

Approved: March 10, 1998
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 March 4, 1998 in Room 519-S of the Capitol.

All members were present except: Representative Phill Kline, Excused

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

Conferees appearing before the committee: Rob Manes, Assistant Secretary, Wildlife and Parks
Al Thompson, Kansas State Rifle Association and Capitol City Gun Club
Mike Dann, Douglas County Rifle and Pistol Club, Lawrence
Herb Taylor, Chairman, Kansas Sportsmen's Alliance
Scott G. Hattrup, Attorney, Overland Park, Kansas
Phillip B. Journey, President, Kansas Second Amendment Society and Spokesperson Air Capital Gun Club
Donald Ross, Mill Creek Rifle Club, Lenexa
Kirk Lowery, Kansas Trial Lawyers
Tom Schaffer, City of Lenexa

The Chairperson asked if there were any bill requests.

Representative Ruff moved and Representative Tanner seconded introduction of a bill that would protect community service volunteers from liability. The motion carried.

Representative Grant moved and Representative Dahl seconded introduction of a bill concerning children and minors; relating to visitation rights of grandparents. The motion carried.

Representative Ruff moved and Representative Grant seconded introduction of a bill concerning the boiler safety act. The motion carried.

HB 2886 - Regulation and application of state and local laws, rules, regulations and ordinances to sport shooting ranges

The Chairman opened the hearing on **HB 2886**.

Rob Manes, Assistant Secretary, Wildlife and Parks, testified in support of **HB 2886**, stating the bill proposes certain limitations on liabilities associated with the operation of sport shooting ranges. The Department of Wildlife and Parks would be required to adopt generally accepted operation practices to be utilized by range operators. The department supports this proposed legislation, as it would appear to have benefits for sport shooters and hunters, who are among the department's core constituents.

The proposed legislation would relieve shooting range operators -- those who adopt the generally accepted operation practices -- from certain civil liabilities and criminal prosecutions, as well as the burden of certain local regulations and ordinances, in circumstances involving noise or noise pollution resulting from range operation. It would also allow the repair, remodel and reconstruction of existing range facilities where the referenced operation standards are utilized, if done in a timely manner (one year). The proposed legislation appears that it would reduce the liability of range operators for personal injury to range users, when such personal injury stems from risks that are obvious and inherent.

This proposed legislation would require the department to adopt "generally accepted (shooting range) operation practices" that are "established by a nationally recognized nonprofit membership organization that provides voluntary firearm safety programs..." (Attachment 1)

Al Thompson, Kansas State Rifle Association, the Kansas Liberty Coalition, and the Capitol City Gun Club, testified in support of **HB 2886**, as the bill provides for the adoption of generally accepted operation practices

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MINUTES OF THE HOUSE COMMITTEE FEDERAL AND STATE AFFAIRS, Room 519-S
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by the Kansas Department of Wildlife and Parks with regard to sport shooting ranges, the voluntary adherence to those practices by sport shooting ranges throughout the state, and certain immunities from liability for those ranges internalizing the operational practices so promulgated by the Secretary (Attachment 2).

Michael Dann, President, Douglas County Rifle and Pistol Club, Lawrence, a proponent for HB 2886, stated he was a member of two other ranges and an NRA Certified Instructor in Pistol and in Personal Protection, chairs the Safety and Training Committee for SWARM, and Treasurer of the Kansas Sportsmen's Alliance. Mr. Dann stated his comments were based on his role of an officer of a range, a firearms instructor, and a strong believer in public safety. This bill promotes the safety of all Kansans by helping to insure safe places to shoot, where help and assistance is made available to firearm owners and those lawfully purchasing a firearm for the first time. (Attachment 3)

Herb Taylor, Chairman, Kansas Sportsmen's Alliance, a proponent for HB 2886, stated the bill would give significant support to the public safety issues espoused by the Kansas Sportsmen's Alliance and all law-abiding Kansas residents. HB 2886 would protect existing ranges, both privately run ranges or ranges owned by governmental agencies, from nuisance lawsuits and local noise control ordinances being brought to bear on the ranges as a direct result of encroaching development in the surrounding areas. (Attachment 4)

Scott G. Hatrup, Attorney at Law, Overland Park, Kansas, a proponent for HB 2886, stated this bill is absolutely necessary for Kansas. Mr. Hatrup offered three proposed amendments: (1) Delete "military style" from page 1, line 33. (2) Add the word "uses" to the phrase on page 1, lines 36-37, so it would read "a person who owns, operates, manages, or uses a sport shooting range" and (3) Add the word "manages" to the phrase on page 1, line 43 through page 2, line 1, so it would read "a person who owns, operates, manages, or uses a sport shooting range". (Attachment 5)

Phillip B. Journey, President, Kansas Second Amendment Society, testified as a proponent for HB 2886, stating 29 states has enacted similar laws. They are intended to protect facilities from civil lawsuits and hopefully it would include a section intended to prevent them from being zoned out of existence or condemned by eminent domain.

Many shooting ranges in Kansas have been in around for over 20 years. some of them are being surrounded by suburban development. At times subsequent property owners desire to increase their property values by eliminating these facilities through legal or political action. Shooting sports bring tens of millions to the Kansas economy each year. Shooting ranges provide recreational and educational opportunities to their members and the general public. More than half of Kansans own firearms. They all need safe places to shoot. Thousands of Kansans each year complete hunter education and many of them are on private shooting ranges.

Law enforcement and the United States military use the private facilities in Kansas for training which are provided at no cost by clubs. When these are shut down the taxpayers must provide ranges for training and qualifying purposes.

Shooting ranges in Kansas provide support for a significant portion of the state's economy, provide recreational and educational opportunities to Kansas youth. They also provide support for law enforcement and the armed forces of the United States and the state of Kansas. (Attachment 6)

Donald Ross, on behalf of Mill Creek Rifle Club, DeSoto, consisting of 3 rifle and 4 pistol outdoor ranges with a club membership of approximately 725 testified as a proponent to HB 2886. The rifle club has existed at this location for 25 years and public services provided include law enforcement training, firearms and related safety training, weekly competitive shooting matches of various types and an annual rifle sight-in service. Presently, 8 law enforcement agencies use the club for all or part of their training and practice. Firearms and related safety courses have been provided to over 1000 personnel in the last 25 years. Annual attendance at competitive shooting events exceeds 2100. The annual sight-in weekend hosts approximately 175 people. The potential for frivolous lawsuits citing noise pollution or other irritations is a serious financial threat. In addition, inquiry by two communities and a state sponsored study indicate there is a possibility of reallocating use of our river front land for other recreational purposes. The passage of HB 2886 insures the continuation of these valuable public services as well as the lawful and safe pursuit of firearm sports for a great many Kansans. (Attachment 7)

