

# **Kansas Personal and Family Protection Act**

## **2013 Legislative Changes**

The 2013 Kansas Legislature enacted two bills that make significant changes to the Personal and Family Protection Act (“the Act”) and that affect the rights and responsibilities of concealed carry license (“CCL”) holders.

Senate Bill 21, which was proposed by the Attorney General’s Office, makes numerous technical and conforming changes to the Act. One significant substantive change is the manner in which Kansas will recognize CCLs issued by other states and jurisdictions.

House Bill 2052 makes numerous changes to the Act. One significant change is the law governing when state or municipal buildings may exclude CCL holders from carrying concealed handguns into the building.

## **FREQUENTLY ASKED QUESTIONS**

### **SB 21 (L. 2013, ch. 36)**

SB 21 amends K.S.A. §§ 12-16,124 (local regulation of firearms), 21-6304 (criminal possession of a firearm by a felon), 21-6614 (expungement of arrests, charges and convictions), 75-7c03 (CCL recognition), 75-7c04 (licensing standards), 75-7c05 (CCL application process), 75-7c07 (administration of licenses) and 75-7c25 (records of involuntary mental health commitments).

#### **Q: What does the amendment in Section 1 do?**

A: This amendment addresses K.S.A. 12-16,124(a) and 12-16,124(d) by cleaning up a reference in each to an old KPFPA statute (75-7c11) that was repealed in 2010. It also amends 12-16,124(b)(2) and (b)(4) so that those protections are afforded to CCLs from other jurisdictions which are recognized by Kansas.<sup>1</sup>

#### **Q: I have an expunged felony conviction. Do the changes in Sections 2 and 3 of SB 21 mean that that expunged conviction cannot be used when reviewing my application?**

A: Generally, no. Prior felony convictions that occur in Kansas’ state court system result in four (4) categories of firearm prohibition periods in Kansas: lifetime (under subsection (a)(1)); a 10 year prohibition for more serious person and drug felonies (under (a)(3)(A)) or for certain

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<sup>1</sup> See discussion of amendments to K.S.A. 75-7c03 below for updates to recognition in Kansas.

nonperson felonies (under (a)(3)(B)); and a catch-all 5 year prohibition period under (a)(2) for any felony that does not fit subsections (a)(1) or (a)(3).<sup>2</sup>

Under Kansas law, the general rule is that the expungement of a felony conviction **will not** sever any state or federal firearms prohibition. The amendment in Section 2 to K.S.A. 21-6304 and the amendments to K.S.A. 21-6614 in Section 3 reiterate this point. They make it clear that the **only** time a firearms prohibition is severed by expungement (or pardon) of a prior felony is when that prior felony conviction falls into 21-6304(a)(3)(A). **NOTE:** The expungement of that felony will only sever any firearm's restrictions for that felony; if the individual has other criminal history that resulted in a loss of firearm rights then that loss is not affected by the expungement. Some felony offenses listed in (a)(3)(A) are not expungeable, however. If you have felony criminal history, you need to consult with private legal counsel about your specific situation and discuss whether Kansas law allows you to possess firearms.

Felony convictions that occurred in another state or in any federal court will have to survive the firearms expungement, set-aside, pardon or restoration procedures of that other jurisdiction and the restoration procedures of Kansas law under 21-6304 before the individual will be considered eligible to possess firearms in Kansas (and, therefore, be eligible for a CCL).

**Q: I live in another state and have a non-expired CCL from that State. Am I lawful to carry concealed handguns in Kansas?**

A: On and after July 1, 2013, Kansas will honor any "valid" concealed carry license that is issued by another state or the District of Columbia so long as the holder of that CCL is not a resident of Kansas. Section 4 of SB 21 amends K.S.A. 75-7c03 to allow this broader recognition.

So long as the non-Kansas CCL is "valid" (defined as non-expired and not revoked or suspended) and so long as the holder is not a resident of Kansas, that non-Kansas CCL will be honored by Kansas.

**Q: I am moving to Kansas from another state and have a non-Kansas CCL. Can I continue to carry concealed using my non-Kansas CCL?**

A: By law, a resident of Kansas whose only authority to carry concealed comes through CCL must either have a Kansas CCL or fit the active duty military exception. For new residents to Kansas between July 1, 2010, and June 30, 2013, the Attorney General will issue a 90-day temporary receipt to that resident once they have submitted a Kansas CCL application which includes a copy of their valid non-Kansas CCL license which is currently honored by Kansas.

