

KANSAS PERSONAL AND FAMILY PROTECTION ACT: K.S.A. 75-7c01 *et seq.*

As Amended by 2010 S.B. 306 (L. 2010, ch. __)

INTRODUCTION

On May 17, 2010, Kansas Governor Mark Parkinson signed Senate Bill (SB) 306 allowing it to become law on July 1, 2010 as prescribed by Section 19 of the Bill. The Concealed Carry Unit (Unit) of the Attorney General's Office (AG) is tasked with the administration, interpretation and, to a quasi degree, enforcement of the KPFPA.

SB 306 is a fairly comprehensive change of existing law in terms of how to obtain a license; the general expectations and requirements for licensees after becoming licensed; and renewal procedures. The following is the Unit's interpretation of what those changes will entail for current and future concealed carry licensees. The summaries will simply progress through each sequential statute that was amended in substance by SB 306. Not every alteration will be discussed as some changes were merely cosmetic in cleaning up language – but this summary should address all substantive changes and many of the cosmetic changes.

SUMMARY OF CHANGES

75-7c02

The definitions statute was altered in two ways. The first change occurred to the term “weapon” was amended to “handgun” which will have the same definition as “firearm” under K.S.A. 75-7b01. That statute says a “firearm” is, “(1) A pistol or revolver which is designed to be fired by the use of a single hand and which is designed to fire or capable of firing fixed cartridge ammunition; or (2) any other weapon which will or is designed to expel a projectile by the action of an explosive and which is designed to be fired by the use of a single hand.”

The second change here was the inclusion of “dependents” for active duty military personnel who are stationed in Kansas. As of July 1st a person who resides with an active duty military member of any armed forces branch AND who is financially dependent *in whole or substantial part* upon that member does not need to obtain a Kansas DL or ID in order to get a Kansas CCH license.

75-7c03

The changes within the first subsection - (a) – are cosmetic and of no substantive value; the changes to (b) highlight the alterations made for military “dependents” and also make clear that administrative penalties for violations of 75-7c03 (in particular carrying but without *valid* license) will not carry with them a criminal violation of K.S.A. 21-4204(a)(4) (the general unlawful

concealed carry statute). The Unit has never espoused that such a criminal penalty should result – but this addition adds clarity and support for that previous advice to law enforcement and prosecutors across Kansas.

The changes to subsection (c) command the attorney general to now determine which states' CCH licensing standards are “reasonably similar to or greater than” those of Kansas. Current requirements call for an analysis of “equal to or greater than” Kansas. In function, it is nearly impossible for a state to have 100% identical standards to those imposed by Kansas so the recognition standards recognized by the Attorney General have never reflected a thru *equal to* standard. However, this new standard will allow the Unit to reassess the previous recognition criteria and determine what, if any, adjustments should be made.

** A new subsection (d) was added under SB 306. This new subsection provides guidance for individuals moving to Kansas, on and after July 1st, if that individual is already licensed by a recognized jurisdiction. These parameters, if met, would allow that individual to continue carrying under their non-resident license while awaiting a Kansas license. In order for this to occur, the following events have to have occurred:

- (1) Residency in Kansas is established *on or after July 1, 2010*;
- (2) The new Kansas resident has a *valid CCH license* issued by a jurisdiction whom Kansas already recognizes;
- (3) The new Kansas resident fills out and completes the application for a Kansas CCH license (including: submission of all required materials to the sheriff in the county of residence)
- (4) The new Kansas resident attaches to that Kansas application a copy of their non-resident/recognized CCH license as proof of training to bypass the Kansas training requirement; AND
- (5) The individual has *received and carries with them* a receipt issued by the AG/Unit which shows that their Kansas application has been received.

