

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0767S.10F
 Bill No.: SS for SCS for HCS for HB Nos. 85 & 310
 Subject: Firearms; Civil Penalties; Political Subdivisions; Law Enforcement Officers and Agencies; and Federal- State Relations
 Type: Original
 Date: May 13, 2021

Bill Summary: This proposal creates additional protections to the right to bear arms.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2022	FY 2023	FY 2024
General Revenue**	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
Total Estimated Net Effect on General Revenue	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)

****Oversight** assumes the total state fiscal impact could exceed \$250,000 due to the potential for civil action and the addition of a civil penalty of \$50,000 per occurrence for any violations of §§1.460 and 1.470.

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2022	FY 2023	FY 2024
State Legal Expense Fund (0692)*	\$0	\$0	\$0
Colleges and Universities*	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
Total Estimated Net Effect on <u>Other</u> State Funds	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)

***The potential fiscal impact to various state funds (and local political subdivisions) stems from a new cause of action that can be brought against the state and other entities in §1.460.**

Numbers within parentheses: () indicate costs or losses.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2022	FY 2023	FY 2024
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2022	FY 2023	FY 2024
Total Estimated Net Effect on FTE	0	0	0

Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$250,000 in any of the three fiscal years after implementation of the act or at full implementation of the act.

Estimated Net Effect (savings or increased revenues) expected to exceed \$250,000 in any of the three fiscal years after implementation of the act or at full implementation of the act.

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2022	FY 2023	FY 2024
Local Government	\$0 or Unknown to (Unknown)	\$0 or Unknown to (Unknown)	\$0 or Unknown to (Unknown)

FISCAL ANALYSIS

ASSUMPTION

Due to time constraints, **Oversight** was unable to receive some agency responses in a timely manner and performed limited analysis. Oversight has presented this fiscal note on the best current information that we have or on information regarding a similar bill(s). Upon the receipt of agency responses, Oversight will review to determine if an updated fiscal note should be prepared and seek the necessary approval to publish a new fiscal note.

§§1.410, 1.420, 1.430, 1.440, 1.450, 1.460, 1.470, 1.480, and 1.485 - Right to bear arms

Officials from the **Office of Administration – General Services (OA/GS)** state §§1.410 to 1.485 create additional protections to the right to bear arms and would create additional categories of claims that could potentially be asserted against the state or other entities covered by the Legal Expense Fund. These claims could result in injunctive relief, civil penalties of fifty thousand dollars per occurrence, and reasonable attorney's fees and costs. If such claims were successfully pursued, they could result in additional costs to the Legal Expense Fund. However, the amount of the potential costs resulting from this proposal cannot be reasonably estimated as this language creates new legal standards, subject to judicial interpretation, and there is no readily available information that could assist in forming a rational basis for estimating costs. In addition, the number of potential claims, the severity of those claims, and the ultimate costs associated with any settlement or judgment resulting from those claims cannot be forecasted with any degree of assurance to their accuracy.

Oversight does not have any information contrary to that provided by OA/GS. Therefore, Oversight will reflect OA/GS's potential unknown impact for fiscal note purposes to the State Legal Expense Fund. Oversight notes the Legal Expense Fund is funded by the General Revenue Fund as well as other state funds. Oversight notes this possible litigation exposure as described by OA could also apply to colleges and universities as well as local political subdivisions.

In response to previous version, officials from the **Office of Attorney General (AGO)** assumed any additional litigation costs arising from this proposal can be absorbed with existing personnel and resources. However, the AGO may seek additional appropriations if there is a significant increase in litigation.

Oversight does not have any information to the contrary. Therefore, Oversight assumes the AGO will be able to perform any additional duties required by this proposal with current staff and resources and will reflect no direct fiscal impact to the AGO for fiscal note purposes.

Officials from the **Department of Public Safety - Missouri State Highway Patrol (MHP)** state the proposal would not have a direct fiscal impact on their organization. However, the Highway Patrol states this proposal could affect Missouri law enforcement agencies' working relationship

with federal partners. In addition, Section 1.460.3 strips the Patrol of any sovereign, official, or qualified immunity and awards attorney's fees to the prevailing party. This act might result in an increased financial cost at the expense of law enforcement and, ultimately, Missouri taxpayers.

Oversight notes the concerns provided by the MHP would be an indirect impact; therefore, for fiscal note purposes, Oversight will reflect a zero impact on the fiscal note for this agency.

Officials from the **City of Kansas City** state the provisions of this legislation in 1.460 could have a negative fiscal impact on Kansas City if it were to lead to an increase in liability.

Oversight notes the unknown impact for the city of Kansas City and is unable to project a statewide cost; therefore, the impact to local governments-political subdivisions will be presented as \$0 to (Unknown).

Officials from the **Office of Administration - Budget and Planning (B&P)** state Article IX, Section 7 of the Missouri Constitution requires that penalties, forfeitures, and fines collected for violations of state law be distributed to the schools. To the extent any additional such revenues are deposited into the state treasury, TSR may increase.

Officials from the **Department of Revenue**, the **Department of Corrections**, the **Missouri Department of Conservation**, the **Missouri Office of Prosecution Services**, the **City of Claycomo**, the **City of Corder**, the **City of St. Louis**, and the **Kansas City Police Department** each assume the proposal will have no fiscal impact on their respective organizations.

