

HCS HB 1439 -- SECOND AMENDMENT PRESERVATION ACT

SPONSOR: Funderburk

COMMITTEE ACTION: Voted "Do Pass" by the Committee on General Laws by a vote of 9 to 4.

This bill establishes the Second Amendment Preservation Act and changes the laws regarding open carry ordinances, school protection officers, patient ownership of firearms, concealed carry permits, and the Peace Officer Standards and Training Commission.

SECOND AMENDMENT PRESERVATION ACT (Section 1.320, RSMo)

The bill establishes the Second Amendment Preservation Act that:

(1) Declares laws which restrict or prohibit the manufacture, ownership, and use of firearms, firearm accessories, or ammunition exclusively within this state exceed the powers granted to the federal government except to the extent they are necessary and proper for governing and regulating of land and naval forces of the United States or for organizing, arming, and disciplining militia forces actively employed in the service of the United States Armed Forces;

(2) Declares Congress' power to regulate commerce with foreign nations and among the states does not include the power to limit citizens' right to keep and bear arms;

(3) Rejects any claim that Congress' taxing and spending powers can be used to diminish in any way the right of people to keep and bear arms;

(4) Declares all federal laws; executive, administrative, or court orders; rules; and regulations, whether past, present, or future, that infringe on the people's right to keep and bear arms as guaranteed by the Second Amendment to the United States Constitution and Article I, Section 23 of the Missouri Constitution to be invalid in this state, must not be recognized by this state, must be specifically rejected by this state, and must be considered null and void and of no effect in this state, including those that impose a tax, fee, or stamp on these items as specified in the bill; require the registration or tracking of these items or their owners; prohibit the possession, ownership, use, or transfer of a firearm; or order the confiscation of these items;

(5) Declares that it is the duty of the courts and law enforcement agencies to protect the rights of law-abiding citizens to keep and bear arms and that a public officer or state employee cannot have

the authority to enforce or attempt to enforce firearms laws declared invalid by the act;

(6) Specifies that any entity or person who knowingly acts under the color of any federal or state law to deprive a Missouri citizen of the rights or privileges ensured by the federal and state constitutions to keep and bear arms will be liable to the injured party for redress. Reasonable attorney fees and costs may be awarded to the prevailing party with specified exceptions. Neither sovereign nor official or qualified immunity can be an affirmative defense in these cases;

(7) Declares that a federal official, agent, or employee who enforces or attempts to enforce any of the specified infringements on the right to keep and bear arms will be guilty of a class A misdemeanor; and

(8) Authorizes state law enforcement officers to have the discretionary power to appropriately interpose on behalf of law-abiding citizens.

OPEN CARRY ORDINANCES (Section 21.750)

Any ordinance of a political subdivision cannot be construed to preclude the use of a firearm in the defense of person or property subject to the provisions regarding defense of justification. In any jurisdiction in which the open carry of firearms is prohibited by ordinance, the open carry of a firearm cannot be prohibited in specified circumstances. In the absence of any reasonable and articulable suspicion of criminal activity, a person carrying a concealed or unconcealed firearm cannot be disarmed or physically restrained by a law enforcement officer unless he or she is under arrest. Any person who violates these provisions must be subject to citation for up to \$35.

SCHOOL PROTECTION OFFICERS (Sections 160.665 and 590.207)

The bill:

(1) Authorizes any school district to designate one or more school teachers or administrators as a school protection officer, whose responsibilities and duties are voluntary and must be in addition to his or her normal responsibilities and duties. Any compensation for service as a protection officer must be funded by the local school district with no use of state funds;

(2) Requires a school protection officer to be authorized to carry concealed firearms or a self-defense spray device in any school in the district and cannot be permitted to allow any firearm or device

out of his or her personal control while the firearm or device is on school property. A person who allows a firearm out of his or her control while that firearm is on school property is guilty of a class B misdemeanor and may result in his or her immediate removal from the classroom and being subject to employment termination proceedings;

(3) Specifies that a school protection officer has the same authority to detain and use force against any person on school property as provided to any other person under the provisions regarding defense of justification;

(4) Requires the school protection officer to immediately notify a school administrator and a school resource officer when anyone is detained. If the person detained is a student, the school administrator must immediately notify the student's parents or guardians;

(5) Requires a teacher or administrator seeking to be designated as a school protection officer to request the designation in writing to the superintendent of the school district and submit proof that he or she has a valid concealed carry endorsement and a certificate of completion of a school protection officer training program approved by the Director of the Department of Public Safety that demonstrates that the person has successfully completed the training requirements as established by the Peace Officer Standards and Training Commission for school protection officers;

