

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 129 CS
Weapons

Lawful Ownership, Possession, and Use of Firearms and Other

SPONSOR(S): Baxley and others

TIED BILLS:

IDEN./SIM. BILLS: SB 206

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Judiciary Committee</u>	<u>8 Y, 2 N, w/CS</u>	<u>Thomas</u>	<u>Hogge</u>
2) <u>Agriculture Committee</u>	<u></u>	<u></u>	<u></u>
3) <u>Justice Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

The bill addresses provisions relating to the storage and transport of firearms in a motor vehicle on property used for the parking of a motor vehicle.

The bill provides that an employee or invitee in lawful possession of a firearm may, except as otherwise provided by the bill, transport and store a firearm locked inside or locked to his or her motor vehicle in a parking lot designated by an employer or its lessor if the firearm is stored out of sight. An employer or its lessor may prohibit an employee or invitee from transporting, storing, or possessing a firearm on property owned, leased, or controlled by the employer or its lessor, or from transporting, storing, or possessing a firearm in any motor vehicle owned, leased, or rented by the employer, when reasonably necessary for the safety and welfare of employees, invitees, or the general public, or to safeguard its business operations.

The bill provides for immunity from liability for employers under certain conditions and provides for enforcement by the Attorney General.

The bill takes effect upon becoming a law.

This bill does not appear to have a fiscal impact on state or local government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard Individual Liberty: the bill restricts the ability of employers to maintain certain policies related to their premises, but permits lawful possession of a firearm that is locked in or locked to a motor vehicle that is on any premises set aside for the parking of motor vehicles.

Promote Personal Responsibility: the bill provides immunity from civil liability to any employer or its lessor for damages in certain occurrences resulting from the use or threatened use of a firearm that was transported or stored by an employee or invitee in a locked motor vehicle on property that was set aside for the parking of a motor vehicle.

Maintain Public Security: the bill affects policies regarding the possession of firearms in vehicles in certain locations.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

A firearm is defined 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."¹

Section 790.053, F.S., provides that it is unlawful to openly carry any firearm or electric weapon, except a person may openly carry a self-defense chemical spray or a nonlethal stun gun or other nonlethal electric weapon that does not fire a projectile and is designed solely for defensive purposes. A violation of this provision is a misdemeanor of the second degree.

Section 790.06, F.S., provides that the Department of Agriculture and Consumer Services may issue licenses to persons qualified to carry concealed weapons or firearms. A concealed weapon or firearm is defined as "a handgun, electronic weapon or device, tear gas gun, knife, or billie, but the term does not include a machine gun as defined in s. 790.001(9)."

Section 790.25, F.S., provides for the lawful and unlawful ownership, possession, and use of firearms and other weapons. It specifically prohibits the carrying of a concealed firearm or weapon without a permit. This section provides that the provisions of s. 790.053, F.S., and s. 790.06, F.S., discussed above, do not apply to:

- Members of the military, law enforcement, or persons carrying out or training for emergency management duties;
- Guards or messengers of common carriers;
- Members of any organization duly authorized to purchase or receive weapons;
- 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;
- A person firing weapons for testing or 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;

¹ Section 790.001(6), F.S.

- 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;
- A person possessing arms at his or her home or place of business; or
- Investigators employed by the several public defenders of the state or the capital collateral representative.

Subsection (5) of s. 790.06, F.S., specifically provides that it is lawful “for a person 18 years of age or older to possess a concealed firearm or other weapon for self-defense or other lawful purpose within the interior of a private conveyance, without a license, if the firearm or other weapon is securely encased or is otherwise not readily accessible for immediate use.”

Schools

In addition to the statutes discussed above regarding the possession of firearms, each district school board in Florida is required to have a zero-tolerance policy regarding the possession of firearms by students on school grounds.² A violation of the policy must result in a least a one-year expulsion from school and referral to the criminal justice or juvenile justice system. Trespassers that carry a weapon or firearm on school property, public or private, commit a felony of the third degree.³

Congress enacted the Gun Free School Zones Act in 1990.⁴ It was subsequently overturned by the United States Supreme Court as a violation of Congress’s powers under the commerce clause to regulate inter-state commerce.⁵ The Act was passed again in 1996 with changes to address the concerns of the Supreme Court that made it only applicable to guns that crossed state lines in commerce.⁶ In general, the Act makes it unlawful for any person to possess a firearm in a school zone. The term “school zone” means “in, or on the grounds of, a public, parochial or private school or within a distance of 1,000 feet from the grounds of a public, parochial or private school.” The term “school” means “a school which provides elementary or secondary education, as determined under State law.” Whoever violates the Act may be fined up to \$5,000, imprisoned up to five years, or both. Exceptions to this Act include:

- if the person is licensed to do so;
- if the firearm is not loaded and in a locked container, or a locked firearms rack which is in a motor vehicle;
- by an individual for use in a program approved by a school in the school zone;
- by an individual in accordance with a contract entered into between a school in the school zone and the individual or an employer of the individual;
- by a law enforcement officer acting in his or her official capacity; or
- the firearm is unloaded and is possessed by an individual while traversing school premises for the purpose of gaining access to public or private lands open to hunting, if the entry on school premises is authorized by school authorities.

