

FIRST REGULAR SESSION

SENATE BILL NO. 629

91ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR JACOB.

Read 1st time March 1, 2001, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

2196S.011

AN ACT

To repeal sections 571.030, 571.070 and 571.090, RSMo 2000, relating to certain weapons offenses, and to enact in lieu thereof six new sections relating to the same subject, with penalty provisions and a referendum clause.

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

Section A. Sections 571.030, 571.070 and 571.090, RSMo 2000, are repealed and six new sections enacted in lieu thereof, to be known as section 571.030, 571.070, 571.090, 571.092, 571.093 and 1, to read as follows:

571.030. 1. A person commits the crime of unlawful use of weapons if he or she knowingly:
(1) **Except as otherwise specified in this section**, carries concealed upon or about his or her person a knife, [a firearm,] a blackjack or any other weapon readily capable of lethal use;
or

(2) Sets a spring gun; or

(3) Discharges or shoots a firearm into a dwelling house, a railroad train, boat, aircraft, or motor vehicle as defined in section 302.010, RSMo, or any building or structure used for the assembling of people; or

(4) Exhibits, in the presence of one or more persons, any weapon readily capable of lethal use in an angry or threatening manner; or

(5) Possesses, **with or without a permit**, or discharges a firearm or projectile weapon while intoxicated; or

(6) Discharges a firearm within one hundred yards of any occupied schoolhouse, courthouse, or church building; or

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

(7) Discharges or shoots a firearm at a mark, at any object, or at random, on, along or across a public highway or discharges or shoots a firearm into any outbuilding; or

(8) Carries a firearm or any other weapon readily capable of lethal use into any church or place where people have assembled for worship, or into any election precinct on any election day, or into any building owned or occupied by any agency of the federal government, state government, or political subdivision thereof[, or into any public assemblage of persons met for any lawful purpose]; or

(9) Discharges or shoots a firearm at or from a motor vehicle, as defined in section 301.010, RSMo, while within any city, town, or village, and discharges or shoots a firearm at any person, or at any other motor vehicle, or at any building or habitable structure, unless the person was lawfully acting in self-defense; [or]

(10) Carries concealed on or about his or her person a firearm, unless such person has a valid permit to carry a concealed firearm issued pursuant to section 571.093, or a valid permit to carry a concealed firearm issued in another state or a political subdivision of another state, if such other state or political subdivision has been determined by the department of public safety to have substantially the same requirements as set forth in this act; or

[(10)] **(11)** Carries a firearm, whether loaded or unloaded, or any other weapon readily capable of lethal use into any school, onto any school bus, or onto the premises of any function or activity sponsored or sanctioned by school officials or the district school board.

2. Subdivisions (1), (3), (4), (6), (7), (8), (9) [and], (10) **and (11)** of subsection 1 of this section shall not apply to or affect any of the following:

(1) All state, county and municipal [law enforcement] **peace** officers possessing the duty and power of arrest for violation of the general criminal laws of the state, **whether such officers are within or outside their jurisdictions or on or off duty**, or for violation of ordinances of counties or municipalities of the state, or any person summoned by such officers to assist in making arrests or preserving the peace while actually engaged in assisting such officer;

(2) Wardens, superintendents and keepers of prisons, penitentiaries, jails and other institutions for the detention of persons accused or convicted of crime;

(3) Members of the armed forces or national guard while performing their official duty;

(4) Those persons vested by article V, section 1 of the Constitution of Missouri with the judicial power of the state and those persons vested by article III of the Constitution of the United States with the judicial power of the United States, the members of the federal judiciary;

(5) Any person whose bona fide duty is to execute process, civil or criminal;

(6) Any federal probation officer;

(7) Any state probation or parole officer, including supervisors and members of the board of probation and parole; and

(8) Any corporate security advisor meeting the definition and fulfilling the requirements of the regulations established by the board of police commissioners under section 84.340, RSMo.

3. Subdivisions (1), (5), (8) and (10) of subsection 1 of this section do not apply when the actor is transporting such weapons in a nonfunctioning state or in an unloaded state when ammunition is not readily accessible or when such weapons are not readily accessible. **[Subdivision] Subdivisions (1) and (10)** of subsection 1 of this section does not apply when the actor is also in possession of an exposed firearm or projectile weapon for the lawful pursuit of game, or is in his dwelling unit or upon **[business]** premises over which the actor has possession, authority or control, or is traveling in a continuous journey peaceably through this state. Subdivision (10) of subsection 1 of this section does not apply if the firearm is otherwise lawfully possessed by a person while traversing school premises for the purposes of transporting a student to or from school, or possessed by an adult for the purposes of facilitation of a school-sanctioned firearm-related event.

