

A MODEL BILL PROVIDING FOR THE CONTROL OF SALES OF
EXPLOSIVES AND BLASTING
AGENTS

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Be it enacted by the [Legislature] of the State of _____:
Section 1. The following new chapter is added to Title _____:
"CHAPTER _____ CONTROL OF SALES OF EXPLOSIVES"

1. Definitions

As used in this chapter---

(1) The term 'person' and the term 'whoever' include any individual, corporation, company, association, firm, partnership, society or joint stock company.

(2) The term 'explosive' means gunpowders, powders used for blasting, all forms of high explosives, blasting materials, fuzes other than electric circuit brakers, detonators and other detonating agents, smokeless powders, and any chemical compounds, mechanical mixture, or device that contains any oxydizing and combustible units, or other ingredients, in such proportions, quantities, or packing that ignition by fire, friction, concussion, percussion, or detonation of the compound, mixture, or device or any part thereof may cause an explosion.

(3) The term 'explosion' means a substantially instantaneous release of gas and heat.

(4) The term 'dealer' means any person engaged in the selling of explosives wholesale or retail; 'licensed dealer' means any dealer licensed under the provisions of this chapter.

(5) The term 'permittee' means any purchaser of explosives for a lawful purpose, who has obtained a purchase permit under the provisions of this chapter.

(6) The term '[Name of Official to administer this act; hereinafter noted as [Official]]' means [definition of position of Official].

(7) The term 'published ordinance' means a published law of any political entity, including but not limited to a State, a political subdivision of a State, or the Government of the United States, which the [Official] determines relevant to the enforcement of this chapter, and which is contained on a list compiled by the [Official], which list shall be revised annually and

[Optional] [be published as are administrative orders by administrative agencies with the State]

and furnished each licensed dealer and permittee under this chapter.

(8) The term 'fugitive from justice' means any person who has fled from any State to avoid prosecution for a crime or to avoid giving testimony in any criminal proceeding.

(9) The term 'crime punishable by imprisonment for a term exceeding one year' shall not include any Federal or State offenses pertaining to antitrust violations, unfair trade practices, restraints

of trade, or other similar offenses relating to the regulation of business practices as the [Official] may be published regulation designate, or any State or Federal offense (other than one involving a deadly weapon or explosive) classified by the laws of the State or by the laws of the United States as a misdemeanor and punishable by a term of two years or less.

2. Unlawful Acts

(a) It shall be unlawful---

(1) for any person, except a licensed dealer, to engage in the business of selling, giving, transferring, or other wise disposing of explosives; except that nothing in this chapter shall prevent sales, gifts, transfers, or other modes of disposal from a manufacturer of explosives to a licensed dealer.

(2) for any person in connection with the acquisition or attempted acquisition of any explosive from any licensed dealer knowingly to make any false or fictitious or misrepresented identification, intended or likely to deceive such dealer, with respect to any fact material to the lawfulness of the sale or other disposition under the provisions of this chapter.

(3) for any person to sell or otherwise dispose of explosives to any individual whom the licensee knows or has reasonable cause to believe is less than twenty-one years of age.

(4) for any licensed dealer to sell or deliver any explosive to any person where the purchase or possession by such person is known to be in violation of any published ordinance by such licensed dealer.

(5) for any licensed dealer to sell or deliver any person who does not produce a purchase permit for explosives as provided for under this chapter.

(6) for any licensed dealer to sell or deliver to any person any explosive unless the licensee notes in his records, required to be kept under this chapter, (A) the name, age, place of residence, and telephone number (if any) if the person is an individual, or the identity and principal and local place of business of such person if the person is a corporation or other entity, and (B) the place where such explosives are to be used.

(7) for any licensed dealer to sell or deliver to any person any explosive where the person declares the place of use of the explosive to be more than two-hundred miles from the principal place of business of the licensed dealer.

Paragraph (3), (5), (6) and (7) shall not apply to transactions between licensed dealers or between licensed dealers and manufacturers.

