

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 274

INTRODUCER: Senators Stargel and Grimsley

SUBJECT: Concealed Weapons and Firearms in Multiuse Facilities

DATE: November 13, 2017 REVISED: _____

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

I. Summary:

SB 274 provides that a person who is licensed to carry a concealed weapon or firearm is not prohibited from carrying a concealed weapon or firearm on private school property on which a religious institution is also located. As such, the bill creates an exception to the general statutory ban on the possession of a firearm or weapon on school property.

II. Present Situation:

Overview

Florida law prohibits even a person who has a concealed weapon or firearm license from possessing a firearm or weapon on the property of any elementary or secondary school, or any college or university, whether public or private. Although federal law also generally prohibits the possession of a firearm on school property, this prohibition does not apply to a person licensed to carry a firearm by his or her state.

Lawful Concealed Carry of Weapons and Firearms

Although carrying a concealed weapon or firearm, as well as openly carrying a firearm, is generally illegal in this state, these prohibitions are subject to several exceptions.¹

The most significant exception to the prohibition on the possession of concealed weapons and firearms may be the licensed carrying of these items. The license authorizes a licensee to carry a concealed firearm in most places in the state. To obtain a license, one must submit an application

¹ Many of these exceptions are set forth in s. 790.25, F.S.

to the Department of Agriculture and Consumer Services, and the Department must grant the license to each applicant who:²

- 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;³
- 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.⁴ 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.

² 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.

³ 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.

⁴ See s. 790.06(12), F.S., for the list of the places that a license does not authorize a licensee to carry into.

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.

Prohibited Possession of a Weapon or Firearm at a 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” as any preschool through postsecondary school, *whether public or private*.⁵ The penalty for violating the ban on weapons varies depending on the weapon possessed and whether the violator has a concealed weapon or firearm license.⁶

However, the statute includes several exceptions to the ban on possessing a weapon or firearm at a school. Specifically, the statute permits 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:⁷

- 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.⁸

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.⁹ However, this prohibition does not apply to a person who is licensed to carry a concealed weapon or firearm.¹⁰

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.¹¹ 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

⁵ It also means any career center. Section 790.115(2)(a), F.S.

⁶ 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 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.

⁷ Section 790.115(2)(a)1.-3., F.S.

⁸ However, a school district may opt out of this exception.

⁹ 18 U.S.C. § 922(q)(2)(A).

¹⁰ *See* 18 U.S.C. § 922(q)(2)(B)(ii).

¹¹ *See* 20 U.S.C. § 7961.

local educational agency and the local educational agency adopts appropriate safeguards to ensure student safety.”¹²

Right to Exclude Anyone Possessing a Weapon or Firearm

The laws generally prohibiting the possession of weapons or firearms on school property are not the only legal means available to *private* schools that want to exclude persons who possess these items. 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. 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.

Trespassing with a firearm is a third degree felony,¹⁵ punishable by up to 5 years in prison,¹⁶ 5 years of probation, and a fine not to exceed \$5,000.¹⁷

III. Effect of Proposed Changes:

The bill provides that a person who is licensed to carry a concealed weapon or firearm is not prohibited from carrying a concealed weapon or firearm on private school property on which a religious institution is also located. As such, the bill creates an exception to the general statutory ban on the possession of a firearm or weapon on school property.

Carrying a Weapon or Firearm at a Private School

Under current law, s. 790.115, F.S., prohibits carrying a weapon or firearm 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 weapon and firearm licensing statute lists elementary and secondary school facilities and administration buildings, college and university facilities, and career centers as places into which the license does not authorize a person to carry.¹⁸

¹² 20 U.S.C. § 7961(g).

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)).

¹⁵ Section 810.08(2)(c), F.S.

¹⁶ Section 775.082(3)(e), F.S.

¹⁷ Section 775.083(1)(c), F.S.

¹⁸ Federal law generally prohibits the possession of a firearm at or within 1,000 feet of any school’s property. However, one exception to this prohibition are persons who are licensed under state law to carry a firearm.

However, the bill expressly states that s. 790.115, F.S., and the concealed weapon and firearm licensing statute do not prohibit concealed-carry licensees from carrying on private school property on which a religious institution is also located. As such, the bill appears to effectively authorize a licensee to carry a concealed weapon or firearm on this property. Nonetheless, this authorization appears to be subject to the right of private school authorities to prohibit the entry of persons possessing a weapon or firearm.

The bill adopts the definition of “religious institution” from elsewhere in the Florida Statutes:¹⁹

“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, an example of a location covered by the bill—i.e., “private school property” on which a “religious institution” is also located—is the property of a private Christian school that has on its campus a church building in which a congregation meets.

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.

¹⁹ The bill references s. 775.0861, F.S., which itself defines “religious institution” by reference to s. 496.404(23), F.S.

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 section 790.115 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.