4. Subdivisions (3), (4) and (6) of subsection 1 of this section shall not apply to persons who are engaged in a lawful act of defense pursuant to section 563.031, RSMo.

[4.] 5. Nothing in this section shall make it unlawful for a student to actually participate in school-sanctioned gun safety courses, student military or ROTC courses, or other school-sponsored firearm-related events, provided the student does not carry a firearm or other weapon readily capable of lethal use into any school, onto any school bus, or onto the premises of any function or activity sponsored or sanctioned by school officials or the district school board.

[5.] 6. Unlawful use of weapons is a class D felony unless committed pursuant to subdivision (5), (6), (7) or (8) of subsection 1 of this section, in which cases it is a class B misdemeanor, or subdivision (10) of subsection 1 of this section, in which case it is a class A misdemeanor if the firearm is unloaded and a class D felony if the firearm is loaded, or subdivision (9) of subsection 1 of this section, in which case it is a class B felony, except that if the violation of subdivision (9) of subsection 1 of this section results in injury or death to another person, it is a class A felony.

[6.] 7. Violations of subdivision (9) of subsection 1 of this section shall be punished as follows:

(1) For the first violation a person shall be sentenced to the maximum authorized term of imprisonment for a class B felony;

(2) For any violation by a prior offender as defined in section 558.016, RSMo, a person shall be sentenced to the maximum authorized term of imprisonment for a class B felony without the possibility of parole, probation or conditional release for a term of ten years;

(3) For any violation by a persistent offender as defined in section 558.016, RSMo, a person shall be sentenced to the maximum authorized term of imprisonment for a class B felony without the possibility of parole, probation, or conditional release;

(4) For any violation which results in injury or death to another person, a person shall be sentenced to an authorized disposition for a class A felony.

[7.] **8.** Any person knowingly aiding or abetting any other person in the violation of subdivision (9) of subsection 1 of this section shall **also** be subject to the [same penalty as that] **penalties** prescribed by **subsection 7 of** this section [for violations by other persons].

571.070. 1. A person commits the crime of unlawful possession of a concealable firearm if he has any concealable firearm in his possession and:

(1) He has pled guilty to or has been convicted of a dangerous felony, as defined in section 556.061, RSMo, or of an attempt to commit a dangerous felony, or of a crime under the laws of any state or of the United States which, if committed within this state, would be a dangerous felony, or confined therefor in this state or elsewhere during the five-year period immediately preceding the date of such possession; or

(2) He is a fugitive from justice, is habitually in an intoxicated or drugged condition, or is currently adjudged mentally incompetent[.]; **or**

(3) He has been formally adjudicated in the juvenile division of the circuit court for any offense which, if committed by an adult, would have been a dangerous felony, as defined in section 556.061, RSMo, or murder in the first degree, if a concealable firearm was used in the commission of such offense.

2. Unlawful possession of a concealable firearm is a class C felony.

571.090. 1. A permit to acquire a concealable firearm shall be issued by the sheriff of the county in which the applicant resides, if all of the statements in the application are true, and the applicant:

(1) Is at least twenty-one years of age, a citizen of the United States and has resided in this state for at least six months;

(2) Has not pled guilty to or been convicted of a crime punishable by imprisonment for a term exceeding one year under the laws of any state or of the United States, other than a crime classified as a misdemeanor under the laws of any state [and] **which is** punishable by a term of imprisonment of two years or less [that] **and** does not involve an explosive weapon, firearm, firearm silencer or gas gun;

(3) Has not been formally adjudicated in the juvenile division of the circuit court for any offense which, if committed by an adult, would have been a dangerous felony, as defined in section 556.061, RSMo, or murder in the first degree, if a concealable firearm was used in the commission of such offense;

[(3)] **(4)** Is not a fugitive from justice or currently charged in an information or indictment with the commission of a crime punishable by imprisonment for a term exceeding one year under the laws of any state or of the United States other than a crime classified as a misdemeanor under the laws of any state and punishable by a term of imprisonment of two years or less that does not

involve an explosive weapon, firearm, firearm silencer or gas gun;

[(4)] (5) Has not been discharged under dishonorable conditions from the United States armed forces;

[(5)] (6) Is not publicly known to be habitually in an intoxicated [or drugged] condition **or known to be a controlled substance abuser**; and

[(6)] (7) Is not currently adjudged mentally incompetent and has not been committed to a mental health facility, as defined in section 632.005, RSMo, or a similar institution located in another state.

