

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 954

SPONSOR: Senators Bronson and Brown-Waite

SUBJECT: Concealed weapons and firearms licenses - nonresidents

DATE: March 10, 1999

REVISED: 03/17/99 _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Gomez</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/1 amendment</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

This bill permits a U.S. resident who is a Florida nonresident to carry a concealed weapon or firearm in this state, provided the nonresident:

- ▶ Is at least 21 years of age; and
- ▶ Has in his or her immediate possession a valid license to carry a concealed weapon or concealed firearm issued to the nonresident in his or her state of residence.

This bill provides that the nonresident's license shall remain in effect in Florida for 90 days following the date on which the license holder establishes legal state residence. Although not entirely clear, (see "VI. Technical Deficiencies"), under the bill, a nonresident establishes legal residence in Florida when he or she does one of the following acts:

- ▶ Registers to vote;
- ▶ Makes a statement of domicile pursuant to s. 222.12, F.S.; or
- ▶ Files for homestead tax exemption on Florida property.

This bill takes effect on July 1, 1999.

This bill creates an unnumbered section of the Florida Statutes.

II. Present Situation:

A. Florida's concealed weapons licensing

In 1987, the Legislature created the Concealed Weapons Licensing Program in s. 790.06, F.S. The program permits the issuance of licenses to citizens who wish to carry a concealed weapon or firearm for lawful self-defense. "Weapons or firearms" are defined as "a handgun, electronic weapon or device, tear gas gun, knife, or billie (club), but the term does not include a machine

gun.” s. 790.06(1), F.S. A concealed firearm is “any firearm which is carried on or about a person in such a manner as to conceal the firearm from ordinary sight of another person.” s. 790.06(2), F.S.

Carrying a concealed weapon or firearm without a license, improperly exhibiting a weapon or firearm, or openly carrying a weapon or firearm is prohibited for both residents and nonresidents. ss. 790.01, 790.10, and 790.053, F.S. It is a first degree misdemeanor to carry a weapon without a valid license and a third-degree felony to carry a firearm without a license. s. 790.01, F.S.

Citizens who desire a legal means to carry a concealed weapon or firearm for lawful self-defense are eligible for a license when they meet the qualifications under subsections (2) and (3) of s. 790.06, F.S. An applicant must meet numerous qualifications including that the applicant:

- ▶ Is a resident of the United States or is a consular security official of a foreign government;
- ▶ Is at least 21 years of age;
- ▶ Does not or has not abused alcohol or other substances;
- ▶ Is not mentally incapacitated;
- ▶ Is not ineligible to possess a firearm because of a prior felony conviction;
- ▶ Has not been convicted of a violent misdemeanor or had adjudication withheld on a felony within 3 years; and
- ▶ Demonstrates competence with a firearm.

Section 790.06(2)(h), F.S., contains a list of seven courses or other criteria, any one of which satisfies the firearms competency requirement. Included in this list are:

- ▶ Completion of any National Rifle Association (NRA) firearms safety or training course;
- ▶ Completion of any firearms safety or training course or class available to the general public offered by law enforcement, junior college, college, or other institution or organization or firearms training school using instructors certified by the NRA, Criminal Justice Standards and Training Commission, or the Department of State; and
- ▶ Completion of any firearms training or safety course or class conducted by a state-certified or NRA certified firearms instructor.

Completion of the course can be demonstrated by a certificate of completion, an instructor’s affidavit, or any document showing completion.

Concealed weapons licenses are valid for 5 years and the license holder may apply for a renewal license. The Department of State administers the concealed weapons licensing program. On December 31, 1998, there were 224,341 individuals who held valid licenses to carry concealed weapons and firearms in Florida.

The department may impose nonrefundable license fees not exceeding \$85 and renewal fees not exceeding \$70. The applicant must also pay for processing the fingerprint background check. The department has 90 days to process the license application. s. 790.06(4), (5), and (6), F.S.

The department is responsible for ensuring that individuals meet the qualifications in order to carry a concealed weapon. The department obtains and reviews applicant background information on current addresses, history of criminal arrests and convictions, history of commitment for mental illness or substance abuse treatment, and documentation indicating completion of a firearms training or safety course. The department also obtains state and federal crime history information on applicants from the Florida Department of Law Enforcement (FDLE). The department is authorized to suspend or revoke the licenses of individuals who no longer meet the requirements for carrying a concealed weapon or who become ineligible for other reasons. According to the department, every 4 weeks the division of licensing verifies, through FDLE records, whether any current license holder has become ineligible due to a criminal arrest or conviction.

B. Other states' concealed weapons licensing laws

According to the National Conference of State Legislatures (NCSL), 43 states have provisions that allow citizens to carry concealed guns if they have permits, "but the requirements to get a permit and other restrictions vary considerably." Further, approximately 28 states, including Florida, have some type of firearms safety training requirement in order to obtain a license.