NOTE: Some jurisdictions that Kansas recognizes may sever the validity of a license if the individual is no longer a resident of the state they were in when the license was originally issued – some may not. The Unit will strive to stay up to date with the recognized jurisdictions to find out which, if any, will sever validity and for what reasons – HOWEVER, it is ultimately incumbent upon the new Kansas resident to make sure that their nonresident/recognized license is still *valid*. The Unit will confer with the jurisdiction of issuance to double-check on validity status upon receipt of such an application.

75-7c04

** The criminal history and other background disqualifying events have significantly changed for CCH licensing in Kansas. SB 306 amended subsection (a) to have five *primary* requirements – two of those primary requirements (eligibility to ship, transport, receive and possess firearms under State and Federal law) have several components within them. Those subrequirements are explained a little further down.

CCH applicants in Kansas must be:

- (1) 21 years of age or older;

- (2) A resident of the state (no time limitation anymore);
- (3) A resident of the county that they are applying;
- (4) Eligible to possess firearms under Federal law (18 USC 922(g) & (n)); and
- (5) Eligible to possess firearms under Kansas law (KSA 21-4204(a)).

First, a quick synopsis of what was removed from the criminal history disqualifications.

- (1) Completed diversions are no longer disqualifications – no matter what the offense was for (see note below);
- (2) DUI's: currently, felony DUI convictions or 2 *misdemeanor DUI convictions (which includes diversions) within the 5 years immediately before application* would disqualify an applicant; now only a felony DUI will disqualify an applicant (see state law explanation below for further explanation of this point);
- (3) Misdemeanor controlled substances (drugs): Currently misdemeanor drug convictions and diversions disqualify if they occurred within the 5 years immediately before application OR if they qualified for denial due to a permanent firearm possession ban under KSA 21-4204(a)(2); now only the permanent ban will disqualify for a misdemeanor drug conviction (see state law explanation below);
- (4) Unlawful concealed carry under 21-4201(a)(4) and “CUI” violations: currently convictions or diversions for these offenses or similar violations from another jurisdiction would disqualify an applicant if they had occurred within the 5 years before application; as of July 1, these will no longer be considered;
- (5) Expungement requirement for felonies: This post-conviction (or post-diversion) remedy will no longer be *required* if the applicant has a felony criminal history; HOWEVER, an expungement of the offense WILL NOT relieve most firearm prohibitions under state or federal law so those requirements still have to be met in order to be eligible for licensure (see below);
- (6) Contempt of Court for child Support proceedings will no longer be a consideration;
- (7) US Citizenship: this will be expanded as per federal requirements (see below);
- (8) Suicide attempts within the 5 years immediately before applying are also no longer a consideration (see mental health explanations below).

NOTE ON DIVERSIONS: An individual who is still under the terms of a diversion agreement with a prosecutor's office still has charges pending against them until they successfully complete the diversion program. Therefore, they are still be considered “under indictment” for purposes of federal prohibitions of 18 USC 922(n). This would only apply to any offense where the possible punishment involves imprisonment for over a year - which means almost all felony charges. The Unit would advise anyone who is currently subject to a diversion agreement for a felony level offense that they should wait until their diversion terms are successfully completed and the case is dismissed before applying.

FEDERAL LAW REQUIREMENTS – 18 USC 922(g) & (n)

Many of these requirements were already a part of the KPFPA since its inception, in fact, only a few were not. Here are the current Federal prohibitions to being eligible to ship,

transport, possess or receive a firearm (applicable subsections are noted parenthetically after the disqualifier):

