

HOUSE BILL No. 2442

By Committee on Federal and State Affairs

2-22

1 AN ACT concerning firearms; creating the Kansas gun rights preservation
2 act; prohibiting the infringement of the right to keep and bear arms by
3 the federal government.
4

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

6 Section 1. The provisions of sections 1 through 8, and amendments
7 thereto, shall be known and may be cited as the Kansas gun rights
8 preservation act.

9 Sec. 2. The legislature hereby finds and declares that:

10 (a) The legislature of the state of Kansas is firmly resolved to support
11 and defend the constitution of the United States against every aggression,
12 whether foreign or domestic, and is duty-bound to oppose every infraction
13 of those principles that constitute the basis of the union of the states
14 because only a faithful observance of those principles can secure the
15 union's existence and the public happiness;

16 (b) acting through the constitution of the United States, the people of
17 the several states created the federal government to be their agent in the
18 exercise of a few defined powers, while reserving for the state
19 governments the power to legislate on matters concerning the lives,
20 liberties and properties of citizens in the ordinary course of affairs;

21 (c) the limitation of the federal government's power is affirmed under
22 amendment X to the constitution of the United States, which defines the
23 total scope of federal powers as being those that have been delegated by
24 the people of the several states to the federal government and all powers
25 not delegated to the federal government in the constitution of the United
26 States are reserved to the states respectively or the people themselves;

27 (d) if the federal government assumes powers that the people did not
28 delegate in the constitution of the United States, its acts are
29 unauthoritative, void and of no force;

30 (e) the several states of the United States respect the proper role of
31 the federal government but reject the proposition that such respect requires
32 unlimited submission. If the federal government, created by a compact
33 among the states, were the exclusive or final judge of the extent of the
34 powers delegated to it by the states through the constitution of the United
35 States, the federal government's discretion, and not the constitution of the
36 United States, would necessarily become the measure of those powers. To

1 the contrary, as in all other cases of compacts among powers having no
2 common judge, each party has an equal right to judge for itself as to
3 whether infractions of the compact have occurred, as well as to determine
4 the mode and measure of redress. Although the several states have granted
5 supremacy to laws and treaties made under the powers delegated in the
6 constitution of the United States, such supremacy does not extend to
7 various federal statutes, executive orders, administrative orders, court
8 orders, rules, regulations or other actions that collect data or restrict or
9 prohibit the manufacture, ownership or use of firearms, firearm accessories
10 or ammunition exclusively within the borders of Kansas. Such statutes,
11 executive orders, administrative orders, court orders, rules, regulations and
12 other actions exceed the powers delegated to the federal government;

13 (f) the people of the several states delegated to congress the power "to
14 regulate commerce with foreign nations, and among the several states," but
15 "regulating commerce" does not include any power to limit citizens' right
16 to keep and bear arms in defense of their families, neighbors, persons or
17 property nor to dictate what sorts of arms and accessories law-abiding
18 Kansans may buy, sell, exchange or otherwise possess within the borders
19 of this state;

20 (g) the people of the several states also delegated to congress the
21 powers "to lay and collect taxes, duties, imports, and excises, to pay the
22 debts, and provide for the common defense and general welfare of the
23 United States" and "to make all laws which shall be necessary and proper
24 for carrying into execution the powers vested by the Constitution of the
25 United States in the government of the United States, or in any department
26 or office thereof." These constitutional provisions merely identify the
27 means by which the federal government may execute its limited powers
28 and shall not be construed to grant unlimited power because to do so
29 would be to destroy the carefully constructed equilibrium between the
30 federal and state governments. Consequently, the state legislature rejects
31 any claim that the taxing and spending powers of congress may be used to
32 diminish in any way the right of the people to keep and bear arms;

33 (h) the federal excise tax rate on arms and ammunition in effect prior
34 to January 1, 2021, that funds programs under the wildlife restoration act,
35 does not have a chilling effect on the purchase or ownership of such arms
36 and ammunition;

37 (i) the people of Kansas have vested the legislature with the authority
38 to regulate the manufacture, possession, exchange and use of firearms
39 within the borders of this state, subject only to the limits imposed by
40 amendment II to the constitution of the United States and the constitution
41 of the state of Kansas; and

42 (j) the legislature strongly promotes responsible gun ownership,
43 including parental supervision of minors in the proper use, storage and

1 ownership of all firearms, the prompt reporting of stolen firearms and the
2 proper enforcement of all state gun laws. The legislature hereby condemns
3 any unlawful transfer of firearms and the use of any firearm in any
4 criminal or unlawful activity pursuant to the constitution of the state of
5 Kansas.

6 Sec. 3. (a) The following federal acts, laws, executive orders,
7 administrative orders, rules and regulations shall be considered
8 infringements on the right of the people to keep and bear arms within the
9 borders of this state, as guaranteed by amendment II to the constitution of
10 the United States and section 4 of the bill of rights of the constitution of
11 the state of Kansas:

12 (1) Any tax, levy, fee or stamp imposed on firearms, firearm
13 accessories or ammunition not common to all other goods and services and
14 that might reasonably be expected to create a chilling effect on the
15 purchase or ownership of those items by law-abiding citizens;

16 (2) any registration or tracking of firearms, firearm accessories or
17 ammunition;

18 (3) any registration or tracking of the ownership of firearms, firearm
19 accessories or ammunition;

20 (4) any act forbidding the possession, ownership, use or transfer of a
21 firearm, firearm accessory or ammunition by law-abiding citizens; and

22 (5) any act ordering the confiscation of firearms, firearm accessories
23 or ammunition from law-abiding citizens.

