

April 16, 2014

The Honorable Ralph Ostmeyer, Chairperson
Senate Committee on Federal and State Affairs
Statehouse, Room 136-E
Topeka, Kansas 66612

Dear Senator Ostmeyer:

SUBJECT: Fiscal Note for SB 438 by Senate Committee on Federal and State Affairs

In accordance with KSA 75-3715a, the following fiscal note concerning SB 438 is respectfully submitted to your committee.

SB 438 would prohibit any city or county from expending any funds derived from the proceeds of any city or county taxes for the purpose of implementing, administering, or operating a firearms buyback program. In addition, no municipality could require an employee to disclose possession of a valid license to carry a concealed handgun. The bill would prohibit municipalities from maintaining records of employees who have made such a disclosure. If a municipality maintained records about employees who possess a valid license to carry a concealed handgun on or before June 30, 2014, the municipality must destroy the records on or before that date. The bill would shield cities and counties from liability relating to the wrongful acts or omissions of any person, including a city or county employee, with regard to firearms. The bill would make it unlawful to carry an unconcealed firearm into a building that was conspicuously posted, in accordance with rules and regulations that would be adopted by the Attorney General, as a building where carrying an unconcealed firearm is prohibited.

The bill would make it lawful for an individual, whether or not the individual possesses a valid license to carry a concealed handgun, to possess, store, carry or transport a concealed handgun in a motor vehicle. Except on an individual's property or during an act of self-defense or defense of another, the possession of a firearm under the influence of alcohol or drugs or both, would be a class A nonperson misdemeanor. The bill makes provisions for how testing for the presence of alcohol or drugs in such an individual would be conducted when a law enforcement officer believes probable cause exists and establishes under what circumstances the results of those tests could be considered as evidence. If a person holds a valid license to carry a concealed

handgun and is convicted of the crime established by this bill, the person's license would be revoked for a minimum of one year for a first offense and three years for a second or subsequent offense.

Cities and counties are already prevented from adopting ordinances, resolutions, or regulations governing the purchase, transfer, ownership, storage, or transporting of firearms or ammunition. The bill would prohibit the enforcement of any such existing law and would add "carrying" of firearms or ammunition to the list of activities which cities and counties cannot regulate. SB 438 would prohibit cities and counties from adopting or enforcing any law relating to firearm sales by an individual who holds a federal firearms license, if that law is more restrictive than local laws relating to the sale of any other commercial good. The bill would declare null and void any local law adopted prior to July 1, 2014, that is in conflict with the prohibitions listed above.

The bill would make modifications to related statutes governing municipal regulation of knives. Local laws governing the manufacture of knives would not be permitted to be more restrictive than laws addressing the manufacture of any other commercial good. Local laws adopted prior to July 1, 2014, which conflict with the provisions in the bill, would be declared null and void and prosecution for violation of any such local laws would be barred if the offense occurred on or after July 1, 2013.

SB 438 would change rules regarding the expungement of certain convictions and related arrest records. The bill would allow an individual to petition for expungement if the person was convicted of any law relating to the regulation of knives if the ordinance was adopted prior to July 1, 2014. This would apply to the expungement of applicable diversion agreements as well. The bill would amend the definition of "criminal use of weapons." The bill would add the following weapons to the list of those that are defined as illegal to possess when the intent is to use the weapon unlawfully against another: dagger, dirk, dangerous knife, straight-edge razor, and stiletto.

The bill would also modify the portion of the statute that makes it a crime for any person under the age of 18 to possess a firearm with a barrel less than 12 inches long. Under current law, this constitutes a violation regardless of whether the person knows or has reason to know the length of the barrel. SB 438 would remove that language. The bill would also allow a minor to shoot such a weapon at a private range with the permission of a parent or legal guardian.

SB 438 would amend current law to change criminal possession of a "firearm" to criminal possession of a "weapon" and include knives, as defined by the bill, as weapons. The bill would amend existing law concerning disposition of seized weapons and ammunition to allow forfeiture, at the discretion of the court, to the law enforcement agency that seized the weapon, the Kansas Bureau of Investigation, a county regional forensic science center or other forensic laboratory, or the Kansas Department of Wildlife, Parks and Tourism. The bill would require weapons that could not be forfeited because of condition issues and weapons used in the commission of a felony to be destroyed. A provision would be added that any weapon seized

from an individual who is not convicted of or adjudicated as described in current law must be returned to the individual from whom it was seized after verification by law enforcement that the weapon was not stolen. Proceeds from weapons that could be sold must be credited to the asset seizure and forfeiture fund of the agency that seized the weapons.

To the list of disqualifications from obtaining a license to carry a concealed handgun, the bill would add a prohibition against an individual who was convicted of or adjudicated as a juvenile offender because of the commission of an act that if done by an adult would have constituted the commission certain felonies specified in existing law. The bill would also exempt from the definition of a weapon provided in the Personal and Family Protection Act any cutting instrument that has a sharpened or pointed blade.

The Office of Judicial Administration states that passage of SB 438 could increase the number of cases filed in district court and the number of appeals relating to regulation and possession of firearms and knives. Passage of SB 438 also would result in the collection of additional docket fees in those cases filed under the provisions of the bill. However, until the courts have had an opportunity to operate under the provisions of SB 438 an accurate estimate of the fiscal effect upon the Judicial Branch cannot be given.

The Kansas Sentencing Commission indicates that passage of SB 438 would result in no immediate increase on prison admission or bed space needs. The Commission expects that passage of the bill would, however, cause an increase in the felony probation population and the workload of the Commission. It is unable to estimate the extent of that increase. The League of Kansas Municipalities indicates that passage of SB 438 would have a fiscal effect on cities that have adopted written personnel policies to address employees carrying handguns on the job and employee disclosure of being licensed for concealed carry. These cities would be required to review and change such policies. Cities that had adopted ordinances regulating weapons, as defined by the bill, would be required to review and repeal those ordinances. Because it is unknown how many cities may have conflicting personnel policies or ordinances, and also unknown what the costs to make these changes might be, the League is unable to estimate what the fiscal effect on cities might be.

According to the Kansas Association of Counties, the bill would result in costs associated with new signage to comply with the rules and regulations adopted by the Attorney General to prohibit open carry in buildings. Counties with ordinances, resolutions and regulations that would be prohibited by the bill would incur costs related to repealing or updating those laws. Passage of the bill could result in reduced costs to a county, however, since the county could not be held liable for wrongful acts or omissions related to the actions of persons carrying firearms. The Association is unable to estimate the costs or the savings associated with passage of the bill.

The Kansas Department of Wildlife, Parks and Tourism and the Kansas Bureau of Investigation state that there would be no fiscal effect on their operations from passage of SB

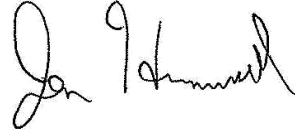
The Honorable Ralph Ostmeyer, Chairperson

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438. Any fiscal effect associated with passage of SB 438 is not reflected in *The FY 2015 Governor's Budget Report*.

Sincerely,

A handwritten signature in black ink, appearing to read "Jon Hummell". The signature is written in a cursive style with a large initial "J" and "H".

Jon Hummell,
Interim Director of the Budget

cc: Mary Rinehart, Judiciary
Scott Schultz, Sentencing Commission
Melissa Wangemann, KAC
Larry Baer, LKM
Linda Durand, KBI
Chris Tymeson, KDWPT