



**Environment
&
Natural Resources Council**

**March 12, 2008
2:30 PM
404 HOB**

Council Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Marco Rubio

Environment & Natural Resources Council

Start Date and Time: Wednesday, March 12, 2008 02:30 pm or 15 minutes after adjournment of the House Session
End Date and Time: Wednesday, March 12, 2008 03:30 pm
Location: 404 HOB
Duration: 1.00 hrs

Consideration of the following bill(s):

HB 671 Sellers of Travel by Rivera

Consideration of the following proposed council substitute(s):

PCS for HB 503 -- Preservation and Protection of the Right to Keep and Bear Arms in Motor Vehicles Act of 2008

Pursuant to rule 7.12, the deadline for amendments to bills on the agenda by non-appointed members shall be 6:00p.m., Tuesday, March 11, 2008.

By request of Chair Mayfield, all council members are asked to have amendments to bills on the agenda submitted to staff by 6:00p.m., Tuesday, March 11, 2008.

NOTICE FINALIZED on 03/10/2008 16:17 by BLR

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 671
SPONSOR(S): Rivera
TIED BILLS:

Sellers of Travel

IDEN./SIM. BILLS: SB 1310

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Agribusiness</u>	<u>7 Y, 0 N</u>	<u>Clemons</u>	<u>Reese</u>
2) <u>Environment & Natural Resources Council</u>		<u>YC Clemons / Smith</u> ^{TLS}	<u>SD</u> <u>Dixon / Hamby</u> <u>Yde</u>
3) <u>Policy & Budget Council</u>			
4) _____			
5) _____			

SUMMARY ANALYSIS

This bill amends the Florida Sellers of Travel Act (Act), ss. 559.926-559.939, F.S., by increasing state oversight for those profiting from selling travel to and from terrorist states as defined by the United States Department of State. This bill requires sellers of travel to and from any terrorist states to comply with additional requirements and imposes higher fees, which do not currently appear in the Act.

Specifically, the bill:

- Creates definitions for "Certifying party" and "Terrorist state," and revises the definition of "Prearranged travel, tourist-related services, or tour-guide services."
- Creates certification requirements for sellers of travel and classifies such sellers within three different categories based on each seller's level of involvement in selling travel to or from terrorist states.
- Creates different levels of security bonds that sellers must purchase according to seller classifications - the more involved in selling travel to or from terrorist states the higher the required bond.
- Eliminates current alternatives to security bonds.
- Increases the requirements for waiver of bond by the Department of Agriculture and Consumer Services (department).
- Adds additional violations of the Act.
- Adds an administrative remedy and a civil penalty which the department may impose for violation of the Act.
- Adds a criminal penalty (a felony of the third degree) for violation of the Act.

This bill has an indeterminate fiscal impact on state government. The bill increases certain annual registration fees and bond amounts for sellers of travel to or from any terrorist states. The Criminal Justice Estimating Conference has not yet determined the prison bed impact of Section 9 of this bill, which creates a third degree felony related to the sale of travel to a terrorist state. The effective date of this legislation is July 1, 2008.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government/Maintain public security - This bill increases requirements for sellers of travel to or from terrorist states. Such requirements impose more record correspondence with the department and higher fees for such business practices.

B. EFFECT OF PROPOSED CHANGES:

The Florida Sellers of Travel Act requires each seller of travel to register with the department, and show the department proof of purchase of adequate bond (or either establishment of a letter of credit or certificate of deposit.) Registration fees are currently set at \$300 per year per registrant. Security bond amounts are currently not to exceed \$25,000 or \$50,000 if the seller of travel is offering vacation certificates. The current law exempts sellers of travel who are under contract with the Airlines Reporting Corporation (ARC) from registration and other sections of the statute. According to ARC, records as of February 1, 2008, indicate that there are 1,436 ARC-accredited locations in Florida. The current law provides for a first degree misdemeanor for violation of the Act.

This bill creates definitions for "certifying party" and "terrorist state" and revises the definition of "prearranged travel, tourist services, or tour-guide services."

This bill provides that terrorist states are defined by the United States Department of State, which maintains a list of countries that have repeatedly supported acts of international terrorism. These countries are considered terrorist nations by three federal laws: section 6(j) of the Export Administration Act, section 40 of the Arms Export Control Act, and section 620A of the Foreign Assistance Act. The countries designated are Cuba, Iran, North Korea, Sudan and Syria.

This bill establishes a new certification scheme, whereby sellers of travel are required to annually certify their business activities by filing a disclosure statement with the department representing the scope of the seller's business activities. Sellers of travel are classified into three categories, as follows:

- Sellers of travel that do not offer for sale, directly or indirectly, at wholesale or retail, prearranged travel, tourist-related services, or tour-guide services for individuals or groups to or from any terrorist state;
- Sellers of travel that only offer for sale, directly or indirectly, at wholesale or retail, prearranged travel, tourist-related services, or tour-guide services for individuals or groups to or from any terrorist state but engage in no other business dealings or commerce with any terrorist state; and
- Sellers of travel that offer for sale, directly or indirectly, at wholesale or retail, prearranged travel, tourist-related services, or tour-guide services for individuals or groups to or from any terrorist state and also engage in any other business dealings or commerce with any terrorist state.

Additionally, the bill provides that the department must specify by rule the form of certification. The rule must include information including the legal name, trade or fictitious names, mailing and physical addresses, phone and fax numbers, email information, and the type of travel that the seller offers for sale to, from, or within terrorist states, including how often such travel service is offered. The bill also requires a listing of each terrorist state with which such seller of travel does direct business or which is an intermediate for doing business with a terrorist state. A seller of travel must also include all contact information for each entity with which the seller engages business that is related to business with a terrorist state.

This bill revises the registration fee scheme; the fee required is based on how a seller of travel is certified. A seller of travel who does not sell travel to or from a terrorist state is required to pay three hundred dollars per year, a seller of travel who sells travel to or from terrorist states but does not

engage in other business dealings with terrorist states must pay one thousand dollars per year, and a seller of travel who sells travel to or from terrorist states and also engages in other business dealings with terrorist states must pay twenty-five hundred dollars per year.

The bill establishes that any violation or charge of a violation by an applicant punishable as a crime under either state or federal law allows the department to deny or refuse to renew the registration of any seller of travel, and acts of moral turpitude are removed as a reason for the department's denial or renewal of registration of any seller of travel.

This bill revises the security bond scheme; the required bond amount is based on how a seller of travel is certified. A seller of travel who does not sell travel to or from terrorist states must provide a performance bond not to exceed \$25,000 or (in the amount of) \$50,000 if offering vacation certificates. A seller of travel who sells travel to or from terrorist states but does not engage in other business dealings with terrorist states must provide a performance bond not to exceed \$100,000 or (in the amount of) \$150,000 if offering vacation certificates. A seller of travel who sells travel to or from terrorist states and also engages in other business dealings with terrorist states must provide a performance bond not to exceed \$250,000 or (in the amount of) \$300,000 if offering vacation certificates.

The bill specifies that a bond provided by a seller of travel to or from terrorist states shall be in favor of the department, and specifies an order of priority for payments. First priority is given to all expenses for prosecuting a seller of travel in any administrative or civil action, including attorneys' fees, court costs, and all other expenses incidental to the action. Second priority is given to all costs of investigation prior to commencement of the administrative or civil action. Third priority is given to any unpaid administrative fines or unpaid civil penalties imposed by final order or final judgment. Last priority is given to damages or compensation for any traveler injured.

The bill also eliminates both certificates of deposit and irrevocable letters of credit in Florida banking institutions as alternatives to providing security bonds. Additionally, the bill establishes that selling travel to or from terrorist states or violation of any statute pertaining to business or commerce with any terrorist state precludes sellers of travel from obtaining a waiver of security bond.

With regard to exemptions of this Act, this bill establishes that to qualify for an exemption the seller of travel must not sell travel to or from a terrorist state, the department may revoke an exemption if it finds that the seller of travel has violated a statute pertaining to business or commerce with any terrorist state, and acts of moral turpitude are removed as a basis for the department to revoke an exemption. Sellers of travel issuing airline tickets or offering vacation certificates who have contracted with the Airlines Reporting Corporation are still exempt under this bill so long as the seller of travel is certified so as to not sell travel to or from any terrorist state.

The bill also establishes that it is a violation of this Act to offer to sell travel or provide any travel-related services to purchasers traveling to or from any terrorist state without disclosure of such activities to the department and to violate any state or federal law that restricts or prohibits commerce with terrorist states.

The bill authorizes administrative fines and civil penalties, not to exceed \$10,000, for each act or omission pertaining to an offer to sell travel or provide travel-related services to purchasers traveling to or from any terrorist state. In addition to a first degree misdemeanor which is currently provided for, the bill creates a third degree felony criminal penalty for a violations of this Act.

C. SECTION DIRECTORY:

Section 1: Amends s. 559.927, F.S., by defining "certifying party" and "terrorist state" and revising the definition of "prearranged travel, tourist-related services, or tour-guide services."

Section 2: Amends s. 559.928, F.S., to revise provisions relating to registration as a seller of travel, registration fees, and conditions for denial of or refusal to renew registration of any seller of travel by the department.

Section 3: Creates s. 559.9285, F.S., to require a seller of travel to annually file a disclosure statement to the department, certifying the scope of his business; requires the department to specify by rule the form of certification; specifies required certification information.

