

SENATE BILL No. 384

By Committee on Federal and State Affairs

2-11

1 AN ACT concerning explosives; enacting the Kansas explosives safety act.

2

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

4 Section 1. (a) Sections 1 through 13, and amendments thereto, shall
5 be known and may be cited as the Kansas explosives safety act.

6 (b) This act shall be administered by the state fire marshal.

7 Sec. 2. As used in this act, unless the context otherwise requires:

8 (a) "Person" means any individual, corporation, company,
9 association, firm, partnership, society, joint stock company or other legal
10 entity.

11 (b) "Explosive materials" means explosives, blasting agents and
12 detonators.

13 (c) "Explosives" means any chemical compound, mixture or device,
14 the primary or common purpose of which is to function by explosion. The
15 term shall also include two or more precursor chemicals sold or possessed
16 together that if mixed or combined would constitute a binary explosive.

17 (d) "Manufacturer" means any person engaged in the manufacture of
18 explosives of any kind in the state of Kansas. Manufacturing shall include
19 mixing, blending, extruding, assembling articles outside the blast site,
20 disassembling, chemical synthesis and other functions involved in making
21 a product or device that is intended to explode.

22 (e) "Distributor" means any person who engages in the business of
23 distributing explosive materials within the state, except the term shall not
24 include common carriers or out-of-state persons who distribute explosive
25 materials to the holder of a manufacturer or distributor permit under this
26 act. Distributing shall include selling, issuing, giving, transferring or other
27 disposing of explosive materials.

28 (f) "User" means any person conducting an operation or activity that
29 requires the use of explosive materials and who shall be responsible for the
30 results and consequences of any loading or firing of explosive materials.

31 (g) "Blaster" means an individual who is responsible for the loading
32 and firing of a blast.

33 (h) "Handler" means an individual, other than the holder of a blaster
34 permit, who actually or constructively possesses explosive materials in the
35 state, except the term shall not include a person who only possesses
36 explosive materials under the direct supervision of the holder of a blaster

1 permit. Direct supervision shall mean that the permitted blaster is
2 physically present and overseeing the actions of the individual. Handlers
3 may include individuals who load or unload vehicles, trainees, magazine
4 keepers, drillers, stemmers and sales staff.

5 Sec. 3. (a) This act shall not apply to:

6 (1) The transportation of explosive materials when under the
7 jurisdiction of the federal department of transportation.

8 (2) The manufacture of explosive materials under the jurisdiction of
9 the United States department of defense.

10 (3) The distribution, storage and use of explosive materials by
11 military agencies of the United States or the state of Kansas or to arsenals,
12 navy yards, depots or other military establishments owned by or operated
13 by, or on behalf of, the United States or the state of Kansas.

14 (4) The use of explosive materials by federal, state or municipal
15 agencies while engaged in public safety functions, but state and municipal
16 agencies shall be subject to the storage, recordkeeping and permit
17 requirements of this act and rules and regulations adopted hereunder.

18 (5) Pyrotechnics such as flares, fuses and railway torpedoes or
19 fireworks, as defined in the edition of any of the following documents as
20 established in rules and regulations adopted by the state fire marshal:

21 (A) National fire protection association standard no. 1123, code for
22 fireworks display;

23 (B) national fire protection association standard no. 1124, code for
24 the manufacture, transportation and storage of fireworks; and

25 (C) national fire protection association standard no. 1126, standard
26 for the use of pyrotechnics before a proximate audience.

27 (6) The use of explosive materials in medicines and medicinal agents
28 in the forms prescribed by the United States pharmacopeia or the national
29 formulary.

30 (7) Small arms ammunition and components of small arms
31 ammunition, except the act shall apply to the manufacture of smokeless
32 propellants and black powder substitutes and to smokeless propellants and
33 black powder substitutes not designed for use in small arms ammunition.

34 (8) Commercially manufactured black powder in quantities not to
35 exceed fifty pounds, percussion caps, safety and pyrotechnical fuses,
36 quills, quick and slow matches, and friction primers, intended to be used
37 solely for sporting, recreational or cultural purposes in antique firearms as
38 defined in 18 U.S.C. § 921(a)(16) or in antique devices exempted from the
39 term "destructive device" in 18 U.S.C. § 921(a)(4).

40 (9) The use, storage or transportation of precursor chemicals used for
41 agricultural purposes other than blasting, or to fertilizers and fertilizer
42 materials regulated by the Kansas department of agriculture pursuant to
43 K.S.A. 2-1201 et seq., and amendments thereto, except that thefts of

1 ammonium nitrate shall be reported to the office of the state fire marshal
2 and to a local law enforcement authority within 24 hours of discovering
3 the theft.

4 Sec. 4. (a) Any person who intends to manufacture, distribute, use,
5 blast or handle any explosive materials shall first obtain the appropriate
6 permit from the state fire marshal.

7 (b) The types of permit shall be as follows:

8 (1) Manufacturer;

9 (2) distributor;

10 (3) user;

11 (4) blaster; and

12 (5) handler.

