

**SENATE BILL No. 227**

By Committee on Federal and State Affairs

2-28

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

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

4 Section 1. (a) Sections 1 through 14, 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, association,  
9 firm, partnership, society, joint stock company, or other legal entity.

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

12 (c) "Explosives" means any chemical compound mixture, or device,  
13 the primary or common purpose of which is to function by explosion; the  
14 term includes, but is not limited to, dynamite and other high explosives,  
15 black powder, pellet powder, initiating explosives, detonators, safety fuses,  
16 squibs, detonating cord, igniter cord, and igniters, as defined in 18 U.S.C.  
17 § 841(d), and any binary explosive, or tannerite explosive.

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

23 (e) "Distributor" means any person who sells, intends to sell, offers for  
24 sale, delivers, transports, consigns, gives, imports, exports or otherwise  
25 furnishes explosives within the state of Kansas to any other person.  
26 "Distributor" shall not include:

27 (1) Anyone who transports explosives from one state to another state  
28 through the state of Kansas and such explosives' ultimate destination is not  
29 within the state of Kansas;

30 (2) freight delivery companies or common carriers as defined in U.S.  
31 federal department of transportation 49 C.F.R. § 171.8; or

32 (3) an out-of-state person who sells, transports, delivers, or gives  
33 explosives to a permitted manufacturer or distributor.

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

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

3 (h) "Handler" means an individual who is in possession of explosive  
4 materials but is not responsible for conducting or supervising blasting  
5 operations or activities. These individuals may be drivers of motor  
6 vehicles transporting or delivering explosives, persons loading or  
7 unloading vehicles, magazine keepers, drillers, stemmers and sales staff  
8 who handle explosives.

9 (i) "Storage" means the safekeeping of explosives in a warehouse or  
10 magazine or comparable appropriate depository.

11 Sec. 3. (a) This act shall apply to:

12 (1) The manufacture, transportation, storage, sale and use of  
13 explosive materials by any person; or

14 (2) any agency of this state or any political subdivision thereof:

15 (A) Desiring to purchase, possess, transport or use explosive  
16 materials for construction or other purposes; and

17 (B) who must obtain user's permits in accordance with the regulations  
18 of the federal department of transportation administration contained in title  
19 49, parts 100-199 of the code of federal regulations.

20 (b) This act shall not apply to:

21 (1) The transportation of explosive materials when under the  
22 jurisdiction of the federal department of transportation, except as required  
23 by subsection (a).

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

26 (3) The distribution or storage of explosive materials by military  
27 agencies of the United States or to arsenals, navy yards, depots or other  
28 establishments owned by or operated by or on behalf of the United States.

29 (4) Pyrotechnics such as flares, fuses, and railway torpedoes or  
30 fireworks, as defined in the edition of any of the following documents in  
31 existence on the effective date of this act, or any subsequent edition  
32 thereof as established in rules and regulations adopted by the state fire  
33 marshal:

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

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

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

40 (5) The use of explosive materials in medicines and medicinal agents  
41 in the forms prescribed by the United States pharmacopeia or the national  
42 formulary.

43 Sec. 4. (a) Any person who intends to manufacture, distribute, use,

1 blast, or handle any explosive materials shall first obtain the appropriate  
2 permit from the state fire marshal.

3 (b) The types of permits shall be as follows:

4 (1) Manufacturer;

5 (2) distributor;

6 (3) user;

7 (4) blaster; or

8 (5) handler.

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

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

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

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

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

20 (h) Permits shall not be transferable.

21 (i) The state fire marshal shall have the authority to fix, charge and  
22 collect fees as provided in this subsection:

23 (1) The manufacturer permit fee shall not exceed \$1,500.

24 (2) The distributor permit fee shall not exceed \$1,000.

25 (3) The user permit fee shall not exceed \$1,000.

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

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

28 (j) No fee shall be charged for a permit or permit under this section  
29 for any person who is an officer or employee of the state or any political or  
30 taxing subdivision of the state when that person is acting on behalf of the  
31 state or political or taxing subdivision in a public safety capacity.

32 Sec. 5. The owner of any explosive storage facility shall obtain a  
33 storage site permit from the state fire marshal for permanent or temporary  
34 storage. The state fire marshal shall have the authority to fix, charge and  
35 collect fees for such permits as follows:

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

40 (b) A temporary storage site permit shall be valid for a period of not  
41 more than 90 days. The fee for a temporary storage site permit shall not  
42 exceed \$125.

