

Analysis of Act 2013-283



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On May 22, 2013, Governor Bentley signed Senate Bill 286. The bill became Act 2013-283 and will become effective on August 1, 2013. If you are a law enforcement officer and you have questions regarding your obligations, duties, responsibilities or rights as they may relate to Act 2013-283 or any other Act of Alabama, you are encouraged to consult your Sheriff, Chief of Police, Commander or your local District Attorney for assistance. If you are a private citizen, business owner, private property owner or other entity that may have questions or concerns regarding this legislation you are encouraged to consult your attorney or other legal professional. This document is not a substitute for your own legal research. Statements within this document are merely an analysis of Act 2013-283 and opinions may vary as to the application of the Act or portions thereof.

EXECUTIVE SUMMARY

Analysis Act 2013-283

Section 1: Repeals most of Section §11-80-11, Code of Alabama 1975, so that those sections could be consolidated in one place under the Act, now Section 7.

Section 2: Amended multiple code sections in Title 13A, Code of Alabama 1975. Specifically:

1. §13A-11-7 regarding disorderly conduct was amended to include a rebuttable presumption that an individual is not in violation if that person is merely carrying a visible pistol, holstered or secured, in a public place. Public place is not defined in the Act, but is defined in the article in which disorderly conduct is contained.
2. §13A-11-52 was amended to expand the location an individual could carry a pistol about his person. This section formerly prohibited a person from carrying a pistol on premises not his own or under his control. It was amended to allow a person who possesses a valid permit or has consent of the owner to carry a pistol on private property. This is interpreted by some as placing the burden on the business owners/operators to take the initiative to prevent individuals from carrying a concealed pistol pursuant to the provisions of Section 6(b). Failure to do so may waive that owner's/operator's right to exclude a person carrying a concealed weapon with a valid permit on their private property. This likely does not apply to homes and real property associated with the home since there are different degrees of visitors and the home is not open to the public like a private business. The amendment also allows open carry on public property.
3. §13A-11-70 expands the definition of "crime of violence" to include Class A and B felonies that have an element of serious physical injury, the distribution or manufacture of a controlled substance, or is of a sexual nature involving a child less than 12.
4. §13A-11-73(a) added subsection (b) that allows a person without a permit to carry a pistol in their vehicle if it is locked away out of the reach of the driver and unloaded.
5. §13A-11-75 requires that a sheriff shall issue a permit to an applicant unless the sheriff determines the applicant is prohibited from possessing a pistol. The process of notification and appeal are set out. Permits are now in 1 to 5 year increments, pursuant to the request of the applicant. The statute sets out what is to be done with the records, where the permit is valid, and when it expires. A permit may be revoked.
6. §13A-11-85 allows for anyone with a valid permit from another state to carry a concealed pistol in Alabama pursuant to that out of state permit as long as that person is not a resident of Alabama. The section also allows the Attorney General to enter into reciprocal agreements with other states so that Alabama permits are recognized by other states.

Section 3: Amended Section §40-12-143, Code of Alabama 1975, regarding gun shows and business license taxes. It requires records of sales to be kept permanently. Failure to do so allows the District Attorney to file a request with the probate judge to revoke the person's license.

Section 4: Allows employers to prohibit employees from carrying firearms while on the employer's property and while engaged in work duties, despite having a permit. This Section also allows an employer to restrict the possession of a pistol and/or firearm in the employee's personal vehicle under certain circumstances. This section does not appear to set out conduct to charge pursuant to this section, but could allow for charges pursuant to §13A-11-7, §13A-11-73, or other state or federal law. This section further sets out how issues may be resolved between employer and employee.

Section 5: Grants immunity to the employer in regards to firearms on the employer's property and sets out where an employer does not have a duty.

Section 6: Restricts where a firearm may be carried and under what circumstances it may be carried. Individuals may not carry a firearm in some facilities even with a valid permit. Due to §13A-11-52 allowing for individuals to carry a pistol on private property as long as they possess a valid permit, subsection (b) sets out how private businesses may prohibit all firearms from being carried on that private property.

Section 7: Establishes with the Legislature complete control over the regulation and policy regarding firearms. The repeals in Section 1 are by and large adopted again in this Section in order to consolidate the law. This Section also defines a "person adversely affected," and sets out the grievance process through the Attorney General's Office for such an individual or organization. It requires that only state firearm violations may be adopted by municipalities and counties. They must be adopted element for element, and the penalties cannot be greater than the state offense. Municipalities and counties may pass ordinances prohibiting the discharge of a firearm, with the caveat that discharging a firearm in defense of one's self, family, or property cannot be a violation of the law. Keep in mind the result of the discharge and an analysis of self-defense law.

Section 8: Expands §13A-3-23 to allow the use of force on business property in regards to self-defense.

Section 9: Repealed §11-45-1.1, Code of Alabama 1975, which was subsumed into Section 7. §11-45-1.1 prohibited municipalities from enacting laws related to handguns, generally.

Section 10: Law enforcement may always act to prevent a breach of the peace and to preserve public safety. This Section applies to all sections of the Act.

Section 11: Deals with being exempted from increased expenditure issues because it sets out a new crime or amends an existing crime.

Section 12: The provisions of the Act are severable, and those not declared invalid remain in effect if any other parts are invalidated.

Section 13: The Act becomes law August 1, 2013.

ANALYSIS OF ACT 2013-283

(Act 2013-283 is a substantial piece of legislation that amends existing statutes or creates new laws for the Code of Alabama. Once Act 2013-283 is codified, its various Sections will be displaced throughout the Code of Alabama into different relevant chapters. Since many of the Sections within Act 2013-283 are significantly impacted by other Sections within this same Act; it will be helpful to maintain a complete copy of Act 2013-283 for future reference. A link to a copy of the Act is located at the end of this document.)

SECTION 1.

Section 11-80-11, Code of Alabama 1975, is amended to read as follows:

"§11-80-11.

(This section repealed subsections (a) and (b) of Section 11-80-11, Code of Alabama, in order to consolidate the law into one section. The language repealed appears with strikethrough below.)

~~"(a) No county or municipal corporation, instrumentality, or political subdivision thereof, by ordinance, resolution, or other enactment, shall regulate in any manner gun shows, the possession, ownership, transport, carrying, transfer, sale, purchase, licensing, registration or use of firearms, ammunition, components of firearms, firearms dealers, or dealers in firearm components.~~

(This repealed section is now contained in Section 7(c)-(e). Those subsections establish complete control for regulating firearms under the authority of the State Legislature. These restrictions were already in place. This paragraph restricted municipalities and counties from regulating firearms in any way, pursuant to some exceptions listed in the statute. Further, municipalities were restricted from regulating handguns in any way other than by adopting state handgun laws as ordinances pursuant to §11-45-1.1, Code of Alabama 1975, which was repealed by Section 9 and adopted in Section 7. One issue that may arise is that municipalities may typically adopt state laws as ordinances that enlarge upon state law as long as they are not inconsistent.

However, that is not the case in regards to firearms. Now, municipal and county ordinances related to firearms must match Alabama law element for element, and the penalties cannot be any greater than that under Alabama law. Subsections 7(e) and 7(g)(10) come into play if the elements of a municipal ordinance related to firearms do

not match the state firearm elements exactly and/or impose greater penalties, in that the ordinance will be null and void. This will not affect discharging a firearm

ordinances and laws. State law will still be applicable in municipalities and offenses may be charged pursuant to the Code of Alabama in district court by a police officer even if an ordinance is considered null and void pursuant to Section 7(e).)

§12-14-1. Creation--Jurisdiction

- (a) There is hereby established, effective December 27, 1977, for each municipal corporation, hereinafter referred to in this chapter as "municipality," within the state, except those which elect not to have such courts by ordinance adopted before December 27, 1977, a municipal court subject to the authority, conditions and limitations provided by law.
- (b) The municipal court shall have jurisdiction of all prosecutions for the breach of the ordinances of the municipality within its police jurisdiction.
- (c) The municipal court shall have concurrent jurisdiction with the district court of all acts constituting violations of state law committed within the police jurisdiction of the municipality which may be prosecuted as breaches of municipal ordinances.)

§ 12-12-32. Misdemeanors

(a) Misdemeanors. The district court shall have exclusive original trial jurisdiction over prosecutions of all offenses defined by law or ordinance as misdemeanors, except:

- (1) Prosecutions by municipalities having municipal courts;
 - (2) Any such prosecution which also involves a felony offense which is within the exclusive jurisdiction of the circuit court, except as the district court is empowered to hold preliminary hearings with respect to felonies and to receive guilty pleas as provided in subsection (b) of this section; and
 - (3) Any misdemeanor for which an indictment has been returned by a grand jury.
- (b) Felonies.** (1) The district court may exercise original jurisdiction concurrent with the circuit court to receive pleas of guilty in prosecutions of offenses defined by law as felonies not punishable by sentence of death.
- (2) The district court shall have jurisdiction to hold preliminary hearings in prosecutions for felonies as provided for in Title 15 of this code.

~~"(b) (1) Subsection (a) does not affect the authority a municipality has under law to regulate the discharge of firearms within the limits of the municipality or the authority a county has under law~~

~~enacted prior to August 1, 2000, to regulate the discharge of firearms within the jurisdiction of the county.~~

(This repealed section is now contained in Section 7(g) (11). Municipalities and counties may still regulate the discharge of firearms within the jurisdiction. However, discharging a firearm in defense of one's self, family, or property is not a violation of state law or ordinance. However, the result of the discharge may be a crime, such as reckless endangerment or discharging a firearm *into* a vehicle or dwelling. Further, a self-defense evaluation should be conducted in this situation to determine if those statutes, or others such as murder, manslaughter, criminally negligent homicide, or assault, are otherwise violated.)

~~"(2) Subsection (a) does not affect the authority of the state, a county, or a municipality to assess, enforce, and collect sales taxes, use taxes, and gross receipts taxes in the nature of sales taxes as defined by Section 40-2A-3(8), on the retail sale of firearms and ammunition or to assess, enforce, and collect business licenses from firearms or ammunition manufacturers, trade associations, distributors, or dealers for the privilege of engaging in business.~~

(This repealed section is now contained in part in Sections 3 and 7(g)(12). Counties and municipalities may exercise any authority they have to assess, enforce, and collect generally applicable sales taxes, use taxes, and gross receipts taxes, on the retail sale of firearms, ammunition, and firearm accessories along with other goods, provided that no such tax imposed by a county or municipality may apply at a higher rate than to the general sales tax. Further, counties and municipalities may collect business license taxes at a rate set out in amended § 40-12-143, Code of Alabama 1975, contained in Section 3.)

~~"Further, nothing herein shall exempt any business which uses firearms or ammunition in the conduct of its business or any business which leases or sells firearms or ammunition from the provisions of county and municipal planning and zoning laws, as long as the code, ordinance, or regulations are not used to circumvent the intent of subsection (a).~~

(This repealed section is now contained in Section 7(g)(4).)

~~"This section shall not be construed to limit or restrict the power of a municipality to adopt or enforce ordinances which make the violation of a state firearm law a violation of a municipal ordinance to the same extent as other state law violations.~~

(This repealed section is now contained in Section 7(g)(10). Counties and municipalities may adopt or enforce ordinances that make the violation of a state firearm law a violation of an ordinance or law, so long as the elements do not differ and the penalties are no greater.)

"(e) The authority to bring or settle any lawsuit in which the state has an exclusive interest or right to recover against any firearm or ammunition manufacturer, trade association, or dealer, and the authority to bring or settle any lawsuit on behalf of any governmental unit created by or pursuant to an act of the Legislature or the Constitution of Alabama of 1901, or any department, agency, or authority thereof, for damages, abatement, injunctive relief, or other equitable relief resulting from or relating to the design, manufacture, marketing, or lawful sale of firearms or ammunition, or both, shall be reserved exclusively to the Attorney General, by and with the consent of the Governor. This section shall not prohibit a county or municipal corporation from bringing an action against a firearms or ammunition manufacturer or dealer for breach of contract or warranty as to firearms or ammunition purchased by the political subdivision or local governmental authority."

(This section remained unchanged, other than it no longer being subsection (c)).

SECTION 2.

Sections 13A-11-7, 13A-11-52, 13A-11-70, 13A-11-73, 13A-11-75, and 13A-11-85, Code of Alabama 1975, are amended to read as follows:

"§13A-11-7.

"(a) A person commits the crime of disorderly conduct if, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, he or she does any of the following:

"(1) Engages in fighting or in violent tumultuous or threatening behavior; or.

"(2) Makes unreasonable noise; or.

"(3) In a public place uses abusive or obscene language or makes an obscene gesture; or.

"(4) Without lawful authority, disturbs any lawful assembly or meeting of persons; or.

"(5) Obstructs vehicular or pedestrian traffic, or a transportation facility; or.

"(6) Congregates with other person in a public place and refuses to comply with a lawful order of the police law enforcement to disperse.

"(b) Disorderly conduct is a Class C misdemeanor.

"(c) It shall be a rebuttable presumption that the mere carrying of a visible pistol, holstered or secured, in a public place, in and of itself, is not a violation of this section.

(This section changes the wording of subsections (a)(1)-(6) by generally stating, “does any of the following,” and then removes the word “or” from the end of each set of elements. The major change is the addition of wording that gives a defendant the rebuttable presumption that the defendant is not in violation of this section for merely carrying a visible firearm, holstered or secured, in a public place. A rebuttable presumption is a presumption that holds good until evidence contrary to it is introduced. Typically, it shifts the burden of proof to the defendant in a criminal case, such as in a DUI case in which the defendant is presumed under the influence with a blood alcohol content of .08 or greater. The presumption gives particular weight to a certain group of facts in absence of further evidence. This amended section now requires evidence of other conduct in addition to or apart from carrying a holstered or secured firearm in a public place. This presumption does not apply to other crimes, such as menacing or criminal trespass.