13 (c) Prior to engaging in activities listed in subsection (a), all persons
14 shall satisfy the requirements of this act and any rules and regulations
15 adopted by the state fire marshal pursuant to this act or K.S.A. 31-133, and
16 amendments thereto.

17 (d) A holder of a manufacturer permit shall not be required to obtain a
18 distributor or user permit.

19 (e) A holder of a distributor permit shall not be required to obtain a
20 user permit.

21 (f) A holder of a blaster permit shall not be required to obtain a
22 handler permit.

23 (g) Each permit shall be valid for a period of three years.

24 (h) Permits shall not be transferable.

25 (i) The state fire marshal shall have the authority to fix, charge and
26 collect fees as provided in this subsection and section 5, and amendments
27 thereto:

28 (1) The manufacturer permit fee shall not exceed \$1,000.

29 (2) The distributor permit fee shall not exceed \$500.

30 (3) The user permit fee shall not exceed \$500.

31 (4) The blaster permit fee shall not exceed \$200.

32 (5) The handler permit fee shall not exceed \$100.

33 (j) No fee shall be charged for a permit or permit under this act for
34 any person who is an officer or employee of the state or any political or
35 taxing subdivision of the state when that person is acting on behalf of the
36 state or political or taxing subdivision in a public safety capacity.

37 Sec. 5. (a) Before a person stores explosive materials in the state, that
38 person shall obtain a site-specific storage permit from the state fire
39 marshal. The storage permit may be temporary or permanent.

40 (b) A permanent storage site permit shall be valid for a period of not
41 more than three years or until the expiration of the permit authorizing the
42 use of explosives if such permit is not renewed, whichever occurs first.
43 The fee for a permanent storage site permit shall not exceed \$150.

1 (c) A temporary storage site permit shall be valid for a period of not
2 more than 90 days, but the permit holder may apply to the office of the
3 state fire marshal to renew the permit one time for no longer than an
4 additional 90 days. The fee for a temporary storage site permit shall not
5 exceed \$100 for the initial permit. There shall be no fee for a renewal of a
6 temporary storage permit.

7 Sec. 6. The state fire marshal may deny, revoke, suspend, limit,
8 condition or refuse renewal of any permit under sections 4 and 5, and
9 amendments thereto, if the state fire marshal determines that the applicant
10 or permit holder has failed to meet or comply with the requirements of this
11 act or rules and regulations adopted hereunder.

12 Sec. 7. (a) The state fire marshal shall have the authority to adopt
13 rules and regulations to implement and administer the provisions of this
14 act. Such rules and regulations may include, but shall not be limited to,
15 qualifications and requirements for obtaining permits under this act and
16 standards regarding the manufacture, distribution, use, blasting, handling
17 or storage of explosive materials.

18 (b) Any rules and regulations of the state fire marshal adopted
19 pursuant to this act may incorporate by reference specific editions, or
20 portions thereof, of nationally recognized fire prevention codes.

21 (c) Existing explosive rules and regulations adopted by the state fire
22 marshal pursuant to K.S.A. 31-133, and amendments thereto, shall be
23 deemed to have been adopted under this act and shall continue to be
24 effective until revised, amended, revoked or nullified pursuant to law.

25 Sec. 8. (a) If explosive materials are found to be stored, possessed or
26 transported in violation of this act or any state fire marshal rule and
27 regulation, such explosive materials may be seized by the state fire
28 marshal or other state or local law enforcement agency. The seizing
29 authority shall inventory all seized items and provide a copy of the
30 inventory to the person from whom the explosive materials were seized
31 upon completion of the seizure. Reasonable costs for the storage and
32 destruction of such explosive materials shall be assessed against the party
33 found to be in violation of this act or of any state fire marshal rules and
34 regulations, except that if a hearing is requested pursuant to subsection (b),
35 no person shall be assessed for storage costs incurred more than 60 days
36 after the completion of judicial review or the expiration of the time for
37 seeking judicial review.

38 (b) The owner of any explosive materials seized under subsection (a)
39 may file a written request with the state fire marshal for a hearing pursuant
40 to the Kansas administrative procedure act. Where, after hearing, the state
41 fire marshal finds that there has been a violation of the provisions of this
42 act or of any rules and regulations, the state fire marshal may destroy or
43 order the destruction of such explosive materials or direct such other

1 disposition of the explosive materials as is deemed proper. Unless
2 necessary to protect against a substantial threat to the public health, safety
3 or welfare, the explosive materials shall not be destroyed until the
4 completion of judicial review or expiration of the time for seeking judicial
5 review. If the state fire marshal finds there has been no violation, the
6 explosive materials shall be returned to their owner.

7 (c) Where no claimant has appeared within 60 days of the seizure,
8 demanded the return of the explosive materials and proved, to the
9 satisfaction of the state fire marshal, the claimant's title to and right of
10 possession of such explosive materials, the state fire marshal may, without
11 process and without liability, destroy or order the destruction of the
12 explosive materials or direct such other disposition as is deemed proper.

