

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 30, 2005 in Room 313-S of the Capitol.

All members were present except: Representative Ray Cox
Representative Melody Miller
Representative Kenny Wilk

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:

Richard Cram, Department of Revenue

Others attending: See attached list

Chairman Edmonds opened the meeting for bill introductions. There were none.

The Chair asked for a motion to adopt the minutes of March 10th, March 14th, March 15th, March 16th, March 17th, March 21st, and March 22nd.

Representative Siegfroid made a motion that the minutes of March 10th, March 14th, March 15th, March 16th, March 17th, March 21st, and March 22nd be adopted as read. Representative Burroughs seconded the motion. Vote was taken. Motion passed.

Chairman Edmonds turned the committees' attention to **SB 195** which had been sent to conference committee. After the subcommittee's report, it was suggested that the subcommittee return to redraw a proposed substitute bill for **SB 195**.

Representative Siegfroid was recognized with an explanation of the changes which the subcommittee was suggesting. They removed from **SB 195** the amendment which would allow justices of the supreme court of the State of Kansas and judges of any court of the State of Kansas or justices of any federal court of the District Court of Kansas to carry weapons in a concealed manner.

Athena Andaya, Research Analyst, provided the definitions of terms used in **SB 195** such as *conceal*, *deadly weapon*, *possession*, *transfer* and *transport*. Mrs. Andaya researched these definitions and they were taken from *Black's Law Dictionary*, case law or *Pattern Instructions for Kansas - Criminal*. (Attachment 1) Also included were the definitions from Keith Wood, NRA (National Rifle Association). (Attachment 2)

Attention was called to a document which was researched and prepared by Representative Ruff regarding **SB 195** Pre-emption on firearms, Side by Side Comparisons - Cities Uniform Code and State Law. (Attachment 3)

Returning to the **SB 195**, Representative Siegfroid reviewed the new sections which were added and the language changes which were purposed. Members were given a copy to review. (Attachment 4)

Richard Cram, Department of Revenue, addressed the committee regarding language changes on page 17 of the bill draft.

Chairman Edmonds opened the floor for committee questions on the conference committee's report and then purposed the bill be worked.

Dennis Hodgins, Research Analyst suggested that in the language on page 22, section c the words *political subdivision* should be struck and add *city or county*.

CONTINUATION SHEET

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

Representative Siegfroid made a motion that the house substitute for **SB 195** be adopted as amended. Representative Brunk seconded the motion.

Representative Mah made a substitute motion that on page 22 - lines 2 and 3, of the substitute for **SB 195** that the words " purchase, transfer, and ownership be struck. With no second to the motion, the motion died.

Returning to the Siegfroid motion, vote was taken. Motion passed.

Representative Siegfroid made a motion that house substitute for **SB 195** be moved out favorable for passage as amended. Representative Ruff seconded the motion. Vote was taken. Motion passed.

Chairman Edmonds returned to the order of bill introduction and recognized Representative Brunk who requested a bill with certain exclusions for people who have the ability to be able to carry weapons and he would like to add judges of the State of Kansas.

With no objections, that bill is accepted for introduction.

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

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March 29, 2005

To: Members of the House Federal and State Affairs Subcommittee
From: Athena Andaya, Research Analyst
Re: SB 195

I was asked to provide definitions of terms used in SB 195. The definitions were found either in *Black's Law Dictionary*, case law, or the *Pattern Instructions for Kansas-Criminal* (PIK) formulated by the Judicial Council and used by judges in criminal jury trials. It should be noted that the Kansas Supreme Court has held that "[W]hen ascertainable, intent of the legislature governs judicial interpretation of statutes, and the courts should give words in common usage their natural and ordinary meanings." *Kilner v State Farm Mut. Auto. Ins. Co.*, 252 Kan. 675, 682, 847 P.2d 1292 (1993).

- "Carry arms or weapons" means to wear, bear, or carry weapons upon the person or in the clothing or in a pocket, for the purpose of use, or for the purpose of being armed and ready for offensive or defensive action in case of a conflict with another person. *Black's Law Dictionary, Abridged 5th edition*.

Case law holds that the intentional carrying of a concealed weapon upon the person of the accused constitutes in itself a complete criminal offense, irrespective of the purpose or motive of the accused, unless the accused occupies an exempt status expressly recognized in K.S.A. 21-4201. *State v. Lassley*, 218 Kan. 758, 545 P.2d 383 (1976).

The federal court has broadly defined carrying a firearm under § 924(c) (drug offenses) to include possession and transportation of a firearm in a vehicle even if the weapon is not within effortless reach. Thus, a person who transports a firearm in the trunk of a car during and in relation to a drug trafficking offense carries the firearm within the meaning of § 924 (c). *U.S. v. Fottler*, ___ F.3d ___ (10th Cir. 1997).

- "Conceal" to hide, secrete, or withhold from the knowledge of others. To withdraw from observation; to withhold from utterance or declaration; to cover or keep from sight. *Black's Law Dictionary, Abridged 5th edition*.
- "Deadly weapon" is an instrument which, from the manner in which it is used, is calculated or likely to produce death or serious injury. *State v. Guebara*, 24 Kan. App. 2d 260, 944 P.2d 164 (1997) and *State v. Hanks*, 236 Kan. 524, 537, 694 P.2d 407 (1985).
- "Possession" under the law involves "[h]aving control over a . . . thing with knowledge of and the intent to have such control." PIK Crim. 3d 53.00.

