

ENROLLED HOUSE
BILL NO. 1624

By: Steidley of the House

and

Easley of the Senate

An Act relating to explosives and blasting; amending 63 O.S. 1991, Section 141.1, as amended by Section 6, Chapter 192, O.S.L. 1992 (63 O.S. Supp. 1994, Section 141.1), which relates to definitions for explosives and blasting; modifying and adding terms; creating the Oklahoma Explosives and Blasting Regulation Act; specifying jurisdictional areas of certain agencies; providing for powers and duties of the Department of Mines; clarifying and updating language; amending 63 O.S. 1991, Sections 124, 125, 126, 127, 128, 129 and 130, which relate to nitroglycerine; clarifying and updating language; amending 63 O.S. 1991, Sections 142.2 and 142.5, which relate to the Underground Facilities Damage Prevention Act; updating language; requiring compliance with specified acts; amending 21 O.S. 1991, Section 1368, which relates to penalty for unlawful use of explosives; defining term; prohibiting certain actions; providing exceptions; requiring certain blaster certificates; requiring certain qualifications; requiring certain files; requiring payment of fee; specifying certain requirements for blasting; making certain actions unlawful; prohibiting transfer of permits or licenses; requiring certain permit for certain activities; establishing fees; setting certain limitations; prohibiting certain actions; requiring permanent rule process; providing for validity; requiring records authorizing inspections; requiring promulgation of rules; providing for violations; setting certain penalties; providing for administrative penalties; providing for notice and hearing; providing for orders; authorizing appeals; providing for interest; providing for certain actions; specifying fine and penalty; making certain actions unlawful; setting and providing for penalties; specifying certain limitations; providing for construction of act; specifying exceptions; providing for certain deposits and expenditures; amending 63 O.S. 1991, Sections 141.2, 141.3, 141.4, 141.5, 141.6, 141.7, 141.8 and 141.9, which relate to powers and duties of State Fire Marshal; amending 63 O.S. 1991, Section 134, which relates to flammable liquids; clarifying and updating language; providing for names of parts; providing for codification; providing for recodification; repealing 21 O.S. 1991, Section 1369, as amended by Section 3, Chapter 192, O.S.L. 1992 (21 O.S. Supp. 1994,

Section 1369), which relates to definition of explosives; providing for noncodification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

Part 1.

Definitions

SECTION 1. AMENDATORY 63 O.S. 1991, Section 141.1, as amended by Section 6, Chapter 192, O.S.L. 1992 (63 O.S. Supp. 1994, Section 141.1), is amended to read as follows:

Section 141.1 A. For purposes of this chapter:

1. "Explosive" means any chemical compound, mixture or device, the primary or common purpose of which is to function by explosion, i.e., with substantially instantaneous release of gas and/or heat, unless such compound, mixture or device is otherwise specifically classified by the United States Department of Transportation any chemical compound or mechanical mixture that is commonly used or which is intended for the purpose of producing an explosion and which contains any oxidizing and combustive units or other ingredients in such proportions, quantities, or packing that an ignition by fire, by friction, by concussion, by percussion, by chemical reaction, or by detonation of any part of the compound or mixture may cause gaseous pressures capable of producing destructive effects on contiguous objects or of destroying life or limb. Provided, that dynamite, nitroglycerin, gunpowder, blasting powder and trinitrotoluene shall be deemed explosives without further proof of their explosive nature. The term "explosive" shall also include all material which is classified as explosive by the United States Department of Transportation. The term "explosive" shall not include explosives in the forms prescribed in the official UNITED STATES PHARMACOPOEIA; fireworks as defined by Section 1622 of Title 68 of the Oklahoma Statutes; or small arms ammunition and components therefor, which are subject to the Gun Control Act of 1968 (Title 18, Chapter 44, U.S. Code) and regulations promulgated thereunder;

B. 2. "Blasting agent" means any material or mixture consisting of a fuel and oxidizer, intended for blasting, not otherwise classified as an explosive, provided that the finished product, as mixed and packaged for use or shipment, cannot be detonated when unconfined by means of a test blasting cap containing two (2) grams of a mixture eighty percent (80%) mercury fulminate and twenty percent (20%) potassium chlorate, or a cap of equivalent strength. The term "blasting agent" shall not include explosives in the forms prescribed in the official UNITED STATES PHARMACOPOEIA; fireworks as defined by Section 1622 of Title 68 of the Oklahoma Statutes; or small arms ammunition and components therefor, which are subject to the Gun Control Act of 1968 (Title 18, Chapter 44, U.S. Code) and regulations promulgated thereunder; and