“Public place” was not defined in this Act, but it is defined in *§13A-11-1, which is the article in which disorderly conduct is found, as:*

Public place. A place to which the public or a substantial group of persons has access, and includes but is not limited to highways, transportation facilities, schools, places of amusement, parks, playgrounds and hallways, lobbies and other portions of apartment houses not constituting rooms or apartments designed for actual residence; provided, that no private dwelling and no place engaged for a private gathering is included within the meaning of public place with respect to any person specifically invited therein.

Keep in mind that limits are placed on where an individual may carry a firearm by Section 2 in the amendment to §13A-11-52 (without a permit), Section 4(a), and Section (6)(a) through (d) and (h). Further, Section 10 gives broad authority to law enforcement to act, in that: “nothing in this act shall be construed to prohibit law enforcement personnel who have reasonable suspicion from acting to prevent a breach of the peace or from taking action to preserve public safety.” There are other state and federal laws that are applicable and limits both who and where a person may carry/possess, set out below:

§ 13A-11-72. Violent felons, drug addicts or drunkards; possession and ownership restrictions -- School grounds; possession or carrying on prohibited.

(a) No person who has been convicted in this state or elsewhere of committing or attempting to commit a crime of violence shall own a pistol or have one in his or her possession or under his or her control.

- (b) No person who is a drug addict or an habitual drunkard shall own a pistol or have one in his or her possession or under his or her control.
- (c) Subject to the exceptions provided by Section 13A-11-74, no person shall knowingly with intent to do bodily harm carry or possess a deadly weapon on the premises of a public school.
- (d) Possession of a deadly weapon with the intent to do bodily harm on the premises of a public school in violation of subsection (c) of this section is a Class C felony.
- (e) Law enforcement officers are exempt from this section, and persons with pistol permits issued pursuant to Section 13A-11-75, are exempt from the provisions of subsection (c) of this section.
- (f) The term "public school" as used in this section applies only to a school composed of grades K-12 and shall include a school bus used for grades K-12.
- (g) The term "deadly weapon" as used in this section means a firearm or anything manifestly designed, made, or adapted for the purposes of inflicting death or serious physical injury, and such term includes, but is not limited to, a bazooka, hand grenade, missile, or explosive or incendiary device; a pistol, rifle, or shotgun; or a switch-blade knife, gravity knife, stiletto, sword, or dagger; or any club, baton, billy, black-jack, bludgeon, or metal knuckles.

As to public schools, boards of education must implement policies to prevent students from possessing firearms on campus:

§ 16-1-24.3. Firearms.

- (a) All city and county boards of education shall develop and implement local policies and procedures requiring the expulsion of students, for a period of one year, who are determined to have brought to school or have in their possession a firearm in a school building, on school grounds, on school buses, or at other school-sponsored functions. Notwithstanding the foregoing, city and county boards of education and the local superintendent of education of each board may modify the expulsion requirement for a student on a case-by-case basis. Students who are expelled for violation of this section shall not be allowed to attend regular school classes in any public school in the state during the expulsion period. Students who are expelled from schools for firearm possession may be permitted to attend alternative schools designed to provide education services. Discipline of students with disabilities who violate the firearm possession policies of city and county boards of education shall be determined on a case-by-case basis in accordance with the requirements of the Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act.

(b) For the purposes of this section, the term "firearm" has the same meaning as defined in Section 921 of Title 18 of the United States Code.

(c) When there are violations of the prohibition on firearms being brought to school or the possession of firearms by students, the school principal shall notify the appropriate law enforcement authority which may include city police, county sheriffs, and the local district attorney. In addition to notification of law enforcement officials, the school principal shall notify the parents of students who violate the firearm-free school environment provided for in this section.

Law enforcement authorities involved with students charged with firearm violations shall refer the violators of this section to the appropriate authority in the judicial system when the action is feasible.

(d) Local education agencies submitting applications for federal funds to the State Department of Education shall include in the application:

(1) An affidavit to affirm that the local education agency has developed and implemented a policy to provide for a gun-free environment in all its public schools.

(2) A description of the circumstances surrounding an expulsion imposed under this section including:

- a. The name of the school concerned.
- b. The number of students expelled.
- c. The types of weapons concerned.

The State Department of Education shall report the information collected from the local education agencies to the Secretary of Education.

18 U.S.C. 921 defines firearms and is referenced by 16-1-24.3:

§ 921. Definitions

(a) As used in this chapter [18 USCS §§ 921 et seq.]--

(1) The term "person" and the term "whoever" include any individual, corporation, company, association, firm, partnership, society, or joint stock company.

(2) The term "interstate or foreign commerce" includes commerce between any place in a State and any place outside of that State, or within any possession of the United States (not including the Canal Zone) or the District of Columbia, but such term does not include commerce between places within the same State but through any place outside of that State. The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States (not including the Canal Zone).

(3) The term "firearm" means (A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device. Such term does not include an antique firearms.

(4) The term "destructive device" means--

(A) any explosive, incendiary, or poison gas--

(i) bomb,

(ii) grenade,

(iii) rocket having a propellant charge of more than four ounces,

(iv) missile having an explosive or incendiary charge of more than one-quarter ounce,

(v) mine, or

(vi) device similar to any of the devices described in the preceding clauses;

(B) any type of weapon (other than a shotgun or a shotgun shell which the Attorney General finds is generally recognized as particularly suitable for sporting purposes) by whatever name known which will, or which may be readily converted to, expel a projectile by the action of an explosive or other propellant, and which has any barrel with a bore of more than one-half inch in diameter; and

(C) any combination of parts either designed or intended for use in converting any device into any destructive device described in subparagraph (A) or (B) and from which a destructive device may be readily assembled.

The term "destructive device" shall not include any device which is neither designed nor redesigned for use as a weapon; any device, although originally designed for use as a weapon, which is redesigned for use as a signaling, pyrotechnic, line throwing, safety, or similar device; surplus ordinance sold, loaned, or given by the Secretary of the Army pursuant to the provisions of section 4684(2), 4685, or 4686 of title 10 [10 USCS § 4682(2), 4685, or 4686]; or any other device which the Attorney General finds is not likely to be used as a weapon, is an antique, or is a rifle which the owner intends to use solely for sporting, recreational or cultural purposes.

(5) The term "shotgun" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of an explosive to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger.

(6) The term "short-barreled shotgun" means a shotgun having one or more barrels less than eighteen inches in length and any weapon made from a shotgun (whether by alteration, modification, or otherwise) if such weapon as modified has an overall length of less than twenty-six inches.

(7) The term "rifle" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of an explosive to fire only a single projectile through a rifled bore for each single pull of the trigger.

(8) The term "short-barreled rifle" means a rifle having one or more barrels less than sixteen inches in length and any weapon made from a rifle (whether by alteration,

modification, or otherwise) if such weapon, as modified, has an overall length of less than twenty-six inches.

(9) The term "importer" means any person engaged in the business of importing or bringing firearms or ammunition into the United States for purposes of sale or distribution; and the term "licensed importer" means any such person licensed under the provisions of this chapter [18 USCS §§ 921 et seq.].

(10) The term "manufacturer" means any person engaged in the business of manufacturing firearms or ammunition for purposes of sale or distribution; and the term "licensed manufacturer" means any such person licensed under the provisions of this chapter [18 USCS §§ 921 et seq.].

(11) The term "dealer" means (A) any person engaged in the business of selling firearms at wholesale or retail, (B) any person engaged in the business of repairing firearms or of making or fitting special barrels, stocks, or trigger mechanisms to firearms, or (C) any person who is a pawnbroker. The term "licensed dealer" means any dealer who is licensed under the provisions of this chapter [18 USCS §§ 921 et seq.].

(12) The term "pawnbroker" means any person whose business or occupation includes the taking or receiving, by way of pledge or pawn, of any firearm as security for the payment or repayment of money.

(13) The term "collector" means any person who acquires, holds, or disposes of firearms as curios or relics, as the Attorney General shall by regulation define, and the term "licensed collector" means any such person licensed under the provisions of this chapter [18 USCS §§ 921 et seq.].

(14) The term "indictment" includes an indictment or information in any court under which a crime punishable by imprisonment for a term exceeding one year may be prosecuted.

(15) The term "fugitive from justice" means any person who has fled from any State to avoid prosecution for a crime or to avoid giving testimony in any criminal proceeding.

(16) The term "antique firearm" means--

(A) any firearm (including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system) manufactured in or before 1898; or

(B) any replica of any firearm described in subparagraph (A) if such replica--

(i) is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition, or

(ii) uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade; or

(C) any muzzle loading rifle, muzzle loading shotgun, or muzzle loading pistol, which is designed to use black powder, or a black powder substitute, and which cannot use fixed ammunition. For purposes of this subparagraph, the term "antique firearm" shall not include any weapon which incorporates a firearm frame or receiver, any firearm which is converted into a muzzle loading weapon, or any muzzle loading weapon which can be readily converted to fire fixed ammunition by replacing the barrel, bolt, breechblock, or any combination thereof.

(17) (A) The term "ammunition" means ammunition or cartridge cases, primers, bullets, or propellant powder designed for use in any firearm.

(B) The term "armor piercing ammunition" means--

(i) a projectile or projectile core which may be used in a handgun and which is constructed entirely (excluding the presence of traces of other substances) from one or a combination of tungsten alloys, steel, iron, brass, bronze, beryllium copper, or depleted uranium; or

(ii) a full jacketed projectile larger than .22 caliber designed and intended for use in a handgun and whose jacket has a weight of more than 25 percent of the total weight of the projectile.

(C) The term "armor piercing ammunition" does not include shotgun shot required by Federal or State environmental or game regulations for hunting purposes, a frangible projectile designed for target shooting, a projectile which the Attorney General finds is primarily intended to be used for sporting purposes, or any other projectile or projectile core which the Attorney General finds is intended to be used for industrial purposes, including a charge used in an oil and gas well perforating device.

(18) The term "Attorney General" means the Attorney General of the United States[.]

(19) The term "published ordinance" means a published law of any political subdivision of a State which the Attorney General determines to be relevant to the enforcement of this chapter [18 USCS §§ 921 et seq.] and which is contained on a list compiled by the Attorney General, which list shall be published in the Federal Register, revised annually, and furnished to each licensee under this chapter [18 USCS §§ 921 et seq.].

(20) The term "crime punishable by imprisonment for a term exceeding one year" does not include--

(A) any Federal or State offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices, or

(B) any State offense classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of two years or less.

What constitutes a conviction of such a crime shall be determined in accordance with the law of the jurisdiction in which the proceedings were held. Any conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction for purposes of this chapter, unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

(21) The term "engaged in the business" means--

(A) as applied to a manufacturer of firearms, a person who devotes time, attention, and labor to manufacturing firearms as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the firearms manufactured;

(B) as applied to a manufacturer of ammunition, a person who devotes time, attention, and labor to manufacturing ammunition as a regular course of trade or

business with the principal objective of livelihood and profit through the sale or distribution of the ammunition manufactured;

(C) as applied to a dealer in firearms, as defined in section 921(a)(11)(A) [18 USCS § 921(a)(11)(A)], a person who devotes time, attention, and labor to dealing in firearms as a regular course of trade or business with the principal objective of livelihood and profit through the repetitive purchase and resale of firearms, but such term shall not include a person who makes occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or who sells all or part of his personal collection of firearms;

(D) as applied to a dealer in firearms, as defined in section 921(a)(11)(B) [18 USCS § 921(a)(11)(B)], a person who devotes time, attention, and labor to engaging in such activity as a regular course of trade or business with the principal objective of livelihood and profit, but such term shall not include a person who makes occasional repairs of firearms, or who occasionally fits special barrels, stocks, or trigger mechanisms to firearms;

(E) as applied to an importer of firearms, a person who devotes time, attention, and labor to importing firearms as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the firearms imported; and

(F) as applied to an importer of ammunition, a person who devotes time, attention, and labor to importing ammunition as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the ammunition imported.

(22) The term "with the principal objective of livelihood and profit" means that the intent underlying the sale or disposition of firearms is predominantly one of obtaining livelihood and pecuniary gain, as opposed to other intents, such as improving or liquidating a personal firearms collection: Provided, That proof of profit shall not be required as to a person who engages in the regular and repetitive purchase and disposition of firearms for criminal purposes or terrorism. For purposes of this paragraph, the term "terrorism" means activity, directed against United States persons, which--

(A) is committed by an individual who is not a national or permanent resident alien of the United States;

(B) involves violent acts or acts dangerous to human life which would be a criminal violation if committed within the jurisdiction of the United States; and

(C) is intended--

- (i) to intimidate or coerce a civilian population;
- (ii) to influence the policy of a government by intimidation or coercion; or
- (iii) to affect the conduct of a government by assassination or kidnapping.

(23) The term "machinegun" has the meaning given such term in section 5845(b) of the National Firearms Act (26 U.S.C. 5845(b)).

(24) The terms "firearm silencer" and "firearm muffler" mean any device for silencing, muffling, or diminishing the report of a portable firearm, including any

combination of parts, designed or redesigned, and intended for use in assembling or fabricating a firearm silencer or firearm muffler, and any part intended only for use in such assembly or fabrication.

(25) The term "school zone" means--

- (A) in, or on the grounds of, a public, parochial or private school; or
- (B) within a distance of 1,000 feet from the grounds of a public, parochial or private school.

