

1 A bill to be entitled
2 An act relating to regulation of firearms and ammunition;
3 amending s. 790.33, F.S.; clarifying and reorganizing
4 provisions which preempt to the state the entire field of
5 regulation of firearms; prohibiting specified persons and
6 entities, when acting in their official capacity, from
7 regulating or attempting to regulate firearms or
8 ammunition in any manner except as specifically authorized
9 by s. 790.33, F.S., by general law, or by the Florida
10 Constitution; providing a penalty for knowing and willful
11 violations; eliminating provisions authorizing counties to
12 adopt an ordinance requiring a waiting period between the
13 purchase and delivery of a handgun; providing additional
14 intent of the section; providing that public funds may not
15 be used to defend the unlawful conduct of any person
16 charged with a knowing and willful violation of the
17 section; providing exceptions; providing fines for
18 governmental entities in whose service or employ the
19 provisions of the section are knowingly and willfully
20 violated; providing for investigation of complaints of
21 criminal violations of the section and prosecution of
22 violators by the state attorney; providing for termination
23 of employment or contract or removal from office of a
24 person acting in an official capacity who knowingly and
25 willfully violates any provision of the section; providing
26 for declarative and injunctive relief for specified
27 persons or organizations; providing for specified damages
28 and interest; providing for seizure of certain vehicles

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29 | for specified nonpayment of damages; providing exceptions
 30 | to prohibitions of the section; providing an effective
 31 | date.

33 | Be It Enacted by the Legislature of the State of Florida:

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

37 | 790.33 Field of regulation of firearms and ammunition
 38 | preempted.—

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

54 | (2) PROHIBITIONS.—The following entities may not, when
 55 | acting in their official capacity or otherwise under color of
 56 | law, regulate or attempt to regulate firearms or ammunition in

57 any manner, whether by the enactment or enforcement of any
 58 ordinance, regulation, measure, directive, rule, enactment,
 59 order, policy, or exercise of proprietary authority, or by any
 60 other means, except as specifically authorized by this section,
 61 by general law, or by the Florida Constitution:

62 (a) A local government.

63 (b) A special district.

64 (c) A political subdivision.

65 (d) A governmental authority, commission, or board.

66 (e) A state governmental agency.

67 (f) Any official, agent, employee, or person, whether
 68 public or private, who works or contracts with any state or
 69 other governmental entity.

70 (g) Any entity that serves the public good when such
 71 service is provided in whole or in part by any governmental
 72 entity or utilizes public support or public funding.

73 (h) Any public entity other than those specified in this
 74 subsection, including, but not limited to, libraries, convention
 75 centers, fairgrounds, parks, and recreational facilities.

76 (i) Any body to which authority or jurisdiction is given
 77 by any unit or subdivision of any government or that serves the
 78 public good in whole or in part with public support,
 79 authorization, or funding or that has the authority to establish
 80 rules or regulations that apply to the public use of facilities,
 81 property, or grounds.

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

83 ~~(a) Any county may have the option to adopt a waiting-~~
 84 ~~period ordinance requiring a waiting period of up to, but not to~~

85 ~~exceed, 3 working days between the purchase and delivery of a~~
 86 ~~handgun. For purposes of this subsection, "purchase" means~~
 87 ~~payment of deposit, payment in full, or notification of intent~~
 88 ~~to purchase. Adoption of a waiting period ordinance, by any~~
 89 ~~county, shall require a majority vote of the county commission~~
 90 ~~on votes on waiting period ordinances. This exception is limited~~
 91 ~~solely to individual counties and is limited to the provisions~~
 92 ~~and restrictions contained in this subsection.~~

93 ~~(b) Ordinances authorized by this subsection shall apply~~
 94 ~~to all sales of handguns to individuals by a retail~~
 95 ~~establishment except those sales to individuals exempted in this~~
 96 ~~subsection. For purposes of this subsection, "retail~~
 97 ~~establishment" means a gun shop, sporting goods store, pawn~~
 98 ~~shop, hardware store, department store, discount store, bait or~~
 99 ~~tackle shop, or any other store or shop that offers handguns for~~
 100 ~~walk-in retail sale but does not include gun collectors shows or~~
 101 ~~exhibits, or gun shows.~~

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

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

108 ~~1. Individuals who are licensed to carry concealed~~
 109 ~~firearms under the provisions of s. 790.06 or who are licensed~~
 110 ~~to carry concealed firearms under any other provision of state~~
 111 ~~law and who show a valid license;~~

