

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 543 Concealed Carry of Weapons and Firearms Without a License

SPONSOR(S): Brannan, Payne and others

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Constitutional Rights, Rule of Law & Government Operations Subcommittee	10 Y, 5 N	Padgett	Williamson
2) Judiciary Committee			

SUMMARY ANALYSIS

Unless exempted, a person is prohibited from carrying a concealed weapon or concealed firearm (CWCF) on or about his or her person unless he or she has a valid license to carry a concealed weapon (CWL). Carrying a concealed weapon without a CWL is a first degree misdemeanor. Carrying a concealed firearm without a CWL is a third degree felony.

HB 543 amends s. 790.01, F.S., to authorize a person to carry a CWCF if he or she has a valid CWL, or does not have a CWL, but otherwise satisfies the criteria for receiving and maintaining a CWL, except that such person is not required to demonstrate competency with a firearm or affirmatively state that he or she desires a legal means to carry a CWCF for lawful self-defense.

The bill creates s. 790.013, F.S., to require a person who carries a CWCF without a CWL to:

- Carry valid identification at all times when he or she is in actual possession of a CWCF and display such identification upon demand by a law enforcement officer, a violation of which is punishable as a noncriminal violation and a \$25 fine; and
- Obey the prohibition against carrying a CWCF in certain locations where a person with a CWL is not currently authorized to carry a CWCF, a violation of which is punishable as a second degree misdemeanor.

The bill amends s. 790.06, F.S., to require a CWL holder, like a person authorized to carry a CWCF without a license under the bill, to carry only a valid identification while in actual possession of a CWCF. The bill leaves the remainder of the CWL licensing scheme in place to allow a person who chooses to receive a CWL to continue to obtain the benefits of licensure, such as the ability to carry a CWCF in another state through reciprocity agreements or to receive an exemption from the required three day waiting period between the purchase and delivery of a firearm.

The bill amends the following statutes to extend the benefits granted to a CWL holder to a person who is authorized to carry a CWCF without a CWL under the bill, including:

- Section 790.015, F.S., to authorize a nonresident to carry a CWCF in Florida if he or she satisfies the same criteria as a Florida resident;
- Section 790.053, F.S., to exempt a person who is authorized to carry a concealed firearm without a license from the criminal penalty for openly carrying a firearm if he or she briefly and openly displays his or her firearm in the same manner as a CWL holder is exempted;
- Section 790.115, F.S., to reduce the criminal penalty that applies to a person who is authorized to carry a CWCF without a license if he or she carries a CWCF on specified school property or at a school event;
- Section 790.25, F.S., to authorize a person to carry a CWCF on his or her person while in a private conveyance if such person is authorized to carry a CWCF; and
- Section 790.251, F.S., to prohibit an employer from prohibiting a person who is authorized to carry a CWCF without a license from possessing a firearm in a vehicle at his or her place of employment and from making specified employment decisions based on a person's ability to carry a CWCF without a license.

Since the bill authorizes a person to carry a CWCF without a CWL, the number of future CWL applications and renewals may decrease. As such, any government entity that receives a fee for processing a CWL application or renewal may have decreased revenues. However, the decrease in revenue may be offset by a decrease in expenditures from the reduced workload for processing fewer CWL applications and renewals.

The bill provides an effective date of July 1, 2023.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Carrying a Concealed Weapon or Concealed Firearm Without a License

Background

Possession and Use of Weapons and Firearms Generally

The Florida Constitution guarantees “the right of the people to keep and bear arms in defense of themselves and of the lawful authority of the state...except that the manner of bearing arms may be regulated by law.”¹ Generally, a person does not need a license to possess or use a firearm² in Florida. Section 790.25(3), F.S., authorizes the following persons to own, possess, openly carry, and lawfully use firearms and other weapons in specified circumstances, including:

- Members of the Militia, National Guard, Florida State Defense Force, Army, Navy, Air Force, Marine Corps, Space Force, Coast Guard, organized reserves, and other armed forces of the state and of the United States, when on duty, when training or preparing themselves for military duty, or while subject to recall or mobilization;
- Citizens of this state subject to duty in the Armed Forces under article X, section 2 of the Florida Constitution, under chs. 250 and 251, F.S., and under federal laws, when on duty or when training or preparing themselves for military duty;
- Persons carrying out or training for emergency management duties under ch. 252, F.S.;
- Sheriffs, marshals, prison or jail wardens, police officers, Florida highway patrol officers, game wardens, revenue officers, forest officials, special officers appointed under ch. 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;
- Officers or employees of the state or United States duly authorized to carry a concealed weapon;
- Guards or messengers of common carriers, express companies, armored car carriers, mail carriers, banks, and other financial institutions, 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;
- Regularly enrolled members of any organization duly authorized to purchase or receive weapons from the United States or from this state, or regularly enrolled members of clubs organized for target, skeet, or trap shooting, while at or going to or from shooting practice; or regularly enrolled members of clubs organized for modern or antique firearms collecting, while such members are at or going to or from their collectors' gun shows, conventions, or exhibits;
- A person engaged in fishing, camping, or lawful hunting or going to or returning from a fishing, camping, or lawful hunting expedition;
- 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;
- 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;
- A person firing weapons in a safe and secure indoor range for testing and target practice;
- 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;

¹ Art. I, s. 8(a), Fla. Const.

