

**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.)

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: SB 1238

INTRODUCER: Senator Mayfield and others

SUBJECT: Safety of Religious Institutions

DATE: April 5, 2019

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Stallard</u>	<u>Cibula</u>	<u>JU</u>	<b>Favorable</b>
2.	<u>Cellon</u>	<u>Jones</u>	<u>CJ</u>	<b>Pre-meeting</b>
3.	_____	_____	<u>RC</u>	_____

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**I. Summary:**

SB 1238 enables a church, synagogue, or other religious institution to authorize a person who has a license to carry a concealed weapon or firearm to carry a firearm on property owned, rented, or otherwise lawfully used by the religious institution.

The bill also enables a private or religious school to designate a person to carry a firearm on the school's property. If a school exercises this option, its governing board or body must create policies and procedures that the designee must meet.

Under current law, a person who has a concealed weapons or firearms license is authorized to carry a concealed handgun on the property of a religious institution, as long as the property is not also home to a school. A license does not authorize a person to possess a firearm on the property of a school, whether public or private, from preschool through college unless an exception applies.

The bill is effective July 1, 2019.

**II. Present Situation:**

**Overview**

Current law allows a person who holds a concealed weapons or firearms license to carry a concealed firearm on the property of a religious institution unless:

- The religious institution's property is also home to a school.
- The religious institution which owns the property prohibits firearms.

Further, the owner of any property rented or leased to or borrowed by a religious institution is free to set and enforce parameters as a condition of the rental, lease, or borrowing agreement, which could include firearm restrictions.

### **Property Owner’s Right to Exclude Anyone Possessing a Firearm**

A property owner, including a religious institution, is free to prohibit firearm possession on its property. The Florida Constitution declares that every person has the right to “acquire, possess, and protect property.”<sup>1</sup> The right to exclude others is “one of the most essential sticks in the bundle of rights that are commonly characterized as property.”<sup>2</sup>

A person who enters the property of another without authorization commits the crime of trespass to property. The elements of trespass are set forth in s. 810.08(1), F.S., which states:

Whoever, without being authorized, licensed, or invited, willfully enters or remains in any structure or conveyance, or, having been authorized, licensed, or invited, is warned by the owner or lessee of the premises, or by a person authorized by the owner or lessee, to depart and refuses to do so, commits the offense of trespass in a structure or conveyance.

Trespassing with a firearm is a third degree felony,<sup>3</sup> punishable by up to 5 years in prison,<sup>4</sup> and a fine not to exceed \$5,000.<sup>5</sup>

A property owner who enters an agreement with another to lease, rent, or loan his or her property to the other currently has the ability to include certain requirements as part of the agreement. For example, in a standard apartment lease there is nearly always a clause regarding the lessee’s responsibility for returning the property undamaged to the lessor.<sup>6</sup>

### **Prohibited Possession of a Firearm on School Property**

Section 790.115, F.S., prohibits a person from possessing a firearm on the property of any school, meaning any preschool through postsecondary school, whether public or nonpublic.<sup>7</sup> As such, property covered by the firearm ban appears to include property that happens to be shared by a religious institution and a school.

There are four exceptions to the general firearm ban on school property. The first allows a person to possess a firearm as authorized in support of school-sanctioned activities.<sup>8</sup> The second exception allows a person to carry a firearm in a case to a firearms training program.<sup>9</sup> The third

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<sup>1</sup> FLA. CONST. art. I, s. 2.

<sup>2</sup> *Nollan v. Cal. Coastal Comm’n*, 483 U.S. 825, 831 (1987) (quoting *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 433 (1982)).

<sup>3</sup> Section 810.08(2)(c), F.S.

<sup>4</sup> Section 775.082, F.S.

<sup>5</sup> Section 775.083, F.S.

<sup>6</sup> *See* s. 83.52, F.S.

<sup>7</sup> It also means any career center. Section 790.115(2)(a), F.S.

<sup>8</sup> Section 790.115(1) and (2), F.S.

