

1                   A bill to be entitled  
2           An act relating to the regulation of firearms and  
3           ammunition; amending s. 790.33, F.S., the Joe Carlucci  
4           Uniform Firearms Act, to eliminate amendments made to  
5           the act by, and restore the act as it existed prior to  
6           the enactment of, ch. 2011-109, Laws of Florida, on  
7           October 1, 2011; making editorial and organizational  
8           changes; revising provisions that preempt to the state  
9           the entire field of regulation of firearms; providing  
10          that the preemption does not affect zoning ordinances  
11          which encompass firearms businesses along with other  
12          businesses; specifying that certain zoning ordinances  
13          are in conflict with the preemption and are  
14          prohibited; reinstating the limited exception to such  
15          preemption which authorizes a county to have the  
16          option to adopt an ordinance that requires a waiting  
17          period of up to 3 working days between the purchase  
18          and delivery of a handgun; defining the term  
19          "purchase"; providing requirements and limitations  
20          with respect to the adoption of a waiting-period  
21          ordinance; providing applicability of such ordinances;  
22          defining the term "retail establishment"; providing  
23          requirements with respect to inspection of records of  
24          handgun sales; providing exemptions from a waiting  
25          period; revising intent of the act; eliminating  
26          provisions which prohibit the knowing and willful  
27          violation of the Legislature's occupation of the whole  
28          field of regulation of firearms and ammunition by the

29 | enactment or causation of enforcement of any local  
 30 | ordinance or administrative rule or regulation;  
 31 | eliminating provision of injunctive relief from the  
 32 | enforcement of an invalid ordinance, regulation, or  
 33 | rule; eliminating the civil penalty for knowing and  
 34 | willful violation of prohibitions; eliminating  
 35 | provisions which disallow the use of public funds to  
 36 | defend or reimburse the unlawful conduct of a person  
 37 | charged with a knowing and willful violation of the  
 38 | act; eliminating provisions which provide for  
 39 | termination of employment or contract or removal from  
 40 | office of a person acting in an official capacity who  
 41 | knowingly and willfully violates any provision of the  
 42 | act; eliminating declaratory and injunctive relief for  
 43 | specified persons or organizations; eliminating  
 44 | specified damages and interest; eliminating exceptions  
 45 | to prohibitions of the act; reenacting s. 790.251(4),  
 46 | F.S., relating to prohibited acts of public and  
 47 | private employers under provisions governing the right  
 48 | to keep and bear arms in motor vehicles for self-  
 49 | defense and other lawful purposes, for the purpose of  
 50 | incorporating the amendment to s. 790.33, F.S., in a  
 51 | reference thereto; providing an effective date.

52 |

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

54 |

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

57 790.33 Field of regulation of firearms and ammunition  
58 preempted.—

59 (1) PREEMPTION.—Except as expressly provided by ~~the State~~  
60 ~~Constitution or~~ general law, the Legislature hereby declares  
61 that it is occupying the whole field of regulation of firearms  
62 and ammunition, including the purchase, sale, transfer,  
63 taxation, manufacture, ownership, possession, ~~storage,~~ and  
64 transportation thereof, to the exclusion of all existing and  
65 future county, city, town, or municipal ordinances or ~~any~~  
66 ~~administrative regulations or rules adopted by local or state~~  
67 ~~government~~ relating thereto. Any such existing ordinances,  
68 ~~rules, or regulations~~ are hereby declared null and void. This  
69 subsection shall not affect zoning ordinances which encompass  
70 firearms businesses along with other businesses. Zoning  
71 ordinances which are designed for the purpose of restricting or  
72 prohibiting the sale, purchase, transfer, or manufacture of  
73 firearms or ammunition as a method of regulating firearms or  
74 ammunition are in conflict with this subsection and are  
75 prohibited.

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

77 (a) Any county may have the option to adopt a waiting-  
78 period ordinance requiring a waiting period of up to, but not to  
79 exceed, 3 working days between the purchase and delivery of a  
80 handgun. For purposes of this subsection, "purchase" means  
81 payment of deposit, payment in full, or notification of intent  
82 to purchase. Adoption of a waiting-period ordinance by any  
83 county shall require a majority vote of the county commission on  
84 votes on waiting-period ordinances. This exception is limited

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85 solely to individual counties and is limited to the provisions  
86 and restrictions contained in this subsection.

