

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

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29 vehicles for specified nonpayment of damages; providing
 30 exceptions to prohibitions of the section; providing an
 31 effective date.

32

33 Be It Enacted by the Legislature of the State of Florida:

34

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

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

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

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

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

62 (a) A local government.

63 (b) A special district.

64 (c) A political subdivision.

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

66 (e) A state governmental agency.

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

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

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

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

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

83 ~~(a) Any county may have the option to adopt a waiting-~~
 84 ~~period ordinance requiring a waiting period of up to, but not to~~

85 ~~exceed, 3 working days between the purchase and delivery of a~~
 86 ~~handgun. For purposes of this subsection, "purchase" means~~
 87 ~~payment of deposit, payment in full, or notification of intent~~
 88 ~~to purchase. Adoption of a waiting period ordinance, by any~~
 89 ~~county, shall require a majority vote of the county commission~~
 90 ~~on votes on waiting period ordinances. This exception is limited~~
 91 ~~solely to individual counties and is limited to the provisions~~
 92 ~~and restrictions contained in this subsection.~~

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

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

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

- 108 ~~1. Individuals who are licensed to carry concealed~~
 109 ~~firearms under the provisions of s. 790.06 or who are licensed~~
 110 ~~to carry concealed firearms under any other provision of state~~
 111 ~~law and who show a valid license;~~
- 112 ~~2. Individuals who already lawfully own another firearm~~

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113 ~~and who show a sales receipt for another firearm; who are known~~
 114 ~~to own another firearm through a prior purchase from the retail~~
 115 ~~establishment; or who have another firearm for trade-in;~~

116 ~~3. A law enforcement or correctional officer as defined in~~
 117 ~~s. 943.10;~~

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

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

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

126 (3) POLICY AND INTENT.—

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

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

141 laws of this state.

142 (4) PENALTIES.—

143 (a) Any person who, or entity that, knowingly and
 144 willfully violates a provision of this section commits a felony
 145 of the third degree, punishable as provided in s. 775.082 or s.
 146 775.083.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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