Other States

Oklahoma and Alaska have passed laws prohibiting persons and businesses from banning the otherwise lawful possession of a firearm in a locked vehicle in a parking lot.⁷ The Oklahoma statute

² Section 1006.13(2), F.S.

³ Section 810.095, F.S.

⁴ P.L. 101-647, Sec. 1702(b)(1), 18 USC ss. 921 and 922.

⁵ *U.S. v. Lopez*, 514 U.S. 549 (1995).

⁶ P.L. 104-208.

⁷ Alaska Stat. Art. 10A, Sec. 18.65.800; Okla. Stat. tit. 21, Pt. IV, Ch. 53, Sec. 1289.7a.

has not taken effect pending the outcome of federal litigation seeking to overturn the law.⁸ Georgia and Indiana have similar legislation pending.⁹

State Correctional Institutions

Section 944.47, F.S., prohibits the introduction of firearms or other weapons into or upon the grounds of any state correctional institution. A violation of the prohibition is a second degree felony offense.

Occupational Violence

An average of 1.7 million people were victims of violent crime while working or on duty in the United States each year from 1993 through 1999, including an average of 1.3 million simple assaults, 325,000 aggravated assaults, 36,500 rapes and sexual assaults, 70,000 robberies, and 900 homicides.¹⁰ In 2001, there were 639 workplace homicides in the U.S., the lowest number since the Census of Fatal Occupational Injuries began in 1992 (just over 80% of these were from shootings). Of the occupations examined, police officers, corrections officers, and taxi drivers were victimized at the highest rates. Businesses can be and have been held liable for crimes occurring on their property where they were found to be negligent in providing security.

Effect of Proposed Changes

The bill addresses provisions relating to the storage and transport of firearms in a motor vehicle on property used for the parking of a motor vehicle.

The bill defines the terms "motor vehicle," "employee," "employer," "invitee," and "parking lot."

The bill provides that an employee or invitee in lawful possession of a firearm may, except as otherwise provided by the bill, transport and store a firearm locked inside or locked to his or her motor vehicle in a parking lot designated by an employer or its lessor if the firearm is stored out of sight. An employer or its lessor may prohibit an employee or invitee from transporting, storing, or possessing a firearm on property owned, leased, or controlled by the employer or its lessor, or from transporting, storing, or possessing a firearm in any motor vehicle owned, leased, or rented by the employer, when reasonably necessary for the safety and welfare of employees, invitees, or the general public, or to safeguard its business operations.

The bill provides that its provisions do not apply to school property as defined and regulated under s. 790.115, F.S., prison-facility grounds as defined and regulated under s. 944.47, F.S., and to property on which an employee or invitee is otherwise prohibited from transporting, storing, or possessing a firearm pursuant to any federal or state law.

The bill provides immunity from civil liability to any employer or its lessor for damages in certain occurrences resulting from the use or threatened use of a firearm that was transported or stored by an employee or invitee in a locked motor vehicle on property that was set aside for the parking of motor vehicles. This immunity does not apply to any person who discharges or threatens to use the firearm, and does not apply if the harm involved was caused by the employer's or lessor's willful or criminal misconduct or conscious and flagrant indifference to the safety of the person or persons harmed.

⁸ The Williams Co. and ConocoPhillips Co. have sued the State of Oklahoma in U.S. District Court, Northern District of Oklahoma, No. 04-CV-820 H(J). The federal court enjoined the enforcement of the statute pending the litigation and certified to the Court of Criminal Appeals of Oklahoma the question of whether the statute was a criminal statute. The Court of Criminal Appeals of Oklahoma ruled that it was a criminal statute in *Whirlpool Corp. v. Henry*, 110 P.3d 83 (Okla. Crim. App. 2005).

⁹ House Bill 1028 passed the Committee on Public Safety and Homeland Security in the Indiana House of Representatives on January 25, 2006. House Bill 998 has been referred to the Committee on Public Safety in the Georgia House of Representatives.

¹⁰ Violence in the Workplace, 1993-99, published by the Bureau of Justice Statistics, December 2001 (NCJ 190076).

The bill provides for enforcement by the Attorney General on behalf of an aggrieved employee or invitee if there is reasonable cause to believe there has been a willful violation of the act.

The bill provides that its provisions may not be construed in derogation of Florida's employment at will doctrine.

C. SECTION DIRECTORY:

Section 1. Amends s. 790.25, F.S., relating to the lawful ownership, possession, and use of firearms and other weapons.

Section 2. Provides that the bill is effective upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

Indeterminate. While the bill provides that it may be enforced by the Attorney General, it is unknown to what extent the Attorney General will be called upon to enforce it.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The economic impact on the private sector is unclear. Employers that have policies regarding the possession of firearms in vehicles in their parking lots may no longer enjoy these policies. However, employers may enjoy greater protection from liability regarding the use of a firearm in the employer's parking lot that was lawfully stored in a vehicle. It is unknown how many employers have these policies and how many will be affected by the bill.