On and after July 1, 2013, for new residents to Kansas (new as of July 1, 2010, and later), upon receiving a Kansas CCL application from that resident, which includes a copy of **any** valid non-Kansas CCL, the Attorney General will issue a 180-day receipt to continue carrying while that application is pending. The Attorney General's office will determine whether that applicant's

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<sup>2</sup> Felony convictions that occur in another state must satisfy the restoration procedures from that state and Kansas; prior Federal felony convictions must satisfy any Federal restoration procedures as well as those time limits of Kansas law.

non-Kansas CCL was issued after receiving training which was equal to or greater than the training imposed by Kansas law in order to receive a Kansas CCL.

- If the non-Kansas CCL was issued after receiving equal to or greater training compared to Kansas law, then the applicant will not have to complete the Kansas training course in order to become approved;
- If the non-Kansas CCL was issued after receiving no training or training that was not equal to or greater than that of Kansas, then the individual will have until the expiration of their 180-day receipt to complete the Kansas training course. If the applicant fails to complete the Kansas training before the expiration of their 180-day receipt, their application will be denied.

**Q: If my current non-Kansas CCL did not require any training or my training was not equal to or greater than Kansas' CCL training, do I have to take the Kansas training course before applying?**

A: No. Simply follow the directions for supplying a completed application (minus the Kansas training certificate) through the sheriff of your county of residence and the Attorney General's office will send you a 180-day receipt that will enable you to continue carrying while you locate a Kansas training course to take during that 180 days. Be sure you attach a copy of your valid non-Kansas CCL to the application. If, however, you fail to submit that Kansas training certificate before the expiration of your 180-day receipt, your application will be denied.

**Q: I have a non-Kansas CCL that did not require any training, but I keep up with my marksmanship regularly at the range and I've taken some other trainings since then. Can those trainings be used to bypass the Kansas training?**

A: The training used to bypass the Kansas training must have been used to obtain the non-Kansas CCL for which the applicant is relying upon. If the training occurred after that license's issuance, it will not be considered for the Kansas license.

**Q: I believe my prior non-Kansas CCL training will meet the equal to or greater than standard. What do I need to do when applying for the Kansas CCL?**

A: Attach copies of the training certificate and all documentation you have which will show the nature of the training you completed (i.e., the topics covered and the live-fire demonstration). Providing the Attorney General's office more information to review ahead of time should help reduce the review time for the application. **NOTE:** Some of the more popular training courses, such as the NRA Basic Pistol course, will not need extra documents submitted with that training certificate as the course requirements for those courses are readily known or locatable. However, a course which is less widely known may require more documents to show the course's framework.

**Q: Because Kansas now recognizes all CCL licenses and permits for non-residents, if I move to Kansas will my non-Kansas CCL be proof of training?**

A: Not necessarily. On and after July 1, 2013, the training used to obtain the non-Kansas CCL will be reviewed to determine whether that previous training was “equal to or greater than” that required by Kansas concealed carry law. Some states require no training at all and some states have training standards that may or may not meet those of Kansas.

The Attorney General was given the discretion to compile a list of states whose training would meet this equal to or greater than standard or review each application on a case by case basis. Irrespective of what a state requires by law, the Attorney General’s office will review the training that the applicant actually received to determine that qualification. The Attorney General’s office understands that a state’s concealed carry law may not require an applicant to demonstrate handgun proficiency during training – but the applicant may have done such a demonstration during their training and the Attorney General’s office does not want to discount that.

**Q: If it takes me almost the entire 180 days to get a Kansas training certificate to the Attorney General’s office, will my 180-day receipt be extended while application finishes the review process?**

A: No. Once the 180-day receipt expires, there is no extension. This is why it is important to get the Kansas training done as soon as possible in order to avoid any periods where you will not be able to lawfully carry.

**Q: In my prior state of residence, my position as a certified law enforcement officer enabled me to bypass the Kansas training course. Is there a similar allowance for a Kansas CCL?**

A: There are several points to cover here, but the short answer is “no.”

