



488558

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/21/2011	.	
	.	
	.	
	.	

---

---

The Committee on Community Affairs (Wise) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause and insert:

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

790.33 Field of regulation of firearms and ammunition preempted.—

(1) PREEMPTION.—Except as expressly provided by the State Constitution or general law, the Legislature hereby declares that it is occupying the whole field of regulation of firearms and ammunition, including the purchase, sale, transfer,



488558

13 taxation, manufacture, ownership, possession, storage, and  
14 transportation thereof, to the exclusion of all existing and  
15 future county, city, town, or municipal ordinances or any  
16 administrative regulations or rules adopted by local or state  
17 government relating thereto. Any such existing ordinances,  
18 rules, or regulations are hereby declared null and void. ~~This~~  
19 ~~subsection shall not affect zoning ordinances which encompass~~  
20 ~~firearms businesses along with other businesses. Zoning~~  
21 ~~ordinances which are designed for the purpose of restricting or~~  
22 ~~prohibiting the sale, purchase, transfer, or manufacture of~~  
23 ~~firearms or ammunition as a method of regulating firearms or~~  
24 ~~ammunition are in conflict with this subsection and are~~  
25 ~~prohibited.~~

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

27 ~~(a) Any county may have the option to adopt a waiting-~~  
28 ~~period ordinance requiring a waiting period of up to, but not to~~  
29 ~~exceed, 3 working days between the purchase and delivery of a~~  
30 ~~handgun. For purposes of this subsection, "purchase" means~~  
31 ~~payment of deposit, payment in full, or notification of intent~~  
32 ~~to purchase. Adoption of a waiting-period ordinance, by any~~  
33 ~~county, shall require a majority vote of the county commission~~  
34 ~~on votes on waiting-period ordinances. This exception is limited~~  
35 ~~solely to individual counties and is limited to the provisions~~  
36 ~~and restrictions contained in this subsection.~~

37 ~~(b) Ordinances authorized by this subsection shall apply to~~  
38 ~~all sales of handguns to individuals by a retail establishment~~  
39 ~~except those sales to individuals exempted in this subsection.~~  
40 ~~For purposes of this subsection, "retail establishment" means a~~  
41 ~~gun shop, sporting goods store, pawn shop, hardware store,~~



488558

42 ~~department store, discount store, bait or tackle shop, or any~~  
43 ~~other store or shop that offers handguns for walk-in retail sale~~  
44 ~~but does not include gun collectors shows or exhibits, or gun~~  
45 ~~shows.~~

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

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

52 ~~1. Individuals who are licensed to carry concealed firearms~~  
53 ~~under the provisions of s. 790.06 or who are licensed to carry~~  
54 ~~concealed firearms under any other provision of state law and~~  
55 ~~who show a valid license;~~

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

60 ~~3. A law enforcement or correctional officer as defined in~~  
61 ~~s. 943.10;~~

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

63 ~~5. Sales or transactions between dealers or between~~  
64 ~~distributors or between dealers and distributors who have~~  
65 ~~current federal firearms licenses; or~~

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

70 ~~(2) (3) POLICY AND INTENT.-~~



488558

71 (a) It is the intent of this section to provide uniform  
72 firearms laws in the state; to declare all ordinances and  
73 regulations null and void which have been enacted by any  
74 jurisdictions other than state and federal, which regulate  
75 firearms, ammunition, or components thereof; to prohibit the  
76 enactment of any future ordinances or regulations relating to  
77 firearms, ammunition, or components thereof unless specifically  
78 authorized by this section or general law; and to require local  
79 jurisdictions to enforce state firearms laws.

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

87 (3) PROHIBITIONS; PENALTIES. -

88 (a) Any person who knowingly and willfully violates the  
89 Legislature's occupation of the whole field of regulation of  
90 firearms and ammunition, as declared in subsection (1), by  
91 enacting or enforcing any local ordinance or administrative rule  
92 or regulation commits a noncriminal violation as defined in s.  
93 775.08 and punishable as provided in s. 775.082 and s. 775.083.

94 (b) The state attorney in the appropriate jurisdiction  
95 shall investigate complaints of noncriminal violations of this  
96 section and, where the state attorney determines that probable  
97 cause of a violation exists, shall prosecute violators in the  
98 circuit court where the complaint arose. Any state attorney who  
99 fails to execute his or her duties under this section may be



488558

100 held accountable under the appropriate Florida rules of  
101 professional conduct.

102 (c) If the court determines that the violation was knowing  
103 and willful the court shall assess a fine of not less than  
104 \$5,000 and not more than \$100,000 against the elected or  
105 appointed local government official or officials or  
106 administrative agency head under whose jurisdiction the  
107 violation occurred. The elected or appointed local government  
108 official or officials or administrative agency head shall be  
109 personally liable for the payment of all fines, costs and fees  
110 assessed by the court for the noncriminal violation.