Section 4: Amends s. 559.929, F.S., to revise requirements with respect to the performance bond which a seller of travel must include with registration or an application for registration; specifies amounts of bonds for certification categories; eliminates alternative means of satisfying security requirements; provides for priority of payment with respect to such bonds; revises conditions under which the department may annually waive the bond; precludes specified certification categories from waiver of bond.

Section 5: Amends s. 559.9335, F.S., by providing that it is a violation of the Florida Sellers of Travel Act to offer to sell travel or provide any travel-related service to a purchaser traveling to or from any terrorist state without disclosing the business activities in a certification filed with the department and to violate any state or federal law restricting or prohibiting commerce with terrorist states.

Section 6: Amends s. 559.935, F.S., to revise provisions which exempt certain sellers of travel and affiliates thereof from specified registration, security, disclosure, and recordkeeping requirements; revises conditions under which the department may revoke such exemptions.

Section 7: Amends s. 559.9355, F.S., by imposing an administrative fine for certain activities of sellers of travel.

Section 8: Amends s. 559.936, F.S., by authorizing the department to seek a specified civil penalty for certain activities of sellers of travel.

Section 9: Amends s. 559.937, F.S., by providing a criminal penalty for a violation of the Florida Sellers of Travel Act for certain activities of sellers of travel.

Section 10: Provides an effective date of July 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill requires registered and exempt sellers of travel to file a new certification with the department. A seller of travel who elects to sell travel to or from terrorist states but does not engage in other business dealings with terrorist states must pay \$1000 per year, and a seller of travel who sells travel to or from terrorist states and also engages in other business dealings with terrorist states must pay \$2,500 per year. A seller of travel who elects to sell travel to or from terrorist states is also required to post bonds in greater amounts and no longer qualifies for exemption from registration and other requirements.

D. FISCAL COMMENTS:

The bill increases certain annual registration fees for those selling travel or doing other business with terrorist nations. The fee required is based on how a seller of travel is certified. A seller of travel who does not sell travel to or from a terrorist state is required to pay \$300 per year, the current fee. A seller of travel who sells travel to or from terrorist states but does not engage in other business dealings with terrorist states must pay \$1000 per year, and a seller of travel who sells travel to or from terrorist states and also engages in other business dealings with terrorist states must pay \$2,500 per year. Pursuant to s. 559.938, F.S., the revenues will be deposited into the department's General Inspection Trust Fund. The bill appears to have an indeterminate fiscal impact.

The Criminal Justice Estimating Conference has not yet determined the prison bed impact of Section 9 of this bill, which creates a third degree felony related to the sale of travel to a terrorist state. According to the Department of Corrections, the impact on the prison and probation populations is unknown, but anticipated to be minimal.

The bill appears to have an insignificant fiscal impact on the Department of Agriculture and Consumer Services.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

This bill authorizes the department to adopt such rules as are necessary for the implementation and administration of the act.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

Travel agencies, or "Sellers of Travel," operating in Florida and doing business with terrorist nations are largely exempted from state oversight and regulation. The U.S. State Department provides a yearly designation of nations around the world that are deemed to be official sponsors of state terrorism. Currently, five nations have been designated by the U.S. State Department as sponsors of state terrorism. These terrorist nations include North Korea, Iran, Sudan, Cuba and Syria. HB 671 seeks to establish regulatory oversight on Florida-based travel agencies that engage in business with these terrorist nations. As most Floridians would agree, terrorist nations pose a unique risk to the safety and security of our citizenry. Just as the federal government has enacted specific legislation to regulate travel and commerce between the United States and terrorist nations, so too should Florida establish regulatory guidelines for the Florida-based operators of travel activity occurring between our state and terrorist nations. HB 671 would provide for reasonable oversight of such commercial activity as well as penalties for non-compliance of regulatory requirements.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

N/A

1 A bill to be entitled
2 An act relating to sellers of travel; amending s. 559.927,
3 F.S.; revising the definition of "prearranged travel,
4 tourist-related services, or tour-guide services";
5 defining "certifying party" and "terrorist state";
6 amending s. 559.928, F.S.; revising provisions relating to
7 registration as a seller of travel; revising registration
8 fees; revising conditions for denial of or refusal to
9 renew the registration of any seller of travel by the
10 Department of Agriculture and Consumer Services; creating
11 s. 559.9285, F.S.; requiring a seller of travel to
12 annually certify to the department the scope of its
13 business activities by filing a disclosure statement;
14 categorizing certifying parties; requiring the department
15 to specify by rule the form of certification; specifying
16 required certification information; amending s. 559.929,
17 F.S.; revising requirements with respect to the
18 performance bond which must accompany registration or an
19 application for registration as a seller of travel;
20 specifying amounts of bonds for certification categories;
21 eliminating alternative means of satisfying security
22 requirements; providing for priority of payment with
23 respect to such bonds; revising conditions under which the
24 department may annually waive the bond; precluding
25 specified certification categories from waiver of bond;
26 amending s. 559.9335, F.S.; providing that it is a
27 violation of the Florida Sellers of Travel Act to offer to
28 sell travel or provide any travel-related service to a

29 purchaser traveling to or from any terrorist state without
 30 disclosing such business activities in a certification
 31 filed with the department and to violate any state or
 32 federal law restricting or prohibiting commerce with
 33 terrorist states; amending s. 559.935, F.S.; revising
 34 provisions which exempt certain sellers of travel and
 35 affiliates thereof from specified registration, security,
 36 disclosure, and recordkeeping requirements; revising
 37 conditions under which the department may revoke such
 38 exemptions; amending s. 559.9355, F.S.; imposing an
 39 administrative fine for each act or omission directly or
 40 indirectly pertaining to an offer to sell travel or
 41 provide any travel-related service to purchasers traveling
 42 to or from any terrorist state; amending s. 559.936, F.S.;
 43 authorizing the department to seek a specified civil
 44 penalty for each act or omission directly or indirectly
 45 pertaining to an offer to sell travel or provide any
 46 travel-related service to a purchaser traveling to or from
 47 any terrorist state; amending s. 559.937, F.S.; providing
 48 a criminal penalty for a violation of the Florida Sellers
 49 of Travel Act which directly or indirectly pertains to an
 50 offer to sell travel or provide any travel-related service
 51 to a purchaser traveling to or from any terrorist state;
 52 providing an effective date.

53
 54 Be It Enacted by the Legislature of the State of Florida:
 55

56 Section 1. Subsections (2) through (5), (7) through (10),
 57 and (11) of section 559.927, Florida Statutes, are renumbered as
 58 subsections (3) through (6), (8) through (11), and (13),
 59 respectively, subsection (6) is renumbered as subsection (7) and
 60 amended, and new subsections (2) and (12) are added to that
 61 section, to read:

62 559.927 Definitions.--For the purposes of this part, the
 63 term:

64 (2) "Certifying party" means a seller of travel
 65 registering under s. 559.928 or a seller of travel who is exempt
 66 under s. 559.935(2) or (3).

67 (7)-(6) "Prearranged travel, tourist-related services, or
 68 tour-guide services" includes, but is not limited to, car
 69 rentals, lodging, transfers, and sightseeing tours and all other
 70 such services which are reasonably related to air, sea, rail,
 71 motor coach, or other medium of transportation, or
 72 accommodations for which a purchaser receives a premium or
 73 contracts or pays prior to or after departure. These terms also
 74 include services for which a purchaser, whose legal residence is
 75 outside the United States, contracts or pays prior to departure,
 76 and any arrangement by which a purchaser prepays for, receives a
 77 reservation or any other commitment to provide services prior to
 78 departure for, or otherwise arranges for travel to or from a
 79 terrorist state directly from Florida or through one or more
 80 intermediate states, countries, or nations.

81 (12) "Terrorist state" means any state, country, or nation
 82 designated by the United States Department of State as a state
 83 sponsor of terrorism.

84 Section 2. Subsections (1), (2), and (9) of section
 85 559.928, Florida Statutes, are amended to read:
 86 559.928 Registration.--
 87 (1) Each seller of travel shall annually register with the
 88 department, providing: its legal business or trade name, mailing
 89 address, and business locations; the full names, addresses,
 90 telephone numbers, and social security numbers of its owners or
 91 corporate officers and directors and the Florida agent of the
 92 corporation; a statement whether it is a domestic or foreign
 93 corporation, its state and date of incorporation, its charter
 94 number, and, if a foreign corporation, the date it registered
 95 with the State of Florida, and occupational license where
 96 applicable; the date on which a seller of travel registered its
 97 fictitious name if the seller of travel is operating under a
 98 fictitious or trade name; the name of all other corporations,
 99 business entities, and trade names through which each owner of
 100 the seller of travel operated, was known, or did business as a
 101 seller of travel within the preceding 5 years; a list of all
 102 authorized independent agents, including the agent's trade name,
 103 full name, mailing address, business address, telephone numbers,
 104 and social security number; the business location and address of
 105 each branch office and full name and address of the manager or
 106 supervisor; the certification required under s. 559.9285; and
 107 proof of purchase of adequate bond ~~or establishment of a letter~~
 108 ~~of credit or certificate of deposit~~ as required in this part. A
 109 certificate evidencing proof of registration shall be issued by
 110 the department and must be prominently displayed in the seller
 111 of travel's primary place of business.

112 (2) (a) Registration fees shall be as follows:

113 1. Three hundred dollars ~~\$300~~ per year per registrant

114 certifying its business activities under s. 559.9285(1) (a).

115 2. One thousand dollars per year per registrant certifying

116 its business activities under s. 559.9285(1) (b).

117 3. Twenty-five hundred dollars per year per registrant

118 certifying its business activities under s. 559.9285(1) (c).

