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CS/CS/CS/HB 45, Engrossed 1

2011 Legislature

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

27
28 Be It Enacted by the Legislature of the State of Florida:

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29
30 Section 1. Section 790.33, Florida Statutes, is amended to
31 read:

32 790.33 Field of regulation of firearms and ammunition
33 preempted.—

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

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

52 ~~(a) Any county may have the option to adopt a waiting-~~
53 ~~period ordinance requiring a waiting period of up to, but not to~~
54 ~~exceed, 3 working days between the purchase and delivery of a~~
55 ~~handgun. For purposes of this subsection, "purchase" means~~
56 ~~payment of deposit, payment in full, or notification of intent~~

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

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

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

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

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

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

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

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

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

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

95 (2) ~~(3)~~ POLICY AND INTENT.—

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

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

112 (3) PROHIBITIONS; PENALTIES.—

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113 (a) Any person, county, agency, municipality, district, or
 114 other entity that violates the Legislature's occupation of the
 115 whole field of regulation of firearms and ammunition, as
 116 declared in subsection (1), by enacting or causing to be
 117 enforced any local ordinance or administrative rule or
 118 regulation impinging upon such exclusive occupation of the field
 119 shall be liable as set forth herein.

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

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

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

136 (e) A knowing and willful violation of any provision of
 137 this section by a person acting in an official capacity for any
 138 entity enacting or causing to be enforced a local ordinance or
 139 administrative rule or regulation prohibited under paragraph (a)
 140 or otherwise under color of law shall be cause for termination

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141 of employment or contract or removal from office by the
 142 Governor.

143 (f) A person or an organization whose membership is
 144 adversely affected by any ordinance, regulation, measure,
 145 directive, rule, enactment, order, or policy promulgated or
 146 caused to be enforced in violation of this section may file suit
 147 against any county, agency, municipality, district, or other
 148 entity in any court of this state having jurisdiction over any
 149 defendant to the suit for declaratory and injunctive relief and
 150 for actual damages, as limited herein, caused by the violation.

151 A court shall award the prevailing plaintiff in any such suit:

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

155 2. The actual damages incurred, but not more than
 156 \$100,000.

157
 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

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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
 172 to the prohibitions of this section from regulating or
 173 prohibiting the carrying of firearms and ammunition by an
 174 employee of the entity during and in the course of the
 175 employee's official 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 Florida Fish and Wildlife Conservation Commission
 181 from 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.