

By Senator Margolis

35-00715-14

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A bill to be entitled

An act relating to the regulation of firearms and ammunition; amending s. 790.33, F.S.; providing that, except as otherwise expressly prohibited by the State Constitution, a county or municipality may regulate the field of possession of firearms on property owned by such county or municipality; amending s. 790.251, F.S.; conforming provisions to changes made by the act; providing an effective date.

WHEREAS, pursuant to Section 2, Article VIII of the State Constitution and section 166.021, Florida Statutes, municipalities have been granted broad home rule powers, and

WHEREAS, the Legislature has made an exception to this policy by enacting section 790.33, Florida Statutes, preempting the field of regulation of firearms and ammunition to itself, and

WHEREAS, there are counties and municipalities that seek to exercise their home rule powers in the field of regulation of firearms and ammunition upon property owned by such counties or municipalities with the same freedom that they have in other fields to consider and account for local conditions and sensibilities, NOW, THEREFORE,

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 790.33, Florida Statutes, is amended to read:

790.33 Field of regulation of firearms and ammunition;

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30 county and municipal ordinances preempted.-

31 ~~(1) PREEMPTION.~~-Except as otherwise expressly prohibited  
32 provided by the State Constitution or general law, a county or  
33 municipality may enact and enforce ordinances that regulate  
34 possession of firearms on property owned by such county or  
35 municipality the Legislature hereby declares that it is  
36 ~~occupying the whole field of regulation of firearms and~~  
37 ~~ammunition, including the purchase, sale, transfer, taxation,~~  
38 ~~manufacture, ownership, possession, storage, and transportation~~  
39 ~~thereof, to the exclusion of all existing and future county,~~  
40 ~~city, town, or municipal ordinances or any administrative~~  
41 ~~regulations or rules adopted by local or state government~~  
42 ~~relating thereto. Any such existing ordinances, rules, or~~  
43 ~~regulations are hereby declared null and void.~~

44 ~~(2) POLICY AND INTENT.~~-

45 ~~(a) It is the intent of this section to provide uniform~~  
46 ~~firearms laws in the state; to declare all ordinances and~~  
47 ~~regulations null and void which have been enacted by any~~  
48 ~~jurisdictions other than state and federal, which regulate~~  
49 ~~firearms, ammunition, or components thereof; to prohibit the~~  
50 ~~enactment of any future ordinances or regulations relating to~~  
51 ~~firearms, ammunition, or components thereof unless specifically~~  
52 ~~authorized by this section or general law; and to require local~~  
53 ~~jurisdictions to enforce state firearms laws.~~

54 ~~(b) It is further the intent of this section to deter and~~  
55 ~~prevent the violation of this section and the violation of~~  
56 ~~rights protected under the constitution and laws of this state~~  
57 ~~related to firearms, ammunition, or components thereof, by the~~  
58 ~~abuse of official authority that occurs when enactments are~~

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59 ~~passed in violation of state law or under color of local or~~  
60 ~~state authority.~~

61 ~~(3) PROHIBITIONS; PENALTIES.—~~

62 ~~(a) Any person, county, agency, municipality, district, or~~  
63 ~~other entity that violates the Legislature's occupation of the~~  
64 ~~whole field of regulation of firearms and ammunition, as~~  
65 ~~declared in subsection (1), by enacting or causing to be~~  
66 ~~enforced any local ordinance or administrative rule or~~  
67 ~~regulation impinging upon such exclusive occupation of the field~~  
68 ~~shall be liable as set forth herein.~~

69 ~~(b) If any county, city, town, or other local government~~  
70 ~~violates this section, the court shall declare the improper~~  
71 ~~ordinance, regulation, or rule invalid and issue a permanent~~  
72 ~~injunction against the local government prohibiting it from~~  
73 ~~enforcing such ordinance, regulation, or rule. It is no defense~~  
74 ~~that in enacting the ordinance, regulation, or rule the local~~  
75 ~~government was acting in good faith or upon advice of counsel.~~

76 ~~(c) If the court determines that a violation was knowing~~  
77 ~~and willful, the court shall assess a civil fine of up to \$5,000~~  
78 ~~against the elected or appointed local government official or~~  
79 ~~officials or administrative agency head under whose jurisdiction~~  
80 ~~the violation occurred.~~

81 ~~(d) Except as required by applicable law, public funds may~~  
82 ~~not be used to defend or reimburse the unlawful conduct of any~~  
83 ~~person found to have knowingly and willfully violated this~~  
84 ~~section.~~

85 ~~(e) A knowing and willful violation of any provision of~~  
86 ~~this section by a person acting in an official capacity for any~~  
87 ~~entity enacting or causing to be enforced a local ordinance or~~

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~~administrative rule or regulation prohibited under paragraph (a) or otherwise under color of law shall be cause for termination of employment or contract or removal from office by the Governor.~~

~~(f) A person or an organization whose membership is adversely affected by any ordinance, regulation, measure, directive, rule, enactment, order, or policy promulgated or caused to be enforced in violation of this section may file suit against any county, agency, municipality, district, or other entity in any court of this state having jurisdiction over any defendant to the suit for declaratory and injunctive relief and for actual damages, as limited herein, caused by the violation. A court shall award the prevailing plaintiff in any such suit:~~

