

MINUTES OF THE HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman John Edmonds at 1:30 P.M. on March 8, 2005 in Room 313-S of the Capitol.

All members were present except: Representative Ray Cox- excused

Committee staff present: Athena Andaya, Kansas Legislative Research Department
Dennis Hodgins, Kansas Legislative Research Department
Mary Torrence, Revisor of Statutes Office
Carol Doel, Committee Secretary

Conferees: Governor Michael Hayden, Secretary of Wildlife and Parks
Representative Candy Ruff
Joan Wagnon, Secretary of Revenue
Jacob Henry
Jeremiah Van Doren
Acott Hatstrup
Dan Ward, City of Topeka
Scott Schneider
Kimberly Gulley, Kansas League of Municipalities
Major Ed Salazar - City of Overland Park
John Ellis - PMO Security Service

Others attending: See attached list

Chairman Edmonds called the meeting together and opened the floor for bill introduction. There were no bill introductions and the Chair opened the public hearing on **SB 195**.

Secretary of Revenue, Joan Wagnon, was recognized as a proponent of **SB 195**. Secretary Wagnon presented testimony stating that the bill provides the Department of Revenue needed additional options for disposing of firearms seized during the course of drug tax assessments executed by agents during drug busts. It also gives the Department the flexibility to transfer seized weapons to the Kansas State Historical Society, the Secretary of Wildlife and Parks to be used in hunter safety training, the Kansas Bureau of Investigation or to local law enforcement where the weapon was seized. The Secretary stated that on page 7, lines 33 through 43, and page 8, lines 1 through 8, there is an error in the bill that needs to be corrected. (Attachment 1)

Information was provided by Mary Galligan, Principal Analyst for the Kansas Legislative Research Department. This information was the result of a city gun ordinance survey taken in 124 first and second class cities in the state with 40% responding. This survey asked about ordinances that regulate the sale, possession, and use of guns. (Attachment 2)

Also addressing the bill as a proponent of **SB 195** was Governor Michael Hayden, Secretary of Wildlife and Parks who related that they have a strong interest in the disposition of firearms possessed by the Kansas Department of Revenue (KDOR) They feel that many of those firearms could be used within the hunter education program for live fire exercises or permanently disabled for use as training aids for classrooms and safety scenarios. (Attachment 3)

With no other person wishing to address **SB 195**, the Chairman closed the hearing and opened the public hearing on **HB 2439** a bill concerning firearms and ammunition, and components or combinations thereof; prohibiting cities and counties from taking certain actions with regard thereto.

Representative Ruff was recognized as a proponent of **HB 2439**. In her testimony Representative Ruff stated that as far as crime and accident reduction, none of the local gun ordinances have accomplished anything that statewide laws would not and the only fair system is one where people can follow and easily understand the law. She further stated that we are trying to help people stay out of trouble while they are trying to spend money in Kansas. (Attachment 4)

CONTINUATION SHEET

MINUTES OF THE House Federal and State Affairs Committee at 1:30 P.M. on March 8, 2005 in Room 313-S of the Capitol.

Kevin Graham, Office of the Attorney General, presented testimony supporting **HB 2439** relating that this bill seeks to simplify and clarify Kansas law regarding the purchase, possession, transfer, ownership, carrying, storage or transportation of firearms or ammunition. He also stated that this bill would eliminate the confusion that exists under current law. On behalf of Attorney General Phill Kline, he encouraged the support and recommended favorable passage of **HB 2439**. ([Attachment 5](#))

Representing the Washburn University College Republicans, Jacob Henry, appeared before the committee to give testimony favorable to **HB 2439**. Mr. Henry is in favor of the bill as it is his opinion that the state need some regulation is area of firearm regulations. ([Attachment 6](#))

Jeremiah Van Doren, President of the Coalition of Libertarian Activists came before the committee stating that their organization is dedicated to preserving freedoms and resisting current infringements on freedom and that is the reason that he presented testimony in favor of **HB 2439**. Mr. Van Doren states the primary reason for passing this bill is that as Kansas citizens, we deserve the same protection by the state from local abuses in authority just as the state provides to other. ([Attachment 7](#)) Included in his testimony was a copy of the deadly weapon code for the City of Topeka as well as the City of Wichita. ([Attachment 8](#))

Scott Hattrup, an attorney practicing in Johnson County, Kansas delivered testimony in support of **HB 2439** relating that in its current form the bill would unify most firearm laws in Kansas to a state standard. He made a further statement that this legislation is needed to conform often conflicting city codes to a single set of laws that anyone can understand by reference to Kansas Statutes Annotate, instead of hundreds of city codes that sometimes overlap, and other times directly conflict with the common understanding of Kansas law. ([Attachment 9](#))

Representing the Kansas Wildlife Federation was Dan Ward, Executive Director who presented testimony supporting **HB 2439**. Mr. Ward contends that the bill is necessary to create a mechanism for transporting firearms in Kansas that is legal. ([Attachment 10](#))

John Ellis of PMO Security Service support **HB 2439** as it helps resolve the incredibly complex operating environment for the private security industry in the Kansas City area. He further relates that standardizing the weapons law statewide would be of enormous benefit. ([Attachment 11](#))

There were no other proponents for **HB 2439** and the Chairman recognized Scott Schneider, J.D., Government Relations Director for the city of Wichita, presented testimony that this bill would invalidate their existing ordinances impacting all aspect of local firearms control. The City of Wichita believes that government closest to the people governs best. ([Attachment 12](#))

Next to stand in opposition to **HB 2439**, was Kim Gulley, Director of Policy Development & Communications for the League of Kansas Municipalities (LKM). The LKM takes the stand that this bill is a direct attack on cities and their Constitutional Home Rule authority to govern their communities. They also feel that if enacted, this legislation would be the most sweeping preemption of local control ever passed by the Kansas Legislature. ([Attachment 13](#)) Ms. Gulley also submitted a copy of an ordinance relating to nuisances in the City of Lawrence date 1866. ([Attachment 14](#))

Testimony in opposition to **HB 2439** was presented on behalf of the City of Overland Park by Police Major Ed Salazar. They strongly oppose the bill as they opined that it would have a significant adverse impact on the Police Department's control. It would also have a significant and adverse impact on ordinances currently in place and those which might be necessary in the future. They strongly oppose the bill. ([Attachment 15](#))

There were no other persons which to address the bill and Chairman Edmonds closed the public hearing on **HB 2439**.

With no further business before the committee, the meeting was adjourned.



K A N S A S

JOAN WAGNON, SECRETARY

DEPARTMENT OF REVENUE
OFFICE OF THE SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

March 8, 2005

Testimony to the House Federal and State Affairs Committee
Joan Wagon

Senate Bill 195

Representative John Edmonds, Chair, and Members of the Committee:

Senate Bill 195 provides the Department of Revenue needed additional options for disposing of firearms seized during the course of drug tax assessments executed by agents during drug busts. Under current law, the only way the Department can dispose of these firearms is through a public auction. Revenue raised from the auction, after expenses, is credited to drug tax liability, and these revenues are distributed as follows: 25% to the state general fund and 75% to local law enforcement involved in the drug bust. K.S.A. 79-5211. We are currently storing in the basement of the Docking Building seized firearms, ranging from expensive high-powered hunting rifles with scopes to "Saturday night special" handguns, and also including antique firearms that may have historic value. This bill would authorize the Department of Revenue to transfer seized firearms to certain state agencies or local law enforcement, where those agencies can make beneficial use of them. Those weapons that are not transferred could still be sold at public auction.

Senate Bill 195 would give the Department the flexibility to transfer seized weapons to: (1) the Kansas State Historical Society if the weapons have historical value; (2) the Secretary of Wildlife and Parks to be used in hunter safety training; (3) the Kansas Bureau of Investigation; or (3) local law enforcement where the weapon was seized. As part of the transfer process, the weapon will be appraised, and the taxpayer will be notified of the appraised value, which is credited toward the taxpayer's drug tax liability. The taxpayer may then appeal the amount of the appraised value in the district court in which the tax warrant used to seize the weapon was issued. Following exhaustion of appeal rights, the weapon will be transferred. The Department retains the option of selling the firearms at public auction, pursuant to the process in current law.

Please note that on page 7, lines 33 through 43, and page 8, lines 1 through 8, there is an error in the bill that needs to be corrected. The bill language in those lines, subparagraphs (g) and (h) of K.S.A. 79-5212, is shown as italicized. This is not new language. The bill does not propose any amendments to these provisions—they are current law. The bill needs to be corrected to reflect that these provisions are not proposed new language.

March 24, 1999

To:

Office No.:

From: Mary Galligan, Principal Analyst

Re: City Gun Ordinance Survey

In order to respond to your question about which cities could be impacted by legislation that would preempt local regulation of guns, we surveyed the 124 first and second class cities in the state. We asked in particular about ordinances that regulate the sale, possession, and use of guns because recently considered bills that would change the local/state relationship in this area have primarily addressed those matters. The list of cities was provided by the League of Kansas Municipalities and can be found in Attachment 1. Sixty-one cities responded to the survey for a 49 percent response rate. Cities that responded to the survey are displayed below.

