

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: SM 1630

INTRODUCER: Senators Hutson and Baxley

SUBJECT: Second Amendment to the Constitution of the United States

DATE: March 19, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Cibula	JU	Pre-meeting
2.			RC	

I. Summary:

SM 1630 expresses the will of the Legislature, on behalf of the State of Florida and its residents, to use all of its lawful authority and power to resist or overturn any federal gun-control measure that violates the right of residents to keep and bear arms.

The memorial lays a predicate for this action by recounting the federal and state constitutional rights to bear arms as well as the federal constitutional amendment that limits the federal government's powers and recognizes each state's sovereignty.

II. Present Situation:

Memorials

A memorial is an official legislative document addressed to Congress, the President of the United States, or some other governmental entity that expresses the will of the Legislature on a matter within the jurisdiction of the recipient. A memorial requires passage by both legislative houses but does not require the Governor's approval nor is it subject to a veto. Memorials often express the Legislature's desire that Congress take action on a certain matter or request that Congress propose an amendment to the United States Constitution.¹

The Second Amendment to the U.S. Constitution

The Constitution of the United States was drafted in 1787, ratified by the people in 1788, and took effect in 1789. However, when the Constitution came into force in 1789, it contained only seven articles, but no individual amendments such as the Bill of Rights.

¹ The Florida Senate, Office of Bill Drafting Services, *Manual for Drafting Legislation* (2009) (on file with the Senate Committee on Judiciary).

After the Constitution was drafted, several states quickly ratified the document while other states opposed it because the document failed to reserve undelegated powers to the states. As a compromise, the delegates agreed that the additional and necessary states would ratify the document if amendments were added that protected basic political rights and explicitly placed limitations on federal government actions. This compromise led to the drafting and ratification in 1791 of the first 10 amendments to the Constitution, now known as the Bill of Rights.²

The Second Amendment, which is often referred to as the right to keep and bear arms, states that:

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

The State Constitution

In a similar manner, the State Constitution contains a provision in the “Declaration of Rights” that is designated as the “Right to bear arms.”³ The guarantee states:

The right of the people to keep and bear arms in defense of themselves and of the lawful authority of the state shall not be infringed, except that the manner of bearing arms may be regulated by law.

III. Effect of Proposed Changes:

SM 1630 enumerates in the “Whereas” clauses that both the United States Constitution and the State Constitution protect the individual right to keep and bear arms. The memorial also recognizes that the United States Supreme Court has ruled that the Second Amendment protects an individual’s right to keep and bear arms that are “commonly used for lawful purposes.”

The memorial then states that the President of the United States has expressed a clear intention to press Congress to pass legislation that will restrict the lawful acquisition and possession of firearms and ban many firearms that are commonly used for self-defense, hunting, competition, and target shooting. Juxtaposed against the President’s intention to restrict firearms is a statement that the United States Supreme Court has recognized in the Tenth Amendment⁴ the principles of separate sovereignty to prohibit the Federal Government from requiring the State of Florida or its officers to take part in any federal gun-control scheme.

The concluding Whereas clause provides that it is the duty of the State Legislature to exercise all of its lawful authority to protect the right of all state residents to keep and bear arms.

Drawing from the sentiments stated in the Whereas clauses, the memorial then states that it is the consensus of the Legislature that the President’s proposals to restrict the right of law abiding

² History.com, *This Day In History, June 21, U.S. Constitution Ratified*, available at <https://www.history.com/this-day-in-history/u-s-constitution-ratified>.

³ FLA. CONST. art. 1, s. 8(a).

⁴ The Tenth Amendment states, “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”

citizens to keep and bear arms is a violation of the United States Constitution. Accordingly, the Legislature intends to use all of its lawful authority and power to resist or overturn any federal gun-control measure that violates the right of residents to keep and bear arms.

The Secretary of State is directed to dispatch copies of the memorial to the President of the United States, the President of the U.S. Senate, the Speaker of the House of Representatives, and to each member of the Florida delegation in Congress.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

None.

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.
