

SESSION OF 2014

**SECOND CONFERENCE COMMITTEE REPORT BRIEF  
HOUSE BILL NO. 2578**

As Agreed to April 2, 2014

**Brief\***

HB 2578 would create new law concerning the transfer of certain federally regulated firearms. The bill also would amend current statutes and create new provisions of law concerning the regulation and possession of weapons, including firearms, handguns, and knives.

Specifically, the bill would address:

- Transfers of certain federally regulated firearms;
- Concealed carrying of handguns;
- Open carrying of firearms;
- Regulation of firearms and knives by local units of government;
- Forfeiture, return, and buyback of firearms;
- Criminal use of weapons; and
- Criminal possession of weapons.

***Transfer of Federally Regulated Firearms***

Under the provisions of the bill, applications for certification of firearms' transfers by the local jurisdiction's chief law enforcement officer, as required by federal law,

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\*Conference committee report briefs are prepared by the Legislative Research Department and do not express legislative intent. No summary is prepared when the report is an agreement to disagree. Conference committee report briefs may be accessed on the Internet at <http://www.kslegislature.org/kldr>

would have to be granted within 15 days, unless a condition exists that prevents the chief law enforcement officer from certifying the transfer, as specified in 27 CFR Section 479.85. The bill would provide that a generalized belief by the chief law enforcement officer that certain firearms have no lawful purpose and that certain persons should not possess such firearms shall not be sufficient reason to deny certification requests.

If the request for certification is not granted, the chief law enforcement officer, or someone designated by the officer, would be required to provide the applicant with written notification of the denial of certification and the reason for the denial.

The bill also would allow applicants to appeal denials of requests for certification of firearms' transfers in the district court of the county where the applicant resides. After reviewing the denial of certification, if the district court found the applicant was not prohibited by state or federal law from receiving the firearm and there is no pending legal or administrative proceeding against the applicant that could result in such prohibition, the court would be required to order the chief law enforcement officer to issue the certification.

Chief law enforcement officers certifying and approving transfers under the provisions of the bill would not be liable for any act committed by another person with the firearm after the transfer.

The bill would adopt definitions for the terms "certification" and "chief law enforcement officer" from 27 CFR Section 479.85, and would adopt the definition of "firearm" from 26 USC Section 5845.

### ***Concealed Carrying of Firearms***

The bill would create new prohibitions for municipalities related to their employees and specifically to employees who

are concealed carry of handgun license holders. Municipal employers of concealed carry license holders would not require disclosure by municipal employees who possess concealed carry of handgun licenses. Municipalities could not terminate, demote, discipline, or otherwise discriminate against an employee based on the employee's refusal to disclose the employee's status as a concealed carry license holder. Municipal employers would be prohibited from creating a record of any employee's possession or disclosure of a concealed carry license. The bill would require any such records created by a municipality before the effective date of the bill be destroyed by July 31, 2014.

The bill would add a conviction for any of the offenses in KSA 2013 Supp. 21-6304(a)(1) (criminal possession of a weapon), as amended elsewhere in this bill, to include all weapons, and not only firearms, as a reason the Attorney General would deny an application for a concealed carry handgun license. This provision also would require the Attorney General to deny the concealed carry application of applicants whose juvenile offenses, had the offenses been committed by an adult, would have constituted the commission of any of the offenses in KSA 2013 Supp. 21-6304(a)(1).

### ***Open Carrying of Firearms***

The bill would add new posting requirements for buildings where the open carrying of firearms could be prohibited as authorized in this legislation. The new provision would make it a violation of this statute to carry an unconcealed firearm into a building that was conspicuously posted according to the new requirements and posted in accordance with the rules and regulations of the Attorney General.

The bill replaces current law concerning the operation, possession, or carrying of a concealed handgun under the influence of alcohol or illegally used controlled substances

with a new provision applying the penalties for possessing or carrying any firearm under the influence, not just concealed handguns addressed in current law.