Kirk W. Lowry, Vice President for Legislation, Kansas Trial Lawyers Association, testified as an opponent to HB 2886, as Section 5 of the bill is not acceptable. That section creates the defense of assumption of risk for a landowner or other participants at the shooting range. Kansas law at this time limits the defense of assumption of risk to employer/employee relationships. It is the law that the possessor of land is under no duty to remove known and obvious dangers. Section 5, as written, would give a sweeping and overbroad

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MINUTES OF THE HOUSE COMMITTEE FEDERAL AND STATE AFFAIRS, Room 519-S
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defense to a clearly negligent sporting range owner or a person who was using alcohol or drugs on the shooting range. This clearly cannot be the intent of this legislature. The state of the law as it is now creates a standard duty of care and a duty to warn on an owner and operator of a place of business. An owner or operator of a place of business, which is open to the public, owes a duty to use reasonable care, under all of the circumstances, in keeping the business place safe. The owner or operator of the business must warn of a dangerous condition which he or she knows about or should know about if he or she exercises reasonable care in tending to the business. (Attachment 8)

Tom Schaefer, Assistant City Administrator, City of Lenexa, testified in opposition to **HB 2886**, stating the bill essentially attempts to "grandfather" sport shooting ranges from any state or local regulation from both an operational and land use standpoint. Of particular concern is the special treatment of a specific land use, exempting it from the city's exercise of its police powers in regulating inherently dangerous and harsh land uses.

The proposed bill exempts ranges from civil and criminal liability, including nuisance suits, for any matter relating to noise or noise pollution resulting from range operation if the range is in compliance with any noise control ordinances that applied to the range and its operation at the time of construction or initial operation.

As a practical matter, the majority of gun club operations affected by this legislation were established in what were then rural areas. Many of these areas did not have noise regulations in existence at the time the use was established. Therefore, this legislation will effectively permit many gun clubs to operate without any noise regulation, and while doing so, be immune from suit. The noise at the property line associated with gun clubs can be significant and routinely exceeds permitted and safe noise levels. Government is charged with exercising its police powers to provide for the public order, peace, health, safety, welfare and morals. Cities routinely adopt zoning regulations, including performance standards addressing noise, odor, vibration, light levels, etc. in an effort to protect the general health and safety of the public. To permit a land use, such as a gun club, to operate without any noise regulation, would be potentially detrimental to citizens' health and welfare. (Attachment 9)

The Chairperson closed the hearing on **HB 2886**.

The following testimony was distributed: Jeff Freeman, NRA-ILA Kansas State Liaison, a proponent (Attachment 10), Mike Taylor, Government Relations Director, City of Wichita, an opponent (Attachment 11) and Don Moler, General Counsel, League of Kansas Municipalities, an opponent (Attachment 12).

The meeting adjourned at 3:00 p.m.

The next meeting is scheduled for March 5, 1998.

FEDERAL & STATE AFFAIRS COMMITTEE

DATE: March 4, 1998

| NAME | REPRESENTING |
|--------------------|---------------------------------|
| Donald Ross | Mill Creek Rifle Club |
| LINDA LUBENSKY | KS Home Care Assoc, |
| MIKE REED | Mill Creek Rifle Club |
| Mike Dann | Citizen |
| HERB TAYLOR | Kansas Sportsmen's Alliance |
| Phillip B Jowmy | Kansas Second Amendment Society |
| Glenn Thompson | Stand Up For KANSAS |
| Erin Caplan | SRS 114/DD |
| Debra Mannell | Citizen |
| Matt B. Mannell | Citizen |
| Laura A. Ziegler | Citizen - Leadership Olathe |
| Vicki Reed | Leadership Olathe |
| Rick Ensz | Leadership Lenexa |
| Pam VanMeekbroeck | Leadership Lenexa |
| Connie Fortner | Leadership Lenexa |
| Doug Stone | Leadership OP |
| Dave Schneider | Kansas For Life At Its Best |
| Heather Jurdal | Whitney Dawson F.A. |
| Bayan Labree | Citizen |
| Brian C Bosan | Citizen |
| Thomas Schaefer | City of Lenexa |
| Blaine Finch | Intern / Rep Tanner |
| Dennis Hightberger | KDHE |
| Erik Sartorius | Rete McGill Assoc |
| Aren Adjoian | Leadership Overland Park |
| Charles W. Lowe | KDOA |
| Kevin W. Lowry | KTLA |
| | |
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STATE OF KANSAS
DEPARTMENT OF WILDLIFE & PARKS

Office of the Secretary
900 SW Jackson, Suite 502
Topeka, KS 66612
913/296-2281 FAX 913/296-6953



February 23, 1998

Representative Garry Boston, Chair
Committee on Federal and State Affairs
House of Representatives
State Capitol
Topeka, Kansas 66612

Dear Representative Boston:

Thank you for the opportunity to provide testimony regarding House Bill No. 2886, which proposes certain limitations on liabilities associated with the operation of sport shooting ranges. This bill would also require the Department of Wildlife and Parks to adopt generally accepted operation practices to be utilized by range operators. The department supports this proposed legislation, as it would appear to have benefits for sport shooters and hunters, who are among the department's core constituents.

The proposed legislation would relieve shooting range operators – those who adopt the generally accepted operation practices – from certain civil liabilities and criminal prosecutions, as well as the burden of certain local regulations and ordinances, in circumstances involving noise or noise pollution resulting from range operation. It would also allow the repair, remodel and reconstruction of existing range facilities where the referenced operation standards are utilized, if done in a timely manner (one year). The proposed legislation appears that it would reduce the liability of range operators for personal injury to range users, when such personal injury stems from risks that are obvious and inherent.

This proposed legislation would require the department to adopt "generally accepted (shooting range) operation practices" that are "established by a nationally recognized nonprofit membership organization that provides voluntary firearm safety programs..." General shooting range operational guidelines are available from various organizations that appear to fit the definition of this bill. Three national organizations – the National Rifle Association, the International Hunter Education Association, and the National Shooting Sports Foundation – have pending draft documents that may provide more specific operation practice prescriptions, should that be required under this proposed legislation.

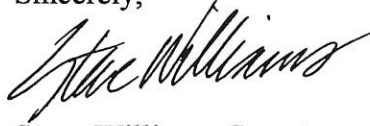
The Wildlife and Parks Commission would be required to adopt and review the established operation practices at least every seven years. Review and recommendation

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for adoption would be conducted with existing department staff, with the assistance of appropriate outside expertise.

Thank you for this opportunity to provide input. Please let me know if you need further information.

Sincerely,

A handwritten signature in black ink that reads "Steve Williams". The signature is written in a cursive, flowing style.

Steve Williams, Secretary
Kansas Department of Wildlife and Parks

c: Rob Manes

HB 2886

House Committee on Federal & State Affairs

23 February, 1998

Chairman Boston, Members of the Committee:

My name is Al Thompson, and I appear before you today on behalf of the Kansas State Rifle Association, the Kansas Liberty Coalition, and the Capitol City Gun Club in support of HB 2886. House Bill 2886 provides for the adoption of generally accepted operation practices by the Kansas Department of Wildlife and Parks with regard to sport shooting ranges, the voluntary adherence to those practices by sport shooting ranges throughout the state, and certain immunities from liability for those ranges internalizing the operational practices so promulgated by the Secretary.