2. Applications shall be made to the sheriff of the county in which the applicant resides. An application shall be filed in writing, signed and verified by the applicant, and shall state only the following: the name, Social Security number, occupation, age, height, color of eyes and hair, residence and business addresses of the applicant, the reason for desiring the permit, and whether the applicant complies with each of the requirements specified in subsection 1 of this section.

3. Before a permit is issued, the sheriff shall make only such inquiries as he deems necessary into the accuracy of the statements made in the application. The sheriff may require that the applicant display a Missouri operator's license or other suitable identification. The sheriff shall issue the permit within a period not to exceed seven days after submission of the properly completed application excluding Saturdays, Sundays or legal holidays. The sheriff may refuse to issue the permit if he determines that any of the requirements specified in subsection 1 of this section have not been met, or if he has reason to believe that the applicant has rendered a false statement regarding any of the provisions in subsection 1 of this section. If the application is approved, the sheriff shall issue a permit and a copy [thereof] **of the permit** to the applicant.

4. The permit shall recite the date of issuance, that it is invalid after thirty days, the name and address of the person to whom granted, the nature of the transaction, and a physical description of the applicant. The applicant shall sign the permit in the presence of the sheriff.

5. If the permit is used, the person who receives the permit from the applicant shall return it to the sheriff within thirty days after its expiration, with a notation thereon showing the date and manner of disposition of the firearm and a description of the firearm including the make, model and serial number. The sheriff shall keep a record of all applications for permits, his action thereon, and shall preserve all returned permits.

6. No person shall in any manner transfer, alter or change a permit, or make a false notation thereon, or obtain a permit upon any false representation, or use, or attempt to use a permit issued to another.

7. For the processing of the permit, the sheriff in each county and the city of St. Louis shall charge a fee not to exceed ten dollars which shall be paid into the treasury of the county or city to the credit of the general revenue fund.

8. In any case when the sheriff refuses to issue or to act on an application for a permit, such

refusal shall be in writing setting forth the reasons for such refusal. Such written refusal shall explain the denied applicant's right to appeal and, with a copy of the completed application, shall be given to the denied applicant within a period not to exceed seven days after submission of the properly completed application excluding Saturdays, Sundays or legal holidays. The denied applicant shall have the right to appeal the denial within ten days of receiving written notice of the denial. Such appeals shall be heard in small claims court as defined in section 482.300, RSMo, and the provisions of sections 482.300, 482.310 and 482.335, RSMo, shall apply to such appeals.

9. A denial of or refusal to act on an application for permit may be appealed by filing with the clerk of the small claims court a copy of the sheriff's written refusal and a form substantially similar to the appeal form provided in this section. Appeal forms shall be provided by the clerk of the small claims court free of charge to any person:

UNOFFICIAL
SMALL CLAIMS COURT

In the Circuit Court of Missouri

Case Number

....., Denied Applicant)

)

vs.)

)

....., Sheriff)

)

Bill

Return Date

DENIAL OF PERMIT APPEAL

The denied applicant states that his properly completed application for a permit to acquire a firearm with a barrel of less than sixteen inches was denied by the sheriff of County, Missouri, without just cause. The denied applicant affirms that all of the statements in the application are true.

COPY

.....
Denied Applicant

10. The notice of appeal in a denial of permit appeal shall be made to the sheriff in a manner and form determined by the small claims court judge.

11. If at the hearing the person shows he is entitled to the requested permit, the court shall issue an appropriate order to cause the issuance of the permit. Costs shall not be assessed against the sheriff in any case.

12. Any person aggrieved by any final judgment rendered by a small claims court in a denial of permit appeal may have a trial de novo as provided in sections 512.180 to 512.320, RSMo.

13. Notwithstanding any provision of chapter 211, RSMo, to the contrary, the sheriff shall have access to any juvenile court records of any person who applies for a permit to acquire a concealable firearm. Any information obtained pursuant to this

subsection shall be shared with the applicant but may not be disclosed to others without court authorization.

[13.] **14.** Violation of any provision of this section is a class A misdemeanor.

