

Approved: 1-22-96
Date

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS.

The meeting was called to order by Chairperson Garry Boston at 1:30 p.m. on January 16, 1996 in Room 519-S of the Capitol.

All members were present except:

Committee staff present: Mary Galligan, Legislative Research Department
Mary Ann Torrence, Revisor of Statutes
June Evans, Committee Secretary

Conferees appearing before the committee: Phillip B. Journey
John McElroy
Kelly Kultala, Kansas Trial Lawyers Association
Don Moler, General Counsel, League of Kansas Municipalities

Others attending: See attached list

The Chairman welcomed the committee members back and introduced the new committee members.
The Chairman introduced the staff.

The Chairman stated the Committee Rules were distributed (See Attachment #1) and the committee met at 1:30 p.m. and would encourage members to be on time.

The Chairman opened the hearing on **HB 2570**.

HB 2570 - Concerning regulation and application of state and local laws, rules, regulations and ordinances to sport shooting ranges; providing civil immunity to persons who operate or use such ranges.

Mary Torrence, Revisor of Statutes, gave a briefing of the bill.

It was requested that staff provide information regarding if there is a law that states no alcohol is to be used at shooting ranges.

Testimony by Representative Doug Lawrence, a proponent, was distributed, stating **HB 2570** was based on model legislation suggested by the National Rifle Association. The bill grows out of a concern for long standing businesses which have been in place many years. As new development moves into the area near shooting ranges, then new residents increasingly seek to limit operations of the ranges to the extent of forcing them out of business. (See Attachment #2)

Phillip B. Journey testified as a proponent to **HB 2570**, stating this bill offers a unique opportunity for the members of the Kansas Legislature to support and promote recreation, health and safety for all Kansans. This would prevent the filing of frivolous lawsuits against both public and private shooting facilities in the state of Kansas. These potential lawsuits could be filed by adjacent and subsequent landowners due to their personal objection to circumstances which existed prior to their building or moving near a shooting facility. (See Attachment #3)

Representative Lloyd asked Mr. Journey if he had any objection of adding "no alcohol provision" in the bill?

Mr. Journey stated, he did not object, but thinks it would be unnecessary.

John McElroy testified as an opponent to **HB 2570**, stating he lives in Shawnee County, one half mile from a gun club and over the years the situation has changed as the gun club became organized, built new facilities and began shooting year round.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE FEDERAL AND STATE AFFAIRS, Room 519-S
Statehouse, at 1:30 p.m. on January 16, 1996

There are two shooting ranges, one requires shooting toward Mr. McElroy's house. The noise is constant on Thursday night and Sunday afternoon. There is no appreciable difference in sound intensity at any time of year. **HB 2570** appears to guarantee that a gun club could continue to steal peaceful enjoyment of many people across the state of Kansas. (See Attachment #4)

Kelly Kultala, Kansas Trial Lawyers Association, testified as an opponent to **HB 2570**, stating the original intent of the bill was to protect existing shooting ranges from being forced to relocate or go out of business due to the complaints of neighbors in encroaching developments because of noise from the shooting range. However, the bill goes far beyond this issue and drafted in such a way that it is unclear about the full impact and public policy consequences.

The specific concern is with Section 5 of the bill, which provides broad immunity for commercial shooting ranges. (See Attachment #5)

Don Moler, League of Kansas Municipalities, testified opposing **HB 2570**, stating the bill takes away from local governing bodies the ability to protect the health, safety and welfare of their citizens. The bill preempts the ordinance authority of cities to regulate the operation of a potentially dangerous activity, that being the control and regulation sport shooting ranges. This is a dangerous path to follow and urge rejection of **HB 2570**. (See Attachment #6)

The Chairperson closed the hearing on **HB 2570**.

The meeting adjourned at 3:00 p.m. and the next meeting will be January 17.

HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE RULES

1. A substitute motion is in order, but no additional substitute motion shall be in order until the prior substitute motion is disposed.
2. Amendments to motions are not in order.
3. A motion requires a second to be in order.
4. A motion to take from the table shall be in order only when such item is on the agenda or is taken up by the chair. The motion requires a simple majority and is non-debatable.
5. No conferee shall be interrupted during presentation of their testimony, except with the permission of the chair.
6. Questioning of a conferee shall be limited to the subject matter of the agenda for the day.
7. Granting excused absences is reserved to the chair.
8. A request from any member that their own vote be recorded shall be granted.
9. All conferees are requested to submit enough copies of written testimony for all committee members and staff.
10. Encourage use of unanimous consent motion on non-controversial items. Motion should be: "Mr/Madam Chairman, I ask unanimous consent that:" The chair's response should be to repeat the motion then say, "Without objection (slight pause) it is so ordered."
11. Adjournment is reserved to the chair.
12. In any case where committee rules do not apply, House Rules shall govern. All powers, duties and responsibilities not addressed above are reserved to the chair.

*Fed & State
1-16-95
Atch #1*

HOUSE FEDERAL AND STATE AFFAIRS
Testimony by Rep. Doug Lawrence
HB 2570
January 16, 1996

Mr. Chairman, Members of the Committee:

Thank you for the opportunity to address the committee on HB 2570.

