

[As Amended by House Committee of the Whole]

As Amended by House Committee

Session of 2010

HOUSE BILL No. 2671

By Committee on Appropriations

2-8

12 AN ACT concerning the fire marshal; ~~relating to investigation authority;~~
13 ~~amending K.S.A. 31-157 and repealing the existing section [amending~~
14 **K.S.A. 31-157, 75-1511, 75-1515 and 75-1516 and K.S.A. 2009**
15 **Supp. 40-110 and repealing the existing sections; also repealing**
16 **K.S.A. 2009 Supp. 75-1510].**
17

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

19 Section 1. K.S.A. 31-157 is hereby amended to read as follows: 31-
20 157. (a) The state fire marshal, the state fire marshal's deputies and ~~full-~~
21 ~~time~~ fire prevention personnel assigned investigation duties who are
22 members of a ~~paid~~ fire department who have been certified **as a fire**
23 **investigator** by the state fire marshal pursuant to this section shall have
24 the authority to make arrests, carry firearms and conduct searches and
25 seizures while investigating any fire or explosion in which arson or at-
26 tempted arson is suspected or in which there is an attempt or suspected
27 attempt to defraud an insurance company *or any other crimes associated*
28 *with or in conjunction with the arson or attempted arson or attempt to*
29 *defraud an insurance company.* Any affidavits necessary to authorize ar-
30 rests, searches or seizures pursuant to this section shall be made in ac-
31 cordance with K.S.A. 22-2302 and 22-2502, and amendments thereto.

32 (b) The state fire marshal, with the assistance of an advisory com-
33 mittee appointed pursuant to K.S.A. 31-135, and amendments thereto,
34 shall adopt rules and regulations and specify the number of investigators
35 for departments or areas and establish standards for certification of mem-
36 bers of fire departments to make arrests, carry firearms and conduct
37 searches and seizures pursuant to this section. No fire department per-
38 sonnel shall be certified to carry firearms under the provisions of this act
39 without having first successfully completed the firearm training course or
40 courses prescribed for law enforcement officers under K.S.A. ~~74-5604~~
41 ~~74-5607~~, and amendments thereto.

42 (c) With the exception of firearms training, nothing in this section
43 shall be construed to require persons employed prior to the effective date

1 of this act to comply with the standards established by the state fire mar-
2 shal pursuant to this section as a condition of continued employment, and
3 such persons' failure to comply with such standards shall not make such
4 persons ineligible for any promotional examination for which they are
5 otherwise eligible or affect in any way any pension rights to which they
6 are entitled on the effective date of this act.

7 **[New Sec. 2. (a) There is hereby established, within and as a**
8 **part of the insurance department, a division of the state fire mar-**
9 **shal, the head of which shall be the state fire marshal. Under the**
10 **supervision of the insurance commissioner, the state fire marshal**
11 **shall administer the division of the state fire marshal. The insur-**
12 **ance commissioner shall appoint the state fire marshal, subject to**
13 **confirmation by the senate as provided in K.S.A. 75-4315b, and**
14 **amendments thereto, and the state fire marshal shall serve at the**
15 **pleasure of the insurance commissioner. Except as provided by**
16 **K.S.A. 46-2601, and amendments thereto, no person appointed as**
17 **state fire marshal shall exercise any power, duty or function as**
18 **state fire marshal until confirmed by the senate. Any person ap-**
19 **pointed as state fire marshal shall have a knowledge of building**
20 **construction and, at the time of appointment, shall have had not**
21 **less than five years of experience in fire safety inspection and in-**
22 **vestigation. The state fire marshal shall maintain an office in the**
23 **city of Topeka.**

24 **[(b) This section shall take effect on and after July 1, 2010.**

25 **[New Sec. 3. (a) The state fire marshal's office created by**
26 **K.S.A.75-1510 through 75-1517, and amendments thereto, is**
27 **hereby abolished.**

28 **[(b) Except as otherwise provided by this act, all of the powers,**
29 **duties and functions of the existing state fire marshal's office and**
30 **the existing state fire marshal are hereby transferred to and con-**
31 **ferred and imposed upon, the Kansas department of insurance and**
32 **the division of state fire marshal and the state fire marshal estab-**
33 **lished by this act.**