(26) The term "school" means a school which provides elementary or secondary education, as determined under State law.

(27) The term "motor vehicle" has the meaning given such term in section 13102 of title 49, United States Code [49 USCS § 13102].

(28) The term "semiautomatic rifle" means any repeating rifle which utilizes a portion of the energy of a firing cartridge to extract the fired cartridge case and chamber the next round, and which requires a separate pull of the trigger to fire each cartridge.

(29) The term "handgun" means--

- (A) a firearm which has a short stock and is designed to be held and fired by the use of a single hand; and
- (B) any combination of parts from which a firearm described in subparagraph (A) can be assembled.

(30), (31) [Repealed]

(32) The term "intimate partner" means, with respect to a person, the spouse of the person, a former spouse of the person, an individual who is a parent of a child of the person, and an individual who cohabitates or has cohabited with the person.

(33) (A) Except as provided in subparagraph (C), the term "misdemeanor crime of domestic violence" means an offense that--

- (i) is a misdemeanor under Federal, State, or Tribal [tribal] law; and
- (ii) has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.

(B) (i) A person shall not be considered to have been convicted of such an offense for purposes of this chapter [18 USCS §§ 921 et seq.], unless--

- (I) the person was represented by counsel in the case, or knowingly and intelligently waived the right to counsel in the case; and
- (II) in the case of a prosecution for an offense described in this paragraph for which a person was entitled to a jury trial in the jurisdiction in which the case was tried, either
 - (aa) the case was tried by a jury, or
 - (bb) the person knowingly and intelligently waived the right to have the case tried by a jury, by guilty plea or otherwise.

(ii) A person shall not be considered to have been convicted of such an offense for purposes of this chapter [18 USCS §§ 921 et seq.] if the conviction has been expunged or set aside, or is an offense for which the person has been pardoned or has had civil rights restored (if the law of the applicable jurisdiction provides for the loss of civil rights under such an offense) unless the pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

(34) The term "secure gun storage or safety device" means--

(A) a device that, when installed on a firearm, is designed to prevent the firearm from being operated without first deactivating the device;

(B) a device incorporated into the design of the firearm that is designed to prevent the operation of the firearm by anyone not having access to the device; or

(C) a safe, gun safe, gun case, lock box, or other device that is designed to be or can be used to store a firearm and that is designed to be unlocked only by means of a key, a combination, or other similar means.

(35) The term "body armor" means any product sold or offered for sale, in interstate or foreign commerce, as personal protective body covering intended to protect against gunfire, regardless of whether the product is to be worn alone or is sold as a complement to another product or garment.

(b) For the purposes of this chapter [18 USCS §§ 921 et seq.], a member of the Armed Forces on active duty is a resident of the State in which his permanent duty station is located.

18 U.S.C. 922(g), federal law prohibits the following individuals from possessing a firearm:

(g) It shall be unlawful for any person--

(1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

(2) who is a fugitive from justice;

(3) who is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

(4) who has been adjudicated as a mental defective or who has been committed to a mental institution;

(5) who, being an alien--

(A) is illegally or unlawfully in the United States; or

(B) except as provided in subsection (y)(2), has been admitted to the United States under a nonimmigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26)));

(6) who has been discharged from the Armed Forces under dishonorable conditions;

(7) who, having been a citizen of the United States, has renounced his citizenship;

(8) who is subject to a court order that--

(A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;

(B) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

(C) (i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

(9) who has been convicted in any court of a misdemeanor crime of domestic violence, to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

18 U.S.C. 922(q) relates to possession of a firearm on public school grounds:

(q) (1) The Congress finds and declares that--

(A) crime, particularly crime involving drugs and guns, is a pervasive, nationwide problem;

(B) crime at the local level is exacerbated by the interstate movement of drugs, guns, and criminal gangs;

(C) firearms and ammunition move easily in interstate commerce and have been found in increasing numbers in and around schools, as documented in numerous hearings in both the Committee on the Judiciary [of] the House of Representatives and the Committee on the Judiciary of the Senate;

(D) in fact, even before the sale of a firearm, the gun, its component parts, ammunition, and the raw materials from which they are made have considerably moved in interstate commerce;

(E) while criminals freely move from State to State, ordinary citizens and foreign visitors may fear to travel to or through certain parts of the country due to concern about violent crime and gun violence, and parents may decline to send their children to school for the same reason;

(F) the occurrence of violent crime in school zones has resulted in a decline in the quality of education in our country;

(G) this decline in the quality of education has an adverse impact on interstate commerce and the foreign commerce of the United States;

(H) States, localities, and school systems find it almost impossible to handle gun-related crime by themselves--even States, localities, and school systems that have made strong efforts to prevent, detect, and punish gun-related crime find their efforts unavailing due in part to the failure or inability of other States or localities to take strong measures; and

(I) the Congress has the power, under the interstate commerce clause and other provisions of the Constitution, to enact measures to ensure the integrity and safety of the Nation's schools by enactment of this subsection.

(2) (A) It shall be unlawful for any individual knowingly to possess a firearm that has moved in or that otherwise affects interstate or foreign commerce at a place that the individual knows, or has reasonable cause to believe, is a school zone.

(B) Subparagraph (A) does not apply to the possession of a firearm--

(i) on private property not part of school grounds;

(ii) if the individual possessing the firearm is licensed to do so by the State in which the school zone is located or a political subdivision of the State, and the law of the State or political subdivision requires that, before an individual obtains such a license, the law enforcement authorities of the State or political subdivision verify that the individual is qualified under law to receive the license;

(iii) that is--

(I) not loaded; and

(II) in a locked container, or a locked firearms rack that is on a motor vehicle;

(iv) by an individual for use in a program approved by a school in the school zone;

(v) by an individual in accordance with a contract entered into between a school in the school zone and the individual or an employer of the individual;

(vi) by a law enforcement officer acting in his or her official capacity; or

(vii) that is unloaded and is possessed by an individual while traversing school premises for the purpose of gaining access to public or private lands open to hunting, if the entry on school premises is authorized by school authorities.

(3) (A) Except as provided in subparagraph (B), it shall be unlawful for any person, knowingly or with reckless disregard for the safety of another, to discharge or attempt to discharge a firearm that has moved in or that otherwise affects interstate or foreign commerce at a place that the person knows is a school zone.

(B) Subparagraph (A) does not apply to the discharge of a firearm--

(i) on private property not part of school grounds;

(ii) as part of a program approved by a school in the school zone, by an individual who is participating in the program;

(iii) by an individual in accordance with a contract entered into between a school in a school zone and the individual or an employer of the individual; or

(iv) by a law enforcement officer acting in his or her official capacity.

(4) Nothing in this subsection shall be construed as preempting or preventing a State or local government from enacting a statute establishing gun free school zones as provided in this subsection.

18 U.S.C. 922(x) prohibits a juvenile from possessing a handgun:

(x) (1) It shall be unlawful for a person to sell, deliver, or otherwise transfer to a person who the transferor knows or has reasonable cause to believe is a juvenile--

(A) a handgun; or

(B) ammunition that is suitable for use only in a handgun.

(2) It shall be unlawful for any person who is a juvenile to knowingly possess--

(A) a handgun; or

(B) ammunition that is suitable for use only in a handgun.

(3) This subsection does not apply to--

(A) a temporary transfer of a handgun or ammunition to a juvenile or to the possession or use of a handgun or ammunition by a juvenile if the handgun and ammunition are possessed and used by the juvenile--

(i) in the course of employment, in the course of ranching or farming related to activities at the residence of the juvenile (or on property used for ranching or farming at which the juvenile, with the permission of the property owner or lessee, is performing activities related to the operation of the farm or ranch), target practice, hunting, or a course of instruction in the safe and lawful use of a handgun;

(ii) with the prior written consent of the juvenile's parent or guardian who is not prohibited by Federal, State, or local law from possessing a firearm, except--

(I) during transportation by the juvenile of an unloaded handgun in a locked container directly from the place of transfer to a place at which an activity described in clause (i) is to take place and transportation by the juvenile of that handgun, unloaded and in a locked container, directly from the place at which such an activity took place to the transferor; or

(II) with respect to ranching or farming activities as described in clause (i), a juvenile may possess and use a handgun or ammunition with the prior written approval of the juvenile's parent or legal guardian and at the direction of an adult who is not prohibited by Federal, State or local law from possessing a firearm;

(iii) the juvenile has the prior written consent in the juvenile's possession at all times when a handgun is in the possession of the juvenile; and

(iv) in accordance with State and local law;

(B) a juvenile who is a member of the Armed Forces of the United States or the National Guard who possesses or is armed with a handgun in the line of duty;

(C) a transfer by inheritance of title (but not possession) of a handgun or ammunition to a juvenile; or

(D) the possession of a handgun or ammunition by a juvenile taken in defense of the juvenile or other persons against an intruder into the residence of the juvenile or a residence in which the juvenile is an invited guest.

(4) A handgun or ammunition, the possession of which is transferred to a juvenile in circumstances in which the transferor is not in violation of this subsection shall not be subject to permanent confiscation by the Government if its possession by the juvenile subsequently becomes unlawful because of the conduct of the juvenile, but shall be returned to the lawful owner when such handgun or ammunition is no longer required by the Government for the purposes of investigation or prosecution.

(5) For purposes of this subsection, the term "juvenile" means a person who is less than 18 years of age.

(6) (A) In a prosecution of a violation of this subsection, the court shall require the presence of a juvenile defendant's parent or legal guardian at all proceedings.

(B) The court may use the contempt power to enforce subparagraph (A).

(C) The court may excuse attendance of a parent or legal guardian of a juvenile defendant at a proceeding in a prosecution of a violation of this subsection for good cause shown.)

"§13A-11-52.

"Except as otherwise provided in this article, no person shall carry a pistol about his person on ~~premises private property not his own or under his control unless the person possesses a valid concealed weapon permit or the person has the consent of the owner or legal possessor of the premises; but this section shall not apply to any sheriff or his deputy or police officer of an incorporated town or city law enforcement officer~~ in the lawful discharge of the duties of his office, or to United States marshal or his deputies, rural free delivery mail carriers in the discharge of their duties as such, bonded constables in the discharge of their duties as such, conductors, railway mail clerks and express messengers in the discharge of their duties.

(This section limits open carry to public property or that person's own private property if that person does not possess a permit or have consent. It did expand the area for which a permit is not needed by removing the word "premises" and inserting "private property." Black's Law Dictionary defines private property as "protected from being taken for public uses, is such property as belongs absolutely to an individual, and of which he has the exclusive right of disposition. Property of a specific, fixed and tangible nature, capable of being in possession and transmitted to another, such as houses, lands, and chattels." *Delaware, L. & W. R. Co. v. Morristown*, 276 U.S. 182 (1928), dealt with a town setting rules for a cab stand on a railroad's private property. The relevant aspect of the case is that the U. S. Supreme Court stated that a business' property is private property. This section, in conjunction with §13A-11-73, states that in order to carry a pistol about his person on private property not his own or under his control, that person must possess a valid concealed weapon permit or have the consent of the owner or legal possessor if there is no permit. This section changed the law in that it amended 13A-11-52, in conjunction with Section 6(b), to place the burden on privately owned businesses and property owners to prohibit an individual from carrying a concealed weapon with a permit. However, this amendment must be read in pari materia with other applicable laws. For instance, see the definition of "Enter or Remain Unlawfully" in 13A-7-1(4): "Enter or Remain Unlawfully. A person 'enters or remains unlawfully' in or upon premises when he is not licensed, invited or privileged to do so." That license, invitation or privilege can only come from the owner or person with authority over the property or premises in question and the property owner retains the right and authority over the property to revoke that license, invitation or privilege.

The Act sets out a mechanism to prevent individuals from carrying a firearm onto private or public property if the property owner follows the requirements set out in subsections 6(b) and 6(c). Placing the burden on private businesses to keep firearms

out of the business is problematic in that it may violate Constitutional rights of property owners. Further, criminal trespass is always applicable in that a license to enter onto property may be revoked at any time for any reason other than a reason that violates a person's civil rights. There may also be other code sections or state agency regulations that prohibit or restrict individuals from possessing firearms in addition to the restrictions set out in this Act, such as §9-11-304, Code of Alabama, (prohibiting possession of firearms within wildlife management areas without a permit), Conservation Regulation Chapter 220-5-.08 (prohibiting firearms in a state park without a permit), and Education Regulation Chapter 290-3-1.02 (requiring schools to adopt and enforce a policy prohibiting persons from bringing a deadly weapon/dangerous instrument onto school property.) There are limitations on carrying a pistol set out in Section 4(a). Section 10 also applies, as do federal and state laws 18 U.S.C. 922(g) and §13A-11-72. Note that in this section, weapon and pistol appear to be used interchangeably. The definition of pistol is set out in §13A-11-70, below.

This section is likely a violation pursuant to 13A-5-4(c) and the fact that no punishment designation was stated. It appears that the legislature intended for this to be criminal conduct, per its inclusion in Title 13A. Further, violations of this statute pre-amendment were charged in *E.T. v. State*, 682 So.2d 508 (Ala.Crim.App. 1996), *K.J. v. State*, 690 So.2d 541 (Ala.Crim.App. 1997), and *A.M. v. State*, 623 So.2d 421 (Ala.Crim.App. 1993). A violation is punishable by not more than 30 days to serve in the county jail and a fine of no more than \$200. When pulled up in AOC, the statute is listed as an undesignated misdemeanor. To be safe, it would be best to charge this in conjunction with another offense, such as disorderly conduct or criminal trespass.