C. The term "explosive" or "blasting agent" shall not include explosives in the forms prescribed in the official UNITED STATES PHARMACOPOEIA; fireworks as defined by Section 1622 of Title 68 of the Oklahoma Statutes; or small arms ammunition and components therefor, which are subject to the Gun Control Act of 1968 (Title 18, Chapter 44, U.S. Code) and regulations promulgated thereunder.

D. 3. "Person" means any individual, firm, copartnership, corporation, company, association, joint stock association, and includes any trustee, receiver, assignee or personal representative thereof.

Part 2.

Oklahoma Explosives and Blasting Regulation Act

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 122.1 of Title 63, unless there is created a duplication in numbering, reads as follows:

The provisions of this part shall be known and may be cited as the "Oklahoma Explosives and Blasting Regulation Act".

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 122.2 of Title 63, unless there is created a duplication in numbering, reads as follows:

The provisions of this section specify the jurisdictional areas of state agencies relating to the regulation of blasting and explosives. The jurisdictional areas of responsibility specified in this section shall be in addition to those otherwise provided by law and assigned to the specific state agency as follows:

1. Department of Mines. The Department of Mines shall have the following jurisdictional areas relating to the regulation of blasting and explosives:

- a. the use of explosives and blasting activities for surface and nonsurface mining operations pursuant to Title 45 of the Oklahoma Statutes,
- b. except as otherwise provided by this part, the use of explosives and blasting activities for nonmining activities,
- c. except as otherwise provided by this part, the regulation of the use of explosives or of blasting activity not subject to the specific statutory authority of another state agency;

2. State Fire Marshal. The State Fire Marshal shall have regulatory jurisdictional responsibility relating to explosives as follows:

- a. the regulation of the manufacture, sale, transportation for hire or storage of explosives or blasting agents for resale pursuant to Division 2 of the Oklahoma Explosives and Blasting Regulation Act,
- b. the examination of buildings and premises and reporting and orders authorized pursuant to Section 317 of Title 74 of the Oklahoma Statutes;

3. The Department of Public Safety. The Department of Public Safety shall have the regulatory jurisdictional responsibility relating to the transportation of explosives or blasting agents classified as hazardous materials pursuant to the Oklahoma Motor Carrier Safety and Hazardous Materials Transportation Act; and

4. Department of Environmental Quality. The Department of Environmental Quality shall have jurisdictional responsibility relating to the regulation and disposal of explosives or blasting agents classified as solid or hazardous waste pursuant to the Oklahoma Environmental Quality Code.

Division 1

Department of Mines

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 123.1 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Pursuant to the Oklahoma Explosives and Blasting Regulation Act, except as otherwise provided by this part, the Department of Mines shall be responsible for the administration, regulation and enforcement of all blasting operations or activities, and the storage and use of all blasting agents and explosives by any person, which is not located within the area of a mining operation or site.

B. Except as otherwise provided by this part, it shall be unlawful for any person to store or use any blasting agents or explosives, or conduct, supervise or control a blasting operation in

this state without first complying with the provisions of the Oklahoma Explosives and Blasting Regulation Act and rules promulgated by the Oklahoma Mining Commission.

C. Except as otherwise required by this part, by January 1, 1996:

1. Any person performing blasting activity shall be certified as a blaster by the Department of Mines;

2. All blasting operations shall be conducted under the direction of a certified blaster. Blaster certification may be obtained from the Department upon application and proof of competency as determined by rules of the Department; and

3. Before January 1, 1996, all blasting operations and activities shall be conducted by competent, experienced persons who understand the hazards involved.

D. Any blaster certification issued by the Department shall be carried by the blaster or shall be on file at the blasting area during blasting operations.

E. A blaster and at least one other person shall be present at the firing of a blast.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 123.2 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Except as otherwise provided by this part, it is a violation to manufacture, store, or use explosives or blasting agents without first obtaining a permit from the Department of Mines.

B. Permits issued under this division shall not be transferable, and shall be readily available for inspection by representatives of the Department and law enforcement officials.