Table 1
Cities that Responded to the Survey

Andover	Herington	Mission
Anthony	Hesston	Nickerson
Arkansas City	Hiawatha	Norton
Atchison	Hillsboro	Olathe
Baxter Springs	Hoisington	Osage City
Belleville	Horton	Oswego
Beloit	Hugoton	Overland Park
Burlington	Humboldt	Paola
Chanute	Hutchinson	Parsons
Chetopa	Iola	Pittsburg
Clay Center	Kansas City	Prairie Village
Colby	Larned	Pratt
Concordia	Leavenworth	Salina
Derby	Leawood	Topeka
Elkhart	Lenexa	Wamego
Emporia	Lincoln Center	Wichita
Florence	Marion	Winfield
Garnett	Marysville	
Girard	McPherson	
Goodland	Merriam	
Great Bend	Minneapolis	
Harper		
Hays		

State laws regarding the use, sale and possession of guns govern those activities everywhere in the state. In addition, some cities have enacted ordinances that supplement those statutes. Every city that responded to the survey has enacted at least one ordinance that

FEDERAL AND STATE AFFAIRS

Date 3-8-05

Attachment 2

supplements state gun statutes.¹ (See Attachment 2 for a summary of state law regarding possession, sale, and use of guns.) Any ordinance that supplements state law could potentially be invalidated by a preemption statute.

Of those 61 cities, 19 (37 percent) have adopted the *Uniform Public Offense Code for Kansas Cities* (UPOC) published by the League of Kansas Municipalities. UPOC includes provisions that address a wide variety of activities, e.g., battery, assault, sex offenses, offenses affecting children, theft, robbery, disorderly conduct, in addition to the sale, use, and possession of guns. UPOC includes provisions that are parallel to state statutes as well as provisions that supplement state statutes. Provisions of UPOC that are more stringent than existing statutes and that are relevant to this discussion are:

10.2 Drawing a Weapon Upon Another.

- (a) Drawing a weapon upon another person is the drawing of a pistol, revolver, knife or other deadly weapon upon another person by a person not an officer of the law in execution of his or her duty.
- (b) It shall be a defense that the defendant was acting within the scope of K.S.A. 21-3211 [self defense], K.S.A. 21-3212 [defense of a dwelling], K.S.A. 21-3213 [defense of property, not a dwelling], K.S.A. 21-3215 [arrest by law enforcement], or K.S.A. 21-3216 [citizens' arrest].

10.5 Unlawful Discharge of Firearms.

Unlawful discharge of firearms is the discharging or firing of any gun, rifle, pistol, revolver or other firearm within the city. This section shall not be construed to apply:

- (a) To the discharge of firearms by any duly authorized law enforcement officer when necessary in the discharge of his or her official duties;
- (b) To the discharge of firearms in any licensed shooting gallery;
- (c) To firing squads for ceremonials; nor

(d)
To a legitimate gunsmith in pursuit of his or her trade.

It shall be a defense that the defendant was acting within the scope of K.S.A. 21-3211, K.S.A. 21- 3212, K.S.A. 21-3213, K.S.A. 21-3215, or K.S.A. 21-3216.

10.6 Air Gun, Air Rifle, Bow and Arrow, Slingshot, or BB Gun.

The unlawful operation of an air gun, air rifle, bow and arrow, slingshot or BB gun is the shooting, discharging or operating of any air gun, air rifle, bow and arrow, slingshot or BB gun, within the city, except within the confines of a building or other structure from which the projectiles cannot escape.

10.8 Unlawful Aiding, Abetting.

It shall be unlawful for any person to conspire to or aid and abet in the operation or discharging or causing to be operated or discharged any air gun, air rifle, bow and arrow, BB gun or slingshot except as provided in Section 10.6 within the city, whether individually or in connection with one or more persons or a principal, agent or accessory, and it is further unlawful for every parent or guardian of a minor child

¹ ". . . local governments may be more restrictive than state law requires and can legislate on matters in which the state has remained silent, which is largely the case when discussing the control of firearms in Kansas." (*Kansas Government Journal*. D. L. Moler. March 1992) Mr. Moler cited *City of Cottonwood Falls v. Smith*, 36 Kan. 401 (1887) and *City of Junction City v. Lee*, 216 Kan. 495 (1975) as the basis for his statement.

who willfully or knowingly permits or directs the operation of discharge of any air gun, air rifle, bow and arrow, BB gun or slingshot by such minor child within the city except as provided in Section 10.6 of this article.

Those 19 responding cities that have adopted the gun provisions of UPOC are displayed below.

Table 2 Cities that Have Adopted Gun Provisions of UPOC Without Amendment		
Andover	Colby	Herington
Atchison	Concordia	Hillsboro
Baxter Springs	Florence	Horton
Belleville	Girard	Hugoton
Beloit	Goodland	Leavenworth
Burlington	Hays	Osage City
Chetopa		

Thirty-eight cities (62 percent) have adopted some, but not all 1996 Edition UPOC gun provisions. Those cities are displayed in Table 3 with indications of the subjects of their ordinances that supplement state statute. Detailed analysis of these ordinances is limited because not all cities submitted copies of their ordinances with the survey response. Information provided by the League of Kansas Municipalities indicates that as many as 171 other cities may have adopted all or part of UPOC.

In addition to adopting some or all provisions of UPOC that supplement state law, some cities have adopted other ordinances concerning the use or purchase of guns. Four cities, Arkansas City, Chanute, Garnett, and Larned have not adopted any portion of UPOC, but have enacted ordinances regarding guns that supplement state statute. Those cities are included in Table 3 which also displays those cities that have not adopted 1996 UPOC in its entirety. Notes for Table 3 are found on the page following the end of that table. As you can see from Table 3:

- 13 cities prohibit carrying loaded guns;
- 11 have ordinances prohibiting carrying of unconcealed guns;
- 10 prohibit carrying loaded guns in vehicles;
- 2 have waiting periods for the purchase of guns;
- 2 require sales to be reported to law enforcement officials;

- 2 require persons using guns to obtain a license or permit; and
- 1 requires guns to be registered.

Table 3
Provisions that Supplement Statute
Cities That Have Not Adopted UPOC Gun Provisions in Total
 (Notes follow the table)

City	WAITING PERIOD	LICENSE FOR PERSON	REGISTRATION OF GUN	REPORT SALES	NO CARRY LOADED	NO LOADED IN VEHICLE	NO UN-CONCEALED	UPOC UNLAWFUL DISCHARGE	UPOC DRAWING ON ANOTHER	UPOC BB AIR GUN	UPOC AIDING/ABETTING BB, AIR GUNS	OTHER NON STATUTE
Anthony	N	N	N	N	N	N	N	Y	Y	Y	Y	
Arkansas City	N	Y ³	N	N	N	N	N	Y ¹	N	Y ²	N	
Chanute	N	N	N	N	Y ¹	Y ¹	Y ¹	Y ²	N	Y ²	N	Y ³
Clay Center	N	N	N	N	N	N	N ¹	Y	Y	Y	Y	
Derby	N	N	N	N	Y ¹	Y ¹	Y ¹	Y	Y	Y ²	Y	
Elkhart	N	N	N	N	N	N	N	Y	N	Y	N	
Emporia	N	N	N	N	Y	N	Y	Y	N	Y ¹	N	Y ¹
Garnett	N	N	N	N	N	N	N	Y ¹	N	N	N	Y ¹
Great Bend	N	N	N	N	N	N	N	Y	Y	Y	Y	
Harper	N	N	N	N	N	N	N	Y	Y	Y	Y	
Hesston	N	N	N	N	N	N	N	Y	Y	Y	Y	
Hiawatha	N	N	N	N	N	N	N	Y	Y	Y	Y	
Hoisington	N	N	N	N	N	N	N	Y	Y	Y	Y	
Humboldt	N	N	N	N	N	N	N	Y	Y	Y	Y	
Hutchinson	N	N	N	N	N	N	N	Y	Y ¹	Y	Y	
Iola	N	N	N	N	N	N	N	Y	Y	Y	Y	
Kansas City	15 days	Y	Y	N ³	Y	Y	Y	Y	N	Y ¹	Y ²	

City	WAITING PERIOD	LICENSE FOR PERSON	REGISTRATION OF GUN	REPORT SALES	NO CARRY LOADED	NO LOADED IN VEHICLE	NO UN-CONCEALED	UPOC UNLAWFUL DISCHARGE	UPOC DRAWING ON ANOTHER	UPOC BB AIR GUN	UPOC AIDING/ABETTING BB, AIR GUNS	OTHER NON STATUTE
Larned	N	N	N	N	N	N	N	Y ¹	N	Y	N ²	
Leawood	N	N	N	N	Y ³	Y	Y ³	Y ¹	Y	Y ²	Y	
Lenexa	N	N	N	N	Y	Y	N	Y	N	N	N	
Lincoln Center	N	N	N	N	Y ¹	N	Y ¹	Y	Y	Y	Y	
Marion	N	N	N	N	N	N	N	Y	Y	N	N	
Marysville	N	N	N	N	N	N	N	Y	Y	Y	Y	
McPherson	N	N	N	N	N	N	N	Y	Y	Y	Y	
Merriam	N	N	N	N	Y ¹	Y ¹	Y ¹	Y	Y	Y	Y	
Minneapolis	N	N	N	N	Y ³	Y ³	N	Y	Y	Y ¹	N	Y ²
Mission	N	N	N	N	N	N	N	Y	Y	Y	Y	
Nickerson	N	N	N	N	N	N	N	N	N	N	N	
Norton	N	N	N	Y	N	N	N	Y	Y	Y	Y	
Olathe	N	N	N	N	N	N	N	Y	N	Y	Y	Y ¹
Oswego	N	N	N	N	N	N	N	Y	Y	N	Y	
Overland Park	N	N	N	N	N	N	N	Y ¹	N	Y ³	N	Y ²
Paola	N ²	N	N	N ²	N	N	N	Y ¹	N	N	N	
Parsons	N	N	N	N	N	N	N	Y	Y	Y	Y	
Pittsburg	N	N	N	N	N	N	N	Y	Y	Y	Y	
Prairie Village	N	N	N	N	Y ¹	Y ¹	Y ¹	Y	Y	Y	Y	
Pratt	N	N	N	N	N	N	N	Y	Y	Y	Y	

