

LEGISLATIVE BILL 163

Approved by the Governor March 8, 1993

Introduced by Coordsen, 32; Schmitt, 41

AN ACT relating to explosives; to amend sections 28-1213, 28-1229, 28-1233, and 28-1239, Reissue Revised Statutes of Nebraska, 1943; to redefine terms; to change provisions relating to the issuance of permits, recordkeeping, and notification of use or storage of explosives; to provide a penalty; to provide for the surrender of certain war trophies and other explosive materials as prescribed; and to repeal the original sections.

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

Section 1. That section 28-1213, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

28-1213. For purposes of ~~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~~ such section, gasoline, kerosene, naphtha, turpentine, benzene, acetone, ethyl ether, benzol, fixed ammunition and primers for small arms, safety fuses, or matches;

(5) ~~Blasting agent shall mean any material or mixture, intended for blasting which meets the requirements of the federal Hazardous Material Regulations, 49 C.F.R. part 173, subpart C; 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 an initiating or primary explosive that is used for initiating detonation. Excluding ignition or delay charges, a detonator shall not contain more

than ten grams of explosive material per unit. Detonator shall include an electric detonator of instantaneous or delay type, a detonator for use with safety fuses, a detonating cord delay connector, and a nonelectric detonator of instantaneous or delay type which consists of detonating cord, shock tube, or any other replacement for electric leg wires; 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 10 U.S.C. 4684(2), 4685, or 4686, (iv) any other device which the 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 18 U.S.C. chapter 40;

(9) Federal licensee shall mean any importer, manufacturer, or dealer in explosive materials who has obtained a federal importers', manufacturers', or dealers' license under 18 U.S.C. chapter 40; 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 28-1229, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

28-1229. (1) The 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 Nebraska State Patrol shall not issue a permit to

store or use explosive materials to any person who:

- (a) Is under ~~nineteen~~ twenty-one 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 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 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 18 U.S.C. chapter 40; 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 adopted and promulgated by the Nebraska State Patrol pursuant to sections 28-1213 to 28-1239 and by the Secretary of the Treasury of the United States pursuant to 18 U.S.C. chapter 40.

(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 ~~three~~ two 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 Nebraska State Patrol shall issue to such applicant a permit to use explosive materials if:

(a) The applicant is an individual to whom the 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 18 U.S.C. chapter 40;

(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 Nebraska State Patrol, concerning the use of such explosive materials; ~~and~~

(e) The applicant has filed with his or her application verification that the applicant has filed for a check of his or her criminal history record information maintained by the Identification Division of the Federal Bureau of Investigation through the Nebraska State Patrol.

(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~~ when 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 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 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. 3. That section 28-1233, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

28-1233. (1) Every holder of any permit required under sections 28-1213 to 28-1239 shall maintain an accurate inventory of all

explosives in his or her possession and maintain records of transfers to other persons of explosive materials. Such ~~such~~ records ~~to~~ shall include a statement of intended use by the transferee; and the name, date of birth, place of birth, ~~and~~ social security number or taxpayer identification number, and place of residence of any natural person to whom the explosives are transferred. If the explosive materials are transferred to a corporation or other business entity, such records shall include the identity and principal and local places of business and the name, date of birth, place of birth, and place of residence of the natural person acting as the agent of the corporation or other business entity in arranging the transfer. In the case of a federal licensee or permittee who is also a permitholder under the terms of sections 28-1213 to 28-1239, the maintenance of one set of records for the fulfilling of the record-keeping requirements of 18 U.S.C. chapter 40 shall be deemed compliance with the record-keeping requirements of sections 28-1213 to 28-1239.

(2) Every holder of any storage or business enterprise permit required under sections 28-1213 to 28-1239 shall maintain a log describing the time, place, amount, and type of explosive used in any blasting operations performed by him or her or at his or her direction.

(3) Every holder of any storage, purchase, or use permit required under sections 28-1213 to 28-1239 shall notify the fire protection district in which any explosive is to be used or stored twenty-four hours prior to such use or storage, and the holder shall keep a written record in the log describing the time the notice was given, office in the district to which the notice was given, and name of the person in the district notified. The fire protection district may waive the twenty-four-hour notice when the public safety requires such waiver to prevent loss of life or property if such notice is given prior to use or storage. The fire protection district may accept a single notification of ongoing use within a set timeframe not to exceed sixty days. Any holder of a storage, purchase, or use permit who fails to notify the fire protection district pursuant to this subsection shall be guilty of a Class II misdemeanor.

Sec. 4. That section 28-1239, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

28-1239. In addition to the exceptions provided in sections 28-1213 to 28-1239, such sections shall not apply to:

(1) The use of explosive materials in medicines and medicinal agents in forms prescribed by the official United States Pharmacopoeia; or the National Formulary;

(2) The sale, transportation, shipment, receipt, or importation of explosive materials for delivery to any agency of the United States or to any state or political subdivision thereof;

(3) Small arms ammunition and components thereof;

(4) The storage or possession of or dealing in black powder used for recreation purposes by ~~sportsmen~~ a sportsperson;

(5) The storage or possession of or dealing in smokeless propellants, percussion caps, primers, and other components used by ~~sportsmen~~ a sportsperson in the reloading of small arms ammunition;

(6) Bona fide war trophies capable of exploding and innocently found explosive materials possessed under circumstances negating an intent to use the same unlawfully, but the owner thereof shall surrender such items forthwith to any nationally certified hazardous device technician or military explosive ordnance expert upon demand by a law enforcement officer or agency ~~upon demand~~ or fire department; and

(7) The storage in minimum amounts necessary for lawful educational purposes of explosive materials to be used in the natural science laboratories of any state-accredited school system.

Sec. 5. That original sections 28-1213, 28-1229, 28-1233, and 28-1239, Reissue Revised Statutes of Nebraska, 1943, are repealed.