

HOUSE BILL No. 2266

By Committee on Appropriations

2-2

9 AN ACT concerning explosives; enacting the Kansas explosives act.
10
11 *Be it enacted by the Legislature of the State of Kansas:*
12 Section 1. (a) Sections 1 through 16, and amendments thereto, shall
13 be known and may be cited as the “Kansas explosives act”.
14 (b) This act shall be administered by the state fire marshal.
15 Sec. 2. (a) This act shall apply to:
16 (1) The manufacture, transportation, storage, sale, licensing and use
17 of explosive materials.
18 (2) Any agency of this state or any political subdivision thereof:
19 (A) Desiring to purchase, possess, transport or use explosive materials
20 for construction or other purposes; and
21 (B) who must obtain a user’s license in accordance with the regula-
22 tions of the federal department of transportation administration contained
23 in title 49, parts 100-199 of the code of federal regulations.
24 (b) This act shall not apply to:
25 (1) The transportation of explosive materials when under the juris-
26 diction of the federal department of transportation except as required by
27 subparagraph (B) of paragraph (2) of subsection (a), and amendments
28 thereto.
29 (2) The manufacture of explosive materials under the jurisdiction of
30 the United States department of defense.
31 (3) The distribution or storage of explosive materials by military agen-
32 cies of the United States or to arsenals, navy yards, depots or other es-
33 tablishments owned by or operated by or on behalf of the United States.
34 (4) Pyrotechnics such as flares, fuses and railway torpedoes or con-
35 sumer fireworks, as defined in the edition of any of the following docu-
36 ments in existence on the effective date of this act, or any subsequent
37 edition thereof as established in rules and regulations adopted by the state
38 fire marshal:
39 (A) National fire protection association 1123, code for fireworks
40 displays;
41 (B) national fire protection association 1124, code for the manufac-
42 ture, transportation and storage and retail sales of fireworks and pyro-
43 technic articles; and

- 1 (C) national fire protection association 1126, standard for the use of
2 pyrotechnics before a proximate audience.
- 3 Sec. 3. As used in this act, unless the context otherwise requires:
- 4 (a) “Blaster” means a person qualified to be in charge of and respon-
5 sible for the loading, firing and handling of a blast.
- 6 (b) “Blasting agent” means a material or mixture intended for blasting
7 and which meets the requirements of the DOT hazardous materials reg-
8 ulations, as set forth in title 49, code of federal regulations, part 173.114a
9 as in existence on the effective date of this act, or any subsequent edition
10 thereof as established in rules and regulations adopted by the state fire
11 marshal.
- 12 (c) “Dealer” means a person who sells explosive materials pursuant
13 to a federal license or permit issued by the United States treasury de-
14 partment, bureau of alcohol, tobacco and firearms or other federal
15 agency.
- 16 (d) “Detonator” means any device containing an initiating or primary
17 explosive that is used for initiating detonation. A detonator may not con-
18 tain more than 10 grams of total explosive material per unit, excluding
19 ignition or delay charges. The term includes, but is not limited to, electric
20 detonators of instantaneous and delay types, detonators for use with safety
21 fuses, detonating cord delay connectors and non-electric detonators of
22 instantaneous and delay types that consist of detonating cord, shock tube
23 or any other replacement for electric leg wires.
- 24 (e) “DOT” means the United States department of transportation.
- 25 (f) “Explosive” means any chemical compound, mixture or device,
26 the primary or common purpose of which is to function by explosion:
- 27 (1) Explosive includes, but is not limited to, dynamite, black powder,
28 pellet powder, initiating explosives, detonators, safety fuses, squibs, det-
29 onating cord, igniter cord, binary and igniters.
- 30 (2) Explosive also includes any material or substance:
- 31 (A) Determined to be within the scope of importation, manufacture,
32 distribution and storage of explosive material, chapter 40 of title 18 of
33 the United States code; and
- 34 (B) classified as an explosive by the hazardous materials regulations
35 of DOT.
- 36 (g) “Lost time injury” means an injury which involves the temporary
37 or permanent loss of employment.
- 38 (h) “Magazine” means any building or structure, other than an ex-
39 plosives manufacturing building, approved for the storage of explosive
40 materials.
- 41 (i) “Molotov cocktail” means a breakable container containing an ex-
42 plosive of flammable liquid or other substance, having a wick or similar
43 device capable of being ignited. A molotov cocktail shall not include a

1 device commercially manufactured primarily for the purpose of
2 illumination.