City	WAITING PERIOD	LICENSE FOR PERSON	REGISTRATION OF GUN	REPORT SALES	NO CARRY LOADED	NO LOADED IN VEHICLE	NO UN-CONCEALED	UPOC UNLAWFUL DISCHARGE	UPOC DRAWING ON ANOTHER	UPOC BB AIR GUN	UPOC AIDING/ABETTING BB, AIR GUNS	OTHER NON STATUTE
Salina	N	N	N	N	N	N	N	Y	Y1	Y	Y	
Topeka	N	N	N	N	Y	Y ²	Y	Y	N ¹	N ¹	N ¹	Y ³
Wamego	N	N	N	N	N	N	N	Y	Y	Y	Y	
Wichita	5 days	N	N	Y	Y ²	Y	Y ²	Y ⁴	Y	Y ³	N	Y1
Winfield	N	N	N	N	Y ¹	N	Y ¹	Y	N	Y	Y	Y1

City	Notes for Table 3
Arkansas City	Did not enact any provision of UPOC. 1) Does not include revolvers or "other firearm" covered by UPOC. Does not exempt licensed shooting galleries, firing squads, or gunsmiths as does UPOC. 2) Discharge within the city is prohibited except upon rural or agricultural land of 15 or more acres with permission of the landowner. 3) Permits issued by the chief of police are required for use of guns to eradicate pests.
Chanute	Did not enact any provision of UPOC. 1) Prohibits carrying concealed or loaded unconcealed except on own land or in own abode or business. 2) Includes gas, air, or spring guns in prohibition against discharge in the city. Does not exempt shooting galleries, firing squads, or gunsmiths. 3) Prohibits selling handguns to any felon within five years of release or conviction.
Clay Center	1) Private security police and guards licensed by the city may not carry concealed weapons, but may carry unconcealed weapons while on duty.
Derby	1) Cannot carry any gun on person or in vehicle whether or not concealed or loaded, except on own land or in own house or business. Exception for going to or from purchase or repair, hunting or sporting purpose if ammunition is carried separately. 2) Cannot shoot anywhere in the city or carry in public unless dismantled or in a scabbard. Exception provided for certain training events.
Emporia	1) Prohibits discharge of any gun, pistol, or other firearm or any gun or weapon that expels a projectile by action of compressed air, gas, spring, or elastic.
Garnett	Did not enact any provision of UPOC. 1) No exception to prohibition against carrying concealed. No exception to prohibition against discharging within city limits.
Hutchinson	1) Does not include defenses included in UPOC. 2) Prohibits selling, giving, or transferring of handgun to any felon within five years of conviction/release.
Kansas City	1) Prohibits discharge while on streets, alleys, or public places. 2) No specific provision for this violation. There is a general prohibition against conspiring to violate an ordinance. 3) Dealer records open to inspection.
Larned	Did not enact any provision of UPOC. 1) Response notes that ordinance dates from 1905, so current state law is more useful. 2) Parents cannot permit minors to possess without supervision.
Leawood	1) Exception provided for existing trap shooting facility. 2) Prohibits possession with intent to use outside. 3) Cannot carry concealed or unconcealed in public loaded or unloaded.
Lincoln Center	1) Prohibits carrying an unconcealed loaded or unloaded gun in any on- or off-premises licensed liquor or CMB establishment.
Merriam	1) No loaded gun in vehicle.
Minneapolis	1) Prohibition applies to any firearm or gun including any designed to expel projectiles using compressed air, gas, spring, or elastic. 2) The only concealed gun exception is for law enforcement. 3) Prohibits carrying or transporting loaded guns unless law enforcement.
Olathe	1) Liquor store owner cannot carry a concealed weapon in the store. Unlawful possession ordinance is closer to statute than is UPOC. Prohibits possession by a minor unless the minor is under the supervision of a parent, grandparent, or guardian.

City	Notes for Table 3
Overland Park	1) Does not exempt firing squads or gunsmiths as does UPOC. 2) Prohibition against possession on school property extends to junior college or university property and to post-secondary school education. 3) Prohibits discharge of any gun (no distinction for BB or air gun) within the city except upon rural or agricultural land of 15 or more acres with the written permission of the landowner.
Paola	1) Insufficient detail in response to determine whether provisions are similar to statute or UPOC. 2) Specifically indicated that there are no ordinances regulating sale, distribution, giving, or transfer of weapons.
Prairie Village	1) Prohibits carrying firearm concealed or unconcealed on person or in area of vehicle accessible to operator, rider, or occupant of vehicle, except in person's own house or business or on own land.
Salina	1) Prohibits demonstration in a hostile manner with a deadly weapon against the person or property of another.
Topeka	1) The city is in process of implementing UPOC, but it was not in effect at the time of the survey. 2) Included in general prohibition against loaded weapons. 3) Prohibits unlawful use of imitation guns, stun guns, tear gas, or mace.
Wichita	1) Prohibits any gun sale to or possession by minor. Prohibits negligent storage of gun and allowing access by minors. Requires gun salespersons to obtain a permit. 2) Prohibits carrying an unconcealed, loaded gun on one's person and a loaded gun, concealed or unconcealed in a vehicle except on one's land or in one's abode or business. 3) No carrying air rifle, pellet gun, or BB gun on streets, alleys, or public places unless dismantled or in a scabbard. 4) No discharge at occupied or unoccupied dwellings, structures, or vehicles.
Winfield	1) No guns, concealed or unconcealed on premises of any liquor licensee.

Attachment 2

State Law governing the sale, possession, and use of guns prohibits:

- Carrying a concealed gun, loaded or unloaded (K.S.A. 21-4201(a) (4))
- Possession of a silencer (K.S.A. 21-4201(a)(6))
- Selling, manufacturing, purchasing, possessing, or carrying a shotgun with a barrel less than 18 inches long (K.S.A. 21-4201 (a)(7))
- Selling, manufacturing, purchasing, possessing, or carrying an automatic gun (K.S.A. 21-4201(a)(7))
- Discharging a gun on any land or nonnavigable body of water or on or from any road or railroad that adjoins land owned by another person without the owner's permission or at an occupied or unoccupied dwelling or occupied vehicle (K.S.A. 21-4217 and 21-4219))
- Possessing a gun on the grounds of or in state or county buildings (K.S.A. 21-4218)

Generally, exceptions to prohibitions are provided for law enforcement, military, and private security/investigatory personnel.

Certain persons cannot possess guns, whether concealed or unconcealed. Those persons are:

- Juveniles if the gun has a barrel less than 12 inches long (K.S.A. 21-4204a). Some exceptions are provided for hunter safety courses and hunting or trapping with a license, practice at an authorized shooting range, certain firearms competitions, and on parents' property with parental permission.
- Addicted to and unlawful users of controlled substances (K.S.A. 21-4204(a)(1))
- Adult or juvenile who was in possession of a gun during the commission of a person felony, a violation of the Uniform Controlled Substances Act, or a nonperson felony (within the preceding ten years), for which they were convicted/adjudicated (K.S.A. 21-4204(a)(2) and (a)(4)(B)).
- Any person, other than a law enforcement officer, in or on any elementary or secondary public or private school property or grounds or at a regularly scheduled school sponsored activity or event (K.S.A. 21-4204(a)(5)). Exceptions are provided for certain educational activities, persons who have the school superintendent's or chief administrator's permission to have the gun at the school, parents who are picking up or dropping off students at the school if the gun is secured in a vehicle, voters who are on the school ground to vote (K.S.A. 21-4204(b))
- Other persons with a criminal history who are prohibited from purchasing or receiving a gun as noted below.

State law also prohibits selling, giving, or transferring any gun:

- with a barrel less than 12 inches long to a minor (K.S.A. 21-4203(a)(1))
- to a person who is addicted to and an unlawful user of a controlled substance (K.S.A. 21-4203(a)(2))
- to any felon who was in possession of a gun at the time of the felony offense (K.S.A. 21-4203(a)(5))
- to any felon who, within the preceding ten years, has been convicted of or released from prison for first or second degree murder, voluntary or involuntary manslaughter, involuntary manslaughter while driving under the influence, aggravated assault or aggravated assault of a law enforcement officer, aggravated battery or aggravated battery of a law enforcement officer, criminal threat, kidnaping or aggravated kidnaping, aggravated robbery, rape, aggravated criminal sodomy, aggravated criminal battery, aggravated burglary, and certain drug violations, but who was not in possession of a gun at the time of the crime and has not been pardoned or had the conviction expunged (K.S.A. 21-4203(a)(4) and (b)). These persons and any juveniles adjudicated for commission of an act that would constitute any of those crimes also are prohibited from possessing a gun. (K.S.A. 21-4204(a)(4)(A))
- to any person who, within five years has been convicted or released from imprisonment for a felony (other than those enumerated above) if the person did not use a gun during the crime (K.S.A. 21-4203(a)(3)). Those persons, and any juveniles adjudicated as guilty of an act that would constitute the same crimes also are prohibited from possessing a gun. (K.S.A. 21-4204(a)(3))

KANSAS

DEPARTMENT OF WILDLIFE & PARKS

KATHLEEN SEBELIUS, GOVERNOR

**Testimony on SB 195 relating to the Firearms Disposition by the KDOR
To
House Committee on Federal and State Affairs**

**By J. Michael Hayden
Secretary
Kansas Department of Wildlife and Parks**

8 March 2005

Senate Bill 195 prescribes certain procedures to be followed when the Kansas Department of Revenue seizes and disposes of firearms. The provisions contained in this bill would be effective on July 1, 2005. The Department of Wildlife and Parks supports the implementation of this bill.

