

LEGISLATIVE BILL 215

Approved by the Governor May 25, 1989

Introduced by Schimek, 27

AN ACT relating to explosives; to amend sections 28-1216, 28-1218, 28-1225, 28-1226, 28-1229 to 28-1232, 28-1234 to 28-1235.01, 28-1238, 28-1252, and 81-502, Reissue Revised Statutes of Nebraska, 1943, and sections 28-1213, 28-1215, 28-1217, and 28-1236, Revised Statutes Supplement, 1988; to provide powers and duties for the Nebraska State Patrol; to eliminate powers and duties of the State Fire Marshal; to change the term of storage permits as prescribed; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 28-1213, Revised Statutes Supplement, 1988, be amended to read as follows:

28-1213. As used in sections 28-1213 to 28-1239, unless the context otherwise requires:

(1) Person shall mean any individual, corporation, company, association, firm, partnership, society, or joint-stock company;

(2) Business enterprise shall mean any corporation, partnership, company, or joint-stock company;

(3) Explosive materials shall mean explosives, blasting agents, and detonators;

(4) Explosives shall mean any chemical compound, mixture, or device, the primary or common purpose of which is to function by explosion, including, but not limited to, dynamite and other high explosives, black powder, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cord, ignited cord, igniters, display fireworks as defined in section 28-1241, and firecrackers or devices containing more than one hundred thirty milligrams of explosive composition, but shall not include common fireworks as defined in section 28-1241, gasoline, kerosene, naphtha, turpentine, benzine, acetone, ethyl ether, benzol, fixed ammunition and primers for small arms, safety fuses, or matches;

(5) Blasting agent shall mean any material or

mixture, consisting of fuel and oxidizer, intended for blasting, not otherwise defined as an explosive, but shall not include a finished product, ready for use or shipment, which cannot be detonated by means of a number eight test blasting cap when unconfined;

(6) Detonator shall mean any device containing a detonating charge that is used for initiating detonation in an explosive, including, but not limited to, electric blasting caps of instantaneous and delay types, blasting caps for use with safety fuses, and detonating cord delay connectors;

(7) Destructive devices shall mean:

(a) Any explosive, incendiary, or poison gas (i) bomb, (ii) grenade, (iii) rocket having a propellant charge of more than four ounces, (iv) missile having an explosive or incendiary charge of more than one-quarter ounce, (v) mine, (vi) booby trap, or (vii) Molotov cocktail, or any similar device, the primary or common purpose of which is to explode and to be used as a weapon against any person or property; or

(b) Any combination of parts either designed or intended for use in converting any device into a destructive device as defined in subdivision (7)(a) of this section from which a destructive device may be readily assembled. The term destructive device shall not include (i) any device which is neither designed nor redesigned for use as a weapon to be used against person or property, (ii) any device, although originally designed for use as a weapon, which is redesigned for use as a signaling, pyrotechnic, line-throwing, safety, or similar device, (iii) surplus ordnance sold, loaned, or given by the Secretary of the Army pursuant to Section 4684(2), 4685, or 4686 of Title 10 of the United States Code, (iv) any other device which the State Fire Marshal Nebraska State Patrol finds is not likely to be used as a weapon or is an antique, or (v) any other device possessed under circumstances negating an intent that the device be used as a weapon against any person or property;

(8) Federal permittee shall mean any lawful user of explosive materials who has obtained a federal user permit under Chapter 40, Title 18, United States Code;

(9) Federal licensee shall mean any importer, manufacturer, or dealer in explosive materials who has obtained a federal importers', manufacturers', or dealers' license under Chapter 40, Title 18, United States Code; and

(10) Smokeless propellants shall mean solid

propellants commonly called smokeless powders in the trade and used in small arms ammunition.

Sec. 2. That section 28-1215, Revised Statutes Supplement, 1988, be amended to read as follows:

28-1215. (1) Except as provided in subsection (2) of this section, any person who is ineligible to obtain a permit from the State Fire Marshal Nebraska State Patrol and who possesses or stores explosive materials commits the offense of unlawful possession of explosive materials in the first degree.

(2) Subsection (1) of this section shall not be applicable to any person transporting explosive materials in accordance with section 28-1235 or to any person who has obtained a permit from the State Fire Marshal Nebraska State Patrol to store or use such explosive materials or, in the case of a business enterprise, a permit to purchase such explosive materials.

(3) Unlawful possession of explosive materials in the first degree is a Class IV felony.

