

By the Committee on Criminal Justice; and Senator Negron

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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 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., by
10 general law, or by the State Constitution; providing a
11 penalty for knowing and willful violations;
12 eliminating provisions authorizing counties to adopt
13 an ordinance requiring a waiting period between the
14 purchase and delivery of a handgun; providing
15 additional intent of the section; providing that
16 public funds may not be used to defend the unlawful
17 conduct of any person charged with a knowing and
18 willful violation of the section; providing
19 exceptions; providing fines for governmental entities
20 in whose service or employ the provisions of the
21 section are knowingly and willfully violated;
22 providing for investigation of complaints of criminal
23 violations of the section and prosecution of violators
24 by the state attorney; providing for termination of
25 employment or contract or removal from office of a
26 person acting in an official capacity who knowingly
27 and willfully violates any provision of the section;
28 providing for declarative and injunctive relief for
29 specified persons or organizations; providing for

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

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.

166 (d) The state attorney in the appropriate jurisdiction
167 shall investigate complaints of criminal violations of this
168 section and, where the state attorney determines probable cause
169 of a violation exists, shall prosecute violators. Any state
170 attorney who fails to execute his or her duties under this
171 section may be held accountable under the appropriate Florida
172 rules of professional conduct.

173 (e) A knowing and willful violation of any provision of
174 this section by a person acting in an official capacity for any

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175 of the entities specified in this section or otherwise under
176 color of law shall be cause for immediate termination of
177 employment or contract or removal from office by the Governor.

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

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

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

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

193
194 Interest on the sums awarded pursuant to this subsection shall
195 accrue at 15 percent per annum from the date on which suit was
196 filed. Where applicable, payment may be secured by seizure of
197 any vehicles used or operated for the benefit of any elected
198 officeholder or official found to have violated this section if
199 not paid within 72 hours after the order's filing.

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

201 (a) Zoning ordinances that encompass firearms businesses
202 along with other businesses, except that zoning ordinances that
203 are designed for the purpose of restricting or prohibiting the

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204 sale, purchase, transfer, or manufacture of firearms or
205 ammunition as a method of regulating firearms or ammunition are
206 in conflict with this subsection and are prohibited;

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

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

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

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

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