119 (b) All amounts collected shall be deposited by the Chief

120 Financial Officer to the credit of the General Inspection Trust

121 Fund of the Department of Agriculture and Consumer Services

122 pursuant to s. 570.20, for the sole purpose of administration of

123 this part.

124 (9) The department may deny or refuse to renew the

125 registration of any seller of travel based upon a determination

126 that the seller of travel, or any of its directors, officers,

127 owners, or general partners:

128 (a) Has failed to meet the requirements for registration

129 as provided in this part;

130 (b) Has been convicted of a crime involving fraud,

131 dishonest dealing, or any other violation punishable as a crime

132 under state or federal law ~~or any other act of moral turpitude;~~

133 (c) Has not satisfied a civil fine or penalty arising out

134 of any administrative or enforcement action brought by any

135 governmental agency or private person based upon conduct

136 involving fraud, dishonest dealing, or any violation of this

137 part;

138 (d) Has pending against her or him any criminal,

139 administrative, or enforcement proceedings in any jurisdiction,

140 based upon any violation of state or federal law ~~conduct~~
 141 ~~involving fraud, dishonest dealing, or any other act of moral~~
 142 ~~turpitude; or~~

143 (e) Has had a judgment entered against her or him in any
 144 action brought by the department or the Department of Legal
 145 Affairs pursuant to ss. 501.201-501.213 or this part.

146 Section 3. Section 559.9285, Florida Statutes, is created
 147 to read:

148 559.9285 Certification of business activities.--

149 (1) Each certifying party, as defined in s. 559.927(2):

150 (a) Which does not offer for sale, directly or indirectly,
 151 at wholesale or retail, prearranged travel, tourist-related
 152 services, or tour-guide services for individuals or groups to or
 153 from any terrorist state;

154 (b) Which only offers for sale, directly or indirectly, at
 155 wholesale or retail, prearranged travel, tourist-related
 156 services, or tour-guide services for individuals or groups to or
 157 from any terrorist state but engages in no other business
 158 dealings or commerce with any terrorist state; or

159 (c) Which offers for sale, directly or indirectly, at
 160 wholesale or retail, prearranged travel, tourist-related
 161 services, or tour-guide services for individuals or groups to or
 162 from any terrorist state and also engages in any other business
 163 dealings or commerce with any terrorist state,

164
 165 shall annually certify its business activities by filing a
 166 disclosure statement with the department that accurately
 167 represents the scope of the seller's business activities

168 | according to the criteria provided in either paragraph (a),
 169 | paragraph (b), or paragraph (c).

170 | (2) The department shall specify by rule the form of each
 171 | certification under this section, which shall include the
 172 | following information:

173 | (a) The legal name, any trade names or fictitious names,
 174 | mailing address, physical address, telephone number or numbers,
 175 | fax number or numbers, all Internet and electronic contact
 176 | information, and registration number, if applicable, of the
 177 | certifying party.

178 | (b) Each terrorist state with which the certifying party
 179 | engages in any business or commerce.

180 | (c) Each intermediate state, country, or nation through
 181 | which the certifying party engages in any business or commerce
 182 | with any terrorist state.

183 | (d) The legal name, any trade names or fictitious names,
 184 | mailing address, physical address, telephone number or numbers,
 185 | fax number or numbers, and all Internet and electronic contact
 186 | information of every other entity with which the certifying
 187 | party engages in business or commerce that is related in any way
 188 | to the certifying party's business or commerce with any
 189 | terrorist state.

190 | (e) The type of all prearranged travel, tourist-related
 191 | services, or tour-guide services the certifying party offers for
 192 | sale to individuals or groups traveling to, from, or within any
 193 | terrorist state and the frequency with which such services are
 194 | offered.

195 Section 4. Section 559.929, Florida Statutes, is amended
 196 to read:

197 559.929 Security requirements.--

198 (1) An application must be accompanied by a performance
 199 bond in an amount set by the department under paragraph (a),
 200 paragraph (b), or paragraph (c) not to exceed \$25,000, or in the
 201 amount of \$50,000 if the seller of travel is offering vacation
 202 certificates. The surety on such bond shall be a surety company
 203 authorized to do business in the state.

204 (a) Each seller of travel which certifies its business
 205 activities under s. 559.9285(1)(a) shall provide a performance
 206 bond in an amount not to exceed \$25,000, or in the amount of
 207 \$50,000 if the seller of travel is offering vacation
 208 certificates.

209 (b) Each seller of travel which certifies its business
 210 activities under s. 559.9285(1)(b) shall provide a performance
 211 bond in an amount not to exceed \$100,000, or in the amount of
 212 \$150,000 if the seller of travel is offering vacation
 213 certificates.

214 (c) Each seller of travel which certifies its business
 215 activities under s. 559.9285(1)(c) shall provide a performance
 216 bond in an amount not to exceed \$250,000, or in the amount of
 217 \$300,000 if the seller of travel is offering vacation
 218 certificates.

219 ~~(2) In lieu of the performance bond required in this part,~~
 220 ~~a registrant or applicant for registration may establish a~~
 221 ~~certificate of deposit or an irrevocable letter of credit in a~~
 222 ~~Florida banking institution in the amount of the performance~~

223 ~~bond. The department shall be the beneficiary to this~~
 224 ~~certificate of deposit, and the original shall be filed with the~~
 225 ~~department. Any such letter of credit shall provide that the~~
 226 ~~issuer will give the department not less than 120 days written~~
 227 ~~notice prior to terminating or refusing to renew the letter of~~
 228 ~~credit.~~

229 (2)~~(3)~~ The bond, ~~letter of credit, or certificate of~~
 230 ~~deposit~~ shall be in favor of the department for the use and
 231 benefit of any traveler who is injured by the fraud,
 232 misrepresentation, breach of contract, financial failure, or
 233 violation of any provision of this part by the seller of travel.
 234 Such liability may be enforced either by proceeding in an
 235 administrative action as specified in subsection (3)~~(4)~~ or by
 236 filing a judicial suit at law in a court of competent
 237 jurisdiction. However, in such court suit the bond, ~~letter of~~
 238 ~~credit, or certificate of deposit~~ posted with the department
 239 shall not be amenable or subject to any judgment or other legal
 240 process issuing out of or from such court in connection with
 241 such lawsuit, but such bond, ~~letter of credit, or certificate of~~
 242 ~~deposit~~ shall be amenable to and enforceable only by and through
 243 administrative proceedings before the department. It is the
 244 intent of the Legislature that such bond, ~~letter of credit, or~~
 245 ~~certificate of deposit~~ shall be applicable and liable only for
 246 the payment of claims duly adjudicated by order of the
 247 department. The bond, ~~letter of credit, or certificate of~~
 248 ~~deposit~~ shall be open to successive claims, but the aggregate
 249 amount may not exceed the amount of the bond, ~~letter of credit,~~
 250 ~~or certificate of deposit.~~ In addition to the foregoing, a bond

251 provided by a registrant or applicant for registration which
 252 certifies its business activities under s. 559.9285(1)(b) or (c)
 253 shall be in favor of the department, with payment in the
 254 following order of priority:

255 (a) All expenses for prosecuting the registrant or
 256 applicant in any administrative or civil action, including fees
 257 for attorneys and other professionals, court costs or other
 258 costs of the proceedings, and all other expenses incidental to
 259 the action.

260 (b) All costs and expenses of investigation prior to the
 261 commencement of an administrative or civil action.

262 (c) Any unpaid administrative fine imposed by final order
 263 or any unpaid civil penalty imposed by final judgment.

264 (d) Damages or compensation for any traveler injured as
 265 provided in this subsection.

266 (3)-(4) Any traveler may file a claim against the bond,
 267 letter of credit, or certificate of deposit which shall be made
 268 in writing to the department within 120 days after an alleged
 269 injury has occurred or is discovered to have occurred. The
 270 proceedings shall be held in accordance with ss. 120.569 and
 271 120.57.

272 (4)-(5) In any situation in which the seller of travel is
 273 currently the subject of an administrative, civil, or criminal
 274 action by either the department, the Department of Legal
 275 Affairs, or the state attorney concerning compliance with this
 276 part, the right to proceed against the bond, letter of credit,
 277 or certificate of deposit, as provided in subsection (3)-(4),

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278 shall be suspended until after any enforcement action becomes
 279 final.

280 (5)~~(6)~~ The department may waive the bond, ~~letter of~~
 281 ~~credit, or certificate of deposit~~ requirement on an annual basis
 282 if the seller of travel has had 5 or more consecutive years of
 283 experience as a seller of travel in Florida in compliance with
 284 this part, has not had any civil, criminal, or administrative
 285 action instituted against the seller of travel in the vacation
 286 and travel business by any governmental agency or any action
 287 involving fraud, theft, misappropriation of property, or
 288 violation of any statute pertaining to business or commerce with
 289 any terrorist state, moral turpitude, and has a satisfactory
 290 consumer complaint history with the department, and certifies
 291 its business activities under s. 559.9285. Such waiver may be
 292 revoked if the seller of travel violates any provision of this
 293 part. A seller of travel which certifies its business activities
 294 under ss. 559.9285(1)(b) or (c) shall not be entitled to the
 295 waiver provided in this subsection.

296 Section 5. Subsection (2) of section 559.9335, Florida
 297 Statutes, is amended, subsections (22), (23), and (24) are
 298 renumbered as subsections (24), (25), and (26), respectively,
 299 and new subsections (22) and (23) are added to that section, to
 300 read:

301 559.9335 Violations.--It is a violation of this part for
 302 any person:

303 (2) To conduct business as a seller of travel without an
 304 annual purchase of a performance bond ~~or establishment of a~~

305 ~~letter of credit or certificate of deposit~~ in the amount set by
 306 the department unless exempt pursuant to s. 559.935.