Public property is an area where an individual may carry a pistol openly without a permit. If public schools choose to address the issue of firearm possession on campus, the options include:

- 1) Prohibiting all employees from carrying firearms while on public school grounds or while engaged in the duties of employment pursuant to Section 4;
- 2) Prohibiting students from possessing firearms pursuant §16-1-24.3, Code of Alabama 1975, and stating that parents may be added as parties in any delinquency proceedings pursuant to §12-15-113, Code of Alabama 1975, and Alabama Rule of Juvenile Procedure 31; and
- 3) Restricting entry to the public school by requiring that all visitors come through the main office, pursuant to §16-1-44, Code of Alabama 1975, regarding school safety and security;

See Also Education Regulation Chapter 290-3-1.02 discussed above.

Further, a school may trespass an individual as long as the person revoking the license has the authority to do so, and such revocation is not a civil rights violation.

A person could be charged with loitering pursuant to §13A-11-9(a)(5) in regards to a school, college, or university:

§ 13A-11-9. Loitering

- (a) A person commits the crime of loitering if he:
(5) Loiters or remains in or about a school, college or university building or grounds after having
been told to leave by any authorized official of such school, college or university, and not having
any reason or relationship involving custody of or responsibility for a pupil or any other specific,
legitimate reason for being there, and not having written permission from a school, college or
university administrator.
Loitering is a violation.

Further, both private and public schools could implement the provisions of Section 6(b) and (c) by using guards, barriers and signs. Based on how broad the terms are, it is possible that a sign at the front of the school premises prohibiting firearms along with a camera or metal detector and a school resource officer or patrolling teacher or administrative employee would suffice to prohibit all firearms in schools as well. See discussion in Section 6.

Parents may be made parties to juvenile delinquency proceedings:

§ 12-15-113. Jurisdiction to make a parent or parents, legal guardians, or legal custodians parties to juvenile court proceedings.

A juvenile court shall have the authority to make a parent, legal guardian, or legal custodian a party to a juvenile court proceeding pursuant to procedures established by the Alabama Rules of Juvenile Procedure.

The procedure is set out in Rule 31 of the Alabama Rules of Juvenile Procedure:

Rule 31. Procedure for making a parent, legal guardian, or legal custodian a party.

- (A) In a petition alleging that a child is a delinquent child, a dependent child, or a child in need of supervision, the child's parent or parents, legal guardian, or legal custodian shall be given notice of the allegations of the petition by sending the parent or parents, legal guardian, or legal custodian a copy of the petition, with a summons, as prescribed by law and rule, and with a written statement of the rights of the parent or parents, legal guardian, or legal custodian and the child.

(B) On each petition alleging that a child is delinquent or in need of supervision, the following notice shall be placed in capital letters at the bottom of the petition, as follows:

"NOTICE

(C) When a petition alleging that a child is delinquent or in need of supervision is delivered by a juvenile court intake officer to be filed in the circuit court clerk's office or, after such a petition is filed, at any time during the course of the juvenile court proceeding, any interested person may make a motion to join a parent, legal guardian, or legal custodian; upon this motion, the juvenile court may issue an order making the parent, legal guardian, or legal custodian a party. Also, at any time during the juvenile court proceeding, the juvenile court may, on its own motion, issue an order making a parent, legal guardian, or legal custodian a party to the proceeding.

(D) If a child is released to a parent, legal guardian, or legal custodian, pursuant to Ala. Code 1975, § 12-15-127(a)(1) and (2), the parent, legal guardian, or legal custodian shall be informed that the parent, legal guardian, or legal custodian may be made a party to the juvenile-delinquency or child-in-need-of-supervision proceeding by ordering the parent, legal guardian, or legal custodian to appear with the child and to answer the allegations of the petition. The juvenile court shall inform the parent, legal guardian, or legal custodian of his or her rights pursuant to law.

(E) If a child is not released to the parent, legal guardian, or legal custodian pursuant to Ala. Code 1975, § 12-15-127, then the notice of a detention or shelter-care hearing, either oral or written, given pursuant to Ala. Code 1975, § 12-15-207(b), may include notice by the juvenile court that the parent, legal guardian, or legal custodian may be made a party to the juvenile-delinquency or child-in-need-of-supervision proceeding. The juvenile court shall also inform the parent, legal guardian, or legal custodian of his or her rights pursuant to law. If a detention or shelter-care hearing is held within 72 hours of placement in detention or shelter care, pursuant to Ala. Code 1975, § 12-15-207(a), then the judge, in open court, may inform the parent, legal guardian, or legal custodian that he or she may be made a party to the juvenile court proceeding and inform the parent, legal guardian, or legal custodian of his or her rights.

(F) During any juvenile-delinquency or child-in-need-of-supervision proceeding, the juvenile court may issue an order making a parent, legal guardian, or legal custodian a party to the proceeding; upon issuing this order, the juvenile court shall inform the parent, legal guardian, or legal custodian of his or her rights. The joinder of the parent, legal guardian, or legal custodian as a party makes the parent, legal guardian, or legal custodian subject to orders to pay attorney fees; to pay for evaluation and treatment; to pay fines, court costs, and restitution; and to pay for the care, support, and supervision of the child. A parent, legal guardian, or legal custodian made a party to the proceeding may also be subject to other orders.

This statute and rule work in conjunction to allow a court to hold parents responsible for payment of costs or conditions of release regarding the juvenile. The parent may held responsible pursuant to the court's powers of contempt.

§ 16-1-44. School safety or security -- Plans and protocols; drills and procedures.

(a) (1) Each local board of education shall adopt a comprehensive school safety plan for each school under the authority of the board.

(2) The local board or its agent shall examine the conditions and operations of each school under the authority of the local board to determine hazards to student and staff safety and shall propose changes, if needed to promote the prevention of dangerous problems and circumstances.

(3) In developing the plan for each school, the local board or its agent shall involve community law enforcement, safety officials, teachers, and nonteaching employees who are assigned to the school.

(b) (1) The board shall incorporate into the plan the following:

a. A protocol for addressing serious threats to the safety of school property, students, employees, or administrators.

b. A protocol for responding to any emergency events that compromise the safety of school property, students, and employees.

(2) Each protocol shall include procedures for responding to threats and emergency events, respectively, including such action as notification of appropriate law enforcement and emergency response personnel for assistance, and informing parents of affected students.

(c) (1) The board shall update the safety plan whenever a major modification to the building requires changes in the procedures outlined in the plan, and at other necessary times.

(2) Upon request of law enforcement or safety officials, or both, the local board shall provide a copy of the current school site and safety plan, which shall be kept in a secure place and not considered public record.

(d) The local board shall grant access to each school under its control to law enforcement and fire department personnel to enable them to prepare for responding to threats and emergency events affecting the school. Such access shall occur outside of student instructional hours and an employee of the board shall be present.

(e) The principal or his or her designee shall instruct and train students concerning procedures to be used for drills and evacuations. The principal or his or her designee shall ensure that all safety and security drills and procedures are conducted and performed no less than what is required by state or federal law, or both. The doors and exits of each school may be locked from the outside but shall allow for immediate egress by those inside the building during school hours and at all school functions.

(f) In conjunction with drills or evacuations required by subsection (e), a principal or his or her designee shall instruct students in safety precautions to be taken in case of a severe weather watch, alert, or warning. A principal or his or her designee shall designate, in accordance with standards prescribed by the local superintendent of education in conjunction with local public safety officials and the fire marshal, or appropriate local fire safety official in counties that do not have a fire marshal, appropriate locations to be used to shelter students in case of a severe weather watch, alert, or warning.

(g) In addition to the requirements of subsection (e), the principal or his or her designee shall conduct a school safety drill at least once each school year to provide students with instruction in the procedures to follow in the case of a threat to the school involving acts of violence, such as terrorism, a person possessing a firearm or a deadly weapon, or any other act of violence. The principal or his or her designee shall hold annual training sessions for employees of the school regarding the school safety drills and procedures to be conducted during a school year.

(h) Appropriate disciplinary action shall be taken against any principal or his or her designee who knowingly neglects or refuses to comply with the requirements of this section.

(i) This section shall be read in pari materia with other laws relating to school safety and emergency planning.)

"§13A-11-70.

"For the purposes of this division, the following terms shall have the respective meanings ascribed by this section:

"(1) PISTOL. Any firearm with a barrel less than 12 inches in length.

"(2) CRIME OF VIOLENCE. Any of the following crimes or an attempt to commit any of them, namely, murder, manslaughter, (except manslaughter arising out of the operation of a vehicle), rape, mayhem, assault with intent to rob, assault with intent to ravish, assault with intent to murder, robbery, burglary, and kidnapping and larceny. "Crime of violence" shall also mean any Class A felony or any Class B felony that has as an element serious physical injury, the distribution or manufacture of a controlled substance, or is of a sexual nature involving a child under the age of 12.

"(3) PERSON. Such term includes any firm, partnership, association or corporation.

(This section greatly expanded and updated the definition of "crime of violence." This now includes individuals convicted of narcotics offenses including trafficking, UDCS, UDCS to a minor, possession with intent to distribute, UMCS 1 and 2, possession of anhydrous ammonia, possession of pseudoephedrine [§20-2-190(b)] and offenses listed in §20-2-71 and 72, Code of Alabama 1975). Further, with the exception of the crime of larceny, the original criminal terms were retained so as to still apply to those who may have been convicted of those crimes without having any confusion as to whether those individuals would still be subject to this statute.)

"§13A-11-73.

"No (a) Except on land under his or her control or in his or her own abode or his or her own fixed place of business, no person shall carry a pistol in any vehicle or concealed on or about his or her person except on his land, in his own abode or fixed place of business, without a license therefor as hereinafter provided permit issued under Section 13A-11-75(a) (1) or recognized under Section 13A-11-85.

(A person may not possess a loaded pistol in a vehicle that is not on land under that person's control, that person's abode, or that person's fixed place of work, without a permit. See Section 4(a), in which an employer may restrict the carrying of a firearm on the employer's property or while engaged in the duties of employment. Refer also to Section 4(b) regarding storage in a vehicle while at work. See also Section 6, which places limits on where a firearm may be possessed, even with a valid permit, as well as §13A-11-72 and 18 U.S.C. 922(g). Section 10 is applicable. §13A-11-84 sets out the penalties and seizure procedures related to this statute. A license to enter the property may be revoked and criminal trespass proceedings instituted if there is a failure to leave. See also the analysis of §13A-11-52 concerning the applicability of criminal trespass statutes.)

"(b) Except as otherwise prohibited by law, a person legally permitted to possess a pistol, but who does not possess a valid concealed weapon permit, may possess an unloaded pistol in his or her motor vehicle if the pistol is locked in a compartment or container that is in or affixed securely to the vehicle and out of reach of the driver and any passenger in the vehicle.

(This section is limited by Section 4(b) based on the language used in that section. Section 4(b) relates to the requirements an employee must follow to possess a firearm, specifically not a pistol, in his or her vehicle while at work when that person does not have a valid concealed weapon permit. Based on that section, only a firearm legal for use for hunting in Alabama, OTHER THAN A PISTOL, may be stored in an employee's vehicle at work pursuant to other enumerated conditions. Pistols are specifically prohibited by statute if the person does not possess a permit. The federal

and state prohibitions of 18 U.S.C. 922(g) and §13A-11-72 apply. Section 10 is applicable.)

"§13A-11-75.

"(a) (1)a. The sheriff of a county, upon the application of any person residing in that county, may within 30 days from receipt of a complete application and accompanying fee, shall issue or renew a qualified or unlimited license permit to for such person to carry a pistol in a vehicle or concealed on or about his or her person within this state for not more than one year one to five year increments, as requested by the person seeking the permit, from date of issue, if it appears that the applicant has good reason to fear injury to his or her person or property or has any other proper reason for carrying a pistol, and that he or she is a suitable person to be so licensed. unless the sheriff determines that the person is prohibited from the possession of a pistol or firearm pursuant to state or federal law, or has a reasonable suspicion that the person may use a weapon unlawfully or in such other manner that would endanger the person's self or others. In making such determination, the sheriff may consider whether the applicant:

"1. Was found guilty but mentally ill in a criminal case.

"2. Was found not guilty in a criminal case by reason of insanity or mental disease or defect.

"3. Was declared incompetent to stand trial in a criminal case.

"4. Asserted a defense in a criminal case of not guilty by reason of insanity or mental disease or defect.

"5. Was found not guilty only by reason of lack of mental responsibility under the Uniform Code of Military Justice.

"6. Required involuntary inpatient treatment in a psychiatric hospital or similar treatment facility.

"7. Required involuntary outpatient treatment in a psychiatric hospital or similar treatment facility based on a finding that the person is an imminent danger to himself or herself or to others.

"8. Required involuntary commitment to a psychiatric hospital or similar treatment facility for any reason, including drug use.

"9. Is or was the subject of a prosecution or of a commitment or incompetency proceeding that could lead to a prohibition on the receipt or possession of a firearm under the laws of Alabama or the United States.

"10. Falsified any portion of the permit application.

"11. Caused justifiable concern for public safety.

