

Weapons—Firearms Transfer; Concealed Carry; Open Carry; Regulation by Local Government; Forfeiture, Return, and Buyback of Firearms; Criminal Use; Criminal Possession; HB 2578

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

Specifically, the bill addresses:

- 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, must 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 § 479.85. The bill provides 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, is required to provide the applicant with written notification of the denial of certification and the reason for the denial.

The bill also allows 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 finds the applicant is 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 is 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 are not liable for any act committed by another person with the firearm after the transfer.

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

Concealed Carrying of Firearms

The bill creates 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 cannot require disclosure by municipal employees who possess concealed carry of handgun licenses. Municipalities cannot 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 are prohibited from creating a record of any employee's possession or disclosure of a concealed carry license. The bill requires any such records created by a municipality before the effective date of the bill be destroyed by July 31, 2014.

The bill adds 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 will deny an application for a concealed carry handgun license. This provision also requires the Attorney General to deny the concealed carry application of an applicant 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 adds new posting requirements for buildings where the open carrying of firearms can be prohibited as authorized in this legislation. The new provision makes 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 rules and regulations the bill requires the Attorney General to adopt.

The bill replaces the 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 prior law.

The bill defines "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 amends the 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 establishes 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 are 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 are 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 are 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 are deemed null and void.

Cities and counties are permitted to adopt ordinances, resolutions, or regulations pursuant to the law pertaining to concealed handguns in public buildings (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 shields 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 repeals statutory provisions delegating to local units of government the authority to regulate open carry and transportation of a firearm.

Legislation from the 2013 Session is expanded with regard to municipal regulation of knives. Municipalities cannot 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 is prohibited. Such ordinances, resolutions, regulations, or taxes adopted prior to the effective date of the bill are void.

Additionally, individuals cannot 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 are added to the list of reasons for which a court will be required to order expungement of an individual's record. Any person convicted of any municipal violation before the effective date will be given the ability to petition the court for expungement.

Forfeiture and Return of Firearms

The bill repeals 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 2013 Supp. 32-1047 (seizure of wildlife, devices, equipment, and firearms).

The bill also addresses the return of seized weapons. Individuals not convicted of a violation and not prosecuted as juveniles must be notified that the weapon can be retrieved by the individuals after the law enforcement agency verifies the weapon is not stolen. Such notification must 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 will be destroyed.

The existing statute concerning forfeiture (KSA 2013 Supp. 21-6307) is repealed, and the new forfeiture provisions are moved to the general criminal procedures statute found in KSA 2013 Supp. 22-2512.

Firearms Buyback Programs

The bill prohibits local government taxes from being used to implement, administer, or operate a firearms buyback program. A firearms buyback program is 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 stiletos are added to the list of prohibited weapons, and the possession of any such dangerous weapon with the intent to use it against another person now constitutes the crime of criminal use of a weapon.

The bill adds 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 deletes 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 broadens language in KSA 2013 Supp. 21-6304 (criminal possession of a firearm by a convicted felon) to refer to criminal possession of a weapon instead of criminal possession of only a firearm. Additionally, the bill adds references to a previous version of the

drug code to ensure that conviction of drug crimes gives rise to the crime of criminal possession of a weapon.