(b) It shall be unlawful for any licensed dealer to sell or other wise deliver explosives to any person who the licensee has reason to believe intends to transport such explosives into a State where purchase of such explosives is prohibited.

(c) It shall be unlawful for any licensed dealer knowingly to sell or deliver explosives to any individual who:

(1) has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year,

(2) is a fugitive from justice,

(3) is an unlawful user of marijuana, as defined in section 4761 of the United States Internal Revenue Code of 1954, or is an unlawful user of any depressant or stimulant drug, as defined in section 201(v) of the Federal Food, Drug, and Cosmetic Act, or is an unlawful user of a narcotic drug, as defined by section 4721(a) of the United States Internal Revenue Code of 1954, or has at any time been adjudicated a mental defective.

(d) In any case not otherwise prohibited by this chapter, a licensed dealer may sell an explosive to a person who does not appear in person at the licensed dealer's business premises (other than another licensed dealer) only if---

(1) the transferee submits to the transferor a sworn statement in the following form:

"Subject to penalties provided by law, I swear that I am twenty-one years or more of age; that I am not prohibited by the provisions of law from receiving explosives; and that my receipt of these explosives will not be in violation of any statute of the State and published ordinance applicable to the locality in which I reside. Further, the true name, title, and address of the principal law enforcement officer of the locality to which the explosive will be delivered are _____

Signature _____ Date _____

and containing blank spaces for the attachment of a true copy of the purchase permit required by this chapter;

(2) the transferor has, prior to the shipment or delivery of the explosives, forwarded by registered or certified mail (return receipt requested) a copy of the sworn statement, together with a description of the explosives, in a form provided by the [Official], to the chief law enforcement officer of the transferee's place of residence, and has received a return receipt evidencing delivery of the statement or has had the statement returned due to the refusal of the named addressee to accept such letter in accordance with United States Postal Service regulations; and

(3) the transferor has delayed shipment or delivery for a period of at least seven days following receipt of the notification of the acceptance or refusal of delivery of the statement.

A copy of the sworn statement and a copy of the notification to the local law enforcement officer, together with evidence of receipt or rejection of that notification shall be retained by the licensee as a part of the records required to be kept under this chapter.

3. Licensing of Dealers

(a) No person shall engage in business as a dealer in explosives until he has filed an application with, and received a license to do so

from, the [Official]. Each applicant shall pay a fee of ten dollars per year for obtaining such license. Such license may be used at more than one place of business if duplicate copies of the license are procured for each other place of business.

(b) Upon the filing of a proper application and payment of the fee, the [Official] shall issue to a qualified applicant the license which, subject to the provisions of this chapter, shall entitle the dealer to sell and otherwise deliver explosives.

(c)(1) Any application submitted under subsection (a) of this section shall be approved if---

(A) the applicant is over twenty-one years of age; and

(B) the applicant has not willfully violated any of the provisions of this chapter or regulations issued thereunder; and

(C) the applicant has not willfully failed to disclose any material information required, or had not made any false statement as to any material fact, in connection with his application; and

(D) the applicant has in a State premises from which he conducts business subject to license under this chapter or from which he intends to conduct such business within a reasonable period of time; and

(E) the applicant has never been convicted of a crime of violence involving a firearm or explosive.

(2) The [Official] must approve or deny the application within forty-five days from receipt by him. If the [Official] has not acted within forty-five days of receipt by him, the applicant may institute any action at law or equity to compel issuance of the license. If the [Official] approves the application, a license shall issue upon payment of the fee.

(d) The [Official] may after notice and opportunity for hearing revoke any license issued under this section if the holder thereof has violated any provision of this chapter or regulation promulgated thereunder.

(e)(1) Any person whose application for a license has been denied shall receive a written specification of the reasons for denial. Any notice of a revocation of a license shall be given to the holder of such license before the effective date of the revocation.

