



Item No. 12.1.b

AGENDA ITEM REQUEST FORM

Town Attorney

Susan L. Trevarthen

Department Submitting Request

Dept Head's Signature

REGULAR
COMMISSION MTG
Meeting Dates - 7:00 PM

DEADLINE TO
Town Clerk

ROUNDTABLE/
SPECIAL MEETING
Meeting Dates / TIME

DEADLINE TO
Town Clerk

7 Days Prior (noon)

- July 26, 2011 SPECIAL BUDGET 5:30 PM
- July 26, 2011
- Aug 23, 2011
- Sept 12, 2011 1st PUBLIC HEARING
- Sept 13, 2011
- Sept 26, 2011 2nd PUBLIC HEARING
- Sept 27, 2011

- July 15 (5:00 pm)
- July 15 (5:00 pm)
- Aug 12 (5:00 pm)
- Sept 01 (5:00 pm)
- Sept 02 (5:00 pm)
- Sept 15 (5:00 pm)
- Sept 16 (5:00 pm)

- Insert Date/Time

*Subject to Change

- Presentation
- Resolution
- Reports
- Quasi Judicial
- Consent
- Old Business
- Ordinance
- New Business

FY2011 DESIGNATED HIGH PRIORITY ITEM
PRIORITY TOPIC:

SUBJECT TITLE: Ordinance Revising Code to Address 2011 Legislative Preemption and Penalties for Local Adoption or Enforcement of Firearms Regulations

EXPLANATION: Chapter 790, Florida Statutes, regulates weapons and firearms throughout the State. Section 790.33, F.S., adopted in 1987 preempts all local regulations related to ammunition and firearms. The Florida Legislature, during its 2011 session, adopted House Bill 45 which revises Section 790.33, F.S., and provides significant penalties, both personal and corporate, to any person or organization *adopting* or *enforcing* local ammunition or firearm regulations which are preempted by the State.

Specifically, the preemption states (existing preemption, underlined text effective October 1, 2011):

Section 790.33 Field of regulation of firearms and ammunition preempted.

(1) PREEMPTION.—Except as expressly provided by the State Constitution or general law, the Legislature hereby declares that it is occupying the whole field of regulation of firearms and ammunition, including the purchase, sale, transfer, taxation, manufacture, ownership, possession, storage, and transportation thereof, to the exclusion of all existing and future county, city, town, or municipal ordinances or any administrative regulations or rules adopted by local or state government relating thereto. Any such existing ordinances, rules or regulations are hereby declared null and void.

The Town Code still addresses firearms. Previously there were no penalties, and local governments could simply choose not to enforce preempted regulations. However, the new penalties enacted by the legislature are extremely onerous. Therefore, I have brought this item forward, and recommend removing these provisions from Town Code, to avoid the possibility of some Town Official or employee overlooking the preemption in the future.

The new penalties for adopting or enforcing firearms regulations in violation of the preemption apply not only to the Town itself, but also to the individual elected or appointed officials adopting regulations or enforcing regulations. Specifically, repercussions of adopting or enforcing these regulations after October 1, 2011 include:

- Court injunction against enforcement
- Knowing and willful violation – up to a \$5,000 fine against the elected or appointed local government official under whose jurisdiction the violation occurred.



Item No. _____

AGENDA ITEM REQUEST FORM

Town Attorney

Susan L. Trevarthen

Department Submitting Request

Dept Head's Signature

- Public funds may not be used or reimbursed for the defense of a person found to have willfully and knowingly violated the statute.
- Violation is cause for termination of employment or removal from office by the Governor.
- Prevailing plaintiff's attorney's fees, including a contingency fee multiplier.
- Actual damages up to \$100,000.

The attached ordinance is proposed to change those portions of the Town Code which conflict with the State preemption and avoid the potential for these onerous penalties.

EXPECTED OUTCOME: Approval of the attached Ordinance (Exhibit 1) on First Reading.

EXHIBIT 1: Ordinance

2: Memo Summarizing State Laws Governing Firearms and Legislative Alert re House Bill 45 from Florida League of Cities

3: House Bill 45 staff analysis

Reviewed by Town Attorney

Yes No

Town Manager Initials

CHA

ORDINANCE 2011-15

1 **AN ORDINANCE OF THE TOWN OF LAUDERDALE-**
2 **BY-THE-SEA, FLORIDA, AMENDING THE CODE OF**
3 **ORDINANCES TO ADDRESS FIREARM REGULATIONS**
4 **PREEMPTED BY STATE LAW BY AMENDING**
5 **CHAPTER 13, "NOISE," AMENDING CHAPTER 14,**
6 **"OFFENSES,;" AND AMENDING CHAPTER 14.3,**
7 **"PARKS AND RECREATIONAL FACILITIES,"**
8 **PROVIDING FOR CODIFICATION, SEVERABILITY,**
9 **CONFLICTS AND AN EFFECTIVE DATE.**

10 **WHEREAS,** the Town Commission recognizes that changes to the adopted Code
11
12 of Ordinances are periodically necessary in order to ensure that the Town's regulations
13 are current and consistent with the requirements of Florida Law; and

14 **WHEREAS,** the Florida Statutes were amended in 1987 to address the regulation
15 of ammunition and firearms throughout the state and pre-empt the regulation of that field
16 to the State; and

17 **WHEREAS,** the Florida Legislature has, by the adoption of House Bill 45 during
18 the 2011 session, adopted additional penalties and repercussions for the adoption and
19 enforcement of preempted local regulations of firearms, effective October 1, 2011; and

20 **WHEREAS,** the Town desires to eliminate preempted regulations of ammunition
21 and firearms from the Town's Code; and

22 **WHEREAS,** ammunition and firearms are currently regulated in Chapter 13,
23 "Noise," Chapter 14, "Offenses," and Chapter 14.3, "Parks and Recreational Facilities,"
24 and

25 **WHEREAS,** the Town Commission conducted a first and second reading of the
26 proposed ordinance at duly noticed public hearings, as required by law, and after having
27 received input from and participation by interested members of the public and staff, the

ORDINANCE 2011-15

28 Town Commission has determined that this Ordinance is consistent with State Law and is in
29 the best interest of the Town, its residents, and its visitors.

30 **NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION**
31 **OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, THAT:**

32 **SECTION 1.** The foregoing “WHEREAS” clauses are hereby ratified and
33 confirmed as being true, correct and reflective of the legislative intent underlying this
34 Ordinance and are hereby made a specific part of this Ordinance.

