

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 39 Weapons and Firearms  
**SPONSOR(S):** Eagle and White  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 148

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	9 Y, 4 N	Bruno	Sumner
2) Judiciary Committee			

### SUMMARY ANALYSIS

Florida law generally prohibits openly carrying firearms and electric weapons. Violation of this prohibition is a second degree misdemeanor, punishable by up to 60 days in jail and a \$500 fine. However, a person does not violate the open carry prohibition if he or she:

- Is licensed to carry a concealed firearm,
- Is lawfully carrying a firearm in a concealed manner,
- Displays the firearm briefly and openly, and
- Does not intentionally display the firearm in an angry or threatening manner, not in necessary self-defense.

HB 39 bill amends the penalties under s. 790.053, F.S., for violation of the open carry prohibition. The bill distinguishes between a violation by a person licensed to carry a concealed weapon (licensee) and a violation by an unlicensed person. Under the bill, a licensee who openly carries a firearm in violation of s. 790.053, F.S., commits:

- A noncriminal violation with a penalty of:
  - \$25, payable to the clerk of court, for a first violation; or
  - \$500, payable to the clerk of the court, for a second violation, or
- A second degree misdemeanor for a third or subsequent violation.

Consistent with current law, non-licensees commit a second degree misdemeanor for any violation of the open carry prohibition.

The bill repeals the portion of the open carry prohibition in s. 790.053, F.S., that excepts a brief and open display of a firearm by a licensee to the ordinary sight of another person, unless the firearm is intentionally displayed in an angry or threatening manner, not in necessary self-defense. The bill moves that general exception to the statute governing concealed carry licenses under s. 790.06(1), where it states:

A person licensed to carry a concealed firearm under this section whose firearm is temporarily and openly displayed to the ordinary sight of another person does not violate s. 790.053 and may not be arrested or charged with a noncriminal or criminal violation of s. 790.053.

Removal of current law's language relating to the intentional display of a firearm in an angry or threatening manner does not affect the ability to bring criminal charges for such behavior, as it falls under either criminal assault or improper exhibition of a firearm.

The bill may have an indeterminate positive fiscal impact on local government. The clerks of court may receive revenue from the fines created for the first two violations of the open carry prohibition by a licensee. The bill may also reduce the need for jail beds because it decriminalizes the first two violations of the open carry prohibition by a licensee.

The bill provides an effective date of July 1, 2018.

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives.**

**STORAGE NAME:** h0039a.CRJ

**DATE:** 1/29/2018

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

The Florida Constitution guarantees the right of the people to keep and bear arms in self-defense.<sup>1</sup> Generally, Florida law authorizes a person to own, possess, and lawfully use firearms and other weapons<sup>2</sup> without a license if:

- The person is not statutorily prohibited from possession a firearm or weapon,<sup>3</sup> and
- Such ownership, possession, or use occurs in a lawful manner and location.<sup>4</sup>

##### Concealed Carry

Unless exempted, a person may not carry a concealed firearm or weapon without a license issued by the Department of Agriculture and Consumer Services.<sup>5</sup> The licensing scheme requires the Department issue a license to any applicant that meets objective statutory criteria.<sup>6</sup> There are approximately 1.8 million licenses to carry a concealed firearm or weapon in Florida.<sup>7</sup>

Carrying a concealed firearm without a license or exemption is a third degree felony, punishable by up to five years in prison and a \$5,000 fine.<sup>8</sup> Carrying any other concealed weapon without a license or exemption is a first degree misdemeanor, punishable by up to one year in jail and a \$1,000 fine.<sup>9</sup>

##### Open Carry

Florida law generally prohibits openly carrying firearms and electric weapons.<sup>10</sup> Violation of this prohibition is a second degree misdemeanor, punishable by up to 60 days in jail and a \$500 fine.<sup>11</sup> However, a person does not violate the open carry prohibition if the person:

- Is licensed to carry a concealed firearm,
- Is lawfully carrying a firearm in a concealed manner,
- Displays the firearm briefly and openly, and
- Does not intentionally display the firearm in an angry or threatening manner, not in necessary self-defense.<sup>12</sup>

In 2017, the Florida Supreme Court (FSC) upheld the constitutionality of Florida's open carry prohibition in *Norman v. State*.<sup>13</sup> The FSC reasoned that prohibiting openly carrying firearms only regulated one manner of bearing arms and therefore did not impair the exercise of the fundamental right to bear arms.<sup>14</sup> The FSC noted that, because Florida's concealed carry licensing scheme requires the

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<sup>1</sup> FLA. CONST. art. 1, s. 8.

<sup>2</sup> Section 790.001(13), F.S., defines "weapon" as "any dirk, knife, metallic knuckles, slugshot, 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."

