

FILED MAR 2 1998

Rereferred To: *Judiciary 3/25/98*

SENATE FILE 2382

BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SF 2211)

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

A BILL FOR

1 An Act providing for the seizure of firearms as part of the  
2 requirements of a protective order against domestic abuse.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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S.F. 2382

1 Section 1. Section 236.5, subsection 2, Code Supplement  
2 1997, is amended by adding the following new paragraph:

3 NEW PARAGRAPH. f. If the court has reasonable grounds to  
4 believe that the defendant owns or possesses any firearms,  
5 that the defendant surrender the firearms. If the defendant  
6 is ordered to surrender the firearms, a peace officer shall  
7 search for any firearms owned or possessed by the defendant,  
8 and seize any firearms found pending further order by the  
9 court.

10 Sec. 2. IMPLEMENTATION OF ACT. Section 25B.2, subsection  
11 3, shall not apply to this Act.

12 EXPLANATION

13 This bill amends Code section 236.5 relating to protective  
14 orders issued upon a finding of domestic abuse. In addition  
15 to the current elements of such a protective order, this bill  
16 permits the court to order that a defendant surrender all  
17 firearms, if the court has reasonable grounds to believe that  
18 the defendant owns or possesses any firearms. A peace officer  
19 shall thereafter search for any firearms and seize them until  
20 further order of the court.

21 This bill may include a state mandate as defined in Code  
22 section 25B.3. This bill makes inapplicable Code section  
23 25B.2, subsection 3, which would relieve a political  
24 subdivision from complying with a state mandate if funding for  
25 the cost of the state mandate is not provided or specified.  
26 Therefore, political subdivisions are required to comply with  
27 any state mandate included in this bill.

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SENATE FILE 2382  
FISCAL NOTE

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A fiscal note for Senate File 2382 is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note is available from the Legislative Fiscal Bureau to members of the Legislature upon request.

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Senate File 2382 permits the Court to order a defendant surrender all firearms when issuing a protective order upon a finding of domestic abuse. The Bill requires peace officers to search and seize firearms owned or possessed by the defendant pending further order by the Court.

FISCAL IMPACT

Senate File 2382 will have no fiscal impact to the State General Fund.

It is unknown to what extent local peace officers will conduct additional searches and seizures of firearms. Therefore, the fiscal impact to local government law enforcement agencies cannot be determined.

SOURCE

Judicial Department

(LSB 3993SV, DHK)

FILED MARCH 5, 1998

BY DENNIS PROUTY, FISCAL DIRECTOR

## SENATE FILE 2382

S-5245

1 Amend the amendment, S-5243, to Senate File 2382 as  
2 follows:  
3 1. Page 1, line 2, by striking the words  
4 "inserting before" and inserting the following:  
5 "striking".  
6 2. Page 1, line 3, by inserting after the word  
7 ""firearms"" the following: "and inserting".  
8 3. Page 1, lines 3 and 4, by striking the words  
9 ", controlled substances, or dangerous weapons,  
10 including" and inserting the following: "or  
11 controlled substances".  
12 4. Page 1, line 5, by striking the words  
13 "inserting before" and inserting the following:  
14 "striking".  
15 5. Page 1, line 6, by inserting after the word  
16 ""firearms"" the following: "and inserting".  
17 6. Page 1, lines 6 and 7, by striking the words  
18 ", controlled substances, or dangerous weapons,  
19 including" and inserting the following: "or  
20 controlled substances".  
21 7. Page 1, line 8, by striking the words  
22 "inserting before" and inserting the following:  
23 "striking".  
24 8. Page 1, line 9, by inserting after the word  
25 ""firearms"" the following: "and inserting".  
26 9. Page 1, lines 9 and 10, by striking the words  
27 ", controlled substances, or dangerous weapons,  
28 including" and inserting the following: "or  
29 controlled substances".  
30 10. Page 1, line 11, by striking the words  
31 "inserting before" and inserting the following:  
32 "striking".  
33 11. Page 1, line 12, by inserting after the word  
34 ""firearms"" the following: "and inserting".  
35 12. Page 1, lines 12 and 13, by striking the  
36 words ", controlled substances, or dangerous weapons,  
37 including" and inserting the following: "or  
38 controlled substances".  
39 13. Page 1, line 14, by striking the words  
40 "inserting before" and inserting the following:  
41 "striking".  
42 14. Page 1, line 15, by inserting after the word  
43 ""firearms"" the following: "and inserting".  
44 15. Page 1, lines 15 and 16, by striking the  
45 words ", controlled substances, or dangerous weapons,  
46 including" and inserting the following: "or  
47 controlled substances".  
48 16. Page 1, line 17, by striking the words  
49 "inserting before" and inserting the following:  
50 "striking".

