

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 148

INTRODUCER: Senator Steube

SUBJECT: Weapons and Firearms

DATE: November 13, 2017 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stallard	Cibula	JU	Unfavorable
2.			GO	
3.			RC	

I. Summary:

SB 148 modifies the nature and consequences of a violation of the ban on openly carrying a firearm by a person who has a license to carry a concealed weapon or firearm. The bill also clarifies the manner in which a legally concealed firearm may briefly be displayed without violating the open-carry ban.

Under current law, any person who violates the ban on openly carrying a firearm commits a second degree misdemeanor. Under the bill, a person who has a concealed weapon or firearm license commits a noncriminal violation of the ban for a first or second violation. The penalties for these violations are \$25 for the first violation and \$500 for the second. A third or subsequent violation by a licensee is a second degree misdemeanor.

Current law provides that a licensee who briefly displays his or her firearm in a certain manner does not violate the ban on the open carry of firearms. However, the terms of this “safe harbor” are set forth in a complex, 63-word sentence that may be open to different interpretations. The sentence might be read to mean that the safe harbor applies only when a firearm is displayed in necessary self-defense. Thus, an inadvertent display of a firearm would not be protected by the safe harbor; however, the revised language covers inadvertent displays. Additionally, the bill removes the safe harbor’s express requirement that the brief display not be “in an angry or threatening manner.” Nonetheless, the display of a firearm in an angry or threatening manner remains prohibited by other laws.

II. Present Situation:

Overview

In general, the open carry of a firearm is illegal. A person who violates the ban on openly carrying a firearm commits a second degree misdemeanor, regardless of whether he or she has a

concealed-carry license. However, not every display of a firearm by a licensee constitutes a violation of the open-carry ban. A licensee does not violate the ban by a brief display of the type described in statute.

Lawful Brief Display of a Firearm by a Concealed-Carry Licensee

In general, carrying a firearm openly is a second degree misdemeanor, punishable by up to 60 days in jail and a fine not to exceed \$500.¹ However, the statute banning the open carry of a firearm provides a safe harbor from criminal liability for a brief display of a firearm by a licensee. The safe harbor protects a licensee:

[W]ho is lawfully carrying a firearm in a concealed manner [and] briefly and openly display[s] the firearm to the ordinary sight of another person, unless the firearm is intentionally displayed in an angry or threatening manner, not in necessary self-defense.²

This language is not completely clear. It might be read to require that a display of a firearm be in necessary self-defense. As a result of this narrow reading, the inadvertent display of a concealed firearm might subject a person to arrest for violating the open-carry ban. Also, the statute might be read to ban any display that is “angry or threatening,” regardless of whether such a display would be necessary to defend oneself.

Concealed Carry of Weapons or Firearms

Concealed Carry Generally Prohibited

In general, a person who does not have a concealed-carry license and who carries a concealed firearm commits a third degree felony.³ And an unlicensed person who carries other types of concealed weapons, or a concealed electric weapon or device, commits a first degree misdemeanor.⁴ This prohibition on the possession of a concealed weapon or firearm is subject to exceptions, including this state’s concealed-carry licensing scheme.⁵

¹ Sections 775.082(4)(b) and 775.083(1)(e), F.S. Neither “openly carrying,” “open carry,” nor any derivation of these terms is defined in the Florida Statutes. The ban on open carrying of firearms is subject to exceptions. Specifically, s. 790.25(3), F.S., sets forth a long and diverse list of persons who are not subject to the ban on openly carrying a firearm, including on-duty law enforcement officers, persons who are hunting, fishing or camping, and investigators of a public defender or state attorney.

² Section 790.053(1), F.S.

³ A third degree felony is punishable by a prison sentence not to exceed 5 years and a \$5,000 fine. Sections 775.082(3)(e), and 775.083(1)(c), F.S. Section 790.02, F.S., provides that the carrying of a concealed firearm in violation of section 790.01, F.S., constitutes a breach of peace, for which an officer may make a warrantless arrest if the officer has “reasonable grounds or probable cause to believe that the offense of carrying a concealed weapon is being committed.”

⁴ A first degree misdemeanor is punishable by a jail sentence not to exceed 1 year and a \$1,000 fine. Sections 775.082(4)(a), 775.083(1)(d), F.S.

⁵ Section 790.25(3), F.S., sets forth a long and diverse list of persons who are not subject to the licensing scheme, and who apparently may carry concealed without a license, including on-duty law enforcement officers, persons who are hunting, fishing or camping, and investigators of a public defender or state attorney, just to name a few.

Licensed Concealed Carry

Florida's concealed carry licensing scheme is set forth at s. 790.06, F.S. The license only permits the concealed carry of handguns and certain non-firearm weapons.⁶ Currently, over 1.8 million Floridians hold a standard concealed-carry license.⁷

To obtain a license, one must submit an application to the Department of Agriculture and Consumer Services. The Department *must* grant this license to each applicant who:⁸

- 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 which 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 or 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 competence with a firearm;⁹
- Has not been adjudicated an incapacitated person in a guardianship proceeding, unless 5 years have elapsed since the applicant's restoration to capacity by court order;
- Has not been committed to a mental institution, unless the applicant produces a certificate from a licensed psychiatrist that he or she has not suffered from disability for at least 5 years before the date of submission of the application;
- 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 and that 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.

