

Approved: February 22, 2000

Date

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS.

The meeting was called to order by Chairperson Representative Tony Powell at 1:30 p.m. on February 7, 2000 in Room 313-S of the Capitol.

All members were present except: Representative Carlos Mayans, Excused.

Committee staff present: Theresa Kiernan, Revisor of Statutes
Russell Mills, Legislative Research
Mary Galligan, Legislative Research
Winnie Crapson, Secretary

Conferees appearing before the committee:

Proponents:

Steve Williams, Secretary, Department of Wildlife and Parks
Phillip Journey, Kansas Second Amendment Society
and Kansas State Rifle Association
George Petersen, Kansas Hunter Education Instructors Association
Scott Hatstrup, Kansas Sportsmans Alliance

Opponents:

Bill Nicks, City of Lenexa
Sandy Jacquot, League of Kansas Municipalities
Kirk Lowry, Kansas Trial Lawyers Association

Written Testimony

Michael Dann, proponent

Others attending: See attached list.

Chairperson Powell announced two items of business: introduction of bills and Hearing on **HB2550**.

Without objection bill will be introduced amending K9 Protection law of Kansas to include Search and Rescue Dogs as requested by Representative Swenson. [See HB 2922 introduced February 9.]

Without objection bill will be introduced regarding perpetrating fraud in Workmen's Compensation. [See HB 2930 introduced February 9.]

Hearing opened on

HB2550 Sport shooting ranges, regulation of

Testimony in support was presented by Steve Williams, Secretary, Department of Wildlife and Parks (Attachment #1). In his position he is involved in shooting range issues across the state and nation. The availability of scientifically based information on range construction and operation is unprecedented. Wildlife & Parks stands ready to develop accepted practiced based on the most recent information available. Well designed shooting ranges serve a valuable role in providing recreation, teaching safe firearm handling, and providing safe areas for shooting. He believes **HB2550** provides a mechanism to address safe range operation, legal liability and long-term viability of shooting range facilities.

Philip Journey, President of Kansas Second Amendment Society, testified in support (Attachment #2). He stated shooting ranges in Kansas provide recreational and educational opportunities. Law enforcement and the United States military use private facilities in Kansas for training.

George E. Petersen, Area Coordinator for Kansas Hunter Education Instructors Association representing 1,500 volunteer Hunter Education instructors, testified in support (Attachment #3). To date the state has graduated nearly 500,000 students, only 30% of whom had the opportunity to live fire due to lack of adequate range facilities.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS

February 7, 2000

Scott G. Hatrup, Lenexa, testified in support (Attachment #4). An attorney with a personal interest in firearms as a hobby, he pointed out provisions in **HB 2550**: Sec. 1 defines "generally accepted operation practice" which must be met before the protection of the bill could be invoked; Sec. 2 codifies a common-law protection on noise nuisance lawsuits against shooting ranges called "coming to the nuisance;" and Sec. 5 codifies "assumption of risk."

Bill Nicks, Director of Parks and Recreation, City of Lenexa, testified in opposition (Attachment #5). The City believes it restricts state and local regulation of sport shooting ranges by attempting to "grandfather" them from both an operational and land use standpoint. He stated the bill (1) exempts ranges from civil and criminal liability including nuisance suits, (2) permits gun clubs to operate without conforming to ordinances if they conform to generally accepted operating practices, (3) permits expansion or increase of a nonconforming use, (4) is very broad, and (5) is less restrictive than legislation adopted in other states.

Sandra Jacquot, Legal Counsel for the League of Kansas Municipalities, testified in opposition (Attachment #6). The League opposes the bill because of its preemptive nature and the fact that it contradicts typical nuisance law which has been in place in Kansas since statehood, and goes beyond the current nonconforming use statute. The League believes preempting all local nuisance ordinances sets a bad precedent and that local governments should determine what is appropriate in their community looking at compatibility of uses and the needs of their particular area.