34 **[(c) Except as otherwise provided by this act, the Kansas de-**
35 **partment of insurance and the state fire marshal established by**
36 **this act shall be the successor in every way to the powers, duties**
37 **and functions of the state fire marshal's office and the existing state**
38 **fire marshal in which the same were vested prior to the effective**
39 **date of this act. Every act performed in the exercise of such pow-**
40 **ers, duties and functions by or under the authority of the depart-**
41 **ment of insurance and the state fire marshal established by this**
42 **act shall be deemed to have the same force and effect as if per-**
43 **formed by the state fire marshal's office and the state fire marshal,**

1 respectively, in which such powers, duties and functions were
2 vested prior to the effective date of this act.

3 [(d) Except as otherwise provided by this act, whenever the
4 state fire marshal's office or state fire marshal, or words of like
5 effect, is referred to or designated by a statute, contract or other
6 document, such reference or designation shall be deemed to apply
7 to the division of state fire marshal within the Kansas department
8 of insurance and the office of state fire marshal established by this
9 act.

10 [(e) Except as otherwise provided by this act, whenever the
11 state fire marshal, or words of like effect, is referred to or desig-
12 nated by a statute, contract or other document, such reference or
13 designation shall be deemed to apply to the state fire marshal es-
14 tablished by this act.

15 [(f) All rules and regulations of the state fire marshal's office
16 or the state fire marshal in existence on the effective date of this
17 act shall continue to be effective and shall be deemed to be duly
18 adopted rules and regulations of the Kansas department of insur-
19 ance, and the state fire marshal established by this act until re-
20 vised, amended, revoked or nullified pursuant to law.

21 [(g) All orders and directives of the office of state fire marshal
22 or the state fire marshal in existence on the effective date of this
23 act shall continue to be effective and shall be deemed to be orders
24 and directives of the state fire marshal and the division of state
25 fire marshal, Kansas department of insurance established by this
26 act, until revised, amended or nullified pursuant to law.

27 [(h) On the effective date of this act, the state fire marshal and
28 Kansas department of insurance shall succeed to whatever right,
29 title or interest the office of state fire marshal has acquired in any
30 real property in this state, and the state fire marshal shall hold the
31 same for and in the name of the state of Kansas. On and after the
32 effective date of this act, whenever any statute, contract, deed or
33 other document concerns the power or authority of the office of
34 state fire marshal or the state fire marshal to acquire, hold or dis-
35 pose of real property or any interest therein, the Kansas depart-
36 ment of insurance and the state fire marshal shall succeed to such
37 power or authority.

38 [(i) The state fire marshal and the division of state fire marshal
39 of the Kansas department of insurance, established by this act shall
40 be continuations of the office of state fire marshal and the state
41 fire marshal.

42 [(j) On the effective date of this act, all officers and employees
43 who, immediately prior to such date, were engaged in the per-

1 formance of powers, duties or functions of the office of state fire
2 marshal which are transferred by this act to the division of state
3 fire marshal, Kansas department of insurance, and who, in the
4 opinion of the commissioner of insurance and the state fire mar-
5 shal, are necessary to perform the powers, duties and functions of
6 the division of state fire marshal, shall be transferred to, and shall
7 become officers and employees of the Kansas department of
8 insurance.

9 [(k) Officers and employees of the office of state fire marshal
10 transferred by this act shall retain all retirement benefits and leave
11 balances and rights which had accrued or vested prior to the date
12 of transfer. The service of each such officer and employee so trans-
13 ferred shall be deemed to have been continuous. All transfers, lay-
14 offs or abolition of classified service positions under the Kansas
15 civil service act shall be made in accordance with the civil service
16 laws and any rules and regulations adopted thereunder. Nothing
17 in this act shall affect the classified status of any transferred person
18 employed by the office of state fire marshal prior to the date of
19 transfer. When such classified positions become vacant, such po-
20 sitions shall be in the unclassified service.

21 [(l) This section shall take effect on and after July 1, 2010.

