

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Commerce Committee

BILL: CS/SB 2006

INTRODUCER: Commerce Committee and Senator Diaz de la Portilla

SUBJECT: Concealed Weapons Licenses

DATE: March 25, 2008      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rogers	Cooper	CM	Fav/CS
2.			CJ	
3.			GA	
4.				
5.				
6.				

**Please see Section VIII. for Additional Information:**

- |                              |                                     |   |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

This CS amends provisions relating to the issuance, suspension, revocation, and re-issuance of concealed weapons licenses to:

- Clarify the meaning of "final disposition of the case" for purposes of suspending a license by the Department of Agriculture and Consumer Services (department);
- Include the condition that the suspension of the license remains until the conditions of probation are satisfied by the defendant;
- Delete an implied requirement in current law that the department suspend or revoke the a license pursuant to the procedures specified in ch. 120, F.S., the Administrative Procedures Act; instead, the suspension or revocation takes place by operation of law;
- Include a new provision to allow persons whose license has been suspended or revoked to request an administrative hearing to review the suspension or revocation; and
- Require that at the request of the prosecuting authority, a defendant will surrender a license to the clerk of the court as a condition of pretrial release if the defendant is arrested for any crime that would require the department to deny, suspend, or revoke the license.

This CS substantially amends sections 790.06, 790.115, and 903.047, of the Florida Statutes.

## II. Present Situation:

### Concealed Weapons or Firearms

The Department of Agriculture and Consumer Services Division of Licensing issues licenses to carry concealed weapons or concealed firearms to qualified persons.<sup>1</sup> A concealed weapon is defined as a handgun, electronic weapon or device, tear gas gun, knife, or billie.<sup>2</sup>

Pursuant to s. 790.06(2), F.S., the department is required to issue a license if the applicant:

- is a resident of the United States or is a consular security official of a foreign government, under specified conditions;
- is 21 years of age or older;
- Desires a legal means to carry a concealed weapon or firearm for lawful self-defense; and
- Demonstrates competence with a firearm, as specified.

However, the license will be denied if the applicant:

- Suffers from a physical infirmity which prevents the safe handling of a weapon or firearm;
- Is a convicted felon;
- Found, in a Florida court, to have committed a delinquent act that would be a felony if committed by an adult and such person is under 24 years of age;<sup>3</sup>
- Found to have committed a delinquent act in another state, territory, or country that would be a felony if committed by an adult and which was punishable by imprisonment for a term exceeding 1 year and such person is under 24 years of age;<sup>4</sup>
- Found guilty of an offense that is a felony in another state, territory, or country and which was punishable by imprisonment for a term exceeding 1 year;<sup>5</sup>
- Has 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;
- Chronically and habitually uses alcoholic beverages or other substances to the extent that his or her normal faculties are impaired;
- Has been adjudicated an incapacitated person, unless 5 years have elapsed since the applicant's restoration to capacity by court order;

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<sup>1</sup> Section 790.06(1), F.S. Prior to 1987, concealed weapons licenses were issued at the local level with each county having jurisdiction over the terms and cost of licensure. (*See* OPPAGA, Report No. 00-22.) Regulation of the concealed weapons licensure was assigned to the Department of State in 1987. In 2002, the program was transferred to the Department of Agriculture and Consumer Services. (*See* ss. 1, 3-10, ch. 2002-295, L.O.F.)

<sup>2</sup> Section 790.06(1), F.S.

<sup>3</sup> Section 790.23(1)(b), F.S.

<sup>4</sup> Section 790.23(1)(d), F.S.

<sup>5</sup> Section 790.23(1)(e), F.S.

- Has 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 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 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; or
- Is prohibited from purchasing or possessing a firearm by any other provision of Florida or federal law.

An applicant for such license must submit to the department a completed application, a nonrefundable license fee, a full set of fingerprints, a photocopy of a certificate or an affidavit attesting to the applicant's completion of a firearms course, and a full frontal view color photograph of the applicant.<sup>6</sup> The application 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 licensure requirements;
- A statement that the applicant has been furnished with a copy of ch. 790, F.S., relating to weapons and firearms and is knowledgeable of its provisions;
- A warning that the application is executed under oath with penalties for falsifying or substituting false documents; and
- A statement that the applicant desires a concealed weapon or firearms license as a means of lawful self-defense.<sup>7</sup>

When an application is received, the department has 90 days to either grant or deny the license.<sup>8</sup> If the department receives criminal history information with no final disposition on a crime which may disqualify the applicant, the time limitation may be suspended until receipt of the final disposition or proof of restoration of civil and firearm rights.<sup>9</sup>

### **Denial, Suspension and Revocation**

Currently, the department receives information from the Florida Department of Law Enforcement (FDLE) concerning domestic violence injunctions (DVI) on a daily basis, receives arrest information on a weekly basis, and receives a list of inmates of the Department of Corrections (DOC) on a monthly basis.

Pursuant to s. 790.06(3), F.S., the department is required to **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

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<sup>6</sup> Section 790.06(5), F.S.

<sup>7</sup> Section 790.06(4), F.S.

<sup>8</sup> Section 790.06(6)(c), F.S.

<sup>9</sup> Section 790.06(6)(c)3., F.S.

elapsed since probation or any other conditions set by the court have been fulfilled or the record has been sealed or expunged.

The department is required to **suspend** a license or the processing of an application for a license, when notified by a law enforcement agency, a court, or FDLE that the licensee or applicant is arrested or formally charged with a crime that would disqualify such person from having a license, until final disposition of the case. In addition, the department is required to suspend a license or the processing of an application for a license if the licensee or applicant is issued an injunction that restrains the licensee or applicant from committing acts of domestic violence or acts of repeat violence.