3 (j) "NFPA" means the national fire protection association.

4 (k) "Person" means any individual, firm, partnership, limited part-
5 nership, limited liability company, corporation, company, association,
6 joint stock association, including any trustee, receiver, assignee or per-
7 sonal representative thereof.

8 (l) "User" means any person conducting an operation or activity that
9 requires the use of explosive materials and who shall be responsible for
10 the results and consequences of any loading or firing of explosive
11 materials.

12 Sec. 4. (a) The state fire marshal shall administer and enforce the
13 provisions of this act. The state fire marshal shall:

14 (1) Issue a license or permit to any applicant, after inspection and
15 investigation, found to be qualified for such license or permit under the
16 provisions of this act and the rules and regulations;

17 (2) deny, suspend or revoke any permit issued under this act upon a
18 finding of noncompliance or violation of any provision of this act or any
19 rule and regulation promulgated thereunder;

20 (3) inspect, during normal business hours, any building, structure or
21 premises subject to the provisions of this act;

22 (4) upon the discovery of any violation of this act or the applicable
23 rules and regulations, issue such orders as are necessary for the safety of
24 workers and the public; and

25 (5) in the case of imminent hazard, apply for an injunction in the
26 appropriate district court.

27 (b) Nothing in this act shall be construed to be in conflict with the
28 provisions of K.S.A. 21-4207, 21-4208, 21-4209 and 21-4210, and amend-
29 ments thereto, governing the criminal use, sale or handling of explosives.

30 Sec. 5. (a) The state fire marshal is hereby authorized to adopt and
31 promulgate rules and regulations to implement and administer the pro-
32 visions of this act concerning the following matters which shall include,
33 but are not limited to:

34 (1) Basic requirements for safety which shall include, but not be lim-
35 ited to, whenever a fire that cannot be contained or controlled before it
36 reaches explosive materials:

37 (A) All personnel shall be immediately evacuated to a safe location;

38 (B) no attempt shall be made to fight such a fire; and

39 (C) the area shall be guarded from entry by spectators or intruders.

40 (2) Requirements regarding the notification of local fire departments
41 and other local emergency response agencies of the location of all explo-
42 sive storage magazines.

43 (3) Except for hand loading of small arms ammunition by an individ-

1 ual prepared for such individual's own personal use and not for resale,
2 requirements prohibiting the manufacture of any explosive material, un-
3 less such manufacture is authorized by federal license and conducted in
4 accordance with recognized safe practices as prescribed by law.

5 (4) Requirements prohibiting the manufacture of explosive materials
6 when such manufacture presents an undue hazard to life or property.

7 (5) To prevent an undue hazard to life and property, requirements
8 restricting the quantity of explosive materials that may be handled or
9 stored at any location.

10 (6) Except for stocks of small arms ammunition and components
11 thereof, to the extent that such are covered by the provisions of the gun
12 control act of 1968, chapter 44 of title 18 of the United States code,
13 storage and handling permit requirements for all explosive materials, in-
14 cluding any newly developed or unclassified explosive materials.

15 (7) Furnishing of reports and information necessary for the state fire
16 marshal to carry out the provisions of this act.

17 (8) Requirements regarding the storage and disposal of explosives
18 and explosive materials.

19 (9) Such other rules and regulations deemed necessary by the fire
20 marshal to administer the provisions of this act.