35 **SECTION 2.** Chapter 13, “Noise,” Section 13-3, “Prohibited Acts,” is amended
36 to read as follows¹:

37 **Sec. 13-3. - Prohibited acts.** The following specific acts shall be prohibited at all times
38 and at all places within the limits of the Town:
39

* * * * *

40
41 (8) The unpermitted explosion of firecrackers, skyrocket, Roman candles,
42 pinwheels or any other form of fireworks ~~or the discharge of any firearms.~~
43 This subsection shall not prohibit organized fireworks displays conducted
44 in accordance with a special event permit issued pursuant to article VIII of
45 chapter 17 of this Code.
46

* * * * *

47
48
49 **SECTION 3.** Chapter 14, “Offenses,” Article I, “In General,” Section 14-14
50 “Discharge of firearms, etc.” is amended to read as follows:

51 **Sec. 14-14. - Discharge of firearms, etc.**
52

53 (a) It shall be unlawful for any person to willfully discharge any ~~firearm,~~ air gun, BB
54 gun, or any toy gun projecting lead or any missiles in the Town, or to cast, throw
55 or propel any missile on any street, alley, or other public place within the Town.
56

57 ~~(b) However, this section shall not be construed to prohibit any Officer of the Law~~
58 ~~from discharging a firearm when lawfully defending person or property.~~
59

¹ Additions to text are shown in underline. Deletions to the text are shown in ~~strikethrough~~.

ORDINANCE 2011-15

60 SECTION 4. Chapter 14.3, "Parks and Recreational Facilities," is amended to
61 read as follows:

62 * * * * *

63 **Sec 14.3-2 - Definitions.**

64
65 The following words, terms and phrases, when used in this chapter, shall have the
66 meanings ascribed to them in this section, except where the context clearly indicates a
67 different meaning:

68 * * * * *

69 *Weapon* means all those weapons, ~~including~~ excluding firearms, defined as requiring a
70 license or permit under State statute, but also includes spears, crossbows, bows and
71 arrows, sling shots, paintball guns or any other dangerous weapon or projectile.

72 * * * * *

73
74
75 **Sec. 14.3-4. - Regulation of general conduct—Personal behavior.**

76 * * * * *

77
78 (e) Possession and use of ~~firearms~~/weapons/fireworks. Except for a licensed Law
79 Enforcement Officer, it shall be unlawful for any person to:

80
81 (1) Have in his/her possession within any Town park, ~~fire or discharge, or~~
82 ~~cause to be fired or discharged across, in, or into any portion of a park, a~~
83 ~~firearm or to possess~~ a weapon, as that ~~those~~ terms are is defined in F.S. §
84 790.001.

85
86 (2) Possess, set off or attempt to set off or ignite any firecracker, fireworks,
87 smoke bombs, rockets, black powder guns or other pyrotechnics without a
88 Town permit.

89 * * * * *

90
91 **SECTION 5. Codification.** This Ordinance shall be codified in accordance with

92 the foregoing. It is the intention of the Town Commission that the provisions of this
93 Ordinance shall become and be made a part of the Town of Lauderdale-by-the-Sea Code of
94 Ordinances; and that the sections of this Ordinance may be renumbered or re-lettered and
95 the word "ordinance" may be changed to "section", "article" or such other appropriate word
96 or phrase in order to accomplish such intentions.

ORDINANCE 2011-15

97 **SECTION 6. Severability.** If any section, sentence, clause, or phrase of this
98 Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction,
99 then said holding shall in no way affect the validity of the remaining portions of this
100 Ordinance.

101 **SECTION 7. Conflicting Ordinances.** All prior ordinances or resolutions or
102 parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

103 **SECTION 8. Effective Date.** This Ordinance shall become effective
104 immediately upon passage on second reading.

105 Passed on the first reading, this ____ day of _____, 2011.

106 Passed on the second reading, this ____ day of _____, 2011.

107
108
109
110

Mayor Roseann Minnet

	First Reading	Second Reading
111		
112 Mayor Minnet	_____	_____
113 Vice-Mayor Dodd	_____	_____
114 Commissioner Clotney	_____	_____
115 Commissioner Sasser	_____	_____
116 Commissioner Vincent	_____	_____
117		

118 Attest:

119 _____
120 Town Clerk June White, CMC

121 (CORPORATE SEAL)

122 Approved as to form only for the use
123 by the Town of Lauderdale-By-The-Sea:

124
125
126 _____
127 Town Attorney, Susan L. Trevarthen

FINAL BILL ANALYSIS

BILL #: CS/CS/CS/HB 45

FINAL HOUSE FLOOR ACTION:
85 Y's 33 N's

SPONSOR: Rep. Gaetz

GOVERNOR'S ACTION: Approved

COMPANION BILLS: CS/CS/CS/SB 402

SUMMARY ANALYSIS

CS/CS/CS/HB 45 passed the House on April 26, 2011, and subsequently passed the Senate on April 28, 2011. The bill was approved by the Governor on June 2, 2011, chapter 2011-109, Laws of Florida, and becomes effective October 1, 2011.

Section 790.33, F.S., currently preempts local governments from regulating firearms and ammunition unless expressly authorized to do so by general law. Subsection (2) of the statute provides such express authorization by giving counties the authority to adopt an ordinance requiring a waiting period of up to three working days between the purchase and delivery of a handgun.

The bill removes the statutory language that authorizes counties to adopt an ordinance requiring a waiting period of up to three working days between the purchase and delivery of a handgun (counties still have the authority, pursuant to Art. VIII, Section 5(b) of the Florida Constitution to require a criminal history records check and a 3 to 5-day waiting period in connection with the sale of any firearm occurring within such county). The bill replaces this provision with language prohibiting specified local governmental entities from regulating or attempting to regulate firearms or ammunition in any manner (except as specifically authorized by s. 790.33, F.S., by general law, or by the Florida Constitution) and provides exceptions to this prohibition.

The bill sets forth various penalties for violating s. 790.33, F.S., including provisions that:

- Require the court to declare ordinances, regulations, or rules that violate s. 790.33, F.S., invalid and issue a permanent injunction against the local government from enforcing such ordinance, regulation, or rule. It is not a defense that, in enacting the ordinance, regulation or rule, the local government was acting in good faith or upon advice of counsel;
- Require the court to assess a civil fine of up to \$5,000 against the elected or appointed local government official or administrative agency head under whose jurisdiction a violation occurred if the court determines that a violation was knowing and willful;
- Specify that a knowing and willful violation of the statute by a person acting in an official capacity is cause for immediate termination of employment; and
- Authorize a person or organization whose membership is adversely affected by any ordinance, regulation, measure, directive, rule, enactment, order, or policy promulgated or enforced in violation of the statute to file suit for declaratory and injunctive relief and for all actual damages attributable to the violation.

