

SESSION OF 2004

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2798

As Amended by Senate Committee of the Whole

Brief*

The bill would enact the Personal and Family Protection Act that would authorize the Kansas Attorney General, beginning in January 2005, to issue four-year licenses to certain persons to carry concealed handguns. The bill establishes qualifications for licensure and procedures and fees for obtaining a license. The bill specifically would preempt local regulation of carrying concealed weapons.

The Attorney General would not have discretion regarding licensure. The only grounds for denial of a license application would be failure of the applicant to meet statutory criteria discussed below. The Attorney General would be required to issue or deny a license within 90 days (180 days between January 1, 2005 and July 1, 2005) of receiving the application, fee, and required documentation. The Attorney General would be authorized to adopt rules and regulations to administer the Act.

In order to qualify for licensure a person would have to:

- ! be a U.S. citizen who is a resident of the county where the application is filed, and for at least six months, a Kansas resident;
- ! be at least 21 years of age;
- ! be free from any physical infirmity that prevents safe handling of a weapon; and
- ! desire a legal means to carry a concealed weapon for lawful self-defense.

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

In addition, applicants for licensure would have to present evidence of completion of a “weapons safety and training course” approved by the Attorney General, law enforcement agency, or the National Rifle Association (NRA). Applicants would have to pay for their training course.

The bill would disqualify from licensure anyone:

- ! who had ever been convicted, placed on diversion, or adjudicated for a felony (adult or juvenile) in any jurisdiction;
- ! who had been determined to be disabled under the Act for obtaining a Guardian or Conservator unless the person was ordered restored to capacity three or more years before applying for a license;
- ! subject to a restraining order under the Protection from Abuse Act or the Protection from Stalking Act;
- ! who is not in contempt of court in a child support proceeding;
- ! who has been dishonorably discharged from military service; and
- ! who, during the five years immediately preceding the date of application, had been:
 - " a mentally ill person or involuntary patient, as defined in KSA 59-2946;
 - " an alcoholic, as defined in KSA 65-4003;
 - " a drug abuser, as defined in KSA 65-5201;
 - " committed for abuse of a controlled substance;
 - " convicted, placed on diversion, or adjudicated (adult or juvenile) in any jurisdiction for a misdemeanor under the Uniform Controlled Substances Act;
 - " committed for abuse of alcohol;

- " convicted or placed on diversion two or more times for driving under the influence of alcohol or drugs; or
- " convicted, placed on diversion, or adjudicated (adult or juvenile) of a misdemeanor under Articles 34 (crimes against persons) and 35 (sex offenses) of Chapter 21 of Kansas law or a similar law in any jurisdiction.

The Attorney General would have access to expunged criminal records for purposes of determining a person's qualification for licensure.

Failure to notify the Attorney General within 30 days of a change of permanent address, or the loss or destruction of a license, could result in imposition of a maximum \$100 fine, or a maximum 180-day license suspension.

Procedures and standards for the weapons safety and training course would be established in rules and regulations of the Attorney General. Those standards would have to include:

- ! a requirement that trainees receive training in the actual firing and safe storage of weapons and instruction in state laws regarding the carrying of concealed weapons and the use of deadly force;
- ! general guidelines for courses;
- ! qualifications of instructors; and
- ! a requirement that the course be a weapons course;
- " certified or sponsored by the Attorney General or the NRA; or
- " certified or sponsored by a law enforcement agency, college, private or public institution or organization, or weapons training school and taught by instructors certified by the Attorney General or the NRA.

The following would constitute evidence of satisfactory completion of an approved weapons safety and training course:

- ! evidence of completion of the course in the form provided by rules and regulations adopted by the Attorney General; or
- ! an affidavit from the instructor, school, club, organization or group that conducted or taught the course attesting to completion by the application.

Licensees could not carry concealed weapons into:

- ! a place in which a common nuisance activity is maintained (illegal gambling, promotion of obscenity, promotion of prostitution, and violations of drug, alcohol, and tobacco laws);
- ! a police, sheriff, or Highway Patrol station;
- ! a detention facility, prison, or jail;
- ! a courthouse;
- ! a polling place on the day an election is held;
- ! a meeting of the governing body of a county, city, or other subdivision;
- ! any city hall;
- ! a courtroom (unless the licensee is a judge or unless authorized by the judge);
- ! a school, community college, college, university, or professional athletic event not related to firearms;
- ! any portion of a drinking establishment, except that this shall not apply to a restaurant;
- ! the State Fairgrounds;
- ! any state office building;
- ! any community college, college, or university facility;

- ! any elementary or secondary school building or structure used for student instruction or attendance;
- ! any athletic event not involving firearms sponsored by private and public schools and colleges;
- ! any professional athletic event not involving firearms;
- ! any place where the carrying of firearms is prohibited by state or federal law;
- ! any child exchange and visitation center; or
- ! any community mental health center or state hospital.

Carrying concealed weapons in prohibited places is a class A misdemeanor.

A licensee carrying a concealed weapon while under the influence of alcohol or drugs, or both, would be guilty of a class A nonperson misdemeanor.