571.092. 1. A permit to carry a concealed firearm shall be issued by the highway patrol, if the applicant:

(1) Is at least twenty-one years of age, a citizen of the United States and has resided in this state for at least six months;

(2) Has not pled guilty to or been convicted of a crime;

(3) Is not a fugitive from justice or currently charged in an information or indictment with the commission of a crime punishable by imprisonment for a term exceeding one year under the laws of any state or of the United States, other than a crime classified as a misdemeanor under the laws of any state which is punishable by a term of imprisonment of two years or less and does not involve an explosive weapon, firearm, firearm silencer or gas gun;

(4) Has not been discharged under dishonorable conditions from the United States armed forces;

(5) Is not publicly known to be habitually intoxicated by alcohol or known to be a controlled substance abuser;

(6) Has been mentally incompetent or mentally ill and has not been committed to a mental health facility, as defined in section 632.005, RSMo, or a similar institution in another state;

(7) Has not exhibited violent behavior toward another person, except in self-defense, or offered credible threats of violence against another person; and

(8) Has demonstrated to the highway patrol a knowledge of handgun safety by submitting proof that the applicant has successfully completed a course approved by the department of public safety that included a minimum of twelve hours of handgun safety training by or under the supervision of a federal, state, county or municipal law enforcement agency, or under the supervision of a firearms instructor certified by the National Rifle Association.

2. Application shall be made to the highway patrol. An application shall be filed in writing, signed and verified by the applicant, and shall state only the following: the name, social security number, occupation, date of birth, height, color of eyes and hair, residence and business addresses of the applicant for the past three years, and whether the applicant complies with each of the requirements specified in subsection 1 of this section. The highway patrol shall take a set of fingerprints of the applicant for use in background and record checks.

3. Before a permit is issued, the highway patrol shall make only such inquiries

as he deems necessary into the accuracy of the statements made in the application. In order to determine the applicant's suitability for a carry concealed firearm permit, the applicant shall be fingerprinted. If no disqualifying record is identified at the state level, the fingerprints shall be forwarded to the Federal Bureau of Investigation for a national criminal history record check. The highway patrol may require that the applicant display a Missouri operator's license or other suitable photo identification. The highway patrol shall request a criminal background check through the appropriate law enforcement agency within seven days after submission of the properly completed application to carry a concealed firearm and issue a permit in a period not to exceed ten days after receipt of the completed background check. The highway patrol shall issue the permit within a period not to exceed forty-five days after submission of the properly completed application unless there is just cause not to, such as the criminal background check has not been received by the highway patrol. The highway patrol may refuse to issue the permit if he determines that any of the requirements specified in subsection 1 or 2 of this section have not been met or if he has reason to believe that the applicant has rendered a false statement regarding any of the provisions in subsection 1 or 2 of this section. If the application is approved, the highway patrol shall issue the permit and a copy of the permit to the applicant.

4. Notwithstanding any provision of chapter 211, RSMo, to the contrary, the highway patrol shall have access to any juvenile court records of the person who applies for a conceal and carry permit. Any information obtained pursuant to this subsection shall be shared with the applicant but may not be disclosed to others without court authorization.

5. Any competent person, age twenty-one or older, may sign a sworn affidavit alleging that a person who has been issued a permit to carry a concealed firearm has since the date of issuance, ceased to be in compliance with subdivisions (2) to (7) of subsection 1 of this section. Such allegations include, but are not limited to stalking, domestic violence, or reckless endangerment with a firearm. The small claims court shall be the court of competent jurisdiction. The court may suspend or order a permit revoked if the permit holder is found not to be in compliance with the provisions of subdivisions (2) to (7) of subsection 1 of this section. The court may award to the prevailing party reasonable attorney fees and costs.

6. The permit shall bear a photograph, date of birth and a physical description of the applicant on the front of the permit. The permit shall recite the date of issuance, the date of expiration and the name and address of the person to whom the permit is granted. The applicant shall sign the permit in the presence of the highway patrol or his designee.

7. The permit shall be valid for a period of two years. The permit shall be renewed by application and compliance with the provisions of this section, except subdivision (8) of subsection 1 of this section, in the county where applicant currently resides.

8. The highway patrol shall keep a record of all applications for permits, his action on such applications, and shall report the issuance of permits to the Missouri uniform law enforcement system or MULES.

9. No person shall in any manner forge, transfer, alter or change a permit, or make a false notation thereon, or obtain a permit upon any false representation, or use or attempt to use a permit issued to another. Any violation of the provisions of this subsection is a class A misdemeanor.

10. For the processing of the permit, the highway patrol shall charge a fee of eighty dollars to be paid to the treasury of the county or city not within a county to the credit of the highway patrol's revolving fund which is hereby established expressly for the purpose of covering costs incurred for the issuing and reviewing of permits to carry concealed firearms. The permittee shall pay a fee of thirty-five dollars to renew the permit, which shall be paid to the treasury of the county or city not within a county to the credit of the highway patrol's revolving fund.

11. The highway patrol may revoke or suspend any permit to carry a concealed firearm when the highway patrol verifies that any of the conditions of subsection 1 of this section have ceased to exist, or when the highway patrol verifies that the permit was improperly issued. When the highway patrol revokes a permit, the highway patrol shall notify the permit holder of such revocation and shall report the revocation to the Missouri uniform law enforcement system or MULES. When a permit is revoked, the permit holder shall surrender the permit to the highway patrol. If the permit holder fails to surrender a revoked permit, the highway patrol may request that the court order the permit holder to surrender such permit.