² A “firearm” means 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. S. 790.001(6), F.S.

- A person possessing arms at his or her home or place of business;
- Investigators employed by a public defender or capital collateral regional counsel, while carrying out official duties, provided such investigators meet specified criteria;
- A tactical medical professional³ who is actively operating in direct support of a tactical operation by a law enforcement agency, provided such tactical medical professionals meet specified criteria.

Section 790.25(5), F.S., also authorizes a person who is at least 18 years old to possess a concealed firearm⁴ or other weapon⁵ without a license within the interior of a private conveyance if such concealed firearm or other weapon is securely encased⁶ or is otherwise not readily accessible for immediate use.⁷ This authorization does not permit an unlicensed person to carry a concealed firearm or other weapon on his or her person.⁸

Concealed Carry of Weapons and Firearms

Unless exempted,⁹ a person is prohibited from carrying a concealed weapon¹⁰ or concealed firearm on or about his or her person unless he or she has a valid license to carry a concealed weapon (CWL) issued by the Department of Agriculture and Consumer Services (DACS).¹¹ Carrying a concealed weapon without a CWL is a first degree misdemeanor.¹² Carrying a concealed firearm without a CWL is a third degree felony.¹³

Concealed Weapon or Concealed Firearm License

Section 790.06(2), F.S., requires DACS to issue a CWL to any applicant that meets specified criteria. For purposes of s. 790.06, F.S., the term “concealed weapons or concealed firearms” means a handgun, electronic weapon or device, tear gas gun, knife, or billie. The term does not include a machine gun as defined in s. 790.001(9), F.S.¹⁴ DACS must issue a CWL to an applicant if he or she:

- Is a resident and a citizen of the United States or a permanent resident alien of the United States, or is an eligible consular security official;
- 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 because of a felony conviction;
- Has not been committed under ch. 397, F.S., for abusing a controlled substance;
- Has not been found guilty of a crime relating to a controlled substance within a three-year period immediately preceding the application date;

³ A “tactical medical professional” means a paramedic, as defined in s. 401.23, F.S., a physician, as defined in s. 458.305, F.S., or an osteopathic physician, as defined in s. 459.003, F.S., who is appointed to provide direct support to a tactical law enforcement unit by providing medical services at high-risk incidents, including, but not limited to, hostage incidents, narcotics raids, hazardous surveillance, sniper incidents, armed suicidal persons, barricaded suspects, high-risk felony warrant service, fugitives refusing to surrender, and active shooter incidents. S. 790.25(3)(q)5., F.S.

⁴ A “concealed firearm” means any firearm which is carried on or about a person in such a manner as to conceal the firearm from the ordinary sight of another person. S. 790.001(2), F.S.

⁵ “Weapon” means 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. S. 790.001(13), F.S.

⁶ “Securely encased” means in a glove compartment, whether or not locked; snapped in a holster; in a gun case, whether or not locked; in a zippered gun case; or in a closed box or container which requires a lid or cover to be opened for access. S. 790.001(17), F.S.

⁷ “Readily accessible for immediate use” means that a firearm or other weapon is carried on the person or within such close proximity and in such a manner that it can be retrieved and used as easily and quickly as if carried on the person. S. 790.001(16), F.S.

⁸ S. 790.25(5), F.S.

⁹ Persons exempted from the prohibition against carrying a concealed weapon or concealed firearm in s. 790.01, F.S., include a law enforcement officer; correctional officer; correctional probation officer; a person who carries a concealed weapon or concealed firearm on or about his or her person while in the act of evacuating during a mandatory evacuation order issued by the Governor under ch. 252, F.S.; or a person who carries concealed a self-defense chemical spray or nonlethal stun gun or dart-firing stun gun or other nonlethal electric weapon or device that is designed solely for defensive purposes. Ss. 790.01(3), 790.051, and 790.06(5)(b), F.S.

¹⁰ A “concealed weapon” means any dirk, metallic knuckles, billie, tear gas gun, chemical weapon or device, or other deadly weapon carried on or about a person in such a manner as to conceal the weapon from the ordinary sight of another person. S. 790.001(3)(a), F.S.

¹¹ S. 790.01, F.S.

¹² S. 790.01(1), F.S. A first degree misdemeanor is punishable by up to one year in jail and a \$1,000 fine. Ss. 775.082 and 775.083, F.S.

¹³ S. 790.01(2), F.S. A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Ss. 775.082 and 775.083, F.S.

¹⁴ S. 790.06(1), F.S.

- 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 with a firearm;¹⁵
- 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 under ch. 394, F.S.;
- Has not had adjudication of guilt withheld or imposition of sentence suspended on any felony, or any misdemeanor crime of domestic violence, unless three years have elapsed since probation or any other conditions set by the court have been fulfilled, or the record has been expunged;
- Has not been issued an injunction that is currently in force and effect restraining the applicant from committing acts of domestic violence or acts of repeat violence;
- Is not prohibited from purchasing or possessing a firearm by any other provision of law;¹⁶ or
- Has not had adjudication of guilt withheld for, or had imposition of sentence suspended for one or more crimes of violence constituting a misdemeanor,¹⁷ unless three years have elapsed since probation or any other conditions set by the court have been fulfilled or the record has been sealed or expunged.¹⁸

Section 790.06(3), F.S., requires DACS to suspend a CWL or the processing of a CWL application if the CWL holder or applicant is:

- Arrested or formally charged with a crime that would disqualify such person from having a license under s. 790.06, F.S., until final disposition of the case; or
- Issued an injunction that restrains the licensee or applicant from committing acts of domestic violence or acts of repeat violence.

