

SECOND REGULAR SESSION

HOUSE JOINT RESOLUTION NO. 195

103RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE OVERCAST.

7056H.011

JOSEPH ENGLER, Chief Clerk

JOINT RESOLUTION

Submitting to the qualified voters of Missouri an amendment repealing Section 40(a) of Article IV of the Constitution of Missouri, and adopting two new sections in lieu thereof relating to the powers of the conservation commission.

Be it resolved by the House of Representatives, the Senate concurring therein:

That at the next general election to be held in the state of Missouri, on Tuesday next following the first Monday in November, 2026, or at a special election to be called by the governor for that purpose, there is hereby submitted to the qualified voters of this state, for adoption or rejection, the following amendment to Article IV of the Constitution of the state of Missouri:

Section A. Section 40(a), Article IV, Constitution of Missouri, is repealed and two new sections adopted in lieu thereof, to be known as Sections 40(a) and 40(c), to read as follows:

Section 40(a). The control, management, restoration, conservation and regulation of the bird, fish, game, forestry and all wildlife resources of the state, including hatcheries, sanctuaries, refuges, reservations and all other property owned, acquired or used for such purposes and the acquisition and establishment thereof, and the administration of all laws pertaining thereto, **except all rules and regulations promulgated shall be subject to any requirements for executive agencies in general law**, shall be vested in a conservation commission consisting of four members appointed by the governor, by and with the advice and consent of the senate, not more than two of whom shall be of the same political party.

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.

9 The members shall have knowledge of and interest in wildlife conservation. The members
10 shall hold office for terms of six years beginning on the first day of July of consecutive odd
11 years. Two of the terms shall be concurrent; one shall begin two years before and one two
12 years after the concurrent terms. If the governor fails to fill a vacancy within thirty days, the
13 remaining members shall fill the vacancy for the unexpired term. The members shall receive
14 no salary or other compensation for their services as members, but shall receive their
15 necessary traveling and other expenses incurred while actually engaged in the discharge of
16 their official duties.

**Section 40(c). 1. For purposes of wildlife enforcement, adjudication, and
2 procedural due process, the following terms mean:**

3 **(1) "Actively hunting":**

4 **(a) Engaging in the pursuit, stalking, tracking, or taking of wildlife with the**
5 **present intent to harvest such wildlife, while possessing a functional weapon outside of a**
6 **motor vehicle and engaging in conduct demonstrating pursuit beyond mere presence,**
7 **transit, or staging activity;**

8 **(b) The term "actively hunting" shall not include:**

9 **a. Standing within fifty feet of a motor vehicle;**

10 **b. Entering, exiting, loading, unloading, or staging equipment near a motor**
11 **vehicle; or**

12 **c. Mere possession of a lawful weapon absent pursuit of or an attempt to take**
13 **wildlife;**

14 **(2) "Commission", the conservation commission created under Article IV of the**
15 **Constitution of Missouri;**

16 **(3) "Department", the department of conservation created under section**
17 **252.002;**

18 **(4) "Protected private land", land that is privately owned and regarded as**
19 **protected property where the owner of the land has manifested an intent to exclude the**
20 **general public from engaging in activities including, but not limited to, fencing, gating,**
21 **posting signage, cultivation, or livestock use;**

22 **(5) "Retention", the continued holding of seized wildlife beyond the time**
23 **reasonably necessary to document the alleged violation;**

24 **(6) "Seizure", the taking of wildlife, carcasses, or parts by an authorized**
25 **conservation agent incident to enforcement.**

26 **2. Nothing in this section shall be construed to limit the authority of the**
27 **conservation commission or the department of conservation to seize wildlife incident to**
28 **lawful enforcement. Seizure shall not constitute forfeiture. Wildlife shall not be deemed**
29 **forfeited absent an order entered by a court of competent jurisdiction.**

30 **3. Payment of a citation, fine, or administrative penalty shall not be required as**
31 **a condition for the return of seized wildlife unless forfeiture is expressly ordered by a**
32 **court. Acceptance of payment shall not operate as an admission of forfeiture.**

33 **4. Wildlife may be retained for a reasonable period necessary to photograph,**
34 **tag, sample, or otherwise document an alleged violation. If wildlife is retained beyond**
35 **seventy-two hours after seizure, judicial authorization shall be required. Such**
36 **authorization shall be sought no later than seven days after seizure and shall require a**
37 **showing of probable cause that a violation occurred, and specific necessity for continued**
38 **retention pending adjudication. Exigent circumstances may justify temporary**
39 **continued retention but shall not excuse the requirement for judicial authorization**
40 **within the prescribed period.**