- (1) Anyone *convicted* in any court of a *crime punishable by imprisonment for a term exceeding one year*; (g)(1)
- (2) Anyone who is a *fugitive from justice*; (g)(2)
- (3) Anyone who is an *unlawful user of or addicted to a controlled substance*; (g)(3)
- (4) Anyone who has been *adjudicated as a mental defective* or has been *committed to a mental institution*; (g)(4)
- (5) Anyone who is an illegal or unlawful alien; or an alien here in the United States under *nonimmigrant VISA*; (g)(5)
- (6) Anyone who has been dishonorably discharged from the military; (g)(6)
- (7) Anyone who has renounced their U.S. citizenship status; (g)(7)
- (8) Anyone who is subject to a court ordered protection order that the individual had notice of and an opportunity to participate at and are still prohibited from harassing, stalking, threatening, using physical force against an intimate partner or child. These protection orders also apply to anyone who has been found to be a credible threat to the physical safety of an intimate partner or child even if there are no explicit prohibitions against using or threatening physical force; (g)(8)
- (9) Anyone who has been *convicted* in any court of a *misdemeanor crime of domestic violence*; (g)(9)
- (10) Anyone who is under *indictment* for a crime punishable by imprisonment for a term exceeding one year. (n)

Many of the terms used above, such as those in italics, have specific definitions under federal statute, regulation or have been explored and explained through federal case law. Please refer to the updated Concealed Carry Application and the “FAQ” forms for these definitions. The Unit will do our best to keep definitions and case law up to date so that potential applicants can have a good idea as to whether or not they are disqualified. However, these concepts and terms are ever-evolving through case law and can depend upon the minute facts or intricacies of a case. Therefore, each applicant needs to understand that the information published by the Unit is only intended as a general guide. An Applicant’s criminal and civil history is just that – the Applicant’s. It is ultimately up to the Applicant to ensure their own compliance before applying – the Unit cannot give individualized legal advice or concrete preemptory decisions of qualification.

The Unit is tasked with a broad reading of the KPFPA and we will do just that. However, just because the Unit interprets your criminal and civil history as being okay, that does not mean the federal government will also – and the federal interpretation will control in the end. The above disqualifications come through the federal system of government – the Unit may make an interpretation mistake from time to time (it has happened). If an applicant has an issue with the way the Unit is interpreting the federal law with respect to an incident in the applicant’s criminal (or civil) history, then the Unit’s decisions can be challenged administratively and, ultimately, in the State court system.

STATE DISQUALIFICATIONS FOR FIREARM POSSESSION: KSA 21-4204

All adult convictions or juvenile adjudications for felony level offenses will require a minimum of a five year firearm possession ban under K.S.A. 21-4204(a)(3). There are, however,

several other situations that can arise depending upon the facts of the individual's criminal case that will dictate up to an additional 5 year ban – or potentially a *lifetime* ban. Remember, under Kansas law, the restoration of firearm rights is *automatic* – a previously prohibited person does not have to take any affirmative steps to restore their rights once eligible again. The only real world advice the Unit offers in this context is for the individual to be sure that they are in compliance (consult with private legal counsel) before possessing firearms again.

Under K.S.A. 21-4204(a)(1) and (a)(2), the *lifetime* firearm prohibitions are laid out. If an individual is deemed to be “addicted to or an unlawful user of” controlled substances, then they are not allowed to possess firearms under (a)(1). Under (a)(2), if the individual has been convicted as an adult or adjudicated as a juvenile for any “person felony” (or crime now classified as such) AND they were found to be in possession of a firearm at the time of the offense, then they are permanently barred.

Under subsection (a)(4)(A), there are several felonies enumerated that require 10 years to have elapsed since conviction or release from imprisonment. These are felonies where a firearm cannot have been possessed by an individual at the time of the offense. Although this 10 year period can be severed early if the conviction is expunged or pardoned – many of the listed felonies are not expungeable under KSA 21-4619, therefore, the full 10 year prohibition will usually have to be satisfied.

Under subsection (a)(4)(B), there is a 10 year prohibition from conviction, adjudication or release from imprisonment for individuals with a nonperson felony where a firearm *was* possessed at the time of the offense (this 10 year prohibition is not severable with an expungement or pardon). NOTE: As indicated, some of the possession bans under 21-4204 are measured from date of release from imprisonment for a crime – not the conviction date. Generally speaking, “imprisonment” will refer to time spent within the custody of the Kansas Department of Corrections’ facilities. If such has not occurred, a person’s eligibility will more than likely be judged from the date of conviction.