(The word “may” was removed and substituted with the word “shall” in regards to how the sheriff is to issue a permit. However, sheriffs are still given great latitude in determining if a concealed weapon permit shall be issued or renewed, as set out in subsections (a)(1a)(1-11). Specifically, (a)(1a)(11), “caused justifiable concern for public safety,” is a broad catch all. The standard the sheriff must meet is reasonable suspicion, which is a low standard, requiring a specific, particularized, and articulable reason. Further, the wording sets out that a sheriff may consider other reasons as well in making the determination as to whether “the person may use a weapon unlawfully or in such other manner that would endanger the person’s self or others.” The statute states, “in making such determination, the sheriff *may* consider,” rather than “may only” consider. Thus, there does not appear to be limiting language as to what a sheriff may consider. It appears that if a sheriff has reasonable suspicion based on another reason, then that would suffice as well. However, during the appeal process by an applicant denied a permit, a sheriff is limited to reasons based on state law, federal law, or those reasons listed in (a)(1a), and the burden a sheriff must meet is clear and convincing evidence. This is a greater burden than that required for the initial declination.

The term weapon and pistol are used interchangeably in this section. Thus, it’s fair to define weapon as synonymous with pistol and subject to the same definition as set out in §13A-11-70.

Federal and state prohibitions apply. §13A-11-81 applies, which prohibits giving false information in an application for a license/permit. Further, *E.M. v. State*, 675 So.2d 90, 92 (Ala.Crim.App. 1995) sets out that a person under the age of 18 may not be issued a permit, because the law prohibits the delivery of a pistol to a person under the age of 18, pursuant to 13A-11-76. Consequently, a sheriff is prohibited from issuing a license to carry a pistol to a person, who, by operation of law, would be ineligible for such a license.

There is a 30 day timeframe for the sheriff to issue the permit or renewal, and therefore that 30 day timeframe would likely apply to denials as well. However, there is no provision in this Section or Section 7 to contest a sheriff failing to act within 30 days. Section 7 sets out what an “adversely affected party” may do regarding an order, ordinance, or rule promulgated in violation of Section 7. Failure to timely respond to an application does not appear to fall under Section 7. However, an applicant could file a mandamus to require a sheriff to act.)

"b. The sheriff shall take into account how recent any consideration under paragraph a. is in relation to the date of the application. The sheriff shall provide a written statement of the reasons for a denial of a permit and the evidence upon which it is based must be disclosed to the applicant, unless disclosure would interfere with a criminal investigation.

(There is mandatory language in this section, in that the sheriff *shall* consider the timeframe between the incident of concern and the date of the application. Further, the sheriff must provide a written statement setting out the reasonable suspicion for the denial, *unless*, the reason would interfere with a criminal investigation. This written denial should meet the standard set out in (a)(3) below, which requires clear and convincing evidence and reasons limited to state or federal law or those listed in (a)(1a).)

"c. Except as otherwise provided by the laws of this state, a permit issued under this subdivision is valid throughout the state, and a sheriff may not place conditions or requirements on the issuance of the permit or limit its scope or applicability.

"(2)a. The sheriff may revoke a permit issued under subdivision (1) for any reason that could lead to a denial of a permit under that subdivision.

(Same standard to revoke a permit. A sheriff is likely not limited to the reasons set out in the statute due to the "may" language rather than "shall." However, the sheriff will still ultimately have to meet the requirements of (a)(3) below, which requires clear and convincing evidence and reasons limited to state or federal law or those listed in (a)(1a). Section 10 and federal and state prohibitions would apply. See discussion under subsection (a)(1a) above and (a)(4) below.)

"b. The sheriff shall provide a written statement of the reasons for the revocation and the evidence upon which it is based must be disclosed to the applicant, unless disclosure would interfere with a criminal investigation.

"(3) A person who is denied a permit under subdivision (1), or a person whose permit is revoked under subdivision (2), within 30 days of notification of the denial or revocation, may appeal the denial or revocation to the district court of the county where the denial or revocation was issued. Upon a review of a denial under this subdivision, the sheriff shall have the burden of proving by clear and convincing evidence that the person is prohibited from possession of a pistol or other firearm pursuant to state or federal law or, based on any of the considerations enumerated in the subsection (a) (1) of this section that the person may use a weapon unlawfully or in such other manner as would endanger the person's self or others if granted a permit to carry a concealed weapon under this section.

"(4) Within 30 days of receipt of the appeal, the district court shall review the appeal and issue a determination providing the reasons for the determination.

(Pursuant to this subsection, there is no requirement for a trial. A sheriff should always file with the district court a detailed basis of the reason for denial. The sheriff carries the burden of establishing that an applicant should be denied a permit by clear

and convincing evidence, which is a different standard than that required for the initial denial. The filing with the court should set out the detailed basis in federal law, state law, and/or the reasons set out in (a)(1a) of this section. This subsection sets a limit on what the sheriff may argue as the reason for denial at appeal. Clear and convincing evidence requires more than a preponderance of the evidence, but less than proof beyond a reasonable doubt. It is shown where the truth of the facts is highly probable. This subsection does not set out who represents the sheriff during the appeal process.)

"(5) If the district court issues a determination in favor of a person whose permit was denied or revoked, the person shall be issued a permit or the permit must be reinstated.

"(6) Nothing in this section shall be construed to permit a sheriff to disregard any federal law or regulation pertaining to the purchase or possession of a firearm.

(§18 U.S.C. 922(g) and §13A-11-72 are applicable.)

"(b) Each ~~The license~~ permit shall be written ~~in triplicate, in~~ or in an electronic or digital form to be prescribed by the Secretary of State ~~in consultation with the Alabama Sheriff's Association~~, and shall bear the name, address, description, and signature of the licensee, ~~permittee and the reason given for desiring a license~~. The original ~~hardcopy of the~~ permit shall be delivered to the licensee ~~permittee, the and a~~ duplicate shall, within seven days, be sent by registered or certified mail to the Director of Public Safety. ~~The application and a copy, and the triplicate~~ shall be preserved for six years by the authority issuing the same. The fee for issuing such license shall be one dollar (\$1) which ~~sheriff may charge a fee as provided by local law for the issuance of the permit under subdivision (1) of subsection (a). The amount of the fee for a period of one year up to five years shall be the amount of the fee as prescribed by local law multiplied by the number of years of the permit requested by the applicant. The fee~~ shall be paid into the county treasury unless otherwise provided by local law. Prior to issuance or renewal of a ~~license~~ permit, the sheriff shall contact available local, state, and federal criminal history data banks, including the National Instant Criminal Background Check System, to determine whether possession of a firearm by an applicant would be a violation of state or federal law. ~~The sheriff may revoke a license upon proof that the licensee is not a proper person to be licensed.~~

(This subsection relates to how permittee information is to be maintained, the fee that may be charged, and the requirement for a background check. This does not really have an application to District Attorney's, other than knowing from where this information may be obtained.)

"(c) For the convenience of the applicant, the sheriff may provide for application or renewal of a permit under subdivision (1) through electronic means. The sheriff may also accept payment for a permit by debit or credit card or other consumer electronic payment method. Any transaction or banking fee charged for the electronic payment method shall be paid by the applicant.

"(d) If a person who is not a United States citizen applies for a permit under this section, the sheriff shall conduct an Immigration Alien Query through U.S. Immigration and Customs Enforcement, or any successor agency, and the application form shall require information relating to the applicant's country of citizenship, place of birth, and any alien or admission number issued by U.S. Immigration and Customs Enforcement, or any successor agency. The sheriff shall review the results of these inquiries before making a determination of whether to issue a permit or renewal permit. A person who is unlawfully present in this state may not be issued a permit under this section.

(This section sets out the requirements a non-U.S. citizen must meet to obtain a permit, and prevents undocumented aliens from obtaining a permit. See also §18 U.S.C. 922(g)(5) regarding aliens.)

"(b)-(e) The name, address, and signature, photograph, and any other personally identifying information collected from an applicant or licensee permittee under this section shall be kept confidential, shall be exempt from disclosure under Section 36-12-40, and may only be used for law enforcement purposes except when a current licensee permittee is charged in any state with a felony involving the use of a pistol. All other information on licenses permits under this section, including information concerning the annual number of applicants, number of licenses permits issued, number of licenses permits denied or revoked, revenue from issuance of licenses permits, and any other fiscal or statistical data otherwise, shall remain public writings subject to public disclosure. Except as provided above, the sheriff of a county shall redact the name, address, signature, and photograph, and any other personally identifying information of an applicant permit holder before releasing a copy of a license permit for a non-law enforcement purpose. The sheriff may charge one dollar (\$1) per copy of any redacted license permit record requested other than when requested for law enforcement purposes. To knowingly publish or release to the public in any form any information or records related to the licensing process, or the current validity of any license permit, except as authorized in this subsection or in response to a court order or subpoena, is a Class A misdemeanor.

(This section relates to how permit information may be shared and released. §36-12-40, Code of Alabama 1975, made inapplicable to this subsection, is included below:

§36-12-40. Citizens' rights -- Exceptions

Every citizen has a right to inspect and take a copy of any public writing of this state, except as otherwise expressly provided by statute. Provided however, registration and circulation records and information concerning the use of the public, public school or college and university libraries of this state shall be exempted from this section.

Provided further, any parent of a minor child shall have the right to inspect the registration and circulation records of any school or public library that pertain to his or her child. Notwithstanding the foregoing, records concerning security plans,

procedures, assessments, measures, or systems, and any other records relating to, or having an impact upon, the security or safety of persons, structures, facilities, or other infrastructures, including without limitation information concerning critical infrastructure (as defined at 42 U.S.C.S. § 5195c(e) as amended) and critical energy infrastructure information (as defined at 18 C.F.R. § 388.113(c)(1) as amended), the public disclosure of which could reasonably be expected to be detrimental to the public safety or welfare, and records the disclosure of which would otherwise be detrimental to the best interests of the public shall be exempted from this section. Any public officer who receives a request for records that may appear to relate to critical infrastructure or critical energy infrastructure information, shall notify the owner of such infrastructure in writing of the request and provide the owner an opportunity to comment on the request and on the threats to public safety or welfare that could reasonably be expected from public disclosure on the records.)

"(f) A concealed pistol permit issued under this section shall be valid for the carrying of a pistol in a motor vehicle or concealed on the permittee's person throughout the state, unless prohibited by this section.

(Prohibitions on all firearms are set out in Section 6, and other prohibitions are set out in Section 4 (a) and (b) as to employment, as well as state and federal law discussed previously.)

"(g) This section shall not be construed to limit or place any conditions upon a person's right to carry a pistol that is not in a motor vehicle or not concealed.

(Limits are placed on carrying or possessing a pistol at work, in a vehicle at work, and on private property, as discussed above. See amended §13A-11-52 [Section 2 of this Act] as to the expansion of the area a person may open carry. See restrictions under Section 4(a), Section 4(b), Section 6, and Section 10. State and federal prohibitions apply as well.)

"(h) If a person issued a pistol permit in this state establishes residence in another state, the pistol permit shall expire upon the establishment of residence in the other state.

(This could be difficult for law enforcement to determine.)

"§13A-11-85.

"(a) A person licensed to carry a handgun in any state whose laws recognize and give effect in that state to a license issued under the laws of the State of Alabama shall be authorized to carry a handgun in this state. This section shall apply to a licenseholder license holder from another state only

while the licenseholder license holder is not a resident of this state. A licenseholder license holder from another state shall carry the handgun in compliance with the laws of this state.

(This section expands the ability of out of state concealed weapon license holders to carry a handgun in the State of Alabama. As long as the person is a valid and current license holder, that person may carry a handgun in all areas not prohibited by law [Sections 4(a) and (b) and 6]. Although the word "handgun" is used, it appears to be synonymous with pistol, as previously defined. "Handgun" is defined by federal law at 18 U.S.C. 921, and is included on page 12. This section may be difficult for local law enforcement to enforce based on the great number of different licenses the state now recognizes, and the possible difficulty in confirming the validity of the license. Section 10 applies to this subsection, as well as state and federal prohibitions. Once a person becomes a resident of Alabama, this statute does not apply.)

"(b) The Attorney General is authorized to enter into reciprocal agreements with other states for the mutual recognition of licenses to carry handguns and shall periodically publish a list of states which meet the requirements of subsection (a) recognize licenses issued pursuant to Section 13A-11-75."

SECTION 3.

Section 40-12-143, Code of Alabama 1975, is amended to read as follows:

"§40-12-143.

"Persons dealing in pistols, revolvers, maxim silencers, bowie knives, dirk knives, brass knucks or knucks of like kind, whether principal stock in trade or not shall pay the following license tax: In cities and towns of 35,000 inhabitants and over, \$150; and in all other places, \$100. The required license amounts shall be paid for each place of business from which sales of such items are made. In addition to any other required licenses, a person may organize and conduct a gun and knife show of no more than seven days, by paying the maximum license tax prescribed in this section, as well as the maximum license taxes provided in Sections 40-12-158 and 40-12-174(d), for each such show. Participants shall not be

required to pay the license taxes provided in this section, nor in Section 40-12-158 or 40-12-174 for participating in such shows, provided the organizer has paid the license taxes prescribed in this section prior to the commencement of the event. It shall be the duty of the organizer of such show to determine if each participant is licensed under the sales tax laws of this state as well as the particular county and municipality in which the show is conducted. The organizer shall be responsible for providing a list of participants to the county and municipality in which the gun show is held and for collecting and remitting all state and local sales taxes for any participant not licensed under state or local sales tax laws. In the event the organizer does not provide the information required herein or pay the license taxes prescribed in this section, prior to the commencement of the event, each participant shall be responsible for his or her applicable licenses. The organizer and all participants shall abide by applicable federal, state, and local laws and regulations. All persons dealing in pistols, revolvers, and maxim silencers shall be required to keep a permanent record of the sale of every pistol, revolvers, or maxim silencer, showing the date of sale, serial number, or other identification marks, manufacturer's name, caliber and type, and also the name and address of the purchaser, ~~which record. The records~~ shall always be open for inspection by any peace officer of the State of Alabama or any municipality thereof. The failure to keep such record shall subject such person to having his or her license revoked by the probate judge of the county where such license was issued on motion of any district attorney of the State of Alabama."

