

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 Commerce and Tourism

BILL: SB 1882

INTRODUCER: Senator Rodrigues

SUBJECT: Issuance of Licenses to Carry Concealed Weapons or Firearms

DATE: March 26, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Harmsen</u>	<u>McKay</u>	<u>CM</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>GO</u>	_____
3.	_____	_____	<u>AP</u>	_____

I. Summary:

SB 1882 requires the Department of Agriculture and Consumer Services (Department) to continually maintain an online application process to facilitate the issuance of concealed weapon or firearm licenses pursuant to s. 790.06, F.S. Additionally, the bill provides that the Department cannot “arbitrarily or subjectively” restrict access to its online application process.

The bill provides that the court presiding over a civil action to enforce any provision of s. 790.06, F.S., must award attorney fees and costs, in addition to any other relief, to the prevailing plaintiff.

The bill takes effect July 1, 2021.

II. Present Situation:

The U.S. Constitution protects the right to bear arms, stating “the right of the people to keep and bear Arms shall not be infringed.”¹ The Florida Constitution more specifically guarantees the right of the people to keep and bear arms in self-defense.² Generally, Florida law authorizes a person to own, possess, and lawfully use firearms and other weapons³ without a license, if the person is not statutorily prohibited and such ownership, possession, or use occurs in a lawful manner and location.⁴

¹ U.S. CONST. amend. II.

² FLA. CONST. art. 1, s. 8.

³ 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. Section 790.001(13), F.S.

⁴ Section 790.25, F.S.

The Division of Licensing (Division) within the Department of Agriculture and Consumer Services (Department) issues concealed weapon or firearm licenses pursuant to s. 790.06, F.S.⁵ In fiscal year 2020, the Department received 231,350 applications for new concealed weapon or firearm licenses and issued 186,446.⁶ The Division works in conjunction with local tax collector's offices to accept concealed weapon or firearm license applications or renewals for processing.⁷

Application Process

An applicant for a concealed weapon or firearm license may apply through the Department's website, by mail to the Department, or by physical submission to either one of the Department's regional offices or an approved tax collector's office.⁸ The applicant must submit an application, a license fee, a color photograph of him or herself, proof of training or other certificate of proficiency with a firearm, and a full set of his or her fingerprints (for original applicants only; in-state-renewals do not require fingerprint submission).⁹

An applicant can have his or her fingerprints taken at one of the Department's regional offices, an approved tax collector's office, or a local sheriff's office or police department.¹⁰ An applicant may submit fingerprints via an online application, if his or her fingerprints were taken in an electronic format. According to the Department, all of its regional offices, most sheriff's offices, and some local police departments offer electronic fingerprint scanning, but local tax collectors are not currently offering the electronic service. Applicants who reside outside of Florida or who are not able to obtain electronic fingerprint services, may submit an original fingerprint card via mail delivery to the Department.¹¹

Upon receipt of an application, the Department must issue a license to carry a concealed weapon or firearm if the applicant:¹²

- 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;

⁵ See generally, Dep't. of Ag. and Consumer Servs., *Applying for a Concealed Weapon License*, <https://www.fdacs.gov/Consumer-Resources/Concealed-Weapon-License/Applying-for-a-Concealed-Weapon-License#bymail> (last visited Mar. 26, 2021).

⁶ Dep't. of Ag. and Consumer Servs., *Concealed Weapon or Firearm License Reports: Applications and Dispositions by County- July 1, 2020 through June 30, 2021*, https://www.fdacs.gov/content/download/92523/file/07012020_06302021_cw_annual.pdf (last visited Mar. 26, 2021).

⁷ Section 790.0625, F.S., permits the Department to enter into agreements with local tax collector offices to accept applications. Section 790.06, F.S., governs the Department's role in accepting and processing applications.

⁸ Florida Department of Agriculture and Consumer Services, *Applying for a Concealed Weapon License: Ways to Apply*, <https://www.fdacs.gov/Consumer-Resources/Concealed-Weapon-License/Applying-for-a-Concealed-Weapon-License> (last visited Mar. 26, 2021).

⁹ Section 790.06(5), F.S.

¹⁰ Section 790.06(5)(c), F.S.

¹¹ Dep't. of Ag. and Consumer Servs., *Online Concealed Weapon or Firearm License Application Fingerprint Submission Instructions*, https://laso.freshfromflorida.com/documentTemplates/LASO_FP_Instructions.pdf (last visited Mar. 26, 2021).

¹² Section 790.06(2), F.S.

- Is 21 years of age or older;
- Does not suffer from a physical infirmity which 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 or 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 competence with a firearm;¹³
- Has not been adjudicated an incapacitated person in a guardianship proceeding, unless he or she has been granted relief from firearms disabilities by a court or pursuant to state law;
- Has not been committed to a mental institution, unless he or she has been granted relief from firearms disabilities by a court or pursuant to state law;
- 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 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.

Cessation of Application Service

On March 20, 2020, the Department closed its regional and state offices to public access due to public health concerns relating to COVID-19.¹⁴ The Department's regional office closures continued through June 2020.¹⁵ These office closures precluded the fingerprinting of applicants and submission of applications at the Department's regional offices.