21 (b) Rules and regulations may include requirements not mentioned
22 specifically in this act but which are reasonably necessary for the safety
23 of workers, the protection of property and the preservation and protection
24 of the public welfare.

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

29 Sec. 6. (a) Except as otherwise provided in this act, without first ob-
30 taining a license or permit required by this act, no person shall:

31 (1) Have in such person's possession any explosive materials;
32 (2) conduct an operation or activity requiring the use or handling or
33 explosive materials;
34 (3) perform or supervise the loading and firing of explosive materials;
35 or
36 (4) sell, give, deliver or transfer any explosive material to any person
37 who has not been issued a valid license under this act. Every person
38 conducting an operation or activity that requires the use of explosive ma-
39 terials shall obtain a license to use explosive materials and shall be re-
40 sponsible for the results and consequences of any loading or firing of such
41 explosive materials. Such person shall also ensure that loading and firing
42 are performed or supervised by a person possessing a license to blast
43 (blaster's license).

- 1 (b) (1) Before a person may conduct an operation or activity that
2 requires the use of explosive materials, such person shall obtain a user
3 license which shall authorize such person to purchase, possess, store and
4 use explosive materials.
- 5 (2) Before a person may supervise and perform the loading and firing
6 of explosive materials, such person shall obtain a license to blast. The
7 license to blast may be issued for any of the following categories:
- 8 (A) "Unlimited" which includes all types of blasting.
9 (B) "General aboveground" which includes all phases of blasting op-
10 erations in quarries, open pit mines and aboveground construction.
11 (C) "General underground" which includes all phases of blasting op-
12 erations in underground mines, shafts, tunnels and drifts.
13 (D) "Demolition" which includes all phases of blasting in demolition
14 projects.
15 (E) "Seismic" which includes all phases of blasting in seismic
16 prospecting.
17 (F) "Agriculture" which includes all phases of blasting in agriculture
18 in which not more than 50 lbs. (22.7 kg.) of explosive materials per blast
19 are used.
20 (G) "Special" which is limited to the conditions described on the
21 permit.
- 22 (3) Before a person may move or store any explosive material at any
23 job site, that person must obtain both a permit to store, and a license to
24 use from the state fire marshal in accordance with the provisions of this
25 act.
- 26 (c) (1) Each applicant for an initial license to blast issued under this
27 act shall demonstrate adequate training and experience in the use, han-
28 dling and storage of explosive materials, as determined by the state fire
29 marshal.
- 30 (2) Each applicant for an initial license to blast issued under this act
31 shall pass a qualifying examination. The examination may be written, oral
32 or by such other means as necessary to determine that the applicant is
33 competent to conduct blasting operations and to perform the duties of a
34 blaster.
- 35 (3) Any person whose license to blast has been revoked shall be re-
36 quired to pass a qualifying examination as a condition of reinstatement of
37 the license.
- 38 (4) Any person whose license to blast has lapsed for a period of one
39 year or more shall be required to pass a qualifying examination as a con-
40 dition of renewal of the license.
- 41 (5) Before any person may obtain a license to use explosive materials,
42 such applicant must first obtain a federal license from the U.S. treasury,
43 bureau of alcohol, tobacco and firearms or other similar federal agency

