

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1343 Issuance of Licenses to Carry Concealed Weapons or Firearms

**SPONSOR(S):** Ingoglia

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1882

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Property Rights Subcommittee	10 Y, 6 N	Brascomb	Jones
2) Agriculture & Natural Resources Appropriations Subcommittee		White	Pigott
3) Judiciary Committee			

### SUMMARY ANALYSIS

The Florida Constitution guarantees the right of the people to keep and bear arms in self-defense. Generally, Florida law authorizes a person to own, possess, and lawfully use firearms and other weapons without a license if:

- The person is not statutorily prohibited from possessing a firearm or weapon; and
- Such ownership, possession, or use occurs in a lawful manner and location.

Although Florida does not generally require a license or permit to purchase or possess a firearm, a person, unless exempted, may not carry a concealed firearm or weapon without a license issued by the Department of Agriculture and Consumer Services (DACS). There are over 2.3 million licenses to carry a concealed firearm or weapon in Florida. DACS's Division of Licensing (DOL) offers an Internet-based online concealed weapon license (CWL) service for initial applicants and renewal applicants. The licensing scheme requires DACS to issue a license to any applicant meeting specified statutory requirements, which require that the applicant:

- Is at least 21 years old;
- Does not suffer from a physical infirmity that prevents the safe handling of a weapon or firearm;
- Has not been committed for the abuse of a controlled substance;
- Does not habitually use alcohol or other substances to the extent normal faculties are impaired;
- Desires the legal means to carry a concealed weapon in self-defense;
- Demonstrates competence with a firearm;
- Has not received a withhold of adjudication for a felony in the preceding three years; and
- Is not otherwise prohibited from purchasing or possessing a firearm under federal or Florida law.

The bill requires DACS to continually maintain an online application process for the issuance of concealed weapon licenses and prohibits DACS from arbitrarily or subjectively restricting access to the online application process. The bill provides for an award of reasonable attorney fees and costs for a successful action against DACS to enforce specified provisions within the bill.

The bill does not appear to have a fiscal impact on state or local governments.

The bill provides an effective date of July 1, 2021.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

The U.S. Constitution protects the right to bear arms, stating that “the right of the people to keep and bear Arms shall not be infringed.”<sup>1</sup> The Florida Constitution more specifically guarantees the right of the people to keep and bear arms in self-defense.<sup>2</sup> Generally, Florida law authorizes a person to own, possess, and lawfully use firearms and other weapons<sup>3</sup> without a license if:

- The person is not statutorily prohibited from possessing a firearm or weapon; and
- Such ownership, possession, or use occurs in a lawful manner and location.<sup>4</sup>

#### Prohibitions on Firearm Possession

##### *Federal Prohibitions*

Federal law prohibits an individual from purchasing or possessing a firearm if he or she:

- Has been convicted of a felony;
- Is a fugitive of justice;
- Is an unlawful user of or addicted to any controlled substance;
- Has been adjudicated mentally defective or committed to a mental institution;
- Is illegally or unlawfully in the U.S., or has been granted a nonimmigrant visa;
- Received a dishonorable discharge from the Armed Forces;
- Has renounced U.S. citizenship;
- Is under an injunction, restraining order, or protective order restraining certain contact with an intimate partner or child; or
- Has been convicted of a misdemeanor crime of domestic violence.<sup>5</sup>

Additionally, a person under indictment or information for a felony may not receive a firearm.<sup>6</sup> A person who sells a firearm knowing or having reasonable cause to believe that the purchaser is prohibited from purchasing a firearm under federal law may be prosecuted and imprisoned for up to 10 years.<sup>7</sup> A person who purchases or possesses a firearm in violation of these prohibitions may be federally imprisoned for up to 10 years.<sup>8</sup>

##### *State Prohibitions*

Florida law prohibits an individual from purchasing a firearm if he or she:

- Has been convicted of a felony;<sup>9</sup>
- Has been convicted of a misdemeanor crime of domestic violence;<sup>10</sup>

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<sup>1</sup> Amend. II, U.S. Const. (“A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms shall not be infringed.”)

<sup>2</sup> Art. 1, s. 8, Fla. Const.

<sup>3</sup> A weapon is a knife, metallic knuckles, slugshot, billie club, tear gas gun, chemical weapon or device, or other deadly weapon except a firearm or a common pocketknife, plastic knife, or blunt-bladed table knife. S. 790.001(13), F.S.

<sup>4</sup> S. 790.25, F.S.

<sup>5</sup> 18 USC s. 922(g).

<sup>6</sup> 18 USC s. 922(n).

<sup>7</sup> 18 USC ss. 922(d) and 924(3).

<sup>8</sup> 18 USC s. 924(3).

<sup>9</sup> S. 790.065(2)(a)1., F.S.