C. The Department may place such restrictions and limitations on permits as it deems necessary.

D. The Department may issue one-time or limited-time permits or permits for continuous blasting operations.

E. 1. Permits for continuous blasting operations issued under this division shall be valid for the calendar year after the date of issue unless revoked or suspended. Permits for continuous blasting operations may be renewed on each issuance date and a showing of compliance with the Oklahoma Explosives and Blasting Regulation Act and rules promulgated thereto.

2. Permits for one-time or limited-time permits shall be valid only for the time specified in the permit.

F. Any person holding a permit issued under this division shall keep such records as may be required by the Department. Records shall be maintained for not less than two (2) years following the year in which the record is made. All such records shall be open to inspection by the Department or its representatives during normal business hours.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 123.3 of Title 63, unless there is created a duplication in numbering, reads as follows:

The Department shall enforce the provisions of this division and for such purposes shall:

1. Issue permits to applicants found by the Department, after inspection and investigation, to be qualified for such permit under the provisions of this division and the rules promulgated by the Department;

2. Deny, suspend, or revoke permits upon a finding of noncompliance or violation of the provisions of this division or of the applicable rules of the Department;

3. Hold hearings upon the application of any person aggrieved by any order of the Department with respect to the denial, suspension, or revocation of any permit; and

4. Inspect, during normal business hours, any building, structure, or premises subject to the provisions of this division, and, upon the discovery of any violation of this division or the applicable rules, issue such orders as are necessary for the safety of workers and the public, and, in the case of imminent hazard or emergency, apply for an injunction in the appropriate district court.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 123.4 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. The Department of Mines shall promulgate the necessary rules to implement the provisions of this Division. Rules promulgated by the Department shall include but not be limited to requirements for blasting plans, use of explosives, public notices, and records.

B. The Department of Mines may establish a schedule of fees to be charged for applications for or issuance of new and renewed certifications and permits required pursuant to this division. The fees shall be subject to the following provisions:

1. The Department shall follow the procedures required by the Administrative Procedures Act for promulgating rules in establishing or amending any such schedule of fees;

2. The Department shall base its schedule of fees upon the reasonable costs of operating the programs specified by this division; and

3. The fees authorized by this section shall not be implemented by emergency rule but shall be adopted by permanent rules, which shall be submitted to the Legislature for review pursuant to Section 308 of Title 75 of the Oklahoma Statutes prior to implementation.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 123.5 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. In the enforcement of the Oklahoma Explosives and Blasting Regulation Act pursuant to this division, any person who violates any permit condition or who violates any other provision of the Oklahoma Explosives and Blasting Regulation Act or rules promulgated thereto pursuant to this division may be assessed an administrative penalty by the Department. Such penalty shall not exceed Five Thousand Dollars (\$5,000.00) for each violation. Each day of continuing violation may be deemed a separate violation for purposes of penalty assessments. In determining the amount of the penalty, consideration shall be given to the person's history of previous violations regarding explosives and blasting operation; the seriousness of the violation, including any irreparable harm to the environment and any hazard to the health or safety of the public; whether the person was negligent; and the demonstrated good faith of the person charged in attempting to achieve rapid compliance after notification of the violation.

B. An administrative penalty shall be assessed by the Department only after the person charged with a violation described under subsection A of this section has been given an opportunity for a hearing pursuant to Article II of the Administrative Procedures Act. Where such a hearing has been held, the Department shall make findings of fact, and shall issue a written decision as to the occurrence of the violation and the amount of the penalty which is warranted, incorporating, when appropriate, an order therein requiring that the penalty be paid. When appropriate, the Department shall consolidate such hearings with other proceedings

under the Oklahoma Explosives and Blasting Regulation Act. Any hearing under this section shall be of record. Where the person charged with such a violation fails to avail himself of the opportunity for a hearing, an administrative penalty shall be assessed by the Department after determining that a violation did occur, and the amount of the penalty which is warranted, and issuing an order requiring that the penalty be paid.

C. Upon the issuance of a notice or order charging that a violation of the Oklahoma Explosives and Blasting Regulation Act has occurred, the Department shall inform the operator within thirty (30) days of the proposed amount of said penalty. The person charged with the penalty shall then have thirty (30) days to pay the proposed penalty in full or, if the person wishes to contest either the amount of the penalty or the fact of the violation, forward the proposed amount to the Department for placement in an escrow account. If through administrative or judicial review of the proposed penalty, it is determined that no violation occurred, or that the amount of the penalty should be reduced, the Department shall within thirty (30) days remit the appropriate amount to the person.

