

**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.)

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: SB 912

INTRODUCER: Senator Baxley

SUBJECT: Exceptions to Requirements for the Purchase and Sale of Firearms

DATE: March 6, 2017

REVISED: \_\_\_\_\_

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

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## I. Summary:

SB 912 is linked to SJR 910, which exempts qualified law enforcement officers and retired law enforcement officers who purchase personal firearms from waiting periods and criminal history record checks required or authorized by the State Constitution. This bill implements the constitutional amendment in statute. As implemented, a qualified law enforcement officer or a qualified retired law enforcement officer who holds a firearms proficiency card is exempt from the waiting periods and the local-option criminal history record checks that apply to most other sales of firearms to individuals. Currently, only concealed weapon permit holders are exempt from the waiting periods and the local-option criminal history record check.

The bill takes effect on January 8, 2019 if SJR 910 is approved by the voters at the general election in November 2018.

## II. Present Situation:

### General 3-Day Waiting Period

In 1990, voters approved a constitutional amendment imposing a mandatory 3-day waiting period on handgun purchases.<sup>1</sup> 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, such as a pistol or revolver. Holders of a concealed weapon permit ... shall not be subject to the provisions of this paragraph.<sup>2</sup>

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<sup>1</sup> The Legislature proposed the amendment.

<sup>2</sup> Art. I, sec. 8(b), FLA. CONST.

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

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

### ***Statutory Implementation***

The Legislature implemented the 3-day waiting period on handgun transactions in 1991.<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup>

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.<sup>8</sup>

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.<sup>9</sup> A purchaser who receives the handgun using fraud, false pretense, or false representation faces the same penalty.<sup>10</sup>

### **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.<sup>11</sup> 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 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.

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<sup>3</sup> Art. I, Sec. 8(b) and (d), FLA. CONST.

<sup>4</sup> Art. I, Sec. 8(c), FLA. CONST.

<sup>5</sup> Ch. 91-24, L.O.F.

<sup>6</sup> *Id.*

<sup>7</sup> Section 212.02(13), F.S.

<sup>8</sup> Section 790.0655(2), F.S.

<sup>9</sup> Sections 790.0655(3)(a), F.S.

<sup>10</sup> Section 790.0655(3)(b), F.S.

<sup>11</sup> The Constitution Revision Commission proposed the amendment.

### **Federal Law on the Carrying of Concealed Firearms by Law Enforcement Officers**

The Federal Law Enforcement Officers Safety Act of 2004 authorizes a qualified law enforcement officer to carry a concealed firearm when the officer carries a card identifying himself or herself as a police officer or law enforcement officer of the agency issuing the identification card.<sup>12</sup> In addition to possessing the identification card, to qualify, the officer must meet other criteria, such as not being the subject of disciplinary action by the agency which could result in a suspension or firing or being under the influence of alcohol or other substances.<sup>13</sup>

To carry a concealed firearm as a retired law enforcement officer, however, the officer must possess and carry a specific card issued by the state law enforcement agency. The identification card must identify the person as having been previously employed as a police or law enforcement officer and show that the person has been tested in firearm proficiency training or otherwise been found to meet active duty training standards within the past year.<sup>14</sup> The retired officer must also not have been found to be mentally unfit or under the influence of alcohol or other substances.<sup>15</sup>

The Criminal Justice Standards and Training Commission, established within the Department of Law Enforcement,<sup>16</sup> is responsible for implementing the federal law requiring the issuance of a uniform firearms proficiency verification cards for qualifying law enforcement officers and qualified retired law enforcement officers.<sup>17</sup>

### **III. Effect of Proposed Changes:**

SB 912 implements the constitutional amendment in SJR 910 which exempts qualified law enforcement officers and qualified retired law enforcement officers from waiting periods and local-option background checks for the purchase of a personal firearm. The waiting periods and the local-option criminal history record checks are currently required or authorized by the State Constitution. Currently, only concealed weapon permit holders are exempt from the requirements.

The current and retired law enforcement officers who are exempt from the waiting periods and local-option criminal history record checks are those who have a valid firearms proficiency verification card. Although the bill eliminates requirements for local-option criminal history

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<sup>12</sup> 18 U.S.C. s. 926B(a) and (d).

<sup>13</sup> 18 U.S.C. s. 926B(c)(3) and (5).

<sup>14</sup> 18 U.S.C. s. 926C(d).

<sup>15</sup> 18 U.S.C. s. 926C(b)(5) and (6).

<sup>16</sup> Section 943.11, F.S., provides for the creation of the 19-member Commission, composed of the Secretary of Corrections or a designee, the Attorney General or a designee, the Director of the Division of the Florida Highway Patrol, and the 16 remaining members appointed by the Governor of members who work in criminal justice (sheriffs, chiefs of police, law enforcement officers, correctional officers, training center director), and 1 state citizen.

<sup>17</sup> Section 943.132(1), F.S. Rule 11B-27.014, F.A.C., implements the Federal Law Enforcement Officers Safety Act of 2004. The rule provides, in relevant part, for a range master, an active Commission-certified firearms instructor, to conduct the firearms proficiency course for a qualified retired law enforcement officer. Upon successful completion, the retiree will receive a Commission-approved Firearms Proficiency Verification Card, issued by the range master, on form CJSTC-600. Rule 11B-27.014(1)(a) and (2), F.A.C.

checks on the sale of a firearm, the state required criminal history record checks for the retail sale of a firearm still apply.

The bill takes effect on January 8, 2019 if SJR 910 is approved by the voters in the general election in November 2018, unless the state holds an earlier special election.<sup>18</sup>

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **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:

The Florida Department of Law Enforcement (FDLE) does not anticipate a fiscal impact from the bill, as the FDLE will still have to conduct a background check on the firearm purchase for the current or retired law enforcement officer.<sup>19</sup>

#### **VI. Technical Deficiencies:**

None.

#### **VII. Related Issues:**

None.

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<sup>18</sup> Art. XI, s. 5, of the FLA. CONST., authorizes an earlier special election only if, pursuant to law, the proposed amendment is enacted by vote of three-fourths of the membership of each house of the Legislature.

<sup>19</sup> Florida Department of Law Enforcement (FDLE), *2017 FDLE Legislative Bill Analysis* (Feb. 24, 2017) (on file with the Senate Judiciary Committee).

**VIII. Statutes Affected:**

This bill amends section 790.0655 of the Florida Statutes.  
This bill creates section 790.0656 of the Florida Statutes.

**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.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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