41 **5. (1) Seized wildlife shall be returned to the owner pending final disposition**
42 **unless a court finds, by clear and convincing evidence, that:**

- 43 **(a) The wildlife constitutes contraband per se;**
- 44 **(b) Continued retention is necessary to preserve material evidence;**
- 45 **(c) Retention is required to protect public health or safety; or**
- 46 **(d) The owner has been adjudicated guilty of a substantially similar violation**
47 **within the preceding five years.**

48 **(2) The burden of proof shall rest with the department.**

49 **6. Forfeiture shall not be ordered unless the department proves by clear and**
50 **convincing evidence that forfeiture is authorized by law and is proportional to the**
51 **violation. Forfeiture proceedings shall be separate from the determination of guilt by a**
52 **court of competent jurisdiction, and no inference of guilt shall arise from seizure or**
53 **retention.**

54 **7. (1) At the time of seizure, the conservation commission or department agent**
55 **or employee shall provide the owner with written notice, stating:**

- 56 **(a) The statutory provision alleged to have been violated;**
- 57 **(b) The specific factual basis for the seizure;**
- 58 **(c) Whether the department intends to retain the wildlife beyond**
59 **documentation; and**
- 60 **(d) The right to judicial review.**

61 **(2) Failure to provide the notice under subdivision (1) of this subsection creates a**
62 **rebuttable presumption that continued retention is unlawful.**

63 **(3) An owner may file a verified petition with a request for an expedited judicial**
64 **hearing in a court of competent jurisdiction. The owner shall pay the filing fees and**
65 **court costs associated with filing the petition. The court shall set the case for hearing no**

66 later than five business days after filing of the petition unless good cause is shown for a
67 delay. The department of conservation shall bear the burden of proof at such hearing.

68 8. If the retention of wildlife by the department is found to be unlawful, the court
69 shall order immediate return of the wildlife to the owner or the payment of monetary
70 compensation in equivalent value if the return is impossible. Reasonable attorney's fees
71 and costs may be awarded only upon a finding of material noncompliance of the
72 applicable law or the department's rules and regulations. Nothing herein shall be
73 construed as a general waiver of sovereign immunity.

74 9. (1) Except as provided in subdivision (2) of this subsection, no commission or
75 department agent shall enter protected private land for purposes of investigation,
76 surveillance, enforcement, or evidence gathering without:

77 (a) A warrant issued by a court of competent jurisdiction; or

78 (b) Voluntary consent of the property owner or lawful occupant of the property.

79 (2) A commission or department agent may enter protected private land without
80 a warrant only when:

81 (a) Responding to an objectively reasonable exigent circumstance involving
82 immediate threat to public safety, destruction of material evidence, or the active
83 commission of a violent or felony wildlife-related offense; or

84 (b) Engaging in noninvestigatory activities expressly authorized by law that do
85 not involve surveillance, evidence collection, or enforcement action.

86 (3) Routine patrol, generalized surveillance, or speculative investigation shall not
87 constitute exigent circumstances for purposes of subdivision (2) of this subsection.

88 (4) The open fields doctrine shall not, standing alone, authorize warrantless
89 entry onto protected private land for wildlife enforcement purposes under the
90 Constitution of Missouri.

91 (5) Evidence obtained in violation of this subsection shall be inadmissible in any
92 criminal, civil, or administrative wildlife enforcement proceeding.

93 (6) Nothing in this subsection shall be construed to:

94 (a) Prohibit entry upon public land or land subject to public access easements;

95 (b) Limit enforcement authority on navigable waters where public access rights
96 exist; or

97 (c) Restrict lawful entry under a valid warrant or voluntary consent.

98 10. Nothing in this section shall be construed to:

99 (1) Decriminalize poaching or illegal taking of wildlife;

100 (2) Diminish the constitutional authority of the conservation commission to
101 conserve and regulate wildlife resources; or

102 **(3) Create a private cause of action beyond the remedies expressly provided**
103 **under the law.**

 Section B. Pursuant to chapter 116, and other applicable constitutional provisions and
2 laws of this state allowing the general assembly to adopt ballot language for the submission of
3 this joint resolution to the voters of this state, the official summary statement of this
4 resolution shall be as follows:

5 "Shall the Missouri Constitution be amended to require judicial oversight and due
6 process protections in wildlife enforcement, limit warrantless entry onto private land, and
7 restore legislative oversight of enforcement regulations, while preserving the conservation
8 authority of the Missouri Department of Conservation?".

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