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Attachment 1

- "Transfer" means to convey or remove from one place, person, etc., to another; pass or hand over from one to another. Specifically, to change over the possession or control of (as, to transfer title to land). To sell or give. *Black's Law Dictionary, Abridged 5th edition.*
- "Transport" has been held to be included in the term carry in federal case law. Therefore, one may transport a firearm from one place to another on one's person or vehicle.

Definitions from Keith Wood, NRA

- (A) For the purposes of this chapter, the following definitions shall apply:
- (1) Possession is the direct custody and control of an item
 - (2) Transfer is the vesting of lawful title from one person to another.
 - (3) Purchase is the acquisition, or attempted acquisition of property by one person from another by voluntary act and agreement based on valuable consideration or contract
 - (4) Storage is the willful keeping of goods within or upon real or personal property under the control of the owner or bailee of the goods
 - (5) Transportation is the intentional or knowing conveyance of an item from one location to another

SB 195 Pre-emption on firearms, Side by Side Comparisons

SB 195

Possession: Will defer to current state & federal law .

Purchase and Transfer: Will defer to Federal & State law.

Storage: No change from Uniform. Public Offense Code or Kansas Statute

Transportation: No change from Uniform. Public Offense Code or Kansas Statute.

Ownership: Federal law will apply (prohibited persons include felons, persons convicted of domestic violence misdemeanors, mentally ill, among others).

Cities and Counties will continue to regulate carry of a firearm on one's person, zoning of firearms businesses, and will allow cities & counties to have less-restrictive storage & transportation rules than those contained in this act.

A cased and unloaded firearm shall be considered legally stored & transported.

Cities Uniform Code

UPOC 10.3.1 Criminal Possession: Possession of a firearm by person addicted to and an unlawful user of a controlled substance. Possession by person other than law enforcement on school property or at school event. Refusal to remove firearm from school property or event when directed by law enforcement or school employee.

UPOC 10.3 Criminal Disposal of Firearms: Selling or transferring a handgun to someone under 18. Selling or transferring a firearm to a person who is addicted to and an unlawful user of a controlled substance. Selling or transferring a firearm to persons convicted of certain offenses (felonies or equivalent).

Storage: UPOC is silent.

Transportation: UPOC is silent.

Ownership: UPOC is silent.

Note: Not all cities have adopted the Uniform Public Offense Code and some municipalities have adopted their own firearm ordinances.

State law

K.S.A. 21-4204 Criminal Possession: Possession of a firearm by person addicted to and an unlawful user of a controlled substance. Possession by those convicted of certain crimes (felonies or equivalent). Possession by person other than law enforcement on school property or at school event. Refusal to remove firearm from school property or event when directed by law enforcement or school employee (certain exceptions apply).

K.S.A. 21-4203 Criminal Disposal of Firearms: Selling or transferring a handgun to someone under 18. Selling or transferring a firearm to a person who is addicted to and an unlawful user of a controlled substance. Selling or transferring a firearm to persons convicted of certain offenses (felonies or equivalent).

Storage: State law is silent.

Transportation: State law is silent.

Ownership: State law is silent

PROPOSED HOUSE Substitute for SENATE BILL NO. 195

By Committee on Federal and State Affairs

AN ACT concerning firearms; relating to the definition thereof; disposition; regulation; training of certain persons; amending K.S.A. 21-4206, 74-5607 and 79-5212 and K.S.A. 2004 Supp. 21-3110, 60-4117, 79-3235, 79-3617, 79-5205 and 79-5211 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Sec. 1: New

Section 1. K.S.A. 2004 Supp. 21-3110 is hereby amended to read as follows: 21-3110. The following definitions shall apply when the words and phrases defined are used in this code, except when a particular context clearly requires a different meaning.

- (1) "Act" includes a failure or omission to take action.
- (2) "Another" means a person or persons as defined in this code other than the person whose act is claimed to be criminal.
- (3) "Conduct" means an act or a series of acts, and the accompanying mental state.
- (4) "Conviction" includes a judgment of guilt entered upon a plea of guilty.
- (5) "Deception" means knowingly and willfully making a false statement or representation, express or implied, pertaining to a present or past existing fact.
- (6) To "deprive permanently" means to:
 - (a) Take from the owner the possession, use or benefit of property, without an intent to restore the same; or
 - (b) retain property without intent to restore the same or with intent to restore it to the owner only if the owner purchases or leases it back, or pays a reward or other compensation for its return;or

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Date 3-31-05
Attachment 4

(c) sell, give, pledge or otherwise dispose of any interest in property or subject it to the claim of a person other than the owner.

(7) "Dwelling" means a building or portion thereof, a tent, a vehicle or other enclosed space which is used or intended for use as a human habitation, home or residence.

New (8) "Firearm" means any weapon designed or having the capacity to propel a projectile by force of an explosion or combustion.

(9) "Forcible felony" includes any treason, murder, voluntary manslaughter, rape, robbery, burglary, arson, kidnapping, aggravated battery, aggravated sodomy and any other felony which involves the use or threat of physical force or violence against any person.

~~(9)~~ (10) "Intent to defraud" means an intention to deceive another person, and to induce such other person, in reliance upon such deception, to assume, create, transfer, alter or terminate a right, obligation or power with reference to property.