SB 306 eliminated the need for Kansas CCH licensees to complete a renewal training course prior to renewing their license. This elimination is seen through the removal of old subsection (c) of this statute. While KSA 75-7c08 deals with the renewal process in general, that statute did not originally install the need for a renewal training course so similar strikings are not seen under 75-7c08.

75-7c05

Applicants are required to attach a photocopy of their state identification card (DL or ID). For most applicants, this will be a DL or ID from Kansas – the exceptions would be active duty military and their dependents.

A major change to the initial application process was that the initial application fees have been reduced. Now, the Sheriff’s offices must receive \$32.50 from an applicant and the Attorney General must receive \$100.00 (as opposed to \$40 and \$110). The Concealed Carry Unit and Sheriff’s Offices are also now required to accept personal checks for payment of application fees. Keep in mind, if a personal check is used and returned to the Unit or Sheriff as having insufficient funds – the application will be deemed incomplete and will not be subjected to the 90 day time limitation for review until it is “complete” (payment in full received).

An individual who is a new resident to Kansas as of July 1, 2010 or after, may be eligible to bypass the Kansas training course AND carry concealed during their pending Kansas application. In order for this to happen the applicant must have a *valid* concealed carry license or permit that was issued by a jurisdiction that Kansas recognizes. If in possession of such a license or permit, they must attach a photocopy of that license or permit to their Kansas application when they turn in their materials at the county Sheriff's office. Once the Unit has confirmed the validity of the recognized license then the Unit will respond to the Applicant with a receipt that the Applicant must keep with them when carrying under that recognized license.

REMEMBER: A RECEIPT FROM THE ATTORNEY GENERAL MUST BE CARRIED IN CONJUNCTION WITH THE RECOGNIZED LICENSE IN ORDER FOR THE PERSON TO BE LEGAL TO CONTINUE CARRYING!!!! A PERSON MAY NOT SIMPLY MOVE TO KANSAS AND CONTINUE CARRYING UNTIL THEY APPLY – IF YOU DO NOT HAVE THE RECEIPT THEN YOU CAN BE CITED FOR UNLAWFUL CONCEALED CARRY.

Retired law enforcement officers who are applying for a Kansas CCH license have also been the recipient of lower fees (\$25 and \$50 for a total of \$75). Also, the statutes now prescribe what an individual must submit to the Attorney General in order to substantiate their claim of being a retired law enforcement officer. This definition largely tracks the Federal LEOSA language of 18 USC 926C. In essence, the Attorney General will need a letter from the individual's retiring agency head which state's that the individual retired in good standing for reasons other than mental instability.

75-7c07

The major changes to this statute include allowances for (1) a Kansas resident to move to another state and have their Kansas CCH remain valid for 90 days; and (2) a Kansas CCH holder who moved away may be eligible to return and have their Kansas CCH license reinstated without penalty.

In order for (1) to happen, the individual MUST notify the Attorney General of their relocation to another jurisdiction. Additionally, the new jurisdiction of residence MUST accept the Kansas license as valid (given that the person is no longer a resident of Kansas). If the notice provision is met, the Kansas CCH license will remain valid for 90 days; after that, it is up to the licensee to be sure that their new state of residence will allow them to continue carrying.

In order for (2) to happen, notice to the Attorney General must be provided again. The Attorney General needs to be made aware of the initial departure and of the pending return. If the notice provisions are not met – then the licensee may comply with the penalty provisions (up to \$100 fine or suspension of license up to 180 days). Finally, the license MUST still be within its most recent expiration period.

Example: Licensee A has a license that expires in March of 2013. In 2011, Licensee notifies the Attorney General that they are moving on day X (Licensee A's license will remain valid for 90 days after day X). In January of 2013, Licensee A notifies the Attorney General that they have moved back to Kansas. License is reinstated (but subject to renewal in a couple months).