The Department of Wildlife and Parks has a strong interest in the disposition of firearms possessed by the KDOR. The KDWP, among its many missions, is the agency charged with educating hunters in safe gun handling skills. As such, accidents involving the use of firearms when hunting are at all time lows within the State of Kansas and it is due to the success of the hunter education program.

Having reviewed the firearms possessed by the KDOR, the KDWP feels that many of those firearms could be used within the hunter education program for live fire exercises or permanently disabled for use as training aids for classrooms and safety scenarios. Using these firearms within the hunter education program would be a wise alternative use to the State continuing to store these seized firearms in perpetuity.

In summation, the KDWP would urge the committee to consider favorable passage of the bill.

Office of the Secretary
1020 S Kansas Ave., Ste. 200, Topeka, KS 66
Phone 785-296-2281 Fax 785-296-6953 www.kd

FEDERAL AND STATE AFFAIRS

Date 3-8-05

Attachment 3

STATE OF KANSAS

L. CANDY RUFF
REPRESENTATIVE FORTIETH DISTRICT
LEAVENWORTH COUNTY
321 ARCH
LEAVENWORTH, KANSAS 66048
(913) 682-6390



TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
RANKING MINORITY MEMBER: COMMERCE & LABOR
MEMBER: FEDERAL AND STATE
AFFAIRS
WILDLIFE, PARKS &
TOURISM

STATE CAPITOL, ROOM 278-W
TOPEKA, KANSAS 66612-1504
(785) 296-7647
E-MAIL: Ruff@house.state.ks.us

TO: House Federal and State Affairs

FROM: L. Candy Ruff

RE: HB 2439

According to Kansas Wildlife and Parks, Kansas has a \$150 million sporting economy. Do we want to discourage people from hunting in Kansas for fear of prosecution?

One cannot fly into either of Kansas' large airports and drive to any spot in the state without encountering local firearms ordinances.

The current system lends itself to selective enforcement as some ordinances are rarely enforced but could be at any time if the officer so desires. No one can even tell hunters what the laws are because there are so many. Visiting sportsmen should be able to read a short pamphlet and consequently understand the law. Current law would require a team of researchers to figure them out. States considered most hunter-friendly are Colorado, South Dakota, Montana, Wyoming, and Texas. In all, there are 44 states with preemption gun laws.

As far as crime and accident reduction, none of the local gun ordinances have accomplished anything that statewide laws would not.. Since ignorance of a law is not a viable defense, the only fair system is one where people can follow and easily understand the law. That goal is virtually impossible with Kansas gun laws. It really comes down to fairness. Local control is fine for many things but does not work in this circumstance.

We are trying to help people stay out of trouble while they are trying to spend money in Kansas! With Cabela's as the state's number one tourist attraction, do we really want to discourage sportsmen?

FEDERAL AND STATE AFFAIRS

Date 3-8-05

Attachment 4



STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL

PHILL KLINE
ATTORNEY GENERAL

120 SW 10TH AVE., 2ND FLOOR
TOPEKA, KS 66612-1597
(785) 296-2215 • FAX (785) 296-6296
WWW.KSAG.ORG

March 8, 2005

HOUSE FEDERAL & STATE AFFAIRS COMMITTEE

Testimony in Support of
House Bill No. 2439
by
Kevin A. Graham
Office of the Attorney General

Dear Chairman Edmonds and Members of the Committee:

Thank you for allowing me to appear before you on behalf of Attorney General Phill Kline and offer testimony in support of HB 2439. This bill seeks to simplify and clarify Kansas law regarding the purchase, possession, transfer, ownership, carrying, storage or transportation of firearms or ammunition.

Under current law, the State of Kansas has statutes that cover a variety of subjects related to firearms and ammunition. For example KSA 21-4201 imposes criminal penalties for the "criminal use of weapons" such as possessing a sawed-off shotgun [KSA 21-4201(a)(7)]. Or KSA 21-4205 which makes it illegal to deface or attempt to remove the serial numbers from a firearm. These are state statutes which apply uniformly statewide and are readily available and accessible to the public via public libraries or the internet [the Kansas Legislature's website at www.kslegislature.org has a free search engine for looking up Kansas state statutes.]

However, Kansas law also currently allows individual political subdivisions (i.e. cities and counties) to adopt their own local ordinances or resolutions that may also affect the purchase, possession, transfer, ownership, carrying, storage or transportation of firearms or ammunition. In a number of cases, local ordinances that have been adopted by Kansas municipalities that regulate or even criminalize certain actions involving firearms that would otherwise be legal under State law.

For example, under Kansas state law there would be no state statute criminal violation if an individual who is going pheasant hunting placed his/her shotgun and a hunting coat with shotgun shells in the pockets on the passenger seat of the individual's truck and then drove down the highway to go hunting with friends. On the other hand,

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if that same hunter drove through any portion of the city limits of the City of Wichita, the hunter could be violating local ordinance Ord. No. 41-967 § 2, which provides:

“(c) The firearm, during transportation, is stored in a case, scabbard, or other container, or has a properly engaged trigger locking mechanism, and it is further stored in the trunk area of the motor vehicle, or if the motor vehicle does not have a trunk, then the firearm is further stored in an area of the motor vehicle where it will not be readily accessible to the driver or passengers; and (d) Ammunition for the firearm is stored in a box or container separate from the firearm.”

As a further example of local ordinances concerning firearms that go beyond State statutes and potentially impose criminal sanctions for what would otherwise be lawful conduct, please consider City of Topeka Municipal Code Sec. 54-101(a)(3), which makes it unlawful for any person “To allow a minor . . . to have access or to gain possession of a firearm, loaded or unloaded. . . .” This code provision does not provide any exception a parent teaching a child firearms safety, target shooting or taking a child hunting; please note that under Kansas law a “minor” is anyone under 18 years old.

These municipal code provisions are referenced simply to demonstrate that under current state law, which allows local political subdivisions to impose their own local ordinances and resolutions regarding firearms and ammunition, transporting a firearm or ammunition across the State forces a person to traverse a virtual minefield of local potential civil and criminal violations and sanctions. Please note that some of the local ordinances and resolutions provide for criminal sanctions for violations, such as fines of up to \$2,500 and up to 1-year in jail as well as the possibility of the seizure and destruction of the firearm(s).

HB 2439 would eliminate the confusion that exists under current law by simply preempting local political subdivisions from adopting or enforcing a local ordinance or resolution that would govern the purchase, possession, transfer, ownership, carrying, storage or transportation of firearms or ammunition. One result of the passage of this bill could be that individuals and local units of government from around the State would approach the legislature seeking to have additional state laws enacted that would restrict the sale, transportation or possession of firearms and ammunition. In that event the legislature would have to weigh those requests and decide upon whether new State laws should be enacted, however, if new laws were enacted they would be State laws that could be easily reviewed and could be applied uniformly across the State.

On behalf of Attorney General Phill Kline, I encourage the Committee to support HB 2439 and to recommend the bill favorably for passage.

Respectfully,



Kevin A. Graham
Assistant Attorney General

House Committee on Federal and State Affairs

Testimony in support of House Bill No. 2439

March 8, 2005

Author: Jacob Henry, Washburn University College Republicans

I come here today to speak out in favor of House Bill No. 2439. This is an area of law, which has needed work for quite some time. As it stands today, Kansas firearms regulations are very confusing, even to those who pay very close attention. I live just southwest of Topeka, near 29th and Urish. This is possibly one of the most confusing regulated areas in the state of Kansas. I live one street outside of the "city limits", to the west. This means that I abide by county rule. To my east, one block, I would have to abide by city rules. Then, you have Dillon's, which is about 3 blocks to my west, which has been included in the city. City ordinances, for firearms, apply on the property of Dillon's Grocery Store. This means that in an area, roughly the size of 4 city blocks, you have a possibility of changing your compliance three times! It is this sort of confusion and arbitrary and capricious regulation that should be abolished, and replaced by state wide, uniform regulation. Listed below is an excerpt from Chapter 54, (Criminal Code), Article IV, Division 2, of Topeka's City Codebook.

DIVISION 2. WEAPONS

Sec. 54-101. Carrying of deadly weapons.

(a) It shall be unlawful for any person who is not an officer of the law, or a deputy to such officer:

(1) To be found within the city limits carrying upon his person a concealed deadly weapon. A deadly weapon includes, by way of illustration, but not limitation: pistols, knives, not including an ordinary pocket knife with a blade not more than four inches in length, dirks, slingshots, knucks or replicas;

FEDERAL AND STATE AFFAIRS

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(2) To carry on his person or have within the immediate control of his person on or about public property or a public place within the city limits, any loaded firearm or automatic firearm with the magazine loaded, detached or attached, which when used is likely to cause death or great bodily harm; or

(3) To allow a minor, either through negligence of the owner or an intentional act by the owner, to have access to or gain possession of a firearm, loaded or unloaded except as provided in K.S.A. 32-920. This subsection shall not apply if the minor obtains the firearm as a result of unlawful entry by any person.

