

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0767H.02I
 Bill No.: HB 85
 Subject: Firearms; Federal - State Relations; Law Enforcement Officers and Agencies;
 Military Affairs; Weapons
 Type: Original
 Date: January 25, 2021

Bill Summary: This proposal establishes the "Second Amendment Preservation Act," which creates additional protections to the right to bear arms.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2022	FY 2023	FY 2024
General Revenue*	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
Total Estimated Net Effect on General Revenue	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2022	FY 2023	FY 2024
State Legal Expense Fund (0692)	\$0	\$0	\$0
Conservation Commission (0609)	\$0 or (Could exceed \$100,000)	\$0 or (Could exceed \$100,000)	\$0 or (Could exceed \$100,000)
Colleges and Universities*	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
Total Estimated Net Effect on <u>Other</u> State Funds	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)

***The potential fiscal impact to various state funds (and local political subdivisions) stems from a new cause of action that can be brought against the state and other entities in §1.460.**

Numbers within parentheses: () indicate costs or losses.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2022	FY 2023	FY 2024
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2022	FY 2023	FY 2024
Total Estimated Net Effect on FTE	0	0	0

Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$250,000 in any of the three fiscal years after implementation of the act.

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2022	FY 2023	FY 2024
Local Government	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)

FISCAL ANALYSIS

ASSUMPTION

§§1.410, 1.420, 1.430, 1.440, 1.450, 1.460, 1.470, 1.480, and 1.485 - Right to bear arms

In response to similar legislation (SB 39), officials from the **Office of Administration – General Services (OA/GS)** stated §§1.460 and 1.470 appears to create a new cause of action. If a claim were successfully brought against a state agency or a state employee alleging a violation of this legislation, the Legal Expense Fund could be required to pay such claim or claims. However, the number of potential claims, the severity of those claims, and the ultimate costs associated with any settlement or judgment resulting from those claims cannot be forecasted with any degree of assurance to their accuracy.

The state self-assumes its own liability under the state Legal Expense Fund, Section 105.711, RSMo. It is a self-funding mechanism whereby funds are made available for the payment of any claim or judgment rendered against the state in regard to the waivers of sovereign immunity or against employees and specified and individuals. Investigation, defense, negotiation or settlement of such claims is provided by the Office of the Attorney General. Payment is made by the Commissioner of Administration with the approval of the Attorney General.

Oversight does not have any information contrary to that provided by OA/GS. Therefore, Oversight will reflect OA/GS's potential unknown impact for fiscal note purposes to the State Legal Expense Fund. Oversight notes the Legal Expense Fund is funded by the General Revenue Fund as well as other state funds. Oversight notes this possible litigation exposure as described by OA could also apply to colleges and universities as well as local political subdivisions.

Officials from the **Department of Conservation (MDC)** state an unknown negative impact but potentially greater than \$100,000 that could impact Federal Funds depending upon the interpretation of the bill language.

Oversight does not have any information contrary to that provided by MDC. Therefore, Oversight will reflect MDC's potential impact for fiscal note purposes to the Conservation Commission Fund.

Officials from the **Office of Attorney General (AGO)** assume any additional litigation costs arising from this proposal can be absorbed with existing personnel and resources. However, the AGO may seek additional appropriations if there is a significant increase in litigation.

Oversight does not have any information to the contrary. Therefore, Oversight assumes the AGO will be able to perform any additional duties required by this proposal with current staff and resources and will reflect no fiscal impact to the AGO for fiscal note purposes.

Oversight notes that the **Department of Public Safety - Missouri State Highway Patrol** has stated the proposal would not have a direct fiscal impact on their organization. However, the Highway Patrol states HB 85 could potentially have a negative impact on officer recruiting and retention, increase the number of suits filed against law enforcement, increase costs associated with litigation, affect the Highway Patrol's relationship with federal and state law enforcement agencies, and place Missouri law enforcement and the criminal justice system at-large in opposition with long standing legal principals of federal supremacy.

Oversight notes the concerns provided by the Highway Patrol would be an indirect impact; therefore, for fiscal note purposes, Oversight will reflect a zero impact on the fiscal note.

Officials from the **City of Kansas City** state the provisions of this legislation in 1.460 could have a negative fiscal impact on Kansas City if it were to lead to an increase in liability.

Oversight notes the unknown impact for the city of Kansas City and is unable to project a statewide cost; therefore, the impact to local governments-political subdivisions will be presented as \$0 to (Unknown).

Officials from the **Missouri Office of Prosecution Services**, the **Office of the State Courts Administrator**, the **City of Ballwin**, the **City of O'Fallon**, the **City of St. Louis**, the **Crestwood Police Department**, the **Ellisville Police Department**, and the **Kansas City Police Department** each assume the proposal will have no fiscal impact on their respective organizations.

In response to similar legislation (SB 39), officials from the **City of Corder**, the **City of Springfield**, the **Springfield Police Department**, and the **St. Louis County Police Department** assumed the proposal will have no fiscal impact on their respective organizations.

