SENATE CONCURRENT RESOLUTION No. 101

STATE OF NEW JERSEY

217th LEGISLATURE

INTRODUCED MAY 2, 2016

Sponsored by:

Senator LORETTA WEINBERG

District 37 (Bergen) Senator NIA H. GILL

District 34 (Essex and Passaic)

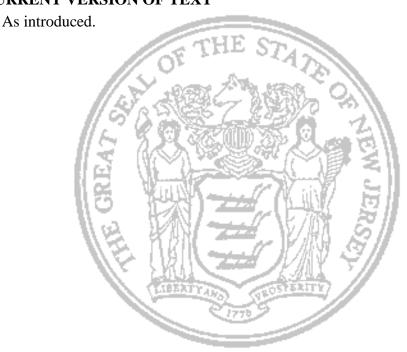
Co-Sponsored by:

Senators Vitale, Stack, Gordon and Turner

SYNOPSIS

Prohibits adoption of proposed amendment to State Police rule to expand definition of justifiable need for purpose of handgun carry permit.

CURRENT VERSION OF TEXT



A CONCURRENT RESOLUTION concerning legislative review of rules and regulations pursuant to Article V, Section IV, paragraph 6 of the Constitution of the State of New Jersey and prohibiting the adoption of certain proposed Division of State Police rules and regulations concerning justifiable need to carry a handgun.

WHEREAS, Pursuant to Article V, Section IV, paragraph 6 of the Constitution of the State of New Jersey, the Legislature may review any rule or regulation adopted or proposed by an administrative agency to determine if it is consistent with the intent of the Legislature, and invalidate an adopted rule or regulation or prohibit the adoption of a proposed rule or regulation if it finds that the rule or regulation is not consistent with legislative intent; and

WHEREAS, Upon finding that a rule or regulation, either proposed or adopted, is not consistent with legislative intent, Article V, Section IV, paragraph 6 provides that the Legislature shall transmit its findings in the form of a concurrent resolution to the Governor and the head of the Executive Branch agency which promulgated, or plans to promulgate, the rule or regulation, and the agency shall have 30 days from the time the concurrent resolution is transmitted to amend or withdraw the rule or regulation; and

WHEREAS, If the agency does not amend or withdraw the existing or proposed rule or regulation, Article V, Section IV, paragraph 6 provides that the Legislature may invalidate or prohibit the adoption of the proposed rule or regulation, following a public hearing held by either House on the invalidation or prohibition, the placement of a transcript of the public hearing on the desks of the members of each House of the Legislature in open meeting followed by the passage of at least 20 calendar days, and a vote of a majority of the authorized membership of each House in favor of a concurrent resolution invalidating or prohibiting the adoption of the rule or regulation; and

WHEREAS, New Jersey's gun safety laws are among the strongest in the nation; the state's regulatory and legislative provisions draw careful lines between possessing a gun in one's home or place of business and carrying a gun for protection outside of the home or business; and

WHEREAS, New Jersey citizens are prohibited from carrying a handgun in public unless they have obtained a permit to carry that handgun; a violation constitutes a crime of the second degree, which is punishable by a term of imprisonment of five-to-10 years, a fine of up to \$150,000, or both; and

WHEREAS, The limited exceptions to the carry permit requirement include: members of the armed forces, federal law enforcement officers, State Police officers, members of municipal and county police departments, sheriff's officers, and corrections officers at all times; railway police, park rangers, and campus police while

- in the actual performance of their duties; certain security personnel in the official performance of their duties; retired law
- 3 enforcement officers, and employees of armored car companies;
- 4 and

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- WHEREAS, To obtain a permit to carry a handgun, an applicant is required to provide with the application a written certification of justifiable need; and
- WHEREAS, Justifiable need is defined in regulation, specifically N.J.A.C.13:54-2.4, as "the urgent necessity for self-protection, as evidenced by specific threats or previous attacks which demonstrate a special danger to the applicant's life that cannot be avoided by means other than by issuance of a permit to carry a handgun"; and
- WHEREAS, While there have been several legal challenges to the justifiable need standard, including that the standard violates the right to bear arms under the Second Amendment, to date, both State and federal courts have upheld the constitutionality of the State's justifiable need requirement, and the United States Supreme Court has denied certiorari on the constitutional challenge; and
- WHEREAS, The Division of State Police is proposing to amend 21 N.J.A.C.13:54-2.4 to add "serious threats" to the circumstances 22 23 that could demonstrate a special danger to the applicant's life that 24 could be specified in the written certification of justifiable need; 25 further, the proposed amendment also specifies that a permit to 26 carry a handgun can be issued based on a special danger to the 27 applicant's life that cannot be avoided by other "reasonable" 28 means: and
- WHEREAS, The proposed amendments are premised on an inaccurate reading of the applicable New Jersey Supreme Court precedent interpreting the justifiable need standard, misstating the standard articulated in <u>Siccardi</u> v. <u>State</u>, 59 <u>N.J.</u> 545 (1971), which is actually consistent with the current regulations; and
- WHEREAS, Examples provided by the State Police of a private citizen who could establish a justifiable need based on "serious threats" suggest that these amendments could potentially authorize taxi drivers, bus drivers, pizza delivery drivers, United Postal Service drivers, and anyone working or living in a high-crime neighborhood to qualify to carry a firearm; and
 - WHEREAS, Current law and judicial interpretations of the justifiable need standard clearly require demonstration of an urgent necessity for protection from a specific threat to one's life rather than from a mere generalized fear or concern; and
- WHEREAS, The proposed amendment to N.J.A.C.13:54-2.4 expanding the scope of the right to carry well beyond that authorized under current law and judicial interpretation is inconsistent with the Legislature's intent to establish who may carry a handgun outside the home in this State; now, therefore,

SCR101 WEINBERG, GILL

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General Assembly concurring):

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BE IT RESOLVED by the Senate of the State of New Jersey (the

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4	1. The Legislature prohibits adoption of the proposed
5	amendment to rules and regulations published by the Division of
6	State Police in the Department of Law and Public Safety for public
7	comment in the New Jersey Register on March 7, 2016, to revise
8	the rule governing Application for a Permit to Carry a Handgun,
9	N.J.A.C.13:54-2.4.
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11	2. Copies of this concurrent resolution, as filed with the
12	Secretary of State, shall be transmitted by the Clerk of the General
13	Assembly and the Secretary of the Senate to the Governor, the
14	Attorney General, and the Superintendent of State Police.
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16	3. This concurrent resolution shall take effect immediately.
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19	STATEMENT
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21	Pursuant to Article V, Section IV, paragraph 6 of the
22	Constitution of the State of New Jersey, this concurrent resolution
23	prohibits adoption of an amendment proposed by the State Police to
24	N.J.A.C.13:54-2.4 to expand the definition of justifiable need for
25	the purpose of issuing a permit to carry a handgun.
26	The resolution directs the Clerk of the General Assembly and the
27	Secretary of the Senate to transmit to the Governor, the Attorney
28	General, and the Superintendent of State Police copies of the
29	resolution.