The Department also began delaying the acceptance of online and in-person initial concealed weapon or firearm license applications on March 20, 2020.¹⁶ The Department states that it closed its online application process "to prevent frustration from applicants submitting online applications but unable to obtain fingerprints [from one of the three sources permitted under s.

¹³ 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.

¹⁴ Dep't. of Ag. and Consumer Servs., *Acceptance of New Concealed Weapons License Applications Delayed During COVID-19* (Mar. 20, 2020), <https://www.fdacs.gov/News-Events/Press-Releases/2020-Press-Releases/Acceptance-of-New-Concealed-Weapons-License-Applications-Delayed-During-COVID-19> (last visited Mar. 26, 2021).

¹⁵ Dep't. of Ag. and Consumer Servs., *Commissioner Nikki Fried Announces Reopening of Tallahassee Regional Office, Return of Online Concealed Weapons Licensing* (Jun. 11, 2020), <https://www.fdacs.gov/News-Events/Press-Releases/2020-Press-Releases/Commissioner-Nikki-Fried-Announces-Reopening-of-Tallahassee-Regional-Office-Return-of-Online-Concealed-Weapons-Licensing> (last visited Mar. 26, 2021).

¹⁶ *Id.* at 10, *supra*.

790.06(5), F.S.] and who would otherwise be denied.”¹⁷ The Department further stated that it would continue to accept online and mailed renewal applications for concealed weapon or firearm licenses.¹⁸ During the shutdown of its online application portal, the Department displayed a message on its portal that it would accept mailed applications for a concealed weapon or firearm license.¹⁹ The Department re-opened the online application portal on June 15, 2020.²⁰

The Department’s closure of its online application system resulted in a lawsuit to enjoin the Department to resume its acceptance of online applications for concealed weapon or firearm licenses.²¹ The Department succeeded in having the case dismissed on September 28, 2020, but the case appears to be ongoing pursuant to a request by the plaintiff to file an amended pleading.²² However, the amended pleading was due by October 9, 2020, and no filings have been made in the case since October 1, 2020.²³

III. Effect of Proposed Changes:

The bill requires the Department to continually maintain an online application process to facilitate the issuance of concealed weapon or firearm licenses pursuant to s. 790.06, F.S. The bill further provides that the Department cannot “arbitrarily or subjectively” restrict access to its online application process.

Additionally, the bill allows a civil action to enforce the subsection, and requires the court to award the prevailing party reasonable attorney fees and costs upon a finding of a violation by the Department.

The bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

¹⁷ Dep’t. of Ag. and Consumer Servs., *Letter from Commissioner Nikki Fried to Attorney General Moody on Concealed Weapon Licenses* (Apr. 23, 2020), <https://www.fdacs.gov/News-Events/Press-Releases/2020-Press-Releases/Letter-from-Commissioner-Nikki-Fried-to-Attorney-General-Moody-on-Concealed-Weapons-Licenses> (last visited Mar. 26, 2021).

¹⁸ *Id.* at 10, *supra*.

¹⁹ *Cliff C. Maloney and Young Americans for Liberty, Inc. v. Fl. Dep’t. of Ag. And Consumer Servs.*, Verified Complaint for Declaratory and Injunctive Relief p 5, Case 2020-CA-888 (Fla. 2d Cir. Ct. 2020)..

²⁰ *Cliff C. Maloney and Young Americans for Liberty, Inc. v. Fl. Dep’t. of Ag. And Consumer Servs.*, Order Granting Defendant’s Motion to Dismiss (Sept. 8, 2020) Case 2020-CA-888 (Fla. 2d Cir. Ct. 2020).

²¹ *See generally*, News Service of Florida, TAMPA BAY TIMES, *After Shutdown Delays Some Florida Concealed Weapon Permits, Lawsuit Charges Rights Were Violated* (May 11, 2020), <https://www.tampabay.com/news/health/2020/05/11/after-shutdown-delays-some-florida-concealed-weapon-permits-lawsuit-charges-rights-were-violated/> (last visited Mar. 26, 2021); *Cliff C. Maloney and Young Americans for Liberty, Inc. v. Fl. Dep’t. of Ag. And Consumer Servs.*, Case 2020-CA-888 (Fla. 2d Cir. Ct. 2020).

²² *Cliff C. Maloney and Young Americans for Liberty, Inc. v. Fl. Dep’t. of Ag. And Consumer Servs.*, Agreed Order on Plaintiffs’ Motion for Extension of Time (Oct. 1, 2020) Case 2020-CA-888 (Fla. 2d Cir. Ct. 2020).

²³ *Id.*

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

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

None.

B. Private Sector Impact:

Individuals who prevail in a civil court case against the Department pursuant to allegations made under s. 790.06, F.S., will be awarded attorney fees and costs in addition to any other relief.

C. Government Sector Impact:

The Department may be subject to litigation regarding any shutdown of its online application portal for concealed weapon or firearm licenses.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill subjects the Department to liability for system failures beyond its control (e.g., power outages, system hack, or routine maintenance).

VIII. Statutes Affected:

This bill substantially 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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