12. In any case when the highway patrol refuses to issue or to act on an application for a permit, such refusal shall set forth in writing the reasons for such refusal. Such written refusal shall explain the denied applicant's right to appeal and, with a copy of the completed application, shall be given to the denied applicant within a period not to exceed ten days after the highway patrol's receipt of the criminal background check. No highway patrolman shall be liable for the actions of a permit holder solely because the highway patrolman issued a permit to such individual. The denied applicant shall have the right to appeal the denial within thirty days of receiving written notice of the denial. Such appeals shall be heard in small claims court as defined in section 482.300, RSMo, and the provisions of sections 482.300, 482.310 and

482.335, RSMo, shall apply to such appeals.

13. A denial, suspension or revocation of or refusal to act on any application or a renewal application of a permit may be appealed by filing with the clerk of the small claims court a copy of the highway patrol's written refusal and a form substantially similar to the appeal form provided in this section. Appeal forms shall be provided by the clerk of the small claims court free of charge to any person:

SMALL CLAIMS COURT

In the Circuit Court of, Missouri

....., Applicant)

vs.)

Case Number

....., Sheriff)

Return Date

Unofficial

APPEAL OF DENIAL

OF PERMIT TO CARRY A CONCEALED WEAPON

The applicant states that his properly completed application (or renewal application) for a permit to carry a concealed firearm with a barrel of less than sixteen inches was denied by the highway patrol without just cause. The denied applicant affirms that all of the statements in the application are true.

.....

Denied Applicant

Bill

14. The notice of appeal shall be made to the highway patrol in a manner and form determined by the small claims court judge.

15. If at the hearing the person shows he is entitled to the requested permit, the court shall issue an appropriate order to cause the issuance of the permit. Costs shall not be assessed against the highway patrol unless the action of the highway patrol is determined by the judge to be arbitrary and capricious.

Copy

16. Any person aggrieved by any final judgment rendered by a small claims court in an appeal of a denial of a permit to carry a concealed firearm may have a trial de novo as provided in sections 512.180 to 512.320, RSMo.

17. No permit issued pursuant to this section shall authorize any person to carry a concealed firearm or any other weapon readily capable of lethal use into any church or place where people have assembled for worship, or into any school, or into any election precinct on any election day, or into any building owned or the portion of building occupied by any agency or branch of the federal government, state government, or political subdivision thereof.

18. The department of public safety shall design and provide the permit to be issued pursuant to this section to the highway patrol.

571.093. All citizens, merchants, not for profit entities, or public bodies have the right to deny access to persons who attempt to carry concealed firearms into buildings they own or lease. Signs prohibiting concealed firearms shall be posted and shall be clearly visible to all entrances. Any person who enters in violation of this section shall be guilty of the infraction of trespass. The third such violation within a five-year period shall constitute a class C misdemeanor, and the permittee shall have his permit revoked and shall not be eligible to reapply for a permit for a period of three years from such violation.

Section 1. 1. Notwithstanding the provisions of sections 50.525 to 50.745, RSMo, the fee which is collected as provided in subsection 10 of section 571.092, RSMo, shall be deposited by the county treasurer into a separate interest-bearing fund to be known as the "Highway Patrol's Revolving Fund" to be expended at the direction of the highway patrol as provided in this section.

2. No prior approval of the expenditures from this fund shall be required by the governing body of the state or county, nor shall any prior audit or encumbrance of the fund be required before any expenditure is made by the highway patrol from this fund. This fund may be audited by the state auditor's office or the appropriate auditing agency.

3. If the moneys collected and deposited into this fund are not totally expended annually, then the unexpended balance shall remain in said fund and the balance shall be kept in said fund to accumulate from year to year.

Section B. This act is hereby submitted to the qualified voters of this state for approval or rejection at an election which is hereby ordered and which shall be held and conducted on first Tuesday next following the first Monday in November, 2002, pursuant to the applicable laws and constitutional provisions of this state for the submission of referendum measures by the general assembly, and it shall become effective when approved by a majority of the votes cast thereon at such election and not otherwise. The official ballot title shall be:

"Shall state or local law enforcement agencies be authorized to issue permits to law-abiding citizens at least twenty-one years of age to carry concealed firearms outside their home for personal protection after having passed a state and federal criminal background check and having completed a firearms safety training course approved by the Missouri Department of Public Safety?"