

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 673 Exceptions to Requirements for the Purchase and Sale of Firearms

SPONSOR(S): Criminal Justice Subcommittee; Hahnfeldt and Asencio

TIED BILLS: CS/HJR 291 **IDEN./SIM. BILLS:** SJR 910

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	11 Y, 0 N, As CS	Homburg	White
2) Judiciary Committee	15 Y, 0 N	Homburg	Camechis

SUMMARY ANALYSIS

HJR 291, which is linked to this bill, proposes a constitutional amendment to article I, section 8(b) and article VIII, section (5)(b) of the Florida Constitution, to authorize certified law enforcement officers who are employed or appointed by a law enforcement agency in this state to be exempted, like holders of a concealed weapon permit (CWP), from the constitutionally-required three-day waiting period for a handgun purchase and from the constitutionally-authorized county three- to five-day waiting periods for a firearm purchase.

The bill implements HJR 291, by amending s. 790.0655(2), F.S., to specify that the three-day statewide waiting period does not apply when a handgun is being purchased by a full-time, part-time, or auxiliary law enforcement officer who is certified under chapter 943, F.S. Additionally, the bill creates s. 790.0656, F.S., which states that counties may not impose additional waiting periods or background checks on CWP holders or certified full-time, part-time, or auxiliary law enforcement officers.

The bill does not appear to have a fiscal impact on state or local governments.

The bill provides that it takes effect on the date that the constitutional amendment by HJR 291 takes effect. If the constitutional amendment is approved by the voters, this bill's effective date would be January 8, 2019.

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 I, 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-

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.

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

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. Broward County has a similar set of ordinances which require a five-day waiting period after the purchase of a firearm which is conducted on property that the public has a right to access,¹² as well as a background check requirement.¹³

Pursuant to the constitutional provisions, the state and local-option waiting periods do not apply to holders of a CWP.

Certification of Law Enforcement Officers

The Criminal Justice Standards and Training Commission is charged with certifying law enforcement officers in Florida.¹⁴ To ensure that applicants are qualified, the Commission establishes minimum employment and training standards for the various positions within the criminal justice field it oversees, including law enforcement officers.^{15, 16} An applicant must pass a Commission-approved basic recruit

⁹ 91-65 Fla. Op. Att’y Gen. 1(1991).

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 Broward Ordinance §18-96

¹³ Broward Ordinance §18-97(b).

¹⁴ s. 943.12(3), F.S.

¹⁵ s. 943.12(4), F.S.

¹⁶ s. 943.12(5), F.S.

training program and receive an acceptable score on the officer certification exam before being certified.¹⁷ Additionally, the applicant must:

- Be at least 19 years old
- Be a United States Citizen
- Have a high school diploma or equivalent as allowed by the commission
- Not have a felony conviction or a misdemeanor conviction for perjury or false statements.
- Not have received a dishonorable discharge from the United States Military
- Have their fingerprints submitted to the Florida Department of Law Enforcement for a background check
- Pass a physical examination
- Be of good moral character as decided by the commission¹⁸

In order to stay active, the law enforcement officer must complete a Commission-approved continuing education program¹⁹ of 40 hours of training every four years.²⁰

Law Enforcement Officers - Authority to Carry without a CWP

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

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

- As a law enforcement or correctional officer,²¹ 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,²² 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.

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.

Effect of Bill

The bill implements HJR 291, which amends article I, section 8(b) and article VIII, section (5)(b) of the Florida Constitution, to authorize certified and employed or appointed law enforcement officers to be exempted, like holders of a CWP, from statewide and county waiting periods for a handgun or firearm purchase. To implement this authority, this bill amends s. 790.0655(2), F.S., to specify that the three-day statewide waiting period does not apply when a handgun is being purchased by a full-time,²³ part-

¹⁷ Persons who have previously served as law enforcement officers in other jurisdictions may be exempt from this requirement, provided that they have worked for another state or federal law enforcement agency for over one year, and have worked as a law enforcement officer within the past eight years.

¹⁸ s. 943.13, F.S.

¹⁹ s. 943.1395(4), F.S.

²⁰ s. 943.135(1), F.S.

²¹ 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.

²² 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.

²³ "Law enforcement officer" is defined to mean any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state.

time,²⁴ or auxiliary²⁵ law enforcement officer who is certified under chapter 943, F.S. Additionally, the bill creates s. 790.0656, F.S., which states that counties may not impose additional waiting periods or background checks on CWP holders or certified full-time, part-time, or auxiliary law enforcement officers.

The bill provides that it takes effect on the date that the constitutional amendment by HJR 291 takes effect. If the constitutional amendment is approved by the voters, the bill's effective date would be January 8, 2019.

B. SECTION DIRECTORY:

Section 1. Amends s. 790.0655, F.S., relating to purchase and delivery of handguns; mandatory waiting period; exceptions; penalties.

Section 2. Creates s. 790.0656, F.S., relating to sale of firearms; county requirements; exceptions.

Section 3. Provides a contingent effective date.

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

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.

This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.” s. 943.10(1), F.S.

²⁴ “Part-time law enforcement officer” is defined to mean “any person employed or appointed less than full time, as defined by an employing agency, with or without compensation, who is vested with authority to bear arms and make arrests and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state.” s. 943.10(6), F.S.

²⁵ “Auxiliary law enforcement officer” is defined to mean “any person employed or appointed, with or without compensation, who aids or assists a full-time or part-time law enforcement officer and who, while under the direct supervision of a full-time or part-time law enforcement officer, has the authority to arrest and perform law enforcement functions.” s. 943.10(8), F.S.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other: None.

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

On March 8, 2017, the Criminal Justice Subcommittee adopted a proposed committee substitute and reported the bill favorably as a committee substitute (CS). The CS differs from the bill as filed in that the original bill applied to qualified law enforcement officers and qualified retired law enforcement officers; whereas, the CS applies to full-time, part-time, or auxiliary law enforcement officer, as defined in s. 943.10, F.S., who is certified under ch. 943, F.S.

This analysis is drafted to the CS as passed by the Criminal Justice Subcommittee.