

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HJR 1395 Purchase of Personal Firearms by Qualified Law Enforcement Officers

SPONSOR(S): Avila

TIED BILLS: HB 1397 **IDEN./SIM. BILLS:** SJR 1134

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	9 Y, 0 N	White	White
2) Transportation & Economic Development Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Since 1990, article 1, section 8(b) of the Florida Constitution, has required a purchaser of a handgun to wait three days, excluding weekends and holidays, before delivery of the handgun, unless the purchaser holds a concealed weapon permit (CWP). Additionally, since 1998, counties in this state have been authorized pursuant to article 8, section (5)(b) of the Florida Constitution, to adopt waiting periods of three to five days for the purchase of a firearm by an individual other than a CWP holder.

According to an Attorney General Opinion, which construed the constitutional statewide three-day wait period, the exception for a holder of a CWP applies exclusively to individuals who hold such permit and does not apply to individuals who are exempt from the requirements of CWP licensure. Thus, even though active and retired law enforcement officers in this state may carry concealed firearms without a CWP pursuant to state and federal law, such officers must obtain a CWP if they wish to avoid the three-day waiting period to purchase a handgun.

HJR 1395 proposes a constitutional amendment to article 1, section 8(b) and article 8, section (5)(b) of the Florida Constitution, to authorize qualified law enforcement officers and qualified retired law enforcement officers to be exempted, like holders of a CWP, from the waiting periods for a handgun or firearm purchase. Under the amendment, the requirements to constitute a "qualified" officer must be prescribed by general law.

A joint resolution to amend the constitution must be passed by a three-fifths vote of the membership of each house of the Legislature. The proposed joint resolution, if passed by the Legislature, would be considered by the electorate at the next general election on November 8, 2016.

The joint resolution requires a nonrecurring expense for the publication of the proposed constitutional amendment in newspapers of general circulation in each county. The Department of State estimates a minimum of \$69,888.58 payable from the General Revenue Fund in FY 2016-17 for this purpose. This joint resolution does not appear to have a fiscal impact on local governments.

If adopted at the 2016 general election, the effective date of this resolution is January 3, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Waiting Periods for Handgun and Firearm Purchases

Statewide Waiting Period

In 1990, the electors approved an amendment to the Florida Constitution, which requires a purchaser of a handgun to wait three days, excluding weekends and holidays, before delivery of the handgun, unless the purchaser holds a concealed weapon permit (CWP). Specifically, article 1, section 8(b) through (d) of the Florida Constitution, states:

(b) There shall be a mandatory period of three days, excluding weekends and legal holidays, between the purchase and delivery at retail of any handgun. For the purposes of this section, “purchase” means the transfer of money or other valuable consideration to the retailer, and “handgun” means a firearm capable of being carried and used by one hand, such as a pistol or revolver. Holders of a concealed weapon permit as prescribed in Florida law shall not be subject to the provisions of this paragraph.

(c) The legislature shall enact legislation implementing subsection (b) of this section, effective no later than December 31, 1991, which shall provide that anyone violating the provisions of subsection (b) shall be guilty of a felony.

(d) This restriction shall not apply to a trade in of another handgun.

The Legislature implemented this constitutional provision by adopting s. 790.0655, F.S. This section of law defines “handgun” and “purchase” in the same manner as the Florida Constitution, and also states that the term “retailer” means and includes every person engaged in the business of making sales at retail or for distribution, or use, or consumption, or storage to be used or consumed in this state, as defined in s. 212.02(13).^{1,2} The section further provides that:

- There is a mandatory three-day waiting period, excluding weekends and legal holidays, between the purchase and the delivery at retail of any handgun.³
- The section does not apply to the purchase of a handgun by a holder of a CWP as defined in s. 790.06, F.S.,⁴ or to a trade-in of another handgun.⁵
- Records of handgun sales must be available for inspection by any law enforcement agency during normal business hours.⁶
- It is a third degree felony⁷ for any retailer or employee or agent of a retailer to deliver a handgun before expiration of the 3-day waiting period and for a purchaser to obtain delivery of a handgun by fraud, false pretense, or false representation.⁸

In 1991, an Attorney General Opinion stated that the exclusion from the three-day waiting day period for holders of a CWP did not apply to law enforcement officers even though such officers are statutorily-exempt from CWP licensure requirements. According to the AGO, s. 790.0655, F.S., reiterates the constitutionally-prescribed exemptions for CWP holders and trade-ins, and, as such, “[w]here the Legislature creates specific exceptions to language in a statute, no other exceptions may be inferred.”⁹

¹ s. 790.0655(1)(a), F.S.

