

HOUSE BILL No. 2887

By Committee on Appropriations

2-16

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) Section 1 through section 15, and amendments
13 thereto, shall 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 and use of explo-
17 sive 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 user’s permits 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 to
35 common fireworks, as defined in the edition 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) NFPA 1123, standard for outdoor display of fireworks;

40 (B) NFPA 1124, code for the manufacture, transportation and stor-
41 age of fireworks; and

42 (C) NFPA 1126, standard for the use of pyrotechnics before a prox-
43 imate audience.

1 (5) To the use of explosive materials in medicines and medicinal
2 agents in the forms prescribed by the United States pharmacopeia or the
3 national formulary.

4 (6) Fireworks.

5 (c) No person whose possession, use or storage of explosives is reg-
6 ulated pursuant to the mined-land conservation and redemption act shall
7 be subject to the provisions of sections 4, 5, 10, 11 or 12, and amendments
8 thereto.

9 Sec. 3. As used in this act, unless the context otherwise requires:

10 (a) "Blaster" means a person qualified to be in charge of and respon-
11 sible for the loading, firing and handling of a blast.

12 (b) "Blasting agent" means a material or mixture intended for blasting
13 and which meets the requirements of the DOT Hazardous Materials Reg-
14 ulations, as set forth in title 49, code of federal regulations, part 173.114a
15 as in existence on the effective date of this act, or any subsequent edition
16 thereof as established in rules and regulations adopted by the state fire
17 marshal.

18 (c) "Dealer" means a person who sells explosive materials pursuant
19 to a federal license or permit issued by the United States treasury de-
20 partment, bureau of alcohol, tobacco and firearms or other federal
21 agency.

22 (d) "Detonator" means any device containing an initiating or primary
23 explosive that is used for initiating detonation. A detonator may not con-
24 tain more than 10 grams of total explosive material per unit, excluding
25 ignition or delay charges. The term includes, but is not limited to, electric
26 detonators of instantaneous and delay types, detonators for use with safety
27 fuses, detonating cord delay connectors, and non-electric detonators of
28 instantaneous and delay types that consist of detonating cord, shock tube
29 or any other replacement for electric leg wires.

30 (e) "DOT" means the United States department of transportation.

31 (f) "Explosive" means any chemical compound, mixture or device,
32 the primary or common purpose of which is to function by explosion:

33 (1) Explosive includes, but is not limited to, dynamite, black powder,
34 pellet powder, initiating explosives, detonators, safety fuses, squibs, det-
35 onating cord, igniter cord, binary and igniters.

36 (2) Explosive also includes any material or substance:

37 (A) Determined to be within the scope of title 18, United States code,
38 chapter 40, "importation, manufacture, distribution and storage of explo-
39 sive materials"; and

40 (B) classified as an explosive by the hazardous materials regulations
41 of DOT.

42 (g) "Lost time injury" means an injury which involves the temporary
43 or permanent loss of employment.

1 (h) "Magazine" means any building or structure, other than an ex-
2 plosives manufacturing building, approved for the storage of explosive
3 materials.

4 (i) "Molotov cocktail" means a breakable container containing an ex-
5 plosive or flammable liquid or other substance, having a wick or similar
6 device capable of being ignited. A molotov cocktail does not include a
7 device commercially manufactured primarily for the purpose of
8 illumination.

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

10 (k) "Person" means any individual, firm, partnership, limited part-
11 nership, limited liability company, corporation, company, association,
12 joint stock association, including any trustee, receiver, assignee or per-
13 sonal representative thereof.

14 (l) "State fire marshal" means the state fire marshal and any author-
15 ized designee thereof.

16 (m) "User" means any person conducting an operation or activity that
17 requires the use of explosive materials and who shall be responsible for
18 the results and consequences of any loading or firing of explosive
19 materials.

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

22 (1) Issue a permit to any applicant, after inspection and investigation,
23 found to be qualified for such permit under the provisions of this act and
24 the rules and regulations promulgated thereunder.