House Bill 2886 offers a wonderful opportunity for Kansas to both adopt and establish a consistent system of safe and reasonable range practices and to provide desirable protections to established and future sport shooting ranges throughout the state. Through its guarantees of immunity from frivolous litigation and/or criminal prosecution in exchange for the adoption of good operational practices, both shooting ranges and the communities that support them receive tremendous benefits. The ranges throughout our state can be protected from the machinations of land speculators, and the citizens of Kansas can be afforded sport shooting facilities operated in a consistent manner. House Bill 2886 is an excellent tool whereby a system of best practices adopted by the Secretary of Wildlife and Parks can be promulgated to improve our recreational shooting sports. Through its offers of certain immunities, it invites compliance with the Secretary's standards, thereby encouraging a higher standard of range operation throughout Kansas.

The pursuit of the shooting sports is a long established and cherished Kansas tradition. The Kansans of today owe to future generations not only the protection of the facilities so necessary to their involvement in these sports, but also the enhancement of the quality and safety of the range operations through which their children's involvement within the shooting sports may be responsibly established.

I thank you for your consideration of HB 2886, and urge you to expedite its passage into law.

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Chairman Boston, Members of the Committee and others present,

My name is Michael Dann, and I have been President of the Douglas County Rifle and Pistol Club (DCR&PC), located in Lawrence, for 2 1/3 years. I am a member of two other ranges and an NRA Certified Instructor in Pistol and in Personal Protection. I chair the Safety and Training Committee for SWARM, and am Treasurer of the Kansas Sportsmen's Alliance. My comments today are based on my role as an officer of a range, a firearms instructor, and a strong believer in public safety.

DCR&PC has operated a shooting range for over 15 years in Lawrence, and is the only facility for shooting handguns and smallbore rifles within a 15 mile radius. It has five shooting stations, and an average annual membership of 80 persons. In addition, we have over 100 persons shoot each year under a guest category. In all the years of operation, there has never been a shooting related injury.

When I became President, I contacted all 7 stores in Lawrence that sell firearms with my name and phone number, and suggested that they suggest that new or unfamiliar gun buyers call me to request information on the range and shooting instruction. The city also has my name and number, to direct inquiries about the shooting facility to me. I began logging these calls in late October, 1995 upon taking office.

For this past 28 month period, I have received an average of 2.3 calls per week with questions about the range. These 269 phone calls were broken down approximately as follows:

- 50% - experienced shooters, current gun owners looking for a local place to shoot.
- 42% - new gun owners looking for a place to shoot and varying degrees of help in learning to shoot
- 8% - persons not currently owning a firearm, but expecting to purchase soon and wanting help in the selection of a firearm for their circumstances and instruction.

These figures tell us that over 250 persons have found the only safe, for them and the public, place to shoot handguns and rifles in our community. One-half of these people were not familiar with or comfortable enough with a firearm to shoot it without making the effort to secure help before doing so. Thank goodness they did. From working with them, I sincerely believe that some of these citizens would almost certainly have hurt themselves, family, or someone else while shooting without the club's assistance and the safety built into the facility.

This bill promotes the safety of all Kansans by helping to insure safe places to shoot, where help and assistance is made available to firearm owners and those lawfully purchasing a firearm for the first time.

Thank you for your attention. I stand for questions.

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Proponent Testimony for HB 2886, presented by Herb Taylor:

Honorable members of the House Federal & State Affairs Committee, thank you for allowing me to address you this afternoon. My name is Herb Taylor and I am the Chairman of the Kansas Sportsmen's Alliance, an organization located in the Kansas 3rd Congressional District

I stand here today to urge your support of HB 2886, a "Range Protection and Preservation" bill that is badly needed in the State of Kansas. This bill would give significant support to the **Public Safety** issues espoused by the Kansas Sportsmen's Alliance and **all** law-abiding Kansas residents.

Range protection laws such as HB 2886 yield very broad public safety benefits. One in two Kansas households contains a firearm and shooting ranges are where our law-abiding citizens learn about firearm safety and responsibility. Safe and convenient ranges promote participation in the shooting sports, allow for firearm and hunter safety education, and provide critically important training for law enforcement personnel.

HB 2886 would protect existing ranges, both privately run ranges or ranges owned by governmental agencies, from nuisance lawsuits and local noise control ordinances being brought to bear on the ranges as a direct result of encroaching development in the surrounding areas.

Kansas has a state mandate requiring all hunters to pass a hunter safety class and if private ranges are unable to provide the training the State will be forced to provide it.

One very significant use of the ranges in the Johnson County area is for law enforcement training. These ranges are used to keep our law enforcement personnel proficient with firearms while at the same time practicing the safe use of their equipment. This range time is normally leased to our law enforcement or governmental agencies at reduced costs. The most important issue here is that when law enforcement utilizes privately developed ranges, **they are saving the taxpayers significant amounts of tax dollars that might otherwise be required for building ranges for their training needs.** If law enforcement personnel do not have range facilities available for training, they are either forced to forego training, which is clearly not an option, or they must travel great distances to available range facilities at taxpayer expense.

I might add that the Bullet Hole, a range in Overland Park, Kansas, provides range time to the police departments of Overland Park, Shawnee, Merriam, Mission, Leawood, Prairie Village and the Johnson County Sheriffs department plus many SWAT teams.

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Ranges in Kansas are vitally important for teaching firearms safety to residents of all ages. We see Boy Scouts, women of all ages with concern for their personal safety and parents taking their children to the range; all with the same intent and that is to learn to safely handle and use firearms. Let's protect Kansas's ranges where safety comes first.

Since the turn of the century the population in America has doubled and the number of lawfully owned firearms has quadrupled. While recognizing these two significant changes in the population and firearm ownership, fatal firearm accidents are at an all time national low! One reason for this decline may be that Americans seek out firearms training, if we do not protect our ranges we could possibly see a reversal of this trend of the safe use of firearms and that is not an acceptable alternative.

Prior to 1994 there were only 8 states in this country that had enacted "Range Protection" statutes, with our neighboring state of Missouri being one of that original 8. Today that number has more than tripled with 29 states now having range protection bills enacted. Please refer to the map attached to my testimony and while there, note that our neighboring state of Oklahoma has also enacted Range Protection. Currently there are some 20 states, including Kansas, considering Range Protection bills.

In closing, as Chairman of the Kansas Sportsmen's Alliance and as a Kansas resident, I ask you to take positive action on HB 2886. Please pass this bill out of committee with a strong recommendation for passage and send it to the House floor for further action.

