

SESSION OF 2021

**SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2058**

As Amended by Senate Committee on Federal  
and State Affairs

**Brief\***

HB 2058, as amended, would amend law related to the recognition and issuance of concealed carry licenses (license); would create two concealed carry license classes; and would created the Kansas Protection of Firearms Rights Act.

***License Reciprocity***

The bill would specify a valid license or permit to carry a concealed firearm issued by another jurisdiction would be recognized in Kansas while such permit or license holder is not a Kansas resident.

The bill would provide valid licenses or permits issued by another jurisdiction would entitle the lawful holder only to carry concealed handguns as defined in Kansas law, and would require such persons to act in accordance with Kansas laws while carrying a concealed handgun in the state.

The bill would also state criminal provisions in continuing law prohibiting the carrying of a concealed firearm by persons under age 21 would not apply to residents of another state who are less than 21 years of age and lawfully carrying a concealed firearm pursuant to a recognized out-of-state license.

The bill would provide that recognition of a license or permit from another jurisdiction would not be construed to

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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>

impose a general prohibition on the open or concealed carrying of handguns, either loaded or unloaded, without a license.

***Issuance of an Alternative License During Certain Circumstances***

The bill would require the Attorney General to issue documents to concealed carry licensees (licensees) as an alternative to the physical card issued pursuant to continuing law, if the Attorney General determines it is impractical for the Department of Revenue Division of Vehicles (Division) to issue such physical cards, and if the Attorney General determines such impractical conditions have lasted for at least 30 days.

The bill would provide that, if such a determination was made, the alternative authorization document would authorize the licensee to exercise the rights and privileges to carry a concealed handgun, pursuant to the Personal and Family Protection Act (PFPA).

The bill would state the alternative document must state it is proof that the licensee holds a valid license to carry concealed handguns and must include the same information included on a regular license card under continuing law, as follows:

- Licensee's name;
- Licensee's signature;
- Licensee's address;
- Licensee's date of birth; and
- Licensee's driver's license number; or
- Nondriver's identification card number; or

- Unique number for military applicants or their dependents as required by continuing law.

The bill would further specify that all such documents issued during the period of determined impracticality would expire 90 days after such conditions have ceased and it is practical for the Division to resume issuing physical cards.

The bill would also make a conforming amendment to provisions regarding the issuance of a license, requiring issuance of such authorization documents within 90 days after receipt of a completed application, if the Attorney General has made a determination of impracticality with regard to card issuance.

### ***Concealed Carry License Classes***

The bill would create two license classes:

- A provisional license that could be issued to persons who are at least 18 years of age and meet the requirements in continuing law for issuance of a license; and
- A standard license for persons who are over 21 years of age and meet the requirements in continuing law for issuance.

[*Note:* Persons over 21 years of age could also carry a concealed firearm without a license pursuant to continuing law.]

The bill would specify that if a licensee holds a valid provisional license at the time a renewal application is submitted, then the Attorney General shall issue a standard license to the licensee if such person is not otherwise disqualified from holding a license. [*Note:* Continuing law provides that licenses are valid for a period of four years.]

Under the provisions of the bill, a license would be required to indicate whether it is a provisional or standard license.

The bill would also make conforming changes in statutes related to crimes and hunting to allow persons who hold a valid provisional license, but are under 21 years of age, to carry a concealed handgun in the same manner as an individual licensed under existing law. Specifically, the bill would amend statutes related to the following:

- Traffic in contraband in a correctional institution or care and treatment facility, specifying that provisional licensees may possess a firearm or ammunition while in a vehicle, or store such items in a vehicle;
- Criminal use of weapons, specifying that provisional licensees may possess a concealed handgun in or on certain school property or grounds and buildings used by a unified school district or accredited nonpublic school. [*Note:* The PFPA exempts public school district buildings from the adequate security requirements which must be met by other public buildings seeking to prohibit concealed carry of weapons in such buildings, allowing school districts to restrict concealed carry of handguns in school buildings by posting signage.];
- Criminal carrying of weapons;
- Possession of a concealed handgun in certain government buildings; and
- Carrying a concealed handgun while hunting, fishing, or furharvesting.

The bill would also make conforming changes to the PFPA to carry out the provisions of the bill.

### ***Kansas Protection of Firearms Rights Act***

The bill would enact the Kansas Protection of Firearms Rights Act by amending current law regarding criminal possession of a weapon by a convicted felon.

#### *Lifetime Prohibition*

The bill would specify, for convictions of a person felony or violation of certain controlled substances crimes prior to July 1, 2009, the convicting court would have had to find the person used a firearm in the commission of the crime, rather than having been in possession of a firearm at the time of the commission of the crime.