22 [Sec. 4. From and after July 1, 2010, K.S.A. 2009 Supp. 40-110
23 is hereby amended to read as follows: 40-110. (a) The commis-
24 sioner of insurance is hereby authorized to appoint an assistant
25 commissioner of insurance, *the state fire marshal as provided by sec-*
26 *tion 1, and amendments thereto*, actuaries, two special attorneys who
27 shall have been regularly admitted to practice, an executive sec-
28 retary, policy examiners, two field representatives, and a secretary
29 to the commissioner. Such appointees shall each receive an annual
30 salary to be determined by the commissioner of insurance, within
31 the limits of available appropriations. The commissioner is also
32 authorized to appoint, within the provisions of the civil service law,
33 and available appropriations, other employees as necessary to ad-
34 minister the provisions of this act. The field representatives au-
35 thorized by this section may be empowered to conduct inquiries,
36 investigations or to receive complaints. Such field representatives
37 shall not be empowered to make, or direct to be made, an exami-
38 nation of the affairs and financial condition of any insurance com-
39 pany in the process of organization, or applying for admission or
40 doing business in this state.

41 [(b) The appointees authorized by this section shall take the
42 proper official oath and shall be in no way interested, except as
43 policyholders, in any insurance company. In the absence of the

1 commissioner of insurance the assistant commissioner shall per-
2 form the duties of the commissioner of insurance, but shall in all
3 cases execute papers in the name of the commissioner of insur-
4 ance, as assistant. The commissioner of insurance shall be respon-
5 sible for all acts of an official nature done and performed by the
6 commissioner's assistant or any person employed in such office. All
7 the appointees authorized by this section shall hold their office at
8 the will and pleasure of the commissioner of insurance.

9 [Sec. 5. From and after July 1, 2010, K.S.A. 75-1511 is hereby
10 amended to read as follows: 75-1511. All the jurisdiction, rights,
11 powers, duties and authority now vested in or imposed upon the
12 Kansas state department of inspections and registration or the di-
13 rector thereof which were transferred to said department or the
14 director thereof from the state fire marshal by the provisions of
15 chapter 285 of the Laws of 1933, and including the jurisdiction,
16 rights, powers, duties and authority conferred, imposed and pro-
17 vided in chapter 31, section 72-4605, 75-1503 and 75-1505 to 75-
18 1509, both sections inclusive, of the General Statutes of 1935 and
19 acts amendatory thereof and supplemental thereto are hereby
20 transferred to, vested in and imposed upon the state fire marshal
21 created in this act *and subject to the supervision of the commissioner*
22 *of insurance.*

23 [Sec. 6. From and after July 1, 2010, K.S.A. 75-1515 is hereby
24 amended to read as follows: 75-1515. The attorney general shall
25 appoint, with the approval of the state fire marshal *and the com-*
26 *missioner of insurance*, an assistant attorney general who shall be the
27 attorney for the state fire marshal and the ~~office~~ *division* of the state
28 fire marshal. Such attorney shall receive an annual salary fixed by
29 the attorney general with the approval of the state fire marshal
30 *and the commissioner of insurance.* Such salary shall be paid from
31 moneys appropriated for the *division of the state fire marshal.*

32 [Sec. 7. From and after July 1, 2010, K.S.A. 75-1516 is hereby
33 amended to read as follows: 75-1516. The assistant attorney gen-
34 eral appointed under K.S.A. 75-1515, *and amendments thereto*, shall
35 be the legal advisor for the ~~office~~ *division* of the state fire marshal.
36 The assistant attorney general appointed under K.S.A. 75-1515,
37 *and amendments thereto*, shall appear for and on behalf of the state
38 fire marshal, or any of the deputies of the state fire marshal, in any
39 litigation that may arise in the discharge of the duties of the ~~office~~
40 *division of the state fire marshal.*

41 [Sec. 8. On July 1, 2010, K.S.A. 75-1511, 75-1515 and 75-1516
42 and K.S.A. 2009 Supp. 40-110 and 75-1510 are hereby repealed.]

43 Sec. ~~2~~: [9.] K.S.A. 31-157 is hereby repealed.

1 Sec. ~~9~~ **10**. This act shall take effect and be in force from and after
2 its publication in the Kansas register.