(b) This section shall not apply to those persons exempt under the provisions of K.S.A. 21-4201 or amendments thereto, or to those persons licensed under the provisions of chapter 30, article XI.

(c) For any violation of this section, the municipal judge shall, upon conviction, order any such weapons to be confiscated and the weapon shall, whenever it is no longer needed for evidentiary purposes in the discretion of the trial court, be destroyed. Unless otherwise provided by law, all other property shall be disposed of in such manner as the court in its sound discretion may direct.

If one was to examine Section 2 of the aforementioned Criminal Code, it is easy to see the arbitrary and capricious nature of the current ordinances. If someone accidentally violates this ordinance, it is punishable by the provisions listed in the General Provisions of the the City Code, 1-7, Sections (a) and (b), subsections (1) through (3), and sections (c) and (d), at the

top of the last page in this packet. People carrying firearms in the city is no more dangerous than it is outside the city. Regulations like these do not deter crime, but simply hinder those of us who are law abiding citizens who should have every right to have a firearm within our immediate control for the purposes of self defense. A piece of legislation, which gives law abiding citizens the freedom and opportunity to defend against deadly force, will not cause a Dodge City, wild west setting to take place, as the myths have been brought forth before. I ask you to support this Act.

(a) The doing of any of the acts or things prohibited, made unlawful or a misdemeanor, or the failing to do any of the things commanded to be done, as specified and set forth in this Code or in any rules and regulations adopted pursuant to this Code, within the jurisdictional limits of the city, shall be deemed an offense against the good order, public peace, morals, health, proper government and welfare of the city.

(b) Whenever any offense is declared by any provision of this Code, absent a specific or unique punishment prescribed, the offender shall be punished in accordance with this section:

- (1) *Fine.* A fine of not less than \$1.00 or more than \$499.00; or
- (2) *Imprisonment.* Imprisonment in the city jail for not more than 179 days; or
- (3) *Both fine and imprisonment.* Both fine and imprisonment not to exceed subsections (b)(1) and (2) of this section.

(c) Each day any violation of this Code continues shall constitute a separate offense.

(d) Any person convicted of violating any of the duties set forth in subsection (a) of this section shall be deemed guilty of a misdemeanor and punished in accordance with subsection (b) of this section.
(Code 1981, § 1-5)

Cross References: Court costs and fees, § 50-26

Sec. 1-8. Severability of parts of Code.

If for any reason any chapter, article, division, section, subsection, sentence, clause or phrase of this Code, or the application thereof to any person or circumstances, is declared to be unconstitutional or invalid, such decision shall not affect the validity of any remaining chapter, article, division, section, subsection, sentence, clause or phrase of this Code.

(Code 1981, § 1-28)

Sec. 1-9. Miscellaneous ordinances not affected by Code.

Nothing in this Code or in the ordinance adopting this Code shall be deemed to affect the validity of any of the following when not inconsistent with this Code:

- (1) Charter ordinances or ordinances published in appendix A to this Code;
- (2) Ordinances relating to the purchase and condemnation or appropriation of property for public use;
- (3) Ordinances providing for the opening, dedicating, widening, vacating or narrowing of streets, avenues, alleys and boulevards;
- (4) Ordinances establishing or changing grades of streets, avenues, alleys and boulevards;
- (5) Ordinances naming or changing the names of streets, avenues and boulevards;

STATEMENT OF TESTIMONY

House Committee of Federal and State Affairs

DATE: March 8, 2005

RE: House Bill 2439, firearms preemption law

FROM: Jeremiah Van Doren, President of the Coalition of
Libertarian Activists

I am the President and co-founder of the Coalition of Libertarian Activists. We are an organization that is dedicated to preserve freedoms and resist current infringements on freedom. That is why I am here to testify in favor of House Bill 2439.

As the President of an organization dedicated to oppose victimless crime laws, I consider myself to be well versed on state and federal gun laws. Nevertheless, I began an internet search as to the specifics of Kansas' city and county gun laws, in an effort to use examples of the confusing patchwork of meaningless legislation. What I found should not be a surprise. City and county gun laws are hard to come by on the internet and there is a plethora of misinformation. A gun control web sight linked me to the 23rd edition of ATF publication 5300.5, which I know to have incorrect or misleading information in it regarding Topeka's gun laws. How is an ordinary Kansas citizen supposed to know the individual gun laws of every city in the state?

Let me provide an example of what it is like to actually comply with local gun laws. As I leave work as an armored truck supervisor, I carry my loaded weapon home. Should I decide to visit my mother in my hometown of Tescott, I then have to unload my gun and lock it in the toolbox of my truck. I then drive down I-70 to just outside Topeka city limits and pull over to unlock my gun, reload it and place it in my holster. I can now drive to just outside of Salina city limits, where I have to again pull over and unload and lock my gun in order to get gas. After fueling, I continue down I-70 to just outside of Salina city limits, where I pull over and unlock and reload my gun.

Non-resident ignorance of local gun laws presents a very unique problem for the state. As the profitability of farming continues to decrease, more and more farmers are outfitting non-resident hunters on CRP and pasture land. These out of state hunters provide desperately needed revenue for urban and rural areas alike. Growing up in rural Kansas, I

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would often see pickup trucks pull into our local gas station with Texas, Pennsylvania, Ohio license plates. A complicated patchwork of gun laws provides a strong deterrent for out of state hunters and tourists alike to visit our great state.

The primary reason to pass this bill, however, is not for the sake hunters or tourists or even for the sake of simplicity. The primary reason is that as Kansas citizens, we deserve the same protection by the state from local abuses in authority just as the state provides to others. The federal government is tasked with keeping a check on state abuses just as the state is tasked to check local abuses. Let the state send the local governments a message. Tell them that this state legislature will not sit idle as local governments tyrannize their citizens.

The Coalition of Libertarian Activists support House Bill 2439.

participating in any such match or contest in such other state; and

(2) identifying the chief law enforcement officer of the political subdivision in which such person resides, to whom such licensed dealer shall forward such statement by registered mail.

[Current through 2001 Legislative Session]

Code of the City of Topeka

Article IV. Offenses Against Public Safety Division 2. Weapons

54-101. Carrying of deadly weapons.

(a) It shall be unlawful for any person who is not an officer of the law, or a deputy to such officer: ...

(3) To allow a minor, either through negligence of the owner or an intentional act by the owner, to have access to or gain possession of a firearm, loaded or unloaded except as provided in K.S.A. 32-920. This subsection shall not apply if the minor obtains the firearm as a result of unlawful entry by any person.

(b) This section shall not apply to those persons exempt under the provisions of K.S.A. 21-4201 or amendments thereto, or to those persons licensed under the provisions of chapter 30, article XI.

(c) For any violation of this section, the municipal judge shall, upon conviction, order any such weapons to be confiscated and the weapon shall, whenever it is no longer needed for evidentiary purposes in the discretion of the trial court, be destroyed. Unless otherwise provided by law, all other property shall be disposed of in such manner as the court in its sound discretion may direct.

54-105. Furnishing weapons to minors. It shall be unlawful for any person to sell, give, loan or otherwise furnish any pistol or revolver by which a cartridge may be exploded, or any dirk, Bowie knife, knucks, slingshot or other dangerous weapons to any minor.

[Code of the City of Topeka current through Ord. No. 17763, adopted Nov. 13, 2001]

Wichita City Code

Title 3. Business - Regulations and Licensing Chapter 3.08. Miscellaneous Fees

3.08.050. Sales of firearms. The nonrefundable application fees for the permits required under Section 5.88.015 of this code to sell one or more firearms shall be as follows: (1) the application fee for a permit to engage in business as a dealer shall be three hundred dollars per application; and (2) the application fee for a permit to make an isolated sale of firearms shall be twenty dollars per application.

Title 5. Public Safety and Morals Chapter 5.88. Weapons

5.88.010. Unlawful use of weapons.

(1) Unlawful use of a weapon is knowingly: ...

(f) Carrying in any vehicle under one's immediate control, any loaded firearm, except when on one's land or in one's abode or fixed place of business;

(g) Possessing any device or attachment of any kind designed, used or intended for use in silencing the report of any firearm; or ...

(2) Subsections (1)(a), (b), (c), (d), (e), (f) and (h) shall not apply to or affect any of the following:

(a) Law enforcement officers, or any person summoned by any such officers to assist in making arrests or preserving the peace while actually engaged in assisting such officer;

(b) Wardens, superintendents, directors, security personnel and keepers of prisons, penitentiaries, jails and other institutions for the detention of persons accused or convicted of crime, while acting within the scope of their authority;

(c) Members of the armed services or reserve forces of the United States or the Kansas National Guard while in the performance of their official duty; or

(d) Manufacture of, transportation to, or sale of weapons to a person authorized under (a) through (c) of this subsection to possess such weapons.

(3) Subsection (1)(d), (e) and (f) shall not apply to or affect the following:

(a) Watchmen, while actually engaged in the performance of the duties of their employment;

(b) Private detectives licensed by the state to carry the firearm involved while actually engaged in the duties of their employment;

(c) Detectives or special agents regularly employed by railroad companies or other corporations to perform full-time security or investigative service, while actually engaged in the duties of their employment; or

(d) The State Fire Marshal, the State Fire Marshal's deputies or any member of a fire department authorized to carry a firearm pursuant to K.S.A. 31-157 and amendments thereto, while engaged in an investigation in which such fire marshal, deputy or member is authorized to carry a firearm pursuant to K.S.A. 31-157 and amendments thereto. ...

