

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #:	CS/HB 463 (SB 998)	FINAL HOUSE FLOOR ACTION:	
SPONSOR(S):	Agriculture & Natural Resources Subcommittee; Kreegel and others (Negron and others)	116 Y's	0 N's
COMPANION BILLS:	SB 998	GOVERNOR'S ACTION:	Approved

SUMMARY ANALYSIS

CS/HB 463 passed the House on February 23, 2012, and subsequently passed the Senate on March 2, 2012. 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 the Department of Agriculture and Consumer Services (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 Division of Licensing of DACS. In addition, 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.

Lastly, the bill amends s. 790.15(1), F.S., to provide that a person who recklessly or negligently discharges a firearm outdoors on any property used primarily as the site of a dwelling as defined in s. 776.013, F.S.,¹ or zoned exclusively for residential use commits a misdemeanor of the first degree, punishable by a term of imprisonment not to exceed one year or a fine not to exceed \$1,000.

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

The bill was approved by the Governor on April 13, 2012, ch. 2012-108, Laws of Florida. The effective date of the bill is upon becoming law.

¹ "Dwelling" means a building or conveyance of any kind, including any attached porch, whether the building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, and is designed to be occupied by people lodging therein at night.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Sections 1 and 2

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 firearms² 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;

² 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.³

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:

³ Section 790.06(2), F.S.

- A completed application described above;
- 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.⁴

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.⁵

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.

⁴ Section 790.06(10), F.S.

⁵ Section 250.01(19), F.S.

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

Section 3

Current Situation

Section 790.15(1), F.S., provides that, except as provided in subsection (2) or subsection (3), any person who knowingly discharges a firearm in any public place or on the right-of-way of any paved public road, highway, or street or whosoever knowingly discharges any firearm over the right-of-way of any paved public road, highway, or street or over any occupied premises is guilty of a misdemeanor of the first degree, punishable by a term of imprisonment not to exceed one year or a fine not to exceed \$1,000. This section does not apply to a person lawfully defending life or property or performing official duties requiring the discharge of a firearm or to a person discharging a firearm on public roads or properties expressly approved for hunting by the Fish and Wildlife Conservation Commission or Division of Forestry.

Subsection (2) provides that any occupant of any vehicle who knowingly and willfully discharges any firearm from the vehicle within 1,000 feet of any person is guilty of committing a felony of the second degree, punishable by a term of imprisonment not exceeding 15 years, a fine not to exceed \$10,000, or, for habitual felony offenders, a term of imprisonment not to exceed 30 years.

Subsection (3) provides that any driver or owner of any vehicle, whether or not the owner of the vehicle is occupying the vehicle, who knowingly directs any other person to discharge any firearm from the vehicle commits a felony of the third degree, punishable by a term of imprisonment not exceeding 5 years, a fine not to exceed \$5,000, or, for habitual felony offenders, a term of imprisonment not to exceed 10 years.

Effect of Proposed Changes

The bill amends s. 790.15(1), F.S., to provide that a person who recklessly or negligently discharges a firearm outdoors on any property used primarily as the site of a dwelling as defined in s. 776.013, F.S.,⁶ or zoned exclusively for residential use commits a misdemeanor of the first degree, punishable by a term of imprisonment not to exceed one year or a fine not to exceed \$1,000.

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.

⁶ "Dwelling" means a building or conveyance of any kind, including any attached porch, whether the building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, and is designed to be occupied by people lodging therein at night.

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.

Additionally, the provision in the bill that makes it a misdemeanor to discharge a firearm outside of a dwelling or on property zoned residential may result in an increase of arrests, which may also result in increased costs for the court system.

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:

The provision in the bill that makes it a misdemeanor to discharge a firearm outside of a dwelling or on property zoned residential may result in increased costs to counties due to a possible increase in county jail populations.

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