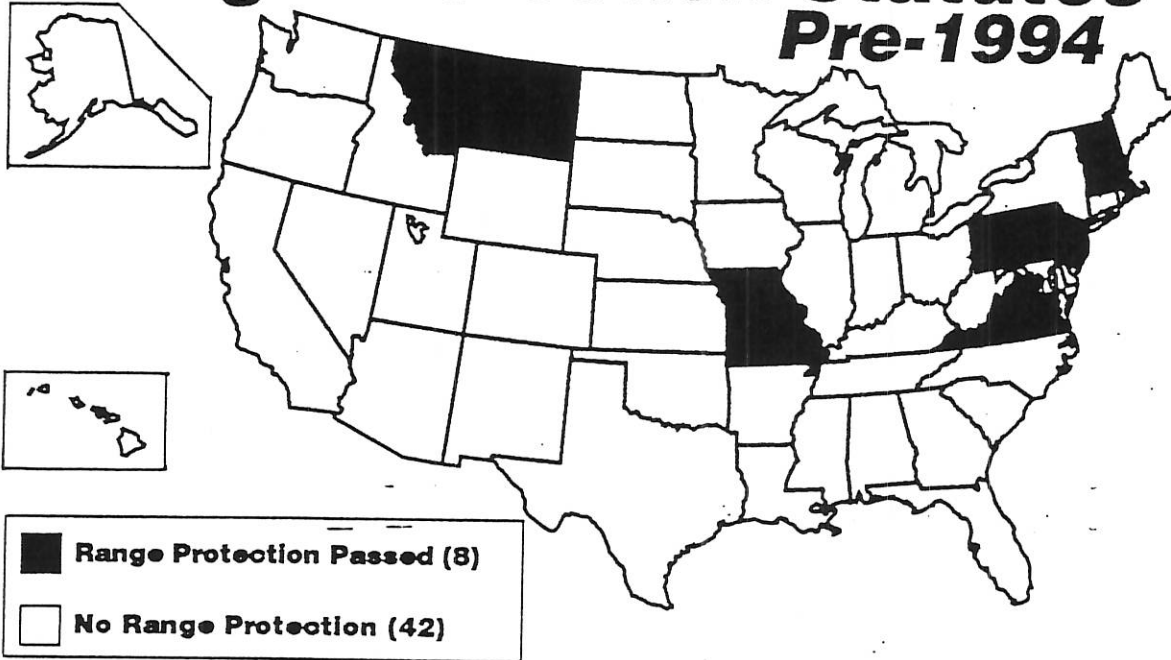
Please note I endorse and support the amendments to HB 2886 as proposed by Mr. Scott Hattrup. Thank you for your time today and I stand for questions from the committee.

Sincerely,



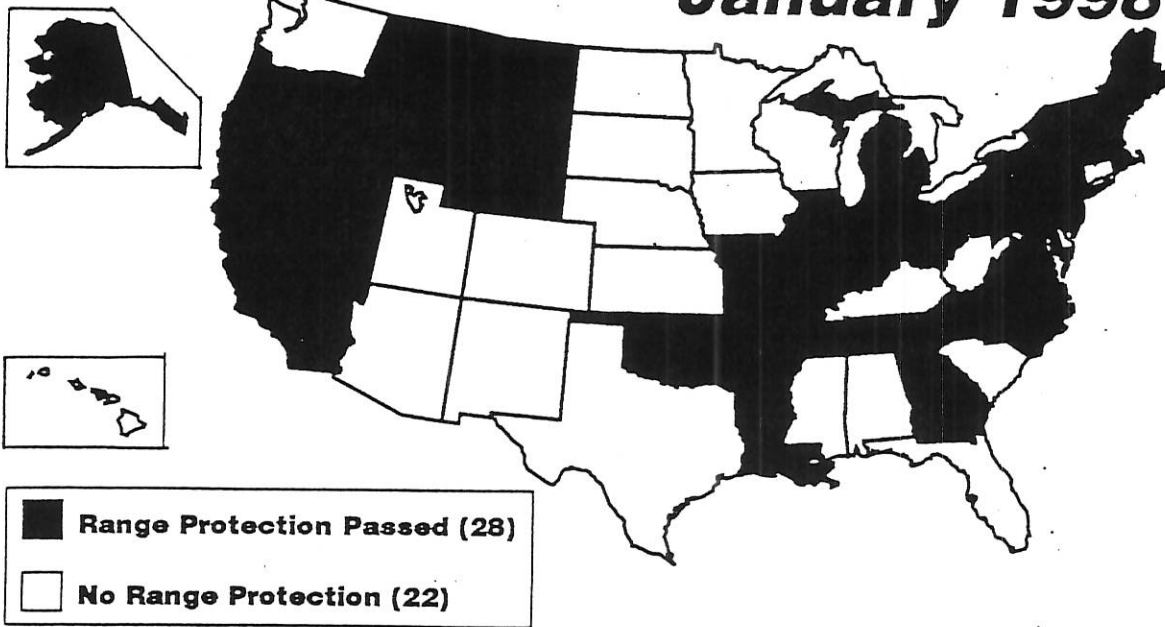
Herb Taylor
12317 West 74th Terrace
Shawnee, KS 66216
913-268-5667

Range Protection Statutes Pre-1994



Since 1994, the number of states that have enacted shooting range protection legislation has more than doubled, jumping from eight to 28, as shown in these maps.

January 1998



SCOTT G. HATTRUP
ATTORNEY AT LAW
10901 LOWELL AVENUE, SUITE 120
OVERLAND PARK, KS 66210-2313
(913) 451-1946
FAX: (913) 451-1626

March 4, 1998

Honorable Members of the House Federal and State Affairs Committee:

Thank you for allowing me to speak to you today. This is the fourth year I have been privileged to address this committee. Many of you have seen me here before, and you know that I only speak to you on firearms related issues. I am not a professional lobbyist here to twist your arms on any issue which concerns me. I have not been hired by any particular group. I am an attorney whose main practice is in the counties of Johnson and Wyandotte, although I have done other cases across the state. I have a particular interest in firearms as a hobby and am a federally licensed collector of "curios and relics," which most people just know as old guns. I have written and published articles on firearms and try to keep up with the legal aspects of firearms ownership and usage. I have become convinced that a bill like HB2886 is absolutely necessary for Kansas.

I have three brief amendments to offer on the bill, as stated on the attached page of my testimony. I favor HB2886 with the proposed amendments.

Section 1 of the bill offers a definition for "generally accepted operation practice," which would codify standard safety training requirements currently used in hunter education and other shooter training programs. These safety requirements must be met before the protection of the bill could be invoked.