Section 790.06(10), F.S., requires DACS to suspend or revoke a CWL if a CWL holder:

- Is found to be ineligible under the criteria set forth in s. 790.06(2), F.S.;
- Develops or sustains a physical infirmity which prevents the safe handling of a weapon or firearm;
- Is convicted of a felony which would make him or her ineligible to possess a firearm under s. 790.23, F.S.;
- Is found guilty of a crime under ch. 893, F.S., or similar laws of any other state, relating to controlled substances;

¹⁵ A person may demonstrate competency with a firearm by:

- Completing any hunter education or hunter safety course approved by the Fish and Wildlife Conservation Commission or a similar agency of another state;
- Completing any National Rifle Association firearms safety or training course;
- Completing any firearms safety or training course or class available to the general public offered by a law enforcement agency, junior college, college, or private or public institution or organization or firearms training school, using instructors certified by the National Rifle Association, Criminal Justice Standards and Training Commission, or the Department of Agriculture and Consumer Services;
- Completing any law enforcement firearms safety or training course or class offered for security guards, investigators, special deputies, or any division or subdivision of a law enforcement agency or security enforcement;
- Presenting evidence of equivalent experience with a firearm through participation in organized shooting competition or military service;
- Being licensed or having been licensed to carry a firearm in this state or a county or municipality of this state, unless such license has been revoked for cause; or
- Completing any firearms training or safety course or class conducted by a state-certified or National Rifle Association certified firearms instructor. S. 790.06(2)(h), F.S.

¹⁶ S. 790.06(2), F.S. As of Dec. 31, 2022, there are 2,611,646 active CWLs issued by DACS. Florida Department of Agriculture and Consumer Services, *Number of Licensees by Type*, https://www.fdacs.gov/content/download/82618/file/Number_of_Licensees_By_Type.pdf (last visited Jan. 31, 2023).

¹⁷ A misdemeanor crime of violence includes any misdemeanor conviction involving the use, attempted use, or threatened use of physical force against the person or property of another, or that by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense. Crimes of violence constituting a misdemeanor may include but are not limited to, assault, battery, stalking, or an attempt or conspiracy to commit any of the foregoing offenses. Department of Agriculture and Consumer Services, *Misdemeanor Crime of Violence, Not Including Domestic Violence*, <https://www.fdacs.gov/Consumer-Resources/Consumer-Rights-and-Responsibilities/Concealed-Weapon-License/Applying-for-a-Concealed-Weapon-License/Eligibility-Requirements/Disqualifying-Conditions/Misdemeanor-Crime-of-Violence-Not-Including-Domestic-Violence> (Jan. 31, 2023).

¹⁸ S. 790.06(3), F.S.

- Is committed as a substance abuser under ch. 397, F.S., or is deemed a habitual offender under s. 856.011(3), F.S., or similar laws of any other state;
- Is convicted of a second violation of s. 316.193, F.S., or a similar law of another state, within three years after a first conviction of such section or similar law of another state, even though the first violation may have occurred before the date on which the application was submitted;
- Is adjudicated an incapacitated person under s. 744.331, F.S., or similar laws of any other state;
- Is committed to a mental institution under ch. 394, F.S., or similar laws of any other state; or
- Has been found guilty of, had adjudication of guilt withheld for, or had imposition of sentence suspended for one or more crimes of violence within the preceding three years.¹⁹

A CWL is valid for seven years from the date of issuance and subject to a nonrefundable fee of \$55 for a new CWL and \$45 for a CWL renewal.²⁰ A new applicant must also submit a set of fingerprints for processing by the Florida Department of Law Enforcement (FDLE) with his or her application, subject to a processing fee of \$42.²¹ A county tax collector that has been appointed by DACS to accept CWL applications may also charge a \$22 convenience fee for new applications and \$12 for renewal applications.²²

A CWL holder must carry his or her CWL, as well as valid identification, at all times when he or she is in actual possession of a concealed weapon or concealed firearm and must display the CWL and identification upon demand by a law enforcement officer.²³ Failure to comply with this requirement is a noncriminal violation,²⁴ punishable by a \$25 fine.²⁵

A CWL does not authorize a person to carry a concealed weapon or concealed firearm in all locations. A CWL does not authorize a person to carry a concealed weapon or concealed firearm into:

- Any place of nuisance as defined in s. 823.05, F.S.;
- Any police, sheriff, or highway patrol station;
- Any detention facility, prison, or jail;
- Any courthouse;
- Any courtroom, except that a judge may carry a concealed weapon and determine who may carry a concealed weapon in his or her courtroom;
- Any polling place;
- Any meeting of the governing body of a county, public school district, municipality, or special district;
- Any meeting of the Legislature or committee thereof;
- Any school, college, or professional athletic event not related to firearms;
- Any elementary or secondary school facility or administration building;
- Any career center;
- Any portion of an establishment licensed to dispense alcoholic beverages for consumption on the premises, which portion of the establishment is primarily devoted to such purpose;
- Any college or university facility unless the licensee is a registered student, employee, or faculty member of such college or university and the weapon is a stun gun or nonlethal electric weapon or device designed solely for defensive purposes and the weapon does not fire a dart or projectile;
- The inside of the passenger terminal and sterile area of any airport, provided that no person shall be prohibited from carrying any legal firearm into the terminal, which firearm is encased for shipment for purposes of checking such firearm as baggage to be lawfully transported on any aircraft; or

¹⁹ S. 790.06(3) and (10), F.S.

