

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 463 Concealed Weapons or Firearms

**SPONSOR(S):** Agriculture & Natural Resources Subcommittee, Kreegel and others

**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 998

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	15 Y, 0 N, As CS	Cunningham	Blalock
2) Agriculture & Natural Resources Appropriations Subcommittee	12 Y, 0 N	Lolley	Massengale
3) State Affairs Committee	14 Y, 0 N	Kaiser	Hamby

### SUMMARY ANALYSIS

To obtain a concealed weapons license, a person must complete, under oath, an application with the Division of Licensing of the Department of Agriculture and Consumer Services, and must meet the following criteria:

- Is a resident of the United States and a citizen of the United States or a permanent resident alien of the United States, as determined by the United States Bureau of Citizenship and Immigration Services, or is a consular security official of a foreign government that maintains diplomatic relations and treaties of commerce, friendship, and navigation with the United States and is certified as such by the foreign government and by the appropriate embassy in this country;
- Is 21 years of age or older;
- Does not suffer from a physical infirmity that prevents the safe handling of a weapon or firearm;
- Is not ineligible to possess a firearm by virtue of having been convicted of a felony;
- Has not been committed for the abuse of a controlled substance or been found guilty of a crime relating to controlled substances within a 3-year period immediately preceding the date on which the application is submitted;
- Does not chronically and habitually use alcoholic beverages or other substances to the extent that his or her normal faculties are impaired. It shall be presumed that an applicant chronically and habitually uses alcoholic beverages or other substances to the extent that his or her normal faculties are impaired if the applicant has been committed or has been convicted, or has been deemed a habitual offender, or has had two or more convictions within the 3-year period immediately preceding the date on which the application is submitted;
- Has not been adjudicated an incapacitated person, unless 5 years have elapsed since the applicant's restoration to capacity by court order;
- Has not been committed to a mental institution, unless the applicant produces a certificate from a licensed psychiatrist that he or she has not suffered from disability for at least 5 years prior to the date of submission of the application;
- Has not 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 or any other conditions set by the court have been fulfilled, or the record has been sealed or expunged;
- Has not been issued an injunction that is currently in force and effect and that restrains the applicant from committing acts of domestic violence or acts of repeat violence; and
- Desires a legal means to carry a concealed weapon or firearm for lawful self-defense;
- Demonstrates competence with a firearm;
- Is not prohibited from purchasing or possessing a firearm by any other provision of Florida or federal law.

The bill specifies that service members and veterans of the United States Armed Forces who were honorably discharged must be issued a license to carry a concealed weapon or firearm, regardless of age, as long as the applicant otherwise meets the concealed weapons permit requirements. Service members are defined as any person serving as a member of the United States Armed Forces on active duty or state active duty and all members of the Florida National Guard and United States Reserve Forces. The bill also requires that DACS accept fingerprints of an applicant administered by any law enforcement agency, military provost, or other military unit charged with law enforcement duties, or as otherwise specified by the Department of Licensing of DACS. Lastly, the bill specifies that a nonresident of Florida who is a service member or veteran of the U.S. Armed Forces who was honorably discharged is exempt from the age requirement for carrying a concealed weapon or firearm, as long as the nonresident service member or veteran has in his or her immediate possession a valid license, from his or her state of residence, to carry a concealed weapon or concealed firearm and is a resident of the United States, as required under current law.

The bill appears to have a fiscal impact on state and local governments (See Fiscal Analysis section below).

The bill is effective upon becoming law.

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

**STORAGE NAME:** h0463e.SAC

**DATE:** 1/25/2012

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Current Situation**

Section 790.01, F.S., specifies that a person who carries a concealed weapon or electronic weapon or device on or about his or her person commits a first degree misdemeanor, and a person who carries a concealed firearm commits a third degree felony. However, these provisions in s. 790.01, F.S., do not apply to a person licensed to carry a concealed weapon or a concealed firearm pursuant to the provisions in s. 790.06, F.S.

Section 790.06(1), F.S., authorizes the Department of Agriculture and Consumer Services to issue licenses to carry concealed weapons or concealed firearms<sup>1</sup> to qualified persons. Each such license must bear a color photograph of the licensee. Licenses issued by the department are valid throughout the state for a period of 7 years from the date of issuance. Any person in compliance with the terms of the license can carry a concealed weapon or concealed firearm. The licensee must carry the license, together with valid identification, at all times in which the licensee is in actual possession of a concealed weapon or firearm and must display both the license and proper identification upon demand by a law enforcement officer.