Example 2: Same departure facts but let's pretend Licensee A notifies the Attorney General in June of 2013 that they have moved back to Kansas? Too late. License has expired and the Licensee must pay the appropriate late fee (\$15), of K.S.A. 75-7c08, with their renewal application in order to renew.

Example 3: Same departure facts but let's pretend it is now October of 2013 (7 months after expiration) when Licensee A announces his return? Way too late. K.S.A. 75-7c08 mandates that no license may be "renewed" more than six months past the license's original expiration date. Licensee A has to go through the entire process again and cannot benefit from the "renewal" fees or processes.

75-7c08

There were substantive and cosmetic alterations to this statute governing the renewal procedure that Licensees must complete in order to renew their concealed carry license. Remember, this statute never set out a requirement for a renewal training course – that was set out under KSA 75-7c04(c) and stricken by SB 306. KSA 75-7c08 generally dealt with the submission of the renewal form, fees and renewal filing deadlines. After SB 306 altered this statute, the key items to remember are:

- 1) The renewal fee is now only \$25;
- 2) The renewal fee is only paid to the Attorney General; no fees, or a visit, to the Sheriff of county of residence is required anymore;
- 3) Renewal apps can be sent to the Attorney General via certified mail or delivered in person to the Concealed Carry Unit at 120 SW 10th Ave., Topeka, KS 66612;
- 4) Renewal applicants will have to go through a name based background check to make sure no criminal history disqualifications have arisen between original licensing and renewal so there could be some lag time between renewal application date and notification of renewal approval – it is anticipated that for the last few months of 2010 and the first few months of 2011, there will be thousands of individuals renewing their licenses, as such **LICENSEES ARE STRONGLY ENCOURAGED TO GET RENEWAL APPLICATIONS IN TO THE ATTORNEY GENERAL WELL IN ADVANCE OF EXPIRATION DATE IN ORDER TO AVOID THEIR LICENSE EXPIRING WHILE THEIR RENEWAL APPLICATION IS BEING PROCESSED – SUBMITTING A RENEWAL APPLICATION DOES NOT ENTITLE THE LICENSEE TO CONTINUE CARRYING ON AN EXPIRED LICENSE;**
- 5) Renewal applications must be filed (postmarked or delivered in person) no more than 6 months after a license's expiration date otherwise the Licensee will not be eligible for the renewal rates and be forced to apply as if doing so for the first time; and
- 6) Any renewal application received after the license's expiration date (up to 6 months after expiration) is subject to an extra \$15 late penalty.

75-7c10 & 75-7c11

Major adjustments were made to 75-7c10 & 75-7c11. The first major change, is that SB 306 repealed 75-7c11 and incorporated its language within 75-7c10. This language is found within 7c10's new subsection (b).

Also, in bringing these two statutes together, the penalty provisions were brought in line and synced up under new subsection (c). Any violation is a “misdemeanor:” however, the first violation is only subject to a \$50 fine; a second violation is a \$100 fine; and a third or subsequent is a class B misdemeanor (up to \$1000 fine and/or up to 6 months in jail).

Licensees will notice that several of the previously enumerated locations of 75-7c10 have been removed: former (a)(7)(meeting of the governing body of a county, city etc.); former (a)(8)(state fairgrounds); former (a)(15)(any place where carrying firearms prohibited by state or federal law); former (a)(18)(any city hall); former (a)(19)(public library of a political subdivision of the state); and former (a)(22)(any place in violation of 21-4218). Most of these strikings are due to coverage under other areas (e.g., new subsection (b) relating to cities and counties ability to post; new subsection (e) relating to federal properties). K.S.A. 21-4218 now explicitly contains an exception for licensees except as otherwise noted in 21-4218.

A major change with SB 306 and the 75-7c10 listed locations is that the ability to post has been explicitly limited to the building(s) of those locations. See, new subsection (d)(defining “building”). Parking lots, like the changes brought about by 2007’s HB 2528, are now expressly not allowed to be posted by the property owners/managers.

