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**House Federal and State Affairs Committee**  
HB 2199  
Assistant Attorney General Charles W. Klebe  
February 19, 2013

Mr. Chairman and members of the committee, thank you for allowing me to provide written testimony, on behalf of Attorney General Derek Schmidt. I am the Assistant Attorney General responsible for the Concealed Carry Licensing Unit and its administration of the Kansas Personal and Family Protection Act, and I also work with other firearms issues in the Attorney General's Office. The Attorney General's Office provides this neutral testimony on House Bill 2199 and, in an effort to help the Committee in its deliberations, provides the following information.

The Attorney General's is sympathetic to the apparent intent of House Bill 2199 and shares the strong sentiment that overreaching by the federal government can intrude upon individual liberties as well as the legitimate province of the state. The Attorney General shares the commitment to object strenuously to federal overreaches, including overreaches that tend to intrude upon the Second Amendment rights of Kansas citizens.

As the Committee considers whether to adopt the policy prescriptions in House Bill 2199, it should be mindful upon legal limits that restrict the ability of states to restrict the actions of the federal government and also upon potential financial risks that could arise in litigation. To state the obvious, the Supremacy Clause of the United States Constitution cannot be waived by state law, and any conflict between a valid federal law and a state law will be resolved by the Courts in favor of the federal enactment. The Committee should weigh these legal and related financial risks as it considers this legislation. The following are areas where scrutiny by the Committee is particularly advisable:

- Section 7 (creating a state-law felony offense for federal authorities to enforce certain federal laws on items that this Bill would seek to deem outside of federal consideration). If Section 7 were enforced by Kansas law enforcement, it is possible that those Kansas officers could be subject to federal criminal charges for obstruction of justice (i.e., 18 USC 1512(d)(3)). It also is possible that Kansas law enforcement officers attempting to arrest federal officers who are engaged in their official duties under authority of federal law could subject the Kansas officers, their departments and/or the State of Kansas to civil liability, including but not limited to the potential for liability under 42 U.S.C. 1983.
- Section 9 (prohibiting physicians – but not psychiatrists – from asking questions about a patient's firearm ownership or possession prior to treatment). Like any attempt by a state to restrict the speech of any person, this restriction raises issues under the First Amendment's free speech clause. It is possible that a physician or other person aggrieved by this attempt to limit, by law, what he or she can say to his or her patients may seek civil remedies against the State of Kansas, including the possibility of claims filed under 42 U.S.C. 1983.

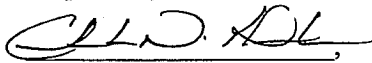
The two sections listed above, if enacted, raise the greatest risk for exposing the State of Kansas to financial liability because of the risk of federal civil rights lawsuits under 42 U.S.C. 1983. As the

Committee is aware, the prevailing party in Section 1983 actions may be entitled to have its attorneys fees paid by the non-prevailing party, which can create significant financial exposure for the State of Kansas. The fiscal note on this legislation reflects an honest assessment of the cost that may result to the State from undertaking these legal risks, and because it is impossible to predict the course of litigation it is possible that the fiscal note is understated.

The Attorney General's office also believes that sections 4 and 6 and 10 of the bill have potential to lead to litigation. For example, Section 4's consideration of what constitutes "firearm[s], firearm accessor[ies] or ammunition" could run contrary to federal definitions found under 18 USC 921(a), 26 U.S.C. 5845, 27 CFR 478.11 and 27 CFR 479.11. Section 10 (which sets an October 1, 2009, start date for these firearms, firearm accessories and ammunition to be considered wholly Kansan) may create a discrepancy with federal law, which likely will not honor such a start date if that firearm, accessory or ammunition has affected interstate commerce at some point in time prior to October 1, 2009. This interpretation gap could lead to criminal issues (particularly for items such as "flash or sound suppressors"). To possess items such as a "firearm muffler or silencer" (which are 'firearms' that are regulated by the National Firearms Act) requires a much more involved federal application process when compared to buying a semi-automatic firearm. Failure to comply with those procedures could lead to federal criminal charges (26 U.S.C. 5861) for unlawful possession of that item.

I hope this information is helpful to the Committee as it weighs the policy choices advanced by this bill against the likelihood of costly litigation resulting from enactment of this measure.

Respectfully submitted,



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Concealed Carry Unit