

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 Judiciary

BILL: SB 498

INTRODUCER: Senator Gruters and others

SUBJECT: Safety of Religious Institutions

DATE: January 29, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Ravelo</u>	<u>Cibula</u>	<u>JU</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>CJ</u>	_____
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 498 addresses the application of the concealed weapons laws in situations in which the property of a religious institution, including a church or synagogue, also includes a school. Under existing law, a person who has a concealed weapons license is generally allowed to possess a concealed firearm on the property of a religious institution. However, the person is generally prohibited from having a concealed firearm on the property if the property also includes a school.

Under the bill, religious institutions with and without a school have the same authority to regulate the possession of concealed weapons or firearms on their property by persons having a concealed weapons license. A religious institution may prohibit concealed weapons by posting a policy specifically prohibiting concealed weapons or firearms on their property.

The bill takes effect upon becoming law.

II. Present Situation:

Concealed Weapon and Firearm Licenses

Florida is known as a “shall issue”¹ state for applications for concealed weapon and firearm licenses.² The Department of Agriculture and Consumer Services must review and either issue or deny a license within 90 days of receiving an application.³

Denial of a license can only be based on an applicant who:

- Is not a citizen of the United States, permanent resident alien, or consular security official of a foreign government;
- Is not 21 years of age or older;
- Suffers from a physical infirmity which prevents the safe handling of a weapon or firearm;
- Has been convicted of a felony;
- Has been found guilty of a controlled substances crime within the previous 3 years;
- Has been committed for the abuse of a controlled substance;⁴
- Suffers from chronic and habitual use of alcohol or other substances to the extent that their normal faculties are impaired;⁵
- Does not intend to carry a concealed weapon or firearm for lawful self-defense;
- Fails to demonstrate competency with a firearm;⁶
- Has been adjudicated as an incapacitated person;
- Has been committed to a mental institution;⁷
- Has had an adjudication of guilt withheld or a suspended sentence on a felony unless 3 years have elapsed since probation or any other conditions set by the court have been fulfilled, or the record has been expunged;

¹ Generally, states issue a permit, or license, to carry a concealed weapon such as a firearm on either a “shall issue,” or “may issue” basis. The key difference is that shall issue states must issue the permit or license if the applicant meets the requirements; whereas, may issue states have much more discretion to deny an application even if the applicant meets the requirements under the law. New York may deny a license, for example, if the applicant fails to demonstrate “proper cause” or lacks “good moral character” as determined by a judge reviewing the application. N.Y. Penal Law § 400.00.

² Section 790.06(2), F.S.

³ Section 790.06(6)(c), F.S.

⁴ An applicant granted relief of firearms disabilities pursuant to s. 790.065(2)(a)4.d, F.S., after having been adjudicated mentally defective or committed to a mental institution is deemed not to be committed for the abuse of a controlled substance.

⁵ The law presumes that a person chronically and habitually uses alcoholic beverages or other substances to the point of impairment if the applicant has been convicted of using a firearm while under the influence of alcoholic beverages, chemical substances, or controlled substances or has been deemed a habitual offender of disorderly intoxication under s. 856.011(3), F.S., or has had two or more convictions of driving under the influence within a 3-year period of preceding the date which the application is submitted.

⁶ There are several methods of demonstrating competency with a firearm, including completion of a hunter education or safety course approved by the Fish and Wildlife Conservation Commission, completion of any law enforcement firearms safety or training course, or completion of firearms training safety courses using instructors certified by the National Rifle Association, Criminal Justice Standards and Training Commission, or the Department of Agriculture and Consumer Services.

⁷ An applicant who has been granted relief from firearms disabilities pursuant to s. 790.065(2)(a)4.d., F.S., after having been adjudicated mentally defective or committed to a mental institution is deemed not to have been committed in a mental institution.

- Has had an adjudication of guilt withheld or an imposition of sentence suspended on a misdemeanor crime of domestic violence, unless 3 years have elapsed since probation or any other conditions set by the court have been fulfilled, or the record has been expunged;
- Has been issued an injunction that is currently in force and effect that restrains that applicant from committing acts of domestic violence or acts of repeat violence; or
- Is prohibited from purchasing or possessing a firearm by any other provision of Florida or federal law.⁸

Additionally, the Department shall *suspend* a license or the processing of an application for a license if the licensee or applicant is arrested or formally charged with a crime that would disqualify such person from having a license until final disposition of the case.⁹ The Department is also required to *suspend* a license or the processing of an application for a license if the licensee or applicant is issued an injunction that restrains the licensee or applicant from committing acts of domestic violence or acts of repeat violence.¹⁰

Once obtained, the licensee must carry the license with valid identification at all times when the licensee is in actual possession of a concealed weapon or firearm.¹¹ According to s. 790.061(12)(a), F.S, the license, however, “does not authorize any person to carry a concealed weapon or firearm into:”

- Any place of nuisance;¹²
- Any police, sheriff, or highway patrol station;
- Any detention facility, prison, or jail;
- Any courthouse;
- Any courtroom;¹³
- Any polling place;
- Any meeting of the governing body of a county, public school district, municipality, or special district;
- Any meeting of the Legislature or a committee thereof;
- Any school, college, or professional athletic event not related to firearms;
- Any elementary or secondary school facility or administration building;
- Any career center;
- Any portion of an establishment licensed to dispense alcoholic beverages for consumption on the premises, which portion of the establishment is primarily devoted to such purpose;
- Any college or university facility;¹⁴
- The inside of the passenger terminal and sterile area of any airport; or
- Any place where the carrying of firearms is prohibited by federal law.¹⁵

⁸ Section 790.01(2), F.S.

