

SECOND REGULAR SESSION

SENATE BILL NO. 778

97TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR NIEVES.

Read 1st time January 27, 2014, and ordered printed.

TERRY L. SPIELER, Secretary.

5111S.011

AN ACT

To repeal section 1.320, RSMo, and to enact in lieu thereof two new sections relating to firearms, with penalty provisions and a contingent effective date for a certain section.

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

Section A. Section 1.320, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 1.320 and 1, to read as follows:

1.320. 1. **This section 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, either 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 Constitution of the United States is reserved to the states respectively,**

21 or to the people themselves;

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

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

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

56 (7) The people of the several states have also granted Congress
57 the power "to lay and collect taxes, duties, imports, and excises, to pay

58 the debts, and provide for the common defense and general welfare of
59 the United States" and "to make all laws which shall be necessary and
60 proper for carrying into execution the powers vested by the
61 Constitution in the government of the United States, or in any
62 department or office thereof". These constitutional provisions merely
63 identify the means by which the federal government may execute its
64 limited powers and ought not to be so construed as themselves to grant
65 unlimited powers because to do so would be to destroy the carefully
66 constructed equilibrium between the federal and state
67 governments. Consequently, the general assembly rejects any claim
68 that the taxing and spending powers of Congress can be used to
69 diminish in any way the right of the people to keep and bear arms;

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

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

81 3. (1) All federal acts, laws, executive orders, administrative
82 orders, court orders, rules, and regulations, whether past, present, or
83 future, which infringe on the people's right to keep and bear arms as
84 guaranteed by the Second Amendment to the United States Constitution
85 and Article I, Section 23 of the Missouri Constitution shall be invalid
86 in this state, shall not be recognized by this state, shall be specifically
87 rejected by this state, and shall be considered null and void and of no
88 effect in this state.

89 (2) Such federal acts, laws, executive orders, administrative
90 orders, court orders, rules, and regulations include, but are not limited
91 to:

92 (a) Any tax, levy, fee, or stamp imposed on firearms, firearm
93 accessories, or ammunition not common to all other goods and services
94 which might reasonably be expected to create a chilling effect on the

95 purchase or ownership of those items by law-abiding citizens;

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

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

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

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

109 4. It shall be the duty of the courts and law enforcement agencies
110 of this state to protect the rights of law-abiding citizens to keep and
111 bear arms within the borders of this state and to protect these rights
112 from the infringements defined in subsection 3 of this section.

113 5. No public officer or employee of this state shall have authority
114 to enforce or attempt to enforce any law, statute, ordinance, or order
115 of any court infringing on the right to keep and bear arms as defined
116 in subsection 3 of this section.

117 6. (1) Any entity or person who knowingly, as defined in section
118 562.016, attempts to enforce any of the infringements of the right to
119 keep and bear arms included in subsection 3 of this section or
120 otherwise knowingly deprives a citizen of Missouri of the rights or
121 privileges ensured by the Second Amendment of the United States
122 Constitution or section 23 of article I of the Missouri Constitution,
123 while acting under the color of any state or federal law, shall be liable
124 to the injured party in an action at law, suit in equity, or other proper
125 proceeding for redress.

126 (2) In such action, the court may award the prevailing party,
127 other than the state of Missouri or any political subdivision of the
128 state, reasonable attorney's fees and costs.

129 (3) Neither sovereign nor official or qualified immunity shall be
130 an affirmative defense in such cases.

131 7. Any official, agent, or employee of the United States

132 government who enforces or attempts to enforce any of the
133 infringements on the right to keep and bear arms included in
134 subsection 3 of this section is guilty of a class A misdemeanor. Missouri
135 law enforcement officers shall have the discretionary power to
136 appropriately interpose on behalf of law-abiding citizens, including the
137 power to levy charges or arrest such officials, agents, or employees of
138 the United States government.

139 8. For the purposes of this section, the term "law-abiding citizen"
140 shall mean a person who is not otherwise precluded under state law
141 from possessing a firearm and shall not be construed to include anyone
142 who is not legally present in the United States or the state of Missouri.

Section 1. If any provision of section 1.320 of this act or the
2 application thereof to anyone or to any circumstance is held invalid,
3 the remainder of those sections and the application of such provisions
4 to others or other circumstances shall not be affected thereby.

Section B. The enactment of section 1.320 shall become effective on
2 January 1, 2017, or upon the revisor of statutes receiving notification that at
3 least four other states have enacted into law substantially similar language as
4 contained in section 1.320 of this act, or upon passage of any new federal acts, or
5 issuance of federal executive, administrative, or court orders which infringe upon
6 or curtail the right to keep and bear arms by law-abiding Missouri citizens as
7 defined in chapter 1.320, whichever event occurs earlier.

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