<sup>3</sup> See, e.g., S. 790.22 (prohibiting minors from possessing firearms); S. 793.23 (prohibiting convicted felons and juvenile delinquents from possessing a firearm).

<sup>4</sup> S. 790.25, F.S.

<sup>5</sup> S. 790.01, F.S.

<sup>6</sup> S. 790.06, F.S.

<sup>7</sup> Florida Department of Agriculture and Consumer Services, *Number of Licenses by Type As of November 30, 2017*, available at: [http://www.freshfromflorida.com/content/download/7471/118627/Number\\_of\\_Licensees\\_By\\_Type.pdf](http://www.freshfromflorida.com/content/download/7471/118627/Number_of_Licensees_By_Type.pdf) (last viewed January 24, 2018).

<sup>8</sup> S. 790.01(2), F.S.; SS. 775.082 & 775.083, F.S.

<sup>9</sup> S. 790.01(1), F.S.; SS. 775.072 & 775.083, F.S.

<sup>10</sup> S. 790.053, F.S.

<sup>11</sup> Id.; SS. 775.082 & 775.083, F.S.

<sup>12</sup> S. 790.053(1), F.S.

<sup>13</sup> 215 So.3d 18 (Fla. 2017).

<sup>14</sup> Id. at 42.

Department of Agriculture and Consumer Services to issue a license to anyone meeting objective criteria, there were alternative channels for bearing arms and self-defense in public.<sup>15</sup>

### Exemptions

Section 790.25, F.S., outlines sixteen circumstances in which neither the concealed carry licensure requirement nor the prohibition on openly carrying a firearm applies. This section exempts, among other circumstances, several professions involving use of a firearm; hunting, camping, and other recreational uses; and possession of firearms in one's home or business.<sup>16</sup>

Other sections address additional circumstances in which a person may carry a concealed weapon without a permit<sup>17</sup> or openly carry a weapon.<sup>18</sup> Additionally, the federal Law Enforcement Officer Safety Act grants a privilege to qualified law enforcement officers or qualified retired law enforcement officers, allowing them to carry a concealed firearm without a state-issued license to do so.<sup>19</sup>

### **Effect of Proposed Changes**

HB 39 amends the penalties under s. 790.053, F.S., for violation of the open carry prohibition. The bill distinguishes between a violation by a person licensed to carry a concealed weapon (licensee) and a violation by an unlicensed person. Under the bill, a licensee who openly carries a firearm in violation of s. 790.053, F.S., commits:

- A noncriminal violation with a penalty of:
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The bill repeals the portion of the open carry prohibition in s. 790.053, F.S., that excepts a brief and open display of a firearm by a licensee to the ordinary sight of another person, unless the firearm is intentionally displayed in an angry or threatening manner, not in necessary self-defense. The bill moves that general exception to the statute governing concealed carry licenses under s. 790.06(1), where it states:

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Removal of current law's language relating to the intentional display of a firearm in an angry or threatening manner does not affect the ability to bring criminal charges for such behavior, as it falls under either criminal assault<sup>20</sup> or improper exhibition of a firearm.<sup>21</sup>

The bill provides an effective date of July 1, 2018.

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<sup>15</sup> Id. at 37.

<sup>16</sup> S. 790.25(3), F.S.

<sup>17</sup> See, e.g., S. 790.01(3)(a), F.S. (allowing a person evacuating under a mandatory evacuation order to carry a concealed firearm); S. 790.052, F.S. (off-duty law enforcement officers have the right to carry a concealed firearm at the discretion of their supervisors).

<sup>18</sup> A person may openly carry self-defense chemical spray, a nonlethal stun or dart-firing gun, or other nonlethal electric weapon or device that is designed solely for defensive purposes. S. 790.053(2), F.S.

<sup>19</sup> 18 USC §§ 926B & 926C.

<sup>20</sup> SS. 784.011 & 784.021, F.S. (providing that assault is a first degree misdemeanor and assault with a deadly weapon is a third degree felony).

<sup>21</sup> S. 790.10, F.S.

**B. SECTION DIRECTORY:**

**Section 1:** Amends s. 790.053, F.S., relating to open carrying of weapons.

**Section 2:** Amends s. 790.06, F.S., relating to license to carry concealed weapon or firearm.

**Section 3:** Reenacts s. 943.051, F.S., relating to criminal justice information; collection and storage; fingerprinting.

**Section 4:** Reenacting s. 985.11, F.S., relating to fingerprinting and photographing.

**Section 5:** Providing an effective date of July 1, 2018.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

The clerks of court may receive revenue from the fines created for the first two violations of the open carry prohibition by a licensee in s. 790.053, F.S.

2. Expenditures:

The bill may reduce the need for jail beds because it decriminalizes the first two violations of the open carry prohibition by a licensee in s. 790.053, F.S.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

The bill appears to be exempt from the requirements of article VII, section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**