

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

595-04671-11

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

28  
29 Be It Enacted by the Legislature of the State of Florida:

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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 handgun. For purposes of this subsection, "purchase" means payment of deposit, payment in full, or notification of intent to purchase. Adoption of a waiting period ordinance, by any~~

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59 ~~county, shall require a majority vote of the county commission~~  
60 ~~on votes on waiting period ordinances. This exception is limited~~  
61 ~~solely to individual counties and is limited to the provisions~~  
62 ~~and restrictions contained in this subsection.~~

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

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

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

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

82 ~~2. Individuals who already lawfully own another firearm and~~  
83 ~~who show a sales receipt for another firearm; who are known to~~  
84 ~~own another firearm through a prior purchase from the retail~~  
85 ~~establishment; or who have another firearm for trade-in;~~

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

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

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

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

96 (2) (3) POLICY AND INTENT.-

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

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

113 (3) PROHIBITIONS; PENALTIES.-

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

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117 declared in subsection (1), by enacting or causing to be  
118 enforced any local ordinance or administrative rule or  
119 regulation impinging upon such exclusive occupation of the field  
120 shall be liable as set forth herein.

121 (b) If any county, city, town, or other local government  
122 violates this section, the court shall declare the improper  
123 ordinance, regulation, or rule invalid and issue a permanent  
124 injunction against the local government prohibiting it from  
125 enforcing such ordinance, regulation, or rule. It is no defense  
126 that in enacting the ordinance, regulation, or rule the local  
127 government was acting in good faith or upon advice of counsel.

128 (c) If the court determines that a violation was knowing  
129 and willful, the court shall assess a civil fine of up to \$5,000  
130 against the elected or appointed local government official or  
131 officials or administrative agency head under whose jurisdiction  
132 the violation occurred.

133 (d) Except as required by applicable law, public funds may  
134 not be used to defend or reimburse the unlawful conduct of any  
135 person found to have knowingly and willfully violated this  
136 section.

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

144 (f) A person or an organization whose membership is  
145 adversely affected by any ordinance, regulation, measure,

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146 directive, rule, enactment, order, or policy promulgated or  
147 caused to be enforced in violation of this section may file suit  
148 against any county, agency, municipality, district, or other  
149 entity in any court of this state having jurisdiction over any  
150 defendant to the suit for declaratory and injunctive relief and  
151 for actual damages, as limited herein, caused by the violation.  
152 A court shall award the prevailing plaintiff in any such suit:

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

156 2. The actual damages incurred, but not more than \$100,000.  
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158 Interest on the sums awarded pursuant to this subsection shall  
159 accrue at the legal rate from the date on which suit was filed.

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

161 (a) Zoning ordinances that encompass firearms businesses  
162 along with other businesses, except that zoning ordinances that  
163 are designed for the purpose of restricting or prohibiting the  
164 sale, purchase, transfer, or manufacture of firearms or  
165 ammunition as a method of regulating firearms or ammunition are  
166 in conflict with this subsection and are prohibited;

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

171 (c) Except as provided in s. 790.251, any entity subject to  
172 the prohibitions of this section from regulating or prohibiting  
173 the carrying of firearms and ammunition by an employee of the  
174 entity during and in the course of the employee's official

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175 duties;

176 (d) A court or administrative law judge from hearing and  
177 resolving any case or controversy or issuing any opinion or  
178 order on a matter within the jurisdiction of that court or  
179 judge; or

180 (e) The Fish and Wildlife Conservation Commission from  
181 regulating the use of firearms or ammunition as a method of  
182 taking wildlife and regulating the shooting ranges managed by  
183 the commission.

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

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