112 ~~2. Individuals who already lawfully own another firearm~~

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113 ~~and who show a sales receipt for another firearm; who are known~~
 114 ~~to own another firearm through a prior purchase from the retail~~
 115 ~~establishment; or who have another firearm for trade-in;~~

116 ~~3. A law enforcement or correctional officer as defined in~~
 117 ~~s. 943.10;~~

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

119 ~~5. Sales or transactions between dealers or between~~
 120 ~~distributors or between dealers and distributors who have~~
 121 ~~current federal firearms licenses; or~~

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

126 (3) POLICY AND INTENT.—

127 (a) It is the intent of this section to provide uniform
 128 firearms laws in the state; to declare all ordinances and
 129 regulations null and void which have been enacted by any
 130 jurisdictions other than state and federal, which regulate
 131 firearms, ammunition, or components thereof; to prohibit the
 132 enactment of any future ordinances or regulations relating to
 133 firearms, ammunition, or components thereof unless specifically
 134 authorized by this section or general law; and to require local
 135 jurisdictions to enforce state firearms laws.

136 (b) It is further the intent of this section to deter and
 137 prevent the violation of this section, the abuse of official
 138 authority that occurs when local enactments are knowingly passed
 139 in violation of state law, and the violation under color of
 140 local authority of rights protected under the constitution and

141 laws of this state.

142 (4) PENALTIES.—

143 (a) Any person who, or entity that, knowingly and
 144 willfully violates a provision of this section commits a felony
 145 of the third degree, punishable as provided in s. 775.082 or s.
 146 775.083.

147 (b)1. Except as required by s. 16, Art. I of the State
 148 Constitution or the Sixth Amendment to the United States
 149 Constitution, public funds may not be used to defend the
 150 unlawful conduct of any person charged with a knowing and
 151 willful violation of this section, unless the charges against
 152 such person are dismissed or such person is determined to be not
 153 guilty at trial.

154 2. Notwithstanding subparagraph 1., public funds may be
 155 expended to provide the services of the office of public
 156 defender or court-appointed conflict counsel as provided by law.

157 (c) The governmental entity in whose service or employ a
 158 provision of this section is violated may be assessed a fine of
 159 not more than \$5 million if the court determines that the
 160 violation was willful and that any person at the governmental
 161 entity with oversight of the offending official, designee,
 162 contractee, or employee knew or in the exercise of ordinary care
 163 should have known the act was a violation.

164 (d) The state attorney in the appropriate jurisdiction
 165 shall investigate complaints of criminal violations of this
 166 section and, where the state attorney determines probable cause
 167 of a violation exists, shall prosecute violators. Any state
 168 attorney who fails to execute his or her duties under this

169 section may be held accountable under the appropriate Florida
170 rules of professional conduct.

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

176 (f) A person or an organization whose membership is
177 adversely affected by any ordinance, regulation, measure,
178 directive, rule, enactment, order, or policy promulgated or
179 enforced in violation of this section may file suit in an
180 appropriate court for declarative and injunctive relief and for
181 all actual and consequential damages attributable to the
182 violation. A court shall award the prevailing plaintiff in any
183 such suit:

184 1. Attorney's fees in the trial and appellate courts to be
185 determined by the rate used by the federal district court with
186 jurisdiction over the political subdivision for civil rights
187 actions;

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

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

191
192 Interest on the sums awarded pursuant to this subsection shall
193 accrue at 15 percent per annum from the date on which suit was
194 filed. Where applicable, payment may be secured by seizure of
195 any vehicles used or operated for the benefit of any elected
196 officeholder or official found to have violated this section if

197 not paid within 72 hours after the order's filing.

198 (5) EXCEPTIONS.—This section does not prohibit:

199 (a) Zoning ordinances that encompass firearms businesses
 200 along with other businesses, except that zoning ordinances that
 201 are designed for the purpose of restricting or prohibiting the
 202 sale, purchase, transfer, or manufacture of firearms or
 203 ammunition as a method of regulating firearms or ammunition are
 204 in conflict with this subsection and are prohibited;

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

209 (c) Except as provided in s. 790.251, any entity listed in
 210 paragraphs (2) (a)-(i) from regulating or prohibiting the
 211 carrying of firearms and ammunition by an employee of the entity
 212 during and in the course of the employee's official duties; or

213 (d) A court or administrative law judge from hearing and
 214 resolving any case or controversy or issuing any opinion or
 215 order on a matter within the jurisdiction of that court or
 216 judge.

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

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