²⁰ S. 790.06(5)(b), F.S.

²¹ S. 790.06(6)(a), F.S. Florida Department of Agriculture and Consumer Services, *Fee Schedule*, <https://www.fdacs.gov/content/download/7438/file/Concealed-Weapons-License-Fees-06-26-2017.pdf> (last visited Jan. 31, 2023).

²² S. 790.0625, F.S.

²³ S. 790.06(1), F.S.

²⁴ A “noncriminal violation” means any offense that is punishable under the laws of this state, or that would be punishable if committed in this state, by no other penalty than a fine, forfeiture, or other civil penalty. A noncriminal violation does not constitute a crime, and conviction for a noncriminal violation shall not give rise to any legal disability based on a criminal offense. S. 775.08(3), F.S.

²⁵ S. 790.06(1), F.S.

- Any place where the carrying of firearms is prohibited by federal law.²⁶

A CWL holder who knowingly and willfully carries a concealed weapon or concealed firearm into any unauthorized location commits a second degree misdemeanor.²⁷

In addition to authorizing a person to carry a concealed weapon or concealed firearm in Florida, a CWL also grants additional benefits to the CWL holder. A CWL holder is authorized to carry a concealed weapon or concealed firearm in another state if the state has a reciprocity agreement that honors a Florida CWL.²⁸ A CWL holder is also exempt from the mandatory three day waiting period between the purchase and delivery of a handgun as required by article I, section 8(b) of the Florida Constitution, or a firearm as required under s. 790.0655, F.S.²⁹

Effect of Proposed Changes – Carrying a Concealed Weapon or Concealed Firearm Without a License

HB 543 amends s. 790.01, F.S., to authorize a person to carry a concealed weapon or concealed firearm if he or she:

- Has a valid CWL; or
- Does not have a CWL, but otherwise satisfies the criteria for receiving and maintaining a CWL, except that such person is not required to demonstrate competency with a firearm or affirmatively state that he or she desires a legal means to carry a concealed weapon or concealed firearm for lawful self-defense.

The bill defines a “concealed weapon or concealed firearm” as a handgun, electronic weapon or device, tear gas gun, knife, or billie.³⁰ This is the same kind of firearm and same type of weapons authorized to be carried under current law by a CWL holder.

The bill creates s. 790.013, F.S., to require a person who carries a concealed weapon or concealed firearm without a CWL to:

- Carry valid identification at all times when he or she is in actual possession of a concealed weapon or concealed firearm and display such identification upon demand by a law enforcement officer, a violation of which is punishable as a noncriminal violation and a \$25 fine; and
- Obey the prohibition against carrying a concealed weapon or concealed firearm in certain locations where a person with a CWL is not authorized to carry a concealed weapon or concealed firearm, a violation of which is punishable as a second degree misdemeanor.

The bill amends s. 790.06(1), F.S., to delete the requirement for a CWL holder to carry his or her CWL when he or she is in actual possession of a concealed weapon or concealed firearm. A CWL holder is still required to carry valid identification when carrying a concealed weapon or concealed firearm and must display such identification to a law enforcement officer upon demand. The bill leaves the remainder of the CWL licensing scheme in place, which allows a person to receive a CWL to obtain the additional benefits of licensure including the ability to carry a concealed weapon or concealed firearm in another state through a CWL reciprocity agreement and to receive an exemption from the three day waiting period between the sale and purchase of a handgun.

²⁶ S. 790.06(12)(a), F.S.

²⁷ A second degree misdemeanor is punishable by up to 60 days in jail and a \$500 fine. Ss. 775.082 and 775.083, F.S.

²⁸ Reciprocity agreements with other states vary in terms of the types of weapons and firearms that a Florida CWL holder is authorized to carry in another state. For example, a Florida CWL holder is authorized to carry a concealed firearm in Georgia, but is prohibited from carrying other types of concealed weapons, such as a concealed stun gun or knife. Some states also only recognize a Florida CWL that is issued to a Florida resident. Department of Agriculture and Consumer Services, *Concealed Weapon License Reciprocity*, <https://www.fdacs.gov/Consumer-Resources/Concealed-Weapon-License/Concealed-Weapon-License-Reciprocity> (last visited Jan. 31, 2023).

²⁹ Section 790.0655, F.S., requires a mandatory waiting period between the purchase and delivery of a firearm from a licensed importer, licensed manufacturer, or licensed dealer of at least three days or until the completion of a criminal background is completed, whichever occurs later. S. 790.0655(1)(a), F.S.

³⁰ This definition mirrors the definition of “concealed weapon or concealed firearm” in s. 790.06(1), F.S., which provides the statutory scheme for issuing CWLs.