Officials from the **City of Hale** responded to the legislation but did not provide a fiscal impact.

Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for these agencies.

Oversight only reflects the responses that we have received from state agencies and political subdivisions; however, other cities, counties, police and sheriff's departments were requested to respond to this proposed legislation but did not. A general listing of political subdivisions included in our database is available upon request.

<u>FISCAL IMPACT –</u> <u>State Government</u>	FY 2022 (10 Mo.)	FY 2023	FY 2024
GENERAL REVENUE FUND			
<u>Transfer Out – to the State Legal Expense Fund – OA-GS (§§1.460 and 1.470) Potential increase in litigation</u>	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>
ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>
STATE LEGAL EXPENSE FUND (0692)			
<u>Transfer In – from General Revenue</u>	<u>\$0 to Unknown</u>	<u>\$0 to Unknown</u>	<u>\$0 to Unknown</u>
<u>Costs – OA/GS (§§1.460 and 1.470) Potential increase in litigation</u>	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>
ESTIMATED NET EFFECT ON THE STATE LEGAL EXPENSE FUND	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

<u>FISCAL IMPACT – State Government (continued)</u>	FY 2022	FY 2023	FY 2024
CONSERVATION COMMISSION FUND (0609)			
<u>Cost - MDC (§§1.420 and 1.430) Potential loss to federal funds</u>	<u>\$0 or (Could exceed \$100,000)</u>	<u>\$0 or (Could exceed \$100,000)</u>	<u>\$0 or (Could exceed \$100,000)</u>
ESTIMATED NET EFFECT ON THE CONSERVATION COMMISSION FUND	<u>\$0 or (Could exceed \$100,000)</u>	<u>\$0 or (Could exceed \$100,000)</u>	<u>\$0 or (Could exceed \$100,000)</u>
COLLEGES AND UNIVERSITIES			
<u>Costs – (§§1.420, 1.430, 1.460, 1.470) Potential increase in litigation</u>	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>
ESTIMATED NET EFFECT ON COLLEGES AND UNIVERSITIES	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>

<u>FISCAL IMPACT – Local Government</u>	FY 2022 (10 Mo.)	FY 2023	FY 2024
LOCAL POLITICAL SUBDIVISIONS			
<u>Costs - (§§1.420, 1.430, 1.460, 1.470) Potential increase in litigation</u>	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>
ESTIMATED NET EFFECT ON LOCAL POLITICAL SUBDIVISIONS	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>

FISCAL IMPACT – Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

FISCAL DESCRIPTION

The bill establishes the "Second Amendment Preservation Act", which:

- (1) Declares that laws, rules, orders, or other actions which restrict or prohibit the manufacture, ownership, and use of firearms, firearm accessories, or ammunition exclusively within this state exceed the powers granted to the federal government except to the extent they are necessary and proper for governing and regulating land and naval forces of the United States or for organizing, arming, and disciplining militia forces actively employed in the service of the United States Armed Forces;
- (2) Declares that all federal acts, laws, executive orders, administrative orders, court orders, rules, and regulations, whether past, present, or future, that infringe on the people's right to keep and bear arms as guaranteed by the Second Amendment to the United States Constitution and Article I, Section 23 of the Missouri Constitution must be invalid in this state, including those that impose a tax, levy, fee, or stamp on these items as specified in the bill; require the registration or tracking of these items or their owners; prohibit the possession, ownership, use, or transfer of a firearm; or order the confiscation of these items;

(3) Declares that it must be the duty of the courts and law enforcement agencies to protect the rights of law-abiding citizens to keep and bear arms and that no person, including a public officer or state employee of this state or any political subdivision of this state, can have authority to enforce or attempt to enforce any federal laws, orders, or rules infringing on the right to keep and bear arms;

(4) Specifies that any entity or person who knowingly acts under the color of any federal or state law to deprive a Missouri citizen of the rights or privileges ensured by the federal and state constitutions to keep and bear arms must be liable to the injured party for redress. Reasonable attorney fees and costs may be awarded to the prevailing party with specified exceptions. Qualified immunity shall not be a defense; and

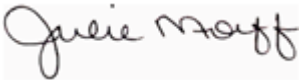
(5) States that any person while acting as an official, agent, employee, or deputy of the United States Government who enforces or attempts to enforce any of the infringements identified in this bill or gives material aid and support to the efforts of others who enforce or attempt to enforce any of the infringements identified in this bill may be permanently ineligible to serve as a law enforcement officer or to supervise law enforcement officers in this state or in any political subdivision of this state.

This bill contains a severability clause.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Attorney General's Office
Department of Public Safety
Missouri Department of Conservation
Missouri Office of Prosecution Services
Office of Administration
Office of the State Courts Administrator
City of Ballwin
City of Corder
City of Hale
City of Kansas City
City of O'Fallon
City of Springfield
City of St. Louis
Crestwood Police Department
Ellisville Police Department
Kansas City Police Department
Springfield Police Department
St. Louis County Police Department



Julie Morff
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January 25, 2021



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January 25, 2021