

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: SJR 910

INTRODUCER: Senator Baxley

SUBJECT: Exempting Law Enforcement Officers from the Waiting Period for Handgun Purchases

DATE: March 6, 2017 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>GO</u>	_____
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SJR 910 creates a constitutional amendment that exempts qualifying current and retired law enforcement officers from waiting periods and criminal history records checks that apply to certain firearm purchases.

The State Constitution currently imposes a 3-day waiting period on a retailer and a purchaser on a sale of a handgun. The Constitution also authorizes counties to impose a 3 to 5 day waiting period on the sale of any firearm which occurs at least in part on property controlled by a government entity along with criminal history record checks. Currently, only holders of concealed carry permits are exempt from these requirements.

The joint resolution, if passed on a 3/5ths vote of each house of the Legislature, will be voted on at the general election in November 2018. SJR 910 is linked to SB 912, which implements the exemption in statute.

II. Present Situation:

Waiting Period for Handguns

In 1990, voters approved a constitutional amendment imposing a mandatory 3-day waiting period on handgun purchases.¹ The amendment, in Art. I, s. 8, of the State Constitution provides:

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,

¹ The Legislature proposed the amendment.

such as a pistol or revolver. Holders of a concealed weapon permit ... shall not be subject to the provisions of this paragraph.²

An exception to the waiting period applies to transactions involving the trade in of another handgun.³

The amendment required the Legislature to implement the waiting period in statute and provide that a person who violates the provision commits a felony.⁴

Statutory Implementation

The Legislature implemented the 3-day waiting period on handgun transactions in 1991.⁵ Section 790.0655(1)(a), F.S., which implements the waiting period, largely mirrors the constitutional amendment. The section requires a purchaser of a handgun to wait 3 days after purchasing a handgun from a retailer to receive the handgun purchased. The 3-day wait excludes weekends and legal holidays.

A handgun is a firearm capable of being carried and used by one hand, such as a pistol or a revolver.⁶ A retailer is a person who is engaged in the business of making sales at retail or for distribution, use or consumption, or storage to be used or consumed in the state.⁷

The waiting period does not apply when a handgun is being purchased by a holder of a concealed weapons permit, or if the purchaser and retailer are actually engaged in a trade-in of another handgun.⁸

If a retailer, or an employee or agent of the retailer, fails to comply with the waiting period, he or she commits a third-degree felony, punishable by up to 5 years in prison and up to a \$5,000 fine.⁹ A purchaser who receives the handgun using fraud, false pretense, or false representation faces the same penalty.¹⁰

Local Option for Criminal History Records Checks and a Waiting Period for Firearm Sales

In 1998, voters approved an amendment to Art. VIII, s. 5(b), of the State Constitution, authorizing counties to enact a criminal history records check and a 3 to 5 day waiting period for the sale of firearms, excluding weekends and legal holidays.¹¹ A sale of a firearm is defined in the amendment as the transfer of money or other consideration for a firearm when any part of the

² Art. I, sec. 8(b), FLA. CONST.

³ Art. I, Sec. 8(b) and (d), FLA. CONST.

⁴ Art. I, Sec. 8(c), FLA. CONST.

⁵ Ch. 91-24, L.O.F.

⁶ *Id.*

⁷ Section 212.02(13), F.S.

⁸ Section 790.0655(2), F.S.

⁹ Sections 790.0655(3)(a), F.S.

¹⁰ Section 790.0655(3)(b), F.S.

¹¹ The Constitution Revision Commission proposed the amendment.

transaction takes place on property accessible to the public. Property accessible to the public likely includes county fairgrounds or convention centers where gun shows often occur.

III. Effect of Proposed Changes:

SJR 910 proposes an amendment to the State Constitution to exempt qualifying current and retired law enforcement officers from waiting periods and criminal history record checks that apply to the purchase of a handgun or other firearms. Currently, only holders of concealed weapon permits are exempt from the waiting periods and background checks required or authorized by the State Constitution.

Specifically, the joint resolution exempts qualifying current and retired law enforcement officers from:

- Art. I, s. 8 of the State Constitution, which requires a 3-day waiting period between the time of the purchase and delivery of a handgun; and
- Art. VIII, s. 5 of the State Constitution, which authorizes a local option of a 3 to 5 day waiting period on firearms and criminal records checks on purchasers of firearms.

The joint resolution, if passed on a 3/5ths vote of each house of the Legislature, will be voted on at the general election in November of 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The restrictions in the State Constitution on the authority of the Legislature to impose mandates on counties and municipalities do not apply to joint resolutions.¹²

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

A joint resolution must be passed by 3/5 of the membership of both houses of the Legislature.¹³ If passed, it must be submitted to the electors at the next general election held more than 90 days after the resolution is filed with the Secretary of State.¹⁴

¹² See Art. VII, FLA. CONST.

¹³ Art. XI, s. 5(a), FLA. CONST.

¹⁴ *Id.* If the resolution comprises one amendment or revision, it can voted on at an earlier special election, but this resolution has multiple revisions, making it ineligible.

A proposed constitutional amendment must be approved by vote of at least 60 percent of the electors voting on the measure.¹⁵ If passed, this amendment becomes effective on January 8, 2019.¹⁶

Art. XI, s. 5(d) of the State Constitution requires proposed amendments or constitutional revisions to be published in a newspaper of general circulation in each county in which a newspaper is published. The amendment or revision must be published once in the 10th week and again in the 6th week immediately preceding the week the election is held.

Based on 2014 costs, the Department of State estimates that the costs for advertising the proposed constitutional amendment will be approximately \$136 per word with a minimum total publishing cost of \$7,752.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

If implemented, the joint resolution may enable qualifying current and former law enforcement officers to avoid the time and expense necessary to obtain a concealed carry permit.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Legislature may wish to revise the bill to clarify the steps a firearms dealer must take to verify that a person is exempt from the waiting periods.

VIII. Statutes Affected:

This joint resolution substantially amends Article I, Article VIII of the State Constitution.

¹⁵ Art. XI, s. 5(e), FLA. CONST.

¹⁶ *Id.*

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.
