

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This legislation may implicate the following House principles:

Safeguard individual liberty: This legislation expands the type weaponry authorized for private investigative interns, security officers and managers of private investigative/security agencies holding a statewide firearms license, to include .380 and 9 millimeter semiautomatic pistols.

Maintain public security: This legislation expands the type weaponry authorized for private investigative interns, security officers and managers of private investigative/security agencies holding a statewide firearms license, to include .380 and 9 millimeter semiautomatic pistols.

B. EFFECT OF PROPOSED CHANGES:

The Division of Licensing [Division] of the Department of Agriculture and Consumer Services licenses and regulates private security agencies and private investigative agencies in accordance with Chapter 493, Florida Statutes.

Security Officers

A security officer is any individual or business who, for consideration, advertises as or is engaged in the business of furnishing security services, such as acting as a bodyguard, guarding property, transporting prisoners, guarding armored cars, attempting to prevent theft, misappropriation or concealment of property or other valuables and seeking the return of stolen valuables.

When an application is received for a Class "D" security officer license, the Florida Department of Law Enforcement and the Federal Bureau of Investigation performs a criminal history record check to determine if the applicant has a criminal history which will disqualify him or her from licensure. In addition, applicants must have 40 hours of training at a licensed school or training facility. According to the Division's website there are 100,162 security officers licensed by the Division.¹

To carry a firearm in the performance of security duties, a security officer must also obtain a statewide firearm license [Class "G" license]. The license may not be issued unless the firearm is required by the employing agency and the firearm must be carried openly.² A statewide firearm license requires an additional 28 hours of range and classroom training administered by a licensed firearms instructor.

Private Investigators

A private investigator is any individual or agency that, for consideration, advertises as providing or performing investigative-type activities, including: subcontracting with the government to determine crimes or wrongs done or threatened against the United States; determining the identity, habits, conduct, movements, whereabouts, affiliations, associations, transactions, reputation or character of any society, person, or group of persons; the credibility of witnesses or other persons; the whereabouts of missing persons, owners of abandoned or escheated property, or heirs to estates; the location or recovery of lost or stolen property; the causes or origin of fires, libels, slanders, losses, accidents, damage, or injuries to real or personal property; and securing evidence to be used before investigating committees or boards of award or arbitration or trial of civil or criminal cases. Persons or agencies performing such services are required to be licensed by the Division.

¹ <http://licgweb.doacs.state.fl.us/stats/licensetypecount.html>; last viewed April 7, 2005

² See s. 790.06 for authority to carry concealed weapons.

As is the case with security agents, applicants for a private investigator's license [Class "C"] are required to submit fingerprints and undergo a background check by the Florida Department of Law Enforcement and the Federal Bureau of Investigation to determine if the applicant has a criminal history which will disqualify the applicant from licensure.

To carry a firearm in the performance of their duties, a private investigator licensee must also obtain statewide firearm license [Class "G" license]. The license may not be issued unless the firearm is required by the employing agency and the firearm must be carried openly.³ A statewide firearm license requires an additional 28 hours of range and classroom training administered by a licensed firearms instructor. An individual who performs private investigative work as an intern under the direction and control of a designated, sponsoring licensee, is required to obtain a Class "CC" license.

Authorized Weaponry

Current law⁴ allows private investigator interns [Class "CC"], security officers [Class "D"], and managers of private investigative/security agencies [Class "M" and "MB"], holding a statewide firearm license to carry .38 or .357 caliber revolvers. Conversely, private investigators (Class "C" licensees) and managers of private investigation firms (Class "MA" licensees), holding a statewide firearms permit, are authorized to carry .38 or .357 caliber revolvers as well as .380 or 9 millimeter semiautomatic pistols. The Division is authorized to waive the restriction on the type of allowable weaponry for private investigator interns, security officers and managers of private investigative/security agencies when the employing agency can adequately justify the need for semi-automatic weaponry to the Division.

No licensee is allowed to carry more than two firearms on their person and only those type firearms for which the licensee has received training under the provisions of chapter 493.

