

LEGISLATIVE BILL 131

Approved by the Governor May 26, 1999

Introduced by Tyson, 19; Hilgert, 7; Schmitt, 41

AN ACT relating to crimes and offenses; to amend section 28-1213, Reissue Revised Statutes of Nebraska, and section 28-1229, Revised Statutes Supplement, 1998; to change provisions relating to explosives; and to repeal the original sections.

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

Section 1. Section 28-1213, Reissue Revised Statutes of Nebraska, is amended to read:

28-1213. For purposes of sections 28-1213 to 28-1239, unless the context otherwise requires:

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

(2) Business enterprise shall mean any corporation, partnership, limited liability company, 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 such section, 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, intended for blasting which meets the requirements of the federal Hazardous Material Regulations, 49 C.F.R. part 173, subpart C;

(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;

(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, (viii) bottle bomb, or (ix) vessel or container intentionally caused to rupture or mechanically explode by expanding pressure from any gas, acid, dry ice, or other chemical mixture, 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. Section 28-1229, Revised Statutes Supplement, 1998, is amended to read:

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 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;

(h) Has been convicted in any court of a misdemeanor crime of domestic violence. This includes any misdemeanor conviction involving the use or attempted use of physical force committed by a current or former spouse, parent, or guardian of the victim or by a person with a similar relationship with the victim;

(i) Is subject to a court order restraining him or her from harassing, stalking, or threatening an intimate partner or child of such partner; or

(j) Is an alien illegally in the United States.

(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, limited liability company, 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, limited liability company, 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 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;

(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

~~(c) 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.~~

(e) The applicant has been fingerprinted and the fingerprints submitted to the Nebraska State Patrol for a criminal history record check. If no disqualifying record is located at the state level, the fingerprints shall be forwarded by the patrol to the Identification Division of the Federal Bureau of Investigation for a national criminal history record check.

(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, 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 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.

(9) If the applicant is an individual, an application for a permit issued under this section shall include the applicant's social security number.

Sec. 3. Original section 28-1213, Reissue Revised Statutes of Nebraska, and section 28-1229, Revised Statutes Supplement, 1998, are repealed.