- 1 and meet all of the requirements imposed thereby.
- 2 (6) Before a person may obtain a permit to store explosives, such
3 person must have been issued a valid user license. In addition to the
4 regular storage permit, a temporary storage permit may be issued for a
5 period not to exceed 30 days.
- 6 (d) (1) At a minimum, the original wallet license to use shall be kept
7 at each blasting site. If multiple blasting sites are authorized under one
8 license to use, a copy of the original license and notice of the location of
9 the original of such license shall be kept at each blasting site.
- 10 (2) The original wallet license to blast shall be carried by the license
11 holder during blasting operations.
- 12 (3) The original permit to store explosives shall be posted at the stor-
13 age site.
- 14 (4) Each license holder shall take every reasonable precaution to pro-
15 tect such holder's license from loss, theft, defacement, destruction or
16 unauthorized duplication. Any loss, theft, defacement, destruction or
17 unauthorized duplication of a license issued under this act shall be re-
18 ported immediately to the issuing authority.
- 19 (e) (1) No license or permit issued under this act may be assigned
20 or transferred.
- 21 (2) No license under this act shall be issued to a person under 21
22 years old.
- 23 (3) Each license shall:
- 24 (A) Be dated and numbered;
- 25 (B) be valid for no more than three years from the date of issue; and
- 26 (C) state the expiration date of the license.
- 27 Sec. 7. (a) The state fire marshal may deny, suspend, revoke or refuse
28 renewal of any license or permit issued under this act if the state fire
29 marshal finds that the applicant or license holder:
- 30 (1) Failed to comply with any order of the state fire marshal within
31 the time specified by such order;
- 32 (2) is under indictment for, or has been convicted of, a crime pun-
33 ishable by imprisonment for a term exceeding one year;
- 34 (3) is a fugitive from justice;
- 35 (4) is an unlawful user of, or is addicted to, any controlled substance
36 as defined in K.S.A. 65-4150, and amendments thereto;
- 37 (5) has been adjudicated as mentally defective;
- 38 (6) advocates, or knowingly belongs to, any organization or group that
39 advocates violent overthrow of or violent action against any federal, state
40 or local government;
- 41 (7) suffers from a mental or physical defect that would interfere with
42 the safe handling of explosives;
- 43 (8) violated any provision of any explosives law or regulation of this

1 state, another state or the United States;

2 (9) provided false information in conjunction with an application for
3 a permit issued under this act;

4 (10) has been convicted or placed on diversion by any state or the
5 federal government for a crime of domestic violence or its equivalent
6 under the uniform code of military justice, when such crime of domestic
7 violence was committed on or after the effective date of this act;

8 (11) made any misrepresentation in conjunction with an application
9 for a permit issued under this act; or

10 (12) violated any provision of this act or any rules and regulations
11 promulgated thereunder.

12 (b) In any case in which the state fire marshal denies or revokes a
13 license or permit, the state fire marshal shall promptly notify the license
14 or permit applicant or holder. Such notification shall specify the basis for
15 denial or revocation of the permit and shall state that, upon written re-
16 quest by the applicant or holder, a hearing before the state fire marshal
17 shall be held within 30 days after the date of the request.

18 (c) Any action taken under this section which affects any license or
19 permit issued under this act shall be taken only after notice and an op-
20 portunity for a hearing conducted in accordance with the provisions of
21 the Kansas administrative procedures act.

22 (d) Upon notice of the revocation of any license or permit, the former
23 license or permit holder shall immediately surrender to the state fire
24 marshal the revoked license permit and all copies thereof.

25 Sec. 8. (a) Each holder of a license to use shall keep a record of all
26 transactions or operations involving explosive materials in accordance
27 with K.S.A. 21-4207 and 21-4208, and amendments thereto. Such records
28 shall be retained for five years and shall be made available to the state
29 fire marshal upon request.

30 (b) Each holder of a license to blast shall keep a daily record of all
31 explosive materials received and fired or otherwise disposed of by the
32 license holder. Such records shall be retained for five years and shall be
33 made available to the state fire marshal upon request.

34 (c) Any invoice, sales slip, delivery ticket or receipt or similar record
35 representing an individual transaction shall include the signature of the
36 receiver of the explosive materials.

37 (d) Each permit holder shall notify the state fire marshal within 10
38 days of any change in address.

39 (e) The loss, theft or unlawful removal of explosive materials shall be
40 reported by any person authorized to possess explosives pursuant to this
41 act within 24 hours to the:

42 (1) Bureau of alcohol, tobacco and firearms;

43 (2) state fire marshal; and

1 (3) local law enforcement agency.