(2) If the [Official] denies an application for, or revokes, a license, he shall upon request by the aggrieved party promptly hold a hearing to review his denial or revocation. In the case of a revocation, the [Official] shall upon the request of the holder of the license stay the effective date of the revocation. A hearing held under this paragraph shall be held at a location convenient to the aggrieved party.

(3) If after a hearing held under paragraph (2) the [Official] decides not to reverse his decision to deny or revoke the license, he shall give notice to the aggrieved party of his decision. The aggrieved party at any time within [] days after the notice was given file in a court of competent jurisdiction a petition for review.

(f) Each licensed dealer shall maintain at his place of business records of sale or disposition for such period as the [Official] may prescribe, which records shall be available for inspection by the [Official] at all reasonable times.

(g) Licenses or duplicates of licenses issued to dealers shall be conspicuously posted upon the business premises of the dealer.

4. Purchase Permits

(a) No person shall purchase explosives or otherwise obtain explosives until he has filed an application with, and received a permit from the [Official]. Each applicant shall pay a fee of five dollars per year for obtaining such license.

(b) Upon the filing of a proper application and payment of the fee, the [Official] shall issue to a qualified applicant the permit, which, subject to the conditions of this chapter, shall entitle the holder to purchase explosives.

(c) (1) Any application submitted under subsection (a) shall be approved if---

(A) the applicant is over twenty-one years of age; and

(B) the applicant has not willfully violated any of the provisions of this chapter or regulations issued thereunder; and

(C) the applicant has not willfully failed to disclose any material information required, or had not made any false statement as to any material fact in connection with his application; and

(D) the applicant has never been convicted of a crime punishable by imprisonment of more than one year; and

(E) is not a fugitive from justice; and

(F) is not an unlawful user of marijuana (as defined by section 4761 of the United States Internal Revenue Code of 1954), or is an unlawful user of any depressant or stimulant drug (as defined in section 201(v) of the Federal Food, Drug, and Cosmetic Act), or is an unlawful user of a narcotic drug (as defined by section 4721(a) of the United States Internal Revenue Code of 1954), or has at any time been adjudicated a mental defective.

(2) The [Official] must approve or deny the application within forty-five days from receipt by him. If the [Official] has not acted within that time, the applicant may institute an action at law or in equity to compel issuance of the permit. If the [Official] approves the application, a permit shall issue upon payment of the fee.

(d) The [Official] may after notice and opportunity for hearing revoke any existing permit issued under this section if the permittee has violated any provision of this chapter or regulation promulgated thereunder.

(e) (1) Any person whose application for a permit has been denied shall receive a written specification of the reasons for denial. Any notice of a revocation of a permit shall be given to the permittee before the effective date of the revocation.

(2) If the [Official] denies the application for, or revokes, a permit, he shall upon request by the aggrieved party promptly hold

a hearing to review his denial or revocation. In the case of a revocation, he shall upon the request of the permittee stay the effective date of the revocation. A hearing held under this paragraph shall be held at a location convenient to the aggrieved party.

(3) If after a hearing held under paragraph (2) the [Official] decides not to reverse his decision to deny or revoke the permit, he shall give notice to the aggrieved party of his decision. The aggrieved party at any time within [] days after the notice was given file in a court of competent jurisdiction a petition for review.

(f) Each permittee shall display his permit prominently when he attempts to obtain explosives from a licensed dealer.

5. Penalties

(a) Whoever violates any provision of this chapter or makes any false, misleading, or fraudulent statement or representation with respect to the information required by the provisions of this chapter, or in applying for a license or permit under the provisions of this chapter, shall be fined not more than five thousand dollars, or imprisoned not more than five years, or both.

6. Exemption

(a) The provisions of this chapter shall not apply to the lawful sporting use of small arms ammunition and components, and black powder by sportsmen who load their own ammunition, and who use black powder as a small arms propellant.

(b) Any person who loads his own ammunition using black powder shall procure their ammunition propellants only from manufacturers or licensed explosives dealers, who shall keep records of the name, address, age, and kind of explosive of that person.

