

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard individual liberty: The bill restricts an employers' ability to implement certain policies related to the workplace and its premises. The bill also permits the lawful possession of personal private property that is locked in, or to, a motor vehicle parked in a lot owned by a private or public entity.

Promote personal responsibility: The bill provides immunity from civil liability to any employer, or its lessor, for damages in certain circumstances resulting from the use, or threatened use, of a firearm or any other legal product that was stored by an employee, customer or invitee in a private motor vehicle on property that was set aside for parking of said vehicles.

Maintain public security: The bill implements policies regarding the possession of private personal property in vehicles in certain locations.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Florida law¹ defines firearm 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."

Current law² prohibits persons openly carrying any firearm or electric weapon or device. Chemical sprays used in self-defense and non-lethal stun guns or other non-lethal electric weapons that do not fire a projectile and are designed solely for defensive purposes are legal. Persons found in violation of this provision are guilty of a misdemeanor of the second degree, punishable by a term of imprisonment not to exceed 60 days or a fine of \$500.

By the authority of s. 790.06, F.S., the Department of Agriculture and Consumer Services (department) issues licenses to qualified persons to carry concealed weapons. Applicants applying for a concealed weapons permit must:

- Be a resident of the United States or be 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 by the foreign government and by the appropriate embassy in this country;
- Be 21 years of age or older;
- Not suffer from a physical infirmity which prevents the safe handling of a weapon or firearm;
- Be eligible pursuant to s. 790.23, F.S., having never been convicted of a felony;
- Have not been committed for the abuse of a controlled substance or been found guilty of a crime relating to drug abuse in Florida or any other state relating to controlled substances within a 3-year period immediately preceding the date of which the application is submitted;
- Not chronically and habitually use alcoholic beverages or other substances to the extent that his/her normal faculties are impaired;
- Desire a legal means to carry a concealed weapon or firearm for lawful self-defense;
- Demonstrate competence with a firearm;

¹ s. 790.001(6), F.S.

² s. 790.053, F.S.

- Not have been adjudicated as an incapacitated person under s. 744.331, F.S., unless 5 years have elapsed since the applicant's restoration to capacity by court order;
- Not have been committed to a mental institution unless the applicant produces a certificate from a licensed psychiatrist that he/she has not suffered from disability for at least 5 years prior to the date of submission of application;
- Not have had adjudication of guilt withheld or imposition of sentence suspended on any felony or misdemeanor crime of domestic violence unless 3 years have elapsed since probation of any other conciliations set by the court have been fulfilled, or the records have been sealed or expunged;
- Not have been issued an injunction that is currently in force relating to committing acts of domestic or repeat violence; and
- Not be prohibited from purchasing or possessing a firearm by any other provision of Florida or federal law.

Persons holding valid permits may not carry concealed weapons into any place of nuisance³, any police, sheriff, or highway patrol station; any detention facility, prison, or jail; any courthouse; any courtroom⁴; 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 a committee thereof; any school, college, or professional athletic event not related to firearms; any school administration building; any portion of an establishment licensed to dispense alcoholic beverages for consumption on the premises; any elementary or secondary school facility; any career center; any college or university facility⁵; inside the passenger terminal and sterile area of any airport⁶; or any place where carrying of firearms is prohibited by federal law. Persons violating this provision commit a misdemeanor of the second degree, punishable by a term of imprisonment not to exceed 60 days or a fine of \$500.

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 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;
- 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.

³ As defined in s. 823.05, F.S.

⁴ Except that nothing in this section precludes a judge from carrying a concealed weapon or determining who will carry a concealed weapon in his/her courtroom.

⁵ Unless the licensee is a registered student, employee, or faculty member of such college or university and the weapon is a stun gun or non-lethal electric weapon or device designed solely for defensive purposes and the weapon does not fire a dart or a projectile.

⁶ No person shall be prohibited from carrying any legal firearm into the terminal, when said firearm is encased for shipping purposes as checking such firearm as baggage to be lawfully transported on any aircraft.

Current law⁷ 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.”