~~(10)~~ (11) "Law enforcement officer" means:

(a) Any person who by virtue of such person's office or public employment is vested by law with a duty to maintain public order or to make arrests for crimes, whether that duty extends to all crimes or is limited to specific crimes;

(b) any officer of the Kansas department of corrections or, for the purposes of K.S.A. 21-3409, 21-3411 and 21-3415, and amendments thereto, any employee of the Kansas department of corrections; or

(c) any university police officer or campus police officer, as defined in K.S.A. 22-2401a, and amendments thereto.

~~(11)~~ (12) "Obtain" means to bring about a transfer of interest in or possession of property,

whether to the offender or to another.

~~(12)~~ (13) "Obtains or exerts control" over property includes but is not limited to, the taking, carrying away, or the sale, conveyance, or transfer of title to, interest in, or possession of property.

~~(13)~~ (14) "Owner" means a person who has any interest in property.

~~(14)~~ (15) "Person" means an individual, public or private corporation, government, partnership, or unincorporated association.

~~(15)~~ (16) "Personal property" means goods, chattels, effects, evidences of rights in action and all written instruments by which any pecuniary obligation, or any right or title to property real or personal, shall be created, acknowledged, assigned, transferred, increased, defeated, discharged, or dismissed.

~~(16)~~ (17) "Property" means anything of value, tangible or intangible, real or personal.

~~(17)~~ (18) "Prosecution" means all legal proceedings by which a person's liability for a crime is determined.

~~(18)~~ (19) "Public employee" is a person employed by or acting for the state or by or for a county, municipality or other subdivision or governmental instrumentality of the state for the purpose of exercising their respective powers and performing their respective duties, and who is not a "public officer."

~~(19)~~ (20) "Public officer" includes the following, whether elected or appointed:

(a) An executive or administrative officer of the state, or a county, municipality or other subdivision or governmental instrumentality of or within the state.

(b) A member of the legislature or of a governing board of a county, municipality, or other subdivision of or within the state.

(c) A judicial officer, which shall include a judge of the district court, juror, master or any other person appointed by a judge or court to hear or determine a cause or controversy.

(d) A hearing officer, which shall include any person authorized by law or private agreement, to hear or determine a cause or controversy and who is not a judicial officer.

(e) A law enforcement officer.

(f) Any other person exercising the functions of a public officer under color of right.

~~(20)~~ (21) "Real property" or "real estate" means every estate, interest, and right in lands, tenements and hereditaments.

~~(21)~~ (22) "Solicit" or "solicitation" means to command, authorize, urge, incite, request, or advise another to commit a crime.

~~(22)~~ (23) "State" or "this state" means the state of Kansas and all land and water in respect to which the state of Kansas has either exclusive or concurrent jurisdiction, and the air space above such land and water. "Other state" means any state or territory of the United States, the District of Columbia and the Commonwealth of Puerto Rico.

~~(23)~~ (24) "Stolen property" means property over which control has been obtained by theft.

~~(24)~~ (25) "Threat" means a communicated intent to inflict physical or other harm on any person or on property.

~~(25)~~ (26) "Written instrument" means any paper, document or other instrument containing written or printed matter or the equivalent thereof, used for purposes of reciting, embodying, conveying or recording information, and any money, token, stamp, seal, badge, trademark, or other evidence or symbol of value, right, privilege or identification, which is capable of being used to the advantage or disadvantage of some person.

Sec. 2: HB 2177

Sec. 2. K.S.A. 21-4206 is hereby amended to read as follows: 21-4206. (1) Upon conviction of a violation or upon adjudication as a juvenile offender for a violation of K.S.A. 21-4201, 21-4202, 21-4204, 21-4204a or 21-4219, and amendments thereto, ~~and K.S.A. 21-4204a~~, any weapon seized in connection therewith shall remain in the custody of the trial court.

(2) Any stolen weapon so seized and detained, when no longer needed for evidentiary purposes, shall be returned to the person entitled to possession, if known. All other confiscated weapons when no longer needed for evidentiary purposes, shall in the discretion of the trial court,

authority to sell new

be: (a) Destroyed; (b) forfeited to the law enforcement agency seizing the weapon for use within such agency or traded, for sale to a properly licensed federal firearms dealer, for trading to a properly licensed federal firearms dealer for other new or used firearms or accessories for use within such agency or for trading to another law enforcement agency for that agency's use; or (c) forfeited to the Kansas bureau of investigation for law enforcement, testing, comparison or destruction by the Kansas bureau of investigation forensic laboratory.

new

(3) If weapons are sold as authorized by subsection (2), the proceeds of the sale shall be credited to the asset seizure and forfeiture fund of the seizing agency.

Sec. 3: HB 2177

Sec. 3. K.S.A. 2004 Supp. 60-4117 is hereby amended to read as follows: 60-4117. Except as provided in K.S.A. 65-7014, and amendments thereto: (a) When property is forfeited under this act, the law enforcement agency may:

(1) Retain such property for official use or transfer the custody or ownership to any local, state or federal agency, subject to any lien preserved by the court;

(2) destroy or use for investigative or training purposes, any illegal or controlled substances and equipment or other contraband, provided that materials necessary as evidence shall be

preserved;

(3) sell property which is not required by law to be destroyed and which is not harmful to the public:

(A) All property, except real property, designated by the seizing agency to be sold shall be sold at public sale to the highest bidder for cash without appraisal. The seizing agency shall first cause notice of the sale to be made by publication at least once in an official county newspaper as defined by K.S.A. 64-101, and amendments thereto. Such notice shall include the time, place, and conditions of the sale and description of the property to be sold. Nothing in this subsection shall prevent a state agency from using the state surplus property system and such system's procedures shall be sufficient to meet the requirements of this subsection.