The following information was compiled from an NCSL "Legisbrief," updated in February, 1999, as well as from the National Rifle Association, Institute for Legislative Action summary, updated in January, 1998.

1. Differing state laws authorize licenses for carrying concealed weapons

Based on ease or difficulty of obtaining a license, state laws fall into three broad categories, (categories identified by the NCSL brief):

▶ Prohibited (7 states):

Carrying of concealed weapons by private citizens is prohibited under most circumstances.

Illinois, Kansas, Missouri, Nebraska, New Mexico, Ohio and Wisconsin

▶ Restrictive or Discretionary System (14 states):

Permits to carry concealed weapons are restricted in some way: (1) the applicant must demonstrate a need (e.g., a documented personal threat); or (2) the law allows the issuer to decide who receives a permit. In what are known as "may issue"(discretionary) states, the sheriff or other designated official has essentially sole discretion over who gets a license.

California, Colorado, Connecticut, Delaware, District of Columbia, Hawaii, Iowa, Maryland, Massachusetts, Michigan, Minnesota, New Jersey, New York, and Rhode Island

▶ Non-Restrictive or Non-Discretionary System (30 states):

In the states below, the license system is considered lenient or permissive either because: (1) the applicant is not required to demonstrate a need; or (2) the law does not allow the issuer discretion over who receives a permit. In “shall issue” (non-discretionary) states, if an applicant meets the established criteria, the official is required to issue a permit.

Alabama, Alaska, Arizona, Arkansas, Florida, Georgia, Idaho, Indiana*, Kentucky, Louisiana, Maine, Mississippi, Montana, Nevada, New Hampshire, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont**, Virginia, Washington, West Virginia, and Wyoming*

*Alabama and Indiana laws appear restrictive, but the licensing process is considered lenient in practice.

**Vermont is the only state that does not require a permit to carry a concealed weapon.

2. State comity or reciprocity for nonresident license holders

A growing number of states have enacted laws which allow nonresidents to carry concealed weapons or firearms when the nonresident has a valid license from another state. These laws vary widely, but are categorized below based on whether the laws are unconditionally or conditionally “open” to nonresident license holders, whether they are “reciprocal laws,” or provide for “reciprocal agreements.” States not listed below, like Florida, do not have laws which recognize an out of state license.

▶ Unconditionally Open (4 states):

The following states allow nonresident license holders to carry without regard to whether the nonresident’s home state reciprocates.

Idaho, Indiana, Michigan, and Wyoming

▶ Conditionally Open (7 states):

The following states allow nonresident license holders to carry without regard to whether the nonresident state reciprocates, but only under certain conditions, e.g., if the other state has equally stringent licensing requirements or for a limited use.

Connecticut, Massachusetts, Missouri, Oklahoma, Rhode Island, Utah, and Virginia

▶ Reciprocal Laws (9 states):

The following states have statutes which recognize licenses from another state if such state grants similar privileges to citizens of the first state.

Arkansas, Georgia, Kentucky, Mississippi, New Hampshire, North Dakota, South Carolina, Tennessee, and West Virginia

▶ Reciprocal Agreements (4 states):

The following states allow a state official, like the Governor or the state's chief law enforcement official, to enter into agreements with other states to recognize the others' license holders.

Louisiana, Montana, Pennsylvania, and Texas

C. Comparison to Florida's recognition of out-of-state drivers' licenses; domicile statements; homestead exemption

While Florida does not currently recognize the concealed weapon or firearm licenses from other states, by way of comparison, Florida like all other states, recognizes out-of-state drivers' licenses under certain conditions. While there are numerous provisions affecting commercial drivers, a nonresident of Florida is required to obtain a drivers' license within 30 days of beginning employment in Florida or entering his or her children in a Florida public school. s. 322.031, F.S. Further, a resident for purposes of drivers' licensing requirements is defined as a person who has his or her principle place of domicile in this state for 6 consecutive months, has registered to vote, has made a statement of domicile pursuant to s. 222.17, F.S., or has filed for homestead tax exemption on Florida property. s. 322.01(33), F.S.

For purposes of vehicle registration, Florida law requires temporary registration of persons who are temporarily employed within the state but are not residents. s. 320.1325, F.S.

Section 222.17, F.S., provides a procedure by which a person who moves to Florida can evidence his or her permanent residency. Section 222.17(1), F.S., provides that any person who shall have established domicile in Florida "may manifest and evidence the same by filing in the office of the clerk of the circuit court in which the said person shall reside, a sworn statement showing that he or she resides in and maintains a place of abode in that county which he or she recognizes and intends to maintain as his or her permanent home." Conversely, s. 222.17(4), F.S., allows for a similar statement for persons with homes in Florida who nonetheless wish to evidence permanent residency in another state.

