FIRST REGULAR SESSION

SENATE BILL NO. 367

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR BURLISON.

Read 1st time February 7, 2019, and ordered printed.

ADRIANE D. CROUSE, Secretary.

AN ACT

To repeal section 1.320, RSMo, and to enact in lieu thereof nine new sections relating to additional protections to the right to bear arms.

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Section A. Section 1.320, RSMo, is repealed and nine new sections enacted in lieu thereof, to be known as sections 1.410, 1.420, 1.430, 1.440, 1.450, 1.460, 1.470, 1.480, and 1.485, to read as follows: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 federal government, and all power not delegated to the federal government in the United States Constitution is reserved to the states respectively, or to the
people themselves;

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

(5) The several states of the United States of America respect the proper role of the federal government, but reject the proposition that such respect requires unlimited submission. If the government, created by a compact among the states, was the exclusive or final judge of the extent of the powers granted to it by the states through the United States Constitution, the federal government's discretion, and not the United States Constitution, would necessarily become the measure of those powers. To the contrary, as in all other cases of compacts among powers having no common judge, each party has an equal right to judge for itself as to if infractions of the compact have occurred, as well as to determine the mode and measure of redress. Although the several states have granted supremacy to laws and treaties made under the powers granted in the United States Constitution, such supremacy does not extend to various federal statutes, executive orders, administrative orders, court orders, rules, regulations, or other actions which restrict or prohibit the manufacture, ownership, and use of firearms, firearm accessories, or ammunition exclusively within the borders of Missouri; such statutes, executive orders, administrative orders, court orders, rules, regulations, and other actions 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 of militia forces actively employed in the service of the United States Armed Forces;

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

(7) The people of the several states have also granted Congress the power "to lay and collect taxes, duties, imports, and excises, to pay the debts, and provide for the common defense and general welfare of
the United States" and "to make all laws which shall be necessary and proper for carrying into execution the powers vested by the United States Constitution in the government of the United States, or in any department or office thereof". These constitutional provisions merely identify the means by which the federal government may execute its limited powers and shall not to be so construed to grant unlimited power because to do so would be to destroy the carefully constructed equilibrium between the federal and state governments. Consequently, the general assembly rejects any claim that the taxing and spending powers of Congress can be used to diminish in any way the right of the people to keep and bear arms;

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

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

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

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

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

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

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

1.430. All federal acts, laws, executive orders, administrative orders, court orders, rules, and regulations, regardless if enacted before or after the provisions of sections 1.410 to 1.485, which infringe on the people's right to keep and bear arms as guaranteed by the Second Amendment to the Constitution of the United States and Article I, Section 23 of the Constitution of Missouri shall be invalid in this state, shall not be recognized by this state, shall be specifically rejected by this state, and shall be considered null and void and of no effect in this state.

1.440. It shall be the duty of the courts and law enforcement agencies of this state to protect the rights of law-abiding citizens to keep and bear arms within the borders of 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 political subdivision of this state, shall have the authority to enforce or attempt to enforce any federal acts, laws, executive orders, administrative orders, court orders, rules, regulations, statutes, or ordinances infringing on the right to keep and bear arms as described under section 1.410.

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

2. In such actions, the court may award the prevailing party,
10 other than the state of Missouri or any political subdivision of the
11 state, reasonable attorney's fees and costs.
12
13 3. Sovereign, official, or qualified immunity shall not be an
affirmative defense in such actions.

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

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

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

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

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

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

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

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

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

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

1.480. For the purposes of sections 1.410 to 1.485, the term "law-abiding citizen" shall mean a person who is not otherwise precluded under state law from possessing a firearm and shall not be construed to include anyone who is not legally present in the 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 person or circumstance is held invalid, such determination shall not affect the provisions or applications of sections 1.410 to 1.485, which may be given effect without the invalid 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 responsible gun ownership, including parental supervision of minors in the proper use, storage, and ownership of all firearms, the prompt reporting of stolen firearms, and the proper enforcement of all state gun laws. The general assembly of the state of Missouri hereby condemns any unlawful transfer of firearms and the use of any firearm in any criminal or unlawful activity.]