⁶ "For the purposes of this section, concealed firearms and concealed weapons are defined as a handgun, electronic weapon or device, tear gas gun, knife, or billie, but the term does not include a machine gun." Section 790.06(1), F.S.

⁷ As of October 31, 2017, 1,812,542 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 November 3, 2017).

⁸ Section 790.06(2), F.S. Accordingly, Florida is referred to as a "shall-issue" state, as opposed to a "may-issue" state. Also, the Department must deny a license to an applicant who meets criteria set forth in s. 790.06(3), F.S.

⁹ 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 the provision.

The licensing statute states that a “person in compliance with the terms of such license may carry a concealed weapon or concealed firearm notwithstanding the [ban on the concealed carry of a weapon or firearm].”¹⁰

However, the statute also expressly states that the license does not permit a licensee to carry into any of a long list of places set forth in the statute, including K-12 facilities, college or university facilities, courthouses, bars, airport terminals, several types of government meetings, and any place prohibited by federal law.¹¹ If a licensee carries into any of these places without independent justification,¹² he or she commits a second degree misdemeanor, punishable by up to 60 days in jail and a fine not to exceed \$500.¹³

III. Effect of Proposed Changes:

Violation of the Prohibition on the Open Carry of a Firearm

Under current law, the open carry of a firearm is generally prohibited, constituting a second degree misdemeanor, punishable by up to 60 days in jail and a fine not to exceed \$500.¹⁴

The bill modifies the nature and consequences of a violation of the open-carry ban *by a person who has a concealed weapons and firearms license*. Under the bill, a licensee’s first two violations of the open-carry ban are non-criminal offenses. The first violation has a penalty of \$25, and the second has a penalty of \$500. A licensee’s third violation is a second degree misdemeanor, punishable by 60 days in jail and a fine not to exceed \$500. Under current law, any violation of the open carry ban by any person is a second degree misdemeanor.¹⁵

Lawful Temporary and Open Display of Firearm by Concealed-Carry Licensees

The bill, like current law, specifies that a concealed-carry licensee who is lawfully carrying concealed, then briefly displays a firearm in the manner described in statute, does not violate the statute banning the open carry of firearms. However, the bill clarifies this “safe harbor,” which currently states that a licensee does not violate the statute if he or she “briefly and openly display[s] the firearm to the ordinary sight of another person, unless the firearm is intentionally displayed in an angry or threatening manner, not in necessary self-defense.”¹⁶

This language is unclear as to whether the display must be in self-defense and as to whether a necessary-self-defense display is prohibited if it is “angry or threatening.”

¹⁰ Section 790.06(1), F.S.

¹¹ Section 790.06(12)(a), F.S.

¹² For example, s. 790.25(3), F.S. authorizes the persons there listed to carry concealed without a license and expressly exempts these persons from the licensing statute. Therefore, a licensee who is also one of the persons listed at section 790.25(3), F.S., might have an independent justification to carry into the places listed in the licensing statute as place into which a license not authorize carrying a weapon or firearm.

¹³ Note that this does not appear to be the type of crime that would be grounds for the revocation of the license pursuant to s. 790.06(3), F.S.

¹⁴ Sections 775.082(4)(b), 775.083(1)(e), F.S. Neither “openly carrying,” “open carry,” nor any derivation of these terms is defined in the Florida Statutes.

¹⁵ Under the bill, a non-licensee who violates the open-carry ban is treated just as he or she would be under current law.

¹⁶ Section 790.053(1), F.S.

Accordingly, one revision made by the bill is the removal of the language relating to “angry or threatening” displays. However, this change does not mean that a licensee may temporarily display his or her weapon in an angry or threatening manner whenever he or she chooses. For instance, by displaying a firearm in an angry and threatening manner without justification, one may commit an aggravated assault.¹⁷ Additionally, the display of a firearm in an “angry[] or threatening manner, not in necessary self-defense,” remains prohibited under another statute not affected by the bill, s. 790.10, F.S.

Also, the bill clarifies that the brief display of a firearm by a licensee no longer needs to be in self-defense. Thus, a licensee whose firearm is temporarily and *inadvertently* displayed should be within the safe harbor.

Finally, the bill expressly states that a licensee who temporarily and openly displays a firearm may not be arrested or charged with a criminal or noncriminal violation of the statute banning the open carry of firearms.

Effective Date

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.

¹⁷ See ss. 784.011 and 784.021, F.S.

B. Private Sector Impact:

The bill reduces penalties for a concealed-carry licensee's first two violations of the ban on open carry of a firearm from a second degree misdemeanor to a non-criminal offense, punishable by a \$25 fine for a first offense and a \$500 fine for a second offense.

C. Government Sector Impact:

By reducing penalties for non-violent offenses with a firearm, the bill may reduce the burden on the court system, as well as on prosecutors and public defenders.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 790.053 and 790.06.

This bill re-enacts the following sections of the Florida Statutes: 943.051 and 985.11.

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.