

CHAPTER NO. 619

SENATE BILL NO. 3092

By Clabough, Atchley

Substituted for: House Bill No. 3020

By Westmoreland, Sargent

AN ACT To amend Tennessee Code Annotated, Title 68, Chapter 105, Part 1, relative to registration of blasters and blasting standards.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 68-105-102, is amended by deleting the text of the section in its entirety and substituting instead the following language:

As used in this chapter, unless the context otherwise requires:

(a) “blast” (or “shot”) means the act of detonating explosive materials joined by a shared initiation system and a single firing device;

(b) “blaster” means a person qualified by reason of training, knowledge, experience and registration to fire or detonate explosives in blasting operations;

(c) “blasting operation” means the use of explosives in the blasting of stone, rock, ore or any other natural formation, or in any construction or demolition work;

(d) “charge” means a quantity of explosives that is to be detonated within a segregated position in the blast design;

(e) “commissioner” means Commissioner of Commerce and Insurance;

(f) “delay” means a period of time until detonation after application of energy to the ignition system;

(g) “delay period” means a time separation of eight (8) milliseconds or greater between detonation of charges;

(h) “department” means the Department of Commerce and Insurance;

(i) “distance” means the actual distance in feet along ground contour to the nearest dwelling house, public building, school, church, commercial or institutional building normally occupied;

(j) “explosives” means any chemical compound or other substance or mechanical system intended for the purpose of producing an explosion, or that contains oxidizing and combustible units or other ingredients in such proportion

or quantities that ignition by detonation may produce an explosion, capable of causing injury to persons or damage to property;

(k) "handler" means a person qualified by reason of training, knowledge, experience and registration to handle explosives in blasting operations;

(l) "limited blaster" means a person qualified by reason of training, knowledge, experience and registration to fire or detonate not more than five (5) pounds of explosives per blast;

(m) "person" means individual, public or private corporation, political subdivision, government agency, municipality, industry, copartnership, association, firm, trust, estate or other entity whatsoever;

(n) "scaled distance" means the actual distance in feet divided by the square root of the maximum charge weight per delay period, in pounds;

(o) "weight" means the maximum weight of explosive, in pounds. For the sole purpose of using the formula set forth in Section 68-105-104, weight means maximum pounds per delay period.

SECTION 2. Tennessee Code Annotated, Section 68-105-103, is amended in subsection (f) by deleting the text of the subsection in its entirety and by substituting the following:

Whenever blasting operations are to be conducted within one hundred (100) feet of any pipeline distributing liquefied petroleum or manufactured, mixed or natural gas, the person who will conduct such blasting operations shall notify the utility company having control of such pipeline at least three (3) full working days (except Sundays and holidays), prior to blasting. Whenever blasting operations are to be conducted on a single project for a period of more than one day, a single notification of intention shall constitute compliance with the requirements of this subsection.

SECTION 3. Tennessee Code Annotated, Section 68-105-103, is further amended by adding the following as new, appropriately designated subsections:

() When blasting is done in congested areas or in proximity to a structure, railway, or highway, or any other installation that may be damaged, the blaster shall take special precautions in the loading, delaying, initiation, and confinement of each blast with mats or other methods so as to control the throw of fragments, and thus prevent bodily injury or property damage.

() When a blast is about to be fired, ample warning shall be given to allow all persons to retreat to a safe place, and care shall be taken to ascertain that all persons are in the clear. Each blaster shall follow a definite plan of warning signals that can be clearly seen or heard by anyone in the blasting area. The blaster shall inform all persons in the proximity of the established procedure, and shall take additional precautions when entry into the area is not easily denied.

() Where the standard table of distance is exceeded, that is, a scaled distance that is less than 50, the blaster shall provide notice to all structures in that area.

() (1) Any person conducting blasting operations in the vicinity of any pipeline referred to in subsection (f) of this section shall use:

(A) A blast hole drilling pattern and blast initiation procedure that will provide the greatest relief possible in the direction away from the pipeline, and

(B) A type of explosive designed to limit propagation between blast holes.

(2) All blasting operations in the vicinity of any such pipeline shall be conducted as follows:

(A) The blast depth in the initial excavation shall be limited to the elevation of the top of the pipeline plus one-half (1/2) of the distance from the nearest blast hole to the pipeline;

(B) Subsequent excavations when approaching such pipelines shall be limited to one-half (1/2) the horizontal distance from the nearest blast hole to the pipeline;

(C) Under the conditions described in subdivision (1), the diameter of the blast hole shall not exceed three (3) inches, and only one blast hole may be fired per delay;

(D) When a free face has been established to the finished depth of the trench, (1) and (2) shall not apply.

(E) Monitored blasting shall not exceed four (4) inches per second peak particle velocity as measured by a seismograph at the pipeline.

(F) Any pipeline owner or operator seeking more restrictive vibration limits shall apply to the department under the provisions of Section 68-105-109(f), and indicate on the application the desired limit, in inches per second.

(3) When blasting is done in the vicinity of other utility lines:

(A) Reasonable precautionary measures shall be taken to protect the line.