#### *Three Year Prohibition*

The bill would prohibit possession of weapons, including firearms, by an individual as follows:

- Such individual has been convicted of a person felony or a crime under the law of another jurisdiction that is substantially the same as such person felony;
- Such individual was adjudicated as a juvenile offender for a crime that if committed by an adult would constitute a person felony;
- Such individual was found by the convicting court to have used a firearm in the commission of the crime; and
- Less than three years have elapsed since such individual satisfied the sentence imposed, terms of any diversion agreement, or discharged from supervision.

### *Eight Year Prohibition*

Current law prohibits possession of a weapon by persons:

- Convicted of certain controlled substances felony crimes; certain crimes against persons and property; sex offenses; or an attempt, conspiracy, or criminal solicitation of any such felony;
- Convicted of a crime under the law of another jurisdiction that is substantially the same as such felony; or
- That have been released from imprisonment for such felony, or adjudicated as a juvenile offender because if committed by an adult, the crime would constitute the commission of such felony.

The bill would clarify current law to provide that such provisions would apply if less than eight years have elapsed since the person satisfied the sentence imposed, terms of any diversion agreement, or discharged from supervision.

The bill would make a technical amendment to clarify that persons convicted of certain controlled substance felony offenses prior to their 2010 recodification transfer would be prohibited from possessing a weapon.

### *Three Month Prohibition*

The bill would also add provisions that would prohibit possession of a weapon by an individual as follows:

- Such individual has been convicted of any other nonperson felony, other than those specified in the bill and continuing law, or a crime of another jurisdiction that is substantially the same as such nonperson felony; or

- Such individual was adjudicated by a juvenile offender because if committed by an adult, the crime would constitute the commission of such nonperson felony; and
- Less than three months have elapsed since since such individual satisfied the sentence imposed, terms of any diversion agreement, or discharged from supervision.

#### *Expungement or Pardon of Felony Convictions*

Additionally, the bill would remove the restriction on firearm possession for an individual that has had a felony conviction expunged or pardoned if a lifetime, three year, or three month weapons possession prohibition would apply under the bill.

#### *Expungement Proceedings*

Current law requires a court to order a petitioner's arrest record, conviction, or diversion be expunged if the court makes certain findings. The bill would require that for petitions seeking expungement of a felony conviction, the court find that possession of a firearm by the petitioner is not likely to pose a threat to the safety of the public.

#### *Concealed Carry License Application*

The bill would remove a provision in current law that requires the person disclose that the arrest, conviction, or diversion occurred, even if the associated records are expunged, when such person applies for a concealed carry license.

### *Firearm Possession*

The bill would provide, when a person whose arrest record, conviction, or diversion of a crime that resulted in such person being prohibited by state or federal law from possession a firearm has been expunged, it shall be deemed that such person's right to keep and bear arms is fully restored. The restoration of rights would include, but not be limited to, the right to use, transport, receive, purchase, transfer, and possess firearms. The bill would specify that the provisions concerning restoration of rights would include any orders issued prior to July 1, 2021.

### *Disclosure of Expunged Records*

Current law provides expunged records may not be disclosed except when requested by certain persons. The bill would amend provisions related to disclosure to the Attorney General by specifying such records could be disclosed to the Attorney General for any purpose authorized by law, except that such records could not be the basis for the denial of a concealed carry permit.

The bill would also amend provisions allowing disclosure to the Kansas Bureau of Investigation (KBI) to remove provisions allowing such records to be used in connection with a National Instant Criminal Background Check System (NICS) record check through the Federal Bureau of Investigation (FBI), to determine a person's qualifications to possess a firearm.

The bill would further specify, upon issuance of an expungement order, the KBI would be required to report to the FBI that such expunged record should be withdrawn from NICS. The KBI would be required to include such expungement order in the person's criminal history record for purposes of documenting the restoration of such person's right to keep and bear arms.

## **Background**

The House Committee on Federal and State Affairs (House Committee) inserted the contents of HB 2089, as introduced, into HB 2058, as introduced. The House Committee on Federal and State Affairs then made further amendments to provisions related to the issuance of alternative documents and adopted a technical amendment.

The House Committee of the Whole also made amendments to the bill.

The Senate Committee on Federal and State Affairs amended the bill by inserting the provisions of SB 190, as introduced.

### ***HB 2058 (License Reciprocity)***

The bill was introduced by the House Committee on Federal and State Affairs at the request of Representative Barker on behalf of the Attorney General.

[*Note:* HB 2058, as introduced, contained provisions similar to those of 2020 HB 2326, as recommended by the House Committee.]

#### ***House Committee on Federal and State Affairs***

In the House Committee hearing on the bill on January 27, 2021, **proponent** testimony was provided by the Attorney General and a representative of the Kansas State Rifle Association. The proponents stated recognition of out-of-state permits would ensure Kansas permit holders would have their credentials recognized in certain other states.

