

FIRST REGULAR SESSION

HOUSE BILL NO. 786

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE POGUE.

1046H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal section 1.320, RSMo, and to enact in lieu thereof nine new sections relating to the Second Amendment preservation act.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 1.320, RSMo, is repealed and nine new sections enacted in lieu thereof, to be known as sections 1.410, 1.420, 1.430, 1.440, 1.450, 1.460, 1.470, 1.480, and 1.485, to read as follows:

1.410. 1. Sections 1.410 to 1.485 shall be known and may be cited as the "Second Amendment Preservation Act".

2. The general assembly finds and declares that:

(1) The general assembly of the state of Missouri is firmly resolved to support and defend the United States Constitution against every aggression, whether foreign or domestic, and is duty bound to oppose every infraction of those principles which constitute the basis of the Union of the States because only a faithful observance of those principles can secure the nation's existence and the public happiness;

(2) Acting through the United States Constitution, the people of the several states created the federal government to be their agent in the exercise of a few defined powers, while reserving to the state governments the power to legislate on matters which concern the lives, liberties, and properties of citizens in the ordinary course of affairs;

(3) The limitation of the federal government's power is affirmed under the Tenth Amendment to the United States Constitution, which defines the total scope of federal power as being that which has been delegated by the people of the several states to the

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

16 federal government, and all power not delegated to the federal government in the United
17 States Constitution is reserved to the states respectively or to the people themselves;

18 (4) If the federal government assumes powers that the people did not grant it in the
19 United States Constitution, its acts are unauthoritative, void, and of no force;

20 (5) The several states of the United States of America respect the proper role of the
21 federal government but reject the proposition that such respect requires unlimited
22 submission. If the government, created by a compact among the states, was the exclusive
23 or final judge of the extent of the powers granted to it by the states through the United
24 States Constitution, the federal government's discretion, and not the United States
25 Constitution, would necessarily become the measure of those powers. To the contrary, as
26 in all other cases of compacts among powers having no common judge, each party has an
27 equal right to judge for itself as to if infractions of the compact have occurred, as well as
28 to determine the mode and measure of redress. Although the several states have granted
29 supremacy to laws and treaties made under the powers granted in the United States
30 Constitution, such supremacy does not extend to various federal statutes, executive orders,
31 administrative orders, court orders, rules, regulations, or other actions which restrict or
32 prohibit the manufacture, ownership, and use of firearms, firearm accessories, or
33 ammunition exclusively within the borders of Missouri; such statutes, executive orders,
34 administrative orders, court orders, rules, regulations, and other actions exceed the powers
35 granted to the federal government except to the extent they are necessary and proper for
36 governing and regulating land and naval forces of the United States or for organizing,
37 arming, and disciplining militia forces actively employed in the service of the United States
38 Armed Forces;

39 (6) The people of the several states have given Congress the power "to regulate
40 commerce with foreign nations, and among the several states", but "regulating commerce"
41 does not include the power to limit citizens' right to keep and bear arms in defense of their
42 families, neighbors, persons, or property, or to dictate as to what sort of arms and
43 accessories law-abiding Missourians may buy, sell, exchange, or otherwise possess within
44 the borders of this state;

45 (7) The people of the several states have also granted Congress the power "to lay
46 and collect taxes, duties, imports, and excises, to pay the debts, and provide for the
47 common defense and general welfare of the United States" and "to make all laws which
48 shall be necessary and proper for carrying into execution the powers vested by the United
49 States Constitution in the government of the United States, or in any department or office
50 thereof". These constitutional provisions merely identify the means by which the federal
51 government may execute its limited powers and shall not to be so construed to grant

52 unlimited power because to do so would be to destroy the carefully constructed equilibrium
53 between the federal and state governments. Consequently, the general assembly rejects
54 any claim that the taxing and spending powers of Congress can be used to diminish in any
55 way the right of the people to keep and bear arms;

56 (8) The people of Missouri have vested the general assembly with the authority to
57 regulate the manufacture, possession, exchange, and use of firearms within the borders of
58 this state, subject only to the limits imposed by the Second Amendment to the Constitution
59 of the United States and the Missouri Constitution; and

60 (9) The general assembly of the state of Missouri strongly promotes responsible gun
61 ownership, including parental supervision of minors in the proper use, storage, and
62 ownership of all firearms, the prompt reporting of stolen firearms, and the proper
63 enforcement of all state gun laws. The general assembly of the state of Missouri hereby
64 condemns any unlawful transfer of firearms and the use of any firearm in any criminal or
65 unlawful activity.

1.420. The following federal acts, laws, executive orders, administrative orders,
2 court orders, rules, and regulations shall be considered infringements on the people's right
3 to keep and bear arms, as guaranteed by the Second Amendment of the Constitution of the
4 United States and Article I, Section 23 of the Constitution of Missouri, within the borders
5 of this state including, but not limited to:

6 (1) Any tax, levy, fee, or stamp imposed on firearms, firearm accessories, or
7 ammunition not common to all other goods and services which might reasonably be
8 expected to create a chilling effect on the purchase or ownership of those items by law-
9 abiding citizens;

10 (2) Any registering or tracking of firearms, firearm accessories, or ammunition
11 which might reasonably be expected to create a chilling effect on the purchase or
12 ownership of those items by law-abiding citizens;

13 (3) Any registering or tracking of the owners of firearms, firearm accessories, or
14 ammunition which might reasonably be expected to create a chilling effect on the purchase
15 or ownership of those items by law-abiding citizens;

16 (4) Any act forbidding the possession, ownership, or use or transfer of a firearm,
17 firearm accessory, or ammunition by law-abiding citizens; and

18 (5) Any act ordering the confiscation of firearms, firearm accessories, or
19 ammunition from law-abiding citizens.

