

Proposed House Substitute for SENATE BILL NO. 226

By Committee on Federal and State Affairs

AN ACT concerning fireworks; amending K.S.A. 2012 Supp. 31-505 and repealing the existing section; also repealing K.S.A. 31-155 and 31-156.

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

New Section 1. (a) If fireworks are found to be stored, possessed or transported in violation of the Kansas fireworks act or any state fire marshal regulation, such fireworks may be seized by the state fire marshal or other state or local law enforcement agency. The seizing authority shall inventory all seized items and provide a copy of the inventory to the person from whom the fireworks were seized upon completion of the seizure. Reasonable costs for the storage and destruction of such fireworks shall be assessed against the party found to be in violation of the state fireworks act or regulations, except that if a hearing is requested pursuant to subsection (b), no person shall be assessed for storage costs incurred for more than 60 days after the completion of judicial review or the expiration of the time for seeking judicial review.

(b) The owner of any fireworks seized under subsection (a) may make written demand upon the state fire marshal for a hearing pursuant to the Kansas administrative procedure act. Where, after hearing, the state fire marshal finds that there has been a violation of the provisions of the Kansas fireworks act or state fire marshal regulations, the state fire marshal may destroy or order the destruction of such fireworks or direct such other disposition of the fireworks as is deemed proper. Unless necessary to protect against a substantial threat to the public health, safety or welfare, the fireworks shall not be destroyed until the completion of judicial review or expiration of the time for seeking judicial review. If the state fire marshal finds there has been no violation, the fireworks shall be returned to their owner.

(c) Where no claimant has appeared within 60 days of the seizure, demanded the return

of the fireworks and proved, to the satisfaction of the state fire marshal, the claimant's title to and right of possession of such fireworks, the state fire marshal may, without process and without liability, destroy or order the destruction of the fireworks or direct such other disposition thereof as is deemed proper.

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

New Sec. 2. (a) In addition to any other penalty provided by law, the state fire marshal, upon finding that any person has violated the provisions of the Kansas fireworks act or any rules and regulations adopted thereunder, may impose a civil penalty as follows:

(1) For failure to obtain a license as required by K.S.A. 31-503, and amendments thereto, the civil penalty shall not exceed \$1,000 per violation and, in the case of a continuing violation, every day such violation continues shall be deemed a separate violation.

(2) For all other violations, the civil penalty shall not exceed \$1,000 per violation, and in the case of a continuing violation, every day such violation continues after the state fire marshal has provided the person with written notice of the violation shall be deemed a separate violation.

(b) All moneys received from penalties imposed pursuant to this section shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and

amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund.

New Sec. 3. There is hereby established in the state treasury a separate, nonlapsing fund to be known as the explosives regulatory and training fund which shall be administered by the state fire marshal. Money deposited to the credit of the fund as provided in K.S.A. 2012 Supp. 31-505, and amendments thereto, in addition to any other money made available for such purposes, shall be made available to the state fire marshal to support fireworks and explosives regulatory and training programs.

New Sec. 4. Except as otherwise provided in section 2, and amendments thereto, proceedings under the Kansas fireworks act shall be conducted in accordance with the Kansas administrative procedure act. Judicial review and civil enforcement of agency actions under the Kansas fireworks act shall be in accordance with the Kansas judicial review act.

New Sec. 5. (a) Except as provided in subsection (c):

(1) It shall be unlawful to sell, offer to sell, or to possess with intent to sell or offer for sale a bottle rocket; and

(2) it shall be unlawful to ignite, fire, set-off or otherwise use a bottle rocket.

(b) Any person violating the provisions of subsection (a) shall be guilty of an unclassified misdemeanor punishable by a fine of not more than \$100.

(c) The provisions of this section shall not prohibit the possession, transportation or sale of bottle rockets within Kansas by a person that is currently registered with the state fire marshal pursuant to section 6, and amendments thereto, to another currently registered person or to a non-registered person provided the non-registered purchaser submits a certification for resale outside

the state of Kansas to the registered seller on a form prescribed by the state fire marshal. The registered seller shall send the certification to the office of the state fire marshal and maintain a copy of the certification for one year from the date of sale.

(d) "Bottle rocket" means any pyrotechnic device which:

(1) Is classified as a class C explosive by the United States department of transportation under 49 C.F.R. § 173.53 (1990);

(2) is mounted on a stick or wire; and

(3) projects into the air when ignited, with or without reports, and includes any device with the same configuration, with or without reports, which may be classified as a pipe or trough rocket. "Bottle rocket" does not include helicopter-type rockets.

New Sec. 6. (a) Any person who manufactures bottle rockets or sells bottle rockets at wholesale and who desires to possess, sell or transport any bottle rockets in this state pursuant to section 5, and amendments thereto, shall register annually with the state fire marshal. Such registration shall entitle the manufacturer or wholesaler to possess, sell and transport bottle rockets in this state for the purpose of selling to another registered wholesaler or to a non-registered person provided the purchaser submits a certificate for resale outside the state of Kansas to the registered seller in accordance with section 5, and amendments thereto. Registration shall be effective for one year from the date of registration.

(b) The provisions of this section shall not require registration by a purchaser when the sale occurs in Kansas and the purchaser will transport the bottle rockets out of the state of Kansas for resale and provides the registered seller with a certificate for sale outside the state in accordance with section 5, and amendments thereto.

(c) The state fire marshal shall adopt rules and regulations necessary to enforce the provisions of section 5, and amendments thereto, and this section.

New Sec. 7. Sections 1 through 6, and amendments thereto, shall be part of and supplemental to the Kansas fireworks act, K.S.A. 31-501 et seq., and amendments thereto.

Sec. 8. K.S.A. 2012 Supp. 31-505 is hereby amended to read as follows: 31-505. (a) All fees collected pursuant to this act shall be transmitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the ~~state fire marshal fee~~ explosives regulatory and training fund.

Sec. 9. K.S.A. 31-155 and 31-156 and K.S.A. 2012 Supp. 31-505 are hereby repealed.

Sec. 10. This act shall take effect and be in force from and after its publication in the Kansas register.

