

**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 1048

INTRODUCER: Senator Baxley

SUBJECT: Firearms

DATE: January 17, 2018

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Stallard</u>	<u>Cibula</u>	<u>JU</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>RC</u>	_____

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## I. Summary:

SB 1048 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 any property lawfully used by the religious institution, regardless of any other law. As such, if a congregation lawfully meets where possession of a firearm is statutorily prohibited for even a concealed carry licensee, the congregation nonetheless may authorize a licensee to carry a firearm in that place.

The current concealed carry licensing statute authorizes licensees to carry throughout the state, except into any of a list of places set forth in that statute. None of these places are the typical meeting places of churches or other religious institutions. However, many churches have schools on their property, and the possession of firearms is generally prohibited by law on school property. As such, though licensed concealed carry is legal in a typical building of worship, such carry may constitute a crime at given church's building or property merely because that church has established a school on its property.

The bill addresses this disparate application of firearms laws amongst religious congregations, enabling congregations that have schools on their property to authorize one or more licensees to carry a firearm on the congregation's property. Additionally, the bill enables a congregation that leases or rents meeting space where the possession of a firearm is normally prohibited to authorize any of its worshipers who has a concealed weapon license to carry a firearm to the congregation's meetings.

## II. Present Situation:

### Overview

A concealed weapon or firearm license authorizes a licensee to carry a concealed weapon or firearm throughout most of the state. Though the licensing statute expressly excludes several places from this authorization, none of these places are the typical meeting places of "churches,

synagogues, or other religious institutions.” Nonetheless, some congregations meet at, or are even co-located with, places where the authority under a concealed carry license does not apply. These places might include “school facilities and administration buildings,” or “college or university facilities.” Moreover, another statute broadly prohibits virtually all people, including concealed weapon licensees, from possessing a firearm on public or private school property. As such, a licensee may generally carry a concealed handgun when he or she meets with his or her congregation, but apparently may not do so if the congregation gathers on the property of a public or private school.

### **Lawful Concealed Carry of Weapons and Firearms**

Although the statutes generally prohibit a person from carrying a firearm or carrying a concealed weapon, these prohibitions are subject to several exceptions.<sup>1</sup>

The most significant exception to the prohibition on a person carrying a concealed weapon or firearm may be the licensed carry of these items. The license authorizes a licensee to carry a concealed firearm in most places in the state.<sup>2</sup> To obtain a license, one must submit an application to the Department of Agriculture and Consumer Services, and the Department must grant the license to each applicant who:<sup>3</sup>

- 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;
- Demonstrates competency in the use of a firearm;<sup>4</sup>
- 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;

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<sup>1</sup> Many of these exceptions are set forth in s. 790.25, F.S.

<sup>2</sup> As of December 31, 2017, 1,836,954 Floridians held a standard concealed carry license. Fla. Dept. of Ag., *Number of Licensees by Type*, [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 visited January 12, 2018).

<sup>3</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>4</sup> See s. 790.06(2)(h), F.S., for the list of courses and other means of demonstrating competency, and for the required documentation that one must present to the state relative to this provision.

- 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.

Although the license generally authorizes a person to carry a concealed weapon or firearm throughout the state, a license “does not authorize” a person to carry a concealed firearm into several places, including any college or university facility, any career center, or any elementary or secondary school facility or administration building. A license also does not authorize a person to carry a concealed firearm into any school, college, or professional athletic event not related to firearms.<sup>5</sup> However, this list does *not* include the property of a church, synagogue or other religious institution, such as a typical church campus. So, a licensee generally may carry a concealed firearm when he or she goes to meet with his or her congregation, but not if they are meeting at a school facility or building, a college or university facility, or any other place at which even licensed carry is illegal.<sup>6,7</sup>

While the licensing statute sets forth that the concealed carry license *does not authorize* carry into any school building or facility, another statute broadly *prohibits* the possession of a weapon or firearm on any public or private school property regardless of whether a person has a license.

### **Prohibited Possession of a Weapon or Firearm at a School or Related Location**

In general, s. 790.115, F.S., prohibits a person from possessing any firearm, electric weapon or device, destructive device, or other weapon on the property of any school, school bus, or school bus stop. Although the word “school” is not defined in the statute authorizing the issuance of concealed weapon or firearm licenses, s. 790.115, F.S., expressly and broadly defines the term “school” as any preschool through postsecondary school, whether public or private.<sup>8</sup> The penalty for violating the ban on weapons varies depending on the weapon possessed and whether the violator has a concealed weapon or firearm license.<sup>9</sup> The limited exceptions in the statute

<sup>5</sup> See s. 790.06(12), F.S., for the list of the places that a license does not authorize a licensee to carry into.

