

Memo

Re: Iowa Right to Carry and NICS Improvement Amendments Act Compliance Draft

This memorandum is a section-by-section explanation of the above-referenced draft.

724.4C – This is a new section that would create the simple misdemeanor of going armed while under the influence of alcohol or illegally used or possessed controlled substances. Current law prohibits the issuance of a permit to acquire handguns or to carry weapons to a person who is “addicted to the use of alcohol.” IA ST 724.8, .15. These prohibitions, however, are both under-inclusive and over-inclusive. They are under-inclusive because they do not reach the situation of a person who is not actually an alcoholic but who causes a risk to public safety by handling a firearm while impaired by alcohol. They are over-inclusive because they would prohibit an alcoholic who is not drinking and is responsibly managing his condition from exercising a fundamental right. The proposed section more adequately and fairly addresses the public safety concern posed by firearms and alcohol.

724.7 – The intent of the amendments is to move from a may-issue system, under which the issuer of the permits ultimately has discretion as to whether to issue a permit to a particular person and to impose case-by-case limitations, to a shall-issue system, under which all persons who meet a list of carefully-considered qualifications have a right to obtain a permit. The history, purpose, language, and location in the Bill of Rights of the Second Amendment all demonstrate that the keeping and bearing of arms is a fundamental individual right, not a state-granted privilege. While the Supreme Court has yet to prescribe a standard of review for regulations affecting Second Amendment rights, the general rule is that a state may only infringe a fundamental right, if at all, with regulations that are narrowly-tailored to serve a compelling governmental interest and are no more restrictive than necessary to serve that interest. The term of the permit would also increase under these amendments from one to five years to increase efficiency and economy for both the citizens and the state.

724.8 – The intent of the amendments is to bring Iowa’s standards into compliance with federal “prohibited persons” law and to ensure that standards are objective and consistent, not open-ended and variable from applicant to applicant. The disqualification for “repeated acts of violence,” for example, would now require evidence of an investigation and paper trail, such as an actual arrest or an investigation by a state agency (such as Child Protective Services). On balance, the amendments would strengthen the public safety aspect of this section by including additional categories of prohibited persons, including fugitives, those under indictment for felonies, and those subject to certain restraining orders. Note, too, that the stricken disqualifiers are generally replaced with similar, broader provisions (felonies, for

example, are replaced by the federal definition of “a crime punishable by imprisonment for a term exceeding one year,” which includes a misdemeanor punishable by more than two years). See the explanation by 724.4C for information on persons “who are addicted to the use of alcohol.”

724.9 – The intent of the amendments in this section is to allow an applicant to demonstrate the required competence with a handgun in a variety of ways and to ensure the quality of the required training. The specified training options provide a firm foundation in the necessary fundamentals without posing an undue barrier or deterrent for those seeking to obtain a permit.

724.10 – The intent of the amendments is simply to clarify that a NICS check is required for initial and renewal applications and to provide for any waivers necessary to obtain the information under the expanded state eligibility provisions. One reason for this is to ensure that disqualifying information from other jurisdictions is available to the issuing officer.

724.11 – The intent of the amendments is to ensure conformity with the new “shall-issue” scheme and to provide for review of a denied application. Since the permit would now be available to eligible persons as a matter of right, such review is necessary to comply with due process.

724.11A & .11B – Most states that issue permits to carry weapons provide a reciprocity and/or recognition provision for nonresident permits. This new section would enact this majority approach in Iowa.

724.13 – The intent of the amendments is to update procedures regarding permit suspensions and revocations to reflect the fact that such actions implicate a fundamental right. Under these amendments, an issuing officer may still immediately suspend a permit when a person is arrested or taken into custody for a crime or proceeding that could lead to disqualification, but the suspension would then be subject to review. A permit could also be revoked if it is thought to have been issued in error, but the permit holder would be entitled to contest such revocation and to seek review of an adverse decision.

724.15 – The intent of the amendments is to make conforming amendments with section 724.8 and to ensure that the standards for a permit to carry remain more stringent than for a permit to acquire. For the reasons expressed in explanation of the amendments to section 724.13, this section also includes provisions for review of permit denials, suspensions, and revocations.

724.23 & 22.7 – The intent of the amendments is to enhance public safety and to protect the privacy of permit holders by ensuring that personally-identifying information of permit holders in public records is kept confidential. When names and addresses of permit holders are printed, thieves know where to look for firearms.

724.27 – The intent of the amendments is to ensure that those who are convicted of offenses that would disqualify them from obtaining a permit are eligible to seek restoration of their civil rights to keep and bear firearms.

229.24 – The intent of the amendments is to clarify that the specified records may be disclosed for the legal purpose of complying with the expanded reporting requirements that would be introduced by 724.31.

724.31 – The intent of this new section is to bring Iowa into compliance with the federal NICS Improvement Amendments Act of 2007 (the NIAA). The overarching purpose of the NIAA is the protection of American citizens. One way the Act protects citizens is by encouraging states to report information to NICS about individuals who, in accordance with state procedures subject to the rules of due process, have been found to suffer from debilitating mental illness or to require commitment for mental health treatment. Such reporting allows for more effective enforcement of federal and state prohibitions relating to those whose mental conditions may prevent them from safely handling or possessing firearms. Just as importantly, the NIAA standards for a restoration procedure also protect individuals from having their constitutional right to arms arbitrarily or discriminatorily infringed when their condition no longer presents this safety concern. Besides the public safety and justice benefit it offers, compliance with the NIAA is also necessary for a state to qualify for certain federal crime control and NIAA implementation grants.