Firearms Hold Agreements; Firearm Suppressors; Short-barrel Shotguns; Senate Sub. for HB 2501

Senate Sub. for HB 2501 creates law concerning firearms hold agreements, amends Kansas Criminal Code prohibitions related to firearm suppressors and short-barrel shotguns, and creates enhanced sentencing rules for persons who use a firearm suppressor or short-barrel shotgun while committing a nonperson or drug felony.

Firearms Hold Agreements

Definitions

The bill defines the following terms:

- "Federal firearms licensee" and "firearm" to mean the same as in federal firearms law;

- "Firearm hold agreement" to mean a private agreement between a federal firearms licensee (FFL) and an individual firearm owner in which the licensee takes physical possession of the owner's lawfully possessed firearm at the owner's request, holds the firearm for an agreed period of time, and returns the firearm to the owner according to the terms of the agreement. If the agreement does not provide for the disposition of a firearm abandoned by the owner, state law regarding the disposition of abandoned property applies; and

- "Municipality" to mean any city, county, and consolidated city-county.

FFL Immunity and Privilege of Refusal

The bill provides that, regardless of federal or state law, an FFL conducting business in the state that has entered into an agreement with a firearm owner shall be immune from any civil liability, including, but not limited to, statutory claims or common law claims arising from tort or contract for any act or omission concerning, arising out of, or related to the temporary storage of the firearm on the FFL's licensed business premises or for the return of a firearm to the firearm owner per the agreement, including, without limitation, claims related to personal injury or death of a person resulting from the return of a firearm to the firearm owner upon termination of the agreement.

Refusal to enter into an agreement. The bill allows an FFL to have complete discretion in refusing to enter into an agreement and it states that its provisions cannot not be construed to require that an FFL accept a firearm for temporary storage on the licensee's premises at the request of the owner as a condition of the FFL's license.

Agreement Information

If an FFL has entered into an agreement with a firearm owner, the bill requires the firearm owner to provide the make, model, and serial number of each firearm to be held as part of the agreement.

Secondary contact information. The bill also requires the agreement to contain an option for the firearm owner to list a second person to contact in the event of death or serious illness of the firearm owner.

End of Agreement—Return of a Firearm

The bill requires, unless expressly agreed to by the parties in the agreement, or the firearm owner is otherwise prohibited by law from possessing the firearm at the time of return, that an FFL return a firearm to the firearm owner without unreasonable delay upon termination of the agreement without any additional penalties or fees.

The bill states that its provisions shall not be construed to impair, waive, or limit a firearm owner's right to recover possession of property or pursue relief for wrongful retention under contract or property law.

Destruction of records. The bill requires an FFL to destroy, and not retain in any form, including digital or electronic records, any agreement, lists of agreements, or identifying information for more than 90 days after the termination of the agreement and return of the firearm to the owner, unless otherwise required by federal law. The bill requires destruction of these records be done in a manner that prevents reconstruction of the records.

Prohibition of Local Regulations on Agreements and FFLs

The bill preempts municipalities from imposing any regulation or additional terms on agreements or from creating any civil course of action involving the parties of the agreement.

The bill's provisions also preempt any local statutes, laws, or regulations that require or impose obligations on an FFL beyond the requirements to receive a firearm by a lawful owner for temporary storage according to an agreement.

Exercise of Property Rights

The bill provides that the voluntary exercise by a firearm owner of the right to temporarily transfer possession of a lawfully owned firearm pursuant to an agreement, and the subsequent exercise of the right to reclaim possession of such firearm, shall be deemed the lawful exercise of a property right and shall not give rise to:

- Any presumption of negligence, fault, recklessness, or foreseeability;
- Any inference that the firearm owner lacked the legal capacity or fitness to possess a firearm; or

- Any duty, obligation, or expectation that the firearm owner continue, extend, or delay reclaiming possession of the firearm beyond the terms of the agreement.

Protection of lawful possession of firearms. The bill provides that an agreement, the decision to enter in an agreement, or the timing of a firearm's return according to the agreement shall not be used to diminish, condition, or burden a firearm owner's lawful right to possess property. The bill further provides that an agreement shall not, standing alone, be admissible to establish a standard of care, breach of duty, or comparative fault in any civil action against the firearm owner.

Repealing the Prohibition on Firearm Suppressors and Barrel-length Requirements

The bill removes firearm suppressors and the requirement that a shotgun have a barrel at least 18 inches long from laws in the Kansas Criminal Code regarding the criminal use of weapons and criminal carrying of a weapon.

Enhanced Sentencing for Crimes Involving Certain Firearms

When a firearm is used to commit any nonperson felony or any drug felony, the bill requires the offender's sentence to be classified one severity level above the appropriate level for such offense if the trier of fact makes a finding beyond a reasonable doubt that the firearm was:

- Equipped with a device designed to suppress the report of the firearm; or
- A shotgun equipped with a forend and having a barrel less than 18 inches in length.

For nonperson felonies, the sentence imposed pursuant to this provision will not be considered a departure and shall not be subject to appeal.