The bill amends s. 790.25(5), F.S., to provide that a person who is authorized to carry a concealed weapon or concealed firearm under the bill may carry such concealed weapon or concealed firearm on his or her person while in the interior of a private conveyance, regardless of whether the person has a CWL.

Definitions

Background

Section 790.001, F.S., defines terms applicable to the entirety of ch. 790, F.S. However, the term “handgun,” which is used throughout ch. 790, F.S., is undefined in this section.³¹

Effect of Proposed Changes – Definitions

The bill amends s. 790.001, F.S., to define the term “handgun” as a firearm capable of being carried and used by one hand, such as a pistol or revolver.³² The bill also reorders existing definitions to place them in alphabetical order.

Nonresidents

Background

A nonresident of Florida may carry a concealed weapon or concealed firearm in Florida if he or she:

- Is 21 years of age or older;³³
- Has in his or her immediate possession a valid license to carry a concealed weapon or concealed firearm issued by his or her state of residence, if such state honors a Florida CWL;³⁴ and
- Is a resident of the United States.³⁵

A nonresident is subject to the same laws and restrictions with respect to carrying a concealed weapon or concealed firearm as a Florida resident with a CWL.³⁶

Effect of Proposed Changes – Nonresidents

The bill amends s. 790.015, F.S., to authorize a nonresident without a CWL issued by his or her state of residence to carry a concealed weapon or concealed firearm in Florida if he or she satisfies the criteria for receiving and maintaining a Florida CWL, except that such person is not required to demonstrate competency with a firearm or affirmatively state that he or she desires a legal means to carry a concealed weapon or concealed firearm for lawful self-defense. This aligns the requirements for a nonresident to carry a concealed weapon or concealed firearm in Florida with those for a Florida resident.

The bill also deletes the reciprocity requirement that limits recognition of a CWL issued by other states to only those states that honor a Florida CWL. Thus, a person who holds a CWL from any state will be authorized to carry a concealed weapon or concealed firearm while in Florida if such person is also at least 21 years old and a resident of the United States.

³¹ The term “handgun” is defined in s. 790.31, F.S., which prohibits specified types of ammunition, however the definition is only applicable to that section.

³² This definition is identical to the definition of “handgun” in article I, section 8(b) of the Florida Constitution and the definition of “handgun” in s. 790.31(1)(c), F.S.

³³ The minimum age of 21 does not apply to a nonresident servicemember or veteran of the United States Armed Forces who was discharged under honorable conditions. S. 790.015(5), F.S.

³⁴ Florida has CWL reciprocity agreements with 37 states. Florida Department of Agriculture and Consumer Services, *Concealed License Weapon Reciprocity*, <https://www.fdacs.gov/Consumer-Resources/Concealed-Weapon-License/Concealed-Weapon-License-Reciprocity#:~:text=Section%20790.015%2C%20Florida%20Statutes%2C%20allows,recognize%20Florida%20concealed%20weapon%20licenses> (last visited Jan. 31, 2023).

³⁵ S. 790.015(1), F.S.

³⁶ S. 790.015(2), F.S.

Carrying Concealed Firearms – Off-Duty Law Enforcement Officers

Background

Section 790.052, F.S., authorizes a law enforcement officer or correctional officer who holds an active certification from the Criminal Justice Standards and Training Commission³⁷ to carry a concealed firearm on or about his or her person during off-duty hours at the discretion of a supervising officer. Such a law enforcement officer or correctional officer is authorized to perform law enforcement duties that an on-duty officer would reasonably be expected to perform.³⁸ A law enforcement officer, correctional officer, or correctional probation officer may also carry a concealed weapon as a private citizen under the exemption in s. 790.06(5)(b), F.S., that authorizes a law enforcement officer, correctional officer, or correctional probation officer to carry a concealed weapon or concealed firearm without a CWL. In such cases where a law enforcement officer, correctional officer, or correctional probation officer is carrying a concealed weapon or concealed firearm as a private citizen, the officer's employing agency is not liable for the officer's use of such weapon or firearm.³⁹

Effect of Proposed Changes – Carrying Concealed Firearms – Off-Duty Law Enforcement Officers

The bill amends s. 790.052, F.S., to conform this section to changes made by the bill that authorize a person to carry a concealed weapon or concealed firearm without a CWL. The bill clarifies that a law enforcement officer, correctional officer, or correctional probation officer is authorized to carry a concealed weapon or concealed firearm as a private citizen under the exemption in s. 790.06(5)(b), F.S., with a CWL issued under s. 790.06, F.S., or without a license under s. 790.01, F.S. The bill also provides that the appointing or employing agency of such an officer is not liable for the use of a firearm carried when the officer is off-duty and acting as a private citizen.