(The District Attorney may move to revoke an individual's business license for failure to comply with this section. The filing is with the probate judge. The basis of revocation is the failure to keep permanent records of sales of pistols, revolvers, and maxim silencers. This could be a source of information for criminal investigations.

The license requirement is set out in 40-12-40:

§ 40-12-40. Requirement.

Every person, firm, company, corporation or association, receiver or trustee, but not a governmental subdivision, engaged in any business, vocation, occupation, calling, or profession herein enumerated or who shall exercise any privilege hereinafter described for which a license or privilege tax is required shall first procure a state license, and a county license when so required, and shall pay for the same or shall pay for the exercise of such privilege the amounts hereinafter provided, and comply with all other provisions of this title.)

SECTION 4.

(a) Except as provided in subdivision (b), a public or private employer may restrict or prohibit its employees, including those with a permit issued or recognized under Section 13A-11-75, Code of Alabama 1975, from carrying firearms while on the employer's property or while engaged in the duties of the person's employment.

(This section allows public and private employers to prohibit employees from carrying firearms while at work or while engaged in work duties. It does not appear to make it a crime if the employee violates the prohibition, but is instead a basis to take an adverse employment action against the employee, though not specifically set out like

in Section 4(c)(1) in regards to Section 4(b). However, it could be charged as a possible violation of §13A-11-7, §13A-7-4, or §13A-11-73, or some other violation of state or federal law. Though the word carry is used, this would appear to mean both actual and constructive possession, in that an employer could prohibit an employee from not only possessing it on the employee's person, but also in a desk in the office or glove compartment in a work vehicle. This section applies broadly to all firearms, not just pistols as defined in this section. Firearm is defined as:

§ 13A-8-1. Definitions

The following definitions are applicable in this article unless the context otherwise requires:

(4) Firearm. A weapon from which a shot is discharged by gunpowder. THIS IS THE DEFINITION ADOPTED BY SECTION 7 OF THIS STATUTE.

§ 13A-11-62. Definitions

For purposes of this division, the following terms shall have the following meanings, unless the context clearly indicates otherwise:

(1) Firearm. Definition is same as provided in Section 13A-8-1(4).

(2) Rifle. Any weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed metallic cartridge to fire only a single projectile through a rifled bore for each pull of the trigger.

(3) Shotgun. A weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the

energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger.

(4) Short-barreled rifle. A rifle having one or more barrels less than 16 inches in length and any weapon made from a rifle (whether by alteration, modification, or otherwise) if such weapon, as modified, has an overall length of less than 26 inches.

(5) Short-barreled shotgun. A shotgun having one or more barrels less than 18 inches in length and any weapon made from a shotgun (whether by alteration, modification, or otherwise) if such weapon as modified has an overall length of less than 26 inches.

Pistol is defined in 13A-11-70 above.)

(b) A public or private employer may not restrict or prohibit the transportation or storage of a lawfully possessed firearm or ammunition in an employee's privately owned motor vehicle while parked or operated in a public or private parking area if the employee satisfies all of the following:

(1) The employee either:

- a. Has a valid concealed weapon permit; or
- b. If the weapon is any firearm legal for use for hunting in Alabama other than a pistol:
 - i. The employee possesses a valid Alabama hunting license;
 - ii. The weapon is unloaded at all times on the property;
 - iii. It is during a season in which hunting is permitted by Alabama law or regulation;
 - iv. The employee has never been convicted of any crime of violence as that term is defined in Section 13A-11-70, Code of Alabama 1975, nor of any crime set forth in Article 6 of Title 13A, Code of Alabama 1975, nor is subject to a Domestic Violence Order, as that term is defined in Section 13A-6-141, Code of Alabama 1975;
 - v. The employee does not meet any of the factors set forth in Section 13A-11-75(a)(1)a.1-8; and
 - vi. The employee has no documented prior workplace incidents involving the threat of physical injury or which resulted in physical injury.

(2) The motor vehicle is operated or parked in a location where it is otherwise permitted to be.

(3) The firearm is either of the following:

- a. In a motor vehicle attended by the employee, kept from ordinary observation within the person's motor vehicle.

b. In a motor vehicle unattended by the employee, kept from ordinary observation and locked within a compartment, container, or in the interior of the person's privately owned motor vehicle or in a compartment or container securely affixed to the motor vehicle.

(This section limits the circumstances under which an employee may possess a pistol or firearm at work in that employee's PRIVATELY owned vehicle. A pistol may be possessed ONLY if the person has a permit. The pistol may be stored loaded (see discussion regarding §13A-11-73 in Section 2). Otherwise, pistols are excluded. Firearms that are used for hunting AND are not pistols may be possessed if certain qualifications are met, which include the firearm being unloaded and it being an

appropriate hunting season. Further, the pistol (if a permit is possessed) or firearm used for hunting must be kept from ordinary observation. If the employee is not in the vehicle, the firearm or pistol must be locked in the employee's vehicle or a compartment securely attached to the vehicle.)

(c) If an employer believes that an employee presents a risk of harm to himself/herself or to others, the employer may inquire as to whether the employee possesses a firearm in his or her private motor vehicle. If the employee does possess a firearm in his or her private motor vehicle on the property of the employer, the employer may make any inquiry necessary to establish that the employee is in compliance with subsection (b) of this section.

(1) If the employee is not in compliance with subsection (b), the employer may take adverse employment action against the employee, in the discretion of the employer.

(2) If the employee has been in compliance with subsection (b) of this section at all times, the employer may not take adverse employment action against the employee based solely on the presence of the firearm.

(This relates to employer action against an employee specifically in regards to a violation of Section 4(b). It is not a criminal conduct unless it violates §13A-11-73 or some other state or federal law.)

(d) If an employer discovers by other means that an employee is transporting or storing a firearm in his or her private motor vehicle, the employer may not take any adverse employment action against the employee based solely on the possession of that firearm if the employee has complied with the requirements in subsection (b).

(This limits employer action against an employee.)

(e) Nothing in this section shall prohibit an employer from reporting to law enforcement a complaint based upon information and belief that there is credible evidence of any of the following:

(1) That the employee's motor vehicle contains:

- a. A firearm prohibited by state or federal law.
- b. Stolen property or a prohibited or illegal item other than a firearm.

(2) A threat made by an employee to cause bodily harm to themselves or others.

(An employer is not restricted from reporting a crime related to firearm possession.)

(f) If law enforcement officers, pursuant to a valid search warrant or valid warrantless search based upon probable cause, exigent circumstances, or other lawful exception to the search warrant requirement, discover a firearm prohibited by state or federal law, stolen property, or a prohibited or illegal item other than a firearm, the employer may take adverse employment action against the employee.

(This relates to employer action against the employee.)

(g) However, if the employee has fully complied with the requirements of subsection (b) and does not possess a firearm prohibited by state or federal law, that employee is entitled to recovery as specified in this subsection for any adverse employment action against the employee. If demand for the recovery has not been satisfied within 45 calendar days, the employee may file a civil action in the appropriate court of this state against the public or private employer. A plaintiff is entitled to seek an award of all of the following:

(1) Compensation, if applicable, for lost wages or benefits.

(2) Compensation, if applicable, for other lost remuneration caused by the termination, demotion, or other adverse action.

(This relates to employee's rights against the employer.)

(h) The license requirements set forth in sections (b) (1)a. and (b)(1)b.i. are for the purposes of this section only in order to determine whether an employee may transport or store a lawfully possessed firearm or ammunition in an employee's privately owned motor vehicle while parked or operated in a public or private parking area owned by the employer and shall not be construed to otherwise expand the requirements for the lawful possession of a firearm. These requirements shall not be interpreted to mean that the laws of the State of Alabama create any new connection between the possession of a hunting license and the right of a citizen to keep and bear arms.

(This subsection limits the use of hunting licenses as a condition for possessing a firearm.)

(i) Prohibitions regarding the carrying of a firearm under this section shall not apply to law enforcement officers engaged in the lawful execution of their official duties.

(This section exempts law enforcement officers in their official capacity.)

(j) Nothing in this section shall be construed to authorize the transportation, carrying, storing, or possession of a firearm or ammunition where prohibited by federal law.

(§18 U.S.C.922(g), §13A-11-72, and Section 10 of this Act apply to all parts of this section.)

SECTION 5.

(a) Except as provided in subsection 4(g), an employer and the owner and/or lawful possessor of the property on which the employer is situated shall be absolutely immune from any claim, cause of action or lawsuit that may be brought by any person seeking any form of damages that are alleged to arise, directly or indirectly, as a result of any firearm brought onto the property of the employer, owner or lawful possessor by an employee, including a firearm that is transported in an employee's privately owned motor vehicle.

(b) The presence of a firearm or ammunition on an employer's property under the authority of this act does not, by itself, constitute the failure by the employer to provide a safe workplace.

(c) For the purposes of this act, a public or private employer, or the employer's principal, officer, director, employee, or agent, does not have a duty:

(1) To patrol, inspect, or secure:

a. Any parking lot, parking garage, or other parking area the employer provides for employees; or

b. Any privately owned motor vehicle located in a parking lot, parking garage, or other parking area the employer provides for employees; or

(2) To investigate, confirm, or determine an employee's compliance with laws related to the ownership or possession of a firearm or ammunition or the transportation and storage of a firearm or ammunition.

(d) Nothing in this section shall be construed to provide immunity from liability to an employer, business entity or property owner for his or her own affirmative wrongful acts that cause harm, damage or injury to another.

(e) The denial by a Court of a Motion to Dismiss based on immunity grounds shall be appealable in the same manner as a final order to the appellate court which would otherwise have jurisdiction over the appeal from a final order of the action. Such appeal may only be filed within 42 days of the order denying the Motion to Dismiss. The filing of such appeal, the failure to file an appeal, or the affirmance of the denial of the Motion to Dismiss shall in no way affect the right of the Defendant, after entry of judgment, to appeal the denial of immunity. During the pendency of such appeal, the action in the trial court shall be stayed in all respects.

(f) Nothing in this act is intended to expand or limit the rights an employer or employee currently has under Section 25-5-1 et seq., Code of Alabama 1975.

(This section sets out the protections employers have. §25-5-1 et seq., Code of Alabama 1975 relates to worker's compensation.)

SECTION 6.

(a) In addition to any other place limited or prohibited by state or federal law, a person, including a person with a permit issued under Section 13A-11-75(a) (1) or recognized under Section 13A-11-85, Code of Alabama 1975, may not knowingly possess or carry a firearm in any of the following places without the express permission of a person or entity with authority over the premises:

(1) Inside the building of a police, sheriff, or highway patrol station.

(2) Inside or on the premises of a prison, jail, halfway house, community corrections facility, or other detention facility for those who have been charged with or convicted of a criminal or juvenile offense.

(3) Inside or on the premises of a facility which provides inpatient or custodial care of those with psychiatric, mental, or emotional disorders.

(4) Inside a courthouse, courthouse annex, a building in which a District Attorney's office is located, or a building in which a county commission or city council is currently having a regularly scheduled or specially called meeting.

(5) Inside any facility hosting an athletic event not related to or involving firearms which is sponsored by a private or public elementary or secondary school or any private or public institution of postsecondary education, unless the person has a permit issued under Section 13A-11-75(a)(1) or recognized under Section 13A-11-85.

(6) Inside any facility hosting a professional athletic event not related to or involving firearms, unless the person has a permit issued under Section 13A-11-75(a)(1) or recognized under Section 13A-11-85.

(In the absence of the express permission of the person/entity with authority over the premises, this Section forbids the possession of firearms in any of the places listed in subsections 1-6. For subsections 1-4, a person cannot possess a firearm on their person even if they have a concealed weapon permit. Subsections 5-6 allow a person to possess a firearm on their person only if they have a concealed weapon permit. A notice stating that firearms are prohibited must be posted. The word “firearm” is used, which has a broader meaning. A violation of this subsection is a Class C misdemeanor.)

The term “facility” is not defined in this Act. It is defined in other titles and chapters, such as in §22-6-23, §22-30E-3 and §33-2-200, Code of Alabama 1975. Those definitions are typically broad, one simply defining it as synonymous with property. Because “facility” is not defined in this Section, there is little guidance to be gleaned from its use as to how broad or narrow the term is used. It is important to note that if interpreted broadly, that would expand the area around which a permit would be required, limiting open carry. This would have a direct effect on towns with universities hosting sporting events. Implications from the prohibitions set out in Section 6(b) would also play a role in prohibiting weapons as to those with permits. However, the question lingers as to what is a facility and how far can the boundaries of the term “facility” and the boundaries associated with the prohibitions of 6(b) be established.

Criminal trespass applies.

Keep in mind 13A-11-59:

§ 13A-11-59. Possession of firearm at or near demonstration.

(a) For the purposes of this section, the following words and phrases shall have the meanings respectively ascribed to them in this subsection, except in those instances where the context clearly indicates a different meaning:

(1) **Demonstration.** Demonstrating, picketing, speechmaking or marching, holding of vigils and all other like forms of conduct which involve the communication or expression of views or grievances engaged in by one or more persons, the conduct of which has the effect, intent or propensity to draw a crowd or onlookers. Such term shall not include casual use of property by visitors or tourists which does not have an intent or propensity to attract a crowd or onlookers.

(2) **Firearm.** Any pistol, rifle, shotgun or firearm of any kind, whether loaded or not.

