

By the Committees on Rules; Community Affairs; and Criminal Justice; and Senators Negron and Evers

595-04671-11

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1 A bill to be entitled

2 An act relating to the regulation of firearms and
3 ammunition; amending s. 790.33, F.S.; clarifying and
4 reorganizing provisions that preempt to the state the
5 entire field of regulation of firearms; prohibiting
6 the violation of the Legislature's occupation of the
7 whole field of regulation of firearms and ammunition
8 by the enactment or causation of enforcement of any
9 local ordinance or administrative rule or regulation;
10 providing additional intent of the act; eliminating
11 provisions authorizing counties to adopt an ordinance
12 requiring a waiting period between the purchase and
13 delivery of a handgun; providing injunctive relief
14 from the enforcement of an invalid ordinance,
15 regulation, or rule; providing a civil penalty for
16 knowing and willful violation of prohibitions;
17 providing that public funds may not be used to defend
18 or reimburse the unlawful conduct of any person
19 charged with a knowing and willful violation of the
20 act; providing for termination of employment or
21 contract or removal from office of a person acting in
22 an official capacity who knowingly and willfully
23 violates any provision of the act; providing for
24 declaratory and injunctive relief for specified
25 persons or organizations; providing for specified
26 damages and interest; providing exceptions to
27 prohibitions of the act; providing an effective date.

28
29 Be It Enacted by the Legislature of the State of Florida:

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

33 790.33 Field of regulation of firearms and ammunition
34 preempted.—

35 (1) PREEMPTION.—Except as expressly provided by the State
36 Constitution or general law, the Legislature hereby declares
37 that it is occupying the whole field of regulation of firearms
38 and ammunition, including the purchase, sale, transfer,
39 taxation, manufacture, ownership, possession, storage, and
40 transportation thereof, to the exclusion of all existing and
41 future county, city, town, or municipal ordinances or any
42 administrative regulations or rules adopted by local or state
43 government relating thereto. Any such existing ordinances,
44 rules, or regulations are hereby declared null and void. ~~This~~
45 ~~subsection shall not affect zoning ordinances which encompass~~
46 ~~firearms businesses along with other businesses. Zoning~~
47 ~~ordinances which are designed for the purpose of restricting or~~
48 ~~prohibiting the sale, purchase, transfer, or manufacture of~~
49 ~~firearms or ammunition as a method of regulating firearms or~~
50 ~~ammunition are in conflict with this subsection and are~~
51 ~~prohibited.~~

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

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

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

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

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

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

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

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

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

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

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

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

96 (2) (3) POLICY AND INTENT.-

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

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

113 (3) PROHIBITIONS; PENALTIES.-

114 (a) Any person, county, agency, municipality, district, or
115 other entity that violates the Legislature's occupation of the
116 whole field of regulation of firearms and ammunition, as

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117 declared in subsection (1), by enacting or causing to be
118 enforced any local ordinance or administrative rule or
119 regulation impinging upon such exclusive occupation of the field
120 shall be liable as set forth herein.

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

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

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

137 (e) A knowing and willful violation of any provision of
138 this section by a person acting in an official capacity for any
139 entity enacting or causing to be enforced a local ordinance or
140 administrative rule or regulation prohibited under paragraph (a)
141 or otherwise under color of law shall be cause for termination
142 of employment or contract or removal from office by the
143 Governor.

144 (f) A person or an organization whose membership is
145 adversely affected by any ordinance, regulation, measure,

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146 directive, rule, enactment, order, or policy promulgated or
147 caused to be enforced in violation of this section may file suit
148 against any county, agency, municipality, district, or other
149 entity in any court of this state having jurisdiction over any
150 defendant to the suit for declaratory and injunctive relief and
151 for actual damages, as limited herein, caused by the violation.
152 A court shall award the prevailing plaintiff in any such suit:

153 1. Reasonable attorney's fees and costs in accordance with
154 the laws of this state, including a contingency fee multiplier,
155 as authorized by law; and

156 2. The actual damages incurred, but not more than \$100,000.
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158 Interest on the sums awarded pursuant to this subsection shall
159 accrue at the legal rate from the date on which suit was filed.

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

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

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

171 (c) Except as provided in s. 790.251, any entity subject to
172 the prohibitions of this section from regulating or prohibiting
173 the carrying of firearms and ammunition by an employee of the
174 entity during and in the course of the employee's official

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175 duties;

176 (d) A court or administrative law judge from hearing and
177 resolving any case or controversy or issuing any opinion or
178 order on a matter within the jurisdiction of that court or
179 judge; or

180 (e) The Fish and Wildlife Conservation Commission from
181 regulating the use of firearms or ammunition as a method of
182 taking wildlife and regulating the shooting ranges managed by
183 the commission.

184 (5) ~~(b)~~ SHORT TITLE.—As created by chapter 87-23, Laws of
185 Florida, this section ~~shall be known and~~ may be cited as the
186 "Joe Carlucci Uniform Firearms Act."

187 Section 2. This act shall take effect October 1, 2011.