(B) In the case of underground utilities, the blaster shall give notice to the utility company at least seventy-two (72) hours in advance of the blasting operation.

SECTION 4. Tennessee Code Annotated, Section 68-105-106, is amended by deleting the text of the section in its entirety and by substituting the following:

Unless otherwise exempted by this chapter, no person shall detonate explosives in any blasting operation unless he is registered with the department.

(a) The minimum requirements for registration are the following:

(1) Previous practical experience, obtained under the supervision of a registered, experienced blaster, the adequacy of which is at the discretion of the commissioner;

(2) A Tennessee Handler's Registration;

(3) Proof of having passed an examination prescribed by the department. The examination shall test the applicants' knowledge of blasting operations, including the storage, transportation, handling, and detonation of explosives, and state laws, rules and regulations pertaining to explosive materials.

(b) No person shall be eligible for registration who is not at least twenty-one (21) years of age.

(c) No person shall be eligible for registration who does not understand, speak and write the English language.

(d) The department shall have three (3) classifications of registration: "Blaster's Registration"; "Limited Blaster's Registration"; "Handler's Registration".

(e) A person holding a Limited Blaster's Registration shall not conduct a blasting operation in which more than five (5) pounds total of explosives are used in a blast.

(f) A blaster who fails to renew his registration within one (1) year of the expiration date of his last valid registration shall be required to reapply for a registration and retake an examination in the manner established in Section 68-105-104.

(g) Applications for registration shall be in writing upon a form furnished by the department and shall be accompanied by a non-refundable application fee.

(h) If the application is satisfactory to the department, then the applicant is entitled to an examination to determine the applicant's qualifications. The department is entitled to charge each applicant an examination fee as set by the department for each examination. The department may administer such examination or may contract for the administration of such examination.

(i) If the results of the examination of any applicant are satisfactory to the department, then the department may issue a registration to the applicant upon receipt of a registration fee.

(j) Any person who is a registered or licensed blaster in another state where the qualifications, in the opinion of the commissioner, are equivalent to those prescribed in the State of Tennessee at the date of application, and where reciprocal registration privileges satisfactory to the department are granted to Tennessee registrants, may be granted a registration without an examination, upon the payment of a fee. Such applicant shall not be required to possess a Tennessee Handler's Registration as a prerequisite for any type of blasting registration.

(k) Certificates of registration shall expire three (3) years following the date of their issuance or renewal and are invalid on that date unless renewed. Renewals may be effected by the payment of a renewal fee.

(l) All fees provided in this section shall be set by the department by rule, pursuant to the Uniform Administrative Procedures Act.

SECTION 5. Tennessee Code Annotated, Section 68-105-107, is amended in subdivision (10) by adding the words "with overhead diagram of the delay pattern" after the word "firing".

SECTION 6. Tennessee Code Annotated, Section 68-105-109, is amended in subsection (f) by deleting the words "it finds that an emergency exists and that".

SECTION 7. Tennessee Code Annotated, Section 68-105-111, is amended by deleting the text of the section in its entirety and substituting instead the following language:

Any person, firm, association, corporation or other entity that engages in activity governed by this chapter and is not registered as required by this chapter commits a Class A misdemeanor.

SECTION 8. Tennessee Code Annotated, Section 68-105-112, is amended by deleting the word "company" wherever it appears and substituting instead the word "firm".

SECTION 9. Tennessee Code Annotated, Title 68, Chapter 105, Part 1, is amended by adding the following as new, appropriately designated sections:

Section _____. (a) No person, firm, association, corporation or other entity shall purchase, receive, or take possession of explosives without first obtaining a registration from the department.

Section _____. (a) The application for a firm registration to purchase, receive, or take possession of explosives shall be on a form prescribed by the department. The application shall indicate the applicant's name, address, type of business, general purpose for which the explosives shall be used and proof of insurance as required by Section 68-105-112, and shall be accompanied by a nonrefundable application fee. For any activity which requires registered blasters, the applicant shall provide the names and registration numbers of the registered blasters on the application.

(b) Firm registrations to purchase, receive, or take possession of explosives shall expire three (3) years following the date of their issuance or renewal and are invalid on that date unless renewed. Renewal may be effected by the payment of a renewal fee. Firm registrations are not transferable.

(c) The manufacture, handling, use, storage and transportation of explosives shall be in accordance with this chapter and the rules promulgated hereunder.

(d) All fees provided in this section shall be set by the department by rule, pursuant to the Uniform Administrative Procedures Act.

Section _____. Notwithstanding any other law to the contrary, a registered blaster who is not a full time employee of a registered firm shall have a current liability insurance policy, which includes blasting coverage, in the minimum amount of five hundred thousand dollars (\$500,000) during all blasting operations for the use and benefit of any person who may be aggrieved by a wrongful act or omission of the blaster.

Section _____. (a) The department may promulgate rules and regulations concerning the manufacture, transportation, sale, storage, or use of explosives and the maintenance of such explosives, and any other rules and regulations necessary to effectuate this chapter.

(b) In order to carry out the purposes of this chapter, the commissioner or his authorized representative may enter without delay and without advance notice any place where explosives are in use or stored or where blasting records are kept, during regular working hours and at other reasonable times, in order to inspect such places and to question any explosives user or seller for the purpose of ascertaining compliance or noncompliance with this chapter.

