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CHAPTER 36.

 EXPLOSIVES CONTROL ACT

**SECTION 23‑36‑10.** Short title.

 This chapter may be cited as the "South Carolina Explosives Control Act".

HISTORY: 1986 Act No. 480, Section 1.

**SECTION 23‑36‑20.** Legislative findings.

 The General Assembly finds it necessary to assure the people of South Carolina that explosive materials are being sold, used, and stored by persons, dealers, and blasters that are duly certified or licensed to engage in the sale, use, or storage of these explosive materials by the State Fire Marshal.

HISTORY: 1986 Act No. 480, Section 2.

**SECTION 23‑36‑30.** Definitions.

 As used in this chapter:

 (1) "Explosive materials" means any explosive, blasting agent, water gel, detonator, or other item contained in the "List of Explosive Materials" published by the Bureau of Alcohol, Tobacco and Firearms (BATF).

 (2) "Explosive" means any chemical compound, mixture, or device, the primary or intended common purpose of which is to function by explosion. The term includes, but is not limited to, dynamite and other high explosives, black powder in quantities in excess of five pounds, pellet powder, initiating explosives, detonators, squibs, and detonating cord. It does not mean small arms ammunition or components of small arms ammunition.

 (3) "Blasting agent" means any material or mixture, consisting of fuel and oxidizer, intended for blasting not otherwise defined as an explosive. The finished product, as mixed for use or shipment, may not be detonated by means of a number eight test blasting cap when unconfined.

 (4) "Detonator" means any device containing a detonating charge that is used for initiating detonation in an explosive. The term includes, but is not limited to, electric blasting caps of instantaneous and delay types, blasting caps for use with safety fuses, and detonating cord delay connectors and nonelectric instantaneous and delay blasting caps which use detonating cord shock tube, or any other replacement for electric leg wires.

 (5) "Person" means any natural person, partnership, association, or corporation.

 (6) "Dealer" means a person engaged in the wholesale or retail business of buying and selling explosives. However, if a manufacturer or distributor of explosives makes sales to consumers, the manufacturer or distributor is required to obtain a license as a dealer.

 (a) "Class I Dealer" means a person engaged in the wholesale or retail business of buying and selling any quantity and type of explosive materials.

 (b) "Class II Dealer" means a person engaged in the retail business of selling black powder, flash powder, and other types of low‑grade explosive.

 (7) "Blaster" means a person who detonates or otherwise effects the explosion of an explosive material or who is in immediate personal charge and supervision of one or more persons who are not licensed to engage in such activity.

 (8) "Sale" means delivery of an explosive with or without consideration.

 (9) "Purchase" means acquisition of any explosive by a person with or without consideration.

HISTORY: 1986 Act No. 480, Section 3.

**SECTION 23‑36‑40.** License and permit requirements; liability insurance requirement; classification of blasters.

 (1) It is unlawful for any person to engage in the business of a dealer in explosives or to acquire, sell, possess, store, or engage in the use of explosive materials in this State except in conformity with the provisions of this act. Each dealer or blaster must possess a valid license or permit issued by the State Fire Marshal.

 (2) Each dealer and blaster maintaining a storage magazine must possess a permit for each magazine. Locations of magazines must be exactly reported to the State Fire Marshal in the application for a license or permit. Any change in magazine locations must be reported to the State Fire Marshal in advance of the actual change. Written notice of the location change must be filed with the State Fire Marshal no less than seven working days after the change is effected.

 (3) Licenses and permits are required for the following and the fees are:

Class I Dealer License..... ...........................one

 thousand dollars;

Class II Dealer License.... ...........................two

 hundred fifty dollars;

Magazine Permit............ .........................fifty

 dollars;

Blaster License,........... ...........................two

 hundred fifty dollars;

Blasting Permits:

 one month................ .........................fifty

 dollars;

 three months............. ...........................one

 hundred dollars;

 six months............... ...........................two

 hundred fifty dollars;

 one year................. ..........................five

 hundred dollars.

