

**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

As introduced.



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

7
8 **WHEREAS**, Pursuant to Article V, Section IV, paragraph 6 of the
9 Constitution of the State of New Jersey, the Legislature may review
10 any rule or regulation adopted or proposed by an administrative
11 agency to determine if it is consistent with the intent of the
12 Legislature, and invalidate an adopted rule or regulation or prohibit
13 the adoption of a proposed rule or regulation if it finds that the rule
14 or regulation is not consistent with legislative intent; and

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

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

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

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

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

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

5 **WHEREAS**, To obtain a permit to carry a handgun, an applicant is
6 required to provide with the application a written certification of
7 justifiable need; and

8 **WHEREAS**, Justifiable need is defined in regulation, specifically
9 N.J.A.C.13:54-2.4, as “the urgent necessity for self-protection, as
10 evidenced by specific threats or previous attacks which
11 demonstrate a special danger to the applicant's life that cannot be
12 avoided by means other than by issuance of a permit to carry a
13 handgun”; and

14 **WHEREAS**, While there have been several legal challenges to the
15 justifiable need standard, including that the standard violates the
16 right to bear arms under the Second Amendment, to date, both
17 State and federal courts have upheld the constitutionality of the
18 State’s justifiable need requirement, and the United States
19 Supreme Court has denied certiorari on the constitutional
20 challenge; and

21 **WHEREAS**, The Division of State Police is proposing to amend
22 N.J.A.C.13:54-2.4 to add “serious threats” to the circumstances
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

29 **WHEREAS**, The proposed amendments are premised on an
30 inaccurate reading of the applicable New Jersey Supreme Court
31 precedent interpreting the justifiable need standard, misstating
32 the standard articulated in Siccardi v. State, 59 N.J. 545 (1971),
33 which is actually consistent with the current regulations; and

34 **WHEREAS**, Examples provided by the State Police of a private
35 citizen who could establish a justifiable need based on “serious
36 threats” suggest that these amendments could potentially
37 authorize taxi drivers, bus drivers, pizza delivery drivers, United
38 Postal Service drivers, and anyone working or living in a high-
39 crime neighborhood to qualify to carry a firearm; and

40 **WHEREAS**, Current law and judicial interpretations of the justifiable
41 need standard clearly require demonstration of an urgent
42 necessity for protection from a specific threat to one’s life rather
43 than from a mere generalized fear or concern; and

44 **WHEREAS**, The proposed amendment to N.J.A.C.13:54-2.4
45 expanding the scope of the right to carry well beyond that
46 authorized under current law and judicial interpretation is
47 inconsistent with the Legislature’s intent to establish who may
48 carry a handgun outside the home in this State; now, therefore,

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1 **BE IT RESOLVED** *by the Senate of the State of New Jersey (the*
2 *General Assembly concurring):*

3

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.

10

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.

15

16 3. This concurrent resolution shall take effect immediately.

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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

27 The resolution directs the Clerk of the General Assembly and the
28 Secretary of the Senate to transmit to the Governor, the Attorney
29 General, and the Superintendent of State Police copies of the
resolution.