<sup>6</sup> As used in the licensing statute, the terms referring to schools, colleges, and universities are not defined. As such, the statute makes no distinction between public and private schools.

<sup>7</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>8</sup> It also means any career center. Section 790.115(2)(a), F.S.

<sup>9</sup> A non-licensee possessing a firearm or other weapon commits a third degree felony, punishable by up to 5 years in prison and a fine not to exceed \$5,000. See ss. 790.115(b)-(c), 775.082(9)(a)3.d. and 775.083(1)(c), F.S. However, licensees who commit this crime are guilty of a lesser crime, a second degree misdemeanor, punishable by up to 60 days in jail and a fine not to exceed \$500. See, ss. 790.115(2)(e), 790.06(12)(d), 775.082(4)(b), and 775.083(1)(e), F.S.

authorize the possession of weapons and firearms “in support of school-sanctioned activities,” “in a case” to a firearms class if approved by school authorities, and in parked cars.

### **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 the individual knows, or has reasonable cause to believe, is a school or is within 1,000 feet of a school.<sup>10</sup> However, this prohibition does not apply to a person who is licensed to carry a concealed weapon or firearm.<sup>11</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>12</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>13</sup>

### **Right to Exclude Anyone Possessing a Weapon or Firearm**

The laws generally prohibiting the possession of weapons or firearms on school property are not the only legal means available to private schools that want to exclude persons who possess these items. The Florida Constitution declares that every person has the right to “acquire, possess, and protect property.”<sup>14</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>15</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>16</sup> punishable by up to 5 years in prison,<sup>17</sup> 5 years of probation, and a fine not to exceed \$5,000.<sup>18</sup>

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<sup>10</sup> 18 U.S.C. § 922(q)(2)(A).

<sup>11</sup> See 18 U.S.C. § 922(q)(2)(B)(ii).

<sup>12</sup> See 20 U.S.C. § 7961.

<sup>13</sup> 20 U.S.C. § 7961(g).

<sup>14</sup> FLA. CONST. art. I, s. 2.

<sup>15</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>16</sup> Section 810.08(2)(c), F.S.

<sup>17</sup> Section 775.082(3)(e), F.S.

<sup>18</sup> Section 775.083(1)(c), F.S.

### **III. Effect of Proposed Changes:**

#### **Overview**

Under the bill, a church, synagogue, or other religious institution may authorize a person who has a license to carry a concealed weapon or firearm to carry a firearm on any property lawfully used by the religious institution, regardless of any other law. As such, if a congregation meets in a place where possession of a firearm is prohibited, the congregation may nonetheless authorize a licensee to carry in that place.

The current concealed carry licensing statute authorizes licensees to carry throughout the state, except into any of a list of places set forth in that statute. None of these places are the typical meeting places of churches or other religious institutions. However, many churches have schools on their property, and the possession of firearms is generally prohibited by law on school property. As such, though licensed concealed carry is legal in a typical building of worship, such carry may constitute a crime at given church's building or property merely because that church has established a school on its property.

The bill addresses this disparate application of firearms laws amongst religious congregations, enabling congregations that have schools on their property to authorize one or more licensees to carry a firearm on the congregation's property. Additionally, the bill enables a congregation that leases or rents meeting space where the possession of a firearm is normally prohibited to authorize any of its worshipers who has a concealed weapon license to carry a firearm to the congregation's meetings.

#### **Carrying a Weapon or Firearm at a School**

Under current law, s. 790.115, F.S., prohibits carrying a weapon or firearm on any school property, subject to exceptions in the statute. This statute defines "school" to include preschools through colleges and universities, public or private, as well as career centers. Also, Florida's concealed weapon and firearm licensing statute lists elementary and secondary school facilities and administration buildings, college and university facilities, and career centers as places into which the license does not authorize a person to carry a concealed weapon or firearm.<sup>19</sup>

However, the bill enables churches, synagogues, and other religious institutions to authorize a licensee to carry a firearm at a school if the religious institution is lawfully using the property.

#### **Right to Prohibit Firearm Possession on Public or Private Property**

The bill does not purport to limit the property rights or contractual rights of any property owner to exclude a person who is carrying a firearm from the property. Accordingly, for example, a contract between a public school and a church for the use of the school's facilities could contractually prohibit the possession of firearms on school property.

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<sup>19</sup> Federal law generally prohibits the possession of a firearm at or within 1,000 feet of any school's property. However, one exception to this prohibition are persons who are licensed under state law to carry a firearm.

**Effective Date**

The bill takes effect upon becoming a law.

**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.

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

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**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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