Open Carrying of Weapons

Background

Section 790.053, F.S., prohibits a person from openly carrying a firearm or electric weapon or device⁴⁰ on or about his or her person unless the person is a law enforcement officer or engaged in one of the activities listed in s. 790.25(3), F.S., such as hunting, camping, or military service. A violation of this prohibition is punishable as a second degree misdemeanor.⁴¹ The open carry prohibition does not apply to a person who is:

- Openly carrying a self-defense chemical spray⁴² or a nonlethal stun gun or dart-firing stun gun⁴³ or other nonlethal electric weapon or device that is designed solely for defensive purposes;⁴⁴ or
- A CWL holder, who briefly and openly displays a 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.⁴⁵

³⁷ The Criminal Justice Standards and Training Commission is responsible for establishing uniform minimum standards for the employment of law enforcement officers and correctional officers and certifying that such officers meet the specified minimum standards for employment. Florida Department of Law Enforcement, *Criminal Justice Standards & Training Commission (CJSTC)*, <http://www.fdle.state.fl.us/CJSTC/Commission.aspx> (last visited Jan. 31, 2023).

³⁸ S. 790.052(1)(a), F.S.

³⁹ S. 790.052(1)(d), F.S.

⁴⁰ An "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. S. 790.001(14), F.S.

⁴¹ S. 790.053(3), F.S. A second degree misdemeanor is punishable by up to 60 days in jail and a \$500 fine. Ss. 775.082 and 775.083, F.S.

⁴² A "self-defense chemical spray" means a device carried solely for purposes of lawful self-defense that is compact in size, designed to be carried on or about the person, and contains not more than two ounces of chemical. S. 790.001(3)(b), F.S.

⁴³ A "dart-firing stun gun" means any device having one or more darts that are capable of delivering an electrical current. S. 790.001(15), F.S.

⁴⁴ S. 790.053(2), F.S.

⁴⁵ S. 790.053(1), F.S.

Effect of Proposed Changes – Open Carrying of Weapons

The bill amends s. 790.053, F.S., to expand the exemption to the criminal penalty for openly carrying a firearm that applies to a CWL holder who briefly and openly displays a firearm to the ordinary sight of another person to also apply to a person who is authorized to carry a concealed weapon or concealed firearm without a license if he or she displays a firearm in the same manner.

Possessing or Discharging Weapons or Firearms on School Property

Background

Section 790.115(2), F.S., prohibits a person from willfully and knowingly possessing any firearm, electric weapon or device, destructive device,⁴⁶ or other weapon, including a razor blade or box cutter, at a school-sanctioned event or on the property of any school,⁴⁷ school bus, or school bus stop.⁴⁸ A violation is punishable as a third degree felony, except that a CWL holder is subject only to a second degree misdemeanor.⁴⁹ A person who discharges a weapon or firearm at a school-sanctioned event or on the property of any school, school bus, or school bus stop is subject to a second degree felony⁵⁰ regardless of whether he or she has a CWL.

Effect of Proposed Changes – Possessing or Discharging Weapons or Firearms on School Property

The bill amends s. 790.115(2)(e), F.S., to expand the reduced penalty for knowingly and willfully possessing a specified weapon or firearm at a school or school-related location by a CWL holder to include any person who is authorized to carry a concealed weapon or concealed firearm under the bill, regardless of licensure. Discharging a weapon or firearm at a school or school-related location remains a second degree felony, regardless of whether a person is authorized to carry a concealed weapon or concealed firearm.

⁴⁶ “Destructive device” means any bomb, grenade, mine, rocket, missile, pipe bomb, or similar device containing an explosive, incendiary, or poison gas and includes any frangible container filled with an explosive, incendiary, explosive gas, or expanding gas, which is designed or so constructed as to explode by such filler and is capable of causing bodily harm or property damage; any combination of parts either designed or intended for use in converting any device into a destructive device and from which a destructive device may be readily assembled; any device declared a destructive device by the Bureau of Alcohol, Tobacco, and Firearms; any type of weapon which will, is designed to, or may readily be converted to expel a projectile by the action of any explosive and which has a barrel with a bore of one-half inch or more in diameter; and ammunition for such destructive devices, but not including shotgun shells or any other ammunition designed for use in a firearm other than a destructive device. A “destructive device” does not include: a device which is not designed, redesigned, used, or intended for use as a weapon; any device, although originally designed as a weapon, which is redesigned so that it may be used solely as a signaling, line-throwing, safety, or similar device; any shotgun other than a short-barreled shotgun; or any nonautomatic rifle (other than a short-barreled rifle) generally recognized or particularly suitable for use for the hunting of big game. S. 790.001(4), F.S.

⁴⁷ “School” means any preschool, elementary school, middle school, junior high school, secondary school, career center, or postsecondary school, whether public or nonpublic. S. 790.115(2)(a), F.S.

⁴⁸ A person may carry a firearm at a school or school-related location:

- In a case to a firearms program, class or function which has been approved in advance by the principal or chief administrative officer of the school as a program or class to which firearms could be carried;
- In a case to a career center having a firearms training range; or
- In a vehicle pursuant to s. 790.25(5), F.S., except that school districts may adopt written and published policies that waive the exception in this subparagraph for purposes of student and campus parking privileges. S. 790.115(2)(a)1.–3., F.S.

⁴⁹ S. 790.115(b), (c), and (e), F.S.

⁵⁰ A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Ss. 775.082 and 775.083, F.S.

Crimes in Pharmacies

Background

Section 790.145, F.S., prohibits a person from possessing a concealed firearm or a destructive device within the premises of a pharmacy,⁵¹ a violation of which is punishable as a third degree felony, unless such person is a:

- Law enforcement officer;
- Person employed and authorized by the owner, operator, or manager of the pharmacy to carry a firearm or destructive device on such premises; or
- CWL holder.

