

SECOND REGULAR SESSION

SENATE BILL NO. 863

89TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR KINDER.

Read 1st time February 4, 1998, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

S3174.011

AN ACT

To repeal sections 571.020, 571.070 and 571.090, RSMo 1994, and section 571.030, RSMo Supp. 1997, relating to certain weapons offenses, and to enact in lieu thereof five new sections relating to the same subject, with penalty provisions, with an emergency clause and a referendum clause.

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

Section A. Sections 571.020, 571.070 and 571.090, RSMo 1994, and section 571.030, RSMo Supp. 1997, are repealed and five new sections enacted in lieu thereof, to be known as sections 571.020, 571.030, 571.070, 571.090 and 571.093, to read as follows:

571.020. 1. A person commits a crime if he knowingly possesses, manufactures, transports, repairs, or sells:

(1) An explosive weapon;

(2) A machine gun;

(3) A gas gun;

(4) A short barreled rifle or shotgun;

(5) A firearm silencer;

(6) A switchblade knife;

(7) A bullet or projectile which explodes or detonates upon impact because of an independent explosive charge after having been shot from a firearm; or

(8) Knuckles.

2. A person does not commit a crime under this section if his conduct:

(1) Was incident to the performance of official duty by the armed forces, national guard,

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

a governmental law enforcement agency, or a penal institution; or

(2) Was incident to engaging in a lawful commercial or business transaction with an organization enumerated in subdivision (1) of this section; or

(3) Was incident to using an explosive weapon in a manner reasonably related to a lawful industrial or commercial enterprise; or

(4) Was incident to displaying the weapon in a public museum or exhibition; or

(5) Was incident to dealing with the weapon solely as a curio, ornament, or keepsake, or to using it in a manner reasonably related to a lawful dramatic performance; but if the weapon is a type described in subdivision (1)[.] **or** (3) [or (5)] of subsection 1 of this section it must be in such a nonfunctioning condition that it cannot readily be made operable. No short barreled rifle, short barreled shotgun, or machine gun may be possessed, manufactured, transported, repaired or sold as a curio, ornament, or keepsake, unless such person is an importer, manufacturer, dealer, or collector licensed by the Secretary of the Treasury pursuant to the Gun Control Act of 1968, U.S.C., Title 18, or unless such firearm is an "antique firearm" as defined in subsection 3 of section 571.080, or unless such firearm has been designated a "collectors item" by the Secretary of the Treasury pursuant to the U.S.C., Title 26, Section 5845 (a).

3. A crime under subdivision (1), (2), (3), (4) or (5) of subsection 1 of this section is a class C felony; a crime under subdivision (6), (7) or (8) of subsection 1 of this section is a class A misdemeanor.

571.030. 1. A person commits the crime of unlawful use of weapons if he knowingly:

(1) Carries concealed upon or about his 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 [or] **and** discharges **or brandishes** a firearm or projectile weapon while intoxicated; or

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

(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 school, 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 a loaded or unloaded firearm or any weapon readily capable of lethal use into any school, or onto any school bus, unless such person has received written permission from the supervising official of the school; or

(11) Carries concealed on or about his or her person a concealable firearm, unless such person has a valid permit to carry a concealed firearm issued pursuant to section 571.091, or a valid permit to carry a concealed firearm issued in another state.

2. Subdivisions (1), (3), (4), (6), (7), (8), [and] (9), **(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 officers possessing the duty and power of arrest for violation of the general criminal laws of the state 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; [and]

(7) 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;

(8) Any peace officer retired from service as a peace officer, provided such person was, prior to retirement, certified as a peace officer pursuant to chapter 590, RSMo;

(9) Any retired Missouri state court judge; and

(10) Any retired Missouri prosecuting or circuit attorney.

3. Subdivisions (1), (5), [and] (8) **and (11)** 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 (1) **or (11)** 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 when the actor is twenty-one years of age or older and possesses an unloaded firearm within a vehicle under his control.**

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.** Unlawful use of weapons is a class D felony unless committed under subdivision (5), (6), (7) or (8) of subsection 1 of this section, in which cases it is a class B misdemeanor, 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.

