

## Committee on Criminal Justice

### **CS/CS/CS/HB 45 — Regulation of Firearms and Ammunition**

by Judiciary Committee; Community and Military Affairs Subcommittee; Criminal Justice Subcommittee and Rep. Gaetz (Rules Committee; Community Affairs Committee; Criminal Justice Committee; and Senator Negron)

This bill expands and clarifies state preemption of the regulation of firearms and ammunition. Section 790.33, F.S., is also reorganized.

The bill expands “the whole field of regulation of firearms and ammunition” (including administrative regulations or rules adopted by local or state governments) to include the storage of those items.

Subsection (2) of s. 790.33, F.S., is stricken by the bill. This is the subsection of the Joe Carlucci Act that allows a county the option to adopt a waiting period, not exceeding three days, for the purchase of a handgun. It pre-dates the constitutional amendment and constitutionally required statutory enactment. Eliminating this subsection of the Act merely clarifies the current state of the law regarding the three-day waiting period, which is found in the Florida Constitution and s. 790.0655, F.S.

The bill retains the policy and intent language from the original Act, currently found in subsection (3) of s. 790.33, F.S. It also adds language setting forth the 2011 Legislature’s intent to deter and prevent the violation of the preemption law.

Any person, county, agency, municipality, district, or other entity that enacts or causes to be enforced any local ordinance or administrative rule or regulation faces a civil fine of up to \$5,000 if the violation is knowing and willful. Any such violation is cause for termination of employment or contract or for removal from office by the Governor.

Except as required by applicable law, public funds may not be used to defend or reimburse the unlawful conduct of any person found to have committed a knowing and willful violation of this section.

Civil actions are also provided for in the bill. A person or organization whose membership is adversely affected by an alleged violation of the preemption law may seek declaratory and injunctive relief. The bill also provides for the assessment of actual damages up to \$100,000. The court is required to award a prevailing plaintiff’s attorney fees, including a contingency fee multiplier, as well as related costs. Additionally, the bill provides that interest shall accrue on the fees, costs, and damages awarded the plaintiff, retroactive to the date the suit is filed.

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

- Law enforcement agencies from enacting and enforcing firearm-related regulations within their agencies;
- The entities listed in paragraphs (2)(a)-(i) from regulating or prohibiting employees from carrying firearms or ammunition during the course of their official duties, except as provided in s. 790.251, F.S.;
- A court or administrative law judge from resolving a case or issuing an order or opinion on any matter within the court or judge's jurisdiction; or
- The Fish and Wildlife Conservation Commission from regulating the use of firearms or ammunition as a method of taking wildlife and regulating the shooting ranges managed by the commission.

If approved by the Governor, these provisions take effect October 1, 2011.

*Vote: Senate 30-8; House 85-33*