

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1419 Firearms  
**SPONSOR(S):** McClure  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 1048

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	7 Y, 3 N	Bruno	Sumner
2) Judiciary Committee	13 Y, 6 N	Bruno	Poche

### SUMMARY ANALYSIS

Unless exempted, a person may not carry a concealed firearm or weapon in public without a license issued by the Department of Agriculture and Consumer Services. However, licensees may not carry a concealed firearm in certain locations, including schools and colleges. Florida law criminalizes possession of a firearm on school property as a third degree felony, punishable by up to 5 years of incarceration and a \$5,000 fine.

Florida law does not generally prohibit a licensee from carrying a concealed firearm or weapon in a church, synagogue, and other religious institution. However, because many places of worship are on or attached to a school – often a preschool – or college, carrying a firearm or weapon on the premises is a crime.

HB 1419 enables a church, synagogue, or other religious institution to authorize a licensed person to carry a concealed firearm on property owned, rented, leased, borrowed, or lawfully used by the institution. The authorization must be made for lawful purposes, including safety, security, and personal protection. Because the bill permits this authorization notwithstanding any other law, a licensed person who carries a firearm with authorization at a school owned, rented, leased, borrowed, or lawfully used by a religious institution would not violate Florida's ban on possessing firearms on school property.

The bill does not limit the property or contractual rights of any property owner to exclude an armed person from his or her property. Religious institutions and owners of property borrowed or used by a religious institution may continue to prohibit firearms as they choose. These property owners may ask a person carrying a firearm to leave the premises, and a person who refuses to leave after warning commits armed trespass, a third degree felony.

The bill does not appear to fiscally impact state or local governments.

The bill provides an effective date of July 1, 2018.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

##### Concealed Carry

Unless exempted, a person may not carry a concealed firearm or weapon in public without a license issued by the Department of Agriculture and Consumer Services.<sup>1</sup> The licensing scheme requires the department to issue a license to any applicant that meets statutory criteria, which includes that the person:<sup>2</sup>

- Is a resident of the United States and a citizen of the United States or a permanent resident alien of the United States, or is an eligible consular security official;
- 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 a controlled substance within a 3-year waiting period immediately preceding the application date;
- Does not chronically and habitually use alcoholic beverages or other substances to the extent that his or her normal faculties are impaired;
- Desires the legal means to carry a concealed weapon or firearm for lawful self-defense;
- 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 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 and 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 law.
  - For example, federal law prohibits a person convicted of misdemeanor domestic violence from purchasing a firearm,<sup>3</sup> so a person convicted of misdemeanor domestic violence is ineligible for a license to carry a concealed firearm or weapon in Florida.

##### Firearms on School Property

Despite being licensed, a licensee may not carry a concealed firearm or weapon into several enumerated locations, including schools and colleges.<sup>4</sup> Both Florida and federal laws criminalize possession of a firearm on school property.<sup>5</sup>

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<sup>1</sup> S. 790.01, F.S.

<sup>2</sup> S. 790.06(2), F.S.

<sup>3</sup> 18 USC § 922(g)(9).

<sup>4</sup> S. 790.06(12)(1), F.S.

<sup>5</sup> S. 790.115(2)(a); 18 USC § 922(q)(2).

### *Florida law*

Under Florida law, possessing a firearm or weapon at a school-sponsored event or on the property of any school, school bus, or school bus stop is a third degree felony,<sup>6</sup> punishable by up to 5 years of incarceration and a \$5,000 fine.<sup>7</sup> Under this law, a school is any public or private preschool, elementary school, middle school, junior high school, secondary school, career center, or postsecondary school.<sup>8</sup> Exceptions to the prohibition on possessing a firearm on school property include when a person carries a firearm:

- In a case to a firearms program, class, or function approved by the principal or chief administrative officer of the school;
- In a case to a firearms training range at a career center; or
- In a vehicle under certain circumstances, except that school districts may adopt written and published policies that waive the exception for purposes of student and campus parking privileges.<sup>9</sup>

### *Federal law*

Federal law prohibits possession of a firearm that has moved in or otherwise affects interstate or foreign commerce in a school zone.<sup>10</sup> A person who unlawfully possesses a firearm in a school zone faces up to 5 years in federal prison.<sup>11</sup> The federal prohibition does not apply to possession of a firearm:

- On private property not part of school grounds;
- By a person licensed to possess a firearm by the state in which the school zone is located;
- That is:
  - Not loaded; and
  - Locked in a container, or a locked firearms rack that is on a motor vehicle.
- By an individual for use in a program approved by a school in the school zone;
- By an individual in accordance with a contract entered into between a school in the school zone and the individual or an employer of the individual;
- By a law enforcement officer acting in his or her official capacity; or
- That is unloaded and is possessed by an individual while traversing school premises for the purpose of gaining access to public or private lands open to hunting, if entry on school premises is authorized by school authorities.<sup>12</sup>

### Firearms in Churches, Synagogues, and Religious Institutions

Florida law does not generally prohibit a licensee from carrying a concealed firearm or weapon in a church, synagogue, and other religious institution. However, because many places of worship are on or attached to a school – often a preschool – or college, carrying a firearm or weapon on the premises is a third degree felony, regardless of a person’s licensure status.

Those churches, synagogues, or religious institutions not on or attached to a school campus may choose whether to ban firearms and weapons from the premises.<sup>13</sup> A religious institution generally has

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<sup>6</sup> S. 790.115(2)(c), F.S.

<sup>7</sup> SS. 775.082 & 775.083, F.S.

<sup>8</sup> S. 790.115(2)(a), F.S.

<sup>9</sup> Id.

<sup>10</sup> 18 USC § 922(q)(2)(A).

<sup>11</sup> 18 USC §§ 924(1)(1)(B) & 924(4).

<sup>12</sup> 18 USC § 922(q)(2)(B).

<sup>13</sup> See, e.g., The Church of Jesus Christ of Latter Day Saints, *Handbook 2: Administering the Church*, policy 21.2.4, available at: <https://www.lds.org/handbook/handbook-2-administering-the-church/selected-church-policies/21.2?lang=eng#21.2.4> (last viewed January 18, 2018); Michael Boulter, *After mass shootings, should legal guns be welcomed into church?*, PBS Newshour, available at: <https://www.pbs.org/newshour/politics/after-mass-shootings-should-legal-guns-be-welcomed-into-church> (last viewed January 18, 2018).

the right to exclude unwanted individuals and items from its property.<sup>14</sup> Thus, a religious institution with a weapons ban could ask a person carrying a firearm to leave, and law enforcement could arrest a person who refused to leave for trespass. Trespass while armed is a third degree felony,<sup>15</sup> punishable by up to 5 years of incarceration and a \$5,000 fine.<sup>16</sup>

### **Effect of Proposed Changes**

HB 1419 enables a church, synagogue, or other religious institution to authorize a licensed person to carry a concealed firearm on property owned, rented, borrowed, leased, borrowed, or lawfully used by the institution. The authorization must be made for lawful purposes, including safety, security, and personal protection. Because the bill permits this authorization notwithstanding any other law, a licensed person who carries a firearm at a school owned, rented, leased, borrowed, or lawfully used by a religious institution, as authorized by the institution, would not violate Florida's ban on possessing firearms on school property. The bill is also consistent with federal requirements, which except persons appropriately licensed by the state from the prohibition on possessing firearms in a school zone, by requiring licensure in order to receive authorization.

The bill does not place time limits on the permissible authorization. Nothing in the bill would prohibit an authorized person from carrying a firearm at the church, synagogue, or religious institution on or attached to school property during school hours or at times other than when the congregation is meeting.

The bill does not limit the property or contractual rights of any property owner to exclude a person carrying a firearm from his or her property. Religious institutions and owners of property borrowed or used by a religious institution may continue to prohibit firearms as they choose.

The bill provides an effective date of July 1, 2018.

#### **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, 2018.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

#### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

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<sup>14</sup> FLA. CONST. Art. 1, s. 2 (a person has the right to acquire, possess, and protect property); *Nollan v. California Coastal Com'n*, 483 U.S. 825 (1987) (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> S. 810.08(2)(C), F.S.

<sup>16</sup> SS. 775.082 & 775.083, F.S.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

### **III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect municipal or county governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**