(B) Real property may be sold pursuant to subsection (A), or the seizing agency may contract with a real estate company, licensed in this state, to list, advertise and sell such real property in a commercially reasonable manner.

(C) No employee or public official of any agency involved in the investigation, seizure or forfeiture of seized property may purchase or attempt to purchase such property; or

(4) salvage the property, subject to any lien preserved by the court.

(b) When firearms are forfeited under this act, the firearms, in the discretion of the seizing agency, shall be destroyed, used within the seizing agency for official purposes, traded to another

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law enforcement agency for use within such agency, sold to a properly licensed federal firearms dealer, traded to a properly licensed federal firearms dealer for other new or used firearms or accessories for use within such agency or given to the Kansas bureau of investigation for law enforcement, testing, comparison or destruction by the Kansas bureau of investigation forensic

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laboratory. If firearms are sold as authorized by this subsection, the proceeds of the sale shall be credited to the asset seizure and forfeiture fund of the seizing agency.

(c) The proceeds of any sale other than the sale of firearms shall be distributed in the following order of priority:

(1) For satisfaction of any court preserved security interest or lien;

(2) thereafter, for payment of all proper expenses of the proceedings for forfeiture and disposition, including expenses of seizure, inventory, appraisal, maintenance of custody, preservation of availability, advertising, service of process, sale and court costs;

(3) reasonable attorney fees:

(A) If the plaintiff's attorney is a county or district attorney, an assistant, or another governmental agency's attorney, fees shall not exceed 15% of the total proceeds, less the amounts of subsection (c)(1) and (2), in an uncontested forfeiture nor 20% of the total proceeds, less the amounts of subsection (c)(1) and (2), in a contested forfeiture. Such fees shall be deposited in the county or city treasury and credited to the special prosecutor's trust fund. Moneys in such fund shall not be considered a source of revenue to meet normal operating expenditures, including salary enhancement. Such fund shall be expended by the county or district attorney, or other governmental agency's attorney through the normal county or city appropriation system and shall be used for such additional law enforcement and prosecutorial purposes as the county or district attorney or other governmental agency's attorney deems appropriate, including educational purposes. All moneys derived from past or pending forfeitures shall be expended pursuant to this act. The board of county commissioners shall provide adequate funding to the county or district attorney's office to enable such office to enforce this act. Neither future forfeitures nor the proceeds therefrom shall be used

in planning or adopting a county or district attorney's budget; or

(B) if the plaintiff's attorney is a private attorney, such reasonable fees shall be negotiated by the employing law enforcement agency;

(4) repayment of law enforcement funds expended in purchasing of contraband or controlled substances, subject to any interagency agreement.

(d) Any proceeds remaining shall be credited as follows, subject to any interagency agreement:

(1) If the law enforcement agency is a state agency, the entire amount shall be deposited in the state treasury and credited to such agency's state forfeiture fund. There is hereby established in the state treasury the following state funds: Kansas bureau of investigation state forfeiture fund, Kansas highway patrol state forfeiture fund, Kansas department of corrections state forfeiture fund and Kansas national guard counter drug state forfeiture fund. Expenditures from the Kansas bureau of investigation state forfeiture fund shall be made upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the attorney general or by a person or persons designated by the attorney general. Expenditures from the Kansas highway patrol state forfeiture fund shall be made upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the superintendent of the highway patrol or by a person or persons designated by the superintendent. Expenditures from the Kansas department of corrections state forfeiture fund shall be made upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of the department of corrections or by a person or persons designated by the secretary. Expenditures from the Kansas national guard counter drug state forfeiture fund shall be made upon warrants of the director of accounts and reports issued pursuant to vouchers approved

by the adjutant general of Kansas or by a person or persons designated by the adjutant general. Each agency shall compile and submit a forfeiture fund report to the legislature on or before February 1 of each year. Such report shall include, but not be limited to: (A) The fund balance on December 1; (B) the deposits and expenditures for the previous 12-month period ending December 1. Upon the effective date of this act, the director of accounts and reports is directed to transfer each agency's balance in the state special asset forfeiture fund to the agency's new, state forfeiture fund. All liabilities of the state special asset forfeiture fund existing prior to such date are hereby imposed on the Kansas bureau of investigation state forfeiture fund, Kansas highway patrol state forfeiture fund and the Kansas department of corrections state forfeiture fund. The state special asset forfeiture fund is hereby abolished.

(2) If the law enforcement agency is a city or county agency, the entire amount shall be deposited in such city or county treasury and credited to a special law enforcement trust fund. Each agency shall compile and submit annually a special law enforcement trust fund report to the entity which has budgetary authority over such agency and such report shall specify, for such period, the type and approximate value of the forfeited property received, the amount of any forfeiture proceeds received, and how any of those proceeds were expended.

(3) Moneys in the Kansas bureau of investigation state forfeiture fund, Kansas highway patrol state forfeiture fund, Kansas department of corrections state forfeiture fund, the special law enforcement trust funds and the Kansas national guard counter drug state forfeiture fund shall not be considered a source of revenue to meet normal operating expenses. Such funds shall be expended by the agencies or departments through the normal city, county or state appropriation system and shall be used for such special, additional law enforcement purposes as the law enforcement agency

head deems appropriate. Neither future forfeitures nor the proceeds from such forfeitures shall be used in planning or adopting a law enforcement agency's budget.