(c) If an explosives user or seller refuses such entry, the commissioner or his authorized representative may apply to the circuit court within the county wherein the premises to be entered are located for an order to enforce the right of entry.

(d) If, during the course of a lawful inspection, the commissioner or his authorized representative discovers explosives stored or kept in an unlawful manner and such unlawfully stored or kept explosives constitute an imminent and substantial danger to life or property, the commissioner or his authorized representative may, upon proper affidavit before a magistrate with authority and jurisdiction to issue search warrants, obtain a warrant authorizing seizure of such unlawfully stored or kept explosives and thereby seize and store such explosives in a lawful and safe manner.

(1) No warrant pursuant to this subsection shall be issued upon an affidavit that does not aver that an arrangement has been made between the commissioner or his authorized representative and public or private sources for the lawful and safe storage of the explosives to be seized.

(2) No warrant pursuant to this subsection shall be issued upon an affidavit that does not specifically describe the place in which the explosives are to be stored and identify the city, county, street address and name of the person, company, or agency accepting the explosives for storage.

(3) Any owner or person entitled to lawful possession of explosives seized pursuant to this subsection shall be entitled to recovery of the seized explosives upon written or verbal notification to the commissioner or his authorized representative stating his capability to lawfully and safely store the seized explosives, and upon an inspection by the commissioner or his authorized representative of his storage facilities and methods that reveals his capability to lawfully and safely store the explosives.

(4) The commissioner or his authorized representative shall make the inspection within five (5) days of receipt of said notification.

(5) If the commissioner or his authorized representative receives no communication from the owner or person entitled to lawful possession of the seized explosives within thirty (30) days after the seizure of such explosives, then the commissioner or his authorized representative may dispose of the seized explosives in a safe and lawful manner.

Section _____. Construction and administration of examinations, forms, applications, etc., necessary for the administration of this function is the responsibility of the Department of Commerce and Insurance.

Section _____. The department may refuse to issue or renew, and revoke or suspend any registration or application if any registrant or applicant:

(a) Has violated any provision of this chapter or any other state or federal law relating to explosives, or has violated any regulation duly promulgated by the department;

(b) Has misrepresented or concealed any material fact in the application for a registration, or any document filed in support of the application;

(c) Has permitted any employee of the person, either by direct instruction or by reasonable implication, to violate the provisions of this chapter;

(d) Has been terminated from employment due to possessing or being under the influence of intoxicants or possessing or using illegal drugs;

(e) Has used explosives in an unsafe manner; or

(f) Has been convicted in a court of competent jurisdiction of a felony, or is under indictment for the same.

Section _____. (a) There is created in the Department of Commerce and Insurance an advisory council on the commercial explosives industry. The advisory council shall consist of twelve (12) members. The term of each member shall be three (3) years. Membership shall include manufacturers, distributors and users of commercial explosives who are engaged in commercial mining, construction and demolition activities. A minimum of six (6) members shall be registered blasters. Three (3) members shall be representatives from other interested agencies.

(b) The department shall be responsible for the administrative functions of the council.

(c) All members of the advisory council shall be appointed by the commissioner. In making appointments to the advisory council, the commissioner shall be fair and non-discriminatory.

(d) Each member shall continue to serve after the expiration of the member's term until a successor shall have been duly appointed and qualified.

(e) The commissioner may remove any member of the advisory council for misconduct, incompetence, or willful neglect of duty.

(f) The advisory council shall meet at least two (2) times every calendar year.

(g) Special meetings may be held at such times it is deemed necessary by the chairman of the advisory council or by three (3) members of such council.

(h) It shall be the duty of the advisory council to assist the department in developing reasonable policies and regulations that will protect public safety while promoting efficiency and effectiveness.

Section _____. Nothing contained in this chapter shall apply to: (a) Personnel of military, or naval forces of the United States, or to the duly organized military force within the state, so long as these persons are acting within their respective official capacities and in the performance of their official duties;

(b) The use of explosives for occasional agricultural blasting. Agricultural blasting means stump removal, beaver dam or lodge eradication and other similar types of personal agricultural use;

(c) The use of explosive materials in medicines and medicinal agents in forms prescribed by the most recent edition of the official United State Pharmacopoeia or the National Formulary;

(d) Fireworks as permitted by T.C.A. 68-104-101 et seq.

Section _____. As a prerequisite to renewal, the registrant must provide proof of having completed the continuing education requirements established by the department. The department may prescribe continuing education requirements by rule.

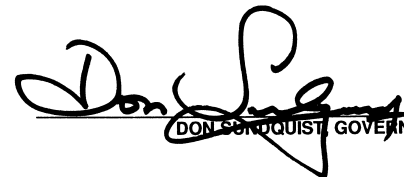
SECTION 10. For purposes of rulemaking, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect January 1, 2001, the public welfare requiring it.

PASSED: March 30, 2000


JOHN S. WILDER
SPEAKER OF THE SENATE


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 5th day of April 2000


DON SUNDQUIST, GOVERNOR