Other States

Oklahoma, Alaska, Kentucky, and Mississippi have laws similar to this legislation. The Oklahoma statute has not taken effect pending the outcome of federal litigation seeking to overturn the law.⁸ The laws in Alaska⁹ and Kentucky¹⁰ are identical to this legislation. According to the National Rifle Association, Georgia, Indiana, Texas, Tennessee and Utah have similar legislation pending.

Effect of Proposed Changes

The bill creates “The Individual Personal Private Property Protection Act of 2007.” Legislative intent is provided regarding the constitutional rights of citizens to:

- Privacy,
- Possess and keep legal property in their motor vehicles, and
- Not lose said rights subject to becoming a customer, employee, or invitee of a business entity.

The bill provides that no public or private entity may prohibit any customer, employee or invitee from possessing any personal private property that is a legal product when said product is lawfully possessed and locked inside or locked to a private motor vehicle in a parking lot if said person is lawfully in such area. The bill further prohibits public or private entities from violating the privacy rights of said persons by verbal or written inquiry regarding the presence of personal private property inside a private motor vehicle in a parking lot or by an actual search of the vehicle in the parking lot. The bill prohibits the public or private entity from taking action against the person based upon verbal or written statements and requires any searches of the vehicle to be conducted by on-duty law enforcement personnel. The search must be based upon due process and comply with constitutional protections.

Employers are prohibited from conditioning employment of prospective employees upon the employees’ agreement to refrain from keeping certain products in his/her motor vehicle when the vehicle is parked in the parking lot of the prospective employer. Additionally, an employer can not prevent or prohibit an employee, customer, or invitee from entering the parking lot of the employer’s place of business when the person’s motor vehicle contains a lawfully possessed product, which is locked out of sight within the vehicle. Neither may an employer terminate the employment of, or discriminate against, an employee or expel a customer or invitee when the person is exercising his/her right to bear arms as long as the firearm is not exhibited on company property for any reason other than lawful defensive purposes.

The provisions of this act do not apply to:

- Property owned or leased by an employer or the landlord of an employer upon which activities involving national defense, aerospace, or domestic security are conducted if the presence of a legally possessed product in a parking lot presents an increased danger of explosion or reasonably predictable catastrophic event;
- Property owned or leased by an employer or the landlord of an employer upon which the primary business involves the manufacture, use, storage, or transportation of combustible or explosive materials regulated under state or federal law if the presence of a legally possessed product in a parking lot presents an increased danger of explosion or reasonably predictable catastrophic event;

⁷ s. 790.25(5), F.S.

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 Section 18.65.800(a), Alaska Statutes

¹⁰ Section 527.020(8), Kentucky Statutes

- A motor vehicle owned, leased, or rented by an employer or the landlord of an employer;
- Any other property owned or leased by an employer or the landlord of an employer upon which possession of a firearm or other legal product is prohibited pursuant to any federal or state law on the effective date of this act;
- Any school property as defined and regulated under s. 790.115, F.S.; or
- Any state correctional institution regulated under s. 944.47, F.S.

The bill provides immunity from civil liability to any employer, or its lessor, for damages in certain instances resulting from the use, or threatened use, of a firearm or any other legal product that was stored by an employee, customer or invitee in a private motor vehicle on property that was set aside for parking of said vehicles. The immunity does not apply to persons who discharge or threaten 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.

The bill provides for enforcement by the Attorney General on behalf of the aggrieved employee or invitee if there is reasonable cause to believe there has been a willful violation of this act. In these cases, the Attorney General is instructed to commence a civil or administrative action for damages, injunctive relief and civil penalties, and such other relief as may be appropriate under the provisions of s. 760.51, F.S.¹¹ The bill also authorizes the Attorney General to negotiate a settlement on behalf of persons aggrieved under this act. The bill does not prohibit a person aggrieved under this act from bringing their own civil action for violation of rights protected under this act.

The bill provides definitions for "parking lot", "motor vehicle", "employee", "employer" and "invitee".

The effective date of this legislation is upon becoming law and applies to causes of action accruing on or after that date.