² Section 212.03(13), F.S., specifies the identical definition of “retailer” specified in s. 790.0655(1)(a), F.S.

³ s. 790.0655(1)(a), F.S.

⁴ Section 790.06(1), F.S., authorizes the Department of Agriculture and Consumer Services to issue permits to carry concealed weapons or concealed firearms in this state to persons 21 years of age or older who meet specified criteria. Such permit holders may carry a concealed handgun, electronic weapon or device, tear gas gun, knife, or billie, subject to other restrictions provided by law. *Id.*

⁵ s. 790.0655(2), F.S.

⁶ s. 790.0655(1)(b), F.S.

⁷ 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.

⁸ s. 790.0655(3), F.S.

⁹ 91-65 Fla. Op. Att’y Gen. 1(1991).

Local-Option Waiting Periods

In 1998, the electors approved an amendment to the Florida Constitution, which authorizes each county to require a criminal history records check and a 3- to 5-day waiting period, excluding weekends and holidays, for the sale of a firearm, unless the purchaser holds a CWP. Specifically, article VIII, section (5)(b) of the Florida Constitution, states:

Each county shall have the authority to require a criminal history records check and a 3 to 5-day waiting period, excluding weekends and legal holidays, in connection with the sale of any firearm occurring within such county. For purposes of this subsection, the term “sale” means the transfer of money or other valuable consideration for any firearm when any part of the transaction is conducted on property to which the public has the right of access. Holders of a concealed weapons permit as prescribed by general law shall not be subject to the provisions of this subsection when purchasing a firearm.

Summary of Waiting Periods in Florida

While there is uniformly a three-day waiting period throughout the state for the purchase of a handgun from a “retailer,” there may be additional waiting periods from three to five days on a county-by-county basis, which apply to the sale of a firearm on any property in the county to which the public has the right of access. For example, Miami-Dade Ordinance 21-20.18, specifies that a purchaser of a firearm¹⁰ must wait five days after the purchase of a firearm on county property to which the public has the right of access¹¹ for delivery of the firearm and must have complied with specified criminal history check requirements.

The state and local-option waiting periods do not apply to holders of a CWP.

Law Enforcement Officers - Authority to Carry without a CWP

As discussed below, active and retired law enforcement officers are authorized to carry a firearm under specified circumstances without a CWP pursuant to a variety of provisions in state and federal law.

State Law – Actively Certified Law Enforcement Officers

With respect to individuals holding an **active** certification from the Criminal Justice Standards and Training Commission:

- As a law enforcement or correctional officer,¹² s. 790.052, F.S., provides that such individual has the right to carry, on or about his or her person, a concealed firearm, during off-duty hours, at the discretion of his or her superior officers, and may perform those law enforcement functions that he or she normally performs during duty hours, utilizing his or her weapon in a manner which is reasonably expected of on-duty officers in similar situations.
- As a law enforcement officer, correctional officer, or correctional probation officer,¹³ s. 790.06(5)(b), F.S., provides that such individual is exempt from the section’s CWP requirements for carrying a concealed weapon or concealed firearm. It further specifies that if such individual wishes to receive a CWP that he or she is exempt from the background investigation and related fees, but must pay the CWP fees regularly required to be paid by nonexempt applicants, which are currently \$70 for an initial permit.

¹⁰ The term “firearm” is defined to mean, “any weapon which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; and firearm muffler or firearm silencer; any destructive device; or any machine gun. Such term does not include an antique firearm.” Miami-Dade Ordinance 21-20.18(a)(3).

¹¹ The term “property to which the public has the right of access” is defined to mean, “any real or personal property to which the public has a right of access, including property owned by either public or private individuals, firms and entities and expressly includes, but is not limited to, flea markets, gun shows and firearms exhibitions.” Miami-Dade Ordinance 21-20.18(a)(4).

¹² Such officers include the following types as defined in s. 943.10(1), (2), (6), (7), (8), or (9), F.S.: (a) a law enforcement or correctional officer; and (b) a part-time or auxiliary law enforcement or correctional officer. s. 790.052(1), F.S.

¹³ Such officers include the following types as defined in s. 943.10(1), (2), (3), (6), (7), (8), or (9), F.S.: (a) a law enforcement or correctional officer; (b) correctional probation officer; and (c) a part-time or auxiliary law enforcement or correctional officer.

Finally, s. 790.051, F.S., provides that a law enforcement officer is exempt from the licensing and penal provisions of ch. 790, F.S., when acting at any time within the scope or course of his or her official duties or in the line of or performance of duty.