Section 2 codifies a common-law protection against noise or nuisance lawsuits against shooting ranges called "coming to the nuisance." Briefly, coming to the nuisance is a protection offered in the courts as an affirmative defense against latecomers to the land. For example, a shooting range established thirty years ago has been in continuous operation since. It complies with all safety and noise regulations in effect at the time, as required in this bill. Developers buy land near the shooting range for residential housing ten to fifteen years ago. The new residents to the area will not be heard by the courts to complain about noise from the shooting range since the range predated the residents. The problem with the situation is that it takes a lawsuit and expensive legal fees to defend the range against such a suit since an "affirmative defense" cannot be asserted until a lawsuit is filed. Unfortunately, the situation I presented to you is not a hypothetical one. The Kansas Field and Gun Dog Association at 83rd Street and Monticello Road in western Lenexa faces this situation right now. It may go the way of the Pioneer Gun Club in southern Kansas City, Missouri, which lost its original range near 350 Highway and Noland Road because of development downrange and a later nuisance lawsuit.

Section 5 codifies another common-law doctrine known as "assumption of the risk." Let's not kid ourselves. Shooting can be dangerous if it is done improperly. If someone brings out an old rifle of unknown age, and has loaded up some new ammunition with modern smokeless powder, that rifle could well blow up in the shooter's hands, possibly injuring others nearby. But what could the owners or operators of the range do to protect other users? Very little, if anything. However, the range would be one of the parties named in a lawsuit based on that incident, because the range, the owners, or the insurance company may be the only "deep pocket" available for recovery. Again, it would take a lawsuit and expensive legal fees before the assumption of the risk defense could be heard. The range and owners might prevail, but bankruptcy due to legal fees is not a practical alternative.

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You may hear from a representative of the Kansas Trial Lawyers' Association on this issue. If you do, please ask why the KTLA sponsored a presentation by Dennis Henigan in December 1996 describing a strategy for lawsuits against the manufacturers and users of non-defective firearms based solely on the injury of the plaintiff. Ask yourselves how that strategy could be turned against the shooting ranges in Kansas without the protection offered by HB2886.

In closing, I urge your support for HB2886. I will be available for questions at your request.

Respectfully,



Scott G. Hatrup

Proposed Amendments to HB 2886

1. Delete “military style” from page 1, line 33.

This amendment would expand the protection of the bill to sporting and target semiautomatic firearms instead of just military style firearms.

2. Add the word “uses” to the phrase on page 1, lines 36-37, so it will read “a person who owns, operates, manages, or uses a sport shooting range”
3. Add the word “manages” to the phrase on page 1, line 43 through page 2, line 1, so it will read “a person who owns, operates, manages, or uses a sport shooting range”

Amendments two and three together would make the bill internally consistent and protect all classes of individuals who might be subject to suit resulting from their relationship with a sport shooting range. Those who support the bill intended to cover any potential defendant in a lawsuit.

Testimony in support of HB2886
by Phillip B. Journey
President Kansas Second Amendment Society
Spokesperson Air Capital Gun Club

HB2886 a bill intended to protect public and private shooting facilities. Currently 29 states have enacted similar laws. They are intended to protect facilities from civil lawsuits and hopefully it will include a section intended to prevent them from being zoned out of existence or condemned by Eminent Domain.


Many shooting ranges in Kansas have been in around for over 20 years. Some of them are now being surrounded by suburban development. At times subsequent property owners desire to increase their property values by eliminating these facilities through legal or political action. Shooting sports bring tens of millions to the Kansas economy each year. Shooting ranges provide recreational and educational opportunities to their members and the general public. More than half of Kansans own firearms. They all need safe places to shoot. Thousands of Kansans each year complete Hunter Education each year many of which are held on private shooting ranges. Many of the courses include live fire exercises. Prior to hunting firearms should be sited in. Many ranges open their facilities to the public on specific days to the general public. That must be done at a range where the distance to the target is a known distance.

Ranges are needed not only for informal recreational shooting but also for organized competition. Tens of thousands of Kansans compete in the various shooting disciplines each year. Thousands of competitors from out of state to Kansas to participate in the shooting sports. Cowboy shooting sports are the fastest growing disciplines. Youth training provides such useful personal training enhancing self-discipline and self reliance. The shooting sports are the only sport where competitors of both genders compete on head to head on an equal footing. Chisolm Trail Antique Gun Association of which I am a member not only donated \$1,000.00 to facilitate the Kansas State Young Hunter Education Challenge but also provided the facilities where the Kansas Department of Wildlife and Parks held the event last year and will do the same this year.

Law enforcement and the United States military use the private facilities in Kansas for training which are provided at no cost by clubs. When these are shut down the taxpayers must provide ranges for training and qualifying purposes. Air Capital Gun Club has in the past allowed its range to be used by the Kansas National Guard, federal law enforcement and state law enforcement agencies.

Shooting ranges in Kansas provide support for a significant portion of the State's economy. Provide recreational and educational opportunities to Kansas youth. They also provide support for law enforcement and the Armed forces of the United States and the State of Kansas. They deserve this protection before it is to late.

Respectfully submitted,


Phillip B. Journey 316-269-0602

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HB 2886

Chairman, Members of the Committee,

My name is Donald Ross. I am a resident of Lenexa and I appear before you on behalf of Mill Creek Rifle Club (MCRC) in support of HB 2886. MCRC is located 2 1/2 miles east and 1 1/2 miles north of Desoto, KS. Facilities consist of 3 rifle and 4 pistol outdoor ranges. Club membership is approximately 725.

MCRC has existed at this location for 25 years and public services provided include law enforcement training, firearms and related safety training, weekly competitive shooting matches of various types and an annual rifle sight-in service. Presently, 8 law enforcement agencies use MCRC for all or part of their training and practice. Firearms and related safety courses have been provided to over 1000 personnel in the last 25 years. Annual attendance at competitive shooting events exceeds 2100. The annual sight-in week end hosts approximately 175 people.

Like other groups represented here today, and other ranges throughout Kansas, we fear for our continued existence. The potential for frivolous lawsuits citing noise pollution or other irritations is a serious financial threat. In addition, inquiry by two communities and a state sponsored study indicate there is a possibility of reallocating use of our river front land for other recreational purposes.

We are currently working with Johnson County, Lenexa and Shawnee law enforcement agencies on plans to expand the MCRC law enforcement training facility. If completed, it will provide the only tactical training facility in this area, and will serve as the primary firearms training facility for the Law Enforcement Academy. All this will be at considerable expense to both the club and the law enforcement agencies involved. The provisions of HB 2886 enhance the probability of MCRC's continued existence and completion of this project.

Recently, MCRC polled the 24 other privately held ranges in Kansas and found that 18 had adequate facilities to provide police and firearms safety training. Of these, 11 currently make their facilities available to local law enforcement personnel and 4 more would do so if requested. In addition, 14 indicated that they make firearms safety training available to the general public. All 18 provide sight-in facilities.

The passage of HB 2886 insures the continuation of these valuable public services as well as the lawful and safe pursuit of firearm sports for a great many Kansans. We urge your prompt passage of this legislation.