Sec. 3. That section 28-1216, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

28-1216. (1) Except as provided in subsection (2) of this section, any person who is eligible to obtain a permit from the Nebraska State Patrol State Fire Marshal, or had has a valid educational, industrial, commercial, agricultural, or other legitimate need for a permit, and who shall possess or store possesses or stores explosive materials without such a permit, commits the offense of unlawful possession of explosive materials in the second degree.

(2) The exclusions provided in subsection (2) of section 28-1215 shall be are also applicable to this section.

(3) Unlawful possession of explosive materials in the second degree is a Class I misdemeanor.

Sec. 4. That section 28-1217, Revised Statutes Supplement, 1988, be amended to read as follows:

28-1217. (1) Any person who knowingly and intentionally sells, transfers, issues, or gives any explosive materials to any person who does not display a valid permit issued by the State Fire Marshal Nebraska State Patrol authorizing the storage or use of such explosive materials or, in the case of a business enterprise, a permit to purchase such explosive materials commits the offense of unlawful sale of

explosives.

(2) Unlawful sale of explosives is a Class IV felony.

Sec. 5. That section 28-1218, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

28-1218. (1) Any person who uses any explosive materials for any purpose whatsoever, unless such person has obtained a permit from the State Fire Marshal Nebraska State Patrol to use such explosive materials or uses such explosive materials under the supervision of a permit holder, commits the offense of use of explosives without a permit.

(2) Except as provided in subsection (3) of this section, use of explosives without a permit is a Class I misdemeanor.

(3) Upon a showing that the accused was eligible under existing rules and regulations to receive a permit or had a valid educational, industrial, commercial, agricultural, or other legitimate need for a permit, use of explosives without a permit is a Class II misdemeanor.

(4) Any person under the direct and proximate supervision of a person possessing a permit to use explosive materials may also use explosive materials under such safety provisions as the State Fire Marshal Nebraska State Patrol may adopt and promulgate. Federal licensees and permittees shall obtain permits from the State Fire Marshal Nebraska State Patrol to use explosive materials.

Sec. 6. That section 28-1225, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

28-1225. (1) Any person who stores any explosive materials or uses in legitimate blasting operations any explosive materials in a manner not in conformity with safety regulations adopted and promulgated by the State Fire Marshal Nebraska State Patrol or the Secretary of the Treasury of the United States, or who stores any explosive materials at a place not designated in a permit to store such explosive materials issued to such person by the State Fire Marshal Nebraska State Patrol commits the offense of storing explosives in violation of safety regulations.

(2) Storing explosives in violation of safety regulations is a Class III misdemeanor.

Sec. 7. That section 28-1226, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

28-1226. (1) Any person who has knowledge of the theft or loss of explosive materials from his or her stock who fails to report such theft or loss within twenty-four hours of discovery to the State Fire Marshal Nebraska State Patrol commits the offense of failure to report theft of explosives.

(2) Failure to report theft of explosives is a Class III misdemeanor.

Sec. 8. That section 28-1229, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

28-1229. (1) The State Fire Marshal Nebraska State Patrol shall have the authority to issue permits for:

- (a) The storage of explosive materials;
- (b) The use of explosive materials; and
- (c) The purchase of explosive materials by business enterprises.

(2) The State Fire Marshal Nebraska State Patrol shall not issue a permit to store or use explosive materials to any person who:

- (a) Is under nineteen years of age;
- (b) Has been convicted in any court of a felony;
- (c) Is charged with a felony;
- (d) Is a fugitive from justice;
- (e) Is an unlawful user of any depressant, stimulant, or narcotic drug;
- (f) Has been admitted as a patient or inmate in a public or private institution for the treatment of a mental or emotional disease or disorder within five years preceding the date of application; or
- (g) Has no reasonable educational, industrial, commercial, agricultural, recreational, or other legitimate need for a permit to store or use explosive materials.

(3) Upon filing of a proper application and payment of the prescribed fee, and subject to the provisions of sections 28-1213 to 28-1239 and other applicable laws, the State Fire Marshal Nebraska State Patrol shall issue to such applicant a permit to store explosive materials if:

- (a) The applicant, including, in the case of a corporation, partnership, or association, any individual possessing, directly or indirectly, the power to direct or cause the direction of the management and policies of the corporation, partnership, or association, is not a person to whom the State Fire Marshal Nebraska State Patrol is prohibited to issue a permit under subsection

(2) of this section;

(b) The applicant has not willfully violated any of the provisions of sections 28-1213 to 28-1239 or of Chapter 40, Title 18, United States Code; and

(c) The applicant has a place of storage for explosive materials which meets such standards of public safety, based on the class, type, and quantity of explosive materials to be stored, and security against theft as prescribed in rules and regulations issued adopted and promulgated by the State Fire Marshal Nebraska State Patrol pursuant to sections 28-1213 to 28-1239 and by the Secretary of the Treasury of the United States pursuant to Chapter 40, Title 18, United States Code.