Sec. 4: HB 2303

Sec. 4. K.S.A. 74-5607 is hereby amended to read as follows: 74-5607. (a) In addition to other powers and duties prescribed by law, the commission shall adopt, in accordance with the provisions of K.S.A. 77-415 et seq., and amendments thereto, rules and regulations necessary to carry out the provisions of subsection (c) of K.S.A. 74-5616, and amendments thereto, and such other rules and regulations as necessary to administer this act. The commission may also adopt such rules of procedure as are necessary for conducting the business of the commission.

(b) In all matters pending before the commission, the commission shall have the power to:

(1) Administer oaths and take testimony;

(2) issue subpoenas, compel the attendance of witnesses and the production of any papers, books, accounts, documents and testimony, and to cause the deposition of witnesses, either residing within or without the state, to be taken in the manner prescribed by law for taking depositions in civil actions in the district courts. In case of the failure of any person to comply with any subpoena issued on behalf of the commission, or on the refusal of any witness to testify to any matters regarding which the witness may be lawfully interrogated, the district court of any county, on application of a member of the commission, may require compliance by proceedings for contempt, as in the case of failure to comply with a subpoena issued from such court or a refusal to testify in such court. Each witness who appears before the commission by its order or subpoena, other than a state officer or employee, shall receive for such attendance the fees and mileage provided for witnesses in civil cases in courts of record which shall be audited and paid upon presentation of proper vouchers sworn to by such witnesses and approved by the chairperson of the commission or

by a person or persons designated by the chairperson;

(3) enter into contracts necessary to administer the provisions of this act and the certification of law enforcement officers; and

(4) assess the costs of such matters pending before the commission under this section against the governmental entity employing the police officer or law enforcement officer.

(c) Members of the law enforcement training commission attending meetings of ~~such~~ the commission, or attending a subcommittee meeting ~~thereof~~ authorized by ~~such~~ the commission, shall be paid amounts provided for in subsection (e) of K.S.A. 75-3223, and amendments thereto. The director and the chairperson of the commission shall be responsible for approving all expense vouchers of members.

(d) The commission shall meet at least once each year at the training center and may hold special meetings whenever they are called by the chairperson.

(e) The commission shall adopt the rules and regulations that are necessary to ensure that law enforcement officers are adequately trained and to enforce the provisions of this act. Such rules and regulations shall include, but are not limited to, the establishment of a course of fire as a standard qualification for active law enforcement officers to carry firearms that may also be used for qualified retired officers to carry firearms pursuant to federal law. The director shall provide qualification opportunities for qualified retired officers at least twice a year at the times and places the director determines to be necessary. The training center shall charge and collect a fee from retired state, local and federal officers for the qualification opportunities, but these fees shall be limited to the actual costs of presenting the standard qualifications course.

"firearms" changed to "fire"

"qualifications courses for the standard" changed to "qualification opportunities for qualified retired officers"

"qualifications courses" changed to "qualification opportunities"

Sec. 5: SB 195; no changes

Sec. 5. K.S.A. 2004 Supp. 79-3235 is hereby amended to read as follows: 79-3235. If any

tax imposed by this act or any portion of such tax is not paid within 60 days after it becomes due, the secretary or the secretary's designee shall issue a warrant under the secretary's or the secretary's designee's hand and official seal, directed to the sheriff of any county of the state, commanding the sheriff to levy upon and sell the real and personal property of the taxpayer found within the sheriff's county for the payment of the amount thereof, with the added penalties, interest and the cost of executing the warrant and to return the warrant to the secretary or the secretary's designee and pay to the secretary or the secretary's designee the money collected by virtue of it not more than 60 days from the date of the warrant. Firearms seized may be appraised and disposed of in the same manner prescribed in K.S.A. 79-5212, and amendments thereto. The sheriff, within five days after the receipt of the warrant, shall file with the clerk of the district court of the county a copy thereof, and thereupon the clerk shall either enter in the appearance docket the name of the taxpayer mentioned in the warrant, the amount of the tax or portion of it, interest and penalties for which the warrant is issued and the date such copy is filed and note the taxpayer's name in the general index. No fee shall be charged for either entry. The amount of such warrant so docketed shall thereupon become a lien upon the title to and interest in the real property of the taxpayer against whom it is issued. The sheriff shall proceed in the same manner and with the same effect as prescribed by law with respect to executions issued against property upon judgments of a court of record and shall be entitled to the same fees for services to be collected in the same manner.

The court in which the warrant is docketed shall have jurisdiction over all subsequent proceedings as fully as though a judgment had been rendered in the court. In the discretion of the secretary or the secretary's designee a warrant of like terms, force and effect may be issued and directed to any officer or employee of the secretary, and in the execution thereof such officer or

employee shall have all the powers conferred by law upon sheriffs, and the subsequent proceedings thereunder shall be the same as provided where the warrant is issued directly to the sheriff. The taxpayer shall have the right to redeem the real estate within a period of 18 months from the date of such sale. If a warrant is returned, unsatisfied in full, the secretary or the secretary's designee shall have the same remedies to enforce the claim for taxes as if the state of Kansas had recovered judgment against the taxpayer for the amount of the tax. No law exempting any goods and chattels, lands and tenements from forced sale under execution shall apply to a levy and sale under any such warrant or upon any execution issued upon any judgment rendered in any action for income taxes. Except as provided further, the secretary or the secretary's designee shall have the right after a warrant has been returned unsatisfied or satisfied only in part, to issue alias warrants until the full amount of the tax is collected.