I would be pleased to answer any questions you may have.

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PALMER, LOWRY & LEATHERMAN

Jerry R. Palmer* Kirk Lowry
LJ Leatherman

ATTORNEYS AT LAW

Columbian Building
112 W. Sixth, Suite 102
TOPEKA, KANSAS 66603-3810
(913) 233-1836
FAX (913) 233-3703

*Certified Civil Trial Advocate
By the
National Board of Trial Advocacy

**Kirk W. Lowry,
Vice President for Legislation
KANSAS TRIAL LAWYERS ASSOCIATION
Testimony Before the House Federal and State Affairs Committee
on House Bill 2886**

February 23, 1998

I am here on behalf of the Kansas Trial Lawyers Association as their Vice President for Legislation. I am a proud card-carrying member of the National Rifle Association and a member of the Capital City Gun Club. Both the Kansas Trial Lawyers Association and myself personally, have no position on Sections 1, 2, 3, and 4 of House Bill 2886. The public should have access to safe sport shooting ranges. I have found them to be good places to practice the sport and relax. I also enjoy taking my wife and children out and making sure everyone understands the risks and dangers of firearms and learns how to safely use them.

Section 5 of the bill is not acceptable. That section creates the defense of assumption of risk for a landowner or other participants at the shooting range. Kansas law at this time limits the defense of assumption of risk to employer/employee relationships. (Walters v. St. Francis Hospital and Medical Center, 23 Kan. App.2d 595 (1997)) It is the law that the possessor of land is under no duty to remove known and obvious dangers. (Balagna v. Shawnee County, 233 Kan. 1068 (1983), and Walters v. St. Francis Hospital and Medical Center, 23 Kan. App.2d 595 (1997)) Section 5, as written, would give a sweeping and overbroad defense to a clearly negligent sporting range owner or a person who was using alcohol or drugs on the shooting range. This clearly cannot be the intent of this Legislature. The state of the law as it is now creates a standard duty of care and a duty to warn on an owner and operator of a place of business. An

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owner or operator of a place of business, which is open to the public, owes a duty to use reasonable care, under all of the circumstances, in keeping the business place safe. The owner or operator of the business must warn of any dangerous condition which he or she knows about or should know about if he or she exercises reasonable care in tending to the business. (Pattern Instructions of Kansas 3d Section 126.03)


Both the NRA and any reasonable gun club should have at least three basic rules:

1. Do not load your firearm until you are ready to shoot. Guns should be brought unloaded to the range.
2. Always keep your gun pointed down range.
3. Always keep your finger off the trigger until you are ready to fire.

If these three basic rules are followed any accidental discharge will never hurt another person.

If a person violates these rules they are negligent. If they violate the rules and hurt another person, then they should be held responsible. A person does not accept the risk of being shot at a shooting range. Each person has a right to expect that others will obey the rules, and if they don't, they should be kicked off the range and out of the club.

Respectfully submitted,



KIRK W. LOWRY
Supreme Court Reg. #13315
PALMER, LOWRY & LEATHERMAN
112 W. 6th, Suite 102
Topeka, KS 66603
(785)233-1836
Capttkirk@networksplus.net



**TESTIMONY BEFORE THE HOUSE
FEDERAL AND STATE AFFAIRS COMMITTEE**

RE: HB No. 2886

March 4, 1998

Mr. Chairman and Members of the Committee:

Good afternoon. My name is Tom Schaefer and I am the Assistant City Administrator for the City of Lenexa. Thank you for the opportunity to appear today to express opposition to HB 2886. The City of Lenexa is strongly opposed to the proposed legislation in that it would severely restrict state and local regulation of sport shooting ranges. The bill essentially attempts to "grandfather" sport shooting ranges from any state or local regulation from both an operational and land use standpoint. HB No. 2886 causes the City alarm for a number of reasons which shall be outlined below, but of particular concern is the special treatment of an specific land use, exempting it from the City's exercise of its police powers in regulating inherently dangerous and harsh land uses.

1. The proposed bill exempts ranges from civil and criminal liability, including nuisance suits, for any matter relating to noise or noise pollution resulting from range operation if the range is in compliance with any noise control ordinances that applied to the range and its operation at the time of construction or initial operation.

As a practical matter, the majority of gun club operations affected by this legislation were established in what were then rural areas. Many of these areas did not have noise regulations in existence at the time the use was established. Therefore, this legislation will effectively permit many gun clubs to operate without any noise regulation, and while doing so, be immune from suit. The noise at the property line associated with gun clubs can be significant and routinely exceeds permitted and safe noise levels. Government is charged with exercising its police powers to provide for the public order, peace, health, safety, welfare and morals. Cities routinely adopt zoning regulations, including performance standards addressing noise, odor, vibration, light levels, etc. in an effort to protect the general health and safety of the public. To permit a land use, such as a gun club, to operate without any noise regulation, would be potentially detrimental to citizens' health and welfare.

The 7-10 Gun Club was established in Johnson County in 1949. At the time of its construction, there were not to my knowledge, any noise ordinances in existence. Nearly forty years later, in 1986, the Club was annexed into the City of Lenexa. The Club is quickly being surrounded by development. In fact, a large residential subdivision is located immediately east of the property. Under this proposed bill, this gun club could operate at a substantially higher, and potentially damaging level, than that permitted for

any other land use in Lenexa. Moreover, pursuant to the other provisions of this bill, the operation could intensify and even expand its current operation, thereby increasing the existing noise level, and still be afforded immunity from suit. Proponents of the bill would argue that these residences were established after the gun club and therefore they knowingly assumed the risk of such noise. I would argue that at a minimum, these residents were entitled to rely upon the City's noise standards and regulatory authority at the time they purchased their homes.

2. The proposed bill permits gun clubs to continue operating even if the operation does not conform to new ordinances or amendments to existing ordinances.

This provision precludes the City from adopting or amending any ordinances with application to the gun club. For example, it would preclude zoning ordinances that set noise standards, lighting standards, berming or landscaping standards, etc. It would also not permit the lawful amortization of this use. Ironically, this legislature as recent as the last legislative session specifically recognized the right of local governments to utilize amortization or other laws for the gradual elimination of nonconforming uses. The proposed legislation would preempt this amortization authority.

Section 4 of the proposed legislation provides that "except as otherwise provided, the provisions of this act shall not prohibit a local unit of government from regulating the location, use, operation, safety and construction of a sport shooting range". This provision, however, is essentially meaningless with regard to the approximately 50 operations already in existence.

3. The proposed bill permits the expansion or increase of a nonconforming use.

A well-recognized policy of zoning law is that nonconforming uses should be gradually eliminated. As mentioned above, the Kansas legislature recently recognized this policy with the adoption of K.S.A 12-771 which provides that nothing in the Planning & Zoning Act is intended to prevent cities or counties from enforcing local laws, enacted under other legal authority, for the gradual elimination of nonconforming uses. The law is that the original nature and purpose of a nonconforming use must remain unchanged. Thus, an operation constituting a nonconforming use cannot be expanded as of right. This proposed legislation would be contrary to well established law.