The suspension of the license will be lifted if the licensee has the DVI lifted, or in the case of the arrest, if the final disposition of the arrest results in a “nolle prosequi”, adjudication is withheld, or is found not guilty. If the final disposition results in a conviction, the suspended license is revoked.

The department is required to **revoke** a license if the licensee is found guilty of, has adjudication of guilt withheld for, or has imposition of sentence suspended for one or more crimes of violence within the preceding 3 years.

The department is the only entity with the statutory authority to issue, suspend or revoke a concealed weapons license.

Subsection 790.06(10), F.S., requires the department to **suspend or revoke** a concealed weapons license, using the processes required under the Administrative Procedures Act (ch. 120, F.S.) if the licensee:

- Is found to be ineligible under the application 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 the licensee ineligible to possess a firearm pursuant to s. 790.23, F.S., which generally applies to persons convicted of a felony;
- Is found guilty of a crime under the provisions of chapter 893, or similar laws of any other state, relating to controlled substances;
- Is committed as a substance abuser under chapter 397, 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., which relates to driving under the influence of alcohol or chemical substance, 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 under s. 744.331, F.S., or similar laws of any other state; or
- Is committed to a mental institution under chapter 394, F.S., or similar laws of any other state.

The Administrative Procedure Act (APA) “presumptively governs the exercise of all authority statutorily vested in the executive branch of state government,”<sup>10</sup> and allows persons substantially affected by the preliminary decisions of administrative agencies to challenge those decisions.<sup>11</sup>

### III. Effect of Proposed Changes:

**Section 1** of this CS amends s. 790.06(3), F.S., to clarify the meaning of “final disposition of the case” for purposes of suspending a license by the department, to specify that the suspension remains in effect until the charges are dismissed (“nolle prosequi”), the case is dismissed because the grand jury finds there is insufficient evidence to warrant the return of formal charges (“No Information” or “No True Bill”), or the defendant is acquitted.

In addition, a license is suspended until successful completion by the licensee of any term of community supervision imposed by a court for any crime that would disqualify a person from having a license under this section.

Subsection (3) is also amended to delete an implied requirement in current law that the department suspend or revoke the a license pursuant to the procedures specified in ch. 120, F.S., the Administrative Procedures Act. Instead, the suspension or revocation takes place by operation of law. A new subsection (11) is created to allow a licensee request an administrative hearing to review a suspension or revocation under this section. The hearing must be held in accordance with the provisions of ch. 120, F.S., as they relate to s. 120.57, F.S.

Consistent with the preceding change to subsection (3), subsection (10) is amended to state that a license is suspended or revoked, pursuant to the preceding subsections, notwithstanding any provision to the contrary in chapter 120, F.S., the Administrative Procedures Act.

**Section 2** amends s. 790.115, F.S., relating to possessing or discharging a weapon on school property, to delete a cross-reference to s. 790.06(12), F.S., and replace it with s. 790.06(13), F.S., consistent with the change made in Section 1 of the CS.

**Section 3** amends s. 903.047, F.S., to require that at the request of the prosecuting authority, a defendant will surrender a license to the clerk of the court as a condition of pretrial release if the defendant is arrested for any crime that would require the Department of Agriculture and Consumer Services to deny, suspend, or revoke the license. Additionally, the clerk of court must destroy the license upon receipt, and the Comprehensive Case Information System, as provided in s. 28.24(12)(e)1., F.S., must develop a report of licensees that have had their licenses surrendered under this section, and that this report must be submitted to the department on no less that a monthly basis.

**Section 4** provides that this act shall take effect upon becoming law.

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<sup>10</sup> *Gopman v. Dep’t of Educ.*, 908 So.2d 1118, 1120 (Fla. 1st DCA 2005).

<sup>11</sup> Judge Linda M. Rigot, *Administrative Law: A Meaningful Alternative to Circuit Court Litigation*, *The Florida Bar Journal*, Jan. 2001, at 14.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

None.

## C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

## A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

- Delete the proposed increase, from 3 to 5 years, the period of time that a denial, suspension or revocation of a license remains in effect, under the conditions specified in current law;
- Clarify the meaning of "final disposition of the case" for purposes of suspending a license by the department, to specify that the suspension remains in effect until the charges are dismissed ("nolle prosequi"), the case is dismissed because the grand jury finds there is

- insufficient evidence to warrant the return of formal charges (“No Information” or “No True Bill”), or the defendant is acquitted;
- Include the condition that the suspension of the license remains until the conditions of probation are satisfied by the defendant;
  - Delete an implied requirement in current law that the department suspend or revoke the a license pursuant to the procedures specified in ch. 120, F.S., the Administrative Procedures Act; instead, the suspension or revocation occurs by operation of law;
  - Include a new provision to allow persons whose license has been suspended or revoked to request an administrative hearing to review the suspension or revocation;
  - Delete the proposed requirement that the court to revoke a license along with imposing sentence under circumstances consistent with revocation requirements in current law for the Department of Agriculture and Consumer Services;
  - Delete the proposed requirement that the court to suspend a license as a condition of probation for the period of probation if the licensee is placed on felony or misdemeanor probation for a crime of violence, whether or not adjudication of guilt is withheld; and
  - Add that *at the request of the prosecuting authority*, a defendant will surrender a license to the clerk of the court as a condition of pretrial release if the defendant is arrested for any crime that would require the Department of Agriculture and Consumer Services to deny, suspend, or revoke the license; and provides that the clerk of court shall destroy the license upon receipt, and the Comprehensive Case Information System, as provided in s. 28.24(12)(e)1., must develop a report of licensees that have had their licenses surrendered under this section, and that this report must be submitted to the department on no less that a monthly basis.

B. Amendments:

None.