(4) A permit for the storage of explosive materials shall specify the class, type, and quantity of explosive materials which are authorized to be stored. It shall also specify the type of security required. A permit for the storage of explosive materials shall be valid for a period of one year three years unless a shorter period is specified in the permit.

(5) Upon filing of a proper application and payment of the prescribed fee, and subject to the provisions of sections 28-1213 to 28-1239 and other applicable laws, the State Fire Marshal Nebraska State Patrol shall issue to such applicant a permit to use explosive materials if:

(a) The applicant is an individual to whom the State Fire Marshal Nebraska State Patrol is not prohibited to issue a permit under subsection (2) of this section;

(b) The applicant has not willfully violated any of the provisions of sections 28-1213 to 28-1239 or of Chapter 40, Title 18, United States Code;

(c) The applicant has demonstrated and certified in writing that he or she is familiar with all published laws of this state and published local ordinances relating to the use of explosive materials applicable at the place or places he or she intends to use such explosive materials; and

(d) The applicant has demonstrated that he or she has adequate knowledge, training, and experience in the use of explosive materials of the class and type for which he or she seeks a users permit and has passed a qualifying examination, as prescribed by the State Fire Marshal Nebraska State Patrol, concerning the use of such explosive materials.

(6) A permit for the use of explosive materials shall specify the class and type of explosive

materials the permitholder is qualified to use. It shall be applicable to the permitholder and to any individual acting under his or her direct personal supervision. A permit may be issued for a single use of explosive materials; or, where the applicant is engaged or employed in a business requiring the frequent use of explosive materials, for a period of not more than two years.

(7) Upon filing of a proper application and payment of the prescribed fees and subject to the provisions of sections 28-1213 to 28-1239 and other applicable laws, the State Fire Marshal Nebraska State Patrol shall issue to a business enterprise a permit to purchase explosive materials if:

(a) The business enterprise has a place of business in this state;

(b) No individual possessing, directly or indirectly, the power to direct or cause the direction of the management and policies of the business enterprise is a person to whom the State Fire Marshal Nebraska State Patrol is prohibited to issue a permit under subsection (2) of this section;

(c) An authorized officer of the business enterprise certifies that all explosive materials will be used on the date of purchase of such materials unless such business enterprise is in possession of a valid storage permit; and

(d) The business enterprise employs at least one employee having a valid use permit issued under this section.

(8) A permit for a business enterprise to purchase explosive materials shall specify the class and type of explosive materials which are authorized to be purchased. The class and type of explosive materials covered by such permit shall be the same as those specified in the use permit or permits issued to an employee or employees of the business enterprise. The permit may be issued for a period of up to two years; but shall become void if the business enterprise ceases to employ an individual having a valid use permit issued under this section for the class and type of explosive materials covered by the purchase permit of the business enterprise.

Sec. 9. That section 28-1230, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

28-1230. Whenever the State Fire Marshal Nebraska State Patrol denies an application for a permit or the renewal thereof, the State Fire Marshal or his

designated agent Nebraska State Patrol shall, within twenty days of such denial, give notice thereof and the reasons therefor in writing to the applicant, personally or by mail, to the address given in the application. The notice of denial shall also advise the applicant of his or her right to appeal, and set forth the steps necessary to undertake an appeal and the time limits pertaining thereto. Such denial may be appealed to the State Fire Marshal Nebraska State Patrol which ~~who~~ shall follow the procedures for contested cases required by the Administrative Procedure Act.

Sec. 10. That section 28-1231, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

28-1231. (1) The State Fire Marshal Nebraska State Patrol may revoke any permit on any ground authorized in subsection (2) of section 28-1229 for the denial of a permit or for any violation of the terms of such permit, ~~or~~ for a violation of any provision of this article or of the rules and regulations of the State Fire Marshal Nebraska State Patrol, or for noncompliance with any order issued by the State Fire Marshal Nebraska State Patrol within the time specified in such order.

(2) Revocation of a permit for any ground authorized may be ordered only after giving written notice and an opportunity to be heard to the holder thereof. Revocation proceedings shall be in accordance with the procedure required for contested cases, set forth in the Administrative Procedure Act. Such notice may be given to the holder personally or by mail and shall specify the ground or grounds on which it is proposed to revoke the permit. When a permit is revoked, the State Fire Marshal Nebraska State Patrol may direct the disposition of the explosives held by such permittee. Upon revocation of a permit by the State Fire Marshal Nebraska State Patrol, the holder thereof shall surrender his or her permit to the State Fire Marshal Nebraska State Patrol at once or be subject to penalties as provided for elsewhere in sections 28-1213 to 28-1239.