Section 790.06(2), F.S., requires the department to issue a concealed weapons permit if the applicant:

- Is a resident of the United States and a citizen of the United States or a permanent resident alien of the United States, as determined by the United States Bureau of Citizenship and Immigration Services, or is a consular security official of a foreign government that maintains diplomatic relations and treaties of commerce, friendship, and navigation with the United States and is certified as such by the foreign government and by the appropriate embassy in this country;
- Is 21 years of age or older;
- Does not suffer from a physical infirmity that prevents the safe handling of a weapon or firearm;
- Is not ineligible to possess a firearm pursuant to s. 790.23, F.S., by virtue of having been convicted of a felony;
- Has not been committed for the abuse of a controlled substance or been found guilty of a crime under the provisions of ch. 893, F.S., or similar laws of any other state relating to controlled substances within a 3-year period immediately preceding the date on which the application is submitted;
- Does not chronically and habitually use alcoholic beverages or other substances to the extent that his or her normal faculties are impaired. It shall be presumed that an applicant chronically and habitually uses alcoholic beverages or other substances to the extent that his or her normal faculties are impaired if the applicant has been committed under ch. 397, F.S., or under the provisions of former ch. 396, F.S., or has been convicted under s. 790.151, F.S., or has been deemed a habitual offender under s. 856.011(3), F.S., or has had two or more convictions under s. 316.193, F.S., or similar laws of any other state, within the 3-year period immediately preceding the date on which the application is submitted;
- Desires a legal means to carry a concealed weapon or firearm for lawful self-defense;
- Demonstrates competence with a firearm by any one of the following:
  - Completion of any hunter education or hunter safety course approved by the Fish and Wildlife Conservation Commission or a similar agency of another state;
  - Completion of any National Rifle Association firearms safety or training course;

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<sup>1</sup> Concealed weapon or concealed firearm is defined in s. 790.001, F.S., as a handgun, electronic weapon or device, tear gas gun, knife, billie, or other deadly weapon, but the terms do not include a machine gun.

- Completion of any firearms safety or training course or class available to the general public offered by law enforcement, junior college, college or private or public institution or organization or firearms training school, utilizing instructors certified by the Department of Agriculture and Consumer Services;
  - Completion of any law enforcement firearms safety or training course or class offered for security guards, investigators, special deputies, or any division or subdivision of law enforcement or security enforcement;
  - Presents evidence of equivalent experience with a firearm through participation in organized shooting competition or military service;
  - Is licensed or has 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
  - Completion of any firearms training or safety course or class conducted by a state certified firearms instructor;
- Has not been adjudicated an incapacitated person under s. 744.331, F.S., or similar laws of any other state, unless 5 years have elapsed since the applicant's restoration to capacity by court order;
  - Has not been committed to a mental institution under ch. 394, F.S., or similar laws of any other state, unless the applicant produces a certificate from a licensed psychiatrist that he or she has not suffered from disability for at least 5 years prior to the date of submission of the application;
  - Has not 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 or any other conditions set by the court have been fulfilled, or the record has been sealed or expunged;
  - Has not been issued an injunction that is currently in force and effect and that restrains the applicant from committing acts of domestic violence or acts of repeat violence; and
  - Is not prohibited from purchasing or possessing a firearm by any other provision of Florida or federal law.<sup>2</sup>

Section 790.06(3), F.S., specifies that the department must deny a license if the applicant has been found guilty of, had adjudication of guilt withheld for, or had imposition of sentence suspended for one or more crimes of violence constituting a misdemeanor, unless 3 years have elapsed since probation or any other conditions set by the court have been fulfilled or the record has been sealed or expunged. The department must also revoke a license if the licensee 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 3 years.

Section 790.06(4), F.S., states that the application for a license to carry concealed weapons must be completed, under oath, on a form promulgated by the department and must include:

- The name, address, place and date of birth, race, and occupation of the applicant;
- A statement that the applicant is in compliance with criteria contained within s. 790.06(2) and (3), F.S., described above;
- A statement that the applicant has been furnished a copy of this chapter of law and is knowledgeable of its provisions;
- A conspicuous warning that the application is executed under oath and that a false answer to a question, or the submission of any false document by the applicant, subjects the applicant to criminal prosecution; and
- A statement that the applicant desires a concealed weapon or firearms license as a means of lawful self-defense.

Section 790.06(5), F.S., specifies that the applicant for a license to carry a concealed weapon or firearm must submit to the department:

- A completed application described above;

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<sup>2</sup> Section 790.06(2), F.S.

- A nonrefundable license fee not to exceed \$85, if he or she has not previously been issued a statewide license, or a nonrefundable license fee not to exceed \$70 for renewal of a statewide license;
- A full set of fingerprints of the applicant administered by a law enforcement agency or the Division of Licensing of the Department of Agriculture and Consume Services;
- A photocopy of a certificate or an affidavit or document showing that the applicant passed an approved firearm competency course or class; and
- A full frontal view color photograph of the applicant taken within the preceding 30 days, in which the head, including hair, measures 7/8 of an inch wide and 11/8 inches high.