The damages and attorney's fees which may be awarded to prevailing plaintiffs could have a negative fiscal impact on state and local governmental entities who willfully violate the statute.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Current Situation

Preemption

Section 790.33, F.S., known as the Joe Carlucci Uniform Firearms Act, became law in 1987¹ and expressly preempts the field of regulation of firearms and ammunition to the state, except as expressly provided by general law.² The intent of the act states:

It is the intent of this section to provide uniform firearms laws in the state; to declare all ordinances and regulations null and void which have been enacted by any jurisdictions other than state and federal, which regulate firearms, ammunition, or components thereof; to prohibit the enactment of any future ordinances or regulations relating to firearms, ammunition, or components thereof unless specifically authorized by this section or general law; and to require local jurisdictions to enforce state firearms laws.³

Local governments may use their home rule powers to enact ordinances not inconsistent with general law.⁴ Local governments may legislate concurrently with the Legislature on any subject that has not been expressly preempted to the state.⁵ Florida law recognizes both express and implied preemption, and express preemption must be made through a specific legislative statement, using clear language.⁶ A municipality may not forbid what the Legislature has expressly authorized, nor may it authorize what the Legislature has expressly forbidden.⁷ The Legislature has preempted regulation of numerous areas of law to the state, including operation of the state lottery,⁸ use of electronic communication devices in motor vehicles,⁹ and interdistrict transfers of groundwater.¹⁰ In cases determining the validity of ordinances enacted in the face of state preemption, the effect has been to find such ordinances null and void.¹¹

In 2000, the City of South Miami passed City Ordinance Number 14-00-1716, which required locking devices on firearms stored within the city. In 2002, Florida's Third District Court of Appeal held the ordinance null and void, stating that local governments were preempted from regulating firearms by section 790.33, F.S.¹² Despite the express preemption stated in section 790.33, F.S., and the court's decision in the City of South Miami case, local governments have regulated or considered regulating firearms in a variety of ways, including measures that would prohibit concealed carry permit holders

¹ Chapter 87-23, L.O.F.

² Section 790.33, F.S.

³ Section 790.33(3), F.S.

⁴ Art. VIII, s. 1(f, g), Fla. Const.; *see also Sarasota v. Browning*, 28 So.3d 880, 885-86 (Fla. 2010).

⁵ *City of Hollywood v. Mulligan*, 934 So.2d 1238, 1243 (Fla. 2006).

⁶ *Sarasota*, 28 So.3d at 886.

⁷ *Rinzler v. Carson*, 262 So.2d 661, 668 (Fla. 1972).

⁸ Section 24.122, F.S.

⁹ Section 316.0075, F.S.

¹⁰ Section 373.2295(10), F.S.

¹¹ *See, e.g., Nat'l Rifle Ass'n of Am., Inc. v. City of S. Miami*, 812 So.2d 504 (Fla. 3d DCA 2002).

¹² *Id.*

from lawfully carrying their firearms on municipal or county property¹³ or ban high-capacity ammunition clips.¹⁴

Section 790.33(1), F.S., preempts local governments from regulating firearms and ammunition unless expressly authorized to do so by general law. The statute specifies that regulation includes the purchase, sale, transfer, taxation, manufacture, ownership, possession, and transportation of firearms and ammunition. The statute does not currently specify that the storage of firearms is included within the term “regulation.”

Exceptions to Preemption

Florida law and the Florida Constitution contain exceptions to the general rule that firearm regulation is preempted to the state. Currently, Section 790.33, F.S., contains a limited exception allowing local governments to enact ordinances governing a three-day handgun purchase waiting period.¹⁵ The following are exempt from waiting period ordinances under the Joe Carlucci Act:

- Individuals who are licensed to carry concealed firearms under the provisions of s. 790.06, F.S., or who are licensed to carry concealed firearms under any other provision of state law and who show a valid license;
- Individuals who already lawfully own another firearm and who show a sales receipt for another firearm, who are known to own another firearm through a prior purchase from the retail establishment, or who have another firearm for trade-in;
- Law enforcement or correctional officers as defined in s. 943.10, F.S.;
- Law enforcement agencies as defined in s. 934.02, F.S.;
- Sales or transactions between dealers or between distributors or between dealers and distributors who have current federal firearms licenses; or
- Any individual who has been threatened or whose family has been threatened with death or bodily injury, provided the individual may lawfully possess a firearm and provided such threat has been duly reported to local law enforcement.

Adopted in 1998, Article VIII, s. 5(b) of the Florida Constitution authorizes counties to require a criminal records check and a 3 to 5-day waiting period in connection with the sale¹⁶ of any firearm occurring within such county.¹⁷ Section 790.0655, F.S. adopted the exceptions from the waiting period for concealed weapons permit holders and handgun trade-ins as required by the 1998 amendment to the Constitution. The Constitution prevails over all local ordinances. Because the Joe Carlucci Act predates the Constitutional provision, and the exemptions listed in the Act were not specified in the Constitution, the exemptions are null and void.

¹³ Lee County Ordinance 06-26 banned firearms from county parks. On October 26, 2010, the county passed ordinance 10-41 which repealed the 2006 ban.

¹⁴ Palm Beach County considered an ordinance banning high capacity ammunition clips, but rescinded from consideration because of the preemption. Andy Reid, *PBC Gun Control Advocates Suffer More Setbacks*, SUNSENTINEL.COM, Feb. 15, 2011, <http://www.palmbeachpost.com/news/palm-beach-county-commissioner-presses-for-ban-on-1216890.html>.

¹⁵ Section 790.33(2), F.S. (1988). Note: At the time of enactment in 1987, the Act provided the exception for a 48-hour waiting period.

¹⁶ The term “sale” is defined as “the transfer of money or other valuable consideration for any firearm when any part of the transaction is conducted on property to which the public has the right of access.” Art. VIII, s. 5(b), Fla. Const.

¹⁷ Concealed weapons permit holders do not have to comply with the waiting periods when purchasing a firearm. Art. VIII, s. 5(b), Fla. Const.

Immunity for Legislative Acts

The general rule under the common law is that legislators enjoy absolute immunity from liability for performance of legislative acts.¹⁸ Absolute immunity for legislators has historically been recognized as a “venerable tradition” which has withstood the development of the law since pre-colonial days.¹⁹ Courts have upheld absolute immunity for legislators at all levels of law-making, including federal, state, and local government levels.²⁰ The courts’ reasoning behind such holdings is that when legislators hold legislative powers, they use them for the public good, and are exempt from liability for mistaken use of their legislative powers.²¹ Furthermore, courts fear that allowing personal liability could distort legislative discretion, undermine the public good by interfering with the rights of the people to representation, tax the time and energy of frequently part-time citizen-legislators, and deter service in local government.²²

When unlawful ordinances have been enacted, the freedom from personal liability does not make the legislative product itself valid.²³ In such instances, affected citizens have been able to challenge the validity of such ordinances by suing to have them declared invalid or have a court enjoin enforcement.²⁴

Courts have found that legislators may be subject to personal liability when they lack discretion.²⁵ Such situations typically exist when legislators are subject to an affirmative duty, such as when a law or court order has directed them to levy a tax. Such acts are labeled “ministerial,” as opposed to “legislative,” acts.²⁶ Arguably, an express and clear preemption would remove discretion from local government officials seeking to engage in lawmaking in the preempted field.

Liens on Municipal Property in Satisfaction of Judgments

Section 55.11, F.S., states that “[n]o money judgment or decree against a municipal corporation is a lien on its property nor shall any execution or any writ in the nature of an execution based on the judgment or decree be issued or levied.” In other words, while a party may be awarded money damages in a suit against a municipality, municipal property may not be subject to a lien to satisfy such an award in the absence of express statutory authorization.²⁷ In the absence of such authorization, a writ of mandamus is “the only vehicle for enforcing judgment against the government.”²⁸ Thus, the Legislature may authorize the satisfaction of an award of damages by seizure of municipal property.