307 (22) To offer to sell travel or provide any travel-related
 308 service to purchasers traveling to or from any terrorist state
 309 without disclosing such business activities in a certification
 310 filed under ss. 559.9285(1)(b) or (c).

311 (23) To violate any state or federal law restricting or
 312 prohibiting commerce with terrorist states.

313 Section 6. Subsections (2), (3), and (4) of section
 314 559.935, Florida Statutes, are amended to read:

315 559.935 Exemptions.--

316 (2) Sections 559.928, 559.929, 559.9295, 559.931, and
 317 559.932 shall not apply to:

318 (a) Sellers of travel directly issuing airline tickets who
 319 have contracted with the Airlines Reporting Corporation for the
 320 most recent consecutive 3 years or more under the same ownership
 321 and control, ~~and~~ and who do not offer vacation certificates, and who
 322 annually certify their business activities under s.

323 559.9285(1)(a); or

324 (b) Sellers of travel offering vacation certificates who
 325 have contracted with the Airlines Reporting Corporation for the
 326 most recent consecutive 5 years or more under the same ownership
 327 and control and who annually certify their business activities
 328 under s. 559.9285(1)(a).

330 This exemption does not apply to sellers of travel certifying
 331 their business activities under ss. 559.9285(1)(b) or (c).

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332 (3) Sections 559.928, 559.929, 559.9295, 559.931, and
 333 559.932 shall also not apply to a seller of travel that is an
 334 affiliate of an entity exempt pursuant to subsection (2) subject
 335 to the following conditions:

336 (a) In the event the department finds the affiliate does
 337 not have a satisfactory consumer complaint history or the
 338 affiliate fails to respond to a consumer complaint within 30
 339 days, the related seller of travel exempt pursuant to subsection
 340 (2) shall be liable for the actions of the affiliate, subject to
 341 the remedies provided in ss. 559.9355 and 559.936.

342 (b) In the event the department is unable to locate an
 343 affiliate, the related seller of travel exempt pursuant to
 344 subsection (2) shall be fully liable for the actions of the
 345 affiliate, subject to the remedies provided in ss. 559.9355 and
 346 559.936.

347 (c) In order to obtain an exemption under this subsection,
 348 the affiliate shall file an affidavit of exemption on a form
 349 prescribed by the department and shall certify its business
 350 activities under s. 559.9285(1)(a). The affidavit of exemption
 351 shall be executed by a person who exercises identical control
 352 over the seller of travel exempt pursuant to subsection (2) and
 353 the affiliate. Failure to file an affidavit of exemption or
 354 certification under s. 559.9285(1)(a) prior to engaging in
 355 seller of travel activities shall subject the affiliate to the
 356 remedies provided in ss. 559.9355 and 559.936.

357 (d) Revocation by the department of an exemption provided
 358 to a seller of travel under subsection (2) shall constitute

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359 automatic revocation by law of an exemption obtained by an
 360 affiliate under the subsection.

361 (e) This subsection shall not apply to:

362 1. An affiliate that independently qualifies for another
 363 exemption under this section ~~s. 559.935~~.

364 2. An affiliate that sells, or offers for sale, vacation
 365 certificates.

366 3. An affiliate that certifies its business activities
 367 under s. 559.9285(1)(b) or (c).

368 (f) For purposes of this section, an "affiliate" means an
 369 entity that meets the following:

370 1. The entity has the identical ownership as the seller of
 371 travel that is exempt under subsection (2).

372 2. The ownership controlling the seller of travel that is
 373 exempt under subsection (2) also exercises identical control
 374 over the entity.

375 3. The owners of the affiliate hold the identical
 376 percentage of voting shares as they hold in the seller of travel
 377 that is exempt under subsection (2).

378 (4) The department may revoke the exemption provided in
 379 subsection (2) or subsection (3) if the department finds that
 380 the seller of travel does not have a satisfactory consumer
 381 complaint history, has been convicted of a crime involving
 382 fraud, theft, misappropriation of property, or deceptive or
 383 unfair trade practices, has been in violation of any statute
 384 pertaining to business or commerce with any terrorist state, or
 385 ~~moral turpitude,~~ or has not complied with the terms of any order
 386 or settlement agreement arising out of an administrative or

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387 enforcement action brought by a governmental agency or private
 388 person based on conduct involving fraud, theft, misappropriation
 389 of property, deceptive or unfair trade practices, or a violation
 390 of any statute pertaining to business or commerce with any
 391 terrorist state ~~moral turpitude.~~

392 Section 7. Section 559.9355, Florida Statutes, is amended
 393 to read:

394 559.9355 Administrative remedies; penalties.--

395 (1) The department may enter an order doing one or more of
 396 the following if the department finds that a person has violated
 397 or is operating in violation of any of the provisions of this
 398 part or the rules or orders issued thereunder:

399 (a) Issuing a notice of noncompliance pursuant to s.
 400 120.695.

401 (b) Imposing an administrative fine not to exceed \$5,000
 402 for each act or omission.

403 (c) Imposing an administrative fine not to exceed \$10,000
 404 for each act or omission directly or indirectly pertaining to an
 405 offer to sell travel or provide any travel-related service to
 406 purchasers traveling to or from any terrorist state.

407 (d)-(e) Directing that the person cease and desist
 408 specified activities.

409 (e)-(d) Refusing to register or canceling or suspending a
 410 registration.

411 (f)-(e) Placing the registrant on probation for a period of
 412 time, subject to such conditions as the department may specify.

413 (g)-(f) Canceling an exemption granted under s. 559.935.

414 (2) The administrative proceedings which could result in
 415 the entry of an order imposing any of the penalties specified in
 416 subsection (1) are governed by chapter 120.

417 (3) The department has the authority to adopt rules
 418 pursuant to chapter 120 to implement this section and ss.
 419 559.928, 559.929, 559.934, and 559.935.

420 Section 8. Subsections (3) through (6) of section 559.936,
 421 Florida Statutes, are renumbered as subsections (4) through (7),
 422 respectively, and a new subsection (3) is added to that section,
 423 to read:

424 559.936 Civil penalties; remedies.--

425 (3) The department may seek a civil penalty of up to
 426 \$10,000 for each act or omission directly or indirectly
 427 pertaining to an offer to sell travel or provide any travel-
 428 related service to a purchaser traveling to or from any
 429 terrorist state.

430 Section 9. Section 559.937, Florida Statutes, is amended
 431 to read:

432 559.937 Criminal penalties.-- Any person or business that
 433 ~~which~~ violates this part:

434 (1) Commits a misdemeanor of the first degree, punishable
 435 as provided in s. 775.082 or s. 775.083.

436 (2) Which violation directly or indirectly pertains to an
 437 offer to sell travel or provide any travel-related service to a
 438 purchaser traveling to or from any terrorist state, commits a
 439 felony of the third degree, punishable as provided in s. 775.082
 440 or s. 775.083.

441 Section 10. This act shall take effect July 1, 2008.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 503 Preservation and Protection of the Right to Keep and Bear Arms in Motor Vehicles Act of 2008
SPONSOR(S): Environment & Natural Resources Council
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Environment & Natural Resources Council		Kaiser / Smith ^{TLS}	Dixon / Hamby ^{Jdo}
1) _____	_____	_____	_____
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The bill creates "The Preservation and Protection Right to Keep and Bear Arms in Motor Vehicles Act of 2008." The bill provides that no public or private entity may prohibit any customer, employee or invitee from possessing any legally owned firearm locked inside, or locked to, a private motor vehicle in a parking lot if the person is lawfully in such area. The bill further prohibits public or private entities from violating the privacy rights of said persons by verbal or written inquiry regarding the presence of a firearm inside a private motor vehicle in a parking lot or by an actual search of the private motor vehicle in the parking lot to ascertain the presence of a firearm. The bill prohibits the public or private entity from taking action against the person based upon verbal or written statements and requires any searches of the vehicle to be conducted by on-duty law enforcement personnel. The search must be based upon due process and comply with constitutional protections.

Employers are prohibited from conditioning employment upon either an employee's or a prospective employee's holding or not holding a license to carry a concealed weapon or firearm, or any agreement by an employee or a prospective employee that prohibits an employee from keeping a legal firearm locked inside a motor vehicle when the firearm is kept for lawful purposes. Additionally, an employer cannot prevent or prohibit an employee, customer, or invitee from entering the parking lot of the employer's place of business because the person's motor vehicle contains a legal firearm, which is out of sight within his/her vehicle. Neither may an employer terminate the employment of, or discriminate against, an employee or expel a customer or invitee when the person is exercising his/her right to keep and bear arms or for exercising the right of self-defense as long as the firearm is not exhibited on company property for any reason other than lawful defensive purposes.

The provisions of this act do not apply to:

- Property owned or leased by an employer or the landlord of an employer upon which activities involving national defense, aerospace, or domestic security are conducted;
- Property owned or leased by an employer or the landlord of an employer upon which the primary business involves the manufacture, use, storage, or transportation of combustible or explosive materials regulated under state or federal law;
- A motor vehicle owned, leased, or rented by an employer or the landlord of an employer;
- Any other property owned or leased by an employer or the landlord of an employer upon which possession of a firearm or other legal product is prohibited pursuant to any federal or state law on the effective date of this act;
- Any school property as defined and regulated under s. 790.115, F.S.; or
- Any state correctional institution regulated under s. 944.47, F.S.

