

By the Committees on Community Affairs; and Criminal Justice;  
and Senators Negrón and Evers

578-02780-11

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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  
11          additional intent; eliminating provisions authorizing  
12          counties to adopt an ordinance requiring a waiting  
13          period between the purchase and delivery of a handgun;  
14          providing a penalty for knowing and willful violations  
15          of prohibitions; providing for investigation of  
16          complaints of violations of the act and prosecution of  
17          violators by the state attorney; providing that public  
18          funds may not be used to defend the unlawful conduct  
19          of any person charged with a knowing and willful  
20          violation of the act; providing exceptions; providing  
21          for termination of employment or contract or removal  
22          from office of a person acting in an official capacity  
23          who knowingly and willfully violates any provision of  
24          the act; providing for declarative and injunctive  
25          relief for specified persons or organizations;  
26          providing for specified damages and interest;  
27          providing for seizure of certain vehicles for  
28          specified nonpayment of damages; providing exceptions  
29          to prohibitions of the act; providing an effective

578-02780-11

2011402c2

30 date.

31  
32 Be It Enacted by the Legislature of the State of Florida:

33  
34 Section 1. Section 790.33, Florida Statutes, is amended to  
35 read:

36 790.33 Field of regulation of firearms and ammunition  
37 preempted.—

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

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

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

578-02780-11

2011402c2

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

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

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

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

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

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

578-02780-11

2011402c2

88 ~~establishment; or who have another firearm for trade-in;~~

89 ~~3. A law enforcement or correctional officer as defined in~~  
90 ~~s. 943.10;~~

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

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

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

99 (2) (3) POLICY AND INTENT.-

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

109 (b) It is further the intent of this section to deter and  
110 prevent the violation of this section and the violation of  
111 rights protected under the State Constitution and laws of this  
112 state related to firearms or ammunition, or components thereof,  
113 by the abuse of official authority which occurs when enactments  
114 are knowingly passed in violation of state law or under color of  
115 local or state authority.

116 (3) PROHIBITIONS; PENALTIES.-

578-02780-11

2011402c2

117 (a) Any person who knowingly and willfully violates the  
118 Legislature's occupation of the whole field of regulation of  
119 firearms and ammunition, as declared in subsection (1), by  
120 enacting or enforcing any local ordinance or administrative rule  
121 or regulation commits a noncriminal violation as defined in s.  
122 775.08 and punishable as provided in s. 775.082 or s. 775.083.

123 (b) The state attorney in the appropriate jurisdiction  
124 shall investigate complaints of noncriminal violations of this  
125 section and, if the state attorney determines that probable  
126 cause of a violation exists, shall prosecute violators in the  
127 circuit court where the complaint arose. Any state attorney who  
128 fails to execute his or her duties under this section may be  
129 held accountable under the appropriate Florida rules of  
130 professional conduct.

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

140 (d) Except as required by s. 16, Art. I of the State  
141 Constitution or the Sixth Amendment to the United States  
142 Constitution, public funds may not be used to defend the  
143 unlawful conduct of any person charged with a knowing and  
144 willful violation of this section.

145 (e) A knowing and willful violation of any provision of

578-02780-11

2011402c2

146 this section by a person acting in an official capacity for any  
147 of the entities specified in this section or otherwise under  
148 color of law shall be cause for immediate termination of  
149 employment or contract or removal from office by the Governor.

150 (f) A person or an organization whose membership is  
151 adversely affected by any ordinance, regulation, measure,  
152 directive, rule, enactment, order, or policy promulgated or  
153 enforced in violation of this section may file suit in an  
154 appropriate court for declarative and injunctive relief and for  
155 all actual and consequential damages attributable to the  
156 violation. A court shall award the prevailing plaintiff in any  
157 such suit:

158 1. Attorney's fees in the trial and appellate courts to be  
159 determined by the rate used by the federal district court having  
160 jurisdiction over the political subdivision for civil rights  
161 actions;

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

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

165  
166 Interest on the sums awarded pursuant to this subsection shall  
167 accrue at 15 percent per annum from the date on which suit was  
168 filed. Where applicable, payment may be secured by seizure of  
169 any vehicles used or operated for the benefit of any elected  
170 officeholder or official found to have violated this section if  
171 not paid within 72 hours after the order's filing.

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

173 (a) Zoning ordinances that encompass firearms businesses  
174 along with other businesses, except that zoning ordinances that

578-02780-11

2011402c2

175 are designed for the purpose of restricting or prohibiting the  
176 sale, purchase, transfer, or manufacture of firearms or  
177 ammunition as a method of regulating firearms or ammunition are  
178 in conflict with this section and are prohibited;

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

183 (c) Except as provided in s. 790.251, any entity covered by  
184 this section from regulating or prohibiting the carrying of  
185 firearms and ammunition by an employee of the entity during and  
186 in the course of the employee's official duties;

187 (d) A court or administrative law judge from hearing and  
188 resolving any case or controversy or issuing any opinion or  
189 order on a matter within the jurisdiction of that court or  
190 judge; or

191 (e) The Fish and Wildlife Conservation Commission from  
192 regulating the use of firearms or ammunition as a method of  
193 taking wildlife and regulating the shooting ranges managed by  
194 the commission.

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

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