The bill would define “possession of a firearm under the influence” as knowingly possessing or carrying a loaded firearm on or about such person, or within such person’s immediate access and control while in a vehicle, while under the influence of alcohol or drugs, or both, to such a degree as to render such person incapable of safely operating a firearm. The bill would amend the current standards of evidence to be used in prosecutions related to possession of firearms under the influence to make them more consistent with existing law related to driving under the influence of drugs or alcohol. The bill also would establish civil penalties for refusal to submit to testing required under the bill (\$1,000 for each violation) and license revocations for concealed carry license holders after conviction of possession of a firearm while under the influence (revocation of concealed carry license for a minimum of one year for a first offense and three years for a second or subsequent offense.)

***Regulation of Firearms and Knives by Local Units of Government***

Statutes passed during the 2013 Session would be expanded to prohibit cities and counties from adopting or enforcing ordinances, resolutions, regulations, or administrative actions governing the purchase, transfer, ownership, storage, carrying, or transporting of firearms, ammunition, or any related component. Cities and counties also would be prohibited from adopting or enforcing any ordinances, resolutions, or regulations relating to the sale of firearms by individuals having federal firearms licenses, if the local controls were more restrictive than any other ordinance, resolution, or regulation governing the sale of any other commercial good. Ordinances, resolutions, or regulations adopted before the effective date of the bill would be deemed null and void.

Cities and counties would be permitted to adopt ordinances, resolutions, or regulations pursuant to KSA 2013 Supp. 75-7c20 relative to the personnel policies governing concealed carry of handguns by city or county employees, so long as in compliance with this law.

A new provision would shield local units of government from being liable for the wrongful acts or omissions related to carrying a firearm, including acts or omissions by municipal employees.

The bill would repeal statutory provisions delegating to local units of government the authority to regulate open carry and transportation of a firearm.

Legislation from the 2013 Session would be expanded with regard to municipal regulation of knives. Municipalities could not enact or enforce any ordinance, resolution, regulation, or tax relating to the transportation, possession, carrying, sale, transfer, purchase, gift, devise, licensing, registration, or use of a knife or knife-making components. Any ordinance, resolution, regulation, or tax relating to the transportation, possession, carrying, sale, transfer, purchase, gift, devise, licensing, registration, or use of a knife or knife-making components that is more restrictive than regulation on any other commercial product would be prohibited. Such ordinances, resolutions, regulations, or taxes adopted prior to the effective date of the bill would be void.

Additionally, individuals could not be prosecuted for violating municipal regulations on knives or knife-making components between July 1, 2013, and the effective date of the bill (July 1, 2014). Violations occurring before the effective date would be added to the list of reasons for which a court would be required to order expungement of an individual's record and any person convicted of any municipal violation before the effective date would be given the ability to petition the court for expungement.

### ***Forfeiture and Return of Firearms***

The bill would repeal certain provisions concerning the forfeiture of firearms, adding new language that weapons or ammunition not covered elsewhere by statutes must be, at the discretion of the court:

- Forfeited to the law enforcement agency that seized the weapon for sale or trade to a licensed federal firearms dealer;
- Forfeited to the Kansas Bureau of Investigation for law enforcement, testing, or comparison by the forensic laboratory;
- Forfeited to a county forensic laboratory for law enforcement, testing, or comparison; or
- Forfeited to the Kansas Department of Wildlife, Parks and Tourism for use pursuant to KSA 32-1047.

The bill also would address the return of seized weapons. Individuals not convicted of a violation and not prosecuted as juveniles would be notified that the weapon could be retrieved by the individuals after the law enforcement agency verifies the weapon is not stolen. Such notification would include the location where the weapon can be retrieved and occur within 30 days of the conclusion of prosecution. Weapons that cannot be returned, are not forfeited because of the condition of the weapon, or were used in the case of a murder or manslaughter would be destroyed.

The existing statute concerning forfeiture, KSA 21-6307, would be repealed, and the new forfeiture provisions would be moved to the general criminal procedures statute found in KSA 22-2512.