D. Administrative penalties owed under the Oklahoma Explosives and Blasting Regulation Act may be recovered in a civil action brought by the Attorney General or any district attorney in the district in which the violation occurred at the request of the Department in the appropriate district court. Such action, also, may be brought by the Department.

E. Any person who willfully and knowingly violates a condition of a permit issued pursuant to this division or fails or refuses to comply with any order issued under this division, or any order incorporated in a final decision issued by the Department under this division, shall, upon conviction, be punished by a fine of not more than Ten Thousand Dollars (\$10,000.00) or by imprisonment for not more than one (1) year, or both.

F. Whenever a corporate permittee violates a condition of a permit issued pursuant to this division or fails or refuses to comply with any order issued under this division, or any order incorporated in a final decision issued by the Executive Director of the Department of Mines under this division, any director, officer or agent of such corporation who willfully and knowingly authorized, ordered or carried out such violation, failure or refusal shall be subject to the same administrative penalties, fines and imprisonment that may be imposed upon a person under subsections A and E of this section.

G. Whoever knowingly makes any false statement, representation or certification, or knowingly fails to make any statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained pursuant to this division or any order of decision issued by the Department under this division, shall, upon conviction, be punished by a fine of not more than Ten Thousand Dollars (\$10,000.00) or by imprisonment for not more than one (1) year, or both.

H. Any person who fails to correct a violation for which a citation has been issued within the period permitted for its correction shall be assessed an administrative penalty of not less than Seven Hundred Fifty Dollars (\$750.00) for each day during which such failure or violation continues.

The period permitted for corrections of violations shall not end until:

1. The entry of a final order by the Department after an expedited hearing which ordered the suspension of the abatement

requirements of the citation because it was determined that the person will suffer irreparable loss or damage from the application of the abatement requirements; or

2. The entry of an order by a court in any review proceedings initiated by the person in which the court orders the suspension of the abatement requirements.

I. Any person who shall, except as permitted by law, willfully resist, prevent, impede or interfere with the Department or any of the agents or employees thereof in the performance of duties pursuant to this division shall, upon conviction, be punished by a fine of not more than Five Thousand Dollars (\$5,000.00), or by imprisonment for not more than one (1) year, or both.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 123.6 of Title 63, unless there is created a duplication in numbering, reads as follows:

The provisions of this part shall be in addition to any other state or federal laws or municipal ordinances regulating explosives, blasting agents or similar devices. Each person shall comply with all applicable state and federal laws and regulations and municipal ordinances for the storage, manufacture, transportation and the use of explosives or blasting agents.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 123.7 of Title 63, unless there is created a duplication in numbering, reads as follows:

Any fees, administrative penalties or any other monies obtained by the Department of Mines pursuant to the Oklahoma Explosives and Blasting Regulation Act shall be deposited in the Department of Mines Revolving Fund and shall be expended by the Department of Mines for implementation and enforcement of this part or as otherwise deemed necessary by the Department for complying with its responsibilities and duties according to law.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 123.8 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. 1. The provisions of this part shall not apply to:

- a. persons engaged in shooting wells or seismographic operations for the purpose of oil or gas production,
- b. mining operations regulated by Title 45 of the Oklahoma Statutes, and
- c. persons using explosives or blasting agents for noncommercial use on their own land, owned in fee or by contract, for the removal of trees, rocks and dams or for other normal agricultural purposes.

2. Any person exempted from the provisions of the Oklahoma Explosives and Blasting Regulation Act pursuant to this subsection shall be liable for all damages caused by the use of explosives, or blasting agents and blasting operations, which damages shall be recoverable in any court of competent jurisdiction.

B. In addition, the provisions of this part shall not apply to:

1. Any municipalities or counties in this state using any blasting agents, explosives or conducting, supervising or controlling a blasting operation in this state. Any such municipality or county shall comply with rules promulgated by the Oklahoma Mining Commission;

2. The Department of Transportation in the conducting, supervision or controlling of any blasting operation in this state, provided the Department shall comply with rules promulgated by the Oklahoma Mining Commission;

3. Duly qualified bomb technicians of municipal, county, state, and federal law enforcement agencies for the transportation, storage

or disposal of any explosive chemical, compound or device, when such technician is performing responsibilities for the preservation of public peace, safety, or criminal investigation.

