statutory list of those who may carry a concealed or unconcealed firearm or a concealed weapon without the need for further authorization, such as a concealed weapon or firearms license.

One such category is a “person engaged in, traveling to, or returning from a lawful outdoor activity” including, but not limited to, the many activities listed in the bill. The enumerated activities range widely, from sporting activities such as cast netting, falconry, or riding an all-terrain vehicle, to leisure activities such as bird watching, picnicking, or dog walking.

Additionally, the bill permits a person to carry a firearm or concealed weapon when traveling to or returning from a motor vehicle, a residence, any place of shelter, or “any other place at which a firearm or weapon may be lawfully possessed.” This quoted language may authorize a person to carry a weapon or firearm when traveling to or from most places in the state, given that the statutes set forth few places, such as schools, at which the mere “possession” of a weapon or firearm is illegal. As such, any place at which the possession of weapons or firearms is not statutorily banned may be deemed to be a place at which “a firearm or weapon may be lawfully possessed.”

The bill takes effect July 1, 2018.

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 section 790.25 of the Florida Statutes.

This bill conforms cross references in section 27.53 of the Florida Statutes.

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.