¹⁸ See *Tenney v. Brandhove*, 341 U.S. 367 (1951).

¹⁹ *Bogan v. Scott-Harris*, 523 U.S. 44 (1998). For additional examples of where absolute immunity of legislative acts has been recognized, see *Harlow v. Fitzgerald*, 457 U.S. 800 (1982); *Lake Country Estates v. Tahoe Regional Planning Agency*, 440 U.S. 391 (1979); *Hough v. Amato*, 269 So.2d 537 (Fla. 1st DCA 1972); *Jones v. Loving*, 55 Miss. 109 (1877); *Ross v. Gonzales*, 29 S.W.2d 437 (Tex. Ct. App. 1930).

²⁰ *Bogan*, 523 U.S. 44.

²¹ *Id.* at 50-51 (citing *Jones v. Loving*, 55 Miss. 109).

²² *Id.* at 52.

²³ *Tenney v. Brandhove*, 341 U.S. at 379.

²⁴ See, e.g., *Bogan*, 523 U.S. 44; *Lake Country Estates v. Tahoe Regional Planning Agency*, 440 U.S. 391 (1979); *Tenney*, 341 U.S. 367.

²⁵ *Bogan*, 523 U.S. at 51-52.

²⁶ See *id.*

²⁷ See *Berek v. Metro. Dade County*, 396 So.2d 756, 759 n.4 (Fla. 3d DCA 1981).

²⁸ *N. Coats v. Metro. Dade County*, 588 So.2d 1016, 1017 (Fla. 3d DCA 1991).

Effect of the Bill

Intent

The bill preserves current language that the intent of the Legislature is to occupy the whole field of regulation of firearms and ammunition except as expressly provided by general law, or as provided by the Florida Constitution. The bill adds the following legislative intent language to s. 790.33, F.S.:

It is further the intent of this section to deter and prevent the violation of this section and the violation of rights protected under the constitution and laws of this state related to firearms, ammunition, or components thereof, by the abuse of official authority that occurs when enactments are knowingly passed in violation of state law or under color of local or state authority.

Clarification of Preemption

In order to clarify the preemption, the bill adds additional details about the methods by which local governments or agencies may violate the preemption. The bill amends s. 790.33(1), F.S., to expand the preemption of regulation to also include the storage of firearms and ammunition. Thus, unless expressly authorized by the Constitution or general law, local governments will be preempted from regulating how firearms and ammunition are stored.

In subsection (4) of s. 790.33, F.S., as created by the bill, a provision excepting certain zoning ordinances in the original Carlucci Act has been relocated and other exceptions to the prohibitions are set forth in the bill. Specifically, the bill does not prohibit:

- Zoning ordinances that encompass firearms businesses along with other businesses (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 prohibited);
- Law enforcement agencies from enacting and enforcing firearm-related regulations within their agencies;
- The entities subject to the bill's prohibitions from regulating or prohibiting employees from carrying firearms or ammunition during the course of their official duties, except as provided in s. 790.251, F.S.;
- A court or administrative law judge from resolving a case or issuing an order or opinion on any matter within the court or judge's jurisdiction; or
- The Florida Fish and Wildlife Conservation Commission from regulating the use of firearms or ammunition as a method of taking wildlife and regulating the shooting ranges managed by the Commission.

The bill strikes subsection (2) of 790.33, which is the section regarding waiting periods and waiting period exemptions. Because these sections of the Joe Carlucci Act predate the relevant language in the Constitution and 790.0655, F.S., striking this language clarifies current state law.

Penalties

The bill prohibits a person, county, agency, municipality, district, or other entity from enacting or causing to be enforced local ordinances or administrative rules or regulations that violate the preemption statute and provides penalties.

If any county, city, town, or other local government violates the above prohibition, the bill requires the court to declare the improper ordinance, regulation, or rule invalid and issue a permanent injunction against the local government from enforcing such ordinance, regulation, or rule. It is not a defense that, in enacting the ordinance, regulation or rule, the local government was acting in good faith or upon advice of counsel.

The bill also requires the court to assess a civil fine of up to \$5,000 against the elected or appointed local government official or administrative agency head under whose jurisdiction a violation occurred if the court determines that a violation was knowing and willful. Except as required by law, public funds may not be used to defend or reimburse the unlawful conduct of any person found to have knowingly and willfully violated the preemption statute.

The bill provides that a knowing and willful violation by a person acting in an official capacity for any entity enacting or causing to be enforced a local ordinance or administrative rule or regulation shall be grounds for termination of employment or contract or removal from office by the Governor.

The bill also allows for civil actions. A person or 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 the preemption statute may sue any county, agency, municipality, district or other entity for declaratory and injunctive relief and for all actual damages caused by the violation. In such suits, courts shall award the prevailing plaintiff:

- Reasonable attorneys fees and costs, in accordance with the laws of the state, including a contingency fee multiplier as authorized by law; and
- The actual damages incurred, but not more than \$100,000.

The bill provides that interest on awarded sums will accrue at the legal rate from the date of which suit was filed.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See "Fiscal Comments."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See "Fiscal Comments."

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The damages and attorney's fees which may be awarded to prevailing plaintiffs could have a negative fiscal impact on state and local governmental entities who willfully violate the statute.



To: Municipal Officials and Attorneys

From: Ryan Matthews

Date: July 14, 2011

Re: State Laws on Firearms and Ammunition

During the 2011 Legislative session, the Legislature changed various laws relating to local regulation of firearms and ammunition. Attached is a legislative alert regarding HB 45, and a copy of Enrolled HB 45. This law strengthens the current state preemption with regard to the regulation of firearms, which was passed by the Legislature in 1987. HB 45 provides civil penalties for governments, elected officials and employees who attempt to regulate firearms or ammunition in violation of the preemption. Due to the preemption and new penalty provisions, it is important to consult with your city attorney to identify any local ordinances, rules or regulations that may need to be amended (see attached Alert).

This memo provides a list of state laws regulating firearms and ammunition available for enforcement by local governments. The laws are separated into three sections: (1) laws that apply to all Floridians or universal firearm statutes; (2) laws that apply to those Floridians with a concealed firearms/weapons permit; and (3) other potentially applicable laws.

Section 1 – Universal firearm statutes

Generally, Chapter 790, Florida Statutes, regulates the control, possession, sale, discharge, and manufacture of weapons and firearms in the state. Chapter 790 also lists varying penalties depending on the severity of the violation and the violator's criminal background. Section 790.001, Florida Statutes, defines "firearm" to mean any weapon (including a starter gun) which will, is designed to, or may readily be converted to expel a projectile by the action of an

explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; any destructive device; or any machine gun. The term “firearm” does not include an antique firearm unless the antique firearm is used in the commission of a crime.

