

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 the
6 knowing and willful violation of the Legislature's
7 occupation of the whole field of regulation of firearms
8 and ammunition by the enactment or causation of
9 enforcement of any local ordinance or administrative rule
10 or regulation; providing additional intent of the section;
11 eliminating provisions authorizing counties to adopt an
12 ordinance requiring a waiting period between the purchase
13 and delivery of a handgun; providing a penalty for knowing
14 and willful violation of prohibitions; providing for
15 investigation of complaints of violations of the section
16 and prosecution of violators by the state attorney;
17 providing that public funds may not be used to defend the
18 unlawful conduct of any person charged with a knowing and
19 willful violation of the section; providing for
20 termination of employment or contract or removal from
21 office of a person acting in an official capacity who
22 knowingly and willfully violates any provision of the
23 section; providing for declaratory and injunctive relief
24 for specified persons or organizations; providing for
25 specified damages and interest; providing for seizure of
26 certain vehicles for specified nonpayment of damages;
27 providing exceptions to prohibitions of the section;
28 providing an effective date.

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

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

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

~~(a) Any county may have the option to adopt a waiting-period ordinance requiring a waiting period of up to, but not to exceed, 3 working days between the purchase and delivery of a~~

57 | ~~handgun. For purposes of this subsection, "purchase" means~~
 58 | ~~payment of deposit, payment in full, or notification of intent~~
 59 | ~~to purchase. Adoption of a waiting-period ordinance, by any~~
 60 | ~~county, shall require a majority vote of the county commission~~
 61 | ~~on votes on waiting-period ordinances. This exception is limited~~
 62 | ~~solely to individual counties and is limited to the provisions~~
 63 | ~~and restrictions contained in this subsection.~~

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

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

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

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

83 | ~~2. Individuals who already lawfully own another firearm~~
 84 | ~~and who show a sales receipt for another firearm; who are known~~

85 ~~to own another firearm through a prior purchase from the retail~~
 86 ~~establishment; or who have another firearm for trade-in;~~

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

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

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

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

97 ~~(2)-(3)~~ POLICY AND INTENT.-

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

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

113 local or state authority.

114 (3) PROHIBITIONS; PENALTIES.—

115 (a) Any person, county, agency, municipality, district, or
 116 other entity that knowingly and willfully violates the
 117 Legislature's occupation of the whole field of regulation of
 118 firearms and ammunition, as declared in subsection (1), by
 119 enacting or causing to be enforced any local ordinance or
 120 administrative rule or regulation commits a noncriminal
 121 violation as defined in s. 775.08, punishable as provided in ss.
 122 775.082 and 775.083.

123 (b) The state attorney in the appropriate jurisdiction
 124 shall investigate complaints of noncriminal violations of this
 125 section and, where the state attorney determines that probable
 126 cause of a violation exists, may prosecute violators in the
 127 circuit court where the complaint arose.

128 (c) If the court determines that the violation was knowing
 129 and willful, the court shall assess a fine of not less than
 130 \$5,000 and not more than \$100,000 against the elected or
 131 appointed local government official or officials or
 132 administrative agency head under whose jurisdiction the
 133 violation occurred. The elected or appointed local government
 134 official or officials or administrative agency head shall be
 135 personally liable for the payment of all fines, costs, and fees
 136 assessed by the court for the noncriminal violation.

137 (d) Except as required by s. 16, Art. I of the State
 138 Constitution or the Sixth Amendment to the United States
 139 Constitution, public funds may not be used to defend the
 140 unlawful conduct of any person charged with a knowing and

141 willful violation of this section.

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

149 (f) A person or an organization whose membership is
150 adversely affected by any ordinance, regulation, measure,
151 directive, rule, enactment, order, or policy promulgated or
152 caused to be enforced in violation of this section may file suit
153 against any county, agency, municipality, district, or other
154 entity, and against any person in that person's individual or
155 official capacity, in any court of this state having
156 jurisdiction over any defendant to the suit for declaratory and
157 injunctive relief and for all actual and consequential damages
158 attributable to the violation. A court shall award the
159 prevailing plaintiff in any such suit:

160 1. Reasonable attorneys' fees and costs in accordance with
161 the laws of this state, including a contingency fee multiplier,
162 if applicable, of between 1.5 and 3; and

163 2. The greater of actual damages or an amount as
164 determined by the court of not less than \$25,000 or more than
165 \$100,000.

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167 Damages under this subsection are not subject to the
168 requirements or limitations on damages set forth in s. 768.28.

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

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

176 (a) Zoning ordinances that encompass firearms businesses
177 along with other businesses, except that zoning ordinances that
178 are designed for the purpose of restricting or prohibiting the
179 sale, purchase, transfer, or manufacture of firearms or
180 ammunition as a method of regulating firearms or ammunition are
181 in conflict with this subsection and are prohibited;

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

186 (c) Except as provided in s. 790.251, any entity subject
187 to the prohibitions of this section from regulating or
188 prohibiting the carrying of firearms and ammunition by an
189 employee of the entity during and in the course of the
190 employee's official duties;

191 (d) A court or administrative law judge from hearing and
192 resolving any case or controversy or issuing any opinion or
193 order on a matter within the jurisdiction of that court or
194 judge; or

195 (e) The Florida Fish and Wildlife Conservation Commission
196 from regulating the use of firearms or ammunition as a method of

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197 taking wildlife and regulating the shooting ranges managed by
198 the commission.

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

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