“Law enforcement officers” in Kansas do not need a Kansas CCL in order to carry a concealed firearm. However, if they desire a CCL, then the law currently requires them to complete the concealed carry training course as well. There are a couple of exceptions to this general rule.

If you can produce proof, by letter from your former agency, that you retired from your law enforcement agency for reasons other than mental instability and are otherwise in compliance with K.S.A. 75-7c05(g), and amendments thereto, then you qualify for a training course bypass; or

If you are a “corrections officer, a parole officer or a corrections officer employed by the federal bureau of prisons” and you can produce proof that you last completed a Department of Corrections or Bureau of Prisons firearms qualification from the past year – then you are exempt from the Kansas training course. If your DOC or BOP firearms qualification was more than one year ago, and you do not qualify for the exception above, you will need to take the Kansas training course.

If you have further questions after reading the above, send the Concealed Carry Licensing Unit an email to [ksagcc@ksag.org](mailto:ksagcc@ksag.org) and staff will respond as quickly as possible to your questions.

### **S. Sub for HB 2052 (L. 2013, ch. 105)<sup>3</sup>**

#### **Q: What does the language of HB 2052, section 2, set out to do?**

A: The general rule of Section 2 is that on and after July 1, 2013, any “state or municipal building” must have “adequate security measures” in place to prevent any weapon from entering the building and properly post Attorney General-approved signage if that state or municipal building desires to restrict the licensed concealed carry of handguns within its walls.

NOTE: There are exceptions and exemptions to this general rule.

#### **Q: Who does this general rule affect?**

A: In a broad sense, this section affects any “state or municipal building;” and it affects those who are authorized to carry a concealed handgun under the Kansas Personal and Family Protection Act.

#### **Q: Who does this general rule not affect?**

A: The general rule will have no effect on the buildings of private businesses – even if the building is one that is state-owned or municipally-owned and leased by a private business. Any building that is held by the state or a municipality for revenue bond financing is likewise exempt from coverage as a “state or municipal building.”

Also not affected by this section are: Kansas schools for the deaf and blind; the secure areas of any buildings for a correctional facility, jail facility or a law enforcement agency; and courtrooms where the chief judge of the judicial district has prohibited firearms (provided there are other means of security available – such as armed security or law enforcement).

The last group of unaffected state or municipal buildings will be those that would ordinarily qualify under the act but which exercise one of three allowed exemptions. Those exemptions are found under subsections (i) and (j) of Section 2.

#### **Q: If we are not an automatically exempted building, where can we find the exemptions available to us in the law?**

A: The Legislature has offered three exemptions but not all three are available to all “state or municipal buildings.” These exemptions within Section 2 will enable exempted buildings to refrain from installing “adequate security measures,” if they choose, for a maximum of four and one-half years in some instances while still prohibiting concealed carry licensees from carrying handguns into the building.

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<sup>3</sup> Session law reference to ch 105 is subject to change as directed by the Kansas Secretary of State’s office.

There is a general six-month exemption available to any Section 2-covered state or municipal building. This exemption is found under Section 2(i) and it will run from July 1, 2013, through December 31, 2013.

There is a four-year exemption for specifically enumerated buildings found under Section 2(j).

And there is a catch-all four year exemption for any other qualified state or municipal building also found under Section 2(i).

**Q: We are the governing body (or I am the chief administrative officer) of a state or municipal building that is not automatically exempted from this Section. How do we (I) seek an exemption from this law until we've had a better opportunity to review it and the effects it might have?**

A: This answer will depend on what date the question is being asked and which exemption your building's management is entitled to ask for.

If you are wanting to exercise the 2013 six-month exemption (good through December 31, 2013) from Section 2(i), then your building's governing body or, if no governing body exists, chief administrative officer can submit a letter exercising the exemption to the Attorney General's Concealed Carry Unit and a letter exercising the exemption to the law enforcement agency of local jurisdiction. No further information (security plans, reasons etc.) are required for this exemption.

If you are a building that falls under those specified in Section 2(j) and you are seeking to institute the four year exemption at any point, then the governing body (or chief administrative officer if no governing body exists) is required to submit a letter exercising that exemption to the Attorney General (no letter to the law enforcement agency of local jurisdiction is required by statute – but may be beneficial regardless in the sense of Notice to that agency). Included within that letter must be stated the reasons why the exemption is being exercised.

