

HB 2176 -- PUBLIC SAFETY

SPONSOR: Perkins

COMMITTEE ACTION: Voted "Do Pass" by the Standing Committee on General Laws by a vote of 8 to 4. Voted "Do Pass" by the Standing Committee on Rules-Legislative by a vote of 9 to 3.

This bill establishes the "Anti-Red Flag Gun Seizure Act".

For purposes of the bill, "red flag law" is defined as any gun control law, order, or measure that directs the seizure of any firearm, accessory, or ammunition of an individual, except persons lawfully in custody or persons who have been released after the execution of a bail bond after having been charged with a dangerous felony, or any Federal or state rule, statute, or judicial order that prohibits a Missouri citizen from owning or receiving any firearm, accessory, or ammunition or any order of removal for the surrender of any firearm, accessory, or ammunition of an individual, except persons lawfully in custody or persons who have been released after the execution of a bail bond after having been charged with a dangerous felony.

Any red flag law that directs the confiscation of any firearm, accessory, or ammunition from any law-abiding citizen, within the borders of Missouri, will not be enforced within Missouri.

No state agency, political subdivision, or state or local law enforcement agency can receive any Federal funds for the purpose of enforcing any Federal law, order, or judicial finding for the purpose of enforcing any state statute, rule, order, or judicial finding that would have the effect of enforcing a red flag law against a Missouri citizen.

No entity or person, including a state entity or employee thereof, or political subdivision or employee thereof, will have the authority to enforce or attempt to enforce a red flag law regardless of the red flag law's origin or the authority of the issuing entity, except that this prohibition will not apply to any agent of the Federal government enforcing a Federal law or Federal order.

A political subdivision or state or local law enforcement agency that employs a law enforcement officer that knowingly violates the provisions of this bill will be liable to the party against whom the red flag law was enforced and additionally will be subject to a civil penalty of \$50,000 per occurrence.

In any action brought under the provisions of this bill, a court can order injunctive or other equitable relief, recovery of damages, other legal remedies, and payment of reasonable attorney's fees, costs, and expenses of the party. Such relief will not be exclusive and additional relief or remedies can be awarded as otherwise permitted by law (Section 1.486).

Currently, the Missouri General Assembly occupies and preempts the entire field of legislation on firearms, components, and ammunition and supplies of firearms. An exception is granted allowing local political subdivisions to regulate the open carrying of firearms by ordinance.

This bill repeals this exception for local political subdivisions. This bill also creates a civil cause of action against a political subdivision that enacts an ordinance that regulates firearms. Any person who believes that a jurisdiction has taken action that would violate these provisions will have standing to pursue a cause of action or to seek injunctive relief, and the injured party will receive a civil penalty of \$50,000. The court can also award the injured party reasonable attorney fees and costs. Sovereign immunity will not be considered an affirmative defense (Section 21.750).

Currently, a person can use physical force upon another person to defend himself or herself or a third person from what he or she reasonably believes to be the imminent use of unlawful force by such other person. However, a person must not use deadly force upon another person unless such force is used against a person who unlawfully enters a dwelling, residence, or vehicle. If the person asserts that his or her use of deadly force was for this purpose, the burden is on the State to prove beyond a reasonable doubt that the defendant did not reasonably believe that the use of such force was necessary.

This bill repeals those provisions related to deadly force used against another who unlawfully enters a dwelling, residence, or vehicle. This bill further states that there must be a presumption of reasonableness that the defendant believed such force was necessary to defend himself or herself or a third party from what he or she believed to be the use or imminent use of unlawful force by another person (Section 563.031).

Currently, an armed nuclear security guard, employer of an armed nuclear security guard, or owner of a nuclear power plant will not be subject to civil liability for the physical or deadly

force used by an armed nuclear security guard. However, even if the use of physical or deadly force was justified, that fact does not abolish or impair any remedy for such conduct in a separate civil action.

This bill repeals the provision allowing for a remedy for such conduct in a separate civil action (Section 563.041).

Currently, a person who uses physical or deadly force under certain conditions, as described in the bill, is justified in using such force and will be an absolute defense to criminal prosecution or civil liability. However, even if the use of physical or deadly force was justified, that fact does not abolish or impair any remedy for such conduct in a separate civil action.

This bill repeals the provision allowing for a remedy for such conduct in a separate civil action (Section 563.074).

This bill provides immunity to a person from criminal prosecution and civil action for the use or threatened use of physical or deadly force, unless:

- (1) The person against whom such force was used or threatened is a law enforcement officer acting in his or her official duties and the officer identified himself or herself as such; and
- (2) The force used or threatened occurred in a location readily accessible to the public.

A law enforcement agency can investigate the use or threatened use of force, but the agency must not arrest the person for using or threatening force unless the agency determines that there is probable cause that the force used or threatened was unlawful.

Once a prima facie claim of self-defense immunity is raised by the defendant in a criminal prosecution or civil action, the party seeking to overcome the immunity claim will have to prove by clear and convincing evidence that the claim is improper (Section 563.085).

Currently, a county or city sheriff can issue a concealed carry permit to someone at least 19 years of age, or who is at least 18 years of age and a member of the U.S. Armed Services. This bill repeals these provisions, and reduces the minimum age to 18 (Section 571.101).

Currently, a concealed carry endorsement issued prior to August 28, 2013, must be suspended or revoked if the holder of the endorsement becomes ineligible due to certain state actions taken against the holder. This bill extends such a suspension or revocation to a holder who is at least 18 years of age (Section 571.104).

Currently, any individual who has knowledge that a person with a concealed carry permit or endorsement is ineligible to hold such a permit or endorsement can file a petition to revoke that person's permit or endorsement. The individual filing the revocation petition can check any boxes that apply to the defendant. This bill updates the revocation petition form by:

(1) Repealing the requirement that the named defendant must be at least 19 years of age; and

(2) Altering the number of years of imprisonment for crimes that the defendant has pled guilty to or been convicted of (Section 571.117).

Currently, a Missouri lifetime or extended concealed carry permit must be issued by a county or city sheriff if the applicant is at least 19 years of age, or is at least 18 years of age and a member of the U.S. Armed Services. This bill repeals these provisions, and reduces the minimum age to 18 (Section 571.205).

Currently, any individual who has knowledge that a person with a Missouri lifetime or extended concealed carry permit is ineligible to hold such a permit can file a petition to revoke that person's permit. The individual filing the revocation petition can check any boxes that apply to the defendant. This bill updates the revocation petition form by:

(1) Repealing the requirement that the named defendant must be at least 19 years of age; and

(2) Altering the number of years of imprisonment for crimes that the defendant has pled guilty to or been convicted of (Section 571.225).

**PROPONENTS:** Supporters say that to assume someone is guilty without probable cause is un-American. Any time that the government enters the fray, gun rights tend to diminish. Red flag laws are often used nefariously, like stalkers, because the red flag is often raised falsely.

Testifying in person for the bill were Representative Perkins; Missouri Firearms Coalition; Susan Myers; Arnie C. Dienoff.

OPPONENTS: Those who oppose the bill say that Missouri has the 4th highest rate of gun violence and very high suicide rates by gun. This will not prevent gun violence. This violates civil and due process laws. Red flag laws are life-saving tools. This is a one-size-fits-all approach that forces jurisdictions to adapt.

Testifying in person against the bill was Kristen Bowen, Moms Demand Action For Gun Sense In America.

Written testimony has been submitted for this bill. The full written testimony and witnesses testifying online can be found under Testimony on the bill page on the House website.