7. Separability Clause

If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the remainder of the chapter and the application of such provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

8. Effective Date

This chapter shall take effect one hundred and eighty days after the enactment of this Act.

COMMENT

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Explosives have been used effectively in recent years to facilitate mining, construction, and navigation, among other things. They have also been used effectively in destroying or damaging synagogues, churches, homes, business establishments, government offices, court-houses, foreign embassies and consulates, schools and colleges, and most recently and glaringly, the seat of the Federal Government. Explosives Control, Hearings Before Subcommittee No. 5 of the Committee on the Judiciary, House of Representatives (1970), at 317.

The problem of right-and left-wing extremists has mushroomed, according to a Treasury study, to the point where in the fifteen-month period ending April 15, 1970, there had been over four thousand bombings, one-quarter involving explosives, in which forty persons lost their lives and 165 were injured. More than four million dollars in property damage resulted. Id. at 85-86.

In the fact of this threat, thirty two states have maintained a virtual silence on the problem of sales of explosives. Many of the remaining states impose little, if any, in the way of barriers to access to explosives.

What is necessary is comprehensive legislation making it virtually impossible for the would-be saboteur to obtain the instruments of destruction. One possibility is federal legislation over the field. Id. Several bills have been introduced into both the Ninety-first and Ninety-second Congresses in this area. There are several problems with this approach, mainly involving the scope and operation of such law so as to be effective not only in the field of interstate commerce, but to prevent intrastate difficulties in regulation. Another problem is the continual one of Congressional inaction.

A second method of effecting control over sales of explosives is state legislation. Heretofore, many states have not felt it worth while to legislate comprehensively in this area, as the effect would be felt only by the dealers and purchasers within the state who have not and would not violate the law, with the explosives entering the state from neighboring states with less stringent laws. The most effective manner of dealing with this lack of uniformity is consistent enactment of uniform laws dealing with the control of sales of explosives.

Such a proposal accompanies this introduction. It is largely modelled on H.R. 17154 and H.R. 18573, introduced in the 91st Congress by Representatives Celler and McCulloch respectively. While originally a federal measure, it has been modified to provide an effective means of state action in this crucial area. Significant are two features integral in sales of explosives: Dealer licensing and purchaser registration. To effectively limit who can obtain and use explosives, limitations based on mental health, drug histories, and criminal record are included. Moreover, by a strict mode of registration of those who will handle explosives within the state, a feed-back principle is available: should explosions occur within the state, an effective method of cross-checking purchasers and resultant use can promote discovery of the criminally responsible. The Act as proposed also makes an exemption in favor of sportsmen who hand-load their own ammunition. While it is felt that sufficient state interest can be shown to limit their rights vis-a-vis bearing arms, should a constitutional argument develop, it is felt that the harm possible from access to small amounts of black powder is negligible.

In sum, is a reasonable reaction to an imperative problem; the slight increase in paperwork by the State is justified by the increasing danger to life and property resulting from the unauthorized use of explosives. It is necessary for a state to have such means of protection lacking federal laws in this area, and it is crucial that adequate state laws exist to supplement federal law should it develop.

APPENDIX: STATES WITH EFFECTIVELY NO RESTRICTIONS ON THE SALE OF EXPLOSIVES

Alabama	Massachusetts	Pennsylvania
Alaske	Michigan	Rhode Island
Arkansas	Minnesota	South Dakota
Delaware	Missouri	Tennessee
District of Columbia	Nebraska	Texas
Idaho	New Hampshire	Utah
Indiana	New Mexico	Vermont
Iowa	North Dakota	West Virginia
Louisiana	Ohio	Wisconsin
Maine	Oklahoma	Wyoming
Colorado	Oregon	

Of the remaining 19 states, laws fall into one of three categories:

1. Seller must record name and address of purchaser.
2. Permit required of purchaser prior to purchase.
3. Comprehensive registration of dealers, manufacturers, purchasers, and users.

Of the latter group, only nine states can be included:

California	Florida
New York	Georgia
New Jersey	Virginia
North Carolina	Washington
Hawaii	