The bill provides for immunity from liability for employers under certain conditions and provides for enforcement by the Attorney General.

The bill does not appear to have a fiscal impact on state or local governments. The bill takes effect upon becoming law and applies to causes of action accruing on or after that date.

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

STORAGE NAME: pcs0503.ENRC.doc
DATE: 3/10/2008

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard individual liberty: The bill restricts an employers' ability to implement certain policies related to the workplace and its premises. The bill also permits the lawful possession of a legal firearm that is locked in, or to, a motor vehicle parked in a lot owned by a private or public entity.

Promote personal responsibility: The bill provides immunity from civil liability to any employer, or its lessor, for damages in certain circumstances resulting from the use, or threatened use, of a firearm that was stored by an employee, customer or invitee in a private motor vehicle on property that was set aside for parking of said vehicles.

Maintain public security: The bill implements policies regarding the possession of legal firearms in vehicles in certain locations.

B. EFFECT OF PROPOSED CHANGES:

Florida law¹ defines firearm as "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."

Current law² prohibits persons openly carrying any firearm or electric weapon or device. Chemical sprays used in self-defense and non-lethal stun guns or other non-lethal electric weapons that do not fire a projectile and are designed solely for defensive purposes are legal. Persons found in violation of this provision are guilty of a misdemeanor of the second degree, punishable by a term of imprisonment not to exceed 60 days or a fine of \$500.

By the authority of s. 790.06, F.S., the Department of Agriculture and Consumer Services (department) issues licenses to qualified persons to carry concealed weapons. Those applying for a concealed weapons permit must:

- Be a resident of the United States or be a consular security official of a foreign government that maintains diplomatic relations and treaties of commerce, friendship, and navigation with the United States and is certified by the foreign government and by the appropriate embassy in this country;
- Be 21 years of age or older;
- Not suffer from a physical infirmity which prevents the safe handling of a weapon or firearm;
- Be eligible pursuant to s. 790.23, F.S., having never been convicted of a felony;
- Have not been committed for the abuse of a controlled substance or been found guilty of a crime relating to drug abuse in Florida or any other state relating to controlled substances within a 3-year period immediately preceding the date of which the application is submitted;
- Not chronically and habitually use alcoholic beverages or other substances to the extent that his/her normal faculties are impaired;
- Desire a legal means to carry a concealed weapon or firearm for lawful self-defense;
- Demonstrate competence with a firearm;
- Not have been adjudicated as an incapacitated person under s. 744.331, F.S., unless 5 years have elapsed since the applicant's restoration to capacity by court order;
- Not have been committed to a mental institution unless the applicant produces a certificate from a licensed psychiatrist that he/she has not suffered from disability for at least 5 years prior to the date of submission of application;

¹ s. 790.001(6), F.S.

² s. 790.053, F.S.

- Not have had adjudication of guilt withheld or imposition of sentence suspended on any felony or misdemeanor crime of domestic violence unless 3 years have elapsed since probation of any other conciliations set by the court have been fulfilled, or the records have been sealed or expunged;
- Not have been issued an injunction that is currently in force relating to committing acts of domestic or repeat violence; and
- Not be prohibited from purchasing or possessing a firearm by any other provision of Florida or federal law.

Persons holding valid permits may not carry concealed weapons into any place of nuisance³, any police, sheriff, or highway patrol station; any detention facility, prison, or jail; any courthouse; any courtroom⁴; any polling place; any meeting of the governing body of a county, public school district, municipality, or special district; any meeting of the Legislature or a committee thereof; any school, college, or professional athletic event not related to firearms; any school administration building; any portion of an establishment licensed to dispense alcoholic beverages for consumption on the premises; any elementary or secondary school facility; any career center; any college or university facility⁵; inside the passenger terminal and sterile area of any airport⁶; or any place where carrying of firearms is prohibited by federal law. Persons violating this provision commit a misdemeanor of the second degree, punishable by a term of imprisonment not to exceed 60 days or a fine of \$500.

Section 790.25, F.S., provides for the lawful and unlawful ownership, possession and use of firearms and other weapons. It specifically prohibits the carrying of a concealed weapon without a permit. This section provides that the provisions of s. 790.053, F.S., and s. 790.06, F.S., discussed above, do not apply to:

- Members of the military, law enforcement, or persons carrying out or training for emergency management duties;
- Guards or messengers of common carriers;
- Members of any organization duly authorized to purchase or receive weapons;
- 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;
- A person firing weapons for testing or 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; or
- Investigators employed by the several public defenders of the state or the capital collateral representative.

Current law⁷ provides that it is "lawful for a person 18 years of age or older to possess a concealed firearm or other weapon 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."

³ As defined in s. 823.05, F.S.

⁴ Except that nothing in this section precludes a judge from carrying a concealed weapon or determining who will carry a concealed weapon in his/her courtroom.

⁵ Unless the licensee is a registered student, employee, or faculty member of such college or university and the weapon is a stun gun or non-lethal electric weapon or device designed solely for defensive purposes and the weapon does not fire a dart or a projectile.

⁶ No person shall be prohibited from carrying any legal firearm into the terminal, when said firearm is encased for shipping purposes as checking such firearm as baggage to be lawfully transported on any aircraft.

⁷ s. 790.25(5), F.S.

Other States

Oklahoma, Alaska, Kentucky, and Mississippi have laws similar to this legislation. However, the United States District Court for the Northern District of Oklahoma found the Oklahoma statute to be preempted by federal law, and enjoined the state from enforcing the statute.⁸ The laws in Alaska⁹ and Kentucky¹⁰ are identical to this legislation. According to the National Conference of State Legislatures (NCSL), other than Florida, Arizona and Georgia have similar legislation pending this year.

Effect of Proposed Changes

The bill creates "The Preservation and Protection Right to Keep and Bear Arms in Motor Vehicles Act of 2008." Legislative intent is provided regarding the constitutional rights of citizens to:

- Privacy,
- Possess and keep legally owned firearm in their motor vehicles, and
- Not lose said rights subject to becoming a customer, employee, or invitee of a business entity.

The bill provides that no public or private entity may prohibit any customer, employee or invitee from possessing any legally owned firearm locked inside, or locked to, a private motor vehicle in a parking lot if the person is lawfully in such area. The bill further prohibits public or private entities from violating the privacy rights of said persons by verbal or written inquiry regarding the presence of a firearm inside a private motor vehicle in a parking lot or by an actual search of the private motor vehicle in the parking lot to ascertain the presence of a firearm. The bill prohibits the public or private entity from taking action against the person based upon verbal or written statements and requires any searches of the vehicle to be conducted by on-duty law enforcement personnel. The search must be based upon due process and comply with constitutional protections.

Employers are prohibited from conditioning employment upon either an employee's or a prospective employee's holding or not holding a license to carry a concealed weapon or firearm, or any agreement by an employee or a prospective employee that prohibits an employee from keeping a legal firearm locked inside a motor vehicle when the firearm is kept for lawful purposes. Additionally, an employer cannot prevent or prohibit an employee, customer, or invitee from entering the parking lot of the employer's place of business because the person's motor vehicle contains a legal firearm, which is out of sight within his/her vehicle. Neither may an employer terminate the employment of, or discriminate against, an employee or expel a customer or invitee when the person is exercising his/her right to keep and bear arms or for exercising the right of self-defense as long as the firearm is not exhibited on company property for any reason other than lawful defensive purposes.

The provisions of this act do not apply to:

- Property owned or leased by an employer or the landlord of an employer upon which activities involving national defense, aerospace, or domestic security are conducted;
- Property owned or leased by an employer or the landlord of an employer upon which the primary business involves the manufacture, use, storage, or transportation of combustible or explosive materials regulated under state or federal law;
- A motor vehicle owned, leased, or rented by an employer or the landlord of an employer;
- Any other property owned or leased by an employer or the landlord of an employer upon which possession of a firearm or other legal product is prohibited pursuant to any federal or state law on the effective date of this act;
- Any school property as defined and regulated under s. 790.115, F.S.; or
- Any state correctional institution regulated under s. 944.47, F.S.

The bill provides immunity from civil liability, except for the exemptions previously listed, to any employer based on actions or inactions taken in compliance with this legislation. The immunity does

⁸ *ConocoPhillips Co. v. Henry*, 520 F.Supp.2d 1282 (N.D. Okla. 2007)

⁹ Section 18.65.800(a), Alaska Statutes

¹⁰ Section 527.020(8), Kentucky Statutes

not apply to civil actions based on actions or inactions of public or private entities or employers that are unrelated to compliance with this legislation.

The bill provides for enforcement by the Attorney General on behalf of the aggrieved person if there is reasonable cause to believe there has been a willful violation of this act. In these cases, the Attorney General is instructed to commence a civil or administrative action for damages, injunctive relief and civil penalties, and such other relief as may be appropriate under the provisions of s. 760.51, F.S.¹¹ The bill also authorizes the Attorney General to negotiate a settlement on behalf of persons aggrieved under this act. The bill does not prohibit a person aggrieved under this act from bringing their own civil action for violation of rights protected under this act. The bill states that, in any successful action brought by a person aggrieved under this act, the court shall award all court costs, attorney's fees, and reasonable personal costs and losses suffered by the aggrieved person as a result of the violation of rights under this act.

