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Neutral Testimony on Senate Bill 45

**Presented to the House Committee on Federal and State Affairs
By Assistant Attorney General C.W. Klebe**

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Mr. Chairman and members of the Committee, thank you for allowing me to provide neutral written testimony regarding 2015 proposed Senate Bill 45 (“SB 45”). Whether to allow unlicensed concealed carry in Kansas is a policy decision for the legislature. The Attorney General’s Office takes no position on this bill, but instead offers several conceptual areas for the Committee’s consideration.

SB 45 would extinguish most of the privileges of a concealed carry license. If SB 45 is enacted, an unlicensed person would enjoy *virtually all* of the same privileges as a concealed carry licensee. If a concealed carry license becomes optional, we would ask the Committee to consider whether licensure should be encouraged by retaining certain privileges only for licensed persons. For example, it is possible to de-criminalize unlicensed concealed carry yet encourage licensure by making the protections of K.S.A. 2014 Supp. 75-7c20 apply only to licensees.

SB 45 would not remove every legal issue for unlicensed persons. Despite the proposed amendment to K.S.A. 21-6301(a)(11), under federal law, unlicensed persons may not knowingly possess a firearm within a “school zone” (within 1,000 feet of a K-12 school); only Kansas concealed carry licensees may do so because of an applicable federal exception. Additionally, through reciprocity agreements Kansas licensees may lawfully carry a concealed handgun in 36 other states; unlicensed persons do not enjoy this privilege. Lastly, a valid concealed carry license allows the holder to skip the NICS background check, at the discretion of the firearms dealer, when purchasing a firearm.

Placement within the Personal and Family Protection Act (PFPA). The PFPA is administered by the Attorney General’s Office. There is some concern that adding unlicensed concealed carry to the PFPA statutes would give the false impression that our office has the authority to regulate unlicensed concealed carry and would receive countless contacts of all forms seeking legal advice which cannot be provided.

Clarification of policy choices. We would ask that the Committee to clarify whether SB 45 would allow a public entity to allow only licensed concealed carry inside a building and prohibit unlicensed concealed carry, or vice versa. As currently drafted, neither K.S.A. 2014 Supp. 75-7c10 or 75-7c20 would appear to prohibit that arrangement. If public entities may choose to exclude only certain types of concealed carry, we would ask the Committee to clarify whether our office would be required to develop new signage to accommodate such a scenario.

We would also ask the Committee clarify whether the amendment to K.S.A. 2014 Supp. 21-6302(a)(4) is intended to de-criminalize the concealed carry of long guns such as shotguns or rifles. That provision references “firearms” whereas other portions of the bill only allow the unlicensed carry of handguns.

The amendment to K.S.A. 2014 Supp. 75-7c04(a)(3) strikes the reference to K.S.A. 2014 Supp. 21-6304(a)(3)(A) and replaces it with a reference to K.S.A. 2014 Supp. 21-6304(a)(3). The effect of this amendment would expand the number of offenses that disqualify a person from a concealed carry license to include those crimes described by 21-6304(a)(3)(B). We bring this to the Committee’s attention in the event that this difference is in error. We also note that HB 2074 is currently seeking to repeal K.S.A. 2014 Supp. 75-7c04(a)(3).

Concealed Carry by certain professions: Currently, under K.S.A. 21-6302, various professions in Kansas are either licensed to carry concealed handguns or have traditionally been required to complete an elevated level of firearms training to do so while engaged in that profession. SB45 proposes to strike the language in 21-6302 related to those professions; but with no corresponding strikes to those professional licensing/training requirements, within their respective professional statutes (e.g., private investigators under K.S.A. 75-7b17), it is unclear whether the person is intended by this Bill to complete that licensing/training in order to be able to carry concealed while engaged in the duties of their respective employment. The OAG would ask that those discrepancies be clarified.

Penalties for felons in possession. If the Committee wishes to move in the direction of license-less concealed carry, we would suggest increasing the penalties under K.S.A. 2014 Supp. 21-6304, criminal possession of a firearm by a convicted felon or other offenses as the Committee may deem proper. Broadening Kansas’ laws to generally allow unlicensed concealed carry will inevitably lead those with felony convictions to believe that they too may lawfully carry firearms – when in fact they may not. Currently, violation of K.S.A. 2014 Supp. 21-6304 is a severity level 8, nonperson felony. Prosecutors in Kansas should, like with federal law, be able to have strong penalties behind them when facing offenders who pay no attention to firearm laws and carry a firearm with them even when they are prohibited from doing so by law.

There are several ways to go about modifying the sentencing alternatives for these kinds of offenses. The Committee may wish to consider a graduated penalty scheme depending on whether the felon possesses, brandishes, or discharges the firearm, or based upon first and subsequent offenses. Other options include a straight increase in the level of the violation (e.g., to a level 5 or higher); converting firearm-involved offenses into person felony crimes (this would increase the amount of prison time an offender would be subject to for each subsequent offense); or any combination of the above.

If any Legislator desires to address any of these issues, our office stands ready to assist in developing language. Again, I appreciate the Committee’s time and attention to this testimony.

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