Whenever a person holding a statewide firearms permit [Class "G"] discharges a firearm in the course of duty, that person and the agency for which the person works, is required to file a report with the department with an explanation describing the nature of the incident, the necessity for using the firearm, and a copy of any report prepared by the investigating law enforcement agency.⁵

Discipline

The department may suspend or revoke a licensee's firearms license as well as the agency's license for failing to file a report detailing the circumstances surrounding the discharge of the licensee's weapon. In addition, s. 493.6118, F.S., outlines various additional grounds for disciplinary action by the Division against persons holding any type of firearms license, including the commission of an act of violence or the use of force on any person except in the lawful protection of one's self or another from physical harm. That statute also allows for the imposition of administrative fines, reprimands, probation or the suspension or revocation of a license for violations.

According to the Division's web page⁶, during the period July 1, 2004 through March 31, 2005, the Division investigated 371 complaints regarding security agents/agencies and initiated 3,953 investigations of their own accord. Of that number, no violations were found in 2,604 cases. In the 1,349 cases where some violation was found, the penalties ranged from the issuance of compliance letters to the revocation of an agent's/agency's license.

During the period of July 1, 2004 through March 31, 2005, the Division conducted a total of 1,035 investigations relating to private investigative licensees.⁷ Of that number, 130 were complaint-based investigations and 905 were initiated by the Division. Also, of that number, no violations were found in

³ See s. 790.06 for authority to carry concealed weapons.

⁴ See s. 493.6115, F.S.

⁵ See s. 493.6115(9), Florida Statutes

⁶ See http://licgweb.doacs.state.fl.us/stats/07012004_06302005_493_annual.html, last visited April 8, 2005.

⁷ See http://licgweb.doacs.state.fl.us/stats/07012004_06302005_493_annual.html, last visited April 8, 2005.

425 cases. In the remaining cases where some violation was found, the penalties ranged from the issuance of compliance letters to the revocation of an agent's/agency's license.

Impact of Proposed Legislation

Under existing law, private investigator interns, security officers, and private investigative/security agencies are not allowed to carry semi-automatic weapons unless granted special dispensation by the Division.

This legislation collapsed several license types into one category for purposes of determining what type weaponry is allowable. As amended, the bill allows private investigator interns, private investigators, private investigative agency managers, security officers, private investigative/security agency managers, and security agency managers licensees, that hold a statewide firearms license, to carry either of four weapons: a .38 caliber revolver, .357 caliber revolver, .380 caliber semi-automatic pistol, or a 9 millimeter semi-automatic pistol.

No licensee is allowed to carry more than two firearms on their person and only those type firearms for which the licensee has received training under the provisions of chapter 493. Weapons may only be carried while in the performance of the licensee's official duties and must be encased in view at all times.

The department reports that, on occasion, the current law has been waived to allow these license types to carry a semi-automatic weapon when the licensee's employer can justify the need for carrying a semi-automatic weapon.

C. SECTION DIRECTORY:

Section 1: Amends s. 493.6115(6), F.S.; expanding the types of firearms certain licensees are authorized to carry.

Section 2: Provides an effective date of July 1, 2005.

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:

This bill does not require counties or municipalities to take an action requiring the expenditure of funds, does not reduce the authority that counties or municipalities have to raise revenues in the aggregate, and does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

Neither the Department of Agriculture and Consumer Services nor the National Rifle Association has taken a position on this legislation.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 23, 2005, the Committee on Agriculture adopted an amendment allowing Classes "M" and "MB" licensees (managers of security firms) to carry the same weaponry as permitted for Class "C" and Class "MA."

On April 6, 2005, the Committee on Business Regulation adopted an amendment that collapsed several license types into one category for purposes of determining what weaponry is allowable and voted the bill favorable with committee substitute. As amended, the bill allows private investigator interns, private investigators, private investigative agency managers, security officers, private investigative/security agency managers, and security agency managers licensees, that hold a statewide firearms license, to carry either of four weapons: a .38 caliber revolver, .357 caliber revolver, .380 caliber semi-automatic pistol, or a 9 millimeter semi-automatic pistol.