C. SECTION DIRECTORY:

Section 1: Creates s. 790.251, F.S.; relating to the lawful possession of personal private property that is locked in, or to, a motor vehicle parked in a parking facility owned by a private or public entity.

Section 2: Provides an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Indeterminate. See fiscal comments.

2. Expenditures:

Indeterminate. See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

¹¹ Provides for a penalty not to exceed \$10,000 per violation.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The economic impact on the private sector is unclear. Employers having policies regarding the possession of personal private property in vehicles in their parking lots may no longer have the authority to implement said 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 in place and how many will be affected by this legislation.

D. FISCAL COMMENTS:

While the bill provides that it may be enforced by the Attorney General, the Office of the Attorney General has not provided a cost estimate of the bill's provisions and it is unknown to what extent the Attorney General will be called upon to enforce it. Any damages recovered as a result of the Attorney General's action shall accrue to the injured person, less reasonable attorney's fees. Further, any civil penalty (of not more than \$10,000 per violation) associated with such actions shall accrue to the state's General Revenue Fund unallocated.

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. It has been argued in the case challenging the Oklahoma statute¹² that the federal Occupational Safety and Health Act¹³ preempt the state statute.¹⁴ 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 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. While the bill provides for exceptions in many areas, there may be other federal laws to which the bill might not be applicable.

Access to Courts

The bill provides immunity for persons and entities from civil liability in lawsuits for certain actions involving the use and possession of personal private property. This provision may implicate the "access to court" protections of the Florida Constitution.¹⁵ 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.¹⁶

¹² WHIRLPOOL CORP. v. HENRY, Case No. 04CV 820H(J), United States District Court, N.D. Oklahoma.

¹³ 29 U.S.C. § 651, et seq.

¹⁴ 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.

¹⁵ 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. JR. 2D CONSTITUTIONAL LAW §§ 360-69.

¹⁶ See *Kluger v. White*, 281 So. 2d 1(Fla. 1973).

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 Constitution¹⁷ and the United States Constitution¹⁸ contain provisions protecting a citizen's right to bear arms. However, these provisions are not implicated without some sort of state action.¹⁹ The Florida Supreme Court, in interpreting Florida's constitutional provision, held that while "the 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."²⁰

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

As a general rule, when drafting legislation, the short title and any definitions included in the bill are placed at the front of the legislation. Both the short title and the definitions are at the end of this legislation.

Certain paragraphs of the legislation seem to be inconsistent. In section 790.251(2)(a), F.S., lawfully possessed personal private property is required to be **locked inside**, or to, a private motor vehicle. Elsewhere in s. 790.251(2), F.S., lawfully possessed personal private property must be **locked out of sight** within the trunk, glove box, or other enclosed compartment or area within the motor vehicle.

D. STATEMENT OF THE SPONSOR

"The Individual Personal Private Property Protection Act of 2007" does not prohibit any business from having a policy regarding firearms in the workplace. What it does prohibit is the unwarranted searching of private vehicles by civilians for firearms and protects your constitutional rights guaranteed by the first and second amendments.

The bill furthermore carves out national defense factories and other entities such as schools. This bill is about freedom from illegal searches and the right to protect oneself.

Furthermore, this bill will protect property owners from liability, and if there is reason to believe someone has explosives, snakes, or other dangerous materials, then law enforcement and other experts should be called to conduct a legal and safe search of a vehicle.

The hysteria about this bill is totally unwarranted. Those who feel a need to carry a firearm for their personal protection against thugs already do so. They are willing to risk being fired more than they are willing to risk being raped or murdered. They just quietly go about their business and otherwise try to follow the employee policy handbook. Those who wish to harm others don't care what is in the employee handbook.

¹⁷ "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.

¹⁸ "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.

¹⁹ 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.

²⁰ *Rinzler v. Carson*, 262 So.2d 661, 665 (Fla. 1972).

As a business owner and local Chamber Member, my record is solid in supporting free enterprise. As a legislator, I am A rated by the Florida Chamber of Commerce. This bill is not about hurting businesses, it's about the safety and privacy of Floridians as lawful citizens and their second amendment right to protect themselves.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

N/A