111 (d) Except as required by s. 16, Art. I of the State  
112 Constitution or the Sixth Amendment to the United States  
113 Constitution, public funds may not be used to defend the  
114 unlawful conduct of any person charged with a knowing and  
115 willful violation of this section.

116 (e) A knowing and willful violation of any provision of  
117 this section by a person acting in an official capacity for any  
118 of the entities specified in this section or otherwise under  
119 color of law shall be cause for immediate termination of  
120 employment or contract or removal from office by the Governor.

121 (f) A person or an organization whose membership is  
122 adversely affected by any ordinance, regulation, measure,  
123 directive, rule, enactment, order, or policy promulgated or  
124 enforced in violation of this section may file suit in an  
125 appropriate court for declarative and injunctive relief and for  
126 all actual and consequential damages attributable to the  
127 violation. A court shall award the prevailing plaintiff in any  
128 such suit:



488558

129        1. Attorney's fees in the trial and appellate courts to be  
130 determined by the rate used by the federal district court with  
131 jurisdiction over the political subdivision for civil rights  
132 actions;

133        2. Liquidated damages of three times the attorney's fees  
134 under subparagraph 1.; and

135        3. Litigation costs in the trial and appellate courts.

136  
137 Interest on the sums awarded pursuant to this subsection shall  
138 accrue at 15 percent per annum from the date on which suit was  
139 filed. Where applicable, payment may be secured by seizure of  
140 any vehicles used or operated for the benefit of any elected  
141 officeholder or official found to have violated this section if  
142 not paid within 72 hours after the order's filing.

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

144        (a) Zoning ordinances that encompass firearms businesses  
145 along with other businesses, except that zoning ordinances that  
146 are designed for the purpose of restricting or prohibiting the  
147 sale, purchase, transfer, or manufacture of firearms or  
148 ammunition as a method of regulating firearms or ammunition are  
149 in conflict with this subsection and are prohibited;

150        (b) A duly organized law enforcement agency from enacting  
151 and enforcing regulations pertaining to firearms, ammunition, or  
152 firearm accessories issued to or used by peace officers in the  
153 course of their official duties;

154        (c) Except as provided in s. 790.251, any entity covered by  
155 this section from regulating or prohibiting the carrying of  
156 firearms and ammunition by an employee of the entity during and  
157 in the course of the employee's official duties; or



488558

158       (d) A court or administrative law judge from hearing and  
159 resolving any case or controversy or issuing any opinion or  
160 order on a matter within the jurisdiction of that court or  
161 judge.

162       (e) The Florida Fish and Wildlife Conservation Commission  
163 from regulating the use of firearms or ammunition as a method of  
164 taking wildlife and regulating the shooting ranges managed by  
165 the Commission.

166       (5) ~~(b)~~ SHORT TITLE.—As created by chapter 87-23, Laws of  
167 Florida, this section ~~shall be known and~~ may be cited as the  
168 “Joe Carlucci Uniform Firearms Act.”

169       Section 2. This act shall take effect upon becoming a law.

171 ===== T I T L E   A M E N D M E N T =====

172 And the title is amended as follows:

173       Delete everything before the enacting clause  
174 and insert:

175                               A bill to be entitled  
176       An act relating to the regulation of firearms and  
177       ammunition; amending s. 790.33, F.S.; clarifying and  
178       reorganizing provisions that preempt to the state the  
179       entire field of regulation of firearms; prohibiting  
180       specified persons and entities, when acting in their  
181       official capacity, from regulating or attempting to  
182       regulate firearms or ammunition in any manner except  
183       as specifically authorized by s. 790.33, F.S., by  
184       general law, or by the State Constitution; providing  
185       additional intent of the section; eliminating  
186       provisions authorizing counties to adopt an ordinance



488558

187 requiring a waiting period between the purchase and  
188 delivery of a handgun; providing a penalty for knowing  
189 and willful violations of prohibitions; providing for  
190 investigation of complaints of violations of the  
191 section and prosecution of violators by the state  
192 attorney; providing that public funds may not be used  
193 to defend the unlawful conduct of any person charged  
194 with a knowing and willful violation of the section;  
195 providing exceptions; providing for termination of  
196 employment or contract or removal from office of a  
197 person acting in an official capacity who knowingly  
198 and willfully violates any provision of the section;  
199 providing for declarative and injunctive relief for  
200 specified persons or organizations; providing for  
201 specified damages and interest; providing for seizure  
202 of certain vehicles for specified nonpayment of  
203 damages; providing exceptions to prohibitions of the  
204 section; providing an effective date.