The bill provides the following definitions:

- "Parking lot" means any property that is used for parking motor vehicles and is available to customers, employees, or invitees for temporary or long-term parking or storage of motor vehicles.
- "Motor vehicle" means any automobile, truck, minivan, sports utility vehicle, motor home, recreational vehicle, motorcycle, motor scooter, or any other vehicle operated on the roads of this state and required to be registered under state law.
- "Employee" means any person who possesses a valid license issued pursuant to section 790.06, Florida Statutes, and:
 1. Works for salary, wages, or other remuneration;
 2. Is an independent contractor; or
 3. Is a volunteer, intern, or other similar individual for an employer.
- "Employer" means any business that is a sole proprietorship, partnership, corporation, limited liability company, professional association, cooperative, joint venture, trust, firm, institution, or association, or public-sector entity, that has employees.
- "Invitee" means any business invitee, including a customer or visitor, who is lawfully on the premises of an entity described in paragraph (d).

The term "firearm" includes ammunition and accouterments attendant to the lawful possession and use of a firearm.

The effective date of this legislation is upon becoming law and the law applies to causes of action accruing on or after that date.

C. SECTION DIRECTORY:

Section 1: Creates s. 790.251, F.S.; relating to the lawful possession of firearms that are locked in, or to, a motor vehicle parking in a parking facility owned by a private or public entity.

Section 2: Provides an effective date of upon becoming law.

¹¹ Provides for a penalty not to exceed \$10,000 per violation.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Indeterminate. See fiscal comments.

2. Expenditures:

Indeterminate. See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The economic impact on the private sector is unclear. Employers having policies regarding the possession of legal firearms in vehicles in their parking lots may no longer have the authority to implement said policies. However, employers may enjoy greater protection from liability regarding the use of a firearm in the employer's parking lot that was lawfully stored in a vehicle. It is unknown how many employers have these policies in place and how many will be affected by this legislation

D. FISCAL COMMENTS:

While the bill provides that it may be enforced by the Attorney General, the Office of the Attorney General has not provided a cost estimate of the bill's provisions and it is unknown to what extent the Attorney General will be called upon to enforce it. Any damages recovered as a result of the Attorney General's action shall accrue to the injured person. Further, any civil penalty (of not more than \$10,000 per violation) associated with such actions shall accrue to the state's General Revenue Fund unallocated.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or cities to spend funds or take action requiring the expenditure of funds, reduce the authority of counties or cities to raise revenues in the aggregate or reduce the percentage of a state tax shared with counties or cities.

2. Other:

Preemption

There may be some federal laws that specifically regulate the premises of certain employers, including their parking lots. The United States District Court for the Northern District of Oklahoma recently ruled that an Oklahoma statute, very similar to the proposed language in HB 503, was preempted by the federal Occupational Safety and Health Act (OSHA), and enjoined the state from enforcing the statute. Federal law is considered to have preempted a specific area of law when

Congress has shown its intent to occupy a given field. When Congress is determined to have shown such intent, a court may strike down a state law that attempts to regulate this same field of law. A court may find that Congress has completely preempted an area of law or it may find that the preemption is only a partial preemption and some state regulation may be allowed. The Oklahoma Federal District Court stated that the Oklahoma statute was invalid because the area of employee safety has been preempted by the federal OSHA and the Oklahoma statute was in conflict with certain provisions of OSHA.¹² The Court found that the Oklahoma statute was preempted based on obstacle conflict preemption, due to the fact that the law materially impeded the plaintiff's attempts to reduce workplace violence and comply with the general policies and obligations under OSHA. However, the court did emphasize that their reasoning was based in part upon the fact that the statute contained criminal penalties against employers who violated the statutory provisions. The current bill does not contain criminal penalties; however, employer's under this bill still face the threat of civil or administrative actions by the Attorney General for damages, injunctive relief and civil penalties, and civil actions by persons aggrieved under this bill.

Access to Courts

The bill provides immunity for persons and entities from civil liability in lawsuits for certain actions involving the use and possession of personal private property. This provision may implicate the "access to court" protections of the Florida Constitution.¹³ The Florida Supreme Court, in *Kluger v. White*, 281 So. 2d 1(Fla. 1973), held that where a right to access the courts for redress for a particular injury predates the adoption of the access to courts provision in the 1968 state constitution, the Legislature cannot abolish the right without providing a reasonable alternative unless the Legislature can show: (1) an overpowering public necessity to abolish the right and (2) no alternative method of meeting such public necessity.¹⁴ A litigant could argue that the bill denies him or her access to the courts if a cause of action existed under Florida law before the adoption of the access to courts provision in 1968. Should a court find a cause of action did not exist, the judicial inquiry would end at that point. But it is also possible that a court could hold that pre-1968 Florida law would have allowed such suits under the common-law cause of action for negligence. If so, this bill might be evaluated under the *Kluger* standard.

Right to Bear Arms

The Florida Constitution¹⁵ and the United States Constitution¹⁶ contain provisions protecting a citizen's right to bear arms. However, these provisions are not implicated without some sort of state action.¹⁷ The Second Amendment's "right to keep and bear arms" imposes a limitation on only federal, not state, legislative efforts.¹⁸ The Florida Supreme Court, in interpreting Article 1, Section 8 of the Florida Constitution, held that while "the Legislature may not entirely prohibit the right of the people to keep and bear arms, it can determine that certain arms or weapons may not be kept or borne by the citizen."¹⁹ State laws regulating the acquisition or possession of guns have been upheld as reasonable exercises of the state's police power. This basis of state regulatory action has been recognized with respect to concealed-weapon statutes and the possession of weapons by proscribed persons such as convicted felons.

¹² *ConocoPhillips Co. v. Henry*, 520 F.Supp.2d 1282 (N.D. Okla. 2007)

¹³ Article I, section 21 of the Florida Constitution provides: "The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay." See generally 10A FLA. JR. 2D CONSTITUTIONAL LAW §§ 360-69.

¹⁴ See *Kluger v. White*, 281 So. 2d 1(Fla. 1973).

¹⁵ "The right of the people to keep and bear arms in defense of themselves and of the lawful authority of the state shall not be infringed, except that the manner of bearing arms may be regulated by law." Art. I, s. 8(a), Fla. Const.

¹⁶ "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. Const. amend. II.

¹⁷ See Validity of state gun control legislation under state constitutional provisions securing the right to bear arms, 86 A.L.R. 4th 93; Constitutional right to bear arms—Federal constitution; generally—Relationship of right to bear arms to preservation of a militia 79 Am. Jur. 2d Weapons and Firearms § 6.

¹⁸ *Bach v. Pataki*, 408 F.3d 75 (2d Cir. 2005), cert. denied, 126 S. Ct. 1341 (U.S. 2006).

¹⁹ *Rinzler v. Carson*, 262 so.2d 661(Fla. 1972).

Contract Clause

Article I, Section 10 of the Florida Constitution provides: "[n]o bill of attainder, ex post facto law or law impairing the obligation of contracts shall be passed."²⁰ "A statute contravenes the constitutional prohibition against impairment of contracts when it has the effect of rewriting antecedent contracts, that is, of changing the substantive rights of the parties to existing contracts."^{21 22}

The Supreme Court of Florida in *Pomponio v. Claridge of Pompano Condominium, Inc.*, 378 So. 2d 774 (Fla. 1979) held that laws impairing contracts can be unconstitutional if they unreasonably and unnecessarily impair the contractual rights of citizens.²³ The *Pomponio* Court indicated that the "well-accepted principle in this state is that virtually no degree of contract impairment is tolerable in this state." *Pomponio*, 378 So. 2d at 780. When seeking to determine what level of impairment is constitutionally permissible, a court "must weigh the degree to which a party's contract rights are statutorily impaired against both the source of authority under which the state purports to alter the contractual relationship and the evil which it seeks to remedy." *Id.*

In other words, "[t]his method requires a balancing of a person's interest not to have his contracts impaired with the state's interest in exercising its legitimate police power." *U.S. Fidelity and Guar. Co. v. Department of Ins.*, 453 So. 2d 1355, 1360-61 (1984). What should be reviewed when considering this balancing test?

[T]he United States Supreme Court recently outlined the main factors to be considered in applying this balancing test. The threshold inquiry is whether the state law has, in fact, operated as a substantial impairment of a contractual relationship. The severity of the impairment is said to increase the level of scrutiny to which the legislation will be subjected. Total destruction of contractual expectations is not necessary for a finding of substantial impairment. On the other hand, state regulation that restricts a party to gains it reasonably expected from the contract does not necessarily constitute a substantial impairment. In determining the extent of the impairment, we are to consider whether the industry the complaining party has entered has been regulated in the past. The Court long ago observed: One whose rights, such as they are, are subject to state restriction, cannot remove them from the power of the State by making a contract about them. If the state regulation constitutes a substantial impairment, the State, in justification, must have a significant and legitimate public purpose behind the regulation such as the remedying of a broad and general social or economic problem. Furthermore, since *Blaisdell*, the Court has indicated that the public purpose need not be addressed to an emergency or temporary situation. One legitimate state interest is the elimination of unforeseen windfall profits. The requirement of a legitimate public purpose guarantees that the State is exercising its police power, rather than providing a benefit to special interests. Once a legitimate public purpose has been identified, the next inquiry is whether the adjustment of the rights and responsibilities of contracting parties [is based] upon reasonable conditions and [is] of a character appropriate to the public purpose justifying [the legislation's] adoption. Unless the State itself is a contracting party, as is customary in reviewing economic and social regulation, courts properly defer to legislative judgment as to the necessity and reasonableness of a particular measure.

²⁰ Article 1, Section 10(1) of the U.S. Constitution provides: "No State shall . . . pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts"

²¹ 10a Fla. Jur. s. 414, Constitutional Law.