4. The bill is very broad and applies to any "sport shooting range" defined to include "an area designed and operated for the use of archery, rifles, shotguns, pistols, semiautomatic military style firearms, skeet, trap, black powder or any other similar sport".

It is my understanding that there are approximately 50 operations in Kansas that have at least minimum facilities that are eligible to obtain insurance through the NRA for operation of a shooting range. Of these 50, approximately 20 are professional gun club operations. The remaining operations are generally individuals who have designated a portion of their property for target shooting, with perhaps a bench and a few other minor

improvements. Under this proposed legislation, these "mom and pop" operations would also be exempt from regulation. However, unlike the professional gun clubs it is my understanding that these operations were not built to any standards, nor do they necessarily adhere to any generally accepted operation practice.

5. Legislation adopted in other states is generally much less restrictive.

The NRA and other proponents of this legislation will point out that a number of other states have adopted range protection statutes. However, a review of several states will show that what, in fact, was adopted is substantially different than what has been proposed to this committee. The majority of states I reviewed, including our sister state to the east, have only addressed noise protection, not the additional immunity from other ordinances, nor the expansion of nonconforming uses. On our southern border, Oklahoma enacted range noise protection legislation, but their statute only applies immunity provided the noise at the property line of the range does not exceed 150 decibels. Thus, ranges exceeding 150 decibels are subject to civil and criminal suits. The Oklahoma statute does not address any other aspects of range operation.

We ask that you consider these factors and vote to preserve local authority to regulate these type of operations. Thank you for your time and consideration. I'll be happy to try to answer any questions committee members may have.



NATIONAL RIFLE ASSOCIATION OF AMERICA
INSTITUTE FOR LEGISLATIVE ACTION
11250 WAPLES MILL ROAD
FAIRFAX, VA 22030-7400

MEMORANDUM IN SUPPORT

TO: Representative Garry Boston and Members of the House Federal & State Affairs Committee
FR: Jeff Freeman, NRA-ILA Kansas State Liaison
RE: HB 2886, Shooting Range Protection Legislation

I respectfully submit on behalf of the nearly 40,000 NRA members in Kansas, I respectfully submit our strong support of HB 2886, shooting range protection legislation, for the following reasons:

1. More states are experiencing development that is occurring in the vicinity of shooting ranges, leading to noise complaints from neighbors aimed at shutting them down.

Population shifts from urban to suburban or rural areas move people in closer proximity to ranges that had purposefully been located away from development for decades. More ranges are facing noise complaints and nuisance lawsuits filed by their new neighbors. The cost of defending a single such suit is often enough to shut a range or club down. The existence of shooting ranges should be taken into consideration (as airports and feed lots often are) when development occurs and neighbors purchase homes near such facilities. HB 2886 offers much-needed protection to range owners and operators against arbitrary actions filed by newcomers.

2. Shooting ranges provide Kansas law enforcement officers, military personnel and civilians with safe places to train in the use of firearms and to shoot recreationally.

Smaller local law enforcement agencies often use local rod and gun club facilities to train for firearms qualification purposes. Even officers from larger departments may use local gun club ranges if they have difficulty finding range time on their own facilities. These agencies would be severely affected if their range or a local range was closed because it was declared a nuisance. Having to relocate and rebuild range facilities is extremely wasteful financially to already-stretched agency budgets. Without range facilities, an agency could have difficulty meeting firearms qualification standards.

3. Shooting range protection is not a radical legislative proposal. HB 2886 does not prohibit an action for negligence or recklessness in the operation of the range from being brought against range owners and operators. Recognizing the valuable public services and safe recreational opportunities ranges offer, the number of states enacting shooting range protection laws has more than tripled over the last several years: jumping from 8 to 28 since just 1994. These include states with some of the greatest levels of gun control (Illinois, Massachusetts, New Jersey and New York, to name a few.)

On behalf of the members of the National Rifle Association, as well as hundreds of NRA-affiliated gun clubs and ranges in the State of Kansas, I strongly urge you to support HB 2886 when it comes before the Committee for consideration.

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HB 2886
THE KANSAS RANGE PROTECTION ACT

WHAT DOES THIS BILL DO?

★ HB 2886 protects existing ranges from nuisance lawsuits and local noise control ordinances brought as a result of encroaching development in the surrounding area.

★ HB 2886 recognizes that ranges are public safety resources, and protects those resources to assure continued access by law enforcement officers, hunters, and recreational shooters to ranges where safe, responsible gun ownership skills are imparted.

WHY ARE SHOOTING RANGES A VALUABLE COMMUNITY RESOURCE?

In many communities, a local shooting range may be available for:

- ★ Law Enforcement Training
- ★ Hunter Education and Training
- ★ Youth Programs
- ★ Historical Re-enactments
- ★ Self-Defense Training
- ★ Recreational Shooting

WHY PROTECT SHOOTING RANGES?

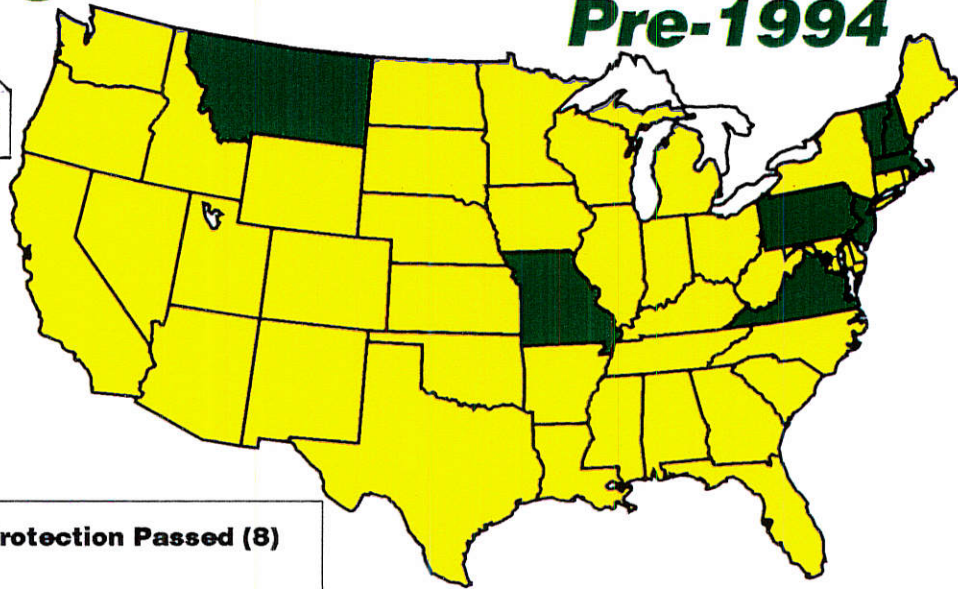
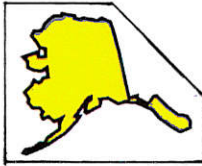
★ Encroaching new development in many areas has led to conflicts between shooting ranges and their neighbors, conflicts through which longstanding operations are threatened, and range use could be curtailed.

