

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 259 Safety of Religious Institutions

**SPONSOR(S):** Education & Employment Committee, Williamson, Byrd and others

**TIED BILLS:** None **IDEN./SIM. BILLS:** CS/SB 498

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice & Public Safety Subcommittee	14 Y, 3 N	Padgett	Hall
2) Education & Employment Committee	16 Y, 5 N, As CS	Bauman	Hassell
3) Judiciary Committee			

### 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 by a non-licensee as a third degree felony, punishable by up to five years imprisonment and a \$5,000 fine. Possession of a firearm on school property by a licensee is a second degree misdemeanor, punishable by up to 60 days in jail and a \$500 fine.

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

HB 259 authorizes a licensee to carry a concealed firearm for any lawful purpose, including safety, security, and personal protection, on any property owned, rented, leased, borrowed, or lawfully used by a church, synagogue, or other religious institution unless the religious institution has a policy specifically prohibiting the carrying of concealed firearms.

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

The bill is effective upon becoming a law.

# 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,<sup>2</sup> which includes that the person:

- Is a resident 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 because of a felony conviction;
- Has not been committed for abusing a controlled substance;
- Has not been found guilty of a crime relating to a controlled substance within a three-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 adjudication of guilt withheld or imposition of sentence suspended on any felony, or any misdemeanor crime of domestic violence, unless three 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 restraining 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>

#### *Florida law*

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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 U.S.C. § 922(g)(9).

<sup>4</sup> S. 790.06(12)(a)10. and (12)(a)13., F.S.

<sup>5</sup> S. 790.115(2)(a), F.S.; 18 U.S.C. § 922(q)(2).

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> However, a licensee who possesses a firearm on school property is subject to the lesser penalty of a second degree misdemeanor.<sup>7</sup> A “school” is defined as 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>
- In support of school-sanctioned activities.<sup>10</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>11</sup> A person who unlawfully possesses a firearm in a school zone is subject to up to five years of incarceration in federal prison.<sup>12</sup> The federal prohibition does not apply to possession of a firearm:

- By a person licensed to possess a firearm by the state in which the school zone is located;
- On private property not part of school grounds;
- Which is unloaded and locked in a container or firearms rack 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 the individual’s employer;
- 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>13</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, or other religious institution. However, because many places of worship are located on the same property 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>14</sup> A religious institution generally has

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<sup>6</sup> S. 790.115(2)(c), F.S. A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Ss. 775.082 and 775.083, F.S.

<sup>7</sup> S. 790.115(2)(e), F.S. A second degree misdemeanor is punishable by up to 60 days in jail and a \$500 fine. *Id.*

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

<sup>9</sup> *Id.*

<sup>10</sup> S. 790.115(2), F.S. Advisory Legal Opinion, Op. Att’y Gen. Fla. 2014-13 (2014), stating that “section 790.115, Florida Statutes, operates as an exemption from the prohibition against the possession of weapons and firearms on campus when authorized in support of approved school-sanctioned activities.” *See also* s. 1006.20, F.S. expressly stating that school guardians serve in support of school-sanctioned activities to aid in the prevention or abatement of active assailant incidents on school premises; *Dozier v. Duval Cnty. Sch. Bd.*, No. 1D20-91 (Fla. 1st DCA Feb. 18, 2021) (holding that the plain language of Florida statutes authorize school guardians to carry concealed firearms on school campuses).

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

<sup>12</sup> 18 U.S.C. §§ 924(a)(1)(B) and 924(a)(4).

<sup>13</sup> 18 U.S.C. § 922(q)(2)(B).

<sup>14</sup> *See, e.g.,* The Church of Jesus Christ of Latter Day Saints, *General Handbook: Serving in the Church of Jesus Christ of Latter-day Saints*, policy 35.4.5, <https://www.churchofjesuschrist.org/study/manual/general-handbook/35-physical->

the right to exclude unwanted individuals and items from its property.<sup>15</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.<sup>16</sup>

### *Church Security Teams*

Following a series of mass violence incidents at churches and synagogues, many religious institutions have formed volunteer church security teams.<sup>17</sup> Though the composition and training of church security teams vary widely, a component of virtually all church security teams includes authorizing certain members of the team to carry concealed weapons.<sup>18</sup> Florida law does not provide specific exemptions or allowances for church security teams. As a result, unless a member of the team is a law enforcement officer, church security teams must abide by the same concealed firearms laws and restrictions as every other Florida citizen.

### **Effect of Proposed Changes**

HB 259 authorizes a licensee to carry a concealed firearm for any lawful purpose, including safety, security, and personal protection, on any property owned, rented, leased, borrowed, or lawfully used by a church, synagogue, or other religious institution, even if a school is located on the premises, unless the religious institution has a policy specifically prohibiting the carrying of concealed firearms.

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 is effective upon becoming a law.

#### **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 upon becoming a law.

## **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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[facilities?lang=eng#title\\_number24](#) (last visited Feb. 10, 2021); Michael Boulter, *After mass shootings, should legal guns be welcomed into church?*, PBS Newshour, (Nov. 17, 2017), <https://www.pbs.org/newshour/politics/after-mass-shootings-should-legal-guns-be-welcomed-into-church> (last visited Feb. 10, 2021).

<sup>15</sup> Art. I, s. 2, Fla. Const. (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>16</sup> Trespass while armed is a third degree felony. S. 810.08(2)(c), F.S.

<sup>17</sup> Nichole Manna, *After shooting, how can Texas churches keep members safe and still welcome all people?*, Fort Worth Star Telegram (Dec. 31, 2019), <https://www.star-telegram.com/news/state/texas/article238834258.html> (last visited Feb. 10, 2021).

<sup>18</sup> *Id.*

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:

None. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 10, 2021, the Education and Employment Committee adopted one amendment and reported the bill favorably as a committee substitute. The amendment removes the requirement for a religious institution to post a policy prohibiting lawfully licensed persons from carrying a firearm on property owned, rented, leased, borrowed, or lawfully used by the religious institution.

The analysis is drafted as amended by the Education and Employment Committee.