2 (f) Any accidents involving explosive materials that cause a lost-time
3 injury or property damage shall be reported by any person authorized to
4 possess explosives pursuant to this act immediately to the state fire
5 marshal.

6 Sec. 9. (a) Each application for a license or permit or for renewal
7 thereof shall be made to the state fire marshal on a form provided by the
8 state fire marshal and shall contain such information as may be required
9 by the state fire marshal.

10 (b) If an application for renewal is filed with the state fire marshal
11 before expiration of the current license or permit the renewal shall be-
12 come effective upon expiration of the current license or permit. No re-
13 newal license or permit shall be issued more than 30 days prior to the
14 expiration date of the current license or permit.

15 (c) An application for renewal filed after the expiration of the current
16 permit shall be considered an application for a new license or permit.

17 Sec. 10. (a) Each application under this act for the initial issuance or
18 renewal of a 36-month license to use, blast, manufacture or for a per-
19 manent or temporary permit to store explosives shall be accompanied by
20 a nonrefundable fee as follows:

21 (1) \$125 for a user license.

22 (2) \$75 for a blaster license.

23 (3) \$400 for a manufacture license.

24 (4) \$75 for a permanent storage permit.

25 (b) Each application under this act for a temporary permit to store
26 explosives shall be accompanied by a nonrefundable fee of \$25.

27 (c) The state fire marshal is hereby authorized to adjust the amount
28 of such fee by rule and regulation, except that no fee shall exceed \$600.

29 (d) All fees received under this section shall be remitted to the state
30 treasurer in accordance with the provisions of K.S.A. 75-4215, and
31 amendments thereto. Upon receipt of each such remittance, the state
32 treasurer shall deposit the entire amount in the state treasury to the credit
33 of the fire marshal fee fund.

34 Sec. 11. No person shall abandon or otherwise dispose of any explo-
35 sives in any manner which might, as the result of such abandonment or
36 disposal, create any danger or threat of danger to life or property. When
37 the need for such explosives no longer exists, any person in possession or
38 control of explosives shall, dispose of such explosives in accordance with
39 rules and regulations adopted by the state fire marshal.

40 Sec. 12. Any person authorized to possess explosives shall immedi-
41 ately report to the local police or county sheriff and to the state fire
42 marshal the theft or loss of such explosive materials, whether from a
43 storage magazine, a vehicle in which such explosives are being trans-

1 ported, or from a site on which they are being used, or from any other
2 location.

3 Sec. 13. (a) It shall be unlawful for any person required to obtain a
4 license or permit under this act to manufacture, sell, store, transport or
5 use explosives without first obtaining the required license or permit.

6 (b) Any person convicted of violating the provisions of subsection (a)
7 shall be guilty of a severity level 6 nonperson felony. Each separate vio-
8 lation shall constitute a separate offense.

9 (c) The provisions of this section shall be part of and supplemental
10 to the Kansas criminal code.

11 Sec. 14. The district court of the state of Kansas shall have jurisdic-
12 tion to restrain violations of this act or the rules and regulations prom-
13 ulgated thereunder. The court may issue such orders, including tempo-
14 rary restraining orders, as the facts may warrant without first requiring
15 proof that an adequate remedy at law does not exist. Any orders issued
16 pursuant to this section shall be issued without bond. Proceedings may
17 be instituted under this section without any criminal proceedings, admin-
18 istrative proceedings or civil penalty proceedings being first initiated.

19 Sec. 15. The state fire marshal may issue subpoenas for a witness or
20 any material that is relevant to the administration of this act. The state
21 fire marshal may issue subpoenas to compel the attendance of witnesses
22 and production of books, or both, documents and records anywhere in
23 the state in any hearing held under the provisions of this act.

24 Sec. 16. This act shall take effect and be in force from and after its
25 publication in the Kansas register.