25 (2) Deny, suspend or revoke any permit issued under this act upon
26 a finding of noncompliance or violation of any provision of this act or any
27 rule and regulation promulgated thereunder.

28 (3) Inspect, during normal business hours, any building, structure, or
29 premises subject to the provisions of this act.

30 (4) Upon the discovery of any violation of this act or the applicable
31 rules and regulations, issue such orders as are necessary for the safety of
32 workers and the public.

33 (5) In the case of imminent hazard, apply for an injunction in the
34 appropriate district court.

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

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

42 (1) Basic requirements for safety which shall include, but not be lim-
43 ited to, whenever a fire that cannot be contained or controlled before it

1 reaches explosive materials:

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

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

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

5 (2) Requirements regarding the notification of local fire departments
6 and other local emergency response agencies of the location of all
7 magazines.

8 (3) Except for hand loading of small arms ammunition by an individ-
9 ual prepared for such individual's own personal use and not for resale,
10 requirements prohibiting the manufacture of any explosive material, un-
11 less such manufacture is authorized by federal license and conducted in
12 accordance with recognized safe practices as determined by law.

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

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

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

23 (7) Furnishing of reports and information necessary for the fire mar-
24 shal to carry out the provisions of this act.

25 (8) Requirements regarding the storage and disposal of explosives
26 and explosive materials.

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

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

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

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

39 (1) Have in such person's possession any explosive materials;

40 (2) conduct an operation or activity requiring the use of explosive
41 materials;

42 (3) perform or supervise the loading and firing of explosive materials;

43 or

1 (4) sell, give, deliver or transfer any explosive material to any person
2 who has not been issued a valid permit under this act.

3 Every person conducting an operation or activity that requires the use
4 of explosive materials shall obtain a permit to use explosive materials (user
5 permit) and shall be responsible for the results and consequences of any
6 loading or firing of such explosive materials. Such person shall also ensure
7 that loading and firing are performed or supervised by a person possessing
8 a permit to blast (blaster permit).

9 (b) (1) Before a person may conduct an operation or activity that
10 requires the use of explosive materials, such person shall obtain a user
11 permit which shall authorize such person to purchase, possess, store and
12 use explosive materials.

13 (2) Before a person may supervise and perform the loading and firing
14 of explosive materials, such person shall obtain a permit to blast. The
15 permit to blast may be issued for any of the following categories:

16 (A) "Unlimited" which includes all types of blasting.

17 (B) "General aboveground" which includes all phases of blasting op-
18 erations in quarries, open pit mines and aboveground construction.

19 (C) "General underground" which includes all phases of blasting op-
20 erations in underground mines, shafts, tunnels and drifts.

21 (D) "Demolition" which includes all phases of blasting in demolition
22 projects.

23 (E) "Seismic" which includes all phases of blasting in seismic
24 prospecting.

25 (F) "Agriculture" which includes all phases of blasting in agriculture
26 in which not more than 50 lb. (22.7 kg.) of explosive materials per blast
27 are used.

28 (G) "Special" which is limited to the conditions described on the
29 permit.

30 (3) Before a person may move or store any explosive material at any
31 job site, that person must obtain both a permit to store (storage site
32 permit) and a permit to use from the state fire marshal in accordance with
33 the provisions of this act.

34 (c) (1) Each applicant for an initial permit to blast issued under this
35 act shall demonstrate adequate training and experience in the use, han-
36 dling and storage of explosive materials, as determined by the state fire
37 marshal.

38 (2) Each applicant for an initial permit to blast issued under this act
39 shall pass a qualifying examination. The examination may be written, oral
40 or by such other means as necessary to determine that the applicant is
41 competent to conduct blasting operations and to perform the duties of a
42 blaster.

43 (3) Any holder of a permit to blast who is convicted of a violation of

1 any explosives law or regulation shall be required to pass a qualifying
2 examination as a condition of retention of the permit.