The conduct prohibited under s. 790.145, F.S., is prohibited generally in other sections. Section 790.01(2), F.S., prohibits carrying a concealed firearm in any location without a CWL and violation of such prohibition constitutes a third degree felony. Section 790.161, F.S., prohibits a person from willfully and unlawfully making, possessing, throwing, projecting, placing, discharging, or attempting to make, possess, throw, project, place, or discharge any destructive device, regardless of location. A violation of this prohibition is punishable as a third degree felony.⁵² The owner of a pharmacy may also prohibit a person from carrying a firearm on his or her property regardless of whether the person has a CWL, a violation of which is punishable as an armed trespass, a third degree felony.⁵³

Effect of Proposed Changes – Crimes in Pharmacies

The bill repeals s. 790.145, F.S., in its entirety as the conduct prohibited under this section is prohibited in ss. 790.01(2), 790.161, and s. 810.08(2), F.S., with identical criminal penalties. Thus, this section is duplicative and unnecessary.

⁵¹ The term “pharmacy” includes a community pharmacy, an institutional pharmacy, a nuclear pharmacy, a special pharmacy, and an Internet pharmacy as follows:

- “Community pharmacy” includes every location where medicinal drugs are compounded, dispensed, stored, or sold or where prescriptions are filled or dispensed on an outpatient basis.
- “Institutional pharmacy” includes every location in a hospital, clinic, nursing home, dispensary, sanitarium, extended care facility, or other facility, hereinafter referred to as “health care institutions,” where medicinal drugs are compounded, dispensed, stored, or sold.
- “Nuclear pharmacy” includes every location where radioactive drugs and chemicals within the classification of medicinal drugs are compounded, dispensed, stored, or sold. The term “nuclear pharmacy” does not include hospitals licensed under ch. 395, F.S., or the nuclear medicine facilities of such hospitals.
- “Special pharmacy” includes every location where medicinal drugs are compounded, dispensed, stored, or sold if such locations are not otherwise defined in this subsection.
- “Internet pharmacy” includes locations not otherwise licensed or issued a permit under this chapter, within or outside this state, which use the Internet to communicate with or obtain information from consumers in this state and use such communication or information to fill or refill prescriptions or to dispense, distribute, or otherwise engage in the practice of pharmacy in this state. Any act described in this definition constitutes the practice of the profession of pharmacy. S. 465.003(20)(a), F.S.

⁵²S. 790.161(1), F.S.

⁵³ S. 810.08(2)(c), F.S.

Carrying of Firearms in Motor Vehicles – Employees

Background

Section 790.251(4), F.S.,⁵⁴ prohibits an employer⁵⁵ from:

- Prohibiting an employee⁵⁶ from possessing a legally owned firearm when such firearm is lawfully possessed and locked inside or locked to a private motor vehicle in a parking lot when the employee is lawfully in such parking lot;
- Making a verbal or written inquiry to an employee regarding the presence of a firearm inside or locked to a private motor vehicle in a parking lot or by an actual search of a private motor vehicle in a parking lot to ascertain the presence of a firearm within the vehicle;
- Conditioning employment upon the fact that an employee or prospective employee holds or does not hold a CWL, or an agreement by an employee or a prospective employee that prohibits the employee from keeping a legal firearm locked inside or locked to a private motor vehicle in a parking lot when such firearm is kept for lawful purposes;
- Prohibiting or attempting to prevent any employee from entering the parking lot of the employer's place of business because the employee's private motor vehicle contains a legal firearm being carried for lawful purposes, that is out of sight within the employee's private motor vehicle; or
- Terminating the employment of, or otherwise discriminating against, an employee for exercising his or her constitutional right to keep and bear arms or for exercising the right of self-defense as long as a firearm is never exhibited on company property for any reason other than lawful defensive purposes.

The restrictions in s. 790.251(4), F.S., do not apply to:

- Any school property as defined and regulated under s. 790.115, F.S.;
- Any correctional institution regulated under s. 944.47, F.S., or ch. 957, F.S.;
- Any property where a nuclear-powered electricity generation facility is located;
- Property owned or leased by a public or private employer or the landlord of a public or private employer upon which are conducted substantial activities involving national defense, aerospace, or homeland security;
- Property owned or leased by a public or private employer or the landlord of a public or private employer upon which the primary business conducted is the manufacture, use, storage, or transportation of combustible or explosive materials regulated under state or federal law, or property owned or leased by an employer who has obtained a permit required under 18 U.S.C. § 842 to engage in the business of importing, manufacturing, or dealing in explosive materials on such property;
- A motor vehicle owned, leased, or rented by a public or private employer or the landlord of a public or private employer;
- Any other property owned or leased by a public or private employer or the landlord of a public or private employer upon which possession of a firearm or other legal product by a customer, employee, or invitee is prohibited pursuant to any federal law, contract with a federal government entity, or general law of this state.⁵⁷

⁵⁴ The employer prohibitions in s. 790.251(4), F.S., were originally drafted to apply to an employee, customer, or invitee. The provisions relating to customers or invitees were held to be unconstitutional. Thus, an employer may still prohibit a customer or invitee from possessing a firearm on its property. The summary in this analysis only discusses the provisions relating to employees. See *Fla. Retail Federation v. Atty. Gen. of Fla.*, 576 F.Supp. 2d 1281 (N.D. Fla. 2008).