Sec. 11. That section 28-1232, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

28-1232. An application for a storage, use, or business enterprise purchase permit for explosive materials shall be in such form and contain such information as the State Fire Marshal Nebraska State Patrol shall by rule and regulation prescribe. Each applicant for a permit shall pay a fee of fifty dollars

in the case of a storage permit, ten dollars in the case of a use permit, and ten dollars in the case of a business enterprise purchase permit.

Sec. 12. That section 28-1234, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

28-1234. (1) Permitholders shall make available for inspection at all reasonable times their records kept pursuant to sections 28-1213 to 28-1239 and the rules and regulations issued adopted and promulgated pursuant to such sections. The State Fire Marshal Nebraska State Patrol may enter during business hours the premises, including places of storage, of any permitholder for the purpose of inspecting and examining (a) any records or documents required to be kept by such permitholder under the provisions of sections 28-1213 to 28-1239 or the rules and regulations issued adopted and promulgated pursuant to such sections; and (b) any explosive materials kept or stored by such permitholder at such premises.

(2) Holders of use permits and business enterprise purchase permits shall retain such permits and make them available to the State Fire Marshal Nebraska State Patrol on request. Storage permits shall be posted and kept available for inspection at all places of storage of explosive materials.

Sec. 13. That section 28-1235, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

28-1235. No person shall transport any explosive materials into this state or within the boundaries of this state unless such person holds a permit as required by sections 28-1213 to 28-1239 or a permit or license issued pursuant to Chapter 40, Title 18, United States Code, ; PROVIDED, there is excepted from the provisions of this section common, contract, and private carriers transporting explosive materials in the lawful, ordinary course of business. Common carriers by air, highway, railway, or water transporting explosive materials into this state or within the boundaries of this state; and contract or private carriers by motor vehicle transporting explosive materials into this state or within the boundaries of this state; and which contract or private carriers are in the lawful, ordinary course of business and engaged in such business pursuant to certificate or permit by whatever name issued to them by any federal or state officer, agency, bureau, commission, or department shall be excepted from the provisions of this section; except

as the State Fire Marshal Nebraska State Patrol by rule and regulation may otherwise provide. All transportation of explosive materials subject to the provisions of this section shall be in conformity with such safety rules and regulations as the State Fire Marshal Nebraska State Patrol may adopt and promulgate.

Sec. 14. That section 28-1235.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

28-1235.01. Any resident of the State of Nebraska who holds a valid explosive permit issued by the State Fire Marshal, Nebraska State Patrol and who uses explosive material in the conduct of a business or occupation, may lawfully purchase explosive materials from a licensed seller located or residing in a state contiguous to the State of Nebraska and bring such explosive material into Nebraska.

Sec. 15. That section 28-1236, Revised Statutes Supplement, 1988, be amended to read as follows:

28-1236. The State Fire Marshal Nebraska State Patrol may adopt and promulgate rules and regulations supplemental to sections 28-1213 to 28-1239 ~~28-1239-01~~ as he or she deems necessary or desirable to assure the public safety as well as to provide reasonable and adequate protection of the lives, health, and safety of persons employed in the manufacture, storage, transportation, handling, and use of explosives. The State Fire Marshal Nebraska State Patrol may adopt and promulgate such rules and regulations as he or she deems necessary and proper for the administration of sections 28-1213 to ~~28-1239-01~~ 28-1239 and, together with all other peace officers of the state and its political subdivisions, shall be charged with the enforcement of such sections.

Sec. 16. That section 28-1238, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

28-1238. Any explosive materials or destructive devices involved in any violation of sections 28-1213 to 28-1239 or any rule or regulation adopted and promulgated pursuant to such sections or in any violation of any other criminal law of this state shall be subject to seizure, and disposition may be made in accordance with the method of disposition directed for contraband in section 29-820, whenever the seized matter results in a judicial civil or criminal action by or against any person or as the State Fire Marshal Nebraska State Patrol directs in the absence of such

judicial action.

Sec. 17. That section 28-1252, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

28-1252. The State Fire Marshal shall adopt and promulgate reasonable rules and regulations for the enforcement of sections 28-1239.01 and 28-1241 to 28-1252 and, together with all peace officers of the state and its political subdivisions, shall be charged with the enforcement of ~~the provisions of~~ sections 28-1239.01 and 28-1244 to 28-1249.