(6) It shall be an affirmative defense that the defendant is within an exemption.

(7) Any person who violates any of the provisions of this section within the corporate limits of the city shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not to exceed five hundred dollars or by imprisonment for not more than one year, or by both such fine and imprisonment.

(8) In addition to the penalty for violation of any of the provisions of this section, it shall be the duty of the municipal court judge:

(a) To order any weapon seized in connection with such violation which is not a firearm to be forfeited to the city and the same shall be destroyed or caused to be destroyed by the chief of police whenever the weapon is no longer needed for evidence;

(b) To order any weapon seized in connection with such violation which is a firearm to be destroyed or forfeited to the Wichita police department. Any weapon forfeited to the Wichita police department shall be utilized by the police department or sold or traded to a federally licensed wholesale gun dealer for materials to be used by the Wichita police department. Proceeds from any such sale shall be used for law enforcement purposes by the Wichita police department. All transactions involving weapons disposed of under this subsection must have the prior approval of the city manager. All sales of weapons are subject to review by the city council;

(c) Any stolen weapon confiscated in connection with any violation of this section other than subdivision (a) of this subsection shall be returned to the person entitled to possession, if known, when the same is no longer needed for

evidence. All other weapons shall be disposed of as provided in subsection (7)(a) and (b) above.

5.88.015. Permit requirements and other restrictions upon the purchase and sale of firearms, handguns and assault weapons.

1. Definitions. As used in this section, the following terms shall have the following meanings, unless the context clearly indicates a different meaning:

Assault Weapon. An "assault weapon" is: (a) any semiautomatic action, center fire rifle or carbine that accepts a detachable magazine with a capacity of twenty rounds or more; (b) any semiautomatic shotgun originally designed with a factory magazine capacity of more than seven rounds; (c) any semiautomatic handgun that is a modification of a semiautomatic action, center fire rifle or carbine that accepts a detachable magazine with a capacity of twenty rounds or more; (d) any semiautomatic handgun originally designed to accept a detachable magazine with a capacity of twenty rounds or more; (e) any semiautomatic handgun that is a modification of an automatic firearm; (f) any firearm from which two or more shots may be discharged by a single function of the firing device; (g) any firearm which may be restored to any operable weapon of a type described in clause (a), (b), (c), (d), (e) or (f), above; and, any part or combination of parts designed or intended to convert a firearm into any operable firearm of a type described in clause (a), (b), (c), (d), (e) or (f), above, or from which any such weapon may be readily assembled. However, the term "assault weapon" does not include any firearm that uses .22 caliber rimfire ammunition with a detachable magazine having a capacity of twenty rounds or less, any shotgun with a factory magazine capacity of seven rounds or less, or any weapon that has been modified to render it permanently inoperable or permanently irreparable to any operable weapon of a type described in any of clauses (a), (b), (c), (d), (e) or (f), above.

"Business day" means any day on which both state offices and city offices are open.

"Dealer" or "firearms dealer" means any person, firm, limited liability company or corporation engaged in the business of selling firearms at wholesale or retail.

"Firearm" means any weapon designed to shoot bullets or other potentially lethal missiles by means of an explosive charge, including but not limited to handguns, rifles and shotguns, but excluding any weapon within the definition of "antique firearm" as set forth in U.S.C. Title 18 Section 921(a)(16). The definition of "firearm" also shall not include any weapon which has been rendered permanently inoperable.

"Handgun" means any firearm designed (originally or by modification) to be held and fired with one hand.

"Purchaser" means any person, other than a dealer, who orders, purchases, rents, or obtains a handgun or assault weapon (other than by devise, bequest, intestate succession or other transfer arising by operation of law) or who attempts to do so. Any transfer pursuant to a security interest shall not be considered a transfer "by operation of law" within the meaning of this subsection.

"Seller" means any person, firm, limited liability company or corporation that sells, rents, pledges, attempts to sell, rent or pledge, or accepts a purchaser's order for, or a purchaser's proposal or offer to purchase, rent or obtain a firearm.

2. Waiting Period. No seller shall transfer possession of any handgun or assault weapon to any person other than a person who is both a

Statement before the Kansas House Federal and State Affairs Committee
in support of HB 2439, March 8, 2005

Scott G. Hatstrup (*Univ. of Kansas: J.D., 1995*) is an attorney practicing in Johnson County, Kansas. He co-authored *A Tale of Three Cities: The Right to Bear Arms in State Supreme Courts*, which appeared in the annual state constitutionalism issue of the *Temple Law Review*, vol. 68, p. 1177, in fall 1995, and authored multiple continuing legal education presentations on Kansas firearms laws. He is also a certified firearms instructor and instructor trainer who teaches in multiple states. Mr. Hatstrup has testified before various Kansas House & Senate committees since the 1995 legislative session on firearms issues.

HB 2439 in its current form would unify most firearm laws in Kansas to a state standard, and I therefore **support** it. This legislation is needed to conform often conflicting city codes to a single set of laws that anyone can understand by reference to Kansas Statutes Annotated, instead of hundreds of city codes that sometime overlap, and other times directly conflict with the common understanding of Kansas law.

Most people understand Kansas law to allow the open carry of loaded firearms for self-protection. It does not. That understanding of state law is deficient since it does not take into account the myriad of city codes within the state that can be more restrictive than existing state law. Some of the oldest gun control laws in Kansas are city codes, including one in Lawrence that predates Quantrill's raid prohibiting the possession of firearms in a home, requiring all firearms to be locked in a city armory, and one in Dodge City that Wyatt Earp and Bat Masterson used to disarm Texas cowboys as they rode their herds into town at the railhead.

In my research through a few city codes, I discovered that some of the cities which have sent representatives to testify against this bill in the past misstated their own city's prohibition on carrying firearms.

For example, Kansas City, Kansas, in which District Attorney Tomasic stated in 1997 one could carry a handgun openly for self-protection, actually prohibits that practice. Kansas City, Kansas Code § 22-106(a)(4) reads: "(a)Unlawful use of weapons is knowingly: (4) Carrying or possessing any pistol, revolver, . . . or other firearm on the person or in any land, water or air vehicle, loaded or unloaded, except when on the person's own land or in the person's own abode, fixed place of business or office." Notice the absence of the word "concealed" from this ordinance, which results in a blanket prohibition on firearms carry. This same ordinance does make an exception for transporting between one's place of business and home, or for repair, but requires that the firearm be unloaded, and locked away from access by the driver or passengers. KCK Code § 22-106(c)(4).

As another example, Leawood, Kansas, of which Police Chief Stephen Cox made similar statements regarding that city's policy towards firearms carried for self-protection, also prohibits open carry. Leawood City Code § 11-103 (a)(4) reads in pertinent part: "Unlawful use of weapons is knowingly: (4) Carrying any pistol, revolver or other firearm: (ii) openly or visibly on the person at any place open to public view; (iii) within any vehicle in transport unless the weapon is unloaded and in a case." The ordinance makes no transportation exceptions, as does

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the Kansas City, Kansas, ordinance.

Other cities prohibiting open carry of firearms include Lenexa, Shawnee, and Wichita, Kansas.

Lenexa Code § 3-9I-1 (A)(4) reads: “(A) Unlawful use of weapons is knowingly: (4) Carrying any pistol, revolver or other firearm on the person except when the person is on his land, in his dwelling or in his fixed place of business, or unless such pistol, revolver or other firearm is unloaded and in a case.”

Shawnee Code § 9.02.010(A)(4) reads in pertinent part: “(A) Carrying any pistol, revolver or other firearm on the person or in an occupied motor vehicle when an occupant of said vehicle has access to any such . . . firearm . . . except when the person is on their (sic) land or in their (sic) dwelling or fixed place of business.” This ordinance makes self-defense and target shooting exceptions, but only as to the prohibition on discharge of a firearm. Carrying a firearm within the city is still prohibited generally.

Wichita Code § 5.88.010(e) & (f) read: “(1) Unlawful use of a weapon is knowingly: (e) Carrying on one’s person any unconcealed, loaded firearm, except when on one’s land or in one’s abode or fixed place of business; (f) Carrying in any vehicle under one’s immediate control, any loaded firearm, except when on one’s land or in one’s abode or fixed place of business.” A copy of the ordinance is attached for reference.

Lenexa prohibits open carry of firearms, whether loaded or unloaded. Wichita, on the other hand, is gracious enough to allow its citizens the ability to carry openly, provided the firearm is unloaded.

These five examples are some of the various firearms restrictions that Kansans face when considering self-protection options, or even just owning and using a firearm for target practice. Kansas has an incredibly complex web of firearms laws that even those of us with law degrees find difficult to understand, much less explain. For the 50 to 60% of Kansans who own firearms, the problems caused by these laws can often lead to criminal charges for those who take anything but the most restrictive view of carrying a firearm locked away.

Sometimes even that is not enough. In the last several years I have defended a client who was charged in Kansas City with unlawful carry when he volunteered to an officer writing him a ticket for a stop sign violation that he had a firearm in his vehicle. The gun was locked in a box underneath the seat of his pickup truck. In another case in Kansas City, my client was charged when an officer found a gun in a shopping bag locked in her trunk after stopping her for speeding. She was of African-American ethnicity. Two other clients, one African-American, and one Hispanic, had guns seized from their cars after being stopped for traffic violations that would not have given probable cause for the search. I urge your support for HB 2439, which will go a long way towards remedying these and other abuses of home rule. Thank you for your support.