(3) **Law enforcement officer.** Any duly appointed and acting federal, state, county or municipal law enforcement officer, peace officer or investigating officer, or any military or militia personnel called out or directed by constituted authority to keep the law and order, and any park ranger while acting as such on the grounds of a public park and who is on regular duty and present to actively police and control the demonstration, and who is assigned this duty by his department or agency. Such term does not include a peace officer on strike or a peace officer not on duty.

(4) **Public place.** Any place to which the general public has access and a right to resort for business, entertainment or other lawful purpose, but does not necessarily mean a place devoted solely to the uses of the public. Such term shall include the front or immediate area or parking lot of any store, shop, restaurant, tavern, shopping

center or other place of business. Such term shall also include any public building, the grounds of any public building, or within the curtilage of any public building, or in any public parking lot, public street, right-of-way, sidewalk right-of-way, or within any public park or other public grounds.

(b) It shall be unlawful for any person, other than a law enforcement officer, to have in his or her possession or on his or her person or in any vehicle any firearm while participating in or attending any demonstration being held at a public place.

(c) It shall be unlawful for any person, other than a law enforcement officer as defined in subsection (a) of this section, to have in his or her possession or about his or her person or in any vehicle at a point within 1,000 feet of a demonstration at a public place, any firearm after having first been advised by a law enforcement officer that a demonstration was taking place at a public place and after having been ordered by such officer to remove himself or herself from the prescribed area until such time as he or she no longer was in possession of any firearm. This subsection shall not apply to any person in possession of or having on his or her person any firearm within a private dwelling or other private building or structure.

(d) Any person violating any of the provisions of this section shall be guilty of a misdemeanor and shall be punished as provided by law.)

(b) Notwithstanding the provisions of subsection (a), a person, including a person with a permit issued under Section 13A-11-75(a)(1) or recognized under Section 13A-11-85, Code of Alabama 1975, may not, without the express permission of a person or entity with authority over the premises, knowingly possess or carry a firearm inside any building or facility to which access of unauthorized persons and prohibited articles is limited during normal hours of operation by the continuous posting of guards and the use of other security features, including, but not limited to, magnetometers, key cards, biometric screening devices, or turnstiles or other physical barriers.

(In the absence of the express permission of the person/entity with authority over the premises, this section forbids the possession of firearms, even with a permit, in any location that has security features AND guards posted during normal working hours. This is the only way to keep all firearms, both concealed and open, out of a building unless the building is listed in subsections (a)(1-4) above. This subsection does not specifically list the punishment designation, and may or may not be a violation. The argument that it is a violation is made pursuant to §13A-5-4, the fact that the other subsections were listed as Class C misdemeanors, and because it is referenced in 6(d), which is a Class C misdemeanor. The legislative intent is likely that this be criminal conduct based on the language used and its inclusion in Title 13A. Because the punishment was not specifically listed for subsection (b), the lowest punishment designation will be applied. To be safe, it will be best to charge an additional crime such as disorderly conduct or criminal trespass. A person's license, invitation, or privilege to enter or remain may always be revoked for any reason that does not violate their civil rights.)

Security features are not limited to what is listed in the subsection, and guard is not defined. Thus, this section could be construed broadly as to both. Cameras could suffice as barriers. Further, based on the wording, there is no requirement expressly stated that a guard be physically present at each building or facility. Thus a guard at central location monitoring the cameras may suffice, though the intent is likely that a guard be posted at each building or facility. For example, Wal-Mart has what could be considered a guard since there is always an employee monitoring the main entrance and there are cameras. Another example is a facility that limits access to all buildings on the property by means of a fence around the property and a guard shack that all must enter through. That may suffice since the building or facility restricts access by means of guards and barriers. A notice stating that firearms are prohibited must be posted. The word "firearm" is used, which has a broader meaning.

§13A-3-20 defines both building and premises. They are not defined in the Act. The definitions are:

Building. Any structure which may be entered and utilized by persons for business, public use, lodging or the storage of goods, and includes any vehicle, aircraft, or watercraft used for the lodging of persons or carrying on business therein. Each unit of a building consisting of two or more units separately occupied or secured is a separate building.

Premises. The term includes any building, as defined in this section, and any real property.

§13A-7-1 defines both terms as well, and gives a more expansive definition of building:

Premises. Such term includes any "building," as herein defined, and any real property.

Building. Any structure which may be entered and utilized by persons for business, public use, lodging or the storage of goods, and such term includes any vehicle, aircraft or watercraft used for the lodging of persons or carrying on business therein, ***and such term includes any railroad box car or other rail equipment or trailer or tractor trailer or combination thereof.*** Where a building consists of two or more units separately occupied or secure, each shall be deemed both a separate building ***and a part of the main building.***

Dictionary.com defines “guards” as:

a person or group of persons that guards, protects, or keeps a protective or restraining watch.

a person who keeps watch over prisoners or others under restraint.

a body of people, especially soldiers, charged with guarding a place from disturbance, theft, fire, etc.

a close watch, as over a prisoner or other person under restraint: to be kept under guard.

a device, appliance, or attachment that prevents injury, loss, etc.

Merriam-Webster defines “guards” as:

one assigned to protect or oversee another: as

a person or a body of persons on sentinel duty

plural : troops attached to the person of the sovereign

Thus, a guard is what you make it.)

(c) The person or entity with authority over the premises set forth in subsections (a)(1)-(6) and subsection (b) shall place a notice at the public entrances of such premises or buildings alerting those entering that firearms are prohibited.

(A notice stating that firearms are prohibited must be posted. Based on the “shall” language, it may be a defense to a misdemeanor charge if signs are not posted, or it may nullify subsections (a)-(b). It is unclear how subsection (c) works in conjunction with subsections (a)-(b), (d), and (e). It is further unclear as to how many signs must be posted and what constitutes an entrance. Though “entrances” is plural, there is precedent for plural actually being singular, such as with precursor chemicals being interpreted as meaning precursor chemical, singular. Premises is defined broadly in Title 13A as buildings and any real property. It is not defined in this Act. It is possible that a sign at the entrance(s) of the premises (such as a campus) will suffice rather than each building based on the use of the word “or” between premises and buildings.)

(d) Except as provided in subsections (a)(5) and (a)(6), any firearm on the premises of any facility set forth in subsection (a)(1), or subsections (a)(4)-(6), or subsection (b) must be kept from ordinary observation and locked within a compartment or in the interior of the person's motor vehicle or in a compartment or container securely affixed to the motor vehicle.

(This subsection allows for the possession of a firearm in a vehicle at the facilities where a person is not allowed to have it on their person, except for prisons, jails, halfway houses, community corrections facilities, other detention facilities, and facilities that provide inpatient or custodial care of those with psychiatric, mental, or emotional disorders. The firearm must be kept from ordinary observation and locked within a compartment, the interior of the motor vehicle, or a compartment/container securely affixed to the motor vehicle. §13A-11-73(b) (Section 2) requires that a pistol be stored unloaded if the person does not have a permit. Federal and state prohibitions apply, as does Section 10. A violation of this subsection is a Class C misdemeanor.)

(e) A violation of subsections (a) or (d) is a Class C misdemeanor.

(Note that subsection 6(b) is not included.)

(f) This section shall not prohibit any person from possessing a firearm within the person's residence or during ingress or egress thereto.

(g) Prohibitions regarding the carrying of a firearm under this section shall not apply to law enforcement officers engaged in the lawful execution of their official duties.

(h) Nothing in this section shall be construed to authorize the carrying or possession of a firearm where prohibited by federal law.

SECTION 7.

(a) The purpose of this section is to establish within the Legislature complete control over regulation and policy pertaining to firearms, ammunition, and firearm accessories in order to ensure that such regulation and policy is applied uniformly throughout this state to each person subject to the state's jurisdiction and to ensure protection of the right to keep and bear arms recognized by the Constitutions of the State of Alabama and the United States. This section is to be liberally construed to accomplish its purpose.

(This entire section vests complete control for regulating firearms in the control of the legislature. Ultimately, it appears that there is not much effect to the laws already in place that this Act repeals. Police officers may obtain warrants for misdemeanor firearms offenses through district court if municipal ordinances are voided, and there does not appear to be any change as to laws regarding discharging a firearm if passed by municipalities and counties. See discussion is Section 1.)

(b) For the purposes of this section, the following words shall have the following meanings:

(1) AMMUNITION. Fixed cartridge ammunition, shotgun shells, the individual components of fixed cartridge ammunition and shotgun shells, projectiles for muzzle-loading firearms, and any propellant used in firearms or ammunition.

(2) EXPRESSLY AUTHORIZED BY A STATUTE OF THIS STATE. The authority of a political subdivision to regulate firearms, ammunition, or firearm accessories that is granted by a duly enacted state law that specifically mentions firearms, a particular type of firearm, ammunition, or a particular type of ammunition.

(3) FIREARM ACCESSORY. A device specifically designed or adapted to enable the wearing or carrying about one's person, or the storage or mounting in or on a conveyance, of a firearm, or an attachment or device specifically designed or adapted to be inserted into or affixed onto a firearm to enable, alter, or improve the functioning or capabilities of the firearm.

(4) FIREARM. This term has the same meaning as in Section 13A-8-1(4), Code of Alabama 1975.

(5) PERSON ADVERSELY AFFECTED. Any of the following:

a. A resident of this state who may legally possess a firearm under the laws of this state and the United States and who is either of the following:

1. Subject to any manner of regulation alleged to be promulgated or enforced in violation of this section, whether or not specific enforcement action has been initiated or threatened against that person or another person.

2. If the person were present in the political subdivision in question, subject to any manner of regulation alleged to be promulgated or enforced in violation of this section, whether or not specific enforcement action has been initiated or threatened against that person or another person.

b. A person who otherwise has standing under the laws of this state to bring an action under subsection (f).

c. A membership organization if its members would otherwise have standing to sue in their own right, if the interests it seeks to protect are germane to the organization's purpose, and neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.

(6) POLITICAL SUBDIVISION. A county, incorporated city, unincorporated city, public local entity, public-private partnership, and any other public entity of a county or city commonly considered to be a political subdivision of the state.

(This definition may prove to have a substantial impact for some entities attempting to regulate the possession of firearms.)

(7) PUBLIC OFFICIAL. Any person elected to public office, whether or not that person has taken office, by the vote of the people of a political subdivision or its instrumentalities, including governmental corporations, and any person appointed to a position at the municipal level of government or its instrumentalities, including governmental corporations.

(8) REASONABLE EXPENSES. The expenses involved in litigation, including, but not limited to, expert witness fees, court costs, and compensation for loss of income.

(c) Except as otherwise provided in this act or as expressly authorized by a statute of this state, the Legislature hereby occupies and preempts the entire field of regulation in this state touching in any way upon firearms, ammunition, and firearm accessories to the complete exclusion of any order, ordinance, or rule promulgated or enforced by any political subdivision of this state.

(d) The authority of a political subdivision to regulate firearms, ammunition, or firearm accessories shall not be inferred from its proprietary authority, home rule status, or any other inherent or general power.

(e) Any existing orders, ordinances, or rules promulgated or enforced contrary to the terms of this section are null and void and any future order, ordinance, or rules shall comply with this section.

(f)(1) A person adversely affected by any order, ordinance, or rule promulgated in violation of this section may file a petition with the Attorney General requesting that he or she bring an action in

circuit court for declarative and injunctive relief. The petition must be signed under oath and under penalty of perjury and must include specific details regarding the alleged violations.

(This limits the reason for which an adversely affected party may file a grievance. They may file only for orders, ordinances, and/or rules made in violation of this section. That does not involve an officer approaching an individual if not pursuant to rules established by the law enforcement agency the officer/deputy works for. Section 10 also states this Section does not limit law enforcement. However, other law applies to law enforcement contact, such as the Fourth Amendment.)

(2) If, after investigation of the enactment or adoption of the order, ordinance, or rule, the Attorney General determines that there is reasonable cause to proceed with an action, he or she shall provide the political subdivision or public official enacting or adopting the order, ordinance, or rule 60 days' notice of his or her intent to file an action. Upon the expiration of the 60 days' notice, the Attorney General may file the suit.

(3) If, after investigation of the enactment or adoption of the order, ordinance, or rule, the Attorney General determines that there is no reasonable cause to proceed with an action, he or she shall publicly state in writing the justification for the determination not to file suit.

(4) The Attorney General shall either bring an action or publicly state, within 90 days of receipt of the petition, in the written justification why a violation of the spirit of this section, specifically subsections (a) and (c), has not occurred.

(5) The court may award reimbursement for actual and reasonable expenses to a person adversely affected if an action under this subsection results in a final determination in favor of the person adversely affected.

(g) This section shall not be construed to prevent any of the following:

(1) A duly organized law enforcement agency of a political subdivision from promulgating and enforcing rules pertaining to firearms, ammunition, or firearm accessories that it issues to or that are used by the political subdivision's peace officers in the course of their official duties.

(2) An employer from regulating or prohibiting an employee's carrying or possession of firearms, firearm accessories, or ammunition during and in the course of the employee's official duties.

(3) A prosecutor, court or administrative law judge from hearing and resolving a case or controversy or issuing an opinion or order on a matter within its jurisdiction.

(4) The enactment or enforcement of a generally applicable zoning or business ordinance that includes firearms businesses along with other businesses, provided that an ordinance designed or enforced effectively to restrict or prohibit the sale, purchase, transfer, manufacture, or display of

firearms, ammunition, or firearm accessories that is otherwise lawful under the laws of this state is in conflict with this section and is void.

(This is the adoption of what was repealed in Section 1 relating to ordinances. This was originally in §11-80-11(b)(2), Code of Alabama 1975. The intent was to have all legislation related to firearms contained in one section.)