²² The term impair is defined as "to make worse; to diminish in quantity, value, excellence, or strength; or to lessen in power or weaken." 10a Fla. Jur. s. 414, Constitutional Law.

²³ The Florida Supreme Court has adopted the method of analysis from the United States Supreme Court in cases involving the contract clause. *Pomponio*, 378 So. 2d at 780.

U.S. Fidelity and Guar. Co., 453 So.2d at 1360-61 (Fla. 1984) (internal citations and quotations omitted).

The bill restricts business entities from being able to prohibit current employees from bringing legal firearms locked in their motor vehicles into the employer's parking lot. Currently, employers and employees enter into legally valid employment contracts, which provide that the employee agrees as a condition of his/her employment not to bring legal firearms in their motor vehicles on the business's property. This bill appears to invalidate these prior employment contracts and could be challenged as an unconstitutional impairment of contracts in violation of Article I, Section 10 of the Florida Constitution.

Substantive Due Process under the United States Constitution

The Due Process Clause of the Fourteenth Amendment of the U.S. Constitution provides that "no state shall deprive any person of life, liberty, or property, without due process of law." When a state law limits the ability of all persons to engage in some activity, a person affected by that state law can challenge the law by arguing that the limitation by the state violates their substantive due process under the 14th Amendment. In determining whether a law violates substantive due process, the court will first identify what "right" is being infringed upon by the state. This allows the court to identify which test will be used to determine whether a state law is unconstitutional under the 14th Amendment.

When a law limits any of the "fundamental" rights identified by the U.S. Supreme Court, which include the right to travel, the right to privacy, the right to vote and all of the First Amendment Rights, the court will use the "strict scrutiny" test. Under this test, a law will be upheld only if it is necessary to promote a compelling or overriding government purpose. The court will always consider whether less burdensome means for accomplishing the legislative goals are available. When strict scrutiny is applied, the government will have the burden of proving that the law is necessary. In all other cases, where a law does not affect a "fundamental" right, the court will use the "rational basis" test. Under this test, the court will uphold the law if it is rationally related to a legitimate state interest. Most state governmental actions examined under this standard are upheld unless they are arbitrary or irrational. Under the rational basis test, the law is presumed valid, and the challenger has the burden of proof.

This bill seeks to enact a law limiting the ability of "public and private entities" to prohibit customers, employees, or invitees from possessing a legally owned firearm when the firearm is lawfully possessed and locked inside or locked to a private motor vehicle. This bill also limits the ability of an employer 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 motor vehicle contains a legal firearm that is out of sight within the vehicle. This bill appears to limit a private property owners "right" to the use and enjoyment of his property and the right to exclude invitees from his property. In order to determine whether this limitation violates the 14th Amendment's Substantive Due Process Clause, the court would first have to determine whether this violation is a limitation of a "fundamental" right, as described above.

The U.S. Supreme Court, in *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528 (2005), stated that it had "long eschewed heightened scrutiny when addressing substantive due process challenges to government regulation of property rights", and indicated that the "arbitrary and irrational" test must be applied to regulation of property rights. Several federal circuit court and district courts have also held that under a substantive due process analysis the right to exclude and the right to the use and enjoyment of one's property is not a "fundamental right" and would be subject to a rational basis analysis, not a strict scrutiny analysis.²⁴ Furthermore, the court in *ConocoPhillips Co. v. Henry*, 520 F.Supp.2d 1282 (N.D. Okla. 2007), which applied a substantive due process analysis to an Oklahoma law very similar to this bill, ruled that the law "did not affect a fundamental right for the

²⁴ See *Weems v. Little Rock Police Dep't*, 453 F.3d 1010, 1015-16 (8th Cir.2006); *Clajon Prod. Corp. v. Petera*, 70 F.3d 1566, 1580 (10th Cir.1995); *Coalition for Equal Rights, Inc. v. Owens*, 458 F.Supp.2d 1251, 1263 (D.Colo.2006); *United States v. 16.92 Acres of Land*, 670 F.2d 1369, 1373 (7th Cir.1982); *ConocoPhillips Co. v. Henry*, 520 F.Supp.2d 1282, 1319 (N.D. Okla. 2007).

purposes of substantive due process analysis, and the law is only subject to rational basis review.”²⁵ Therefore, it appears that the limitation on property rights associated with the current bill could possibly be upheld as long as the limitation is rationally related to a legitimate state purpose and not found to be arbitrary or irrational.

Substantive Due Process under the Florida Constitution

Florida’s Constitution also includes a due process provision. Article I, Section IX of the Florida Constitution provides that “No person shall be deprived of life, liberty or property without due process of law.” In Florida, substantive due process protects a person’s property from unfair governmental interference, unwarranted encroachment or taking.²⁶ The test to be applied in determining whether a statute violates due process is whether the statute bears a rational relation to a legitimate legislative purpose in safeguarding the public health, safety, or general welfare and is not discriminatory, arbitrary, or oppressive.²⁷ Furthermore, the Florida Constitution does not secure property rights against reasonable and just statutory regulations, restraints, and prohibitions duly administered to conserve the best interests of the public affected by the regulations.²⁸ All property rights are held and enjoyed subject to the fair exercise of the police power to establish regulations that are reasonably necessary to secure the general welfare of the state.²⁹ Often, this exercise of police power clashes with the full enjoyment of property by its owner,³⁰ but in the interests of the public welfare, a property owner must submit to reasonable regulations and limitations upon the use of his or her property, and when private interests and public welfare conflict, the former must give way to the latter.³¹

If the limitations in this bill were found not to be affecting any fundamental rights, they would be upheld by the court as long as they are rationally related to a legitimate legislative purpose in safeguarding the public health, safety, or general welfare and are not discriminatory, arbitrary, or oppressive. The courts would uphold the limitations in this bill if the courts found the regulations to be a fair exercise of the state’s policy powers that are necessary to secure the general welfare of the state. In order to survive a state substantive due process challenge, the challenger would have to prove that the limitations in the current bill are not rationally related to a legitimate legislative purpose in safeguarding the public health, safety, or general welfare and are arbitrary or oppressive. The State of Oklahoma argued and presented testimony that the Oklahoma gun law, which is similar to HB 503, was passed to “promote the goal of public health, safety, and welfare by allowing citizens to arm themselves in their vehicles, to deter crime, and to protect the community as a whole. The Oklahoma Federal District Court upheld the state law ruling that although the testimony presented probably was not enough to meet a heightened scrutiny analysis and another scheme to achieve these goals probably would have been better, the law was not “wholly irrational” or arbitrary, and therefore, met the rational basis test.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

As a general rule, when drafting legislation, the short title and any definitions included in the bill are placed at the front of the legislation. Both the short title and the definitions are at the end of this legislation.

Certain paragraphs of the legislation seem to be inconsistent. In section 790.251(2)(a), F.S., legal firearms are required to be **locked inside or locked to** a private motor vehicle in a parking lot. In

²⁵ *ConocoPhillips Co. v. Henry*, 520 F.Supp.2d 1282, 1319 (N.D. Okla. 2007).

²⁶ *Department of Law Enforcement v. Real Property*, 588 So.2d 957 (Fla. 1991)

²⁷ *Chicago Title Ins. Co. v. Butler*, 770 So.2d 1210, 1215 (Fla. 2000).

²⁸ *Department of Community Affairs v. Moorman*, 664 So. 2d 930, 20 Fla. L. Weekly S500 (Fla. 1995).

²⁹ *Harris v. Martin Regency, Ltd.*, 576 So. 2d 1294, 16 Fla. L. Weekly 98 (Fla. 1991)

³⁰ *Town of Bay Harbor Islands v. Schlapik*, 57 So. 2d 855 (Fla. 1952).

³¹ *State v. City of Miami*, 157 Fla. 726, 27 So. 2d 118 (1946).

paragraph (2)(d) of section 790.251 F.S., the legal firearm is required to be **out of sight** within the person's motor vehicle.

D. STATEMENT OF THE SPONSOR

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

N/A

A bill to be entitled

An act relating to the "Preservation and Protection of the
 Right to Keep and Bear Arms in Motor Vehicles Act of
 2008"; creating s. 790.251, F.S.; creating the
 "Preservation and Protection of the Right to Keep and Bear
 Arms in Motor Vehicles Act of 2008"; providing legislative
 findings and intent; prohibiting a public or private
 entity from prohibiting a customer, employee, or invitee
 from possessing any legally owned firearm that is lawfully
 possessed and locked inside or locked to a private motor
 vehicle in a parking lot; prohibiting a public or private
 entity from violating the privacy rights of a customer,
 employee, or invitee by verbal or written inquiry
 regarding the presence of a firearm inside a private motor
 vehicle in a parking lot or by the search of a private
 motor vehicle in a parking lot to ascertain the presence
 of a firearm within the vehicle; prohibiting actions by a
 public or private entity against a customer, employee, or
 invitee based upon verbal or written statements concerning
 possession of a firearm stored inside a private motor
 vehicle in a parking lot for lawful purposes; providing
 conditions under which a search of a private motor vehicle
 in the parking lot of a public or private entity may be
 conducted; prohibiting an employer from conditioning
 employment upon an agreement by a prospective employee
 that prohibits employees from keeping a legal firearm
 locked inside a motor vehicle; prohibiting an employer
 from attempting to prevent or prohibiting any customer,

29 employee, or invitee from entering the parking lot of the
 30 employer's place of business when the customer's,
 31 employee's, or invitee's motor vehicle contains a legal
 32 firearm; prohibiting employers from terminating the
 33 employment of or otherwise discriminating against an
 34 employee, or expelling a customer or invitee, for
 35 exercising his or her constitutional right to keep and
 36 bear arms or for exercising the right of self-defense;
 37 providing a condition to the prohibition; providing that
 38 such prohibitions apply to all public-sector employers;
 39 delineating duties not owed by public and private entities
 40 and employers with respect to the provisions of the act;
 41 providing specified immunity from liability for public and
 42 private entities and employers; providing nonapplicability
 43 of such immunity; providing for enforcement of the act;
 44 providing for the award of costs and attorney's fees;
 45 providing definitions; providing exceptions to the
 46 prohibitions under the act; providing applicability;
 47 providing an effective date.