If execution is not issued within 10 years from the date of the docketing of any such warrant, or if 10 years shall have intervened between the date of the last execution issued on such warrant, and the time of issuing another writ of execution thereon, such warrant shall become dormant, and shall cease to operate as a lien on the real estate of the delinquent taxpayer. Such dormant warrant may be revived in like manner as dormant judgment under the code of civil procedure.

Sec. 6: SB 195;
no changes

Sec. 6. K.S.A. 2004 Supp. 79-3617 is hereby amended to read as follows: 79-3617.

Whenever any taxpayer liable to pay any sales or compensating tax, refuses or neglects to pay the tax, the amount, including any interest or penalty, shall be collected in the following manner. The secretary of revenue or the secretary's designee shall issue a warrant under the hand of the secretary or the secretary's designee and official seal directed to the sheriff of any county of the state commanding the sheriff to levy upon and sell the real and personal property of the taxpayer found

within the sheriff's county to satisfy the tax, including penalty and interest, and the cost of executing the warrant and to return such warrant to the secretary or the secretary's designee and pay to the secretary or the secretary's designee the money collected by virtue thereof not more than 90 days from the date of the warrant. Firearms seized may be appraised and disposed of in the same manner prescribed in K.S.A. 79-5212, and amendments thereto. The sheriff shall, within five days, after the receipt of the warrant file with the clerk of the district court of the county a copy thereof, and thereupon the clerk shall either enter in the appearance docket the name of the taxpayer mentioned in the warrant, the amount of the tax or portion of it, interest and penalties for which the warrant is issued and the date such copy is filed and note the taxpayer's name in the general index. No fee shall be charged for either such entry. The amount of such warrant so docketed shall thereupon become a lien upon the title to, and interest in, the real property of the taxpayer against whom it is issued. The sheriff shall proceed in the same manner and with the same effect as prescribed by law with respect to executions issued against property upon judgments of a court of record, and shall be entitled to the same fees for services.

The court in which the warrant is docketed shall have jurisdiction over all subsequent proceedings as fully as though a judgment had been rendered in the court. A warrant of similar terms, force and effect may be issued by the secretary or the secretary's designee and directed to any officer or employee of the secretary or the secretary's designee, and in the execution thereof such officer or employee shall have all the powers conferred by law upon sheriffs with respect to executions issued against property upon judgments of a court of record and the subsequent proceedings thereunder shall be the same as provided where the warrant is issued directly to the sheriff. The taxpayer shall have the right to redeem the real estate within a period of 18 months from

the date of such sale. If a warrant is returned, unsatisfied in full, the secretary or the secretary's designee shall have the same remedies to enforce the claim for taxes as if the state of Kansas had recovered judgment against the taxpayer for the amount of the tax. No law exempting any goods and chattels, land and tenements from forced sale under execution shall apply to a levy and sale under any of the warrants or upon any execution issued upon any judgment rendered in any action for sales or compensating taxes. Except as provided further, the secretary or the secretary's designee shall have the right after a warrant has been returned unsatisfied, or satisfied only in part, to issue alias warrants until the full amount of the tax is collected. No costs incurred by the sheriff or the clerk of the court shall be charged to the secretary or the secretary's designee.

If execution is not issued within 10 years from the date of the docketing of any such warrant, or if 10 years shall have intervened between the date of the last execution issued on such warrant, and the time of issuing another writ of execution thereon, such warrant shall become dormant, and shall cease to operate as a lien on the real estate of the delinquent taxpayer. Such dormant warrant may be revived in like manner as dormant judgments under the code of civil procedure.

Sec. 7: SB 195;
no changes

Sec. 7. K.S.A. 2004 Supp. 79-5205 is hereby amended to read as follows: 79-5205. (a) At such time as the director of taxation shall determine that a dealer has not paid the tax as provided by K.S.A. 79-5204, and amendments thereto, the director may immediately assess a tax based on personal knowledge or information available to the director of taxation; mail to the taxpayer at the taxpayer's last known address or serve in person, a written notice of the amount of tax, penalties and interest; and demand its immediate payment. If payment is not immediately made, because collection of every assessment made hereunder is presumed to be in jeopardy due to the nature of the commodity being taxed, the director may immediately collect the tax, penalties and interest in

any manner provided by K.S.A. 79-5212, and amendments thereto.

(b) The tax, penalties and interest assessed by the director of taxation are presumed to be valid and correctly determined and assessed. The burden is upon the taxpayer to show their incorrectness or invalidity. Any statement filed by the director of taxation with the court or any other certificate by the director of taxation of the amount of tax, penalties and interest determined or assessed is admissible in evidence and is prima facie evidence of the facts it contains.

(c) In making an assessment pursuant to subsection (a), the director of taxation may consider but shall not be bound by a plea agreement or judicial determination made in any criminal case.