Nick Lowry, testified on behalf of the Kansas Trial Lawyers Association, and for himself (Attachment #7). They have no position on Sections 1, 2, 3 and 4 of **HB 2550** but believe Sec. 5 should be stricken as current law covers this area because as written it would overturn twenty years of law and give a negligent shooting range owner or participant an additional defense of assumption of risk.

Written testimony in support of **HB 2550** was received from Michael Dunn, President of the Douglas County Rifle and Pistol Club (Attachment #8). In his testimony he stated the bill promotes the safety of all Kansans by helping to insure safe places to shoot where help and assistance can be available to firearm owners and those lawfully purchasing a firearm for the first time.

In response to questions as to how the bill ends local control, Mr. Hatrup said it would prevent a city from closing down an existing shooting range because of noise issues only but would not prevent shutting it down or asking for additional protection for nearby residents.

In response to questions, Mr. Petersen clarified qualification for federal funds from gun and ammunition sales apportioned to the states based upon number of hunting licenses sold, a portion of which goes to shooting ranges to update their facilities. Some of the money comes back for hunter education.

Secretary Williams said Kansas receives between \$5 and \$6 million a year. A portion of the \$3 million which comes to Wildlife for use in hunter education and range development. Currently 100% of that is set aside for hunter education but it could be used for range development. Criteria were put in place about three years ago and an application developed which was provided to cities and counties and sportsmen's groups. Since that time about \$300,000 a year has been awarded in cost sharing. There have been a number of 1-to-1 matches to develop shooting ranges.

Representative Klein called attention to the fact that line 21 on page 2 of **HB 2550** refers to "ordinances of the local unit" but counties and townships have resolutions not ordinances and suggested it be clarified.

Hearing was closed on HB2550 and meeting adjourned. Next meeting is scheduled for February 9.

CONTINUATION SHEET

MINUTES OF THE COMMITTEE ON FEDERAL AND STATE AFFAIRS

February 7, 2000

Scott G. Hattrup, Lenexa, testified in support (Attachment #4). An attorney with a personal interest in firearms as a hobby, he pointed out provisions in **HB 2550**: Sec. 1 defines "generally accepted operation practice" which must be met before the protection of the bill could be invoked; Sec. 2 codifies a common-law protection on noise nuisance lawsuits against shooting ranges called "coming to the nuisance;" and Sec. 5 codifies "assumption of risk."

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HOUSE FEDERAL & STATE AFFAIRS COMMITTEE

COMMITTEE GUEST LIST

DATE: Feb 7, 2000

NAME	REPRESENTING
George Petersen	Ks 2nd Amendment Soc Ks Hunter Fed
Alex Kobyanetz	Citizen
Phil Jennings	Ks Second Amendment Soc
Jandy Jaquet	League of Ks Municipalities
Scott Hattin	ICS Sportsmen's Alliance
ROBERT HODGSON	" " "
Kirk W. Lowry	KTLA
STEVE WILLIAMS	KDWP
Mike Burgess	
Kelly Kuitala	City of Overland Park
Pat Lehman	KS B4 R #
Tom Burgess	KSA
Bill Freeman	Mill Creek Rifle Club
Anna Spiess	Peterson Public Affairs Group
MIKE TAYLOR	City of Wichita
Ann Dukes	DOB
Don Molen	LKM

House Committee on Federal and State Affairs

February 7, 2000

Testimony on House Bill No. 2550

Steve Williams, Secretary
Department of Wildlife and Parks

Thank you for the opportunity to testify on HB 2550 concerning the regulation and operation of sport shooting ranges.

In my role as Secretary of the Department of Wildlife and Parks and as Chairman of the Hunting Education and Shooting Sports Committee of the International Association of Fish and Wildlife Agencies, I have become involved in shooting range issues across the state and nation. I am aware of many success stories and controversies surrounding the placement and operation of shooting ranges facilities.