Division 2

State Fire Marshal

SECTION 12. AMENDATORY 63 O.S. 1991, Section 141.2, is amended to read as follows:

Section 141.2 The State Fire Marshal Commission shall promulgate:

1. Promulgate rules ~~and regulations~~ for the administration and enforcement of this ~~act and the State Fire Marshal shall administer~~ division;

2. Administer the provisions hereof, pursuant to said rules ~~and regulations~~; and ~~shall employ~~

3. Employ such agents and clerical help as may be necessary for such purpose.

SECTION 13. AMENDATORY 63 O.S. 1991, Section 141.3, is amended to read as follows:

Section 141.3 Any rule or regulation promulgated by ~~any~~ a duly authorized federal department, bureau, or agency shall supersede any ~~regulation rule~~ promulgated under this ~~act~~ division.

SECTION 14. AMENDATORY 63 O.S. 1991, Section 141.4, is amended to read as follows:

Section 141.4 A. No person shall manufacture, sell, transport for hire, or store for resale explosives or blasting agents without first obtaining ~~from the State Fire Marshal~~ a permit to engage in such activity from the State Fire Marshal; provided, however, the State Fire Marshal shall waive the state permit requirement where a valid federal license or permit has been issued.

B. Explosives or blasting agents shall not be sold, given, delivered or transferred to any person who does not furnish the information required in ~~Section 4C of this act~~ subsection C of this section.

C. It shall be unlawful for any person to purchase, receive or obtain explosives or blasting agents without first furnishing to the seller or distributor the following information: a statement of intended use, name, date, quantity, social security number or taxpayer identification number, and place of residence of any natural person to whom explosives or blasting agents are distributed. If explosives or blasting agents are sold or distributed to a corporation or other entity, such information shall include the identity and principal and local places of business, statement of intended use, quantity, date, name, social security number, and place of residence of the natural person acting as agent of the corporation or other entity in arranging the purchase or distribution.

D. An application for a permit under this ~~act~~ division shall be accompanied by the payment of a fee in the amount of Ten Dollars (\$10.00).

E. All state, county and city agencies that use explosives and blasting agents shall furnish the information required in ~~Section 4C~~ subsection C of this act section.

F. Permits shall be valid for the calendar year in which issued, unless sooner revoked or suspended, and may be renewed annually on January 1 upon the payment of the required fee.

G. It shall be unlawful for any person to possess or use explosives or blasting agents unless such person can furnish proof of compliance with the provisions of this ~~act~~ division.

SECTION 15. AMENDATORY 63 O.S. 1991, Section 141.5, is amended to read as follows:

Section 141.5 All monies derived from the sale of permits as specified in this ~~act~~ division shall be transferred to the State Treasurer of the State of Oklahoma, to be placed to the credit of the "General Revenue Fund".

SECTION 16. AMENDATORY 63 O.S. 1991, Section 141.6, is amended to read as follows:

Section 141.6 ~~Every permit holder~~ person permitted pursuant to the provisions of this division, including those holding federal licenses or permits, shall keep such records as may be required by the State Fire Marshal. Records shall be maintained for a period of not less than five (5) years following the year in which the record is made. All such records shall be open to inspection by the State Fire Marshal and his assistants during normal business hours.

SECTION 17. AMENDATORY 63 O.S. 1991, Section 141.7, is amended to read as follows:

Section 141.7 The Fire Marshal and ~~his~~ any assistants of the Fire Marshal may, during normal business hours, inspect any building, structure or premises of any person subject to the provisions of this ~~act~~ division, and shall, upon the discovery of any violation of this ~~act~~ division or ~~regulations~~ rules promulgated hereunder, issue such orders as are necessary for the safety of occupants and the public.

SECTION 18. AMENDATORY 63 O.S. 1991, Section 141.8, is amended to read as follows:

Section 141.8 Any violation of this ~~act~~ division or the ~~regulations~~ rules promulgated hereunder shall constitute grounds for the denial, revocation or suspension of a permit by the State Fire Marshal as ~~he deems~~ deemed appropriate by the State Fire Marshal.

