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Concealed Carry**

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Uniform State
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Regulation of
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Firearms and Weapons

K-2 Uniform State Laws—Firearms

Recent Legislative Changes

2013

The 2013 Legislature passed SB 102, which establishes the Second Amendment Protection Act in statute. The legislation has three main provisions that:

- Exclude from federal regulation any personal firearm, firearm accessory, or ammunition manufactured commercially or privately and owned in Kansas. The legislation provides that for as long as any such personal firearm, firearm accessory, or ammunition remains within the borders of Kansas, it is not subject to any federal law, regulation, or authority;
- Prevent any federal agent or contracted employee, any state employee, or any local authority from enforcing any federal regulation or law governing any personal firearm, firearm accessory, or ammunition manufactured commercially or privately and owned in Kansas, provided it remains within the borders of Kansas. In the process of a criminal prosecution, the legislation would preclude any arrest or detention prior to a trial for a violation of the Act; and
- Allow a county or district attorney or the Attorney General to seek injunctive relief in court to enjoin certain federal officials from enforcing federal law regarding a firearm, a firearm accessory, or ammunition that is manufactured commercially or privately and owned in the state of Kansas and that remains within the borders of Kansas.

Additionally, Senate Sub. for HB 2052:

- Prohibits the unlawful discharge of a firearm within or into the corporate limits of any city. The bill provides exemptions for when a firearm may be discharged within or into a city and also classifies the unlawful discharge of a firearm as a class B, nonperson misdemeanor;
- Provides that it will not be a criminal violation for a licensed person to carry a concealed handgun through a restricted

- access entrance into a state or municipal building with adequate security measures;
- Establishes that it is not a crime for a person to carry a concealed handgun into a public building if properly posted and allows for the denial entry to a building or removal of such person from a building where concealed carry is prohibited; and
- Modifies the Personal and Family Protection Act to allow the possession of firearms on certain governmental property, including in most state and municipal buildings, except where prohibited in compliance with and under provisions of the new law (see article on Concealed Carry for details).

Second Amendment Protection Act

A complaint was filed on July 9, 2014, in the Kansas federal district court challenging the legality of the Second Amendment Protection Act (Docket #2:14-cv-02327 – *Brady Campaign to Prevent Gun Violence v. Brownback*).

2014

Transfer of Federally Regulated Firearms

Under new 2014 provisions, all 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 legislation provided 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 legislation also allowed 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 legislation would not be not liable for any act committed by another person with the firearm after the transfer.

The 2014 legislation adopted definitions for the terms "certification" and "chief law enforcement officer" from 27 CFR § 479.85, and adopted the definition of "firearm" from 26 USC § 5845.

Forfeiture and Return of Firearms

The 2014 legislation repealed certain provisions concerning the forfeiture of firearms, adding new language that weapons or ammunition not covered elsewhere by statutes, at the discretion of the court, must be forfeited to:

- The law enforcement agency that seized the weapon for sale or trade to a licensed federal firearms dealer;
- The Kansas Bureau of Investigation for law enforcement, testing, or comparison by the forensic laboratory;
- A county forensic laboratory for law enforcement, testing, or comparison; or
- 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 legislation also addressed 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) was repealed, and the new forfeiture provisions are moved to the general criminal procedures statute found in KSA 2013 Supp. 22-2512.

Criminal Statutes Amended

The Legislature amended provisions related to the accidental entry into a posted building using correct signage to restrict conceal carry by a licensed concealed carry holder; possession of a firearm under the influence; the criminal use of a weapon; and the criminal carrying of a weapon.

The Legislature in 2013 provided it would not be a criminal violation for a licensed person to carry a concealed handgun through a restricted access entrance into a state or municipal building with adequate security measures and established that it is not a crime for a person to carry a concealed handgun into a public building if properly posted. The legislation also allowed for the denial of entry to a building or the removal of such a licensed person from a building where conceal carry is prohibited.

Legislative changes in 2014 defined “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 legislation 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 legislation also establishes civil penalties for refusal to submit to testing (\$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).

Legislative changes in 2013, modified in 2014, amended the criminal use of weapons statute to add daggers, dirks, dangerous knives, straight-edged razors, and stilettos 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 legislation also added new 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 legislation also deleted 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.

The 2014 legislation broadened 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 legislation added 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.

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