<sup>9</sup> Section 790.115(2)(a)1., F.S.

exception allows a person to carry a firearm in a case to a firearms training range at a career center.<sup>10</sup> The final exception generally allows a person to store a firearm inside a parked car as authorized in s. 790.25(5), F.S.<sup>11</sup>

### **Lawful Concealed Carry of Firearms**

Although the law generally prohibits a person from carrying a firearm on his or her person, this prohibition is subject to several exceptions. Of these exceptions, perhaps the most well-known and broadly applicable is the concealed weapons or firearms license.<sup>12, 13</sup>

The license authorizes a person to carry a concealed handgun throughout the state with limited exceptions. For example, the license does not authorize a concealed carry licensee to carry a firearm into a list of places, including “school facilities and administration buildings” and “college or university facilities.”<sup>14</sup> However, a licensee can carry a firearm on the property of religious institutions as long as that property does not also house a school.

To obtain a concealed firearm license, a person must submit an application to the Department of Agriculture and Consumer Services (Department), and the Department must grant the license to each applicant who:

- 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;
- Has not 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;
- Desires a legal means to carry a concealed weapon or firearm for lawful self-defense;

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<sup>10</sup> Section 790.115(2)(a)2., F.S.

<sup>11</sup> Section 790.115(2)(a)3., F.S.

<sup>12</sup> As of December 31, 2018, 1,941,180 Floridians held a standard concealed weapons or firearms license. Fla. Dept. of Agriculture and Consumer Services, *Number of Licensees by Type*, available at [http://www.freshfromflorida.com/content/download/7471/118627/Number\\_of\\_Licensees\\_By\\_Type.pdf](http://www.freshfromflorida.com/content/download/7471/118627/Number_of_Licensees_By_Type.pdf) (last viewed April 3, 2019).

<sup>13</sup> Additional exceptions to the prohibition against carrying a concealed firearm or openly carrying a firearm are created by s. 790.25(3), F.S. This statute authorizes an unlicensed individual to openly possess a firearm or to carry a concealed firearm in any of the manners described in the statute. The statute, for example, authorizes law enforcement officers to carry firearms while on duty. Additionally, the statute authorizes a person to carry a firearm while engaged in hunting, fishing, or camping or while traveling to and from these activities. A person may also possess a firearm at his or her home or place of business or in any of the other circumstances set forth in statute.

<sup>14</sup> Section 790.06(12), F.S.

- Demonstrates competency in the use of a firearm;
- Has not been, or is deemed not to have been, adjudicated an incapacitated person in a guardianship proceeding;
- Has not been, or is deemed not to have been, committed to a mental institution;
- Has not had adjudication of guilt withheld or imposition of sentence suspended on any felony, or any misdemeanor crime of domestic violence, unless 3 years have elapsed since probation or any other conditions set by the court have been fulfilled, or expunction has occurred;
- Has not been issued an injunction that is currently in force and effect which 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>15</sup>

### Federal Law

The federal Gun-Free School Zones Act prohibits the possession of a firearm that has moved in or otherwise affects interstate or foreign commerce at a place an individual knows, or has reasonable cause to believe, is a school or is within 1,000 feet of a school.<sup>16</sup> However, this prohibition does not apply to a person who is licensed by his or her state to carry a concealed handgun.<sup>17</sup>

Another federal law, the Gun-Free Schools Act, is more-narrowly focused on prohibiting students from possessing firearms at or near schools. This prohibition is also subject to exceptions.<sup>18</sup> The act expressly states that it does not apply to a firearm “that is lawfully stored inside a locked vehicle on school property, or if it is for activities approved and authorized by the local educational agency and the local educational agency adopts appropriate safeguards to ensure student safety.”<sup>19</sup>

### III. Effect of Proposed Changes:

The bill amends s. 790.06, F.S., “notwithstanding *any* other law,” to provide that a church, synagogue, or any other religious institution may authorize a concealed carry licensee to carry a firearm on:

- Property owned by the church, synagogue, or religious institution;
- Property rented by the church, synagogue, or religious institution;
- Property leased by the church, synagogue, or religious institution;
- Property borrowed by the church, synagogue, or religious institution; or
- Property otherwise lawfully used by the church, synagogue, or religious institution.