Federal Law – Qualified Officers

Under the federal Law Enforcement Officers Safety Act of 2004 and state implementing law, a qualified law enforcement officer and a qualified retired law enforcement officer may carry a concealed firearm if he or she possesses a firearms proficiency verification card issued to persons who achieve a passing score on the firing range test.^{14, 15}

The term “qualified law enforcement officer” is defined as an individual who:

- Is authorized to investigate persons for violations of law and has powers of arrest;
- Is authorized by his or her employing agency to carry a firearm;
- Is not the subject of any disciplinary action by the agency which could result in suspension or loss of police powers; and
- Meets standards, if any, established by the agency which require the employee to regularly qualify in the use of a firearm.¹⁶

The term “qualified retired law enforcement officer” is defined as an individual who:

- Separated from service in good standing as a law enforcement officer and before such separation:
 - Was authorized to investigate persons for violations of law and had powers of arrest; and
 - Served as a law enforcement officer for an aggregate of 10 years or more or separated earlier due to a service-connected disability;
- During the most recent 12-month period, has met, the standards for qualification in firearms training for active law enforcement officers;¹⁷ and
- Has not been found by a qualified medical professional employed by his or her former employing public agency to be unqualified for reasons relating to mental health^{18, 19}

Effect of Bill

The joint resolution amends article 1, section 8(b) and article 8, section (5)(b) of the Florida Constitution, to authorize qualified law enforcement officers and qualified retired law enforcement officers to be exempted, like holders of a CWP, from statewide and county waiting periods for a handgun or firearm purchase. Under the amendment, the requirements to constitute a “qualified” officer must be prescribed by general law.

The joint resolution also amends these constitutional provisions to delete an obsolete date and make technical changes to eliminate unnecessary terminology and improve grammar.

The joint resolution does not provide an effective date.²⁰ Therefore, it would take effect on the first Tuesday after the first Monday in January following the election at which it was approved by the electorate,²¹ which is January 3, 2017.

¹⁴ 42 U.S.C. §§926B and C (2016); s. 943.132(1), F.S.

¹⁵ The term “firearm” is defined as, “(A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device. Such term does not include an antique firearm.” 18 U.S.C. §921C(3) (2016).

¹⁶ 42 U.S.C. §926B(c) (2016).

¹⁷ These standards are set forth in Rule 11B-27.014, F.A.C.

¹⁸ 42 U.S.C. §926C(c) (2016).

¹⁹ In addition to the above-referenced requirements, a qualified law enforcement officer and a qualified retired law enforcement officer may not be under the influence of alcohol or another intoxicating or hallucinatory drug or substance and may not be prohibited by federal law from receiving a firearm. 42 U.S.C. §§926B(c)(5) and (6) and C(c)(6) and (7) (2016).

²⁰ While an amendment can specify its effective date, it is common practice in constitutional amendments to simply allow the default effective date to apply.

²¹ art. XI, s. 5, Fla. Const.

B. SECTION DIRECTORY:

N/A

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

Article XI, section 5(d) of the Florida Constitution requires publication of a proposed amendment in a newspaper of general circulation in each county. The Department of State provided the following fiscal analysis for HJR 1395 as originally filed:

The Division of Elections is required to advertise the full text of proposed constitutional amendments in English and Spanish twice in a newspaper of general circulation in each county before the election in which the amendment shall be submitted to the electors. The Division is also required to provide each Supervisor of Elections with either booklets or posters displaying the full text of proposed amendments. The cost to advertise constitutional amendments for the 2014 general election was \$135.97 per word. Using 2014 rates, the cost to advertise this amendment for the 2016 general election could be \$69,888.58 at a minimum.²²

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This section does not apply to proposed constitutional amendments.

2. Other:

Article XI of the Florida Constitution sets forth various methods for proposing amendments to the constitution, along with the methods for approval or rejection of proposals. One method by which

²² Department of State analysis dated January 13, 2016, on file with the Criminal Justice Subcommittee.

constitutional amendments may be proposed is by joint resolution agreed to by three-fifths of the membership of each house of the Legislature.²³ Any such proposal must be submitted to the electors, either at the next general election held more than 90 days after the joint resolution is filed with the Secretary of State, or, if pursuant to law enacted by the affirmative vote of three-fourths of the membership of each house of the Legislature and limited to a single amendment or revision, at an earlier special election held more than 90 days after such filing.²⁴ If the proposed amendment is approved by a vote of at least 60 percent of the electors voting on the measure, it becomes effective as an amendment to the Florida Constitution on the first Tuesday after the first Monday in January following the election, or on such other date as may be specified in the amendment.²⁵

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

²³ art. XI, s. 1, Fla. Const.

²⁴ art. XI, s. 5(a), Fla. Const.

²⁵ art. XI, s. 5(e), Fla. Const.