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

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

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

102 1. Individuals who are licensed to carry concealed  
103 firearms under the provisions of s. 790.06 or who are licensed  
104 to carry concealed firearms under any other provision of state  
105 law and who show a valid license;

106 2. Individuals who already lawfully own another firearm  
107 and who show a sales receipt for another firearm; who are known  
108 to own another firearm through a prior purchase from the retail  
109 establishment; or who have another firearm for trade-in;

110 3. A law enforcement or correctional officer as defined in  
111 s. 943.10;

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

113        5. Sales or transactions between dealers or between  
 114 distributors or between dealers and distributors who have  
 115 current federal firearms licenses; or

116        6. Any individual who has been threatened or whose family  
 117 has been threatened with death or bodily injury, provided the  
 118 individual may lawfully possess a firearm and provided such  
 119 threat has been duly reported to local law enforcement.

120        ~~(3)(2)~~ POLICY AND INTENT.—

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

130        ~~(b)~~ ~~It is further the intent of this section to deter and~~  
 131 ~~prevent the violation of this section and the violation of~~  
 132 ~~rights protected under the constitution and laws of this state~~  
 133 ~~related to firearms, ammunition, or components thereof, by the~~  
 134 ~~abuse of official authority that occurs when enactments are~~  
 135 ~~passed in violation of state law or under color of local or~~  
 136 ~~state authority.~~

137        ~~(3)~~ PROHIBITIONS; PENALTIES.—

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

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141 ~~declared in subsection (1), by enacting or causing to be~~  
142 ~~enforced any local ordinance or administrative rule or~~  
143 ~~regulation impinging upon such exclusive occupation of the field~~  
144 ~~shall be liable as set forth herein.~~

145 ~~(b) If any county, city, town, or other local government~~  
146 ~~violates this section, the court shall declare the improper~~  
147 ~~ordinance, regulation, or rule invalid and issue a permanent~~  
148 ~~injunction against the local government prohibiting it from~~  
149 ~~enforcing such ordinance, regulation, or rule. It is no defense~~  
150 ~~that in enacting the ordinance, regulation, or rule the local~~  
151 ~~government was acting in good faith or upon advice of counsel.~~

152 ~~(c) If the court determines that a violation was knowing~~  
153 ~~and willful, the court shall assess a civil fine of up to \$5,000~~  
154 ~~against the elected or appointed local government official or~~  
155 ~~officials or administrative agency head under whose jurisdiction~~  
156 ~~the violation occurred.~~

157 ~~(d) Except as required by applicable law, public funds may~~  
158 ~~not be used to defend or reimburse the unlawful conduct of any~~  
159 ~~person found to have knowingly and willfully violated this~~  
160 ~~section.~~

161 ~~(e) A knowing and willful violation of any provision of~~  
162 ~~this section by a person acting in an official capacity for any~~  
163 ~~entity enacting or causing to be enforced a local ordinance or~~  
164 ~~administrative rule or regulation prohibited under paragraph (a)~~  
165 ~~or otherwise under color of law shall be cause for termination~~  
166 ~~of employment or contract or removal from office by the~~  
167 ~~Governor.~~

168 ~~(f) A person or an organization whose membership is~~

169 ~~adversely affected by any ordinance, regulation, measure,~~  
 170 ~~directive, rule, enactment, order, or policy promulgated or~~  
 171 ~~caused to be enforced in violation of this section may file suit~~  
 172 ~~against any county, agency, municipality, district, or other~~  
 173 ~~entity in any court of this state having jurisdiction over any~~  
 174 ~~defendant to the suit for declaratory and injunctive relief and~~  
 175 ~~for actual damages, as limited herein, caused by the violation.~~  
 176 ~~A court shall award the prevailing plaintiff in any such suit:~~

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

180 ~~2. The actual damages incurred, but not more than~~  
 181 ~~\$100,000.~~

182  
 183 ~~Interest on the sums awarded pursuant to this subsection shall~~  
 184 ~~accrue at the legal rate from the date on which suit was filed.~~

185 ~~(4) EXCEPTIONS. This section does not prohibit:~~

186 ~~(a) Zoning ordinances that encompass firearms businesses~~  
 187 ~~along with other businesses, except that zoning ordinances that~~  
 188 ~~are designed for the purpose of restricting or prohibiting the~~  
 189 ~~sale, purchase, transfer, or manufacture of firearms or~~  
 190 ~~ammunition as a method of regulating firearms or ammunition are~~  
 191 ~~in conflict with this subsection and are prohibited;~~

