

HB 993

2013

1 A bill to be entitled
2 An act relating to the regulation of firearms and
3 ammunition; amending s. 790.33, F.S.; providing that,
4 except as otherwise expressly prohibited by the State
5 Constitution, a county or municipality may regulate
6 the field of possession of firearms on property owned
7 by such municipality or county; amending s. 790.251,
8 F.S.; conforming provisions to changes made by the
9 act; providing an effective date.

10
11 WHEREAS, pursuant to Section 2, Article VIII of the State
12 Constitution and section 166.021, Florida Statutes,

13 municipalities have been granted broad home rule powers, and
14 WHEREAS, the Legislature has made an exception to this
15 policy by enacting section 790.33, Florida Statutes, preempting
16 the field of regulation of firearms and ammunition to itself,
17 and

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

24
25 Be It Enacted by the Legislature of the State of Florida:

26
27 Section 1. Section 790.33, Florida Statutes, is amended to
28 read:

29 790.33 Field of regulation of firearms and ammunition;
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 municipality or
35 county ~~the Legislature hereby declares that it is occupying the~~
36 ~~whole field of regulation of firearms and ammunition, including~~
37 ~~the purchase, sale, transfer, taxation, manufacture, ownership,~~
38 ~~possession, storage, and transportation thereof, to the~~
39 ~~exclusion of all existing and future county, city, town, or~~
40 ~~municipal ordinances or any administrative regulations or rules~~
41 ~~adopted by local or state government relating thereto. Any such~~
42 ~~existing ordinances, rules, or regulations are hereby declared~~
43 ~~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~~

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57 ~~related to firearms, ammunition, or components thereof, by the~~
58 ~~abuse of official authority that occurs when enactments are~~
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~~
 88 ~~administrative rule or regulation prohibited under paragraph (a)~~
 89 ~~or otherwise under color of law shall be cause for termination~~
 90 ~~of employment or contract or removal from office by the~~
 91 ~~Governor.~~

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

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

104 ~~2. The actual damages incurred, but not more than~~
 105 ~~\$100,000.~~

106
 107 ~~Interest on the sums awarded pursuant to this subsection shall~~
 108 ~~accrue at the legal rate from the date on which suit was filed.~~

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

110 ~~(a) Zoning ordinances that encompass firearms businesses~~
 111 ~~along with other businesses, except that zoning ordinances that~~
 112 ~~are designed for the purpose of restricting or prohibiting the~~

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113 ~~sale, purchase, transfer, or manufacture of firearms or~~
114 ~~ammunition as a method of regulating firearms or ammunition are~~
115 ~~in conflict with this subsection and are prohibited;~~

116 ~~(b) A duly organized law enforcement agency from enacting~~
117 ~~and enforcing regulations pertaining to firearms, ammunition, or~~
118 ~~firearm accessories issued to or used by peace officers in the~~
119 ~~course of their official duties;~~

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

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

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

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

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

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

141 from liability; enforcement.—

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

145 (a) No public or private employer may prohibit any
 146 customer, employee, or invitee from possessing any legally owned
 147 firearm when such firearm is lawfully possessed and locked
 148 inside or locked to a private motor vehicle in a parking lot and
 149 when the customer, employee, or invitee is lawfully in such
 150 area.

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

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

168 1. The fact that an employee or prospective employee holds

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169 or does not hold a license issued pursuant to s. 790.06; or

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

174 (d) No public or private employer shall prohibit or
175 attempt to prevent any customer, employee, or invitee from
176 entering the parking lot of the employer's place of business
177 because the customer's, employee's, or invitee's private motor
178 vehicle contains a legal firearm being carried for lawful
179 purposes, that is out of sight within the customer's,
180 employee's, or invitee's private motor vehicle.

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

188
189 This subsection applies to all public sector employers,
190 including those already limited in their ability to regulate
191 ~~prohibited from regulating~~ firearms under the ~~provisions of s.~~
192 790.33.

193 Section 3. This act shall take effect July 1, 2013.