

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4001 Licenses to Carry Concealed Weapons or Firearms

SPONSOR(S): Steube and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 68

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|----------------------------------------------|-----------|---------|---------------------------------------|
| 1) Criminal Justice Subcommittee | 8 Y, 5 N | White | White |
| 2) Higher Education & Workforce Subcommittee | 10 Y, 3 N | Banner | Bishop |
| 3) Judiciary Committee | | | |

SUMMARY ANALYSIS

Currently, s. 790.06(12)(a)13., F.S., prohibits persons who have valid concealed weapons or concealed firearms licenses from carrying a concealed weapon or firearm into 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 which does not fire a dart or projectile.

In the wake of several campus shootings, many states are considering legislation regarding whether to authorize concealed carry license holders to carry concealed weapons and firearms on college campuses. According to recent research, 19 states ban carrying a concealed weapon or firearm on a college campus. In 23 states, the decision to ban or allow concealed carry on campuses is made by each college or university individually. Eight states allow concealed carry on college campuses - Colorado, Idaho, Kansas, Mississippi, Oregon, Texas, Utah, and Wisconsin.

The bill repeals s. 790.06(12)(a)13., F.S., to authorize persons who have a valid concealed weapons or concealed firearms license to carry a concealed weapon or firearm into any college or university facility.

The bill may have an indeterminate fiscal impact. (Please see "FISCAL IMPACT ON STATE GOVERNMENT," *infra*.)

The bill is effective July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Concealed Carry Licensure

Section 790.06, F.S., authorizes the Department of Agriculture and Consumer Services (DACS) to issue licenses to carry concealed weapons or concealed firearms to qualified applicants. For purposes of the section, "concealed weapons or concealed firearms" are defined as a handgun, electronic weapon or device, tear gas gun, knife, or billie, but not a machine gun.¹

As August 31, 2015, there were 1,440,276 persons licensed to carry a concealed weapon or firearm in Florida.² The age profile of concealed carry license holders is as follows:

- 260,723 license holders between the ages of 21-35;
- 370,066 license holders between the ages of 36-50;
- 451,762 license holders between the ages of 51-65; and
- 357,725 license holders age 66 and up.³

In order to obtain a concealed carry license, a person must complete, under oath, and submit to DACS,⁴ an application that includes:

- The name, address, place and date of birth, race, and occupation of the applicant;
- A statement that the applicant is in compliance with the criteria contained in ss. 790.06(2) and (3), F.S. (described below);
- A statement that the applicant has been furnished with a copy of ch. 790, F.S., and is knowledgeable of its provisions;
- A conspicuous warning that the application is executed under oath and that a false answer to any question, or the submission of any false document by the applicant, subjects the applicant to criminal penalties; and
- A statement that the applicant desires a concealed weapon or firearm license as a means of lawful self-defense.⁵

The applicant must also submit the following to DACS:

- A nonrefundable license fee not to exceed \$70 (if the applicant has not previously been issued a statewide license) or \$60 (for renewal of a statewide license);
- A full set of fingerprints administered by a law enforcement agency, DACS, or an approved tax collector;
- Documented proof of completion of a firearms safety and training course; and
- A full frontal view color photograph of the applicant taken within the preceding 30 days.⁶

Section 790.06(2), F.S., requires DACS to issue a concealed carry license 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

¹ s. 790.06(1), F.S.

² DACS, *Number of Licensees by Type as of August 31, 2015*,

<http://www.freshfromflorida.com/Divisions-Offices/Licensing/Concealed-Weapon-License/Statistical-Reports> (last visited on September 8, 2015).

³ DACS, *Concealed Weapon or Firearm License Holder Profile as of August 31, 2015*,

http://www.freshfromflorida.com/content/download/7500/118857/cw_holders.pdf (last visited on September 8, 2015).

⁴ Section 790.0625, F.S., authorizes DACS, at its discretion, to appoint tax collectors, as defined in s. 1(d) of Art. VIII of the State Constitution, to accept applications on behalf of the Division of Licensing of the DACS for concealed weapon or firearm licenses. Such appointments are for specified locations that will best serve the public interest and convenience in applying for these licenses.

⁵ s. 790.06(4), F.S.

⁶ s. 790.06(5), F.S.

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 which 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 is 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 completing a specified firearms safety and training course;
- 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.

DACS must deny an application 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.⁷

DACS must revoke a concealed weapons or firearms 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.⁸

DACS must, upon notification by a law enforcement agency, a court, or the Florida Department of Law Enforcement and subsequent written verification, suspend a concealed carry license or the processing of an application for such license if 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; or
- Is issued an injunction that restrains the licensee or applicant from committing acts of domestic violence or acts of repeat violence.⁹

⁷ s.790.06(3), F.S.

⁸ *Id.*

⁹ *Id.*

In addition, DACS is required to suspend or revoke a concealed license if the licensee:

- 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 the licensee ineligible to possess a firearm pursuant to s. 790.23, F.S.;
- Is found guilty of a crime under the provisions of ch. 893, F.S., or similar laws of any other state, relating to controlled substances;
- 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 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 another state; or
- Is committed to a mental institution under ch. 394, F.S., or similar laws of another state.¹⁰

Concealed carry licenses are valid for 7 years from the date of issuance. Licensees must carry their license and valid identification any time they are in actual possession of a concealed weapon or firearm and display both documents upon demand by a law enforcement officer. Failure to have proper documentation and display it upon demand is a noncriminal violation punishable by a penalty of \$25, payable to the clerk of the court.¹¹

Locations where Concealed Carry by Licensees is Prohibited

Section 790.06(12)(a), F.S., specifies that a concealed carry license does not authorize a person to carry a concealed weapon or firearm into:

1. Any place of nuisance as defined in s. 823.05;
2. Any police, sheriff, or highway patrol station;
3. Any detention facility, prison, or jail;
4. Any courthouse;
5. Any courtroom, except that nothing in this section would preclude a judge from carrying a concealed weapon or determining who will carry a concealed weapon in his or her courtroom;
6. Any polling place;
7. Any meeting of the governing body of a county, public school district, municipality, or special district;
8. Any meeting of the Legislature or a committee thereof;
9. Any school, college, or professional athletic event not related to firearms;
10. Any elementary or secondary school facility or administration building;
11. Any career center;
12. 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;
13. 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;
14. 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
15. Any place where the carrying of firearms is prohibited by federal law.