192 ~~(b) A duly organized law enforcement agency from enacting~~  
 193 ~~and enforcing regulations pertaining to firearms, ammunition, or~~  
 194 ~~firearm accessories issued to or used by peace officers in the~~  
 195 ~~course of their official duties;~~

196 ~~(c) Except as provided in s. 790.251, any entity subject~~

197 ~~to the prohibitions of this section from regulating or~~  
 198 ~~prohibiting the carrying of firearms and ammunition by an~~  
 199 ~~employee of the entity during and in the course of the~~  
 200 ~~employee's official duties;~~

201 ~~(d) A court or administrative law judge from hearing and~~  
 202 ~~resolving any case or controversy or issuing any opinion or~~  
 203 ~~order on a matter within the jurisdiction of that court or~~  
 204 ~~judge; or~~

205 ~~(e) The Florida Fish and Wildlife Conservation Commission~~  
 206 ~~from regulating the use of firearms or ammunition as a method of~~  
 207 ~~taking wildlife and regulating the shooting ranges managed by~~  
 208 ~~the commission.~~

209 (4)~~(5)~~ SHORT TITLE.—As created by chapter 87-23, Laws of  
 210 Florida, this section may be cited as the "Joe Carlucci Uniform  
 211 Firearms Act."

212 Section 2. For the purpose of incorporating the amendment  
 213 made by this act to section 790.33, Florida Statutes, in a  
 214 reference thereto, subsection (4) of section 790.251, Florida  
 215 Statutes, is reenacted to read:

216 790.251 Protection of the right to keep and bear arms in  
 217 motor vehicles for self-defense and other lawful purposes;  
 218 prohibited acts; duty of public and private employers; immunity  
 219 from liability; enforcement.—

220 (4) PROHIBITED ACTS.—No public or private employer may  
 221 violate the constitutional rights of any customer, employee, or  
 222 invitee as provided in paragraphs (a)-(e):

223 (a) No public or private employer may prohibit any  
 224 customer, employee, or invitee from possessing any legally owned



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225 | firearm when such firearm is lawfully possessed and locked  
226 | inside or locked to a private motor vehicle in a parking lot and  
227 | when the customer, employee, or invitee is lawfully in such  
228 | area.

229 |       (b) No public or private employer may violate the privacy  
230 | rights of a customer, employee, or invitee by verbal or written  
231 | inquiry regarding the presence of a firearm inside or locked to  
232 | a private motor vehicle in a parking lot or by an actual search  
233 | of a private motor vehicle in a parking lot to ascertain the  
234 | presence of a firearm within the vehicle. Further, no public or  
235 | private employer may take any action against a customer,  
236 | employee, or invitee based upon verbal or written statements of  
237 | any party concerning possession of a firearm stored inside a  
238 | private motor vehicle in a parking lot for lawful purposes. A  
239 | search of a private motor vehicle in the parking lot of a public  
240 | or private employer to ascertain the presence of a firearm  
241 | within the vehicle may only be conducted by on-duty law  
242 | enforcement personnel, based upon due process and must comply  
243 | with constitutional protections.

244 |       (c) No public or private employer shall condition  
245 | employment upon either:

246 |       1. The fact that an employee or prospective employee holds  
247 | or does not hold a license issued pursuant to s. 790.06; or

248 |       2. Any agreement by an employee or a prospective employee  
249 | that prohibits an employee from keeping a legal firearm locked  
250 | inside or locked to a private motor vehicle in a parking lot  
251 | when such firearm is kept for lawful purposes.

252 |       (d) No public or private employer shall prohibit or

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253 attempt to prevent any customer, employee, or invitee from  
254 entering the parking lot of the employer's place of business  
255 because the customer's, employee's, or invitee's private motor  
256 vehicle contains a legal firearm being carried for lawful  
257 purposes, that is out of sight within the customer's,  
258 employee's, or invitee's private motor vehicle.

259 (e) No public or private employer may terminate the  
260 employment of or otherwise discriminate against an employee, or  
261 expel a customer or invitee for exercising his or her  
262 constitutional right to keep and bear arms or for exercising the  
263 right of self-defense as long as a firearm is never exhibited on  
264 company property for any reason other than lawful defensive  
265 purposes.

266

267 This subsection applies to all public sector employers,  
268 including those already prohibited from regulating firearms  
269 under the provisions of s. 790.33.

270 Section 3. This act shall take effect October 1, 2012.