3 (4) Any person whose permit to blast has been revoked shall be re-
4 quired to pass a qualifying examination as a condition of reinstatement of
5 the permit.

6 (5) Any person whose permit to blast has lapsed for a period of one
7 year or more shall be required to pass a qualifying examination as a con-
8 dition of renewal of the permit.

9 (6) Before any person may obtain a permit to use explosive materials
10 (user's permit), such applicant must first obtain a federal license from the
11 U.S. treasury, bureau of alcohol, tobacco, and firearms or other similar
12 federal agency and meet all of the requirements imposed thereby.

13 (7) Before a person may obtain a permit to store explosives (storage
14 permit), such person must have been issued a valid user permit. In ad-
15 dition to the regular storage permit, a temporary storage permit may be
16 issued for a period not to exceed 30 days.

17 (d) (1) At a minimum, the original wallet permit to use shall be kept
18 at each blasting site. If multiple blasting sites are authorized under one
19 permit to use, a copy of the original permit and notice of the location of
20 the original of such permit shall be kept at each blasting site.

21 (2) The original wallet permit to blast shall be carried by the permit
22 holder during blasting operations.

23 (3) The original permit to store explosives (storage permit) shall be
24 posted at the storage site.

25 (4) Each permit holder shall take every reasonable precaution to pro-
26 tect such holder's permit from loss, theft, defacement, destruction or
27 unauthorized duplication. Any loss, theft, defacement, destruction or
28 unauthorized duplication of a permit issued under this act shall be re-
29 ported immediately to the issuing authority.

30 (e) (1) No permit issued under this act may be assigned or
31 transferred.

32 (2) No permit under this act shall be issued to a person under 21
33 years old.

34 (3) Each permit shall:

35 (A) Be dated and numbered;

36 (B) be valid for no more than three years from the date of issue; and

37 (C) show the expiration date of the permit.

38 Sec. 7. (a) The state fire marshal may deny, suspend, revoke or refuse
39 renewal of any permit issued under this act if the state fire marshal finds
40 that the applicant or permit holder:

41 (1) Failed to comply with any order of the state fire marshal within
42 the time specified by such order;

43 (2) is under indictment for, or has been convicted of, a crime pun-

- 1 ishable by imprisonment for a term exceeding 1 year;
- 2 (3) is a fugitive from justice;
- 3 (4) is an unlawful user of, or is addicted to, any controlled substance
4 as defined in K.S.A. 65-4150, and amendments thereto;
- 5 (5) has been adjudicated as mentally defective;
- 6 (6) advocates, or knowingly belongs to, any organization or group that
7 advocates violent overthrow of or violent action against any federal, state
8 or local government;
- 9 (7) suffers from a mental or physical defect that would interfere with
10 the safe handling of explosives;
- 11 (8) violated any provision of any explosives law or regulation of this
12 state, another state or the United states;
- 13 (9) provided false information in conjunction with an application for
14 a permit issued under this act;
- 15 (10) has been convicted or placed on diversion by any state or the
16 federal government for a crime of domestic violence or its equivalent
17 under the uniform code of military justice, when such crime of domestic
18 violence was committed on or after the effective date of this act;
- 19 (11) made any misrepresentation in conjunction with an application
20 for a permit issued under this act; or
- 21 (12) violated any provision of this act or any rule and regulations
22 promulgated thereunder.
- 23 (b) In any case in which the state fire marshal denies or revokes a
24 permit, the state fire marshal shall promptly notify the permit applicant
25 or holder. Such notification shall specify the basis for denial or revocation
26 of the permit and shall state that, upon written request by the applicant
27 or holder, a hearing before the state fire marshal will be held within 30
28 days after the date of the request.
- 29 (c) Any action taken under this section which affects any permit is-
30 sued under this act shall be taken only after notice and an opportunity
31 for a hearing conducted in accordance with the provisions of the Kansas
32 administrative procedures act.
- 33 (d) Upon notice of the revocation of any permit, the former permit
34 holder shall immediately surrender to the state fire marshal the revoked
35 permit and all copies thereof.
- 36 Sec. 8. (a) Each holder of a permit to use (user permit) shall keep a
37 record of all transactions or operations involving explosive materials in
38 accordance with K.S.A. 21-4207 and 21-4208 and amendments thereto.
39 Such records shall be retained for five years and shall be made available
40 to the state fire marshal upon request.
- 41 (b) Each holder of a permit to blast (blaster permit) shall keep a daily
42 record of all explosive materials received and fired or otherwise disposed
43 of by the permit holder. Such records shall be retained for five years and