(d) Within 15 days after the mailing or personal service of such notice of assessment pursuant to subsection (a), the taxpayer may request an informal conference with the secretary of revenue or the secretary's designee relating to the tax, penalties and interest assessed by filing a written request with the secretary or the secretary's designee. Such written request shall set forth the taxpayer's objections to the assessment. The purpose of such conference shall be to review and reconsider all facts and issues that underlie the assessment. The informal conference shall not constitute an adjudicative proceeding under the Kansas administrative procedure act and the rules of evidence shall not apply. No record of the informal conference shall be made except at the request and expense of the taxpayer. The taxpayer may be represented at the informal conference by an attorney licensed in the state of Kansas. The taxpayer may also present written or verbal information from other persons. The secretary or the secretary's designee may confer at any time with any employee of the department of revenue who has factual information relating to the assessment under reconsideration. The secretary or the secretary's designee shall issue a written final determination within 270 days of the date of the request for informal conference unless the parties agree in writing

to extend the time for issuing such final determination. A final determination issued within or after 270 days, with or without extension, constitutes final agency action subject to administrative review by the state board of tax appeals pursuant to K.S.A. 74-2438, and amendments thereto. In the event that a written final determination is not rendered within 270 days or within an agreed extension, the taxpayer may appeal the assessment to the state board of tax appeals within 30 days after the expiration date of the 270 days or agreed extension. A taxpayer's request for an informal conference shall not stay the collection of the assessment but shall stay the sale of real or personal property, or the disposal of firearms, seized pursuant to K.S.A. 79-5212, and amendments thereto, until the final determination is made by the secretary or the secretary's designee. A taxpayer's appeal to the state board of tax appeals shall not stay the collection of the assessment but shall stay the sale of real or personal property seized pursuant to K.S.A. 79-5212, and amendments thereto, until a decision is rendered by the state board of tax appeals.

Sec. 8: SB 195;
no change

Sec. 8. K.S.A. 2004 Supp. 79-5211 is hereby amended to read as follows: 79-5211. All moneys received from the collection of taxes imposed under the provisions of K.S.A. 79-5201 et seq., and amendments thereto, and 25% of all moneys collected from assessments of delinquent taxes and penalties imposed thereunder, shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund. The appraised value of a firearm seized and disposed of pursuant to K.S.A. 79-5212, and amendments thereto, which is applied to a taxpayer's liability shall not be considered as a collection of moneys under this section. The director of taxation shall remit 75% of all moneys received from the collection of assessments of delinquent taxes and penalties imposed pursuant to

the provisions of K.S.A. 79-5201 *et seq.*, and amendments thereto, as follows: (a) If the law enforcement agency which conducted the investigation is a county agency, the entire amount shall be deposited in the county treasury and credited to a special law enforcement trust fund for use solely for law enforcement and criminal prosecution purposes; (b) if the law enforcement agency which conducted the investigation is a city agency, the entire amount shall be deposited in the city treasury and credited to a special law enforcement trust fund for use solely for law enforcement and criminal prosecution purposes; and (c) if more than one law enforcement agency is substantially involved in the investigative process, the amount shall be distributed equally among the city, county and state law enforcement agencies involved and credited to the appropriate county and city special law enforcement trust funds and state law enforcement agency funds unless an alternate distribution is mutually agreed upon by the law enforcement agencies involved and submitted in writing to the director of taxation. Funds received by city and county treasurers shall not be considered to be a source of revenue to meet normal operating expenses of law enforcement agencies.

Sec. 9: SB 195;
no change

Sec. 9. K.S.A. 79-5212 is hereby amended to read as follows: 79-5212. (a) Whenever a taxpayer liable to pay any tax, penalty or interest assessed pursuant to K.S.A. 79-5205, and amendments thereto, refuses or neglects to immediately pay the amount due, the director of taxation may issue one or more warrants for the immediate collection of the amount due, directed to the sheriff of any county of the state commanding the sheriff to seize and sell the real and personal property of the taxpayer, or to seize, appraise and dispose of the firearms of the taxpayer, found within the sheriff's county to satisfy the amount specified on the warrant and the cost of executing the warrant. The director of taxation may also issue one or more warrants directed to any employee of the department of revenue commanding the employee to seize and sell the real and personal

property of the taxpayer, or to seize, appraise and dispose of the firearms of the taxpayer, found anywhere within the state of Kansas to satisfy the amount specified on the warrant and the cost of executing the warrant. A copy of the warrant shall also be mailed to the taxpayer at the taxpayer's last known address or served upon the taxpayer in person.

(b) The sheriff or department of revenue employee shall proceed to execute upon the warrant in the same manner as provided for attachment orders by K.S.A. 60-706, 60-707 and 60-710, and amendments thereto, except as otherwise provided herein. In the execution of a warrant issued to a department of revenue employee, the employee shall have all of the powers conferred by law upon sheriffs. Any law enforcement officer may assist in the execution of a warrant if requested to do so by a department of revenue employee.

(c) No law exempting any goods and chattels, land and tenements from forced sale under execution shall apply to a seizure and sale, or in the case of firearms, sale or disposal, under any warrant.

(d) A third party holding funds or other personal property of the taxpayer shall immediately, or as soon thereafter as possible, after service of the warrant on such third party, deliver such funds or other personal property to the sheriff or department of revenue employee, who shall then deliver such to the director of taxation or the director's designee for deposit toward the balance due on the taxpayer's assessment.

(e) The sheriff or department of revenue employee shall make return of such warrant to the director of taxation within 60 days from the date of the warrant. If property is seized, then the sheriff or department of revenue employee shall also make return of such warrant to the clerk of the district court in the county where the property was seized.

