

## THE SECOND AMENDMENT PRESERVATION ACT

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The Second Amendment Preservation Act (SAPA) has passed the Missouri legislature and been signed by the Governor. I have read the Act, which seems to have put me one up on all the local commentators.

The law is NOT an attempt to nullify federal gun laws. It is NOT a sanctuary law. It does NOT authorize domestic abusers to have guns. The Kansas City Star strongly implies that it does and does a disservice to its readers by doing so.

The law begins by stating that the federal government has limited powers and the right to own guns is prized in Missouri. Since 1820, Missouri Constitutions have recognized the personal right to own guns. The current 1945 Constitution is very specific on this point. In 2014, this section of the Constitution was amended to strengthen the right and require the Missouri Attorney General to defend that right.

The SAPA law at RSMo 1.420 states that five specific actions infringe the people's right to keep and bear arms under the Second Amendment to the Federal Constitution and Article I Section 23 of the Missouri Constitution:

1. Any tax, levy, fee, or stamp imposed on firearms, firearm accessories, or ammunition not common to all other goods and services;
2. Any registration or tracking of firearms, firearms accessories, or ammunition;
3. Any registration or tracking of the ownership of firearms, firearm accessories, or ammunition;
4. Any act forbidding the possession, ownership, use, or transfer of a firearm, firearm accessory, or ammunition by law abiding citizen; and
5. Any act ordering the confiscation of firearm, firearm accessories, or ammunition from law-abiding citizens.

We must note the phrase "law-abiding citizens" in paragraphs 4 and 5. The Missouri legislature has departed from its glorious history of not defining its terms. The term is defined at RSMo 1.480 as "a person who is not otherwise precluded under state law from possessing a firearm and shall not be construed to include anyone who is not legally present in the United States or the state of Missouri." The last part of the definition would refer to illegal aliens who are not legally present in the state and are forbidden to possess firearms by federal law. It is specifically not a violation of this law for local law enforcement to assist federal law enforcement in pursuit of a suspect when there is a criminal connection with another state or country; RSMo 1.480.3. It is specifically not a violation of this law for local law enforcement to assist federal agents in prosecution for:

1. Felony crimes involving weapons offenses substantially similar to Missouri law
2. Class A or B felony (the highest levels) violations similar to Missouri law involving controlled substances; 1.480.4. Reviewing weekly reports from the BATF show that it is common for that agency to file federal firearms charges on persons using them in drug transactions. SAPA will not disturb local law enforcement assistance in this area.

Violation of this law invokes a civil penalty of \$50,000. Individuals who believe this law is being violated are authorized to file an injunction to halt the violation. A St. Louis metro area police chief resigned in the belief this provision might bankrupt him. Prior law allows lawsuits for violation of constitutional rights. SAPA codifies part of this area.

The law does not prevent the federal government from enforcing federal law. It cannot. That would be like King Canute ordering the tide to go out (didn't work). It is a response to President Biden's threats to further restrict firearms. The US Supreme Court has previously ruled that the federal government cannot commandeer local law enforcement in order to enforce federal law. This law puts teeth into the decision.

It is frequently said that this law, and previous laws, allow persons convicted of adult abuse to own guns. The usual suspects repeatedly claim that there is no law preventing adult abusers from possessing guns. This is not true. Federal law prohibits persons convicted of even misdemeanor adult abuse from possessing or having access to guns. Missouri does not have an equivalent law. Adult abuse and stalking are against the law in Missouri. Felony versions of these laws prevent the defendant from possessing or having access to guns. Under SAPA, local law enforcement can assist in confiscating guns from such defendants. It is arguable that local law enforcement cannot assist in disarming misdemeanor defendants. Federal law enforcement can. Under federal law, defendants in a civil protective order cannot possess or have access to guns. Missouri does not have an equivalent statute, local law enforcement cannot assist in disarming persons subject to these orders. Federal law enforcement certainly can. The federal government has nicer prisons; but they do not have a parole system and rarely grant probation. Persons subject to these orders or convictions are advised not to take their chances.

The City of St. Louis has filed a lawsuit challenging the constitutionality of SAPA. The federal Department of Justice has written to Missouri's Governor and Attorney General demanding to know why they think they can invalidate federal law. They wrote back to the effect of, "Read the law, it does nothing of the kind." This continues the recent tradition of parties screaming at each other from positions of hysteria. We shall see.