 Magazine permits and licenses are issued by the State Fire Marshal for one calendar year beginning on January first and ending on December thirty‑first. Blasting permits must be issued for the length of time necessary to complete the blasting work.

 (4) The forms for the licenses, permits, and applications are prescribed by the State Fire Marshal and shall require such information and data as the State Fire Marshal considers appropriate. No license or permit may be issued a person who has been convicted for a crime of violence or of any crime punishable by a term of imprisonment exceeding two years.

 (5) No license or permit is required for persons exploding or effecting the explosion of explosive materials working under the immediate and personal supervision and control of a person holding a valid blasters permit. Agricultural users of explosives or explosive materials are exempt from the license or permit provision of this chapter. Agricultural users of explosives or explosive materials shall comply with all applicable provisions regarding the sale, use, transportation, or storage of explosive materials.

 (6) No license or permit may be issued by the State Fire Marshal pursuant to an application unless it is determined that the purpose for which the applicant seeks a permit or license falls within the purview of this chapter and that the purpose is not in violation of any other laws of this State.

 (7) The fees collected for the licenses and permits must be deposited in the general fund of the State.

 (8) A blaster shall furnish the State Fire Marshal with liability insurance with a company licensed to do business as an insurer in this State in an amount not less than five hundred thousand dollars to protect the public against injury. This insurance must be continued in effect during the period of the permit.

 (9) The State Fire Marshal must institute classifications of blasters for the purpose of insuring adequate skill, knowledge, and experience in different types of blasting operations. Classification will be determined by the passage of a written examination.

HISTORY: 1986 Act No. 480, Section 4; 1987 Act No. 47, Section 1; 1988 Act No. 658, Part II, Section 19.

**SECTION 23‑36‑50.** Applicability of license and permit requirements.

 (1) No person shall possess an explosive material unless he is the holder of a valid license or permit as required by this chapter and possesses the explosive material for the purpose stated in the license or permit.

 (2) The exceptions are:

 (a) contract and private carriers operating in interstate and intrastate commerce.

 (b) persons possessing explosive materials while under the immediate and personal supervision and control of a person holding a valid blaster's license and engaged in the preparation for and in the exploding or otherwise effecting the explosion of explosive materials. It is unlawful for any person holding a blaster's permit to allow persons working under him to possess explosive materials except during the time when the person is loading or unloading or exploding or otherwise effecting the explosion of an explosive material under the immediate and personal supervision and control of the licensed blaster.

HISTORY: 1986 Act No. 480, Section 5.

**SECTION 23‑36‑60.** Accounting and recordkeeping requirements; access to records.

 (1) Dealers must keep accurate accounts of all inventories and sales of explosive materials including explosive materials sold and used for agricultural purposes. All the sales must be evidenced by invoices or sales tickets executed in quadruplicate, the dealer retaining the original and one copy, delivering a third copy to the purchaser, and forwarding a fourth copy to the State Fire Marshal.

 (2) A carbon copy of the Explosive Transaction Record as required by the United States Department of the Treasury‑‑Bureau of Alcohol, Tobacco and Firearms and the invoices or sales tickets delivered to purchasers must bear the name of the manufacturer or dealer and purchaser, date of sale, date‑shift code, quantity sold, use for which the explosive materials are purchased, and the address of the purchaser.

 (3) Upon the sale or delivery of any explosive materials within the State, the selling and receiving agency of either of them shall notify the State Fire Marshal of the sale or delivery by forwarding a copy of the bill of sale or bill of lading to him.

 (4) Dealers must retain all records of inventories, invoices, sales tickets, and copies and make them available to any law enforcement officer of this State and to the State Fire Marshal or his representative at such time as the State Fire Marshal considers appropriate.

 (5) A blaster must keep an accurate, written inventory of all explosive materials possessed by him and a record of the use of explosive materials on forms approved by the State Fire Marshal. The inventory and record of use must be made available to any law enforcement officer of this State or to the State Fire Marshal or his representative at such time as the State Fire Marshal considers appropriate.