Also included within the 75-7c10 changes made by SB 306 were certain signage mandates. Signs must now be at eye level of an adult and within 12 inches to the left or right of all exterior entrances. Signs cannot be obstructed from view or altered (regulations do allow verbiage to be on a sign but not within one inch of the graphic). And signs that are illegible must be replaced. The Attorney General will be revamping regulations to comply with the new requirements found in all statutes and we will work to see if these new signage mandates have resulted in unanticipated wrinkles we can iron out with regulations.

Finally, Federal, State and County prosecutors who are in compliance with KSA 75-7c19 (CCH license plus additional KLETC training course) have been granted a general exemption from the locations of subsections (a) and (b). They still must abide by the directives of the chief judge of the judicial district – i.e., whether or not the prosecutor can carry into the courtrooms of that judicial district.

75-7c12

The carrying under the influence (CUI) statute was also modified significantly. It is still unlawful for a licensee to carry a handgun under the influence of alcohol or drugs to a degree that renders them incapable from safely handling the handgun. This is a class A misdemeanor. This applies to possession on their person or within the licensee’s immediate access and control if they are transporting the firearm in a vehicle.

In a situation where the Licensee is only suspected of a CUI violation, the Licensee is not presumed to have consented to any testing of their breath, blood or other bodily substance unless they shoot and kill or seriously injure a person (including themselves). In such an instance, if a licensee refuses to test for intoxication, then their CCH license is subject to suspension for a minimum of one year (for a first offense) and a minimum of 3 years (for second or subsequent offense).

A licensee is not subject to the penalty provisions of KSA 75-7c12 if: (a) the licensee is generally carrying concealed at their dwelling, place of business or on land the licensee owns or possesses; or (b) if the licensee's possession of a handgun is briefly long enough to carry out a lawful act of self-defense or defense of another.

Licensee's, in any situation where intoxication is suspected, will not be entitled to written or verbal implied consent warnings. If a licensee is simultaneously suspected of a DUI, the licensee will be provided implied consent warnings for the suspected DUI violation – but will not receive specific CUI implied consents. Additionally, evidence obtained during a DUI investigation may be used against the licensee during a prosecution for CUI. An officer is free to ask a Licensee to test for a suspected CUI violation. If the Licensee refuses, and the no one has been seriously injured or killed, then the Licensee's license is not subject to suspension for the refusal. An officer in such a situation, however, is free to pursue a court-ordered search warrant that will force the licensee to perform necessary testing.

Finally, law enforcement are no longer required to certify certain facts to the Attorney General in furtherance of a suspected CUI. These stricken certifications include proper certifications for the testing officer, the testing equipment used etc.

75-7c13, 75-7c15, 75-7c17, and 75-7c19

These statutes were amended only cosmetically to reflect changes to the “handgun” definition. Also, 75-7c17 was amended to reflect the changes to 75-7c10, 75-7c11 and 21-4218. Other than these changes, nothing of substance was changed in these statutes.

KSA 21-4201

A statement that licensees in violation of KSA 75-7c03 are not simultaneously in violation of K.S.A. 21-4201(a)(4) has been added. See amendments to subsection (h).

KSA 21-4204

A new paragraph (5) of subsection (b) generally exempts persons licensed under the Kansas Personal and Family Protection Act from the firearm prohibitions relating to K through 12th grade school property or grounds. Licensees can still violate KSA 75-7c10 if they carry into a posted K-12 school building.

KSA 21-4218

21-4218 was restructured completely through SB 306. Within that restructuring, Kansas CCH licensees were granted a general exemption from the 21-4218(a) property locations. *See*, 21-4218(b)(5). This exemption, however, does not apply if they properties are posted in accordance with 75-7c10; and the exemption does not apply to the governor's residence or the grounds of the governor's residence (whether posted or not).