20 1.430. All federal acts, laws, executive orders, administrative orders, court orders,
21 rules, and regulations, regardless if enacted before or after the Second Amendment
22 Preservation Act, which infringe on the people's right to keep and bear arms as guaranteed

23 by the Second Amendment to the Constitution of the United States and Article I, Section
24 23 of the Constitution of Missouri shall be invalid in this state, shall not be recognized by
25 this state, shall be specifically rejected by this state, and shall be considered null and void
26 and of no effect in this state.

1.440. It shall be the duty of the courts and law enforcement agencies of this state
2 to protect the rights of law-abiding citizens to keep and bear arms within the borders of
3 this state and to protect these rights from the infringements defined under section 1.420.

1.450. No person, including any public officer or employee of this state or any
2 political subdivision of this state, shall have the authority to enforce or attempt to enforce
3 any federal acts, laws, executive orders, administrative orders, court orders, rules,
4 regulations, statutes, or ordinances infringing on the right to keep and bear arms as
5 defined under section 1.410.

1.460. 1. Any entity or person who knowingly, as defined under section 562.016,
2 violates section 1.450 or otherwise knowingly deprives a citizen of Missouri of the rights
3 or privileges ensured by the Second Amendment of the Constitution of the United States
4 or Article I, Section 23 of the Constitution of Missouri, while acting under the color of any
5 state or federal law, shall be liable to the injured party in an action at law, suit in equity,
6 or other proper proceeding for redress.

7 2. In such actions, the court may award the prevailing party, other than the state
8 of Missouri or any political subdivision of the state, reasonable attorney's fees and costs.

9 3. Sovereign, official, or qualified immunity shall not be an affirmative defense in
10 such actions.

1.470. 1. Any person while acting as an official, agent, employee, or deputy of the
2 government of the United States, or while otherwise acting under the color of federal law
3 while within the borders of this state, who knowingly, as defined under section 562.016:

4 (1) Enforces or attempts to enforce any of the infringements identified in section
5 1.410; or

6 (2) Gives material aid and support to the efforts of others who enforce or attempt
7 to enforce any of the infringements identified in section 1.410

8
9 shall be permanently ineligible to serve as a law enforcement officer or to supervise law
10 enforcement officers for the state or any political subdivision of the state.

11 2. Neither the state nor any political subdivision of the state shall employ as a law
12 enforcement officer or supervisor of law enforcement officers any person who is ineligible
13 to serve in such capacity under this section.

14 **3. Any person residing in or conducting business in a jurisdiction who believes that**
15 **a law enforcement officer or supervisor of law enforcement officers of such jurisdiction has**
16 **taken action that would render that person ineligible under this section to serve in such**
17 **capacity shall have standing to pursue an action for declaratory judgment in the circuit**
18 **court of the county in which the action allegedly occurred, or in the circuit court of Cole**
19 **County, with respect to the employment eligibility of the law enforcement officer or the**
20 **supervisor of law enforcement officers under this section.**

21 **4. If a court determines that a law enforcement officer or supervisor of law**
22 **enforcement officers has taken any action that would render him or her ineligible to serve**
23 **in that capacity under this section:**

24 **(1) The law enforcement officer or supervisor of law enforcement officers shall**
25 **immediately be terminated from his or her position; and**

26 **(2) The jurisdiction that had employed the ineligible law enforcement officer or**
27 **supervisor of law enforcement officers shall be required to pay the court costs and**
28 **attorney's fees associated with the declaratory judgment action that resulted in the finding**
29 **of ineligibility.**

30 **5. Nothing in this section shall preclude a person's right of appeal or remediation,**
31 **as provided under chapter 590.**

1.480. For the purposes of sections 1.410 to 1.485, the term "law-abiding citizen"
2 **shall mean a person who is not otherwise precluded under state law from possessing a**
3 **firearm and shall not be construed to include anyone who is not legally present in the**
4 **United States or the state of Missouri.**

1.485. If any provision of sections 1.410 to 1.485 or the application thereof to any
2 **person or circumstance is held invalid, such determination shall not affect the provisions**
3 **or applications of sections 1.410 to 1.485, which may be given effect without the invalid**
4 **provision or application, and the provisions of sections 1.410 to 1.485 are severable.**

~~[1.320. The general assembly of the state of Missouri strongly promotes
2 responsible gun ownership, including parental supervision of minors in the
3 proper use, storage, and ownership of all firearms, the prompt reporting of stolen
4 firearms, and the proper enforcement of all state gun laws. The general assembly
5 of the state of Missouri hereby condemns any unlawful transfer of firearms and
6 the use of any firearm in any criminal or unlawful activity.]~~

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