 (6) Records required to be maintained under subsections (1) through (5) of this section may not be disposed of without approval by the State Fire Marshal. Any business which terminates its operations must turn over its records to the State Fire Marshal.

HISTORY: 1986 Act No. 480, Section 6.

**SECTION 23‑36‑70.** Notice of theft, illegal use, or illegal possession of explosive materials; inspection of magazines by dealers and blasters.

 Any sheriff, police department, or law enforcement officer shall give immediate notice to the State Fire Marshal of any theft, illegal use, or illegal possession of explosive materials and shall forward a copy of his final written report to the State Fire Marshal. Any dealer or blaster who knows that explosive materials in his possession have been stolen or otherwise misappropriated shall notify immediately the nearest sheriff's office or police department and the State Fire Marshal. Each dealer and blaster must physically inspect all magazines at least once every seven days to insure security of all explosive materials.

HISTORY: 1986 Act No. 480, Section 7.

**SECTION 23‑36‑80.** Promulgation of regulations by Division of State Fire Marshal; administrative procedures applicable; enforcement of chapter by State Fire Marshal.

 The Division of the State Fire Marshal shall promulgate regulations setting forth minimum general standards covering the use, sale, handling, and storage of explosive materials. The regulations must be in substantial conformity with generally accepted standards of safety concerning these subject matters. Regulations in substantial conformity with the published rules and suggested standards of the Institute of Makers of Explosives are considered in substantial conformity with accepted standards of safety. All procedures with regard to the revocation, suspension, or denial of licenses and permits shall be handled by an administrative law judge as provided under Article 5 of Chapter 23 of Title 1. The State Fire Marshal is the enforcement authority of this chapter.

HISTORY: 1986 Act No. 480, Section 8; 1993 Act No. 181, Section 364.

**SECTION 23‑36‑90.** Assessment of civil penalties; referral of civil penalties to Attorney General for collection; deposit of civil penalties in general fund.

 (1) After notice and an opportunity for a hearing in accordance with the Administrative Procedures Act, the State Fire Marshal may assess a civil penalty not to exceed one thousand dollars for each violation of this chapter. In determining the amount of the penalty, the State Fire Marshal shall take into account the nature, circumstances, extent, and gravity of the violation, the degree of culpability, the history of previous offenses, the ability to pay, the effect of the penalty on the ability to continue to operate, and any other matter that justice requires.

 (2) The State Fire Marshal may refer any civil penalty to the Attorney General for collection.

 (3) All civil penalties collected must be deposited in the general fund of the State.

HISTORY: 1986 Act No. 480, Section 9.

**SECTION 23‑36‑100.** Revocation, suspension, or denial of license or permit.

 (1) A license or permit may be revoked, suspended, or denied by the State Fire Marshal because of, but not limited to:

 (a) noncompliance with any order written by the State Fire Marshal.

 (b) conviction of a crime of violence or of any crime punishable by a term of imprisonment exceeding two years.

 (c) advocating or knowingly belonging to any organization or group which advocates violent overthrow of or violent action against the federal, state, or local government.

 (d) having or contracting physical or mental illness or condition that in the judgment of the State Fire Marshal would make the use and possession of explosive materials hazardous to the licensee or permittee and to the public.

 (e) violating the terms of the license or permit or essential changes in the condition under which the license or permit was issued without prior approval of the State Fire Marshal.

 (f) violating the provisions of this section. However, except for violations considered an immediate threat to public safety, the State Fire Marshal may issue a notice of noncompliance and set a time limit to achieve immediate compliance.

 (g) giving false information or making a misrepresentation to obtain a license or permit.

 (2) The State Fire Marshal may invoke suspension of a license or permit pending disposition of a felony charge which involves the use of explosives brought against a licensee or permittee.

HISTORY: 1986 Act No. 480, Section 10.