⁵⁵ "Employer" means any business that is a sole proprietorship, partnership, corporation, limited liability company, professional association, cooperative, joint venture, trust, firm, institution, or association, or public sector entity, that has employees. S. 790.251(2)(d), F.S.

⁵⁶ "Employee" means any person who possesses a valid license issued pursuant to s. 790.06, F.S., and:

- Works for salary, wages, or other remuneration;
- Is an independent contractor; or
- Is a volunteer, intern, or other similar individual for an employer. S. 790.251(2)(c), F.S.

⁵⁷ S. 790.251(7), F.S.

Effect of Proposed Changes – Carrying of Firearms in Motor Vehicles – Employees

The bill amends s. 790.251, F.S., to expand the definition of “employee” to include any person who is authorized to carry a concealed weapon or concealed firearm under the bill, regardless of whether such person has a CWL. Thus, the protections afforded an employee in s. 790.251, F.S., will apply equally to a CWL holder and a person who is authorized to carry a concealed weapon or concealed firearm without a CWL. Thus, an employer would be prohibited from barring an employee from carrying a firearm in a motor vehicle or taking specified employment actions if such employer employed at least one person who is authorized under the bill to carry a concealed weapon or concealed firearm.

Technical Changes

The bill makes nonsubstantive technical changes to the following sections to conform cross-references, make other conforming changes, and correct terminology: ss. 27.53, 790.0655, 790.1612, 790.31, 810.095, 921.0022, 921.0024, 943.051, 943.0585, 943.059, and 985.11, F.S.

The bill provides an effective date of July 1, 2023.

B. SECTION DIRECTORY:

- Section 1:** Amends s. 27.53, F.S., relating to appointment of assistants and other staff; method of payment.
- Section 2:** Amends s. 790.001, F.S., relating to definitions.
- Section 3:** Amends s. 790.01, F.S., relating to unlicensed carrying of concealed weapons or concealed firearms.
- Section 4:** Creates s. 790.013, F.S., relating to carrying of concealed weapons or concealed firearms without a license.
- Section 5:** Amends s. 790.015, F.S., relating to nonresidents who are United States citizens and hold a concealed weapons license in another state; reciprocity.
- Section 6:** Amends s. 790.052, F.S., relating to carrying concealed firearms; off-duty law enforcement officers.
- Section 7:** Amends s. 790.053, F.S., relating to open carrying of weapons.
- Section 8:** Amends s. 790.06, F.S., relating to license to carry concealed weapon or firearm.
- Section 9:** Amends s. 790.0655, F.S., relating to purchase and delivery of firearms; mandatory waiting period; exceptions; penalties.
- Section 10:** Amends s. 790.115, F.S., relating to possessing or discharging weapons or firearms at a school-sponsored event or on school property prohibited; penalties; exceptions.
- Section 11:** Repeals s. 790.145, F.S., relating to crimes in pharmacies; possession of weapons; penalties.
- Section 12:** Amends s. 790.1612, F.S., relating to authorization for governmental manufacture, possession, and use of destructive devices.
- Section 13:** Amends s. 790.25, F.S., relating to lawful ownership, possession, and use of firearms and other weapons.
- Section 14:** Amends s. 790.251, F.S., relating to protection of the right to keep and bear arms in motor vehicles for self-defense and other lawful purposes; prohibited acts; duty of public and private employers; immunity from liability; enforcement.
- Section 15:** Amends s. 790.31, F.S., relating to armor-piercing or exploding ammunition or dragon’s breath shotgun shells, bolo shells, or flechette shells prohibited.
- Section 16:** Amends s. 810.095, F.S., relating to trespass on school property with firearm or other weapon prohibited.
- Section 17:** Amends s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.
- Section 18:** Amends s. 921.0024, F.S., relating to Criminal Punishment Code; worksheet computations; scoresheets.
- Section 19:** Amends s. 943.051, F.S., relating to criminal justice information; collection and storage; fingerprinting.
- Section 20:** Amends s. 943.0585, F.S., relating to court-ordered expunction of criminal history records.

Section 21: Amends s. 943.059, F.S., relating to court-ordered sealing of criminal history records.

Section 22: Amends s. 985.11, F.S., relating to fingerprinting and photographing.

Section 23: Provides an effective date of July 1, 2023.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill eliminates the requirement for a person who is authorized to carry a concealed weapon or concealed firearm to pay a fee to obtain a CWL to carry a concealed weapon or concealed firearm.

D. FISCAL COMMENTS:

DACS, FDLE, and some county tax collectors are involved in the CWL application and approval process and receive statutorily authorized fees for services provided. Since the bill authorizes a person to carry a concealed weapon or concealed firearm without a CWL, fewer people may apply for, or seek renewal of, a CWL. A decrease in CWL applications and renewals will result in reduced revenue from application and processing fees for the entities collecting such fees. However, the decrease in revenue may be offset by a decrease in expenditures due to the reduced workload resulting from fewer CWL applications. Since the number of persons who will choose to carry a concealed weapon or concealed firearm without a license is unknown, the fiscal impact is indeterminate.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear provide nor does it appear to require any additional rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

None.