SECTION 19. AMENDATORY 63 O.S. 1991, Section 141.9, is amended to read as follows:

Section 141.9 A. Any firm, corporation, company or partnership shall ~~see~~ ensure that all personnel, field crews, magazine attendants, truck drivers, supervisors and superintendents are fully conversant with all provisions of this ~~act~~ division and the ~~regulations~~ rules promulgated hereunder. The permit holder shall be responsible for violations committed by employees working under the company or corporation permit.

B. Any person violating any of the provisions of this ~~act~~ division or any rules or regulations made thereunder shall be guilty of a felony and shall be punished by a fine of not more than Five Thousand Dollars (\$5,000.00) or by imprisonment for not more than five (5) years, or by both such fine and imprisonment. If such violation was committed with the knowledge or intent that any explosive or blasting agent involved was to be used to kill, injure or intimidate any person or unlawfully to damage any real or personal property, the person or persons committing such violations, upon conviction, shall be guilty of a felony and shall be punished by a fine of not more than Ten Thousand Dollars (\$10,000.00) or imprisoned for not more than ten (10) years, or both. If in a case involving such knowledge or intent personal injury results, such person shall be imprisoned for not more than twenty (20) years, or fined not more than Twenty Thousand Dollars (\$20,000.00), or both; and if death results such person shall be subject to imprisonment for any term of years or for life.

Part 3.

Nitroglycerine

SECTION 20. AMENDATORY 63 O.S. 1991, Section 124, is amended to read as follows:

Section 124. ~~Every~~ Except as otherwise regulated by federal law, every vehicle carrying or transporting nitroglycerine in this

state shall have conspicuously marked thereon in letters not less than six (6) inches in height on each side and the rear of such vehicle, the words "Nitroglycerine - Dangerous."

SECTION 21. AMENDATORY 63 O.S. 1991, Section 125, is amended to read as follows:

Section 125. Nothing in this ~~article~~ part shall be held to apply to persons, partnerships or corporations who store not to exceed twenty-five (25) pounds of said explosives, except nitroglycerine, in any one place at any one time, nor to the manufacturing or storing of drugs: Provided, however, that for good cause shown, the Chief Mine Inspector or deputy may issue a permit for temporary storage of any of said explosives, except nitroglycerine, not exceeding five hundred (500) pounds.

SECTION 22. AMENDATORY 63 O.S. 1991, Section 126, is amended to read as follows:

Section 126. Whoever, either as principal, agent, servant, or employee of such person, partnership, or corporation violates any of the ~~preceding sections of this article~~ provisions of Sections 20 and 21 of this act, or fails to procure a valid certificate from the Chief State Mine Inspector, as herein provided, shall be fined not less than Fifty Dollars (\$50.00) nor more than Two Thousand Dollars (\$2,000.00).

SECTION 23. AMENDATORY 63 O.S. 1991, Section 127, is amended to read as follows:

Section 127. It shall be unlawful ~~from and after the passage of this act~~ for any person, partnership, or corporation to haul, transport or cause to be hauled or transported in any manner, any nitroglycerin over, across, or upon any street, alley or highway of any city, town or village, or any highway or lands within one-fourth (1/4) mile of any city, town or village within this state.

SECTION 24. AMENDATORY 63 O.S. 1991, Section 128, is amended to read as follows:

Section 128. ~~It is further provided herein that if~~ If it becomes necessary ~~at any time~~ to shoot a well located within any city, town or village or within the prohibited distance prescribed herein, before such well is shot or any nitroglycerin is taken within any city, town or village or within the prohibited distance herein prescribed, permission to take a sufficient amount of nitroglycerin to shoot said well must first be obtained from the mayor, city council, manager or board of trustees of such city, town or village where said well is to be shot.

SECTION 25. AMENDATORY 63 O.S. 1991, Section 130, is amended to read as follows:

Section 130. Any person, partnership or corporation violating any of the provisions of ~~this act~~ Sections 23 and 24 of this act shall be fined not less than Two Hundred Dollars (\$200.00) nor more than Five Thousand Dollars (\$5,000.00) or by imprisonment in the county jail for a term not exceeding twelve (12) months nor less than sixty (60) days.

SECTION 26. AMENDATORY 63 O.S. 1991, Section 129, is amended to read as follows:

Section 129. Any ~~sheriff, deputy sheriff, or constable of any county~~ municipal, county or state law enforcement officer within this state, ~~or any policeman or marshal of any city, town or village~~ shall have the right to arrest any person for the violation of any of the provisions of this ~~act~~ part.