48

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

50

51

52 Section 1. Section 790.251, Florida Statutes, is created
 53 to read:

54 790.251 Protection of the right to keep and bear arms in
 55 motor vehicles for self-defense and other lawful purposes;

56 prohibited acts; duty of public and private entities and
 57 employers; immunity from liability; enforcement.--

58 (1) LEGISLATIVE INTENT; FINDINGS.--This act is intended to
 59 codify the long-standing legislative policy of the state that
 60 individual citizens have a constitutional right to keep and bear
 61 arms, that they have a constitutional right to possess and keep
 62 legally owned firearms within their motor vehicles for self-
 63 defense and other lawful purposes, and that these rights are not
 64 abrogated by virtue of a citizen becoming a customer, employee,
 65 or invitee of a business entity. It is the finding of the
 66 Legislature that a citizen's lawful possession, transportation,
 67 and secure keeping of firearms and ammunition within his or her
 68 motor vehicle is essential to the exercise of the fundamental
 69 constitutional right to keep and bear arms and the
 70 constitutional right of self-defense. The Legislature finds that
 71 protecting and preserving these rights is essential to the
 72 exercise of freedom and individual responsibility. The
 73 Legislature further finds that no citizen can or should be
 74 required to waive or abrogate his or her right to possess and
 75 securely keep firearms and ammunition locked within his or her
 76 motor vehicle by virtue of becoming a customer, employee, or
 77 invitee of any employer or business establishment within the
 78 state.

79 (2) PROHIBITED ACTS.--No public or private entity may
 80 violate the constitutional rights of any customer, employee, or
 81 invitee as provided in paragraphs (a)-(e):

82 (a) No public or private entity may prohibit any customer,
 83 employee, or invitee from possessing any legally owned firearm

84 | when such firearm is lawfully possessed and locked inside or
 85 | locked to a private motor vehicle in a parking lot and when the
 86 | customer, employee, or invitee is lawfully in such area.

87 | (b) No public or private entity may violate the privacy
 88 | rights of a customer, employee, or invitee by verbal or written
 89 | inquiry regarding the presence of a firearm inside a private
 90 | motor vehicle in a parking lot or by an actual search of a
 91 | private motor vehicle in a parking lot to ascertain the presence
 92 | of a firearm within the vehicle. Further, no public or private
 93 | entity may take any action against a customer, employee, or
 94 | invitee based upon verbal or written statements of any party
 95 | concerning possession of a firearm stored inside a private motor
 96 | vehicle in a parking lot for lawful purposes. A search of a
 97 | private motor vehicle in the parking lot of a public or private
 98 | entity to ascertain the presence of a firearm within the vehicle
 99 | may only be conducted by on-duty law enforcement personnel based
 100 | upon due process and must comply with constitutional
 101 | protections.

102 | (c) No employer shall condition employment upon either:

103 | 1. an employee's or a prospective employee's holding or
 104 | not holding a license issued pursuant to section 790.06, F.S., or

105 | 2. any agreement by an employee or a prospective employee
 106 | that prohibits an employee from keeping a legal firearm locked
 107 | inside a motor vehicle when such firearm is kept for lawful
 108 | purposes.

109 | (d) No employer shall prohibit or attempt to prevent any
 110 | customer, employee, or invitee from entering the parking lot of
 111 | the employer's place of business because the customer's,

112 employee's, or invitee's motor vehicle contains a legal firearm,
 113 being carried for lawful purposes, that is out of sight within
 114 the customer's, employee's, or invitee's motor vehicle.

115 (e) No employer may terminate the employment of or
 116 otherwise discriminate against an employee, or expel a customer
 117 or invitee, for exercising his or her constitutional right to
 118 keep and bear arms or for exercising the right of self-defense
 119 as long as a firearm is never exhibited on company property for
 120 any reason other than lawful defensive purposes.

121
 122 This subsection applies to all public-sector employers,
 123 including those already prohibited from regulating firearms
 124 under the provisions of s. 790.33.

125 (3) DUTY OF PUBLIC AND PRIVATE ENTITIES AND EMPLOYERS;
 126 IMMUNITY FROM LIABILITY.--

127 (a) Except for public or private entities and employers
 128 subject to the exceptions of subsection (6), a public or private
 129 entity or employer has no duty to:

130 1. Prohibit any customer, employee, or invitee from
 131 possessing a legal firearm in a locked motor vehicle in the
 132 entity's or employer's parking lot;

133 2. Search a motor vehicle in the entity's or employer's
 134 parking lot or inquire regarding the presence of a firearm in a
 135 locked motor vehicle in the entity's or employer's parking lot;

136 3. Condition employment upon an agreement regarding the
 137 employee's possession of a legal firearm within a locked motor
 138 vehicle in the entity's or employer's parking lot; or

139 4. Terminate the employment of an employee for exercising
 140 his or her right to bear arms or for exercising the right of
 141 self-defense, as long as a firearm is never exhibited on company
 142 property for any reason other than lawful defensive purposes.

143 (b) Except for public or private entities and employers
 144 subject to the exceptions of subsection (6), a public or private
 145 entity or employer is not liable in a civil action based on
 146 actions or inactions taken in compliance with this section. The
 147 immunity provided in this subsection does not apply to civil
 148 actions based on actions or inactions of public or private
 149 entities or employers that are unrelated to compliance with this
 150 section.

151 (4) ENFORCEMENT.--The Attorney General shall enforce the
 152 protections of this act on behalf of any customer, employee, or
 153 invitee aggrieved under this act. If there is reasonable cause
 154 to believe that the aggrieved person's rights under this act
 155 have been violated by a public or private entity, the Attorney
 156 General shall commence a civil or administrative action for
 157 damages, injunctive relief and civil penalties, and such other
 158 relief as may be appropriate under the provisions of s. 760.51,
 159 or may negotiate a settlement with any employer on behalf of any
 160 person aggrieved under the act. However, nothing in this act
 161 shall prohibit the right of a person aggrieved under this act to
 162 bring a civil action for violation of rights protected under the
 163 act. In any successful action brought by a customer, employee,
 164 or invitee aggrieved under this act, the court shall award all
 165 court costs, attorney's fees, and reasonable personal costs and

166 losses suffered by the aggrieved person as a result of the
 167 violation of rights under this act.

168 (5) DEFINITIONS.--As used in this section, the term:

169 (a) "Parking lot" means any property that is used for
 170 parking motor vehicles and is available to customers, employees,
 171 or invitees for temporary or long-term parking or storage of
 172 motor vehicles.

173 (b) "Motor vehicle" means any automobile, truck, minivan,
 174 sports utility vehicle, motor home, recreational vehicle,
 175 motorcycle, motor scooter, or any other vehicle operated on the
 176 roads of this state and required to be registered under state
 177 law.

178 (c) "Employee" means any person who possesses a valid
 179 license issued pursuant to section 790.06, Florida Statutes,
 180 and:

- 181 1. Works for salary, wages, or other remuneration;
- 182 2. Is an independent contractor; or
- 183 3. Is a volunteer, intern, or other similar individual for
 184 an employer.

185 (d) "Employer" means any business that is a sole
 186 proprietorship, partnership, corporation, limited liability
 187 company, professional association, cooperative, joint venture,
 188 trust, firm, institution, or association, or public-sector
 189 entity, that has employees.

190 (e) "Invitee" means any business invitee, including a
 191 customer or visitor, who is lawfully on the premises of an
 192 entity described in paragraph (d).

193

194 As used in this section, the term "firearm" includes ammunition
 195 and accouterments attendant to the lawful possession and use of
 196 a firearm.

197 (6) EXCEPTIONS.--The prohibitions in subsection (2) do not
 198 apply to:

199 (a) Any school property as defined and regulated under s.
 200 790.115.

201 (b) Any state correctional institution regulated under s.
 202 944.47.

203 (c) Property owned or leased by an employer or the
 204 landlord of an employer upon which are conducted substantial
 205 activities involving national defense, aerospace, or domestic
 206 security.

207 (d) Property owned or leased by an employer or the
 208 landlord of an employer upon which the primary business
 209 conducted is the manufacture, use, storage, or transportation of
 210 combustible or explosive materials regulated under state or
 211 federal law.

212 (e) A motor vehicle owned, leased, or rented by an
 213 employer or the landlord of an employer.

214 (f) Any other property owned or leased by an employer or
 215 the landlord of an employer upon which possession of a firearm
 216 or other legal product by a customer, employee, or invitee is
 217 prohibited pursuant to any federal law or any general law of
 218 this state on the effective date of this act.

219 (7) SHORT TITLE.--This section may be cited as the
 220 "Preservation and Protection of the Right to Keep and Bear Arms
 221 in Motor Vehicles Act of 2008."

PCS for HB 503

2008

222 Section 2. This act shall take effect upon becoming a law
223 and shall apply to causes of action accruing on or after that
224 date.