

By Senator Negrón

28-00034-11

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

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30 damages and interest; providing for seizure of certain  
31 municipal vehicles for specified nonpayment of  
32 damages; providing exceptions to prohibitions of the  
33 section; providing an effective date.

34  
35 Be It Enacted by the Legislature of the State of Florida:

36  
37 Section 1. Section 790.33, Florida Statutes, is amended to  
38 read:

39 790.33 Field of regulation of firearms and ammunition  
40 preempted.—

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

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

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

64 (a) A local government.

65 (b) A special district.

66 (c) A political subdivision.

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

68 (e) A state governmental agency.

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

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

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

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

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

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

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

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

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

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

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

114 ~~2. Individuals who already lawfully own another firearm and~~  
115 ~~who show a sales receipt for another firearm; who are known to~~  
116 ~~own another firearm through a prior purchase from the retail~~

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117 ~~establishment; or who have another firearm for trade in;~~

118 ~~3. A law enforcement or correctional officer as defined in~~  
119 ~~s. 943.10;~~

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

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

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

128 (3) POLICY AND INTENT.—

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

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

144 (4) PENALTIES.—

145 (a) Any person who, or entity that, knowingly and willfully

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146 violates a provision of this section commits a felony of the  
147 third degree, punishable as provided in s. 775.082 or s.  
148 775.083.

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

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

159 (c) The governmental entity in whose service or employ a  
160 provision of this section is violated may be assessed a fine of  
161 not more than \$5 million if the court determines that the  
162 violation was willful and that any person at the governmental  
163 entity with oversight of the offending official, designee,  
164 contractee, or employee knew or in the exercise of ordinary care  
165 should have known the act was a violation. Fines assessed under  
166 this section shall be deposited in equal amounts into the  
167 administrative account of the state attorney and the  
168 administrative account of the court in the jurisdiction in which  
169 the offense occurred and was prosecuted.

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

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175 section may be held accountable under the appropriate Florida  
176 rules of professional conduct.

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

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

190 1. Attorney's fees in the trial and appellate courts to be  
191 determined by the rate used by the federal district court with  
192 jurisdiction over the political subdivision for civil rights  
193 actions;

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

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

197  
198 Interest on the sums awarded pursuant to this subsection shall  
199 accrue at 15 percent from the date on which suit was filed.  
200 Where applicable, payment may be secured by seizure against any  
201 municipal vehicles used or operated for the benefit of any  
202 elected officeholder in the appropriate municipality if not paid  
203 within 72 hours after the order's enrollment and publication.

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

205       (a) Zoning ordinances that encompass firearms businesses  
206 along with other businesses, except that zoning ordinances that  
207 are designed for the purpose of restricting or prohibiting the  
208 sale, purchase, transfer, or manufacture of firearms or  
209 ammunition as a method of regulating firearms or ammunition are  
210 in conflict with this subsection and are prohibited;

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

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

219       (d) A court or administrative law judge from hearing and  
220 resolving any case or controversy or issuing any opinion or  
221 order on a matter within the jurisdiction of that court or  
222 judge.

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

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