### ***Firearms Buyback Programs***

The bill would prohibit local government taxes from being used to implement, administer, or operate a firearms buyback program. The firearms buyback program would be defined in the bill as “any program wherein individuals are offered the opportunity to gift, sell, or otherwise transfer ownership of such individual’s firearm to a city or county.”

### ***Criminal Use of Weapons***

Daggers, dirks, dangerous knives, straight-edged razors, and stilettos would be added to the list of prohibited weapons, and the possession of any such dangerous weapon with the intent to use it against another person would constitute the crime of criminal use of a weapon.

The bill would add language to existing law, exempting use of a firearm with a barrel less than 12 inches by a person less than 18 years of age, at a private range with permission of that person’s parent or legal guardian, from the crime of criminal use of a weapon. The bill also would delete language requiring a person who is less than 18 years of age to know or have reason to know that the barrel of the firearm that a person possesses is less than 12 inches long in order to be guilty of criminal use of a weapon.

### ***Criminal Possession of Weapons***

The bill also would broaden language in KSA 2013 Supp. 21-6304 to refer to criminal possession of a weapon instead of criminal possession of only a firearm. Additionally, the bill would add references to a previous version of the drug code to ensure that conviction of drug crimes would give rise to the crime of criminal possession of a weapon.

## **Conference Committee Action**

The first Conference Committee agreed to disagree. The second Conference Committee adopted the amendments made to HB 2578 by the Senate Committee on Federal and State Affairs and further amended the bill by adding the contents of SB 447 as passed by the Senate.

## **Background**

### ***HB 2578***

At the House Committee hearing, Representatives Carlson and Howell appeared in support of the bill, along with a representative from the Kansas State Rifle Association. Written testimony in support of the bill was submitted by the American Silencer Association and the National Rifle Association. The Kansas Association of Chiefs of Police and the Kansas Sheriffs' Association presented neutral testimony on the bill.

The House Committee amended the bill by changing the circumstances under which the chief law enforcement officer may deny applications for firearm transfers to reflect the requirements associated with 27 CFR Section 479.85. Originally, the bill required certification unless the applicant was prohibited by state or federal law from receiving the firearm or there was a pending legal or administrative proceeding that could result in such prohibition. The amendment by the House Committee also made slight changes to the language requiring the chief law enforcement officer to provide an applicant with a written notice and explanation when a firearm transfer is not certified.

The Senate Committee amended the bill, at the request of a representative of the National Rifle Association, adding language that a generalized belief held by the chief law enforcement officer concerning certain firearms, or those desiring possession of such firearms, shall not be a sufficient reason for denial of certification.

The fiscal note on the original bill indicated the Attorney General's Office may need to increase staff to accommodate requests for firearm transfer certifications and for an increased number of appeals in district court, depending on the number of requests that are made and denied. The Office of Judicial Administration noted a likely increase in the amount of time spent by judicial and non-judicial personnel in processing, researching, and hearing cases. The Kansas Association of Counties indicated a possible increase in costs for sheriffs' offices administering the requirements. Without knowing the precise number of requests for firearms' transfer certification, a precise fiscal effect could not be determined, according to the fiscal note. There was no fiscal note for the bill as amended by the House Committee.

### **SB 447**

The Senate Committee introduced SB 447 with the same provisions as included in 2014 Sub. for HB 2473 as amended by the House Committee on Federal and State Affairs.

At the Senate Committee hearing, Representative Howell, along with representatives from the Kansas State Rifle Association, the Kansas Association of Chiefs of Police, and the Kansas Sheriffs' Association presented testimony in favor of the bill. A representative from the League of Kansas Municipalities testified against the bill, and the Kansas Association of Counties presented written testimony in opposition to the bill.

There was no fiscal note available for SB 447 at the time of its hearing in the Senate Committee on March 24-25, 2014.

weapons; firearms; knives; concealed carry; open carry; local government regulation; forfeiture and return of firearms; firearms buyback programs; criminal use of weapons; criminal possession of weapons

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