

HOUSE BILL No. 2703

AN ACT relating to crimes and punishment; concerning nuclear generating facilities; relating to armed nuclear security guards; amending K.S.A. 2005 Supp. 21-3721 and repealing the existing section.

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

New Section 1. The provisions of sections 1 through 5, and amendments thereto, may be cited as the nuclear generating facility security guard act.

New Sec. 2. As used in this act:

(a) “Armed nuclear security guard” means a security guard who works at a nuclear generating facility, who is employed as part of the security plan approved by the nuclear regulatory commission and who meets the requirements mandated by the nuclear regulatory commission for carrying a firearm;

(b) “nuclear generating facility” means an electric power generating facility that is owned by an electric utility or a consortium of electric utilities and that produces electricity by means of a nuclear reactor and includes the property on which the facility is located;

(c) “electric utility” means every public utility as defined by K.S.A. 66-104, and amendments thereto, which owns, controls, operates or manages any equipment, plant or generating machinery for the production, transmission, delivery or furnishing of electricity or electric power;

(d) “enter” means the intrusion of any part of any instrument or any part of a person’s body inside of a nuclear generating facility or a structure or fenced yard of a nuclear generating facility;

(e) “entering or remaining unlawfully” means an act by a person who enters or remains in or on a nuclear generating facility or a structure or fenced yard of a nuclear generating facility if that person’s intent for entering or remaining is not licensed, authorized or otherwise privileged;

(f) “structure or fenced yard” means any structure, fenced yard, wall, building or other similar barrier or any combination of structures, fenced yards, walls, buildings or other barriers that surrounds a nuclear generating facility and that is posted with signage indicating it is a felony to trespass.

New Sec. 3. (a) Criminal trespass on a nuclear generating facility is either:

(1) Knowingly entering or remaining unlawfully in or on a nuclear generating facility; or

(2) knowingly entering or remaining unlawfully within a structure or fenced yard of a nuclear generating facility.

(b) Criminal trespass on a nuclear generating facility is a severity level 6, person felony.

New Sec. 4. (a) An armed nuclear security guard is justified in using physical force against another person at a nuclear generating facility or structure or fenced yard of a nuclear generating facility if the armed nuclear security guard reasonably believes that such force is necessary to prevent or terminate the commission or attempted commission of criminal damage to property under K.S.A. 21-3720 (a)(1), and amendments thereto, criminal use of weapons under K.S.A. 21-4201, and amendments thereto, or criminal trespass on a nuclear generating facility under section 3, and amendments thereto.

(b) Notwithstanding the provisions of K.S.A. 21-3211, 21-3212, 21-3213, 21-3215 and 21-3216, and amendments thereto, an armed nuclear security guard is justified in using physical force up to and including deadly physical force against another person at a nuclear generating facility or structure or fenced yard of a nuclear generating facility if the armed nuclear security guard reasonably believes that such force is necessary to:

(1) Prevent the commission of manslaughter under K.S.A. 21-3403 or 21-3404, and amendments thereto, murder in the first degree under K.S.A. 21-3401, and amendments thereto, murder in the second degree under K.S.A. 21-3402, and amendments thereto, aggravated assault under K.S.A. 21-3410, and amendments thereto, kidnapping under K.S.A. 21-3420, and amendments thereto, aggravated kidnapping under K.S.A. 21-3421, and amendments thereto, aggravated burglary under K.S.A. 21-3716, and amendments thereto, arson under K.S.A. 21-3718, and amendments thereto, aggravated arson under K.S.A. 21-3719, and

amendments thereto, aggravated robbery under K.S.A. 21-3427, and amendments thereto; or

(2) defend oneself or a third person from the use or imminent use of deadly physical force.

(c) Notwithstanding any other provision of this act, an armed nuclear security guard is justified in threatening to use physical or deadly physical force if and to the extent a reasonable armed nuclear security guard believes it necessary to protect oneself or others against another person's potential use of physical force or deadly physical force.

(d) No armed nuclear security guard, employer of an armed nuclear security guard or owner of a nuclear generating facility shall be subject to civil liability for conduct of an armed nuclear security guard which is justified pursuant to this act.

New Sec. 5. (a) An armed nuclear security guard, with reasonable belief, may detain in or on a nuclear generating facility or a structure or fenced yard of a nuclear generating facility in a reasonable manner and for a reasonable time any person who is suspected of or attempting to commit any of the crimes specified under subsection (a) or (b) of section 4, and amendments thereto, for the purpose of summoning a law enforcement officer.

(b) Reasonable belief of an armed nuclear security guard is a defense to a civil or criminal action against an armed nuclear security guard, such guard's employer or any owner of the nuclear generating facility where such guard is employed for false arrest, false or unlawful imprisonment or wrongful detention.

Sec. 6. K.S.A. 2005 Supp. 21-3721 is hereby amended to read as follows: 21-3721. (a) Criminal trespass is:

(1) Entering or remaining upon or in any land, nonnavigable body of water, structure, vehicle, aircraft or watercraft, other than railroad property as defined in K.S.A. 2005 Supp. 21-3761, and amendments thereto, or nuclear generating facility as defined in section 1, and amendments thereto, by a person who knows such person is not authorized or privileged to do so, and:

(A) Such person enters or remains therein in defiance of an order not to enter or to leave such premises or property personally communicated to such person by the owner thereof or other authorized person; or

(B) such premises or property are posted in a manner reasonably likely to come to the attention of intruders, or are locked or fenced or otherwise enclosed, or shut or secured against passage or entry; or

(C) such person enters or remains therein in defiance of a restraining order issued pursuant to K.S.A. 60-31a05, 60-31a06, K.S.A. 60-1607, 60-3105, 60-3106 or 60-3107 or K.S.A. 38-1542, 38-1543 or 38-1563, and amendments thereto, and the restraining order has been personally served upon the person so restrained; or

(2) entering or remaining upon or in any public or private land or structure in a manner that interferes with access to or from any health care facility by a person who knows such person is not authorized or privileged to do so and such person enters or remains thereon or therein in defiance of an order not to enter or to leave such land or structure personally communicated to such person by the owner of the health care facility or other authorized person.

(b) As used in this section:

(1) "Health care facility" means any licensed medical care facility, certificated health maintenance organization, licensed mental health center, or mental health clinic, licensed psychiatric hospital or other facility or office where services of a health care provider are provided directly to patients.

(2) "Health care provider" means any person: (A) Licensed to practice a branch of the healing arts; (B) licensed to practice psychology; (C) licensed to practice professional or practical nursing; (D) licensed to practice dentistry; (E) licensed to practice optometry; (F) licensed to practice pharmacy; (G) registered to practice podiatry; (H) licensed as a social worker; or (I) registered to practice physical therapy.

(c) (1) Criminal trespass is a class B nonperson misdemeanor.

(2) Upon a conviction of a violation of subsection (a)(1)(C), a person shall be sentenced to not less than 48 consecutive hours of imprisonment

which must be served either before or as a condition of any grant of probation or suspension, reduction of sentence or parole.

(d) This section shall not apply to a land surveyor, licensed pursuant to article 70 of chapter 74 of the Kansas Statutes Annotated, and amendments thereto, and such surveyor's authorized agents and employees who enter upon lands, waters and other premises in the making of a survey.

Sec. 7. K.S.A. 2005 Supp. 21-3721 is hereby repealed.

Sec. 8. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the HOUSE, and passed that body

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.