Miscellaneous Provisions

SECTION 27. AMENDATORY 63 O.S. 1991, Section 142.2, is amended to read as follows:

Section 142.2 As used in ~~this act~~ the Underground Facilities Damage Prevention Act:

1. "Certified project" means a project where the public agency responsible for the public project, as part of its procedure, certifies that the project right-of-way is free and clear of underground facilities or wherein the public agency responsible for such project, as part of its procedure, notifies all persons determined by the public agency to have underground facilities located within the construction right-of-way and certifies that all known underground facilities are duly located or noted on the engineering drawings for the project;

2. "Damage" means any impact upon or removal of support from an underground facility as a result of explosion, excavation or demolition which according to the operating practices of the operator of the underground facilities would necessitate the repair thereof;

3. "Demolish" means to wreck, raze, render, move or remove a structure by means of any equipment or explosive;

4. "Demolition" means the act or operation of demolishing a structure;

5. "Excavate" means to dig, compress or remove earth, rock or other materials in or on the ground by use of mechanized equipment or blasting, including, but not necessarily limited to, augering, boring, backfilling, drilling, grading, pile driving, plowing in, pulling in, trenching, tunneling and plowing; provided, however, that neither:

- ~~(a)~~ a. the moving of earth by tools manipulated only by human or animal power, nor
- ~~(b)~~ b. any form of cultivation for agricultural purposes, nor any augering, dozing by noncommercial dozer operators or digging for postholes, farm ponds, land clearing or other normal agricultural purposes, nor
- ~~(c)~~ c. routine maintenance, nor
- ~~(d)~~ d. work by a public agency or its contractors on a preengineered project, nor
- ~~(e)~~ e. work on a certified project, nor
- ~~(f)~~ f. work on a permitted project, nor
- ~~(g)~~ g. the opening of a grave in a cemetery, nor
- ~~(h)~~ h. a solid waste disposal site which is a preengineered project, nor
- ~~(i)~~ i. any individual excavating on his own property and who is not in the excavating business for hire,

shall be deemed excavation;

6. "Excavation" means the act or operation of excavating;

7. "Excavator" means a person or public agency that intends to excavate or demolish within the State of Oklahoma;

8. "Notification center" means a center operated by an organization which has as one of its purposes to receive notification of planned excavation and demolition in a specified area from excavators, and to disseminate such notification of planned excavation or demolition to operators who are members and participants;

9. "Operator" shall mean and include any person or public agency owning or operating underground facilities; except private underground facilities not used to service the public, which serve residential or rural customers one or more of whom is the owner of such facilities;

10. "Permitted project" means a project where a permit for the work to be performed must be issued by a state or federal agency and, as a prerequisite to receiving such permit, the applicant must

locate all underground facilities in the area of the work and in the vicinity of any blasting and notify each owner of such underground facilities;

11. "Person" includes any individual, partnership, corporation, association, cooperative, trust or other entity, including a person engaged as a contractor by a public agency, but not including a public agency;

12. "Preengineered project" means a public project wherein the public agency responsible for such project, as part of its engineering and contract procedures, holds a meeting prior to the commencement of any construction work on such project in which all persons, determined by the public agency to have underground facilities located within the construction area of the project, are invited to attend and given an opportunity to verify or inform the public agency of the location of their underground facilities, if any, within the construction area and where the location of all known underground facilities are duly located or noted on the engineering drawing and specifications for the project;

13. "Public agency" means the state or any board, commission or agency of the state, and any city, town, county, subdivision thereof or other governmental entity;

14. "Routine maintenance" means the grading of roads and barrow or drainage ditches, the removal and replacement of pavement, including excavation relating thereto and the installation and maintenance of drainage and bridge facilities, signs, guardrails, and electrical and communications facilities in or on the public rights-of-way by a public agency; and

15. "Underground facility" means any underground line, facility, system and appurtenances thereto, for producing, storing, conveying, transmitting or distributing communication, electricity, power, light, heat, gas, oil, petroleum products, water (including storm water), steam, sewage and other commodities.