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Page 2

- 1 17. Page 1, line 18, by inserting after the word
- 2 ""firearms"" the following: "and inserting".
- 3 18. Page 1, lines 18 and 19, by striking the
- 4 words ", controlled substances, or dangerous weapons,
- 5 including" and inserting the following: "or
- 6 controlled substances".
- 7 19. By renumbering as necessary.

By STEVE KING

S-5245 FILED MARCH 12, 1998

## SENATE FILE 2382

S-5243

1 Amend Senate File 2382 as follows:

- 2 1. Page 1, line 4, by inserting before the word
- 3 "firearms" the following: "alcohol, controlled
- 4 substances, or dangerous weapons, including".
- 5 2. Page 1, line 5, by inserting before the word
- 6 "firearms" the following: "alcohol, controlled
- 7 substances, or dangerous weapons, including".
- 8 3. Page 1, line 6, by inserting before the word
- 9 "firearms" the following: "alcohol, controlled
- 10 substances, or dangerous weapons, including".
- 11 4. Page 1, line 7, by inserting before the word
- 12 "firearms" the following: "alcohol, controlled
- 13 substances, or dangerous weapons, including".
- 14 5. Page 1, line 8, by inserting before the word
- 15 "firearms" the following: "alcohol, controlled
- 16 substances, or dangerous weapons, including".
- 17 6. Title page, line 1, by inserting before the
- 18 word "firearms" the following: "alcohol, controlled
- 19 substances, and dangerous weapons, including".

By STEVE KING

S-5243 FILED MARCH 12, 1998

## SENATE FILE 2382

S-5258

1 Amend Senate File 2382 as follows:

2 1. Page 1, by inserting before line 1 the  
3 following:

4 "Section 1. Section 232.106, subsection 1, Code  
5 1997, is amended to read as follows:

6 1. The order shall state the reasons for and  
7 purpose of the terms and conditions. The court shall  
8 order the surrender of firearms, as detailed in  
9 section 236.5, subsection 2, to protect an identified  
10 victim in a case involving domestic abuse as defined  
11 in section 236.2."

12 2. Page 1, by striking lines 3 through 9 and  
13 inserting the following:

14 "NEW PARAGRAPH. f. That the defendant surrender  
15 any firearms owned or possessed by the defendant.  
16 Upon application for a search warrant pursuant to  
17 section 808.3, the court shall determine whether to  
18 issue a search warrant. Pursuant to the provisions of  
19 chapter 808, if the court has probable cause to  
20 believe that the defendant owns or possesses firearms,  
21 and that the firearms are in a reasonably certain  
22 location, the court shall issue a search warrant, and  
23 a peace officer shall execute the warrant. Procedure  
24 for return of the seized property shall be governed by  
25 the provisions of chapter 809. The defendant shall  
26 not be eligible for return of any seized firearms, nor  
27 may the seizing agency dispose of such firearms except  
28 in accordance with chapter 809, while a protective  
29 order or approved consent agreement under this section  
30 is in effect, except as permitted by chapter 809."

31 3. Page 1, by inserting before line 10 the  
32 following:

33 "Sec. \_\_\_\_ . Section 236.14, subsection 2, is  
34 amended by adding the following new unnumbered  
35 paragraph 2:

36 NEW UNNUMBERED PARAGRAPH. The court shall also  
37 order that the defendant surrender any firearms owned  
38 or possessed by the defendant, if such firearms have  
39 not been previously surrendered or seized pursuant to  
40 court order and search warrant. If the defendant is  
41 ordered to surrender firearms, the court shall  
42 determine whether to issue a search warrant. Pursuant  
43 to the provisions of chapter 808, if the court has  
44 probable cause to believe that the defendant owns or  
45 possesses firearms, and that the firearms are in a  
46 reasonably certain location, the court shall issue a  
47 search warrant, and a peace officer shall execute the  
48 warrant. Procedure for return of the seized property  
49 shall be governed by the provisions of chapter 809.  
50 The defendant shall not be eligible for return of any

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Page 2

1 seized firearms, nor shall the seizing agency dispose  
2 of such firearms except in accordance with chapter  
3 809, while a no-contact order under this section is in  
4 effect.