(5) A political subdivision from enacting and enforcing rules of operation and use for any firearm range owned or operated by the political subdivision.

(6) A political subdivision from sponsoring or conducting any firearm-related competition or educational or cultural program and from enacting and enforcing rules for participation in or attendance at such program, provided that nothing in this section authorizes or permits a political subdivision to offer remuneration for the surrender or transfer of a privately owned firearm to the political subdivision or another party as a method of reducing the number of privately owned firearms within the political subdivision.

(7) Any official of a political subdivision, a sheriff, or other law enforcement officer with appropriate authority and jurisdiction from enforcing any law enacted by the Legislature.

(8) A sheriff of a county from acting on an application for a permit under Section 13A-11-75, Code of Alabama 1975.

(9) A political subdivision from leasing public property to another person or entity for a gun show or other firearm-related event on terms agreeable to both parties.

(10) The adoption or enforcement by a county or municipality of ordinances which make the violation of a state firearm law a violation of an ordinance, provided that the elements of the local ordinance may not differ from the state firearm law, nor may the local ordinance impose a higher penalty than what is imposed under the state firearm law.

(This is the adoption of what was repealed in Section 1 relating to the adoption of state firearms laws. This was originally in §11-80-11(b)(2), Code of Alabama 1975. The intent was to have all legislation related to firearms contained in one section.)

(11) A municipality from regulating the discharge of firearms within the limits of the municipality or a county from exercising any authority it has under law, to regulate the discharge of firearms within the jurisdiction of the county. The discharge of a firearm in defense of one's self or family or in defense of one's property may not be construed to be a violation of state law or any ordinance or rule of a political subdivision of this state.

(This is the adoption of what was repealed in Section 1 relating to criminalizing the discharge of a firearm. This was originally in §11-80-11(b)(1), Code of Alabama 1975.)

The intent was to have all legislation related to firearms contained in one section. However, discharging a firearm in defense of one's self, family, or property is not a violation of state law or ordinance. However, the result of the discharge may be a crime, such as reckless endangerment or discharging a firearm into a vehicle or dwelling. Further, a self-defense evaluation should be conducted in this situation to determine if those statutes, or others such as murder, manslaughter, criminally negligent homicide, or assault, are otherwise violated.)

(12) A county or a municipality from exercising any authority it has to assess, enforce, and collect generally applicable sales taxes, use taxes, and gross receipts taxes in the nature of sales taxes as defined by Section 40-2A-3(8), Code of Alabama 1975, on the retail sale of firearms, ammunition, and firearm accessories along with other goods, provided that no such tax imposed by a county or municipality may apply at a higher rate to firearms, ammunition, or firearm accessories than the general sales tax rate of the jurisdiction.

(This is the adoption of what was repealed in Section 1 relating to taxes. This was originally in §11-80-11(b)(2), Code of Alabama 1975. The intent was to have all legislation related to firearms contained in one section.)

§ 40-2A-3. Definitions. For the purposes of this chapter, the following terms shall have the following meanings:

(8) Gross receipts tax in the nature of a sales tax. A privilege or license tax, imposed by a municipality or county, measured by gross receipts or gross proceeds of sale and which: (i) was in effect on or before February 25, 1997, or is an amendment to a tax which was in effect on that date; (ii) is levied against those selling tangible personal property at retail, those operating places of amusement or entertainment, those making street deliveries, and those leasing or renting tangible personal property; and (iii) is due and payable to a county or municipality monthly or quarterly.)

SECTION 8.

Section 13A-3-23, Code of Alabama 1975, is amended to read as follows:

"§13A-3-23.

"(a) A person is justified in using physical force upon another person in order to defend himself or herself or a third person from what he or she reasonably believes to be the use or imminent use of unlawful physical force by that other person, and he or she may use a degree of force which he or she reasonably believes to be necessary for the purpose. A person may use deadly physical force, and is

legally presumed to be justified in using deadly physical force in self-defense or the defense of another person pursuant to subdivision (4), if the person reasonably believes that another person is:

"(1) Using or about to use unlawful deadly physical force.

"(2) Using or about to use physical force against an occupant of a dwelling while committing or attempting to commit a burglary of such dwelling.

"(3) Committing or about to commit a kidnapping in any degree, assault in the first or second degree, burglary in any degree, robbery in any degree, forcible rape, or forcible sodomy.

"(4) Using or about to use physical force against an owner, employee, or other person authorized to be on business property when the business is closed to the public while committing or attempting to commit a crime involving death, serious physical injury, robbery, kidnapping, rape, sodomy, or a crime of a sexual nature involving a child under the age of 12."

"(4) (5) In the process of unlawfully and forcefully entering, or has unlawfully and forcefully entered, a dwelling, residence, business property, or occupied vehicle, or federally licensed nuclear power facility, or is in the process of sabotaging or attempting to sabotage a federally licensed nuclear power facility, or is attempting to remove, or has forcefully removed, a person against his or her will from any dwelling, residence, business property, or occupied vehicle when the person has a legal right to be there, and provided that the person using the deadly physical force knows or has reason to believe that an unlawful and forcible entry or unlawful and forcible act is occurring. The legal presumption that a person using deadly physical force is justified to do so pursuant to this subdivision does not apply if:

(Adds "business property" to the list of places deadly force may be used during an unlawful and forceful entering.)

"a. The person against whom the defensive force is used has the right to be in or is a lawful resident of the dwelling, residence, or vehicle, such as an owner or lessee, and there is not an injunction for protection from domestic violence or a written pretrial supervision order of no contact against that person;

"b. The person sought to be removed is a child or grandchild, or is otherwise in the lawful custody or under the lawful guardianship of, the person against whom the defensive force is used;

"c. The person who uses defensive force is engaged in an unlawful activity or is using the dwelling, residence, or occupied vehicle to further an unlawful activity; or

"d. The person against whom the defensive force is used is a law enforcement officer acting in the performance of his or her official duties.

"(b) A person who is justified under subsection (a) in using physical force, including deadly physical force, and who is not engaged in an unlawful activity and is in any place where he or she has the right to be has no duty to retreat and has the right to stand his or her ground.

"(c) Notwithstanding the provisions of subsection (a), a person is not justified in using physical force if:

"(1) With intent to cause physical injury or death to another person, he or she provoked the use of unlawful physical force by such other person.

"(2) He or she was the initial aggressor, except that his or her use of physical force upon another person under the circumstances is justifiable if he or she withdraws from the encounter and effectively communicates to the other person his or her intent to do so, but the latter person nevertheless continues or threatens the use of unlawful physical force.

"(3) The physical force involved was the product of a combat by agreement not specifically authorized by law.

"(d) A person who uses force, including deadly physical force, as justified and permitted in this section is immune from criminal prosecution and civil action for the use of such force, unless the force was determined to be unlawful.

"(e) A law enforcement agency may use standard procedures for investigating the use of force described in subsection (a), but the agency may not arrest the person for using force unless it determines that there is probable cause that the force used was unlawful."

SECTION 9.

Section 11-45-1.1, Code of Alabama 1975, relating to the authority of a municipality to enact ordinances relating to handguns, is repealed.

(See discussion in Section 1. See Section 7 as to the intent that all laws regarding firearms be left solely to the State Legislature. Further, see Section 7(g)(10)-(11) regarding municipalities and counties having the authority to pass laws regarding discharging a firearm and adopting state laws that mirror the elements and penalties as they relate to firearms.)

§ 11-45-1.1. Handguns.

No incorporated municipality shall have the power to enact any ordinance, rule, or regulation which shall tax, restrict, prevent, or in any way affect the possession or

ownership of handguns by the citizens of this state. The entire subject matter of handguns is reserved to the State Legislature. This section shall not be construed to limit or restrict the power of a municipality to adopt ordinances which make the violation of a state handgun law a violation of a municipal ordinance to the same extent as other state law violations, or to limit or restrict the power of a municipal court to exercise concurrent jurisdiction with the district court over violations of state handgun laws which may be prosecuted as breaches of a municipal ordinance.

SECTION 10.

Nothing in this act shall be construed to prohibit law enforcement personnel who have reasonable suspicion from acting to prevent a breach of the peace or from taking action to preserve public safety.

(This is a catch all provision that should apply to all sections of this Act and gives officers clearance when dealing with pistol or firearm possession issues. The fundamental rule of statutory construction is that a court is under a duty to ascertain and effectuate the legislative intent as expressed in the statute. This section is established separately, and not restricted in any way. It is not included as a part of a separate section to limit a specific section. Further, the language of Section 10 begins with language stating that Section 10 is not to be limited by any other part of the Act. It is another component of statutory construction that words are given their plain and usual meaning. Therefore, due to the stand alone nature of the Section and the language used, it is reasonable to argue that the legislative intent is that Section 10 applies to all sections of the Act.

The rebuttable presumption in §13A-11-7(c) does not prevent law enforcement from approaching an individual carrying a firearm openly, if that officer can point to a specific, particularized, and articulable reason that criminal conduct may be occurring or that the officer fears for his/her safety. Reasonable suspicion requires the officer to articulate something more than an inchoate and unparticularized suspicion or hunch. The Fourth Amendment requires some minimal level of objective justification for making the stop, but the level of suspicion is less than that required for probable cause. Courts look at the totality of the circumstances to see if the officer had a particularized and objective basis for suspecting wrongdoing. That allows officers to draw on their experience and specialized training to make inferences from and deductions about the cumulative information available to them that might elude an

untrained person. The seizure is judged by the totality of the circumstances on two parts: 1) was the seizure justified, and 2) were the officer's actions related in scope to the circumstances that justified the seizure. An investigative detention must be no longer than necessary to effectuate the purpose of the stop, and the investigative methods used should be the least intrusive means reasonably available to verify or dispel the officer's suspicion in a short period of time. The relevant inquiry in determining the presence of reasonable suspicion is not whether conduct is innocent or guilty, but the degree of suspicion that attaches to particular types of non-criminal acts. Courts should give great deference to the training and experience of police officers, because it is the experience of an officer that allows him to bring the factors together into a meaningful whole demonstrating reasonable suspicion of criminal activity. Thus, an officer may detain a person for reasonable suspicion of criminal activity, and seize the weapon during any detention for officer safety if the officer has a specific, particularized, and articulable reason to fear for his/her safety.

An officer is not prohibited from simply approaching and talking to an individual just because that officer is in uniform and working. As long as there is not any force or show of authority, and a reasonable person would feel free to leave, that contact is not a seizure. Therefore, even if officers do not possess reasonable suspicion to detain a person briefly, they may still speak to that person.

Officers should keep in mind that they have a number of options if they believe an individual poses a danger, including speaking with a person, detaining a person for investigation, seizing a firearm during that investigation, and multiple charging options.

Breach of the peace is not defined in the Title 13A. Breach of the peace was a common law concept. In §12-8-1(2), Code of Alabama 1975, it is included with synonymous terms for purposes of conduct that can lead to contempt: [a] breach of the peace, boisterous conduct, violent disturbance or any other act calculated to disturb or obstruct the administration of justice, committed in the presence of the court or so near thereto as to have that effect.

§13A-11-7(a)(1) now covers the sort of public activity that was traditionally within the common law concept of breach of the peace per the commentary to that section. That section is now amended to read as follows:

"(a) A person commits the crime of disorderly conduct if, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, he or she does any of the following:

"(1) Engages in fighting or in violent tumultuous or threatening behavior; or.

Therefore, Section 10 is applicable to all parts of the Act with broad application based on the broad language regarding a breach of the peace set out in §12-8-1(2) and §13A-11-7(a)(1), and the wording in the final part of Section 10, "nothing...shall prohibit law enforcement...from taking action to preserve public safety.")

SECTION 11.

Although this bill would have as its purpose or effect the requirement of a new or increased expenditure of local funds, the bill is excluded from further requirements and application under Amendment 621, now appearing as Section 111.05 of the Official Recompilation of the Constitution of Alabama of 1901, as amended, because the bill defines a new crime or amends the definition of an existing crime.

SECTION 12.

The provisions of this act are severable. If any part of this act is declared invalid or unconstitutional, that declaration shall not affect the part which remains.

SECTION 13.

This act shall become effective on the first day of the third month following its passage and approval by the Governor, or its otherwise becoming law.

NOTES

If you are a law enforcement officer and you have questions regarding your obligations, duties, responsibilities or rights as they may relate to Act 2013-283 or any other Act of Alabama, you are encouraged to consult your Sheriff, Chief of Police, Commander or your local District Attorney for assistance.

If you are a private citizen, business owner, private property owner or other entity that may have questions or concerns regarding this legislation you are encouraged to consult your attorney or other legal professional. This document is not a substitute for your own legal research. Statements within this document are merely an analysis of Act 2013-283 and opinions may vary as to the application the Act or portions thereof.

FOR A COPY OF ACT 2013-283

To obtain a copy of Act 2013-283, we have created a shortcut to the Secretary of State link for Act 2013-283. <http://bit.ly/13nChc4> This link will take you to the ‘Legislative Acts Details’ window of the Secretary of State’s link to Act 2013-283. Simply click the ‘view image’ window and a PDF of Act 2013-283 will appear.

If this link is disabled for any reason, go to The Secretary of State’s web site at www.sos.alabama.gov. Click the link to the left that reads ‘Government Records’. That will open a list in the same window. Click the link for ‘Legislative Acts’. This will open an option for ‘Act Numbers’. Click that Link and you will be taken to a page with the details of Act 2013-238. Click ‘View Image’ and a PDF of Act 2013-283 will appear. It may be printed or downloaded from this point.