SECTION 28. AMENDATORY 63 O.S. 1991, Section 142.5, is amended to read as follows:

Section 142.5 No excavator shall demolish a structure, discharge an explosive or commence to excavate in a highway, street, alley or other public ground or way, a private easement, or on or near the location of the facilities of an operator without first complying with the requirements of ~~this act~~ the Underground Facilities Damage Prevention Act and the Oklahoma Explosives and Blasting Regulation Act.

SECTION 29. AMENDATORY 21 O.S. 1991, Section 1368, is amended to read as follows:

Section 1368. A. Any person who has been convicted of a felony under the laws of this or any other state or the laws of the United States who, with an unlawful intent, is in possession of any explosives is guilty of a felony and, upon conviction, shall be punished by a fine of not to exceed Five Thousand Dollars (\$5,000.00) or by imprisonment in the State Penitentiary for a term not to exceed ten (10) years, or by both such fine and imprisonment.

B. For purposes of this section, the term "explosive" shall have the same definition as the term "explosive" as defined by Chapter 8 of Title 63 of the Oklahoma Statutes.

SECTION 30. AMENDATORY 63 O.S. 1991, Section 134, is amended to read as follows:

Section 134. ~~(a) For the purpose of this act,~~ Except as otherwise specifically provided by law, the term "flammable liquids" shall mean all petroleum products used as motor fuel liquids having a flash point below seventy degrees Fahrenheit (70 F) as determined in accordance with the standard method of test for flash point by

means of a tag closed tester (ASTM D56-56) or equivalent test device and having a vapor pressure not exceeding forty (40) pounds per square inch absolute at one hundred degrees Fahrenheit (100 F).

~~(b) For the purpose of this act the term "service station" shall mean any facility where flammable liquids are stored and dispensed into the fuel tanks of highway motor vehicles of the public.~~

SECTION 31. Part 4 of Chapter 8 of Title 63 of the Oklahoma Statutes shall be entitled "Combustibles" and shall consist of Sections 131 and 132 of Title 63 of the Oklahoma Statutes.

SECTION 32. RECODIFICATION 63 O.S. 1991, Section 141.1, as last amended by Section 1 of this act, shall be recodified as Section 121.1 of Title 63 of the Oklahoma Statutes, unless there is created a duplication in numbering.

SECTION 33. RECODIFICATION 63 O.S. 1991, Sections 141.2, as amended by Section 12 of this act, 141.3, as amended by Section 13 of this act, 141.4, as amended by Section 14 of this act, 141.5, as amended by Section 15 of this act, 141.6, as amended by Section 16 of this act, 141.7, as amended by Section 17 of this act, 141.8, as amended by Section 18 of this act and 141.9, as amended by Section 19 of this act, shall be recodified as Sections 124.1 through 124.8 of Title 63 of the Oklahoma Statutes, respectively, unless there is created a duplication in numbering.

SECTION 34. RECODIFICATION 63 O.S. 1991, Sections 124, as amended by Section 20 of this act, 125, as amended by Section 21 of this act, 126, as amended by Section 22 of this act, 127, as amended by Section 23 of this act, 128, as amended by Section 24 of this act and 130, as amended by Section 25 of this act, shall be recodified as Sections 128.1 through 128.6 of Title 63 of the Oklahoma Statutes, respectively, unless there is created a duplication in numbering. 63 O.S. 1991, Section 129, as amended by Section 26 of this act, shall be recodified as Section 128.7 of Title 63 of the Oklahoma Statutes, unless there is created a duplication in numbering.

SECTION 35. RECODIFICATION 21 O.S. 1991, Section 1370, shall be recodified as Section 9.1 of Title 45 of the Oklahoma Statutes, unless there is created a duplication in numbering.

SECTION 36. RECODIFICATION 63 O.S. 1991, Section 134, as amended by Section 30 of this act, shall be recodified as Section 36 of Title 25 of the Oklahoma Statutes, unless there is created a duplication in numbering.

SECTION 37. Section 31 of this act shall not be codified in the Oklahoma Statutes.

SECTION 38. REPEALER 21 O.S. 1991, Section 1369, as amended by Section 3, Chapter 192, O.S.L. 1992 (21 O.S. Supp. 1994, Section 1369), is hereby repealed.

SECTION 39. This act shall become effective November 1, 1995.

Passed the House of Representatives the 25th day of May, 1995.

Speaker of the House of
Representatives

Passed the Senate the 26th day of May, 1995.

President of the Senate