HB 2570 was introduced at my request at the suggestion of a constituent.

The bill is based on model legislation suggested by the National Rifle Association. This bill grows out of a concern for long standing businesses which have been in place many years. As new development moves into the area near shooting ranges, then new residents increasingly seek to limit operations of the ranges to the extent of forcing them out of business.

While zoning laws allow grandfathering of existing uses, noise pollution and nuisance laws do not. Then laws are being used to accomplish what can not be done through the zoning process. This bill does require shooting ranges to comply with all nuisance and noise pollution laws which existed after the time the facility was established.

Thank you again for the opportunity to address this committee.

*Fed & State
1-16-96
Atch # 2*

RANGE PROTECTION ACT

House Bill 2570

Testimony presented by Phillip B. Journey

Ladies and Gentlemen of the Committee:

First let me express my sincere thanks for the opportunity to testify before the committee. House Bill 2570 offers a unique opportunity for the members of the Kansas Legislature to support and promote recreation, health and safety for all Kansans. This Act would prevent the filing of frivolous lawsuits against both public and private shooting facilities in the State of Kansas. These potential lawsuits could be filed by adjacent and subsequent landowners due to their personal objection to circumstances which existed prior to their building or moving near a shooting facility. While this issue has not become significant in Kansas, in other states facilities that have existed for decades have been sued by individuals.

These suits generally tend to be civil nuisance litigation. Like moving next to an airport, an individual who moves next to a public or private shooting range assumes the circumstances that exist at the time that they purchased the property. Protection of these facilities in the State of Kansas and facilitating of the construction of new facilities is necessary so that sportsmen, competitors, law enforcement and children across the state have safe facilities where they can practice their chosen sport. Competitive and recreational shooting occur at safe and well managed private facilities that are open to the public across the State of Kansas. These organizations generally have limited income and may not be able to withstand the financial burden of such frivolous lawsuits.

In other states where facilities originally placed in clearly rural areas thirty years ago, today have situations where they could soon become surrounded by the urban sprawl of modern society. For the citizens of Kansas to obtain the benefits that are derived from the shooting sports, safe and accessible ranges must be available. Organizations in the State of Kansas such as the Jaycees, 4-H and the Boy Scouts all do training and/or competition at facilities which would be protected by this legislation. Also, federal and state law enforcement agencies along with those of many cities would be protected by this legislation.

A few years ago in Sedgwick County when the Sedgwick County Sheriff's Department in conjunction with the Wichita Police Department wanted to expand their facilities and improve them, they were faced with not only newer and stronger environmental rules and regulations, but some opposition from the public that live near the facilities. The resistance to the improvement of those facilities increased the cost of those improvements at taxpayer expense.

Fed. State
1-16-95
Atch #3

New technology has been developed that when ranges are expanded or improved the most objectional part of sound pollution can be directed away from areas where residents may be and the rules followed by shooters make the possibility of projectiles exiting shooting ranges is non-existent. One of the ranges operated by a club out of Wichita, Kansas has been used on an annual basis by United States Military Personnel and Federal Law Enforcement. These facilities should be protected so that these federal agencies will not need to build their own ranges and continue to use the private ones made available to them on a voluntary basis. Supporting this legislation is something all legislators should be able to do and we ask you to do the same.

TESTIMONY OF JOHN McELROY
BEFORE THE HOUSE COMMITTEE
ON
FEDERAL & STATE AFFAIRS
RELATING TO HB 2570
JANUARY 16, 1996

Mr. Chairman and members of the committee. Thank you for giving me the opportunity to bring another perspective to you regarding H.B. 2570 - An Act Concerning the Regulation and Application of State and Local Laws, Rules, Regulation and Ordinances to Sport Shooting Ranges; Providing Civil Immunity to Persons Who Operate or Use Such Ranges.

I live in Shawnee County, one half mile from a gun club. I have lived in my house for sixteen years. When I first moved in, the gun club was a sporadic and occasional annoyance. That situation changed when the club became organized, built new facilities, and began shooting year round.

Upon investigation I discovered that the club had two ranges. One required shooting toward my house and one generated shooting at about 90 degrees off a line from the club to my house. In summer, trees obscure my view of the gun club, but in winter they don't. There is no appreciable difference in sound intensity at any time of year.

How can I explain the effect of living next to a gun club? Imagine, if you will, a large firecracker detonating outside your living room window every couple of seconds. Imagine that there is nowhere in your house you can go to escape the noise.

Now imagine every week you are assaulted by this noise on Thursday night for three hours and on Sunday afternoon for four hours. Imagine turning on the television and still hearing the shooting. Imagine being sick and wanting to sleep, but the noise won't stop. Imagine not being able to put your baby to sleep because of the noise. Imagine being on a diesel tractor mowing your grass and still being able to hear the noise.

This is life in my neighborhood.

Yes, I became frustrated. On checking, I found the club was operating in violation of the zoning restrictions. The club made a request for a special use permit for a period of ten years. It was granted.