★ Ranges protect Kansas' long standing heritage of shooting activities, including marksmanship competition and hunting.

★ Many of these ranges have been in existence for decades and when first built were purposely located away from development. Today, people are building closer and closer to these existing ranges and then filing legal actions or threatening suit against these ranges - alleging that they are a nuisance. The cost of defending a single suit is often enough to shut down a range.

★ HB 2886 is fully supported by hunters, recreational shooters, and firearms enthusiasts throughout Kansas as a positive step to provide range owners and operators the protection they deserve as providers of a valuable community service.

Range Protection Statutes Pre-1994

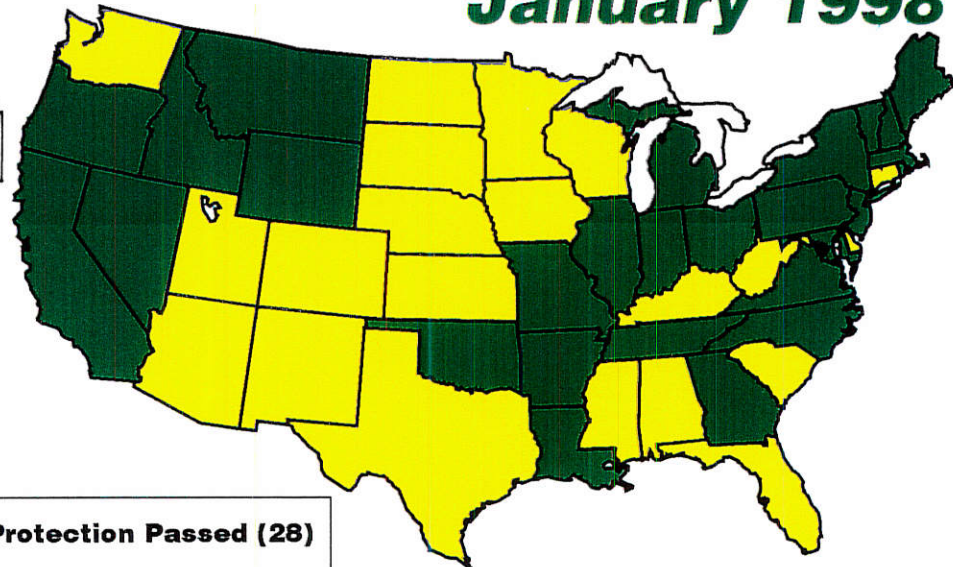
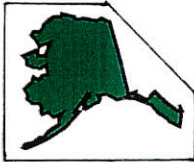


 Range Protection Passed (8)

 No Range Protection (42)

Since 1994, the number of states that have enacted shooting range protection legislation has more than doubled, jumping from eight to 28, as shown in these maps.

January 1998



 Range Protection Passed (28)

 No Range Protection (22)



City of Wichita

Testimony

By Mike Taylor, Government Relations Director

HOUSE BILL 2886

DELIVERED TO
HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE
FEBRUARY 24, 1998

House Bill 2886 is a special interest bill on behalf of the National Rifle Association and operators of existing shooting ranges. It is bad public policy which would preempt local authority, disadvantage new competitors in the shooting range industry and subject archery ranges to, in effect, being governed by the NRA.

House Bill 2886 would generally delegate governance of "sport shooting ranges" in Kansas to the National Rifle Association. "Sport shooting ranges" would include areas operated for use of all types of firearms, including black powder weapons and all types of archery. The Wildlife and Parks commission would be required to adopt "generally accepted operation practices" within 180 days of the effective date of the act. The "generally accepted operation practices" are to be established by "a nationally recognized nonprofit membership organization that provides voluntary firearm safety programs which include training individuals in the safe handling and use of firearms." In other words, the National Rifle Association. Why the NRA wants authority over archery practices is unclear, but doesn't make sense.

The bill would insulate sport shooting ranges which follow the "generally accepted operation practices" from civil or criminal actions regarding noise pollution ordinances. They would also be protected from common lawsuits for nuisance. Section 3 strikes down all ordinances that prohibit or regulate any aspect of existing shooting ranges. In effect, it nothing the shooting range wants to do could be prohibited if the NRA says it is "a generally accepted operating practice." Section 3 also preempts local control by preventing the new or stricter standards unless they are required by a change in state law.

The bill also provides an apparent statutory "assumption of risk" defense for operators of shooting ranges, as to anyone who participates in sport shooting at the range and is injured. It doesn't seem to matter whether or not the injury is firearm related. There isn't a single business in business that wouldn't want that kind of immunity.

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League of
Kansas
Municipalities

Legal Department
300 S.W. 8th
Topeka, Kansas 66603
Phone: (785) 354-9565/ Fax: (785) 354-4186

T E S T I M O N Y

TO: House Federal and State Affairs Committee
FROM: Don Moler, General Counsel
DATE: March 4, 1998
RE: Opposition to HB 2886

First I would like to thank the Committee for allowing the League to submit written testimony in opposition to HB 2886. Specifically, the League opposes HB 2886 because of its preemptive nature and the fact that it contradicts typical nuisance law which has been in place in Kansas since statehood. Nonconforming uses are allowed to continue when zoning is placed on a property or the property and use exist prior to the modification of a zoning ordinance. Prohibiting the use of nuisance law sets a very bad precedent which we believe is unwise.

Nuisance law exists to protect the health, safety and welfare of the public. This is typically known as the "police powers" of state and local government. Typically, they are used when an otherwise lawful use becomes hazardous to the general welfare of the public. We believe that to preempt all local nuisance ordinances sets a very bad precedent and would allow activities which are potentially harmful to the health, safety and welfare of the public to continue without the ability of government at the local level to regulate the activity. Essentially this legislation excuses a variety of nuisance behaviors when they are undertaken as part of a "sport shooting range" or "range" in the state. Further, it goes far beyond the current nonconforming use statute, which provides that when a structure is destroyed that it cannot be rebuilt as a nonconforming use, to indicate that despite damage to any structure involved at a sport shooting range, it may be rebuilt and the use may continue if done within one year of the damage.

HB 2886 would also allow a nonconforming use, which may well be in violation of local nuisance ordinances and noise control ordinances, to legally expand or increase the size and scope of the facilities and activities which may further increase the hazard to the general public. We would suggest that this is an unwise piece of legislation. We would hope that the Committee would conclude that it is not in the best interests of the public to statutorily allow nuisances which may adversely affect the health, safety or welfare of the public.

Thank you once again for allowing the League to submit testimony on this subject.

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