

SESSION OF 2014

**SUPPLEMENTAL NOTE ON SENATE BILL NO. 447**

As Recommended by Senate Committee on  
Federal and State Affairs

**Brief\***

SB 447 would amend current law and create new provisions concerning the regulation and possession of weapons, including firearms, handguns, and knives. Specifically, the bill would address 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.

***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 employees based on their refusal to disclose their 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. Any such records created by a municipality before the effective date of the bill would 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

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\*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>

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 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 evidentiary standards 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 (\$1000 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 any weapon 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. 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.

### **Background**

The Senate Committee introduced SB 447 with the same provisions 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 Sheriff's 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.