Florida's Constitution contains a "homestead exemption" including a tax exemption of a certain amount for "[e]very person who has the legal or equitable title to real estate and maintains thereon the permanent residence of the owner, or another legally or naturally dependent upon the owner." Art. VII, s.6(a), Fla. Const.

D. The Governor's veto

This bill is identical to House Bill 909 which the 1998 Legislature passed by votes of 77-40 (House) and 32-6 (Senate). However, the Governor vetoed House Bill 909 on May 22, 1998. In the veto message, the Governor stated that House Bill 909 raised "the unacceptable possibility that concealed weapons could be legally carried in Florida by out-of state citizens with criminal backgrounds or no proven ability to safely handle a gun."

III. Effect of Proposed Changes:

This bill permits a U.S. resident who is a Florida nonresident to carry a concealed weapon or firearm in this state, provided the nonresident:

- ▶ Is at least 21 years of age; and
- ▶ Has in his or her immediate possession a valid license to carry a concealed weapon or concealed firearm issued to the nonresident in his or her state of residence.

This bill provides that the nonresident is subject to the same laws and restrictions as a licensed Florida resident.

This bill provides that the nonresident's license shall remain in effect in Florida for 90 days following the date on which the license holder establishes legal state residence. Although not entirely clear, (see "VI. Technical Deficiencies"), under the bill, a nonresident establishes legal residence in Florida when he or she does one of the following acts:

- ▶ Registers to vote;
- ▶ Makes a statement of domicile pursuant to s. 222.12, F.S.; or
- ▶ Files for homestead tax exemption on Florida property.

The effect is to require the nonresident to take one of the above actions in order to establish residency. Mere habitation in Florida, no matter the length, will not establish residency.

The intended effects of this bill may be compromised by some "technical deficiencies" described below.

This bill takes effect on July 1, 1999.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Nonresident license holders will experience a positive fiscal impact from not having to pay the \$85 license application fee.

C. Government Sector Impact:

To the extent that an unknown number of nonresidents would have applied for a Florida license but for the provisions of this bill, the state will experience an unspecified revenue reduction from uncollected fees.

VI. Technical Deficiencies:

- ▶ On page 2, line 1, the bill states:

If the resident of another state who is the holder of a valid license to carry a concealed weapon or concealed firearm issued in another state establishes legal residence in this state, has registered to vote, has made a statement of domicile pursuant to s. 222.17, Florida Statutes, or has filed for homestead tax exemption on property in this state, the license shall remain in effect for 90 days following the date on which the holder of the license establishes legal residence in this state.

It is not entirely clear whether the list of three acts (registering to vote, making a domicile statement, or filing for homestead), are the ways by which one establishes legal residency for purposes of the bill. For clarity, the wording should be changed to specify that one establishes legal residence in this state “*by*” registering to vote, making a domicile statement, or filing for homestead exemption. Further, it is not clear whether the intent of the bill is to establish legal residency when a nonresident undertakes any one of the three acts or when a nonresident registers to vote in all cases and then either makes a domicile statement or files for homestead. If the intent is to establish legal residency when a nonresident undertakes any of the three acts, an “*or*” should be inserted between “registered to vote” and “has made a statement of domicile....”

- ▶ On page 2, lines 9-10, the bill states:

The provisions of this section apply only *to states* which have reciprocity with the State of Florida with respect to the issuance of a concealed weapon or concealed firearm permit.”

However, the bill does not apply to states, but rather to nonresidents of states. Also, it is not clear what is meant by “issuance of a concealed weapon or concealed firearm permit” within the bill’s

context. Presumably, the intent of this provision is to limit the bill's application to nonresident license holders from states that honor visiting Florida license holders. If this is the intent, the phrase "states that have reciprocity" may in effect be limiting or confusing since reciprocity connotes mutuality and there are a number of states that honor visiting Florida license holders without regard to what Florida does in return. This could be clarified by specifying that the provisions of this bill apply only to nonresidents from states that honor Florida licenses.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Criminal Justice:

This amendment addresses the issues raised under "VI. Technical Deficiencies," above. First, the amendment clarifies the provision which describes how a nonresident establishes Florida residency by stating it is established: "by registering to vote, or making a statement of domicile ... or filing for homestead tax exemption...." Second, the amendment rewords the last sentence of the bill to better reflect the intent. The last sentence avoids using the word "reciprocity" as it is used in the bill because it could be construed to limit the bill to those nonresidents whose states have "reciprocal laws" and leave out nonresidents from those states whose laws are not reciprocal but rather "open" and are currently honoring Florida licenses.