24 (b) All federal acts, laws, executive orders, administrative orders,
25 rules and regulations, whether enacted prior to or after the effective date of
26 the Kansas gun rights preservation act, that violate subsection (a) shall be
27 invalid and unenforceable in this state.

28 (c) It shall be the duty of the courts of this state and all law
29 enforcement agencies to protect the rights of law-abiding citizens to keep
30 and bear arms within the borders of this state and to protect such rights
31 from infringement as set forth in subsection (a).

32 Sec. 4. (a) No person, including any officer or employee of any state
33 agency or any political subdivision of this state, shall have the authority to
34 enforce or attempt to enforce any federal acts, laws, executive orders,
35 administrative orders, rules and regulations that violate section 3, and
36 amendments thereto.

37 (b) Any law enforcement agency or political subdivision of this state
38 that employs a law enforcement officer who violates this section or
39 otherwise infringes on an individual's rights ensured by amendment II to
40 the constitution of the United States or section 4 of the bill of rights of the
41 constitution of the state of Kansas while acting under the color of any state
42 or federal law shall be liable to such individual for any damages resulting
43 from such infringement and subject to a civil penalty of \$50,000 for each

1 occurrence. Each infringement with respect to a firearm, firearm accessory
2 or container of ammunition shall constitute a separate occurrence. Any
3 individual aggrieved by a violation of this section may bring an action in a
4 court of competent jurisdiction for injunctive and other relief. Upon the
5 filing of a motion for a temporary or permanent injunction, the court shall
6 hold a hearing on such motion within 30 days of service of such motion on
7 the defendant.

8 (c) The court may award reasonable attorney fees and court costs to
9 the prevailing party in any action filed pursuant to this section unless such
10 prevailing party is the state of Kansas or any political subdivision thereof.

11 (d) Sovereign immunity shall not be an affirmative defense in any
12 action filed pursuant to this section.

13 Sec. 5. (a) Any law enforcement agency or political subdivision of
14 this state that employs an individual, acting or who previously acted as an
15 official, agent, employee or deputy of the government of the United States,
16 or otherwise acted under the color of federal law within the borders of this
17 state after the effective date of this section, who enforced or attempted to
18 enforce or who gave material aid and support to the efforts of another
19 individual or agency of the government of the United States who enforced
20 or attempted to enforce any federal act, law, executive order,
21 administrative order, rule or regulation in violation of section 3, and
22 amendments thereto, shall be subject to a civil penalty of \$50,000 for each
23 such employee.

24 (b) Any person who believes that an individual has violated this
25 section may file an action in a court of competent jurisdiction for
26 injunctive relief. Upon the filing of a motion for a temporary or permanent
27 injunction, the court shall hold a hearing on such motion within 30 days of
28 service of such motion on the defendant.

29 (c) The court may award reasonable attorney fees and court costs to
30 the prevailing party in any action filed pursuant to this section unless such
31 prevailing party is the state of Kansas or any political subdivision thereof.

32 (d) Sovereign immunity shall not be an affirmative defense in any
33 action filed pursuant to this section.

34 (e) It shall not be a violation of this section:

35 (1) To provide material aid and support to federal law enforcement
36 agencies that are in pursuit of a suspect when there is a demonstrable
37 criminal nexus with another foreign jurisdiction and such suspect is either
38 not a citizen of this state or is not present in this state; or

39 (2) to provide material aid and support to any United States attorney
40 or assistant United States attorney in the prosecution of felony crimes
41 substantially similar to any crime described in article 57, 58 or 63 of
42 chapter 21 of the Kansas Statutes Annotated, and amendments thereto, that
43 includes the possession of a firearm or other weapon if the charges are not

1 solely for the possession or use of such firearm or weapon.

2 Sec. 6. Nothing in sections 3 through 5, and amendments thereto,
3 shall be construed to prohibit any law enforcement agency from accepting
4 aid from any federal law enforcement agency in an effort to enforce the
5 laws of this state made in pursuance to the constitution of the United States
6 and the constitution of the state of Kansas.

7 Sec. 7. As used in sections 1 through 6, and amendments thereto:

8 (a) "Law-abiding citizen" means a person who is not otherwise
9 precluded under state law from possessing a firearm. "Law-abiding
10 citizen" does not include any person who is not legally present in the
11 United States; and

12 (b) (1) "material aid and support" includes voluntarily giving or
13 allowing others to make use of lodging, communications equipment or
14 services, including social media accounts, facilities, weapons, personnel,
15 transportation, clothing or other physical assets; and

16 (2) "material aid and support" does not include giving or allowing the
17 use of medicine or other materials necessary to treat physical injuries or
18 any assistance provided to help persons escape a serious, present risk of
19 life-threatening injury.

20 Sec. 8. If any provision of the Kansas gun rights preservation act or
21 the application thereof to any person or circumstances is held invalid, such
22 invalidity shall not affect other provisions or applications of such act that
23 can be given effect without the invalid provision or application and to this
24 end the provisions of the Kansas gun rights preservation act are hereby
25 declared to be severable.

26 Sec. 9. This act shall take effect and be in force from and after its
27 publication in the Kansas register.