State agencies, private industry, and private organizations have made tremendous strides in the past few years addressing concerns about shooting ranges. The amount of scientifically based studies and recommendations for range construction and operation available at this time is unprecedented. Organizations such as the National Shooting Sports Foundation, National Rifle Association, International Hunter Education Association, and numerous others have invested significant dollars into safe range development plans. As a department, we stand ready to develop accepted operation practices based on the most recent information available.

From my perspective, a few facts are clear. The demand for recreational and competitive shooting facilities is on the increase nationwide. The number of non-traditional shooters are also on the increase. Hunters continue to search for shooting ranges to hone their shooting skills prior to hunting seasons. There is a trend to include live-firing exercises in the traditional hunter education curriculum in order to best prepare young hunters. Increased urbanization results in a greater demand for shooters to identify an appropriate location to shoot safely. Finally, shooters need safe and adequate facilities to shoot. In the absence of such facilities, individuals may use inappropriate areas to shoot. Although prohibited, we are aware of "shooting ranges" on public lands. We also know that many unsafe shooting scenarios occur on private land with no regulation. The above areas may not meet the standards and rigid requirements that state agencies or private organizations recommend and could lead to undesirable results.

These facts lead us to the conclusion that well designed shooting ranges serve a valuable role in providing recreation, teaching safe firearm handling, and providing safe areas for shooting. House Bill 2550 provides a mechanism to address safe range operation, legal liability, and long-term viability of shooting range facilities. I am not an attorney and cannot address all the legal ramifications of this bill. However, I do believe that shooting range protection is needed to assure that the future public demand for safe, shooting facilities is met.

Thank you for the opportunity to comment.

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Testimony in support of HB2550
by Phillip B. Journey
President Kansas Second Amendment Society
Director-at-Large Kansas State Rifle Association
Spokesperson Air Capital Gun Club

HB2550 is a bill intended to protect law enforcement, 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.

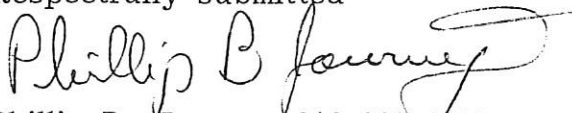
Many shooting ranges in Kansas have been in around for over 20 years. Some of them are now being surrounded by suburban development. At times subsequent property owners desire to increase their property values by eliminating these facilities through legal or political action. Shooting sports bring tens of millions of dollars 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. Law enforcement officers must qualify each year. Many ranges open their facilities on specific days to the general public and law enforcement. 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 \$1,500.00 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 the last 3 years 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 private 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. We urge the committee to pass the proposed legislation as soon as possible. The last time this bill was considered it passed with over 80 votes.

Respectfully submitted


Phillip B. Journey 316-269-9602

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KANSAS HUNTER EDUCATION INSTRUCTORS ASSOCIATION

Web: www.KHEIA.org

Range Protection-- HB 2550

February 7,2000

**By: George E Petersen , Area Coordinator , Kansas Hunter Education
Acting VP KHEIA**

Chairman Powell and Members of the Committee. Thank you for the opportunity to testify today.

I represent approximately 1500 Volunteer Hunter Education Instructors that bear the burden of teaching the hunter education classes in the state of Kansas.

The legislation proposed in this bill is something that is needed. As you know, the Kansas Hunter Education program, which has been in existence since 1973, does not mandate live firing for the students, but it does STRONGLY suggest that, where possible, each student should have the opportunity to experience live firing in a safe environment. The Kansas Department of Wildlife and Parks estimates that there are approximately 100 ranges in the state and many are closed to non -members. We instructors here in Shawnee County have a Hunter Education Training area at the Shawnee County State Lake where we have a rifle range, trap range and archery range. We are able at present to conduct the majority of our classes to include the opportunity for the students to fire a .22 cal rifle, a black powder rifle, a shot gun and a bow and arrow. For many students this is their first opportunity for such an experience. To date the state has graduated close to 500,000 students. Approximately only 30 % of these students had the opportunity to live fire due to the lack to adequate range facilities. Those of us that do have access to a range feel this legislation is very important. Without it we can lose the ability to use facilities like ours. The Pittman Robertson legislation at the Federal level in 1937, placed an 11% tax on all firearms and ammunition. These funds are transferred back to the states for various activities such as the building of ranges for public use. This legislation will insure that that there will be ranges where parents and instructors can teach firearm safety to all ages of students.