- Carrying a concealed firearm – A person who does not have concealed weapons permit may not carry a concealed firearm. Section 790.01, Florida Statutes.
- Open carrying of a firearm – A person may not openly carry on or about his person any firearm. Section 790.053, Florida Statutes.
- Discharging firearm in public – A person may not discharge a firearm knowingly in any public place or on the right of way of any paved public road, highway, or street, or occupied premises. This section does not apply to a person who is lawfully defending life or property or performing official duties requiring the discharge of a firearm. Subsection 790.15(1), Florida Statutes.
 - Any person or occupant of any vehicle may not knowingly and willfully discharge a firearm from a vehicle within 1,000 feet of another person. Subsection 790.15(2), Florida Statutes.
 - Any driver or owner of any vehicle, whether or not the owner of the vehicle is occupying the vehicle, may not knowingly direct any other person to discharge a firearm from the vehicle. Subsection 790.15(3), Florida Statutes.
- Using firearms while under the influence of alcoholic beverages, chemical substances, or controlled substances - As used in the law, to “use a firearm” means to discharge a firearm or to have a firearm readily accessible for immediate discharge; and “readily accessible for immediate discharge” means loaded and in a person’s hand. It is unlawful for any person who is under the influence of alcoholic beverages, any chemical substance set forth in s. 877.111, or any substance controlled under chapter 893, when affected to the extent that his or her normal faculties are impaired, to use a firearm. Section 790.151, Florida Statutes.
- Shooting into dwellings, public or private buildings, occupied or not occupied, vessels, aircraft, buses, railroad cars, streetcars, or other vehicles – A person may not, wantonly or maliciously, shoot at, within, or into any public or private building, occupied or unoccupied, or public or private bus or any train, locomotive, railway car, caboose, cable

railway car, street railway car, monorail car, or vehicle of any kind which is being used or occupied by any person, or any boat, vessel, ship or barge lying in or plying the waters of the state, or aircraft flying in the airspace of the state. Section 790.19, Florida Statutes.

- Improper exhibition of firearms – A person may not, in the presence of one or more persons, display a firearm in a rude, careless, angry, or threatening manner except for necessary self-defense. Section 790.10, Florida Statutes.
- Possessing or discharging firearms at a school-sponsored event on school property – A person may not exhibit a firearm, except as authorized in support of school sanctioned activities, in a rude, careless, angry or threatening manner at a school-sponsored event or on the property of any school, school bus, or school bus stop or within 1000 feet of the real property that comprises a public or private elementary school, middle school, or secondary school, during school hours or during the time of a sanctioned school activity. A person also may not possess or discharge a firearm on the property of any school, school bus or school bus stop. For the purposes of this section a “school” means any preschool, elementary school, middle school, junior high school, secondary school, career center, or post-secondary school, whether public or private. Section 790.115, Florida Statutes.
- Crimes in Pharmacies: possession of weapons – A person may not possess a concealed firearm within the premises of a pharmacy. Section 790.145, Florida Statutes.
- Discharging Machine guns – A person may not shoot or discharge any machine gun upon, across, or along any road, street, or highway in the state; upon or across any public park in the state; or in, upon, or across any public place where people are accustomed to assemble in the state. This section does not apply to the use of such machine guns by any law enforcement officer while in the discharge of his or her lawful duty. Section 790.16, Florida Statutes.
- Furnishing firearms to minors under 18 years of age – A person may not knowingly or willfully sell or transfer a firearm to a minor under 18 years of age, except that a person may transfer ownership of a firearm to a minor with permission of the parent or guardian, and the parent or guardian must maintain possession of the firearm. Section 790.17, Florida Statutes.

- Safe storage of firearms required – A person who stores or leaves, on a premise under his or her control, a loaded firearm, as defined in s. 790.001, and who knows or reasonably should know that a minor is likely to gain access to the firearm without the lawful permission of the minor’s parent or the person having charge of the minor, or without the supervision required by law, shall keep the firearm in a securely locked box or container or in a location which a reasonable person would believe to be secure or shall secure it with a trigger lock, except when the person is carrying the firearm on his or her body or within such close proximity thereto that he or she can retrieve and use it as easily and quickly as if he or she carried it on his or her body. Section 790.174, Florida Statutes.
- Use of BB guns, air or gas operated guns, or electric weapons by minor under 16; possession of a firearm by minor under 18– The Florida Statutes do not appear to have a specific regulation relating to the firing of a BB gun by an adult who is over the age of 19; also a BB gun may not be considered to be a “firearm” for purposes of the preemption in section 790.33, Florida Statutes.
 - The use for any purpose of a BB gun, or electric weapons or devices, by an unsupervised minor under the age of 16 is prohibited; supervising adults must have the permission of the minor’s parent that the child may participate in the activity.
 - A minor under 18 years of age may not possess a firearm, other than an unloaded firearm at his or her home, unless: the minor is engaged in a lawful hunting activity or the minor is engaged in a lawful marksmanship activity or recreational shooting competition. Section 790.22, Florida Statutes.
- Possession of short-barreled rifle, short-barreled shotgun, or machine gun - A person may not own or have in his or her care, custody, possession, or control any short-barreled rifle, short-barreled shotgun, or machine gun which is, or may readily be made, operable; but this section shall not apply to antique firearms. Firearms in violation hereof which are lawfully owned and possessed under provisions of federal law are excepted. Section 790.221, Florida Statutes.
- Felons and delinquents; possession of firearms, ammunition, or electronic weapons - A person may not own or to have in his or her care, custody, possession, or control any firearm, if that person has been:

- Convicted of a felony in the courts of this state;
 - Found, in the courts of this state, to have committed a delinquent act that would be a felony if committed by an adult and such person is under 24 years of age;
 - Convicted of or found to have committed a crime against the United States which is designated as a felony;
 - Found to have committed a delinquent act in another state, territory, or country that would be a felony if committed by an adult and which was punishable by imprisonment for a term exceeding 1 year and such person is under 24 years of age; or
 - Found guilty of an offense that is a felony in another state, territory, or country and which was punishable by imprisonment for a term exceeding 1 year.
 - This section shall not apply to a person convicted of a felony whose civil rights and firearm authority have been restored. Section 790.23, Florida Statutes.
- Possession of firearm or ammunition prohibited when person is subject to an injunction against committing acts of domestic violence - A person may not have in his or her care, custody, possession, or control any firearm or ammunition if the person has been issued a final injunction that is currently in force and effect, restraining that person from committing acts of domestic violence, and that has been issued under s. 741.30. Section 790.233, Florida Statutes.
 - Armor-piercing or exploding ammunition or dragon's breath shotgun shells, bolo shells, or flechette shells prohibited – A person may not manufacture, sell, offer to sell, or deliver and a person is restricted from possessing any armor-piercing bullet or exploding bullet, or dragon's breath shotgun shell, bolo shell, or flechette shell. Subsection 790.31(2), Florida Statutes.
 - Field of Regulation of firearms and ammunition preempted - Except as expressly provided by the State Constitution or general law, the Legislature hereby declares that it is occupying the whole field of regulation of firearms and ammunition, including the purchase, sale, transfer, taxation, manufacture, ownership, possession, storage, and transportation thereof, to the exclusion of all existing and future county, city, town, or municipal ordinances or any administrative regulations or rules adopted by local or state

government relating thereto. Any such existing ordinances, rules, or regulations are hereby declared null and void. Section 790.33, Florida Statutes.

