

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 Committee on Rules

BILL: CS/SB 1048

INTRODUCER: Judiciary Committee and Senator Baxley

SUBJECT: Firearms

DATE: January 31, 2018

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1048 enables a church, synagogue, or other religious institution to authorize a person who has a concealed handgun license to carry a concealed handgun in some places where even a licensee normally may not, subject to several restrictions. These places includes elementary or secondary schools and career centers, if they are also established places of worship.

Under current law, a person who has a concealed handgun license is authorized to carry a concealed handgun on the typical property of a religious institution, such as a church property that is not also home to a school. However, a license does not authorize a person to possess a firearm at a school, including a school that is on church property. There is even a question as to whether a licensee may carry a handgun on any part of a property on which both a church's worship building and its school are located.

Under the bill, a religious institution may authorize the holder of a concealed handgun license to carry a concealed handgun on certain school properties if they are "established physical place[s] of worship at which religious services are regularly conducted."

However, if the institution uses school property not owned by the institution, the institution must have the permission of the owner or administrator of the property to allow the licensed carrying of concealed handguns. Additionally, a person may not possess a handgun on school property during school hours or when any school-sponsored activity is taking place on the property. Finally, the bill expressly states that religious institutions may not authorize a person to carry a handgun on the property of a public or private college or university.

II. Present Situation:

Overview

A concealed handgun license authorizes a licensee to carry a concealed handgun 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 located on the same property as, places where the authority under a concealed handgun license does not apply, including “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.¹

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 handgun in most places in the state.² 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:³

- 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;

¹ Many of these exceptions are set forth in s. 790.25, F.S.

² 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 (last visited January 12, 2018).

³ 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.

- Desires a legal means to carry a concealed weapon or firearm for lawful self-defense;
- Demonstrates competency in the use of a firearm;⁴
- 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.

Although the license generally authorizes a person to carry a concealed handgun throughout the state, a license “does not authorize” a person to carry a concealed handgun 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 handgun into any school, college, or professional athletic event not related to firearms.⁵ 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 handgun 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.^{6, 7}

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.⁸ The penalty

⁴ 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.

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

⁶ 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.

⁷ 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.

⁸ It also means any career center. Section 790.115(2)(a), F.S.

for violating the ban on weapons varies depending on the weapon possessed and whether the violator has a concealed weapon or firearm license.⁹ The limited exceptions in the statute 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.¹⁰ However, this prohibition does not apply to a person who is licensed to carry a concealed weapon or firearm.¹¹

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.¹² 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.”¹³

III. Effect of Proposed Changes:

The bill addresses the issue under current law of how persons who would otherwise be able to carry a concealed handgun to their worship services may not do so if their place of worship is also school property. Particularly, the bill enables a church, synagogue, or other religious institution¹⁴ to authorize a person who has a concealed handgun license to carry a concealed handgun at certain places, including the property of public or private elementary or secondary school, or a career center, that is also an “established place of physical worship at which religious services are regularly conducted.”

However, if the institution uses property that it does not own, the institution must have the permission of the owner or administrator of the property to allow the licensed carrying of concealed handguns. Additionally, a person may not possess a handgun on school property during school hours or when extracurricular school-sponsored activities are taking place on the

⁹ 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.

¹⁰ 18 U.S.C. § 922(q)(2)(A).

¹¹ *See* 18 U.S.C. § 922(q)(2)(B)(ii).

¹² *See* 20 U.S.C. § 7961.

¹³ 20 U.S.C. § 7961(g).

¹⁴ The bill adopts the definition of this term in s. 496.404, F.S.:

“Religious institution” means 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.

property. Finally, the bill expressly states that religious institutions may not authorize a person to carry a handgun on the property of a public or private college or university.

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:

The bill enables a religious institution to authorize a person who has a license carry a concealed handgun to do so in certain places where even a licensee currently may not. These places include certain schools, subject to several restrictions. These restrictions include a restriction that handguns may not be carried on school property during school hours or during any school-sponsored activity.

The lack of a clear definition of what constitutes a school-sponsored activity and the lack of a required notice of when those activities are occurring may lead to unintentional violations of

criminal law by those authorized to carry a concealed handgun. If the activities of a religious institution and a school it operates are closely interrelated, such as a student performance during the institution's worship service, the authority for a person to possess a concealed handgun even during a worship service seems uncertain. Therefore, the Legislature may wish to revise the bill to minimize the risk of unintentional violations of criminal law by otherwise law-abiding persons.

VIII. Statutes Affected:

This bill substantially amends section 790.06 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Judiciary on January 25, 2018:

In the underlying bill, a religious institution could authorize a person who has a concealed weapon or firearms license to carry a firearm anywhere the religious institution could lawfully meet, regardless of whether a licensee's carrying in that place would otherwise be prohibited. Under the committee substitute, a religious institution may authorize a person who has a concealed weapon or firearms license to carry a concealed handgun only on certain properties that are used by a religious institution, and only under a number of limitations.

- B. **Amendments:**

None.