National statistics show that ACCIDENTIAL firearm accidents have steadily declined over the last 20 years, and this is largely due to the Hunter Education Programs active in all 50 states, all of the Canadian Provinces and in Mexico.

We need firing ranges that are available and safe. This bill, if passed, gives some assurance that existing ranges will not be forced to close as the population moves closer to them. .

This bill as written does nothing more that say that the sound of gunfire does not harm surrounding property. Having worked for several years for the Department of Transportation conducting environmental noise studies along highways, I would much rather hear the gun fire than traffic noise.

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SCOTT G. HATTRUP
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FAX: (913) 492-8836

February 7, 2000

Honorable Members of the House Federal and State Affairs Committee:

Thank you for allowing me to speak to you today. This is the sixth 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 practice across the state. I have a particular interest in firearms as a hobby, am a federally licensed collector of "curio and relic" firearms, and am an NRA certified firearms instructor in several disciplines. 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 HB2550 would be a benefit for Kansas.

Section 1 of the bill offers a definition for "generally accepted operation practice," which would codify safety and 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. The state agency which many would consider to have expertise in this field, the department of wildlife and parks, would review the latest standards to ensure that existing ranges remain in compliance if they wish to receive the protection of the bill.

Section 2 codifies a common-law protection regarding only noise or nuisance lawsuits against shooting ranges called "coming to the nuisance." Briefly, coming to the nuisance is a lawsuit defense against latecomers to the land. For example, a shooting range established fifty years ago has been in continuous operation since. It complies with all safety and noise regulations in effect, as required in this bill. Developers buy land near the shooting range for residential housing fifteen years ago. The new residents to the area then cannot bring a lawsuit 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. However, this bill protects the shooting ranges only from noise or nuisance lawsuits, or "obvious and inherent" risks in the language of the bill, not actions based on negligence. Some of the hypotheticals offered regarding this section in 1998 were quite fanciful, and would not be protected. For example, one shooter injures another person through a negligent or intentional shot. The other person is injured or killed. This bill does not prohibit a lawsuit for that injury. Some of the examples in 1998 seemed to be offered by people who have never even held a firearm, much less visited a properly run shooting range. Take their comments for what they are worth.

Finally, HB 2550 is good for business. It recognizes that existing shooting ranges are a viable enterprise worthy of protection. Kansas needs to protect shooting ranges for several reasons. First, law

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enforcement officers train on many of the ranges that are covered in this bill. If there are no shooting ranges, it makes it rather difficult for law enforcement officers to remain competent with their duty firearms. Second, sportsmen and hunters sight in and practice with their hunting firearms at these ranges. Kansas has some of the best bird hunting in the nation, and has seasons for several other types of game. If the only time hunters can shoot their firearms each year is during the hunting season itself, the result will be missed shots, or worse, wounded animals that are never recovered. Third, and most importantly, as long as firearms are available for lawful sale and ownership, the owners need a place to practice and learn safe operation procedures. The person who owns a firearm for self defense or hunting, and has never taken a class or attained proficiency with that device is a danger to us all. Existing firearms ranges provide a safe place to practice, and also provide a place to hold hunter education or firearms safety classes. Practice and education protect us all because of the experience that existing firearms owners can develop there.

In closing, I urge your support for HB2550. I will be available for questions at your request.