NOTE: The buildings specified in 2(j) are:

- state or municipal-owned medical care facilities, defined under K.S.A. 65-425;
- state or municipal-owned adult care homes, defined by K.S.A. 39-923;
- community mental health center organized under 19-4001 et seq;
- indigent health care clinics defined by 65-7402; and
- postsecondary educational institutions as defined by 74-3201b (including buildings that are leased by the institution).

On and after January 1, 2014, if you oversee a state or municipal building (again, as a governing body or, where no governing body exists, the chief administrative officer) other than those specified under Section 2(j) and it is determined that the four year exemption under 2(i) will be exercised, then you must:

- provide a letter of the exemption (via resolution or letter) to the Attorney General and law enforcement agency of local jurisdiction;

- include a legal description of the building(s) being exempted;
- include the reasons for seeking the exemption; and
- include the following statement: “A security plan has been developed for the building being exempted which supplies adequate security to the occupants of the building and merits the prohibition of the carrying of a concealed handgun as authorized by the personal and family protection act.”
- Make a copy of the security plan(s) available to local law enforcement or the Attorney General’s office upon request. **DO NOT** mail a copy of the security plan to the Attorney General’s office with your four-year exemption letter.

**Q: Once the four-year exemption is coming to an end, how can we renew the exemption?**

A: Under the current language of the law, the four year exemptions were only allowed for a one-time use. After the four years has run, the buildings will either need to allow licensed concealed carry or have adequate security measures and proper signage in place.

**Q: Who can submit an exemption notice?**

A: By statute, the exemption request must come from the governing body of the state or municipal building. If no governing body exists for that building, then the chief administrative officer for the building must submit the exemption notice.

**Q: How long does the exemption review process take?**

A: There is no review process. Exemptions are not “granted” or “denied” as no authority to do so was provided in the statute. The Attorney General will return a file stamped copy of the exemption letter to acknowledge its receipt. If the exemption appears to be missing any information (particularly with regard to the 2(i) four-year exemptions where more information is required), the Attorney General may include a letter of response which explains that the Attorney General’s office believes the exemption to be deficient. Ultimately, however, it will be up to the exercising body or administrative officer to make sure that the exemption exercised was done so in accordance with the statutory guidelines of Section 2.

**Q: Within the four-year exemption of Section 2(i), the required statement mandates that a security plan be “developed” – are there any guidelines for what the security plan should entail?**

A: No. The term “security plan” was not a defined term within the act. The only guidance given by the Legislature is that the security plan must supply “adequate security to the occupants of the building.”

**Q: Does the fact that the security plan has to have been developed mean that the security plan must be active at the point of requesting an exemption?**

A: Yes. The four-year exemption in Section 2(i) cannot be sought to further develop a security plan for the building. It must provide “adequate security to the occupants of the building” at the time the exemption is requested.

**Q: Within Section 2(i)’s statement for the security plan, what is meant by “adequate security” for the building’s occupants – does “adequate security” equal the definition of “adequate security measures?”**

A: The Legislature did not provide a separate definition for what constitutes “adequate security” and it was not defined under Section 2(i) to mean the same as “adequate security measures.” If exercising a security plan that has “adequate security” for the building’s occupants is equal to having “adequate security measures” then there would be no need for the exemption; the Legislature would essentially be requiring the building to have “adequate security measures” in place before the building could exempt itself from having to install “adequate security measures.”

**Q: Does a copy of the “security plan” need to be attached to the 2(i) four-year exemption request?**

A: **No.** The security plan needs to be maintained on file in case the Attorney General or law enforcement agency of local jurisdiction should request it for review.

**Q: If a member of the public wishes to examine the security plan that was declared in the 2(i) exemption request, do they have a right to see it?**

A: No. Per Section 2(i), the security plan itself is not a record subject to the Kansas Open Records Act.

**Q: If a building(s) has elected to exercise one of the allowed exemptions, what effect does that have for licensees carrying concealed into that building?**

A: Licensed concealed carry could be restricted through the proper posting of Attorney General-approved signage at all entrances to the building(s) and the building would not be required to have adequate security measures in place. Essentially, most concealed carry law would remain as it was pre-July 1, 2013.