- This subsection shall not affect zoning ordinances which encompass firearms businesses along with other businesses. Zoning ordinances which 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. Subsection 790.33(1), Florida Statutes.

Section 2 – Statutes that pertain to persons with Concealed Firearms/Weapons Permits (CWP)

In Florida, if a person has registered with the Department of Agriculture and Consumer Services and is legally permitted to carry a registered firearm, there are still general laws with which the person must abide. The state imposes restrictions on places a person is allowed to carry a firearm, which are in addition to federal restrictions.

- Concealed Firearms/Weapons Permit; restrictions – The possession of a concealed firearms/weapons permit does not allow a person to bring a firearm in the following areas. Note the existence or non-existence of a concealed firearms/weapons permit does not preclude a person from violating the law if they possess a firearm in one of the below defined areas:
 - 1. Any place of nuisance as defined in s. 823.05;
 - Subsection 823.05(1), Florida Statutes, provides: whoever shall erect, establish, continue, or maintain, own or lease any building, booth, tent or place which tends to annoy the community or injure the health of the community, or become manifestly injurious to the morals or manners of the people as described in s. 823.01, or any house or place of prostitution, assignation, lewdness or place or building where games of chance are engaged in violation of law or any place where any law of the state is violated, shall be deemed guilty of maintaining a nuisance, and the building, erection, place, tent or booth and the furniture, fixtures, and contents are declared a nuisance.
 - 2. Any police, sheriff, or highway patrol station;

- 3. Any detention facility, prison, or jail;
 - 4. Any courthouse;
 - 5. Any courtroom, except that nothing in this section would preclude a judge from carrying a concealed weapon or determining who will carry a concealed weapon in his or her courtroom;
 - 6. Any polling place;
 - 7. Any meeting of the governing body of a county, public school district, municipality, or special district;
 - 8. Any meeting of the Legislature or a committee thereof;
 - 9. Any school, college, or professional athletic event not related to firearms;
 - 10. Any elementary or secondary school facility or administration building;
 - 11. Any career center;
 - 12. Any portion of an establishment licensed to dispense alcoholic beverages for consumption on the premises, which portion of the establishment is primarily devoted to such purpose;
 - 13. Any college or university facility unless the licensee is a registered student, employee, or faculty member of such college or university and the weapon is a stun gun or nonlethal electric weapon or device designed solely for defensive purposes and the weapon does not fire a dart or projectile;
 - 14. The inside of the passenger terminal and sterile area of any airport, provided that no person shall be prohibited from carrying any legal firearm into the terminal, which firearm is encased for shipment for purposes of checking such firearm as baggage to be lawfully transported on any aircraft; or
 - 15. Any place where the carrying of firearms is prohibited by federal law. Subsection 790.06(12), Florida Statutes.
- Nonresidents who are United States citizens and hold a concealed weapons license in another state; reciprocity - Notwithstanding s. 790.01, a resident of the United States who is a nonresident of Florida may carry a concealed firearm while in this state if the nonresident:
 - Is 21 years of age or older; and
 - Has in his or her immediate possession a valid license to carry a concealed weapon or concealed firearm issued to the nonresident in his or her state of residence.

- A nonresident is subject to the same laws and restrictions with respect to carrying a concealed weapon or concealed firearm as a resident of Florida who is so licensed. Section 790.015, Florida Statutes.

Section 3 – Other Potentially Applicable Laws

The following section includes other applicable laws that may be appropriate when dealing with the discharge, possession, transfer, or concealment of a firearm.

- General Nuisances – All nuisances that tend to annoy the community, injure the health of the citizens in general, or corrupt the public morals are misdemeanors of the second degree. Section 823.01, Florida Statutes
- Specific Nuisances – Whoever shall erect, establish, continue, or maintain, own or lease any building, booth, tent or place which tends to annoy the community or injure the health of the community, or become manifestly injurious to the morals or manners of the people as described in s.823.01, or any house or place of prostitution, assignation, lewdness or place or building where games of chance are engaged shall be guilty of maintaining a nuisance, and the building, erection, place, tent, or booth and the furniture, fixtures, and contents shall be declared a nuisance. Section 823.05, Florida Statutes.
- Breach of the Peace – Whoever commits such acts as are of a nature to corrupt the public morals, or outrage the sense of public decency, or affect the peace and quiet of persons who may witness them, or engages in brawling or fighting, or engages in such conduct as to constitute a breach of the peace or disorderly conduct shall be guilty of a misdemeanor. Section 877.03, Florida Statutes.
- Lawful ownership, possession, and use of firearms - The provisions of ss. 790.053 (Open carrying of firearms) and 790.06 (License to carry concealed firearm) do not apply in the following instances, and, despite such sections, it is lawful for the following persons to own, possess, and lawfully use firearms and other weapons, ammunition, and supplies for lawful purposes:
 - Members of the Militia, National Guard, Florida State Defense Force, Army, Navy, Air Force, Marine Corps, Coast Guard, organized reserves, and other

- armed forces of the state and of the United States, when on duty, when training or preparing themselves for military duty, or while subject to recall or mobilization;
- Citizens of this state subject to duty in the Armed Forces under s. 2, Art. X of the State Constitution, under chapters 250 and 251, and under federal laws, when on duty or when training or preparing themselves for military duty;
 - Persons carrying out or training for emergency management duties under chapter 252;
 - Sheriffs, marshals, prison or jail wardens, police officers, Florida highway patrol officers, game wardens, revenue officers, forest officials, special officers appointed under the provisions of chapter 354, and other peace and law enforcement officers and their deputies and assistants and full-time paid peace officers of other states and of the Federal Government who are carrying out official duties while in this state;
 - Officers or employees of the state or United States duly authorized to carry a concealed weapon;
 - Guards or messengers of common carriers, express companies, armored car carriers, mail carriers, banks, and other financial institutions, while actually employed in and about the shipment, transportation, or delivery of any money, treasure, bullion, bonds, or other thing of value within this state;
 - Regularly enrolled members of any organization duly authorized to purchase or receive weapons from the United States or from this state, or regularly enrolled members of clubs organized for target, skeet, or trap shooting, while at or going to or from shooting practice; or regularly enrolled members of clubs organized for modern or antique firearms collecting, while such members are at or going to or from their collectors' gun shows, conventions, or exhibits;
 - A person engaged in fishing, camping, or lawful hunting or going to or returning from a fishing, camping, or lawful hunting expedition;
 - A person engaged in the business of manufacturing, repairing, or dealing in firearms, or the agent or representative of any such person while engaged in the lawful course of such business;