Respectfully,



Scott G. Hatrup

Opponent

Bill Nicks, Dir., Parks & Recreation
Lenexa

TESTIMONY BEFORE THE KANSAS HOUSE
FEDERAL AND STATE AFFAIRS COMMITTEE

HB No. 2550

Honorable Representative Anthony J. Powell and Committee Members:

The City of Lenexa is strongly opposed to the above referenced legislation which severely restricts 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. 2550 causes the City alarm for a number of reasons which shall be outlined below, but 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.

- 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

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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. We 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, so long as the gun club conforms to generally accepted operating practices.

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. if they were in conflict with generally accepted operating practices, as defined by those adopted by the Kansas Dept. of Wildlife & Parks and established by a nationally recognized nonprofit membership organization (which is essentially the NRA). It would also not permit the lawful amortization of this use. Ironically, this legislature as recent as the 1997 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 since this legislation would "grandfather those uses".

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 general rule of 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 as it specifically permits a sport shooting range to expand or increase facilities and activities. This creates a definite dilemma for cities since any such increase in facilities

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and/or activities will most likely have an increase in associated noise, but this bill prevents a city from regulating the increased noise. Surrounding impacted property owners are unable to petition their elected officials for relief because the elected officials are preempted from regulating the noise.

- 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 firearms, skeet, trap, black powder or any other similar sport".**

It is our 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 our understanding that these operations were not built to any standards, nor do they 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 we reviewed, including Missouri, 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.

Lenexa feels strongly that sport shooting ranges should not be given differential treatment from other zoning uses and this bill should be denied. However, if such change is made, Lenexa would respectfully request that a maximum noise limit at the property line, similar to the provision in Oklahoma, be applied. This maximum noise limit should be based on safe noise levels as determined by medical experts. This would at least give surrounding property owners some assurance that noise levels would not exceed a specified limit regardless of the activities conducted and it would also ensure that the health of our citizens are protected.

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League of Kansas Municipalities

TO: House Federal and State Affairs Committee
FROM: Sandra Jacquot, Director of Law/Legal Counsel
DATE: February 7, 2000
RE: Opposition to HB 2550

First I would like to thank the Committee for allowing the League to testify in opposition to HB 2550. Specifically, the League opposes HB 2550 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 2550 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 testify on this subject.

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Jerry R. Palmer *
LJ Leatherman



Kirk W. Lowry
Gary D. White Jr.

Kirk W. Lowry,
President
KANSAS TRIAL LAWYERS ASSOCIATION
Testimony Before the House Federal and State Affairs Committee
on House Bill 2550

February 7, 2000

I am here on behalf of the Kansas Trial Lawyers Association. 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 2550. 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.

Guns are inherently dangerous. If participants follow all the rules of gun safety, no one should get hurt. If someone does get hurt at a shooting range, someone did not follow the rules and was therefore negligent. People who are injured always must prove negligence or fault. If no one was at fault, no one will be liable. The current law of comparative fault functions well and should be left alone.

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Section 5 of the bill is not acceptable. That section creates the defense of assumption of risk for a landowner or other participants at a 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 overturn twenty years of law and give a negligent shooting range owner or participant an additional defense of assumption of risk. The current Kansas law of comparative fault already takes all fault into account. Current law imposes 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 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,

A handwritten signature in black ink, appearing to read "Kirk W. Lowry", with a large, sweeping flourish underneath.

KIRK W. LOWRY
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Dear Ladies and Gentlemen 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 also a member of two other ranges and an NRA Certified Instructor in Pistol and in Personal Protection. I am a member of Safety For Women And Responsible Motherhood, and am the Treasurer of the Kansas Sportsmen's Alliance. My comments today are based on my role as President of the DCR&PC and a believer in firearms 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 has 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 to give them my name, phone number, and to suggest that they have any 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. A good proportion of these new shooters 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 can be available to firearm owners and those lawfully purchasing a firearm for the first time.

Thank you for your attention. I stand for questions

did not appear in person.

House Fed. & State Affairs

Date 2/7/00

Attachment No. 8

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