NOTE: K.S.A. 75-7c10 was amended in other ways during the 2013 session, including a revision to the penalty section. That new penalty section would still be effective even if the building has exempted itself. The penalty for violating 75-7c10 would not revert back to its misdemeanor position of pre-July 1, 2013.

**Q: Will the Attorney General be maintaining a complete list of the buildings that have given Notice of exemption?**

A: No. There is no statutory directive to compile or publish this information.

**Q: If the Attorney General is not maintaining a list of the exempt buildings, how do licensees know whether or not a state or municipal building has sought exemption?**

A: On and after July 1, 2013, the original Attorney General-approved signage for buildings to restrict licensed concealed carry will be insufficient postings for state and municipal buildings who have exempted themselves from having “adequate security measures.” The Attorney General’s Office has designed a new sign by temporary regulation for state or municipal buildings that exempt themselves from the provisions of Section 2. The new signage includes specific text and will need to be displayed at all of the buildings’ entrances.

**Q: If we choose to allow concealed carry within our buildings without the “adequate security measures” in place, and later determine that we would like to exempt the buildings, will that be allowed?**

A: As the law stands, the language would not prevent such a procedure. Again, the four-year exemption is currently a one-time use.

**Q: I am a CCL holder who works in a qualifying state or municipal building. If my building does not put adequate security measures in place and the building does not exercise an exemption from Section 2, can I carry while I’m at work?**

A: Yes. Section 2(c) states that adequate security measures and signage are necessary in order to “prohibit” an employee from carrying on and after July 1, 2013.

NOTE: Again, if the building has exempted itself, then the law largely reverts back to its pre-July 1, 2013 position and K.S.A. 75-7c10(b) language relating to employer/employee relations would still be in effect.

**Q: I am a CCL holder who works in a qualifying state or municipal building. My building has put in place “adequate security measures” and posted the public entrances with Attorney General-approved signage. But I am able to access my building through private access entry – am I still allowed to carry concealed while at work?**

A: Maybe. The answer will depend upon whether your employer has authorized you, as an employee, to carry concealed or whether the employer has a policy against employees carrying concealed in the building.

If the latter is the employer’s position, then the answer to this question is that, under Section 2(d), it is not a violation of the Act for you to carry concealed into such a building. However, other laws or actions may be applicable to you. An employee-licensee should consider consulting with private legal counsel about their legal rights in that scenario.

**Q: Same as above, except the employee-licensee does not have restricted access entrance to the adequately secured and properly posted building?**

A: Again, such an employee may be allowed by the employer to carry concealed in certain situations but here, absent that authorization, the licensee violates the Act and, again, other laws or actions may be applicable. Again, consult private legal counsel to know your full, personal legal rights in that situation.

**Q: I was reading through the provisions of HB 2052, and I see under Section 9, which addresses K.S.A. 75-7c10, that statute still says an employer can restrict my ability to carry concealed while I'm engaged in the duties of my employment. Does 75-7c10 or Section 2 control these restrictions?**

A: For state or municipal buildings, Section 2 controls. As is clearly spelled out in Section 9, K.S.A. 75-7c10 was amended there so that the entirety of that statute will be subject to Section 2 on and after July 1, 2013. Any employer/employee restrictions will have to comply with Section 2 at that point in time – unless an exemption (granted by the Legislature or exercised by the state or municipal building's management) applies. For any other employer/employee scenario – K.S.A. 75-7c10 controls.

**Q: What are “adequate security measures?”**

A: By definition within Section 2, “adequate security measures” involves “the use of electronic equipment and personnel at public entrances to detect and restrict the carrying of any weapons into the state or municipal building, including, but not limited to, metal detectors, metal detector wands or any other equipment used for similar purposes to ensure that weapons are not permitted to be carried into such building by members of the public.”

**Q: Does the building have to provide secure storage for weapons that are discovered during screening?**

A: No. Storage is not required, but it is allowed.

**Q: Do all entrances of a qualifying state or municipal building have to have “adequate security measures” in place in order to restrict licensed concealed carry?**

A: No, but all public access entrances do under Section 2(b). If other entrances are “restricted access entrances” then those entrances are not required to have “adequate security measures.”