In addition, s. 790.06(10), F.S., states that the department is required to suspend or revoke a concealed weapons license if the licensee:

- Is found to be ineligible under the criteria set forth in s. 790.06(2), F.S., described above;
- Develops or sustains a physical infirmity that prevents the safe handling of a weapon or firearm;
- Is convicted of a felony that would make the licensee ineligible to possess a firearm;
- Is found guilty of a crime under the provisions of ch. 893, F.S., relating to drug abuse, or similar laws of any other state, relating to controlled substances;
- Is committed as a substance abuser or is deemed a habitual offender;
- Is convicted of a second violation of s. 316.193, F.S., (driving under the influence), or a similar law of another state, within 3 years of a previous conviction of such section, or similar law of another state, even though the first violation may have occurred prior to the date on which the application was submitted;
- Is adjudicated an incapacitated person; or
- Is committed to a mental institution.<sup>3</sup>

Section 790.015, F.S., specifies that nonresidents who are United States citizens, notwithstanding s. 790.01, F.S., must be at least 21 years of age and must have in his or her possession a valid license to carry a concealed weapon or firearm from his or her state of residence. Nonresidents are subject to the same laws regarding concealed weapons and firearms as residents of the state of Florida. If a nonresident who holds a valid license from their state of residence establishes legal residence in Florida, then their out-of-state license shall remain in effect for 90 days.

Currently, members and veterans of the United States Armed Forces are not given any exemptions for licensure of a concealed weapon or firearm or exceptions from the requirements to obtain a license to carry a concealed weapon or firearm.

### **Effect of Proposed Changes**

The bill creates s. 790.062, F.S., to specify that service members and veterans of the United States Armed Forces who were honorably discharged must be issued a license to carry a concealed weapon or firearm, regardless of age, as long as the applicant is otherwise qualified. Service members are defined as any person serving as a member of the United States Armed Forces on active duty or state active duty and all members of the Florida National Guard and United States Reserve Forces.<sup>4</sup>

The bill also requires the department to accept fingerprints of an applicant administered by any law enforcement agency, military provost, or other military unit charged with law enforcement duties, or as otherwise specified in s. 790.06(5), F.S., described above.

Lastly, the bill amends s. 790.015, F.S., to specify that a nonresident of Florida who is a service member or veteran of the U.S. Armed Forces who was honorably discharged is exempt from the age requirement for carrying a concealed weapon or firearm, as long as the nonresident service member or veteran has in his or her immediate possession a valid license from his or her state of residence to

<sup>3</sup> Section 790.06(10), F.S.

<sup>4</sup> Section 250.01(19), F.S.

carry a concealed weapon or concealed firearm and is a resident of the United States, as required under current law.

**B. SECTION DIRECTORY:**

**Section 1.** Creates s. 790.062, F.S., providing an exception to the minimum age requirement for obtaining a license to carry a concealed weapon for members of the United States Armed Forces as well as honorably discharged veterans. It also specifies that the department shall accept fingerprints from license applicants administered by any law enforcement agency, military provost, or other military unit charged with law enforcement duties or as otherwise specified in s. 790.06(5)(c), F.S.

**Section 2.** Amends s. 790.015, F.S., specifying that members and veterans of the United States Armed Forces be granted reciprocity regardless of age if they meet certain other requirements in current law.

**Section 3.** Specifies that this act shall take effect upon becoming law.

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

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

1. Revenues:

According to the Department of Agriculture & Consumer Services, the Division of Licensing anticipates an indeterminate increase in the volume of concealed weapon license applications and application fees.

2. Expenditures:

According to the department, the increase in the volume of concealed weapon license applications would result in increases in hard copy applications, forms, background checks, and other variable costs, the extent of which is unknown. All costs incurred, however, would be covered by application license fees.

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

1. Revenues:

There is potential for minimal increased sales tax collections from local option portion, based on possible increased firearm sales for counties with significant military presence.

2. Expenditures:

None.

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

There is potential for increased economic activity from increased sales of firearms to previously ineligible concealed weapon or firearm licensees, especially in areas with higher military presence.

**D. FISCAL COMMENTS:**

None.

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

##### **1. Applicability of Municipality/County Mandates Provision:**

Not applicable. This bill does not appear to affect county or municipal governments.

##### **2. Other:**

None.

#### **B. RULE-MAKING AUTHORITY:**

Not applicable.

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On January 11, 2012, the Agriculture & Natural Resources Subcommittee amended and passed HB 463 as a committee substitute (CS). The amendment removed a provision in the title that was not a part of the bill.

The bill was reported favorably as a committee substitute. The analysis reflects the committee substitute.