



STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL

DEREK SCHMIDT
ATTORNEY GENERAL

MEMORIAL HALL
120 SW 10TH AVE., 2ND FLOOR
TOPEKA, KS 66612-1597
(785) 296-2215 • FAX (785) 296-6296
WWW.KSAG.ORG

Senate Federal and State Affairs Committee
SB 454
Assistant Attorney General Charles W. Klebe
March 8, 2012

Mr. Chairman and members of the committee, thank you for allowing me to provide written and oral testimony in favor of Senate Bill 454 on behalf of Attorney General Derek Schmidt. I am the Assistant Attorney General responsible for the Concealed Carry Licensing Unit (Unit) and its administration of the Kansas Personal and Family Protection Act (KPFPA). While most of this bill is "clean-up" in nature, there are some aspects that might be seen as substantive changes. I simply wish to highlight some technical areas of consideration and I am happy to stand for any questions.

Section 1 of the bill touches upon K.S.A. § 12-16,124. The amendments withdraw any references to previously repealed KPFPA statutes (i.e., § 75-7c11) and add language making it clear that cities and counties with transportation restrictions on firearms are not to apply those restrictions to individuals with CCH licenses or permits that are honored by Kansas.

Section 2 of the bill amends the definition of a "firearm" under K.S.A. § 21-5111. This amendment does not touch concealed carry itself but it does bring Kansas further into line with federal law by exempting "antique" firearms. This is predominantly viewed as a black powder exemption. See 18 USC § 921(a)(3) & (a)(16).

Sections 3 and 4 are intended to remedy an interpretation issue between the adult expungement statute (K.S.A. § 21-6614; previously found at § 21-4619) and the criminal possession of a firearm statute (K.S.A. § 21-6304; previously § 21-4204). Specifically, the former states that the expungement of a felony conviction will not relieve state or federal firearm use and possession restrictions. But, the latter states that the expungement of certain felonies (those listed under subsection (a)(3)(A)) will release a firearms prohibition early. Neither subsection references the other to specify which provision will prevail. The prohibition originally pronounced in § 21-4619 was inserted in 1978 (L. 1978, ch. 120 § 28) and the allowance originally drafted into § 21-4204 was inserted in 1990. See, L. 1990, ch. 102, § 2.

Employing statutory construction principles, the later-created and more specific statutory language of § 21-6304(a)(3)(A) will control over earlier-created and more general statutory language of § 21-6614(i). Therefore, when that prior (a)(3)(A) conviction has been expunged the Unit will view the 10 year prohibition as severed and will not consider the conviction as a prohibiting event. After the 1986 "Firearm Owner's Protection Act" amended 18 USC § 921(a)(20)'s definition what constitutes a prior felony "conviction" (overturning the U.S.S.C.'s 1983 decision in *Dickerson v. New Banner*), it has been the law of the convicting jurisdiction (not federal law) that determines whether or not an individual has a prohibiting felony conviction. Unfortunately, the issue that we have encountered a handful of times is that the FBI's National Instant Criminal Background Check System (NICS) personnel are resolving the "conflict" in favor of § 21-6614(i), disregard the expungement and still find a prohibition exists. This has led to an undesirable situation where an individual has been approved by the Unit for licensure but, when attempting to purchase a firearm before the 10 year prohibition has expired, FBI/NICS denied

Sn Fed & State
Attachment 1
3-8-12

the attempted purchase. This is certainly problematic because the Kansas CCH license (those issued after July 1, 2010 anyway) has been qualified by the FBI as a NICS background check alternative during firearm purchases from licensed gun dealers. In other words, if the dealer so chooses, they may accept a Kansas CCH license as a successful NICS background check. But this is also a problem for non-licensees who have had their firearm rights restored under Kansas law - but they too are not being allowed to purchase firearms when they should be able to. The Attorney General has, therefore, proposed language within each of these statutes which will reference one another and dictate that the language of § 21-6304(a)(3)(A) will control over § 21-6614(i).

The Unit would also note that under Section 4 of the bill there are other clean-ups which the Revisor included to bring all of the recodification amendments to the expungement statute in line. See, subsections (e), (f)(2), (k)(17) and (l). If there are questions about these inclusions, we ask that you direct your questions to the Revisor.

Section 5 amends, expands and clarifies the KPFPA in terms of recognizing non-Kansas issued CCH licenses or permits by breaking down the recognition into two categories. The first category involves who are traversing the state and who are not residents of Kansas. The second scenario involves new residents to Kansas (as of July 1, 2010 and beyond) who have a non-Kansas issued CCH/CCW.

In the first scenario, Kansas would recognize all "valid" CCH licenses or permits issued by other states or the District of Columbia. If you are just temporarily in Kansas and have a CCH from any other "jurisdiction" then you may carry a concealed handgun without any other considerations. In the second instance, any new resident to Kansas who has a "valid" CCH license or permit from another jurisdiction may submit an application for a Kansas license and include a copy of their "valid" non-Kansas CCH license or permit. The attorney general will then send the applicant a 180-day receipt that allows them to continue carrying under the authority of their previous license or permit. From that point, there are two options: (1) along with the above, the individual can also submit proof of training (used to obtain their current non-Kansas CCH license) and the Unit will review that prior training to determine whether or not it was "equal to or greater than" the training which the KPFPA requires; or (2) during the 180 day receipt period, the new resident may take and complete the Kansas training course and submit that certificate upon completion.

The above scenarios allow for the greatest recognition of licenses but also maintain the training requirements that the Legislature has previously established if the individual wishes to transfer a non-Kansas license into a Kansas license. Subsection (d) sets out further considerations of the Attorney General when dealing with a 180-day receipt situation.

Sections 6, 7 and 8 contain general clean-up language and/or amendments reflecting the changes made under section 5 of the bill.

Section 9 simply strikes the first four subsections of K.S.A. § 75-7c25 as they are no longer relevant. They contained mandates which were required to be completed almost 5 years ago.

Based upon the above information, Attorney General Schmidt asks that the Committee move Senate Bill 454 to the full Senate with a vote of favorable for passage.

I would be happy to stand for questions.