D. FISCAL COMMENTS:

While the bill provides that it may be enforced by the Attorney General, it is unknown to what extent the Attorney General will be called upon to enforce it.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Preemption

There may be some federal laws that specifically regulate the premises of certain employers, including their parking lots. In its memorandum of law in the case challenging the Oklahoma statute, Haliburton Energy Services, Inc. argues that federal laws regulating nuclear safety,¹¹ oil and gas operations,¹² and the use of explosives,¹³ preempt the state law as it applies to the premises of these businesses.¹⁴ It has also been argued in this same case that the federal Occupational Safety and Health Act¹⁵ preempts the state statute.¹⁶ Federal law is considered to have preempted a specific area of law when Congress has shown its intent to occupy a given field. When Congress is determined to have shown such an intent, a court may strike down a state law that attempts to regulate this same field of law. A Court may find that Congress has completely preempted an area of law or it may find that the preemption is only a partial preemption and some state regulation may be allowed.

Access to Courts

The bill provides immunity for persons and entities from civil liability in lawsuits for certain actions involving the use of firearms. This provision may implicate the “access to court” protections of the Florida Constitution.¹⁷ The Florida Supreme Court has held that where a right to access the courts for redress for a particular injury predates the adoption of the access to courts provision in the 1968 state constitution, the Legislature cannot abolish the right without providing a reasonable alternative unless the Legislature can show (1) an overpowering public necessity to abolish the right and (2) no alternative method of meeting such public necessity.¹⁸ A litigant could argue that the bill denies him or her access to the courts if a cause of action existed under Florida law before the adoption of the access to courts provision in 1968. Should a court find a cause of action did not exist, the judicial inquiry would end at that point. But it is also possible that a court could hold that pre-1968 Florida law would have allowed such suits under the common-law cause of action for negligence. If so, this bill might be evaluated under the *Kluger* standard.

Right to Bear Arms

The Florida Constitution¹⁹ and the U.S. Constitution²⁰ contain provisions protecting a citizen’s right to bear arms. However, these provisions are not implicated without some sort of state action.²¹ The Florida Supreme Court, in interpreting Florida’s constitutional provision, held that while “the

¹¹ Atomic Energy Act of 1954 (42 USCA § 2011 et seq.).

¹² Pipeline Safety Act (49 USCA § 60101 et seq.).

¹³ Explosives Act (18 USCA § 841 et seq.).

¹⁴ See Brief of Halliburton Energy Services, Inc., As Amicus Curiae in Support of Plaintiff’s Complaint and Plaintiff’s Motion for A Permanent Injunction, WHIRLPOOL CORP. v. HENRY, Case No. 04CV 820H (J), United States District Court, N.D. Oklahoma.

¹⁵ 29 U.S.C. § 651, et seq.

¹⁶ See Plaintiff’s Opening Memorandum in Support of Motion for a Temporary Restraining Order and/or a Preliminary Injunction on behalf of Plaintiff Whirlpool Corporation, WHIRLPOOL CORP. v. HENRY, Case No. 04CV 820H (J), United States District Court, N.D. Oklahoma.

¹⁷ Article I, section 21 of the Florida Constitution provides: “The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay.” See generally 10A FLA. JUR. 2D CONSTITUTIONAL LAW §§ 360-69.

¹⁸ See *Kluger v. White*, 281 So. 2d 1 (Fla. 1973).

¹⁹ “The right of the people to keep and bear arms in defense of themselves and of the lawful authority of the state shall not be infringed, except that the manner of bearing arms may be regulated by law.” Art. I, s. 8(a), Fla. Const.

²⁰ “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.” U.S. Const. amend. II.

²¹ See Validity of state gun control legislation under state constitutional provisions securing the right to bear arms, 86 A.L.R.4th 93; Constitutional right to bear arms--Federal constitution; generally-- Relationship of right to bear arms to preservation of a militia 79 Am. Jur. 2d Weapons and Firearms § 6.

Legislature may not entirely prohibit the right of the people to keep and bear arms, it can determine that certain arms or weapons may not be kept or borne by the citizen."²²

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

The bill was amended in the Judiciary Committee on April 4, 2006. The amendment removed the entire bill and inserted new language. The strike-all amendment differed from the bill as filed by narrowing the scope of the bill, removing the criminal penalty, providing civil remedies only, and providing exemptions to the bill.

The amendment includes public employers, but specifically exempts schools, prisons, and any other property on which an employee or invitee is otherwise prohibited from transporting, storing, or possessing a firearm pursuant to any federal or state law.

The amendment provides that an employer or its lessor may prohibit employees or invitees from transporting, storing, or possessing a firearm on its property when reasonably necessary for the safety and welfare of employees, invitees, or the general public, or to safeguard business operations.

The amendment provides for immunity from liability for employers under certain conditions and provides for enforcement by the Attorney General.

The amendment provides that the provisions of the bill may not be construed in derogation of Florida's employment at will doctrine.

²² *Rinzler v. Carson*, 262 So.2d 661, 665 (Fla. 1972).