**SECTION 23‑36‑110.** Confiscation, storage, or disposal of explosive materials by State Fire Marshal.

 (1) The State Fire Marshal or his representative has authority to confiscate, place in storage, or dispose of explosive materials in any manner considered appropriate to insure the safety of the public when:

 (a) explosive materials are found abandoned as provided in Section 23‑36‑130.

 (b) explosive materials are found stored illegally and present an immediate threat to the public safety as provided in Section 23‑36‑120.

 (c) explosive materials are used in illegal activities.

 (d) explosive materials which are found to be unsafe or unstable.

 (2) The revocation or suspension of a dealer's or blaster's license or permit shall result in the confiscation of the dealer's or blaster's explosive materials. These explosive materials will be stored pending the disposition of the action.

 (3) All costs incurred in the confiscation or disposal of explosive materials as provided in this section are paid by the legal owner of the confiscated explosive materials.

HISTORY: 1986 Act No. 480, Section 11.

**SECTION 23‑36‑120.** Storage of explosive materials.

 It is unlawful to store explosive materials within the boundaries of the State unless in a properly constructed and approved magazine.

HISTORY: 1986 Act No. 480, Section 12.

**SECTION 23‑36‑130.** Abandonment of explosive materials.

 It is unlawful to abandon explosive materials or blasting caps in any field, culvert, ditch, waterway, building, or quarry in the State.

HISTORY: 1986 Act No. 480, Section 13.

**SECTION 23‑36‑140.** Inapplicability of chapter to fireworks and to activities of government agencies.

 (1) Nothing contained in this chapter applies to the regular military or naval forces of the United States, to the duly organized military force of any state or territory, or to police or fire departments in this State if they are acting within their official capacities and in the performance of their duties.

 (2) Nothing contained in this chapter applies to the use of fireworks or to the sale or storage of fireworks as regulated by the State Board of Pyrotechnic Safety.

HISTORY: 1986 Act No. 480, Section 14.

**SECTION 23‑36‑150.** Regulation of explosive materials by local governments.

 Nothing contained in this chapter shall affect any existing ordinances or regulations pertaining to explosive materials of any county or incorporated city or town which are not less restrictive than the provisions of this chapter or affect, modify, or limit the power of the county or incorporated city or town to adopt ordinances and regulations pertaining to explosive materials within the county or corporate limits.

HISTORY: 1986 Act No. 480, Section 15.

**SECTION 23‑36‑160.** Employment of personnel to carry out provisions of chapter; powers and authority of agents of Division of State Fire Marshal.

 The Director of the Department of Labor, Licensing & Regulation, pursuant to Section 40‑73‑15, may employ such personnel as may be necessary to carry out the provisions of this chapter. The agents employed by the Division of the State Fire Marshal shall have statewide authority, the power of arrest, and all other powers and authority of duly certified law enforcement officers of the State.

HISTORY: 1986 Act No. 480, Section 16; 1993 Act No. 181, Section 365.

**SECTION 23‑36‑170.** Criminal penalties.

 Any person who violates the provisions of this chapter is guilty of a felony and, upon conviction, shall be punished:

 (a) for the first offense, by a fine of not less than five hundred dollars nor more than one thousand, five hundred dollars or imprisonment for not more than five years, or both.

 (b) for the second offense, by a fine of not less than one thousand, five hundred dollars nor more than five thousand dollars and imprisonment for not less than five years nor more than ten years.

 (c) for the third offense, by a fine of not less than five thousand dollars nor more than ten thousand dollars and imprisonment for not less than ten years nor more than fifteen years.

 (d) for any fourth or subsequent offense, by a fine of not less than seven thousand, five hundred dollars nor more than fifteen thousand dollars and imprisonment of not less than ten years nor more than fifteen years.

 The license of any dealer or blaster is permanently revoked upon conviction for a second offense and no license may be issued to any person whose base operation is substantially the same as that of a person whose license has been permanently revoked.

HISTORY: 1986 Act No. 480, Section 17.