

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 0767H.03P  
 Bill No.: Perfected HCS for HB Nos. 85 & 310  
 Subject: Firearms; Federal - State Relations; Law Enforcement Officers and Agencies;  
 Military Affairs; Weapons  
 Type: Original  
 Date: February 3, 2021

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

**FISCAL SUMMARY**

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

\*\***Oversight** assumes the total state fiscal impact could exceed \$250,000 due to the potential for civil action and the addition of a civil penalty of no less than \$50,000 per occurrence for any violation of §1.470.

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

\***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.

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

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

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

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

## 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.

In response to a previous version, officials from the **Department of Conservation (MDC)** assumed the proposal will have no fiscal impact on their organization.

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 direct fiscal impact to the AGO for fiscal note purposes.

In response to a previous version, **Oversight** notes that the **Department of Public Safety - Missouri State Highway Patrol** stated the proposal would not have a direct fiscal impact on their organization. However, the Highway Patrol states this proposal 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 for this agency.

In response to a previous version, officials from the **City of Kansas City** stated 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 O’Fallon**, the **City of St. Louis**, the **Ellisville Police Department**, and the **St. Joseph Police Department** each assume the proposal will have no fiscal impact on their respective organizations.

In response to a previous version, officials from the **Office of Administration**, the **City of Ballwin**, the **City of Corder**, the **City of Hughesville**, the **Crestwood Police Department**, the **Eldon Police Department**, the **Kansas City Police Department**, and the **Springfield Police Department** each assumed the proposal will have no fiscal impact on their respective organizations.

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

In response to a previous version, 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.

House Amendment (HA) 1

**Oversight** notes that violations of §1.470 could result in a civil penalty of no less than \$50,000 per occurrence. Oversight also notes per Article IX Section 7 of the Missouri Constitution fines and penalties collected by counties are distributed to school districts. Fine varies widely from year to year and are distributed to the school district where the violation occurred. Oversight will reflect a positive fiscal impact of \$0 to Unknown to local school districts.

House Amendment (HA) 2

**Oversight** assumes House Amendment 2 will have no direct fiscal impact on state or local governments.

<u>FISCAL IMPACT – State Government</u>	FY 2022 (10 Mo.)	FY 2023	FY 2024
<b>GENERAL REVENUE FUND</b>			
<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>
<b>ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND</b>	<b><u>\$0 to (Unknown)</u></b>	<b><u>\$0 to (Unknown)</u></b>	<b><u>\$0 to (Unknown)</u></b>

<b>STATE LEGAL EXPENSE FUND (0692)</b>			
<u>Transfer In</u> – from General Revenue and other State and Federal funds	\$0 to Unknown	\$0 to Unknown	\$0 to Unknown
<u>Costs</u> – OA/GS (§§1.460 and 1.470) Potential increase in litigation	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>
<b>ESTIMATED NET EFFECT ON THE STATE LEGAL EXPENSE FUND</b>	<b><u>\$0</u></b>	<b><u>\$0</u></b>	<b><u>\$0</u></b>
<b>COLLEGES AND UNIVERSITIES</b>			
<u>Costs</u> – (§§1.420, 1.430, 1.460, 1.470) Potential increase in litigation	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>
<b>ESTIMATED NET EFFECT ON COLLEGES AND UNIVERSITIES</b>	<b><u>\$0 to (Unknown)</u></b>	<b><u>\$0 to (Unknown)</u></b>	<b><u>\$0 to (Unknown)</u></b>

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

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.

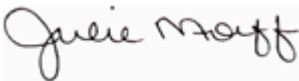
#### SOURCES OF INFORMATION

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 Hughesville  
City of Kansas City  
City of O'Fallon  
City of Springfield  
City of St. Louis

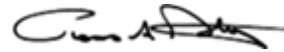


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Crestwood Police Department  
Eldon Police Department  
Ellisville Police Department  
Kansas City Police Department  
Springfield Police Department  
St. Joseph Police Department  
St. Louis County Police Department



Julie Morff  
Director  
February 3, 2021



Ross Strobe  
Assistant Director  
February 3, 2021