The bill would not prevent public or private employers or businesses open to the public from prohibiting licensees from carrying concealed weapons while on the premises of the business or while engaging in duties of employment. Businesses that are open to the public would have to post signs stating that carrying a concealed weapon on the premises is prohibited. Property owners would be authorized to restrict or prohibit concealed weapons by posting notices. Violation of this section would be a class B misdemeanor.

An application for a concealed weapon license would be completed under oath and submitted with the required fee to the sheriff of the county where the applicant resides. The initial license fee would be up to \$150. The license renewal fee would be up to \$100. A late fee of \$15 would apply to license renewals made up to six months after expiration of the license. The fee for replacement of a lost or destroyed license would be \$15. Retired law enforcement officers would be exempt from fees and background investigations. Fees received by the Attorney General would have to be used for administration of the Act with any balance allocated to the county Law Enforcement Equipment

Fund (20 percent) an the Forensic Laboratory and Materials Fee Fund (80 percent).

The sheriff would be required to forward to the Attorney General \$110 of the original license fee, and \$50 of the renewal fee. The cost of taking the applicant's fingerprints would be included in the portion of the fee kept by the sheriff. All fees retained by the sheriff would be deposited in the county general fund and budgeted for the use of the sheriff's department.

The sheriff accepting an application would be authorized, but not required, to submit within 45 days a report to the Attorney General of any "readily discoverable prior information" that the sheriff deems pertinent to the licensing of any applicant. A sheriff who submits such a report would not incur any civil or criminal liability as a result of a good faith submission.

The Attorney General would be required to notify licensees in writing at least 90 days prior to license expiration. Licensees would apply for renewal by submitting to the sheriff the renewal fee, renewal form, affidavit stating that the licensee is qualified as required by the bill, a photograph, and evidence of completion of the required weapons safety and training course.

The Attorney General would be required to maintain an automated listing of license holders and "pertinent information." That information would have to be available, upon request, at all times to all law enforcement agencies in Kansas. By January 1, each year, the Attorney General would have to provide a statistical report to the Governor and Legislative leadership regarding the number of licenses issued, revoked, suspended, and denied during the preceding fiscal year.

Suspension or revocation of a license would be subject to review by the district court.

Failure to carry the concealed weapons license and a valid driver's license or nondriver identification card when carrying a concealed weapon or failure to display both the incense and proper identification upon demand by a law enforcement officer would be a class B nonperson misdemeanor.

A false answer to any question on the license application form or submission of any false document by the applicant would subject the applicant to prosecution for perjury.

The House Committee amended the bill to add “city halls” to the listing of places where concealed weapons were prohibited; delete the requirement for a fingerprint card for renewals; and make other clarifying and conforming changes.

The House Committee of the Whole amended the bill to:

- ! include both person and nonperson felonies as disqualifying items;
- ! provide that evidence of completion of firearms training would be in a form specified in rules and regulations of the Director;
- ! make any license suspension or revocation subject to review by the district court;
- ! add the State Fairgrounds, the State Capitol, and any state office building to the listing of places where concealed weapons could not be carried;
- ! delete from the listing of places where concealed weapons could not be carried any meeting of the Legislature, or any committee or subcommittee thereof;
- ! clarify the language regarding elementary or secondary school buildings; and
- ! make technical changes.

The Senate Committee amended the bill to:

- ! transfer administration of the act from the Kansas Bureau of Investigation to the Attorney General;
- ! add to the list of places where concealed weapons could not be carried an athletic event not involving firearms sponsored by a school, college, or professional team; and

- ! narrow the language regarding elementary or secondary schools.

The Senate Committee of the Whole amended the bill to:

- ! remove the State Capitol from the listing of places where concealed weapons would be prohibited;
- ! make the effective date of the reciprocity provision the same as the effective date of the act;
- ! authorize a property owner to restrict or prohibit concealed weapons if the property owner has posted notices;
- ! establish a penalty provision (Class B misdemeanor) for carrying concealed weapons on premises which have posted notices; and
- ! modify the language which prohibits concealed weapons in establishments which dispense alcoholic beverages to limit the prohibition to drinking establishments, except that this will not apply to restaurants.

Background

The bill is similar to the House-passed version of 1997 HB 2159, which was amended by the Senate and ultimately vetoed by the Governor.

A number of conferees testified on HB 2798. Opponents included representatives of the following: Safe State Kansas; Kansas Coalition Against Sexual and Domestic Violence; League of Kansas Municipalities; and the City of Overland Park.

Neutral testimony was presented by representatives of the Kansas Bureau of Investigation and the Kansas National Education Association.

Proponents included: Senator Journey; Representative Ruff; Representative Long-Mast; Miami County Mental Health Center; Fairway Chief of Police; Kansas State Lodge Fraternal Order of Police; Finney County Emergency Medical Services; Hamilton County Commissioner; and a member of concerned citizens.

The fiscal note on the original bill indicates that the KBI would need 9.0 new FTE positions and first-year expenditures of \$439,897. The additional staff includes an attorney, two special investigators, an accountant, three administrative specialists, and two administrative assistants. The fiscal note estimates that the license fees would generate \$280,000 annually. There is no fiscal note on the amended version of the bill.