(6) Requires, within 30 days, the school district to notify, in writing, the department director of the designation of any school protection officer or when the district has revoked a person's designation;

(7) Requires the department director to maintain a list of all school protection officers and make the list available to all law enforcement agencies; and

(8) Requires, before a school district may designate a school protection officer, the school board to hold a public hearing on whether to allow the designation. At the hearing, the board must determine whether the school protection officer will be authorized to carry a concealed firearm on school property, or a self-defense spray device, or both. Notice of the hearing must be published at least 15 days before the date of the hearing in a newspaper of general circulation within the city or county in which the school district is located.

PATIENT OWNERSHIP OF FIREARMS (Section 571.012)

The bill:

(1) Specifies that a licensed health care professional, nor anyone under her or her supervision, cannot be required by law to ask a patient whether he or she owns a firearm, document or maintain firearm ownership in a patient's medical records, or notify any governmental entity of the identity of a patient based solely on the patient's status as a firearm owner or access to a firearm;

(2) Prohibits a licensed health care professional, or anyone under his or her supervision, or any person or entity that has possession or control of medical records from disclosing information gathered in a doctor/patient relationship regarding a person's status as a firearm owner or access to firearms except under certain specified circumstances; and

(3) Prohibits a health care professional licensed in this state from using an electronic medical record program that requires, in order to complete and save a medical record, entry of data regarding whether or not a patient owns, has access to, or lives in a home containing a firearm.

CONCEALED CARRY PERMITS (Sections 571.030 and 571.070 - 571.117)

The bill:

(1) Adds a person appointed by a court to be a special prosecutor who has completed the firearms safety training course to the list of individuals who may carry a knife, firearm, blackjack or any other weapon readily capable of lethal use concealed upon or about his or her person; carry 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 carry 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) Lowers, from at least 21 years old to at least 19 years old, the age when a person may apply for a concealed carry endorsement;

(3) Specifies that a person commits the offense of unlawful possession of a firearm if he or she is illegally or unlawfully in the United States;

(4) Changes the time period that a concealed carry permit is valid

from five years for the date of issue or renewal to five years from the last day of the month in which the permit was issued or renewed;

(5) Waives any fees required for a concealed carry endorsement for an applicant who is a service-disabled veteran;

(6) Repeals the provision requiring the sheriff or his or her designee to take, within seven days of receipt of the certificate of qualification, the certificate to the Department of Revenue and the Director of the Department of Revenue to issue a new driver's license or nondriver's license with an endorsement which identifies that the applicant has received a certificate of qualification to carry concealed weapons and the provision requiring a nondriver's license with a concealed carry endorsement to expire three years from the date the certificate of qualification was issued;

(7) Specifies that consent from an educational facility is not required for a person with a concealed carry endorsement or permit who has been designated by his or her school district as a school protection officer to carry a firearm in a school within that district; and

(8) Specifies that a qualified firearms safety instructor who provides firearms safety instruction to a person who applies for a concealed carry permit must not have more than 40 students per certified instructor in the classroom portion of the course.

PEACE OFFICER STANDARDS AND TRAINING COMMISSION (Section 590.200)

The bill requires the Peace Office Standards and Training Commission to establish minimum standards for the training of school protection officers, set the minimum number of hours of required training, and set the curriculum for school protection officer training programs.

The bill specifies that if the provisions of the bill or their application to anyone or to any circumstances is held invalid, the remainder of the provisions and their application to others or other circumstances cannot be affected with the exception of the provision regarding the requirement that there can be no more than 40 students per certified instructor in the classroom portion of a firearms safety course.

The provisions of the bill regarding the Second Amendment Preservation Act will become effective on January 1, 2017, or upon the Revisor of Statutes receiving notification that at least four other states have enacted into law substantially similar language or upon passage of any new federal acts or issuance of federal

executive, administrative, or court orders that infringe upon or curtail the right to keep and bear arms by law-abiding Missouri citizens, whichever occurs earlier.

PROPONENTS: Supporters say that there is a clear separation between federal authority and state authority to regulate firearms and this constitutional right needs to be protected.

Testifying for the bill were Representative Funderburk; Ron Calzone; Phillip Todd; and Missouri Family Network.

OPPONENTS: Opponents say that the bill does not include liabilities incurred due to mishaps.

Testifying against the bill was Missouri National Education Association.