

## House Substitute for SENATE BILL No. 226

By Committee on Federal and State Affairs

3-26

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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-  
3 156.

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

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

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

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

36 (d) Any provision herein to the contrary notwithstanding, where the

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

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

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

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

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

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

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

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

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

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

43 (b) Any person violating the provisions of subsection (a) shall be

1 guilty of an unclassified misdemeanor punishable by a fine of not more  
2 than \$100.

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

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

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

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

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

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

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

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

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

41 Sec. 8. K.S.A. 2012 Supp. 31-505 is hereby amended to read as  
42 follows: 31-505. (a) All fees collected pursuant to this act shall be  
43 transmitted to the state treasurer in accordance with the provisions of

1 K.S.A. 75-4215, and amendments thereto. Upon receipt of each such  
2 remittance, the state treasurer shall deposit the entire amount in the state  
3 treasury to the credit of the ~~state fire marshal fee~~ *explosives regulatory and*  
4 *training* fund.

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

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