Sec. 18. That section 81-502, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-502. (1) It shall be the duty of the State Fire Marshal, under authority of the Governor:

(a) To enforce all laws of the state relating to the suppression of arson and investigation of the cause, origin, and circumstances of fires;

(b) To promote safety and reduce loss by fire;

(c) To make an investigation for fire safety of the premises and facilities of:

(i) Liquor establishments for which a license or renewal of a license is sought, upon request of the Nebraska Liquor Control Commission, pursuant to section 53-119.01;

(ii) Licensed child care facilities or applicants for licenses for child care facilities, upon request by the Department of Social Services, pursuant to section 71-1903;

(iii) Licensed providers of early childhood programs or applicants for licenses to provide such programs, upon request of the Department of Social Services, pursuant to section 71-1913. The State Fire Marshal shall report the results of the investigation to the department within thirty days after receipt of the request from the department;

(iv) Licensed hospitals, skilled nursing facilities, intermediate care facilities, or other facilities or institutions which are mentioned in subdivision (1) of section 71-2017 or applicants for licenses for such facilities or institutions, upon request by the Department of Health, pursuant to section 71-2022; and

(v) Mobile home parks for which a license or renewal of a license is sought, upon request of the Department of Health, pursuant to section 71-4635; and

(d) After a careful study and investigation of relevant data bearing thereon, to adopt, promulgate,

alter, and enforce rules and regulations covering:

(i) The prevention of fires;
 (ii) The storage, sale, and use of flammable liquids, combustibles, and explosives fireworks;

(iii) Electric wiring and heating, protection equipment devices, materials, furnishings, and other safeguards within the structure necessary to promote safety and reduce loss by fire, and the means and adequacy of exits, in case of fire, in assembly, educational, institutional, residential, mercantile, office, storage, and industrial-type occupancies as such structures are defined in the National Fire Protection Association, Pamphlet Number 101, and associated pamphlets, and all other buildings, structures, and enclosures in which numbers of persons congregate from time to time for any purpose whether privately or publicly owned;

(iv) Design, construction, location, installation, and operation of equipment for storing, handling, and utilization of liquefied petroleum gases, specifying the odorization of such gases and the degree thereof;

(v) Chemicals, prozylin plastics, X-ray nitrocellulose films, or any other hazardous material that may now or hereafter exist; and

(vi) Tanks used for the storage of regulated substances pursuant to the Petroleum Products and Hazardous Substances Storage and Handling Act.

(2) The State Fire Marshal may enter into contracts with private individuals or other agencies, boards, commissions, or governmental bodies for the purpose of carrying out his or her duties and responsibilities pursuant to sections 81-502 to 81-552 and 81-5.115 to 81-5.146.

(3) The State Fire Marshal may delegate the authority set forth in this section to qualified local fire prevention personnel. The State Fire Marshal may overrule a decision, act, or policy of the local fire prevention personnel. When the State Fire Marshal overrules the local personnel, such local personnel may follow the appeals procedure established by sections 81-502.01 to 81-502.03. Such delegation of authority may be revoked by the State Fire Marshal for cause upon thirty days' notice after a hearing.

(4) The State Fire Marshal, first assistant fire marshal, and deputies shall have such other powers and perform such other duties as are set forth in sections 81-501.01 to 81-531 and as may be conferred and imposed by law.

(5) The rules and regulations adopted and promulgated pursuant to subdivision (1)(d) of this section may conform generally to the standards recommended by the National Fire Protection Association, Pamphlet Number 101, known as the Life Safety Code, and associated pamphlets, but not when doing so would impose an unduly severe or costly burden without substantially contributing to the safety of persons or property. This section and the rules and regulations adopted and promulgated pursuant to subdivision (1)(d) of this section shall apply to existing as well as new buildings, structures, and enclosures. Such rules and regulations shall also apply to sites or structures in public ownership listed on the National Register of Historic Places but without destroying the historic quality thereof.

(6) Plans for compliance with the rules and regulations adopted and promulgated pursuant to subdivision (1)(d) of this section shall be reviewed by the State Fire Marshal.

Sec. 19. That original sections 28-1216, 28-1218, 28-1225, 28-1226, 28-1229 to 28-1232, 28-1234 to 28-1235.01, 28-1238, 28-1252, and 81-502, Reissue Revised Statutes of Nebraska, 1943, and sections 28-1213, 28-1215, 28-1217, and 28-1236, Revised Statutes Supplement, 1988, are repealed.