In response to similar legislation from 2021 (SS SB 39), officials from the **Office of the State Public Defender** and the **City of O'Fallon** each assumed the proposal will have no fiscal impact on their respective organizations.

In response to similar legislation from 2021 (SB 39), officials from the **Office of the State Courts Administrator**, the **City of Ballwin**, the **City of Bland**, the **City of Houstonia**, the **City of Hughesville**, the **City of Liberty**, the **City of Neosho**, the **City of Springfield**, the **City of Sugar Creek**, the **Crestwood Police Department**, the **Ellisville Police Department**, the **Springfield Police Department**, the **St. Joseph Police Department**, and the **St. Louis County Police Department** each assumed the proposal will have no fiscal impact on their respective organizations.

In response to similar legislation from 2021 (HCS HB Nos. 85 & 310), officials from the **City of Hale**, the **City of Mansfield**, and the **Bel-Nor Police Department** responded to the legislation but did not provide a fiscal impact.

Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for these agencies.

Oversight notes that violations of §§1.460 and 1.470 could result in a civil penalty of \$50,000 per occurrence. Oversight also notes per Article IX Section 7 of the Missouri Constitution fines and penalties collected by counties are distributed to school districts. Fine varies widely from year to year and are distributed to the school district where the violation occurred. Oversight will reflect a positive fiscal impact of \$0 to Unknown to local school districts.

Oversight only reflects the responses that we have received from state agencies and political subdivisions; however, other police and sheriff's departments, cities, and counties were requested to respond to this proposed legislation but did not. A general listing of political subdivisions included in our database is available upon request.

<u>FISCAL IMPACT – State Government</u>	FY 2022	FY 2023	FY 2024
GENERAL REVENUE FUND			
<u>Transfer Out</u> – to the State Legal Expense Fund – OA-GS (§§1.410 to 1.485) Potential increase in litigation p. 3	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>
ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>
STATE LEGAL EXPENSE FUND (0692)			
<u>Transfer In</u> – from General Revenue and other State and Federal funds p. 3	\$0 to Unknown	\$0 to Unknown	\$0 to Unknown
<u>Costs</u> – OA/GS (§§1.410 to 1.485) Potential increase in litigation p. 3	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>
ESTIMATED NET EFFECT ON THE STATE LEGAL EXPENSE FUND	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
<u>FISCAL IMPACT – State Government</u>	FY 2022	FY 2023	FY 2024
COLLEGES AND UNIVERSITIES			
<u>Costs</u> – (§§1.410 to 1.485) Potential increase in litigation p. 3	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>

ESTIMATED NET EFFECT ON COLLEGES AND UNIVERSITIES	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>
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<u>FISCAL IMPACT – Local Government</u>	FY 2022	FY 2023	FY 2024
LOCAL POLITICAL SUBDIVISIONS			
<u>Revenue – School districts (§§1.460 and 1.470) Fines from violations p. 5</u>	\$0 to Unknown	\$0 to Unknown	\$0 to Unknown
<u>Costs - (§§1.410 to 1.485) Potential increase in litigation and/or civil penalty costs p. 4</u>	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>
ESTIMATED NET EFFECT ON LOCAL POLITICAL SUBDIVISIONS	<u>\$0 or Unknown to (Unknown)</u>	<u>\$0 or Unknown to (Unknown)</u>	<u>\$0 or Unknown to (Unknown)</u>

FISCAL IMPACT – Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

FISCAL DESCRIPTION

The bill establishes the "Second Amendment Preservation Act", which:

(1) Declares that laws, rules, orders, or other actions 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 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 that all federal acts, laws, executive orders, administrative orders, 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 must be invalid in this state, including those that impose a tax, levy, 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;

(3) Declares that it must be the duty of the courts and law enforcement agencies to protect the rights of law-abiding citizens to keep and bear arms and that no person, including a public officer or state employee of this state or any political subdivision of this state, can have authority to enforce or attempt to enforce any federal laws, orders, or rules infringing on the right to keep and bear arms; and

(4) 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 must be liable to the injured party for redress. Reasonable attorney fees and costs may be awarded to the prevailing party with specified exceptions. The employer of the individual who is found liable is responsible for the civil penalty, attorney's fees, and court costs associated with the litigation if the individual is found to have violated this act. Government entities may not recover under this act. Qualified immunity shall not be a defense.

This bill contains an emergency clause.

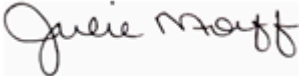
This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

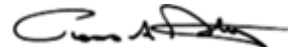
Attorney General's Office
Department of Corrections
Department of Public Safety - Missouri Highway Patrol
Department of Revenue
Missouri Department of Conservation
Missouri Office of Prosecution Services
Office of Administration
Office of the State Courts Administrator
Office of the State Public Defender
City of Ballwin
City of Bland
City of Claycomo
City of Corder
City of Hale
City of Houstonia
City of Hughesville
City of Kansas City
City of Liberty
City of Mansfield
City of Neosho

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City of O'Fallon
City of Springfield
City of St. Louis
City of Sugar Creek
Bel-Nor Police Department
Crestwood Police Department
Ellisville Police Department
Kansas City Police Department
Springfield Police Department
St. Joseph Police Department
St. Louis County Police Department



Julie Morff
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May 13, 2021



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