Any person who knowingly and willfully carries a concealed weapon or firearm into any of the above-listed locations commits a second degree misdemeanor.¹²

¹⁰ s. 790.06(10), F.S.

¹¹ s. 790.06(1), F.S.

¹² A second degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. ss. 775.082 and 775.083, F.S.

Possession on School Property

Section 790.115(2)(a), F.S., prohibits any person from possessing “any firearm, electric weapon or device, destructive device, or other weapon as defined in s. 790.001(13), including a razor blade or box cutter,” at a school-sponsored event or on the property of any school, school bus, or school bus stop, unless such possession is authorized in support of school-sanctioned activities or unless it is a firearm carried:

- 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., unless prohibited by a school district policy.¹³

“School” is defined to mean any preschool, elementary school, middle school, junior high school, secondary school, career center, or postsecondary school, whether public or nonpublic.¹⁴

For a violation of the prohibition, the subsection provides that it is:

- A second degree misdemeanor¹⁵ for a person to store or leave a loaded firearm within the easy reach of a minor who obtains the firearm and commits a violation of the prohibition, except under specified circumstances.¹⁶
- A third degree felony¹⁷ for a person to willfully and knowingly violate the prohibition by possessing any firearm, electric weapon or device, destructive device, or other weapon as defined in s. 790.001(13), F.S., including a razor blade or box cutter.¹⁸
- A second degree felony¹⁹ for a person to willfully and knowingly discharge a firearm while in violation of the prohibition unless discharged for lawful defense or a lawful purpose.²⁰

With respect to concealed carry licensees, the subsection provides that:

The penalties of this subsection shall not apply to persons licensed under s. 790.06. Persons licensed under s. 790.06 shall be punished as provided in s. 790.06(12), except that a licenseholder who unlawfully discharges a weapon or firearm on school property as prohibited by this subsection commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

As indicated above, s. 790.06(12), F.S., in relevant part, currently penalizes the carrying of a concealed weapon or firearm by a licensee into any college or university facility, except under specified circumstances, as a second degree misdemeanor.²¹

Concealed Carry on College and University Campuses

In the wake of several campus shootings, many states are considering legislation regarding whether to permit concealed carry licensees to carry concealed weapons and firearms on college campuses. For some, these events point to a need to ease existing firearm regulations and allow concealed weapons

¹³ s. 790.115(2)(a), F.S.

¹⁴ *Id.*

¹⁵ See Footnote 12.

¹⁶ s. 790.115(2)(c)2., F.S.

¹⁷ 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.

¹⁸ s. 790.115(2)(b) and (c)1., F.S.

¹⁹ 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.

²⁰ s. 790.115(2)(d), F.S.

²¹ See Footnote 12.

and firearms on campuses. Others argue the solution is tightening restrictions to keep guns off campuses.²²

Recent research indicates that 19 states ban carrying a concealed weapon or firearm on a college campus.²³ In 23 states, the decision to ban or allow concealed carry on campuses is made by each college or university individually.²⁴ Eight states allow concealed carry on college campuses - Colorado, Idaho, Kansas, Mississippi, Oregon, Texas, Utah, and Wisconsin.²⁵

Effect of the Bill

The bill repeals s. 790.06(12)(a)13., F.S., to allow persons who a valid concealed carry license to carry a concealed weapon or firearm into any college or university facility.

B. SECTION DIRECTORY:

Section 1. Amends s. 790.06, F.S., relating to license to carry concealed weapon or firearm.

Section 2. Provides an effective date of July 1, 2016.

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:

In its 2016 Legislative Bill Analysis, the Board of Governors states that implementation of this bill may result in an indeterminate increase in recurring and non-recurring administrative costs.

In its 2015 Legislative Bill Analysis for HB 4005 (2015), which is identical to the instant bill, the Department of Education states that the bill may have indeterminate fiscal impact on insurance premiums paid by colleges and universities.

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:

None.

²² *Guns on Campus: Overview* National Conference of State Legislatures, February 23, 2015, <http://www.ncsl.org/research/education/guns-on-campus-overview.aspx> (last visited on September 12, 2015); Texas Senate Bill 11, Enrolled (2015).

²³ California, Florida, Georgia, Illinois, Louisiana, Massachusetts, Michigan, Missouri, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, South Carolina, Tennessee, and Wyoming. *Id.*

²⁴ Alabama, Alaska, Arizona, Arkansas, Connecticut, Delaware, Hawaii, Indiana, Iowa, Kentucky, Maine, Maryland, Minnesota, Montana, New Hampshire, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Vermont, Virginia, Washington, and West Virginia. *Id.*

²⁵ *Id.*

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable, because the bill does not appear to require the counties or municipalities to spend funds or take an 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 and municipalities.

2. Other:

None.

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 CHANGES

None.