

FIRST REGULAR SESSION

# HOUSE BILL NO. 859

99TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE POGUE.

1174H.011

D. ADAM CRUMBLISS, Chief Clerk

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## AN ACT

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

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*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Section A. Section 1.320, RSMo, is repealed and nine new sections enacted in lieu thereof, to be known as sections 1.410, 1.420, 1.430, 1.440, 1.450, 1.460, 1.470, 1.480, and 1, to read as follows:

~~[1.320.]~~ **1.410. 1. Sections 1.410 to 1.480 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**

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) Whenever the federal government assumes powers that the people did not grant  
19 it in the 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 compact among the states, was the exclusive or  
23 final judge of the extent of the powers granted to it by the states through the United States  
24 Constitution, the federal government's discretion, and not the United States Constitution,  
25 would necessarily become the measure of those powers. To the contrary, as in all other  
26 cases of compacts among powers having no common judge, each party has an equal right  
27 to judge for itself as to when infractions of the compact have occurred, as well as to  
28 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 ought not to be so construed as themselves

52 to grant unlimited powers because to do so would be to destroy the carefully constructed  
53 equilibrium between the federal and state governments. Consequently, the general  
54 assembly rejects any claim that the taxing and spending powers of Congress can be used  
55 to diminish in any 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 United States  
59 Constitution 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 ownership  
62 of all firearms, the prompt reporting of stolen firearms, and the proper enforcement of all state  
63 gun laws. The general assembly of the state of Missouri hereby condemns any unlawful transfer  
64 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,  
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 Missouri constitution, within the borders of  
5 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.

1.430. All federal acts, laws, executive orders, administrative orders, court orders,  
2 rules, and regulations, whether past, present, or future, which infringe on the people's  
3 right to keep and bear arms as guaranteed by the Second Amendment to the United States  
4 Constitution and article I, section 23 of the Missouri constitution shall be invalid in this

5 state, shall not be recognized by this state, shall be specifically rejected by this state, and  
6 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  
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 in 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 authority to enforce or attempt to enforce any  
3 federal acts, laws, executive orders, administrative orders, court orders, rules, regulations,  
4 statutes, or ordinances, infringing on the right to keep and bear arms as defined in section  
5 1.410.

1.460. 1. Any entity or person who knowingly, as defined in 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 United States Constitution or  
4 article I, section 23 of the Missouri constitution, while acting under the color of any state  
5 or federal law, shall be liable to the injured party in an action at law, suit in equity, or  
6 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 United States Government, or while otherwise acting under the color of federal law while  
3 within the borders of this state, who knowingly, as defined in 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 which 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 1.480, 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.

Section 1. If any provision of sections 1.410 to 1.480 or the application thereof to  
2 any person or circumstance is held invalid, such determination shall not affect the  
3 provisions or applications of sections 1.410 to 1.480 which may be given effect without the  
4 invalid provision or application, and to that end the provisions of sections 1.410 to 1.480  
5 are severable.

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