- A person firing weapons for testing or target practice under safe conditions and in a safe place not prohibited by law or going to or from such place;
- A person firing weapons in a safe and secure indoor range for testing and target practice;
- A person traveling by private conveyance when the weapon is securely encased or in a public conveyance when the weapon is securely encased and not in the person's manual possession;
- A person while carrying a pistol unloaded and in a secure wrapper, concealed or otherwise, from the place of purchase to his or her home or place of business or to a place of repair or back to his or her home or place of business.
- A person possessing arms at his or her home or place of business;
- Investigators employed by the several public defenders of the state, while actually carrying out official duties;
 - Construction.—This act shall be liberally construed to carry out the declaration of policy herein and in favor of the constitutional right to keep and bear arms for lawful purposes. This act is supplemental and additional to existing rights to bear arms now guaranteed by law and decisions of the courts of Florida and nothing herein shall impair or diminish any of such rights. This act shall supersede any law, ordinance, or regulation in conflict herewith. Subsections 790.25 (3) and (4), Florida Statutes.
- Possession of a firearm in a Private Conveyance. — It is lawful and is not a violation of s. 790.01 for a person 18 years of age or older to possess a concealed firearm for self-defense or other lawful purpose within the interior of a private conveyance, without a license, if the firearm or other weapon is securely encased or is otherwise not readily accessible for immediate use. Nothing in the statute prohibits the carrying of a legal firearm other than a handgun anywhere in a private conveyance when such firearm is being carried for a lawful use. These laws shall not be construed to authorize the carrying of a concealed firearm or other weapon on the person. This subsection shall be liberally construed in favor of the lawful use, ownership, and possession of firearms and other

weapons, including lawful self-defense as provided in s. 776.012. Subsection 790.25(5), Florida Statutes.

- Protection of the right to keep and bear arms in motor vehicles for self-defense and other lawful purposes – The Legislature has determined that individual citizens have a constitutional right to keep and bear arms, that they have a constitutional right to possess and keep legally owned firearms within their motor vehicles for self-defense and other lawful purposes, and that these rights are not abrogated by virtue of a citizen becoming a customer, employee, or invitee of a business entity. The Legislature finds that a citizen's lawful possession, transportation, and secure keeping of firearms and ammunition within his or her motor vehicle is essential to the exercise of the fundamental constitutional right to keep and bear arms and the constitutional right of self-defense. The Legislature finds that protecting and preserving these rights is essential to the exercise of freedom and individual responsibility. The Legislature further finds that no citizen can or should be required to waive or abrogate his or her right to possess and securely keep firearms and ammunition locked within his or her motor vehicle by virtue of becoming a customer, employee, or invitee of any employer or business establishment within the state, unless specifically required by state or federal law.
 - No public or private employer may violate the constitutional rights of any customer, employee, or invitee as provided in paragraphs (a)-(e):
 - (a) No public or private employer may prohibit any customer, employee, or invitee from possessing any legally owned firearm when such firearm is lawfully possessed and locked inside or locked to a private motor vehicle in a parking lot and when the customer, employee, or invitee is lawfully in such area.
 - (b) No public or private employer may violate the privacy rights of a customer, employee, or invitee by verbal or written inquiry regarding the presence of a firearm inside or locked to a private motor vehicle in a parking lot or by an actual search of a private motor vehicle in a parking lot to ascertain the presence of a firearm within the vehicle. Further, no public or private employer may take any action against a customer, employee, or invitee based upon verbal or written statements of any party

concerning possession of a firearm stored inside a private motor vehicle in a parking lot for lawful purposes. A search of a private motor vehicle in the parking lot of a public or private employer to ascertain the presence of a firearm within the vehicle may only be conducted by on-duty law enforcement personnel based upon due process and must comply with constitutional protections.

- (c) No public or private employer shall condition employment upon either:
 - 1. The fact that an employee or prospective employee holds or does not hold a concealed firearms/weapons license issued pursuant to s. 790.06; or
 - 2. Any agreement by an employee or a prospective employee that prohibits an employee from keeping a legal firearm locked inside or locked to a private motor vehicle in a parking lot when such firearm is kept for lawful purposes.
- (d) No public or private employer shall prohibit or attempt to prevent any customer, employee, or invitee from entering the parking lot of the employer's place of business because the customer's, employee's, or invitee's private motor vehicle contains a legal firearm being carried for lawful purposes, that is out of sight within the customer's, employee's, or invitee's private motor vehicle.
- (e) No public or private employer may terminate the employment of or otherwise discriminate against an employee, or expel a customer or invitee for exercising his or her constitutional right to keep and bear arms or for exercising the right of self-defense as long as a firearm is never exhibited on company property for any reason other than lawful defensive purposes. Section 790.251, Florida Statutes.

While the Florida Legislature has gone to great lengths to ensure local governments may not regulate the area of firearms and ammunitions, the purpose of this memorandum is to provide local governments with the resources with which it may enforce violations of state laws.



LEGISLATIVE ALERT



IMMEDIATE ACTION REQUESTED

June 28, 2011

LOCAL REGULATION OF FIREARMS AND AMMUNITION: PENALTIES FOR VIOLATING STATE PREEMPTION

CS/CS/CS/HB 45 (Rep. Gaetz) imposes a financial penalty on governments, elected officials, or staff that adopts policies or takes enforcement action violating the existing state law preemption of firearms and ammunition regulation. The bill was approved by the Governor, is designated as Chapter No. 2011-109, and becomes effective on October 1, 2011.

Under current law, section 790.33, Florida Statutes, the state has preempted “the whole field of regulation of firearms and ammunition” to the exclusion of any city or county ordinances, regulations or rules. Under HB 45, city officials or employees who willfully and knowingly violate the preemption would be personally liable for a fine of up to \$5,000. A willful and knowing violation of the preemption is also grounds for termination of employment or contract, or removal from office by the governor. Also, public funds may not be used to defend or reimburse the unlawful conduct of any person found to have knowingly and willfully violated the preemption. An ordinance, regulation or rule that violates the preemption is to be ruled invalid and a permanent injunction is to be issued prohibiting its enforcement. A government could be liable for actual damages up to \$100,000 and for the plaintiff’s attorney’s fees. For example, under HB 45, an elected city official passing or a city employee enforcing an ordinance prohibiting guns in parks, discharging guns within city limits, or otherwise restricting guns could be personally liable and the government could also be liable.

Your city attorney should likely review your city’s codes for any existing firearms or ammunition related ordinances, regulations or rules. Such an ordinance, regulation or rule should be carefully considered to determine if it violates the state preemption. (Attached is a news article on recent actions taken by Leon County addressing existing ordinances determined by the county attorney to be subject to the state preemption.) The new law is effective October 1, 2011, and your city should have taken any corrective actions prior to this date.

- If you have any questions on this matter, please contact Kraig Conn (kconn@flcities.com) or Rebecca O’Hara (rohara@flcities.com), at 850-222-9684.