5 Sec. \_\_\_\_\_. Section 598.33, Code 1997, is amended by  
6 adding the following new unnumbered paragraph:

7 NEW UNNUMBERED PARAGRAPH. As part of any order  
8 under this section, the court shall also order the  
9 surrender of firearms, as detailed in section 236.5,  
10 subsection 2, for the protection of the other party or  
11 the children in a case involving domestic abuse as  
12 defined in section 236.2.

13 Sec. \_\_\_\_\_. NEW SECTION. 724.26A POSSESSION OF  
14 FIREARMS BY PERSONS SUBJECT TO CERTAIN COURT ORDERS.

15 1. A person who is subject to a court order that  
16 satisfies the following requirements shall not  
17 possess, ship, or transport any firearm or ammunition:

18 a. The order arose from a situation involving  
19 domestic abuse as defined in section 236.2.

20 b. The court order was issued after notice and an  
21 opportunity to participate in a hearing.

22 c. The order is a no-contact order, temporary  
23 restraining order, or other protective order requiring  
24 that the person refrain from contacting, threatening,  
25 harassing, or intimidating a family or household  
26 member, and that the person surrender all firearms  
27 owned or possessed by the person.

28 2. A person who violates subsection 1 while such a  
29 court order is in effect is guilty of an aggravated  
30 misdemeanor.

31 Sec. \_\_\_\_\_. Section 808.2, Code 1997, is amended by  
32 adding the following new subsection:

33 NEW SUBSECTION. 5. For firearms ordered to be  
34 surrendered as part of a no-contact, protective, or  
35 temporary restraining order issued in a case involving  
36 domestic abuse as defined in section 236.2.

37 Sec. \_\_\_\_\_. Section 809.5, subsection 1, Code 1997,  
38 is amended by adding the following new unnumbered  
39 paragraph:

40 NEW UNNUMBERED PARAGRAPH. Notwithstanding the  
41 provisions of this subsection, the seizing agency  
42 shall retain firearms seized pursuant to a search  
43 warrant issued by the court in a case involving  
44 domestic abuse until after expiration of any  
45 applicable protective order, no-contact order, or  
46 temporary restraining order. At the expiration of  
47 such order, the notice required by this subsection  
48 shall be sent, and the property dealt with in  
49 accordance with the procedures for return or disposal.  
50 This subsection shall not be construed to limit an

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1 action for forfeiture under chapter 809A.

2 Sec. \_\_\_\_\_. Section 910A.11, subsection 1, Code  
3 1997, is amended by adding the following new  
4 unnumbered paragraph 2:

5 NEW UNNUMBERED PARAGRAPH. As part of any order  
6 under this subsection, the court shall also order the  
7 surrender of firearms, as detailed in section 236.5,  
8 subsection 2, to protect an identified victim in a  
9 case involving domestic abuse as defined in section  
10 236.2.

11 Sec. \_\_\_\_\_. Section 910A.11, subsection 2, Code  
12 1997, is amended by adding the following new  
13 unnumbered paragraph 4:

14 NEW UNNUMBERED PARAGRAPH. As part of any order  
15 under this subsection, the court shall also order the  
16 surrender of firearms, as detailed in section 236.5,  
17 subsection 2, to protect an identified victim in a  
18 case involving domestic abuse as defined in section  
19 236.2.

20 Sec. \_\_\_\_\_. APPLICABILITY. The provisions of this  
21 Act shall apply only to offenses committed on or after  
22 the effective date of this Act."

23 4. Title page, line 2, by inserting after the  
24 word "abuse" the following: "and providing a  
25 penalty".

26 5. By renumbering as necessary.

By MAGGIE TINSMAN

S-5258 FILED MARCH 16, 1998