**KANSAS WILDLIFE
FEDERATION**

The voice of outdoor Kansas

**Testimony Prepared for the House Federal & State Affairs Committee
In Support of HB 2439**

March 8, 2005

My name is Dan Ward, and I'm the Executive Director of the Kansas Wildlife Federation. KWF is a 54-year old organization dedicated to the wise use, conservation, appreciation, and the restoration of our state's wildlife and natural environment. We approach this mission primarily from the perspective of hunting and fishing, which are important traditions in Kansas. Over 500,000 hunters and anglers spend close to one billion dollars in the state each year.

No one would argue that it is wise to treat firearms with respect. Unfortunately, because guns are the most visible symptom of crime, firearms and the law-abiding citizens who own them are often the target of legislation and ordinances intended to show a commitment to the public safety.

If a KWF member were to ask me how he could be sure that he was legally carrying a gun in his car to go out hunting, I would not be able to answer him. There is no simple and uniform mechanism by which transporting firearms in Kansas is legal.

This bill is a necessary step to creating that mechanism. If, for instance, the Legislature passed a law stating that cased and unloaded firearms in a vehicle were always legal, but left it up to a municipality to opt-out of that law, then it would not be long before we were back to what we have now: a hodge-podge of laws that varies from place to place.

We urge you to protect the rights of law-abiding hunters and to action that will protect the peace of mind and simplify the lives of the more than 100,000 hunters in the state of Kansas.

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Attachment 10

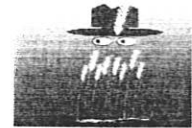


S.M. PMIO, K.C., KS, 1996

PMO SECURITY SERVICES

**5104 Edgehill Drive
Kansas City, KS 66106
816-830-1177**

**www.pmokspd.com
johnellis@pmokspd.com**



S.M. KAPI, O.P., KS 1996
MEMBER
KANSAS
ASSOCIATION
OF
PRIVATE
INVESTIGATORS
www.kapi.org

March 8, 2005

House Federal and State Affairs Committee
State Capitol
Topeka, KS

Comments in Support of HB 2439

I support passage of this bill: it helps resolve the incredibly complex operating environment for the private security industry in the Kansas City area. The reasons are outlined below.

A. As seen in the attached chart, there are 63 municipal ordinances in Wyandotte and Johnson County which affect the possession, carry and use of a firearm as an armed private security officer. Hunters residing in these counties are confronted with 60 municipal ordinances with which to comply while heading out on a hunting trip. These municipal ordinances are not consistent with each other, not consistent in adjoining cities, not consistent within a specific county and not consistent with state laws. Some are; others aren't. Consequently, you have to examine all of them, and constantly determine the exact locations involved in order to comply. It is nearly impossible to do that when city, county and state boundaries are crossed by walking or driving across an urban street and are so poorly marked that you have to consult a map in order to determine what city, county and state you are in.

B. Experience has also shown that many local police officers do not know the exact provisions of the firearms laws in their own city. Stories of private security officers or licensed private detectives being arrested or threatened with arrest while simply driving to and from work or while actually working are common in the security industry in the Kansas City metro area.

C. Some of these municipal ordinances are poorly written. Two examples of this problem are attached (extracts of Leawood ordinance 11-102 and Kansas City, KS ordinance 22-106). The Leawood ordinance prohibits both open and concealed carry and then specifies in the same paragraph how the firearm must be transported in a vehicle. They don't say how you legally get the firearm to and from the vehicle since it is illegal to carry it there. Apparently, you have to strap the firearm to your hunting dog for transport between your house and car since you can't legally carry it. The KCK ordinance includes drawing provisions which are so broadly written that a five-year-old girl who waves her Barbi doll around can be charged with a weapons violation. Ken must be protected!

D. Finally, these weapons laws do even begin to address the problems that will arise when private security officers begin to provide armed security to Critical Infrastructure sites in a high threat Homeland Security situation. The municipalities haven't even begun to consider that problem.

Standardizing the weapons laws statewide would be of enormous benefit. The state legislature should begin adding provisions to deal with the Homeland Security issues. The use of force laws also need work for the same reason.

John W. Ellis, B.S., M.A.J.
Licensed Private Detective
Certified Firearms Instructor

Major, Military Police, US Army Reserve (Ret.)



FEDERAL AND STATE AFFAIRS

Date 3-8-05

Attachment 11

MUNICIPAL ORDINANCES AFFECTING WEAPONS POSSESSION, CARRY, USE, OR DISPOSAL CITIES IN WYANDOTTE AND JOHNSON COUNTIES

CITY	CRIM. USE (KSA 21-4201) (UPOC 10.1)	CRIM. POSS. (KSA 21-4204) (UPOC 10.3.1)	UNL. DISCH. (KSA 21-4217) (UPOC 10.5)	BRANDISHING OR DRAWING (UPOC 10.2)	UNLAWFUL DISPOSAL (UPOC 10.3)	PROJECTILE WEAPONS (UPOC 10.6)	HUNTING	PRIVATE SECURITY LICENSING
Bonner Springs			X	X		X		X
Fairway	X	X	X	X				
Gardner	X	X	X	2X		X	X	

Kansas City, KS	X				X			X
Leawood	X		X			X	X	X
Lenexa	X		X				X	X

Merriam	X	X	X	X				X
Mission	X	X	X	2X		X		X
Mission Hills	2X		X					X

Olathe	X	X	X		X	X	X	X
Overland Park	X		X			2X	X	
Prairie Village	X	X	X	X		X	X	X

Roeland Park	X	X	X	X		X		
Shawnee	X						X	X

Ordinances are similar to or address the same topic as the Kansas Statute Annotated (KSA) or the Uniform Public Offense Code (UPOC) published by the League of Kansas Municipalities cited.

Table prepared by John W. Ellis, PMO Security Services, Kansas City, KS March 2005 based on previous research. Research was not updated or reconfirmed for this chart.



Scott J. Schneider, J.D.
Government Relations Director

TESTIMONY

City of Wichita
455 N Main, Wichita, KS. 67202
Wichita Phone: 316.268.4351
sschneider@wichita.gov

**Opposition Testimony
HB 2439
House Federal and State Affairs Committee
March 8, 2005**

The City of Wichita opposes HB 2439. This bill invalidates our existing ordinances impacting all aspects of local firearms control. In Wichita, this would eliminate our carrying prohibitions, negligent storage provisions, waiting periods and local background checks, local dealer licensing and insurance requirements, as well as ordinances governing minors who possess firearms.

We oppose this measure because it removes essential tools from our law enforcement. Communities differ in size, customs and criminal activity. What works for a smaller town in western Kansas might not work for Wichita. For example, with a few exceptions, possession of a firearm by a minor is prohibited in Wichita. This ordinance would no longer be enforceable. When a young member of our criminal community is out on the prowl and is discovered to be carrying a weapon, can our police arrest him?

The City of Wichita firmly believes that government closest to the people governs best. Protecting our local control of our laws is essential to our ability to help craft and create a community filled with an ever increasing quality of life.

FEDERAL AND STATE AFFAIRS

Date 3-8-05

Attachment 12



League of Kansas Municipalities

300 SW 8th Avenue
Topeka, Kansas 66603-3912
Phone: (785) 354-9565
Fax: (785) 354-4186

To: House Federal and State Affairs Committee
From: Kim Gulley, Director of Policy Development & Communications
Date: March 8, 2005
Re: Opposition to HB 2439

Thank you for the opportunity to appear before you today on behalf of the League of Kansas Municipalities and our 565 member cities. The League and our member cities, have taken a strong position in favor of Constitutional Home Rule and local control. The 2005 *Statement of Municipal Policy* reads as follows: "We oppose any legislation which preempts local regulation of firearms."

Kansas has a strong history of local firearms regulation, including the local regulation of concealed weapons, discharge within city limits, drawing a weapon upon another, criminal possession of a firearm, criminal use of a firearm, and other weapons related crimes. The cities of this state have regulated the possession and use of firearms since the 1860s. I have attached to this testimony an ordinance adopted by the City of Lawrence in 1863 which prohibited discharge of firearms in the city limits (section 9) and the concealed carry of weapons (section 10). The City of Lawrence is not unique in this regard; many cities in Kansas have been regulating firearms by local ordinance for at least the last 141 years.

The Kansas Supreme Court has long recognized the power of cities to regulate firearms. As early as 1887, the Court recognized the right of cities to regulate the discharge of firearms pursuant to their general police powers. See, *City of Cottonwood Falls v. Smith*, 36 Kan. 401 (1887). In 1975, the Court dealt directly with the issue of concealed carry in the *City of Junction City v. Lee*, 216 Kan. 495 (1975). In this case, the Kansas Supreme Court opined that neither the federal Constitution nor the state constitution grants a right to individuals to carry a weapon concealed on their person. In addition, the Court stated that "[w]eapons control is an area of cities' concern" and upheld a local ordinance which was more restrictive than state law. The Court in *Junction City v. Lee* recognized that one-size-does-not-fit-all with regard to firearms regulation and upheld the Kansas tradition of local control by noting, "The governing bodies of some cities may conclude they are sufficiently protected by the state statutes on weapons control, but that is their business." *Junction City v. Lee*, 216 Kan. 495, 501-502 (1975).