~~1. Reasonable attorney's fees and costs in accordance with the laws of this state, including a contingency fee multiplier, as authorized by law; and~~

~~2. The actual damages incurred, but not more than \$100,000.~~

~~Interest on the sums awarded pursuant to this subsection shall accrue at the legal rate from the date on which suit was filed.~~

~~(4) EXCEPTIONS. This section does not prohibit:~~

~~(a) Zoning ordinances that encompass firearms businesses along with other businesses, except that zoning ordinances that are designed for the purpose of restricting or prohibiting the sale, purchase, transfer, or manufacture of firearms or ammunition as a method of regulating firearms or ammunition are in conflict with this subsection and are prohibited;~~

~~(b) A duly organized law enforcement agency from enacting and enforcing regulations pertaining to firearms, ammunition, or~~

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117 ~~firearm accessories issued to or used by peace officers in the~~  
118 ~~course of their official duties;~~

119 ~~(c) Except as provided in s. 790.251, any entity subject to~~  
120 ~~the prohibitions of this section from regulating or prohibiting~~  
121 ~~the carrying of firearms and ammunition by an employee of the~~  
122 ~~entity during and in the course of the employee's official~~  
123 ~~duties;~~

124 ~~(d) A court or administrative law judge from hearing and~~  
125 ~~resolving any case or controversy or issuing any opinion or~~  
126 ~~order on a matter within the jurisdiction of that court or~~  
127 ~~judge; or~~

128 ~~(e) The Florida Fish and Wildlife Conservation Commission~~  
129 ~~from regulating the use of firearms or ammunition as a method of~~  
130 ~~taking wildlife and regulating the shooting ranges managed by~~  
131 ~~the commission.~~

132 ~~(5) SHORT TITLE. As created by chapter 87-23, Laws of~~  
133 ~~Florida, this section may be cited as the "Joe Carlucci Uniform~~  
134 ~~Firearms Act."~~

135 Section 2. Subsection (4) of section 790.251, Florida  
136 Statutes, is amended to read:

137 790.251 Protection of the right to keep and bear arms in  
138 motor vehicles for self-defense and other lawful purposes;  
139 prohibited acts; duty of public and private employers; immunity  
140 from liability; enforcement.-

141 (4) PROHIBITED ACTS.-No public or private employer may  
142 violate the constitutional rights of any customer, employee, or  
143 invitee as provided in paragraphs (a)-(e):

144 (a) No public or private employer may prohibit any  
145 customer, employee, or invitee from possessing any legally owned

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146 firearm when such firearm is lawfully possessed and locked  
147 inside or locked to a private motor vehicle in a parking lot and  
148 when the customer, employee, or invitee is lawfully in such  
149 area.

150 (b) No public or private employer may violate the privacy  
151 rights of a customer, employee, or invitee by verbal or written  
152 inquiry regarding the presence of a firearm inside or locked to  
153 a private motor vehicle in a parking lot or by an actual search  
154 of a private motor vehicle in a parking lot to ascertain the  
155 presence of a firearm within the vehicle. Further, no public or  
156 private employer may take any action against a customer,  
157 employee, or invitee based upon verbal or written statements of  
158 any party concerning possession of a firearm stored inside a  
159 private motor vehicle in a parking lot for lawful purposes. A  
160 search of a private motor vehicle in the parking lot of a public  
161 or private employer to ascertain the presence of a firearm  
162 within the vehicle may only be conducted by on-duty law  
163 enforcement personnel, based upon due process and must comply  
164 with constitutional protections.

165 (c) No public or private employer shall condition  
166 employment upon either:

167 1. The fact that an employee or prospective employee holds  
168 or does not hold a license issued pursuant to s. 790.06; or

169 2. Any agreement by an employee or a prospective employee  
170 that prohibits an employee from keeping a legal firearm locked  
171 inside or locked to a private motor vehicle in a parking lot  
172 when such firearm is kept for lawful purposes.

173 (d) No public or private employer shall prohibit or attempt  
174 to prevent any customer, employee, or invitee from entering the

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175 parking lot of the employer's place of business because the  
176 customer's, employee's, or invitee's private motor vehicle  
177 contains a legal firearm being carried for lawful purposes, that  
178 is out of sight within the customer's, employee's, or invitee's  
179 private motor vehicle.

180 (e) No public or private employer may terminate the  
181 employment of or otherwise discriminate against an employee, or  
182 expel a customer or invitee for exercising his or her  
183 constitutional right to keep and bear arms or for exercising the  
184 right of self-defense as long as a firearm is never exhibited on  
185 company property for any reason other than lawful defensive  
186 purposes.

187  
188 This subsection applies to all public sector employers,  
189 including those already limited in their ability to regulate  
190 ~~prohibited from regulating~~ firearms under the ~~provisions of s.~~  
191 790.33.

192 Section 3. This act shall take effect July 1, 2014.