(f) (1) If the taxpayer fails to appeal the assessment as provided by subsection (b) of K.S.A. 79-5205, and amendments thereto, or if the taxpayer requests a hearing and a final order has been entered by the director of taxation as to the correctness of the assessment, then the sheriff or department of revenue employee shall sell the seized property at public auction, except that firearms may be sold at public auction or disposed of as provided in subsection (2). The provisions of K.S.A. 60-2406, and amendments thereto, shall apply to liens against the property being sold. Notice of the sale of personal property shall be given in accordance with K.S.A. 60-2409, and amendments thereto. Notice of the sale of real property shall be given in accordance with K.S.A. 60-2410, and amendments thereto. The taxpayer shall have the right to redeem real property within a period of six months from the date of the sale.

(2) In the case of seized firearms not sold, the director of taxation shall obtain an appraisal value performed by a federally licensed firearms dealer or an employee thereof. Such value shall be credited against the taxpayer's outstanding liability. Subsequent to such appraisal and credit against the taxpayer's outstanding liability, the director shall transfer such firearm or firearms as follows:

(A) If the firearm or firearms have historical significance, the director may transfer the firearm or firearms to the Kansas state historical society;

(B) the director may transfer the firearm or firearms to the secretary of wildlife and parks;

(C) the director may transfer the firearm or firearms to the director of the Kansas bureau of investigation; or

(D) the director may transfer the firearm or firearms to such city or county law enforcement agency where the firearm was seized.

At least 30 days prior to the transfer of such firearm or firearms, pursuant to this subsection,

the director shall give written notice by mail to the taxpayer at the taxpayer's last known address of the appraised value of such firearm or firearms and the date that the director intends to transfer such firearm or firearms. The taxpayer may appeal the appraised value of any such firearm or firearms by filing a written request for a hearing before the district court in which the tax warrant used to seize such firearm or firearms was filed. Such request must be filed with the district court within 15 days after such notice to the taxpayer was mailed by the director. If no appeal is filed with the district court within 15 days, or if upon appeal the district court rules against the taxpayer, the director shall transfer such firearm or firearms.

(g) The director of taxation may also direct the sheriff or department of revenue employee to file any warrant issued pursuant to subsection (a) with the clerk of the district court of any county in Kansas, and thereupon the clerk shall enter in the appearance docket the name of the taxpayer mentioned in the warrant, the amount of the tax or portion of it, interest and penalties for which the warrant is issued and the date such copy is filed and note the taxpayer's name in the general index. No fee shall be charged for such entry. The amount of such warrant shall thereupon become a lien upon the title to, and interest in, the real property of the taxpayer located within such county. Thereupon, the director of taxation shall have the same remedies to collect the amount of the tax, penalty and interest, as if the state of Kansas had recovered judgment against the taxpayer, including immediately garnishing the wages or other property of the taxpayer pursuant to K.S.A. 60-716 et seq., and amendments thereto. Such remedies shall be in addition to the other collection remedies provided herein.

(h) The director of taxation shall have the right at any time to issue alias warrants until the full amount of the tax, penalty and interest is collected.

Sec. 10: HB 2439

New Sec. 10. (a) No city or county shall adopt any ordinance, resolution or regulation, and no agent of any city or county shall take any administrative action, governing the purchase, possession, transfer, ownership, storage or transporting of firearms or ammunition, or any component or combination thereof, other than those expressly authorized by statute. Any such ordinance, resolution or regulation adopted prior to the effective date of this act shall be null and void. For purposes of this section, a statute that does not refer to firearms or ammunition, or components or combinations thereof, shall not be construed to provide express authorization.

"political subdivision" changed to "city or county" throughout

"regulation" added throughout

changed from allowing workplace rules to allowing zoning

(b) Nothing in this section shall:

(1) Prohibit a city or county from adopting any zoning measure related to firearms licenses if otherwise authorized by law to do so;

(2) prohibit a law enforcement officer, as defined in K.S.A. 22-2202, and amendments thereto, from acting within the scope of such officer's duties;

(3) prohibit a city or county from regulating the manner of carrying any firearm on one's person;

(4) prohibit a city or county from regulating in any manner the carrying or possession of any firearm in any jail, juvenile detention facility, prison, courthouse, courtroom or city hall; or

(5) prohibit a city or county from adopting an ordinance, resolution or regulation requiring a firearm transported in any air, land or water vehicle to be unloaded and encased in a container which completely encloses the firearm or any less restrictive provision governing the transporting of firearms.

New

(c) No person shall be prosecuted or convicted of a violation of any ordinance, resolution or regulation of a *city or county* political subdivision which regulates the possession, storage or transportation of

"carrying" deleted

a firearm if such person (1) is possessing, "carrying" deleted storing or transporting the firearm without violating any provision of the Kansas criminal code or (2) is otherwise transporting the firearm in a lawful manner.

New (d) No person shall be prosecuted under any ordinance, resolution or regulation for transporting a firearm in any air, land or water vehicle if the firearm is unloaded and encased in a container which completely encloses the firearm.

subsection deleted which preempted firearm regulations of any local entity Sec. 11. K.S.A. 21-4206, 74-5607 and 79-5212 and K.S.A. 2004 Supp. 21-3110, 60-4117, 79-3235, 79-3617, 79-5205 and 79-5211 are hereby repealed.

Sec. 12. This act shall take effect and be in force from and after its publication in the statute book.