43 Sec. 6. The state fire marshal may deny, revoke, suspend, limit,

1 condition, or refuse renewal of any permit under section 4, and  
2 amendments thereto, or section 5, and amendments thereto, if the state fire  
3 marshal determines that the applicant or permit holder has failed to meet  
4 or comply with the requirements of this act or rules and regulations  
5 adopted hereunder.

6 Sec. 7. Every permitted manufacturer, distributor and user in the state  
7 of Kansas shall maintain continuous general liability coverage that  
8 includes coverage for intentional blasting of not less than \$2,000,000 and  
9 shall annually provide proof of such insurance to the state fire marshal.

10 Sec. 8. The holder of any permit or permits issued pursuant to this act  
11 shall maintain a copy of the permit or permits at all work sites where  
12 explosive materials are stored or used and in any vehicle used to transport  
13 explosive materials.

14 Sec. 9. (a) The state fire marshal shall have the authority to adopt  
15 rules and regulations to implement and administer the provisions of this  
16 act. Such rules and regulations may include, but shall not be limited to,  
17 qualifications and requirements for obtaining permits under this act and  
18 standards regarding the manufacture, distribution, use, blasting, handling,  
19 or storage of explosive materials.

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

23 (c) All rules and regulations of the state fire marshal pertaining to  
24 explosives regulated by this act in existence on the effective date of this  
25 act shall continue to be effective until revised, amended, revoked or  
26 nullified pursuant to law.

27 Sec. 10. (a) If explosive materials are found to be stored, possessed or  
28 transported in violation of this act or any state fire marshal regulation, such  
29 explosive materials may be seized by the state fire marshal or other state or  
30 local law enforcement agency. The seizing authority shall inventory all  
31 seized items and provide a copy of the inventory to the person from whom  
32 the explosive materials were seized upon completion of the seizure.  
33 Reasonable costs for the storage and destruction of such explosive  
34 materials shall be assessed against the party found to be in violation of this  
35 act or state fire marshal regulations.

36 (b) The owner of any explosive materials seized under subsection (a)  
37 may make written demand upon the state fire marshal for a hearing  
38 pursuant to the Kansas administrative procedure act. Where, after hearing,  
39 the state fire marshal finds that there has been a violation of the provisions  
40 of this act or state fire marshal regulations, the state fire marshal may,  
41 without liability, destroy or order the destruction of such explosive  
42 materials or direct such other disposition of the explosive materials as is  
43 deemed proper. Unless necessary to protect against a substantial threat to

1 the public health, safety or welfare, the explosive materials shall not be  
2 destroyed until the completion of judicial review or expiration of the time  
3 for seeking judicial review. If the state fire marshal finds there has been  
4 no violation, the explosive materials shall be returned to their owner.

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

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

19 Sec. 11. The state fire marshal and duly authorized representatives  
20 may investigate any complaints regarding the use of explosive materials or  
21 any suspected violations of this act or rules and regulations adopted  
22 hereunder. All persons subject to this act shall provide the state fire  
23 marshal or authorized representatives free access to any place where  
24 explosive materials are manufactured, stored or used and shall allow the  
25 state fire marshal or authorized representatives to examine any records or  
26 other information relating to explosive materials.

27 Sec. 12. (a) In addition to any other penalty provided by law, the state  
28 fire marshal, upon finding that any person has violated the provisions of  
29 this act or any rules and regulations adopted hereunder, may impose a civil  
30 penalty not to exceed \$1,000 per violation and, in the case of a continuing  
31 violation, every day such violation continues shall be deemed a separate  
32 violation.

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

38 Sec. 13. Except as otherwise provided in section 10, and amendments  
39 thereto, proceedings under the Kansas explosives safety act shall be  
40 conducted in accordance with the Kansas administrative procedure act.  
41 Judicial review and civil enforcement of agency actions under the Kansas  
42 explosives safety act shall be in accordance with the Kansas judicial  
43 review act.

1       Sec. 14. (a) There is hereby established in the state treasury a  
2 separate, nonlapsing fund to be known as the explosives regulatory and  
3 training fund which shall be administered by the state fire marshal. Money  
4 deposited to the credit of the fund as provided in subsection (b), and to any  
5 other money made available for such purposes, shall be made available to  
6 the state fire marshal to support fireworks and explosives regulatory and  
7 training programs.

8       (b) All moneys received from permit fees collected pursuant to this  
9 act shall be remitted to the state treasurer in accordance with the  
10 provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of  
11 each such remittance, the state treasurer shall deposit the entire amount in  
12 the state treasury to the credit of the explosives regulatory and training  
13 fund.

14       Sec. 15. This act shall take effect and be in force from and after  
15 January 1, 2014, and publication in the statute book.