<sup>10</sup> S. 790.065(2)(a)2., F.S.

- Has had an adjudication of guilt withheld or imposition of sentence suspended on any felony or misdemeanor crime of domestic violence, unless three years have elapsed since all sentence conditions were fulfilled or the record has been expunged;<sup>11</sup>
- Has been adjudicated mentally defective or committed to a mental institution;<sup>12</sup>
- Has had an injunction for protection against domestic violence or repeat violence entered against him or her;<sup>13</sup> or
- Is a minor.<sup>14</sup>

### *License to Carry a Concealed Firearm*

Florida generally does not require a license or permit to purchase or possess a firearm. However, unless exempted, a person may not carry a concealed firearm or weapon without a license issued by the Department of Agriculture and Consumer Services (DACS).<sup>15</sup> There are over 2.3 million licenses to carry a concealed firearm or weapon in Florida.<sup>16</sup> The licensing scheme requires DACS to issue a license to any applicant meeting objective statutory criteria, which include that the applicant:

- Is at least 21 years old;
- Does not suffer from a physical infirmity that prevents the safe handling of a weapon or firearm;
- Has not been committed for the abuse of a controlled substance;
- Does not habitually use alcohol or other substances to the extent normal faculties are impaired;
- Desires the legal means to carry a concealed weapon in self-defense;
- Demonstrates competence with a firearm;
- Has not received a withhold of adjudication for a felony in the preceding three years; and
- Is not prohibited from purchasing or possessing a firearm under federal or Florida law.<sup>17</sup>

DACS's Division of Licensing (DOL) offers an Internet-based online concealed weapon license (CWL) service for initial applicants and for renewal applicants.<sup>18</sup> After completing the online application process, the applicant must have his fingerprints taken at:

- A law enforcement agency;
- A Florida tax collector's office that offers the CWL intake service; or
- One of the division's nine regional offices.<sup>19</sup>

In Fiscal Year 2019-2020, there were:

- 163,934 applications for a new license received;
- 114,730 new licenses issued;
- 10,406 applications denied, 5,039 of which due to applicant ineligibility;
- 1,546 licenses revoked;
- 5,633 licenses suspended for a disqualifying arrest; and
- 1,646 licenses suspended for a domestic violence injunction.<sup>20</sup>

<sup>11</sup> S. 790.065(2)(a)3., F.S.

<sup>12</sup> S. 790.065(2)(a)4., F.S.

<sup>13</sup> S. 790.065(2)(c)1., F.S.

<sup>14</sup> S. 790.18, F.S.

<sup>15</sup> S. 790.01, F.S.

<sup>16</sup> Florida Department of Agriculture and Consumer Services, *Concealed Weapon/Firearm License Holders by County as of Feb. 28, 2021* [https://www.fdacs.gov/content/download/7502/file/cw\\_active.pdf](https://www.fdacs.gov/content/download/7502/file/cw_active.pdf) (last visited Mar. 15, 2021.).

<sup>17</sup> S. 790.06(2), F.S.

<sup>18</sup> Florida Department of Agriculture and Consumer Services, Agency Analysis for 2021 HB 1343, p. 2, Mar. 11, 2021.

<sup>19</sup> *Id.*

<sup>20</sup> Florida Department of Agriculture and Consumer Services, *Concealed Weapon or Firearm License Reports July 1, 2019 – June 30, 2020*, [https://www.fdacs.gov/content/download/84469/file/07012019\\_06302020\\_cw\\_annual.pdf](https://www.fdacs.gov/content/download/84469/file/07012019_06302020_cw_annual.pdf) (last visited Mar. 15, 2021).

Carrying a concealed firearm without a license or exemption is a third-degree felony, punishable by up to five years in prison and a \$5,000 fine.<sup>21</sup> Carrying any other concealed weapon without a license or exemption is a first-degree misdemeanor, punishable by up to one year in jail and a \$1,000 fine.<sup>22</sup>

### **Effect of Proposed Changes**

The bill requires DACS to continually maintain an online application process for the issuance of concealed weapon licenses. The bill also prohibits DACS from arbitrarily or subjectively restricting access to the online application process. The bill provides for an award of reasonable attorney fees and costs in addition to other relief if DACS is found in violation of specified provisions under the bill.

The bill provides an effective date of July 1, 2021.

#### **B. SECTION DIRECTORY:**

**Section 1:** Amends s. 760.06, F.S., relating to license to carry concealed weapon or firearm.

**Section 2:** Provides an effective date of July 1, 2021.

## **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.

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 county or municipal governments.

2. Other:

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<sup>21</sup> Ss. 790.01(2), 775.082, and 775.083, F.S.

<sup>22</sup> Ss. 790.01(1), 775.072, and 775.083, F.S.

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.