Fed & State
1-16-96
Atch # 4

Page 2
John McElroy
H.B. 2570
January 16, 1996

Imagine once again the firecrackers going off outside your window. Now imagine that there is, in fact, no police officer or other public official you can call to come and stop this noise.

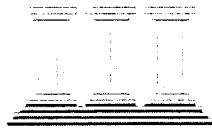
H.B. 2570 defines "generally accepted operation practice." I have tried without success to find books on the design of gun ranges. Let me relate that in my neighborhood, it is the "generally accepted operation practice" to permit a gun club to shoot from its own land into a public creek where the accumulation of lead shot pollutes the water. In my neighborhood it is also the "generally accepted operation practice" to not require construction of any noise reducing devices.

Contrast this situation with the noise reducing dikes required of Heartland Park Racetrack in Topeka. This construction was a clear indication of the recognition by public officials of the benefits of such structures; yet none are required for gun clubs.

H.B. 2570 appears to me to be an attempt to guarantee that a gun club can continue to steal not only my peaceful enjoyment of my property, but that of hundreds of people in my immediate neighborhood of approximately one hundred houses, and any other Kansans across the state in similar situations.

This country was created based upon a set of legal principles, one of which is that my rights go only so far as not to interfere with your rights. This bill will guarantee that ^{neither} I nor any other Kansan will have recourse against a group of people that interfere with our right to the peaceful enjoyment of our property.

I can't imagine the circumstances under which you would approve this bill. However, if you do, I would request that you legislate requirements for pollution control devices (especially noise control) to be installed at every range, existing or not, and penalties, including closure, for failure to comply. These requirements would indicate a legislative intent that property owners are entitled to protection of their right of peaceful enjoyment of their property as envisioned by our forefathers.



KANSAS TRIAL LAWYERS ASSOCIATION

Lawyers Representing Consumers

January 16, 1996

To: Representative Garry Boston, Chair
House Federal & State Affairs Committee
From: Kelly Kultala, Lobbyist
Kansas Trial Lawyers Association
Re: Testimony for HB 2570

Committee Members:

My name is Kelly Kultala and I am here representing the Kansas Trial Lawyers Association (KTLA) on HB 2570.

We understand the original intent of this bill is to protect existing shooting ranges from being forced to relocate or go out of business due to the complaints of neighbors in encroaching developments because of noise from the shooting range. However, the bill goes far beyond this issue and is drafted in such a way that we are unclear about its' full impact and public policy consequences.

Specifically, our concern is with Section 5 of the bill, which provides broad immunity for commercial shooting ranges. Eventhough, we are unaware of any major problems with shooting ranges, it is not in the public's interest to provide them with preferential immunity. Shooting ranges are inherently dangerous and the responsibility for safe design, maintenance and operations should lie with the business owner/operator.

Why should shooting ranges be treated any differently than amusement parks, movie theaters, sports complexes, skating rinks or any other business that provides a recreational activity for a fee? All these for-profit enterprises invite people onto their premises for commerce but, according to HB 2570, only shooting ranges would have immunity for the injuries suffered by their patrons, which result from their negligence.

The public expects a certain standard of care and they deserve to be protected from losses caused by businesses that fail to exercise reasonable care. The Kansas Trial Lawyers Association asks that you reject HB 2570.

Terry Humphrey, Executive Director



**League
of Kansas
Municipalities**

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LEGISLATIVE TESTIMONY

TO: House Federal and State Affairs Committee

FROM: Don Moler, General Counsel

RE: Opposition to HB 2570

DATE: January 16, 1996

First I would like to thank the Committee for allowing the League to appear today in opposition to HB 2570. We are opposing HB 2570 for a variety of reasons. Most fundamentally it takes away from local governing bodies the ability to protect the health, safety and welfare of their citizens. Specifically HB 2570 preempts the ordinance authority of cities to regulate the operation of a potentially dangerous activity, that being the control and regulation sport shooting ranges. We believe this is a dangerous path to follow and would urge the Committee to reject HB 2570 for the possible dangers it presents.

While the bill specifically discusses promulgation of ordinances after a shooting range is in place, I would point out to the Committee that most cities in Kansas do not currently have an ordinance on sport shooting ranges or firing ranges of any type. As is the case with legislative bodies at all levels, most often legislation reacts to concerns rather than is preemptive in its application. Therefore, I would suggest that were a shooting range to locate within a city, the city would be completely unable to respond should the shooting range present a danger to the citizens of the community. We find this to be an unacceptable result and would urge the Committee to reject HB 2570 on its face. Furthermore, we would point out that this takes away the ability of local governing bodies, acting on behalf of their citizenry, to make reasonable regulations concerning shooting ranges and their activities within a community. Certainly it cannot be argued that the use of a firearm, even in a firing range situation, presents a potential hazard to the safety of the public. It would appear to the League that cities have a duty to protect the public and should not be preempted from regulating these activities so as to assure the safety of the public and the citizens of Kansas. It is not acceptable to simply say that a firing range is "grandfathered in" at the regulation level which was present when it was originally established. This provides few, if any safeguards, for the public and creates a potentially dangerous situation for the citizens of Kansas.

Thank you for allowing us to testify before the Committee today.

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