HB 2439 is a direct attack on cities and their Constitutional Home Rule authority to govern their communities. It is safe to say that if enacted, this legislation would be the most sweeping preemption of local control ever passed by the Kansas Legislature.

FEDERAL AND STATE AFFAIRS

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Perhaps most importantly, this legislation takes the decision regarding local firearms regulation out of the hands of the citizens of our state. It preempts firearms ordinances which have been adopted by city officials who were elected by the citizens of cities to represent them. In some cases, most notably the City of Wichita, the issue of firearms regulation was put to a vote of the public. HB 2439 would overturn the election results of the citizens of the City of Wichita and other cities that have held elections regarding the regulation of firearms.

While there are a few statutes regarding criminal use of firearms at the state level, the reality is that the State of Kansas is not in the business of regulating firearms. There are no state police who are actively pursuing those who possess and use firearms in a criminal manner. It is local law enforcement that is responsible for dealing with bar room brawls, domestic batteries, and other crimes which involve the use of firearms. Preempting local communities from regulating firearms would in effect result in very little, if any, direct enforcement of firearms regulations throughout the state of Kansas.

In conclusion, we ask this Committee to respect the tradition of local control in this state and oppose HB 2439. I would be happy to stand for questions at the appropriate time.

H. - 152

CHARTER,

OTHER POWERS,

ORDINANCES

CITY OF LAWRENCE,

COMPILED BY ORDER OF THE CITY COUNCIL.

RAMUEL KIMBALL, COUNCILMAN }
R. V. BANKS, CITY ATTORNEY, } **COMPILING COMMITTEE.**

LAWRENCE:
LATIAS STATE JOURNAL STEAM POWER PRESS PRINT.
1886.

FEDERAL AND STATE AFFAIRS

Date 3-08-05

Attachment 14

NUISANCES.

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[No. 34.]

An Ordinance Relating to Nuisances.

- | | |
|-----------------------------|---------------------------------|
| 1. Deposit of dead animals. | 4. Removal of nuisances. |
| 2. Refusal to remove. | 7. Notice to abate. |
| 3. Privies. | 8. Bathing in the Kaw. |
| 4. Slaughter houses. | 9. Discharging firearms. |
| 5. Filth. | 10. Carrying concealed weapons. |

Be it ordained by the Mayor and Councilmen of the City of Lawrence :

SECTION 1. Any person who shall deposit, or cause to be deposited, any dead animal upon any ground within the limits of this city, shall be subject to a penalty of not less than five nor more than twenty-five dollars.

SEC. 2. Any person, the owner of any dead animal which shall be found lying upon any ground within the limits of this city, who shall neglect or refuse to remove the same within one day after notice to remove the same shall have been given by the marshal, shall be subject to a penalty of not less than five nor more than twenty-five dollars.

SEC. 3. The owner of any privy in this city, or the owner of any lot in this city, upon which any privy is or may be erected, which is or may become offensive to persons residing in the neighborhood, shall remove or cleanse, or cause the same to be removed or cleansed within five days after notice shall be served upon him by the city marshal to remove or cleanse the same; and any person who shall neglect or refuse to remove or cleanse any privy as aforesaid, shall be subject to a penalty of not less than five nor more than fifteen dollars.

SEC. 4. Any slaughter house which now is, or may hereafter be erected within the limits of this city, which is or shall become offensive to the inhabitants of the neighborhood, shall be removed out of the bounds of this city within ten days after notice shall be given to remove the same by the city marshal. Any person or persons, the owner or owners of any slaughter house, as above mentioned, who shall neglect or

refuse to remove the same within the time above specified, shall be subject to a penalty of not less than ten nor more than twenty-five dollars.

SEC. 5. Any person who shall deposit any excrement, or filth, or refuse, or any vegetable or animal matter, or any substance whatsoever, which is or may become offensive in any street or place within the limits of this city, shall be liable to a penalty of not less than two or more than ten dollars; and all persons who shall or may have deposited any excrement or filth, or refuse, or any vegetable or animal matter, as aforesaid, are required to remove the same within one day after receiving notice to remove the same, from the city marshal, under a penalty of not less than two nor more than five dollars.

SEC. 6. It shall be the duty of the city marshal, in all cases of nuisance committed under the provisions of this ordinance, where the offending party is not known, or cannot be found, to remove and abate, or cause to be removed or abated, all nuisances so committed within a reasonable time, at the expense of the city; and in all cases where such offending party is known or can be found, but who neglected or refuses to obey the provisions of this ordinance, the city marshal shall remove and abate, or cause to be removed and abated, such nuisances, at the cost and expense of the party so neglecting or refusing to abate or remove the same.

SEC. 7. The city marshal shall have authority to notify persons to abate and remove nuisances as described in sections two, three, four and five of this ordinance, only upon written complaint made of the existence and continuance of such nuisance, by two residents of the city.

SEC. 8. It shall be unlawful for any person between the hours of five o'clock, A. M., (forenoon) and sun set, to bathe in a state of nudity in the Kaw river within the limits of this city. Any person offending against the provisions of this section shall be fined not less than one dollar.

NUISANCES.

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SEC. 9. Whoever shall, within the city, discharge any fire-arms, except by permission of the mayor, or when mustered for drill or review, or otherwise acting under the command or by permission of some commissioned officer, or except when done in self-defense, or for the protection of gardens from destructive animals, shall be, upon conviction thereof, fined not less than five dollars.

SEC. 10. Any person who shall in this city have or carry concealed or partially concealed, upon his person, any pistol, bowie knife or other deadly weapon, shall, on conviction, be fined not less than one nor more than ten dollars: *Provided*, This section shall not apply to peace officers of the city or state. The carrying of a weapon in a holster, exposed to full view, shall not be deemed a concealed or partially concealed weapon under this section.

S. K. HUSON, Mayor.

Approved, January 12, 1863.

[No. 35]

An Ordinance Amending "An Ordinance Relating to Nuisances."

Be it ordained by the Mayor and Councilmen of the City of Lawrence:

SECTION 1. That section seven of "An Ordinance relating to nuisances," approved, January 12, 1863, be and the same is hereby amended so as to read as follows: Section 7. The city marshal shall have authority and it shall be his duty to notify any and all persons whose duty it shall be so to do, to remove any nuisance or nuisances mentioned in said ordinance.

SEC. 2. That this ordinance shall be in force from its publication.

Approved, December 7, 1866.

Attest: W. H. R. LYKINS, Mayor.

H. O. SHOLES, City Clerk.

14-4

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Mr. Chairman and Members of the Committee:

Thank you for your time.

Chief Douglass regrets he could not attend; however, I have been asked to testify in his absence. I am Major Ed Salazar of the Overland Park, Kansas Police Department. I am here to oppose this bill.

The City of Overland Park has confronts numerous public-safety issues on a daily basis. Passage of this bill would preempt our City ordinance. While the Police Department is very proactive in its effort to control all crime and particularly violent crime, passage of this bill would place us on a slippery slope. Thus, the City of Overland Park strongly opposes this bill.

Access to guns contributes significantly to the threat of violent crime and actual violent crime. This bill assumes:

1. Municipalities are or have been ineffective in controlling guns and ammunition, and state intervention or preemption is now required to correct our inadequacy.
2. A state created statute and a one-size-fits-all standard for the state creates more effective control of guns and ammunition.
3. The state will be more effective in dealing with gun-related issues in the future, and Municipal control is not necessary.

Despite all of our Police Department's successes, public safety issues require continual maintenance. Violent crime and even the perceived risk of violent crime are major public concerns. In the final analysis, the local Police Department is responsible for the safety of its children, its residents, its shoppers and its workers.

Local gun control in Kansas has historically been left to Municipalities and local control. This bill minimizes the importance of municipal law enforcement and Municipalities, and strips our City of its local control over an area of significant public safety concern - guns and gun-related crimes.

As the second largest city in Kansas with a population of 163,319, our Police Department protects shopping centers, major malls, the KU Edwards Campus, the Johnson County Community College, two renowned school districts, a parochial school district, the City's Arboretum, the City's Convention Center and a planned Arena. We protect and serve Sprint National Headquarters and its 17,000 employees, numerous restaurants, banks, ATM facilities, child-care facilities, health clubs, walking trails and bike trails.

Thus, our community is multi-faceted, diverse and complex. Protecting it is no easy task,

FEDERAL AND STATE AFFAIRS

Date 3-8-05

Attachment 15

yet the Overland Park Police Department has maintained an excellent public-safety record. Our continued success is dependent upon:

1. The Police Department's continued ability to create local initiatives which provide high levels of protection for our residents. Their expectation is these will be prompt and personalized responses will a strong local flavor, including the creation of appropriate Municipal ordinances.

This bill would have a significant and adverse impact on the Police Department's local control.

2. The Police Department's ability to promptly without pre-emptive state constraints must not be interfered with.

This bill would have a significant and adverse impact on ordinances currently in place and those which might be necessary in the future.

3. A wide range of resources must be employed when responding to the local needs of our diverse community.

Any statute preempting City control in the area of guns, places our Police Department on a slippery slope. This proposed bill's proposes a one-size-fits-all initiative can be created under the broad brush of one state statute. Again, it significantly and adversely undermines our public-safety responsibilities and responsiveness to all residents of Overland Park

Thus, the City of Overland Park strongly opposes this bill.

Presented on the City of Overland Park's Behalf By:
Ed Salazar
Police Major
Overland Park Police Department
12400 Foster
Overland Park, KS 66213
913-327-6905