**Opponent** testimony was provided by representatives of Kansas Interfaith Action and Moms Demand Action for Gun Sense in America, and a private citizen. The opponents expressed their concern for additional concealed firearms

possibly being carried in the state and said out-of-state permits may require less stringent qualifications. Written-only **opponent** testimony was provided by seven private citizens.

No other testimony was provided.

*HB 2089 (Issuance of an Alternative License During Certain Circumstances)*

HB 2089 was introduced by the House Committee at the request of Representative Barker on behalf of the Attorney General.

*House Committee on Federal and State Affairs*

In the House Committee hearing on HB 2089 on January 27, 2021, **proponent** testimony was provided by the Attorney General and a representative of the Kansas State Rifle Association. The proponents stated, due to the COVID-19 pandemic, it is more difficult for a concealed carry permit holders to obtain a permit card. They further stated the bill would provide the Office of Attorney General more flexibility in issuing paper documents that would be recognized the same as permit cards.

No neutral or **opponent** testimony was provided.

***House Committee of the Whole***

The House Committee of the Whole made a technical amendment to the bill and inserted provisions that would create two license classes.

[*Note:* The inserted provisions are similar to the provisions of HB 2059, as introduced.]

### ***Senate Committee on Federal and State Affairs***

In the Senate Committee Hearing, **proponent** testimony was provided by Representative Blake Carpenter, a representative of the National Rifle Association, and a private citizen. Proponents generally stated that the bill would help bring Kansas into compliance with other parts of the country concerning concealed carry licenses and would correct an oversight in previous concealed carry legislation. Written-only **proponent** testimony was provided by the Kansas Office of the Attorney General and the Kansas State Rifle Association.

**Opponent** testimony was provided by three representatives of Moms Demand Action and one private citizen. Opponents generally stated concerns about high school aged individuals carrying concealed handguns, higher rates of gun violence among 18 to 20 year olds than those 21 years and older, and the damaging effects gun violence can have on families and communities. Written-only **opponent** testimony was provided by two representatives of the Kansas Chapter of American Academy of Pediatrics, the Executive Director of Kansas InterFaith Action Committee, a representative of Kansas Moms Demand Action, a representative of the Kansas National Education Association, two representatives of Moms Demand Action, a representative of Students Demand Action, and four private citizens.

No other testimony was provided.

The Senate Committee amended the bill by inserting the contents of SB 190, as introduced. The Senate Committee reconsidered its action on the bill in order to amend the contents of SB 190, as introduced, by:

- Restoring certain restrictions on individuals convicted of certain person felonies from carrying a firearm;

- Amending provisions related to expungement law and required findings by the convicting court;
- Prohibiting the Attorney General from using expungement information to deny a concealed carry license; and
- Requiring the KBI to maintain and report expungement orders to the FBI.

### **Fiscal Information**

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the Office of Attorney General states enactment of the bill would have no fiscal effect.

According to the fiscal note prepared by the Division of the Budget on HB 2089, as introduced, the Office of Attorney General currently sends out notices to individuals informing them that their application for a license has been approved. The agency states the authorization document established by the bill could be included with the normal approval document mailing. The agency states there would be increased printing and postage costs to send duplicate notices to individuals who misplace a notice and request another copy. However, any additional expenditures could be absorbed within existing resources.

Any fiscal effect associated with the bill is not reflected in *The FY 2022 Governor's Budget Report*.

### **SB 190 (Kansas Protection of Firearms Rights Act)**

The bill was introduced in the Senate Committee on Federal and State Affairs at the request of Senator Kloos.

### **Senate Committee on Federal and State Affairs**

At the Senate Committee hearing, Former Secretary of State Kris Kobach and a representative of the Kansas State Rifle Association provided **proponent** testimony on the bill. Proponents generally stated their belief that it was good public policy to require restoration of Second Amendment rights upon expungement or pardon and only institute a lifetime ban on possession of a firearm upon finding a firearm had been used in a crime.

No other testimony was provided.

### **Fiscal Information**

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the Office of Judicial Administration (Office) states enactment of the bill would reduce the number of ways unlawful possession of a weapon is committed, which could reduce the number of charges filed. The Office states this could reduce the time spent by court employees and judges processing and hearing these cases. According to the Office, a fiscal effect cannot be estimated.

The Kansas Sentencing Commission (Commission) states enactment of the bill could have an effect on prison admissions and bed space; however, the Commission cannot estimate what that effect would be.

The Department of Corrections (Department) states enactment of the bill would have no fiscal effect on the Department's operations.

Any fiscal effect associated with SB 190 is not reflected in *The FY 2022 Governor's Budget Report*.

Attorney General; concealed carry license; Personal and Family Protection Act; expungement; criminal possession; Kansas Protection of Firearms Rights Act