**Q: Is the State Capitol building now accessible for those authorized to carry concealed under the KPFPA?**

A: No. However, between June 1, 2014, and June 30, 2014, the legislative coordinating council will review the security position of the Capitol building and, if “adequate security measures” are not in place by that point in time, CCL holders will be allowed within the Kansas Capitol building.

**Q: I am an individual who is carrying concealed under the authority of the Law Enforcement Officer's Safety Act (LEOSA). Am I allowed to carry concealed into buildings restrict concealed carry under the KPFPA?**

A: As of July 1, 2013, LEOSA carry in Kansas will be more broadly recognized in Kansas. See HB 2052, Sections 4, 5 and 9.

NOTE: LEOSA carry could still be limited in buildings where metal detectors and personnel are employed to detect weapons. The provisions of Section 2 only apply to licensed concealed carry pursuant to the Personal and Family Protection Act, but other adequately secured buildings may have complete weapons bans except those carried by their own personnel.

**Q: What other changes did HB 2052 bring about related to concealed carry in Kansas?**

A: Under Section 5, K.S.A. 21-6309 is amended in several respects. First, under subsection (a), some language was clarified about those places that are off-limits to firearms. Second, former subsection (c)(5) is removed and is now found in a modified form under new subsection (e). This new language eliminates some prior limitations that applied to CCL holders while at the Governor's residence, grounds of the Governor's residence, etc. Third, in subsection (f) some clerical changes were made to the statute to remove the terms "facility" or "facilities" and instead refer to "building" or "buildings." And, finally, in the definitions for 21-6309(g), "adequate security measures" is now defined by reference to the definition found in Section 2.

Under Section 6 of the Bill, the Kansas Open Records Act was amended by adding a new paragraph (53) in subsection (a). This section states that "records of a public agency that would disclose the name, home address, zip code, e-mail address, phone number or cell phone number or other contact information for any person licensed to carry concealed handguns or of any person who enrolled in or completed any weapons training in order to be licensed or has made application for such license under the personal and family protection act,..." are protected information that are not subject to disclosure by the agency unless otherwise required by law.

**Retired Law Enforcement Officers:** In Section 7, K.S.A. 75-7c05 is amended in several ways. First, as of July 1, 2013, all CCL applicants will pay the full application fee of \$132.50 (\$32.50 to the County sheriff where they reside and they will pay \$100.00 to the Attorney General). This will affect those who are applying as retired law enforcement officers. Other fees will be required, such as the training course and getting the actual license card issued through the DMV.

The other manner in which K.S.A. 75-7c05 was modified in HB 2052 is that qualified corrections officers, parole officers or a corrections officer employed by the federal Bureau of Prisons will be exempted from taking the Kansas training course if they were last firearm certified by the Department of Corrections or federal Bureau of Prisons (or similar body from another jurisdiction) within the past year.

Section 8 amends K.S.A. 75-7c06 to simply reflect the modifications made within the Kansas Open Records Act as spelled out under HB 2052, Section 6.

Section 9 amends K.S.A. 75-7c10, making the entire statute is subject to Section 2. Next, the previously listed locations of subsection (a) were removed and the prior bright-line rule of being able to post Attorney General-approved signage on “buildings” is made even brighter.

One substantive change made by HB 2052 is that licensees will no longer be subject to a criminal penalty for simply carrying past a properly posted Attorney General-approved sign. The licensee will be subject to denial of entry or removal from the building. If licensees fail to comply with removal commands, a “criminal trespass” charge may apply. In other words, if you carry past a properly posted Attorney General-approved sign, and are asked to leave the premises – do so.

Under subsection (c), the Legislature sought to include some liability protections for private businesses. Those are when: (1) the business complied with adequate security measures and posted signage; or (2) allows licensed concealed carry into the building. The Legislature also included language stating the act is not meant to increase liabilities as they exist under the personal and family protection act.

New subsection (d) allows various entities (including K-12 school districts and postsecondary education institutions) the option of allowing staff to carry within their buildings even if Attorney General-approved signage is properly posted on the building(s). And finally, a new reference to the state capitol building is added in new subsection (f).

Finally, Section 10 of HB 2052 amends K.S.A. 75-7c17 to reflect the new provisions of Section 2.