

Senate Substitute for HOUSE BILL No. 2167

By Committee on Federal and State Affairs

4-1

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

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

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

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

29 (c) Where no claimant has appeared within 60 days of the seizure,
30 demanded the return of the fireworks and proved, to the satisfaction of the
31 state fire marshal, the claimant's title to and right of possession of such
32 fireworks, the state fire marshal may, without process and without liability,
33 destroy or order the destruction of the fireworks or direct such other
34 disposition thereof as is deemed proper.

35 (d) Any provision herein to the contrary notwithstanding, where the
36 manufacture, condition, storage, packing or location of fireworks is such

1 that their continued existence or transportation is an immediate danger to
2 public safety, health or welfare, the state fire marshal or authorized
3 representative thereof may apply to the court which has jurisdiction over
4 such fireworks for an emergency ex parte order authorizing the state fire
5 marshal or authorized representative to destroy or dispose of the fireworks
6 without liability to the owner thereof.

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

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

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

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

24 New Sec. 3. There is hereby established in the state treasury a
25 separate, nonlapsing fund to be known as the explosives regulatory and
26 training fund which shall be administered by the state fire marshal. Money
27 deposited to the credit of the fund as provided in K.S.A. 2012 Supp. 31-
28 505, and amendments thereto, in addition to any other money made
29 available for such purposes, shall be made available to the state fire
30 marshal to support fireworks and explosives regulatory and training
31 programs.

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

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

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

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

42 (b) Any person violating the provisions of subsection (a) shall be
43 guilty of an unclassified misdemeanor punishable by a fine of not more

1 than \$100.

2 (c) The provisions of this section shall not prohibit the possession,
3 transportation or sale of bottle rockets within Kansas by a person that is
4 currently registered with the state fire marshal pursuant to section 6, and
5 amendments thereto, to another currently registered person or to a non-
6 registered person provided the non-registered purchaser submits a
7 certification for resale outside the state of Kansas to the registered seller
8 on a form prescribed by the state fire marshal. The registered seller shall
9 send the certification to the office of the state fire marshal and maintain a
10 copy of the certification for one year from the date of sale.

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

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

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

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

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

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

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

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

40 Sec. 8. K.S.A. 2012 Supp. 31-505 is hereby amended to read as
41 follows: 31-505. (a) All fees collected pursuant to this act shall be
42 transmitted to the state treasurer in accordance with the provisions of
43 K.S.A. 75-4215, and amendments thereto. Upon receipt of each such

1 remittance, the state treasurer shall deposit the entire amount in the state
2 treasury to the credit of the ~~state fire marshal fee~~ explosives regulatory and
3 training fund.

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

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