- 1 shall be made available to the state fire marshal upon request.
- 2 (c) Any invoice, sales slip, delivery ticket or receipt or similar record
3 representing an individual transaction shall include the signature of the
4 receiver of the explosive materials.
- 5 (d) Each permit holder shall notify the state fire marshal within 10
6 day of any change in address.
- 7 (e) The loss, theft or unlawful removal of explosive materials shall be
8 reported within 24 hours to the:
- 9 (1) Bureau of alcohol, tobacco, and firearms;
10 (2) state fire marshal; and
11 (3) local law enforcement agency.
- 12 (f) Any accidents involving explosive material that cause a lost-time
13 injury or property damage shall be reported immediately to the state fire
14 marshal.
- 15 Sec. 9. (a) Each application for a permit or for renewal thereof shall
16 be made to the state fire marshal on a form provided by the state fire
17 marshal and shall contain such information as may be required.
- 18 (b) If an application for renewal is filed with the state fire marshal
19 before expiration of the current permit, the renewal will become effective
20 upon expiration of the current permit. No renewal permit shall be issued
21 more than 30 days prior to the expiration date of the current permit.
- 22 (c) An application for renewal filed after the expiration of the current
23 permit shall be considered an application for a new permit.
- 24 Sec. 10. (a) Each application under this act for the initial issuance or
25 renewal of a 36-month permit to use, blast or store explosives shall be
26 accompanied by a nonrefundable fee as follows:
- 27 (1) \$125 for a user permit.
28 (2) \$75 for a blaster permit.
29 (3) \$75 for a storage permit.
- 30 (b) Each application under this act for a temporary permit to store
31 explosives shall be accompanied by a nonrefundable fee of \$25.
- 32 (c) The state fire marshal is hereby authorized to adjust the amount
33 of such fee by rule and regulation, except that such fee shall not exceed
34 \$200.
- 35 (d) All fees received under this section shall be deposited in the fire
36 marshal fee fund.
- 37 Sec. 11. No person shall abandon or otherwise dispose of any explo-
38 sives in any manner which might, as the result of such abandonment or
39 disposal, create any danger or threat of danger to life or property. When
40 the need for such explosives no longer exists, any person in possession or
41 control of explosives shall, dispose of such explosives in accordance with
42 rules and regulations of the state fire marshal.
- 43 Sec. 12. Any person authorized to possess explosives shall immedi-

1 ately report to the local police or county sheriff and to the state fire
2 marshal the theft or loss of such explosive materials, whether from a
3 storage magazine, a vehicle in which such explosives are being trans-
4 ported, or from a site on which they are being used, or from any other
5 location.

6 Sec. 13. (a) Except as provided in subsection (b), it shall be unlawful
7 for any person required to obtain a permit under this act to manufacture,
8 sell, store, transport or use explosives without first obtaining the required
9 permit, shall be guilty of a class C felony. Each separate violation shall
10 constitute a separate offense.

11 (b) Subsection (a) shall not apply to persons regulated under the
12 mined-land conservation and reclamation act.

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

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

26 Sec. 16. This act shall take effect and be in force from and after its
27 publication in the statute book.