It is possible that the owner of property rented, leased, borrowed, or otherwise lawfully used by a religious institution may find that his or her property rights are diminished as an effect of the bill

<sup>15</sup> Section 790.06(2), F.S. However, the Department must *deny* a license to an applicant who meets any criterion set forth in s. 790.06(3), F.S, which also sets forth criteria for the mandatory revocation of a license.

<sup>16</sup> 18 U.S.C. s. 922(q)(2)(A).

<sup>17</sup> See 18 U.S.C. s. 922(q)(2)(B)(ii).

<sup>18</sup> See 20 U.S.C. s. 7961.

<sup>19</sup> 20 U.S.C. s. 7961(g).

if he or she, for whatever reason, does not want to allow persons to carry firearms on the property and the lease does not contain the restriction.

The bill also enables a private or religious school to designate a person to carry a firearm on the school's property.<sup>20</sup> The bill does not specify that the person carrying the firearm be licensed under s. 790.06, F.S., to carry a concealed firearm. Under this provision, if a school exercises this option, its governing board or body must create policies and procedures the designee must meet.

Because of the language in the bill, "notwithstanding *any* other law," it is possible that if the private or religious school is situated on land owned by another, that property owner may find his or her property rights diminished as related to his or her authority to prohibit firearms on the property unless the firearm restriction is included in the lease or other agreement.

The bill provides that the purpose for the licensee or the person to carry the firearm is for safety, security, personal protection, or other lawful purposes.

The bill is effective July 1, 2019.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

This bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Article VII, s. 18 of the Florida Constitution.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

##### **D. State Tax or Fee Increases:**

None.

##### **E. Other Constitutional Issues:**

None identified.

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<sup>20</sup> Presumably this would create statutory authority for private schools or religious schools to do that which they currently appear to be able to do, provided the school owns the property upon which it sits, and the school declares it is making the designation under one of the exceptions in s. 790.115, F.S.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:****Title**

The title of the bill is “an act relating to the *safety of religious institutions*.” The bill amends the restrictions on carrying a concealed firearm by creating new subparagraphs (c)1. and 2. in s. 790.115(12), F.S. New subparagraph s. 790.115(12)(c)2., F.S., authorizes a private or religious *school* to designate a person to carry a firearm on the property of that *school*. This provision does not appear to fit within the title of the bill, “an act relating to the *safety of religious institutions*.” It is suggested that the title be amended to include “schools” within the title of the bill if the safety of both religious institutions and schools are going to be addressed in the bill.

**Definition**

The term “religious institution” is not defined in the bill. A cross-reference to s. 496.404, F.S., which contains a definition of the term would eliminate any possible confusion about the institutions to which the bill applies.<sup>21</sup>

**VII. Related Issues:**

A property owner, whether a religious institution, a private or religious school, or a person who is the lessor of property to a religious institution or private or religious school, may be open to some degree of liability related to an incident involving the use of a firearm by the designee of the religious institution or school. This, of course, depends on the degree of control the owner has over the property and whether it is found that the property owner owes a duty of care to a person who may be injured or killed during the incident.<sup>22</sup>

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<sup>21</sup> Section 496.404, F.S., defines “religious institution” as a church, ecclesiastical or denominational organization, or established physical place for worship in this state at which nonprofit religious services and activities are regularly conducted and carried on and includes those bona fide religious groups that do not maintain specific places of worship. The term also includes a separate group or corporation that forms an integral part of a religious institution that is exempt from federal income tax under s. 501(c)(3) of the Internal Revenue Code and that is not primarily supported by funds solicited outside its own membership or congregation.

<sup>22</sup> *Brown v. Suncharm Ranch Inc.*, 748 So.2d 1077 (Fla 5th DCA 1999).

**VIII. Statutes Affected:**

This bill substantially amends section 790.06 of the Florida Statutes.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

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

None.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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