13 (d) Any provision herein to the contrary notwithstanding, where the
14 manufacture, condition, storage, packing or location of explosive materials
15 is such that their continued existence or transportation is an immediate
16 danger to public safety, health or welfare, the state fire marshal or
17 authorized representative may apply to the court which has jurisdiction
18 over such explosive materials for an emergency ex parte order authorizing
19 the state fire marshal or authorized representative to destroy or dispose of
20 the explosive materials without liability to the owner.

21 Sec. 9. The state fire marshal and duly authorized representatives are
22 hereby empowered to investigate any complaints regarding the use of
23 explosive materials or any suspected violations of this act or rules and
24 regulations adopted hereunder. All persons subject to this act shall provide
25 the state fire marshal or authorized representatives free access to any place
26 where explosive materials are manufactured, stored or used and shall allow
27 the state fire marshal or authorized representatives to examine any records
28 or other information relating to explosive materials.

29 Sec. 10. (a) In addition to any other penalty provided by law, the state
30 fire marshal, upon finding that any person has violated the provisions of
31 this act or any rules and regulations adopted hereunder, may impose a civil
32 penalty not to exceed \$1,000 per violation and, in the case of a continuing
33 violation, every day such violation continues shall be deemed a separate
34 violation.

35 (b) All moneys received from penalties imposed pursuant to this
36 section shall be remitted to the state treasurer in accordance with the
37 provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of
38 each such remittance, the state treasurer shall deposit the entire amount in
39 the state treasury to the credit of the state general fund.

40 Sec. 11. Except as otherwise provided in section 8, and amendments
41 thereto, proceedings under the Kansas explosives safety act shall be
42 conducted in accordance with the Kansas administrative procedure act.
43 Judicial review and civil enforcement of agency actions under the Kansas

1 explosives safety act shall be in accordance with the Kansas judicial
2 review act.

3 Sec. 12. All moneys received from permit fees collected pursuant to
4 this act shall be remitted to the state treasurer in accordance with the
5 provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of
6 each such remittance, the state treasurer shall deposit the entire amount in
7 the state treasury to the credit of the explosives regulatory and training
8 fund.

9 Sec. 13. (a) The Kansas explosives safety advisory board is hereby
10 created and assigned to the office of the state fire marshal. The board shall
11 consist of nine members appointed by the fire marshal as follows:

12 (1) One representative of a city or county who serves in the capacity
13 of director of public works, public safety or a representative of the Kansas
14 fire marshals association;

15 (2) one person who is engaged in mining and who uses explosives
16 which are subject to the requirements of this act;

17 (3) one person who is engaged in construction and who uses
18 explosives which are subject to the requirements of this act;

19 (4) one person who distributes explosives subject to the requirements
20 of this act;

21 (5) one person engaged in the manufacturing of powder subject to the
22 requirements of this act;

23 (6) one person engaged in the manufacturing of explosives subject to
24 the requirements of this act;

25 (7) one person who is engaged in oil and gas operations and who uses
26 explosives which are subject to the requirements of this act;

27 (8) one person who is engaged in deslagging operations and who uses
28 explosives which are subject to the requirements of this act; and

29 (9) the state fire marshal or the state fire marshal's designee.

30 (b) Each board member, other than the state fire marshal or the state
31 fire marshal's designee, shall serve for a term of four years, except for the
32 members initially appointed, two shall be appointed for a one-year term,
33 two shall be appointed for a two-year term, two shall be appointed for a
34 three-year term, and two shall be appointed for a four-year term. Members
35 appointed and serving shall serve until their successor is named and shall
36 be eligible for reappointment.

37 (c) Members of the board shall serve without compensation but may
38 be reimbursed by the state fire marshal for reasonable and necessary
39 expenses. Meetings of the board shall be held in facilities arranged by the
40 state fire marshal.

41 (d) The board shall, prior to January 31, each year, elect a chairperson
42 from one of the members other than the state fire marshal or the state fire
43 marshal's designee. The chairperson shall be elected by a majority vote of

1 the board and shall preside over all meetings and perform any specific
2 duties set out in this act.

3 (e) The state fire marshal or the state fire marshal's designee shall
4 perform the duties of secretary of the board.

5 (f) The board shall meet at the call of the state fire marshal at least
6 once each calendar year.

7 (g) It shall be the duty of the board to:

8 (1) Advise the state fire marshal in the development of application
9 and registration forms, permits, training and examinations, and for the
10 filing of required applications, permits, registrations and reports;

11 (2) make recommendations on any rules and regulations proposed by
12 the state fire marshal for the administration of this act; and

13 (3) advise or assist the office of the state fire marshal in any other
14 matter regarding administration or enforcement within the scope and
15 requirements of this act.

16 Sec. 14. This act shall take effect and be in force from and after its
17 publication in the statute book.