ENROLLED
CS/CS/CS/HB 45, Engrossed 1

2011 Legislature

29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56

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

790.33 Field of regulation of firearms and ammunition preempted.—

(1) PREEMPTION.—Except as expressly provided by the State Constitution or general law, the Legislature hereby declares that it is occupying the whole field of regulation of firearms and ammunition, including the purchase, sale, transfer, taxation, manufacture, ownership, possession, storage, and transportation thereof, to the exclusion of all existing and future county, city, town, or municipal ordinances or any administrative regulations or rules adopted by local or state government relating thereto. Any such existing ordinances, rules, or regulations are hereby declared null and void. ~~This subsection shall not affect zoning ordinances which encompass firearms businesses along with other businesses. Zoning ordinances which 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.~~

~~(2) LIMITED EXCEPTION; COUNTY WAITING PERIOD ORDINANCES.~~

~~(a) Any county may have the option to adopt a waiting-period ordinance requiring a waiting period of up to, but not to exceed, 3 working days between the purchase and delivery of a handgun. For purposes of this subsection, "purchase" means payment of deposit, payment in full, or notification of intent~~

Page 2 of 7

CODING: Words stricken are deletions; words underlined are additions.

hb0045-05-er

ENROLLED
 CS/CS/CS/HB 45, Engrossed 1

2011 Legislature

57 ~~to purchase. Adoption of a waiting period ordinance, by any~~
 58 ~~county, shall require a majority vote of the county commission~~
 59 ~~on votes on waiting period ordinances. This exception is limited~~
 60 ~~solely to individual counties and is limited to the provisions~~
 61 ~~and restrictions contained in this subsection.~~

62 ~~(b) Ordinances authorized by this subsection shall apply~~
 63 ~~to all sales of handguns to individuals by a retail~~
 64 ~~establishment except those sales to individuals exempted in this~~
 65 ~~subsection. For purposes of this subsection, "retail~~
 66 ~~establishment" means a gun shop, sporting goods store, pawn~~
 67 ~~shop, hardware store, department store, discount store, bait or~~
 68 ~~tackle shop, or any other store or shop that offers handguns for~~
 69 ~~walk in retail sale but does not include gun collectors shows or~~
 70 ~~exhibits, or gun shows.~~

71 ~~(c) Ordinances authorized by this subsection shall not~~
 72 ~~require any reporting or notification to any source outside the~~
 73 ~~retail establishment, but records of handgun sales must be~~
 74 ~~available for inspection, during normal business hours, by any~~
 75 ~~law enforcement agency as defined in s. 934.02.~~

76 ~~(d) The following shall be exempt from any waiting period:~~

77 ~~1. Individuals who are licensed to carry concealed~~
 78 ~~firearms under the provisions of s. 790.06 or who are licensed~~
 79 ~~to carry concealed firearms under any other provision of state~~
 80 ~~law and who show a valid license;~~

81 ~~2. Individuals who already lawfully own another firearm~~
 82 ~~and who show a sales receipt for another firearm; who are known~~
 83 ~~to own another firearm through a prior purchase from the retail~~
 84 ~~establishment; or who have another firearm for trade-in;~~

ENROLLED
CS/CS/CS/HB 45, Engrossed 1

2011 Legislature

85 ~~3. A law enforcement or correctional officer as defined in~~
86 ~~s. 943.10;~~

87 ~~4. A law enforcement agency as defined in s. 934.02;~~

88 ~~5. Sales or transactions between dealers or between~~
89 ~~distributors or between dealers and distributors who have~~
90 ~~current federal firearms licenses; or~~

91 ~~6. Any individual who has been threatened or whose family~~
92 ~~has been threatened with death or bodily injury, provided the~~
93 ~~individual may lawfully possess a firearm and provided such~~
94 ~~threat has been duly reported to local law enforcement.~~

95 (2)(3) POLICY AND INTENT.-

96 (a) It is the intent of this section to provide uniform
97 firearms laws in the state; to declare all ordinances and
98 regulations null and void which have been enacted by any
99 jurisdictions other than state and federal, which regulate
100 firearms, ammunition, or components thereof; to prohibit the
101 enactment of any future ordinances or regulations relating to
102 firearms, ammunition, or components thereof unless specifically
103 authorized by this section or general law; and to require local
104 jurisdictions to enforce state firearms laws.

105 (b) It is further the intent of this section to deter and
106 prevent the violation of this section and the violation of
107 rights protected under the constitution and laws of this state
108 related to firearms, ammunition, or components thereof, by the
109 abuse of official authority that occurs when enactments are
110 passed in violation of state law or under color of local or
111 state authority.

112 (3) PROHIBITIONS; PENALTIES.-

Page 4 of 7

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

hb0045-05-er

ENROLLED

CS/CS/CS/HB 45, Engrossed 1

2011 Legislature

113 (a) Any person, county, agency, municipality, district, or
 114 other entity that violates the Legislature's occupation of the
 115 whole field of regulation of firearms and ammunition, as
 116 declared in subsection (1), by enacting or causing to be
 117 enforced any local ordinance or administrative rule or
 118 regulation impinging upon such exclusive occupation of the field
 119 shall be liable as set forth herein.

120 (b) If any county, city, town, or other local government
 121 violates this section, the court shall declare the improper
 122 ordinance, regulation, or rule invalid and issue a permanent
 123 injunction against the local government prohibiting it from
 124 enforcing such ordinance, regulation, or rule. It is no defense
 125 that in enacting the ordinance, regulation, or rule the local
 126 government was acting in good faith or upon advice of counsel.

127 (c) If the court determines that a violation was knowing
 128 and willful, the court shall assess a civil fine of up to \$5,000
 129 against the elected or appointed local government official or
 130 officials or administrative agency head under whose jurisdiction
 131 the violation occurred.

132 (d) Except as required by applicable law, public funds may
 133 not be used to defend or reimburse the unlawful conduct of any
 134 person found to have knowingly and willfully violated this
 135 section.

136 (e) A knowing and willful violation of any provision of
 137 this section by a person acting in an official capacity for any
 138 entity enacting or causing to be enforced a local ordinance or
 139 administrative rule or regulation prohibited under paragraph (a)
 140 or otherwise under color of law shall be cause for termination

ENROLLED
 CS/CS/CS/HB 45, Engrossed 1

2011 Legislature

141 of employment or contract or removal from office by the
 142 Governor.

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

- 152 1. Reasonable attorney's fees and costs in accordance with
 153 the laws of this state, including a contingency fee multiplier,
 154 as authorized by law; and
- 155 2. The actual damages incurred, but not more than
 156 \$100,000.

157
 158 Interest on the sums awarded pursuant to this subsection shall
 159 accrue at the legal rate from the date on which suit was filed.

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

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

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

ENROLLED
 CS/CS/CS/HB 45, Engrossed 1

2011 Legislature

169 firearm accessories issued to or used by peace officers in the
 170 course of their official duties;
 171 (c) Except as provided in s. 790.251, any entity subject
 172 to the prohibitions of this section from regulating or
 173 prohibiting the carrying of firearms and ammunition by an
 174 employee of the entity during and in the course of the
 175 employee's official duties;
 176 (d) A court or administrative law judge from hearing and
 177 resolving any case or controversy or issuing any opinion or
 178 order on a matter within the jurisdiction of that court or
 179 judge; or
 180 (e) The Florida Fish and Wildlife Conservation Commission
 181 from regulating the use of firearms or ammunition as a method of
 182 taking wildlife and regulating the shooting ranges managed by
 183 the commission.
 184 (5)(b) SHORT TITLE.—As created by chapter 87-23, Laws of
 185 Florida, this section shall be known and may be cited as the
 186 "Joe Carlucci Uniform Firearms Act."
 187 Section 2. This act shall take effect October 1, 2011.