[5.] **6.** 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.

[6.] **7.** 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 6 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, 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, 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] **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;

[(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] **frequently** intoxicated [or drugged condition] **by alcohol 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:

SMALL CLAIMS COURT

In the Circuit Court of Missouri
Case Number

....., Denied Applicant

vs.

....., Sheriff

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.

..... 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.

571.093. 1. A permit to carry a concealed firearm shall be issued by the sheriff of the county in which the applicant resides, 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 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;

(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, if a concealable firearm was used in the commission of such offense;

(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 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;

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

(6) Is not frequently intoxicated by alcohol or known to be a controlled substance abuser;

(7) Is not currently 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;

(8) Has not, within the past five years, exhibited violent behavior toward another person, except in self-defense, or offered credible threats of violence against another person; and

(9) Has demonstrated a knowledge of handgun safety. The applicant may fully satisfy this requirement by submitting proof that the applicant has successfully completed a course that included a minimum of sixteen hours of handgun safety training by or under the supervision of a federal, state, county or municipal law enforcement agency, or by or under the supervision of a firearms instructor recognized as knowledgeable in matters of firearm safety or a course approved by the department of public safety. The applicant may also fully satisfy the requirements of this subdivision by submitting proof of law enforcement or military training.

2. Application shall be made to the sheriff of the county in which the applicant resides. The sheriff shall take a set of fingerprints of the applicant for use in background and record checks. 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, 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 fifteen days after submission of the properly completed application. The sheriff 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 sheriff shall issue the permit and a copy of the permit to the applicant.

4. The permit shall bear a photograph, date of birth and a physical description of the applicant on the front of the permit and a right thumb print of the applicant on the back 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 sheriff or his designee.

5. The permit shall be valid for a period of three years. The applicant shall apply for renewal of the permit pursuant to subsection 8 of this section.

6. The sheriff 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.

7. 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.

8. For the processing of the permit, the sheriff of any county or city not within a county shall charge a fee not to exceed seventy-five dollars. Forty dollars of this fee shall be paid to the treasury of the county or city not within a county to the credit of the general revenue fund and thirty-five dollars shall be placed in the peace officers standards and training commission fund established pursuant to section 590.178, RSMo. Moneys placed in this fund shall be used to defray the costs charged to peace officers for their own training pursuant to section 590.115, RSMo. The permittee shall pay a fee not to exceed thirty-five dollars to renew the permit. The renewal fee shall be placed into the peace officers standards and training commission fund established pursuant to section 590.178, RSMo.

9. The sheriff may revoke or suspend any permit to carry a concealed firearm when the sheriff learns that any of the conditions of subsection 1 of this section have ceased to exist, or when the sheriff learns that the permit was improperly issued. When the sheriff revokes or suspends a permit, the sheriff shall notify the permit holder of such revocation or suspension in writing by certified mail. Once notice of revocation or suspension is given, the permit holder shall have ten days to surrender the permit to the sheriff of the county where the permit was issued. When the ten day period has expired the sheriff shall report the revocation or suspension to the Missouri uniform law enforcement system or MULES. If the permit holder fails to surrender a revoked or suspended permit, the sheriff may request that the court order the permit holder to surrender such permit.

10. In any case when the sheriff refuses to issue or to act on an application for

firearm may have a trial de novo as provided in sections 512.180 to 512.320, RSMo.

15. 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 carry a concealed firearm. Any information obtained pursuant to this subsection shall be shared with the applicant but may not be disclosed to others without court authorization.

Section B. Because it is necessary to protect the citizens of this state, this act is deemed necessary for the immediate preservation of the public health, welfare, peace and safety, and is hereby declared to be an emergency act within the meaning of the constitution, and this act shall be in full force and effect upon its passage and approval.

Section C. 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 Tuesday next following the first Monday in April, 1999, 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.

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Bill

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