⁹ Section 790.06(3), F.S.

¹⁰ *Id.*

¹¹ Section 790.06(1), F.S.

¹² See s. 823.05, F.S., for an extensive description of places of nuisance.

¹³ Judges, however, may carry a concealed weapon and may allow others to do so within their courtroom.

Section 790.06(12)(a)5., F.S.

¹⁴ However, a “student, employee, or faculty member” may carry a stun gun or nonlethal electric weapon designed for defensive purposes as long as the weapon does not fire a dart or projectile.

¹⁵ Section 790.06(12)(a)15., F.S.

Importantly, the wording of s. 790.06(12)(a) that a license “does not authorize any person . . . to carry a concealed weapon or firearm into [specified places]” indicates that despite the limitations of the license, an individual might be authorized to carry a concealed weapon in a non-authorized area, such as a school, if he or she has different source of authorization. This is the case with law enforcement officers¹⁶ and school guardians acting under the Coach Aaron Feis Guardian Program,¹⁷ who are authorized to carry concealed weapons in a school, for example, through separate sections of state law.

Lawful gun ownership

While a concealed weapons license is generally needed when carrying a concealed firearm, there are instances where an individual may legally poses or carry a firearm without a license, so long as they are not a prohibited possessor.¹⁸ These instances include an individual:

- Fishing, camping, or hunting or going to or returning from fishing, camping, or hunting;
- Who is in the business of manufacturing, repairing, or dealing in firearms, or the agent or representative of any such person while engaged in the lawful course of such business;
- Firing weapons for testing or target practice under safe conditions and in a safe place not prohibited by law or going to or from such place;
- Traveling by private conveyance when the weapon is securely encased or in a public conveyance when the weapon is securely encased and not in the person's manual possession; or
- At his or her home or place of business.¹⁹

Importantly, the “place of business” provision has been interpreted to indicate that a concealed weapon or firearm license is not needed in order for an employee to carry a firearm within the establishment he or she is employed.²⁰ This does not, however, allow individuals to carry a firearm to every “place of business” because there are some places such as schools where possession of a firearm is generally prohibited by law.

Property owners have the right to refuse the possession of concealed weapons or firearms on their property.²¹ A private property owner, for example, may have a policy in place forbidding concealed firearms. If someone were not in compliance with that policy, the property owner

¹⁶ Section 790.115(3)(a), F.S.; s. 790.06(12)(a), F.S.

¹⁷ Section 1006.12, F.S.

¹⁸ Those prohibited from possessing a firearm include convicted felons whose civil rights have not been restored. Section 790.23, F.S.

¹⁹ Section 790.25(3), F.S.

²⁰ This authority to carry a concealed firearm without a license broadly applies to where “business is transacted,” and is not limited to employees of businesses or organizations. *State v. Little*, 104 So. 3d 1263 (Fla. 4th DCA 2013) (Finding that a labor union official could not be charged with carrying a concealed firearm while at the union hall because the union hall was his place of business).

²¹ FLA CONST., art. I, 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).

could order that individual to leave, and if the person refuses, they could be arrested for trespassing.²²

Firearms and Religious Institutions

In response to a several violent incidents targeting religious institutions, some churches have opted to form “security teams” for the purpose of keeping their congregation safe during services.²³ These security teams are often comprised of individuals having concealed weapons licenses who carry concealed firearms during service on a voluntary basis.

Florida law does not generally prohibit a licensee from carrying a concealed firearm inside a church. However, some churches share property with, or congregate at, a school or college campus, where concealed firearms are expressly prohibited regardless of a concealed weapons license.²⁴ This makes it more difficult for these religious institutions to implement a security team because the religious institution would be limited to individuals who are authorized to carry on these properties, such as law enforcements officers.²⁵

III Effect of Proposed Changes:

Under the bill, a person having a concealed weapons license may carry a concealed weapon or firearm on the property of a religious institution, such as a church or a synagogue, which is co-located with a school, unless the institution posts a policy prohibiting licensees from possessing concealed weapons. As a result, religious institutions co-located with a school will have the same authority to regulate the possession of concealed weapons and firearms on their property as religious institutions that are not co-located with a school.

Specifically, the bill authorizes a person having a concealed weapons license to “carry a firearm on property owned, rented, leased, borrowed, or lawfully used by a church, a synagogue, or any other religious institution unless the church, synagogue, or other religious institution has a posted policy specifically prohibiting persons who are lawfully licensed under this section from carrying a firearm on such property.”

The bill takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

²² “Whoever, without being authorized, licensed, or invited, willfully enters or remains in any structure or conveyance, or, having been authorized, licensed, or invited, is *warned by the owner or lessee of the premises*, or by a person authorized by the owner or lessee, *to depart and refuses to do so*, commits the offense of trespass in a structure or conveyance.” Emphasis added. Section 810.08(1), F.S.

²³ 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> .

²⁴ Section 790.115(2)(a), F.S.; s. 790.06(12)(a), F.S.

²⁵ Section 790.025, F.S.; s. 790.115(3), F.S.

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:

The bill may be cost effective for religious institutions. Churches on school grounds, for example, may use volunteers having concealed weapons licenses within their church membership in lieu of hiring off-duty law enforcement officers to provide security.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following section 790.06, 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.
