

## Article 9

### Explosives

Effective date. – The act which added this article became effective October 1, 1993.

#### § 8-17-240. Short title.

This article shall be known and may be cited as the “Alabama Explosives Safety Act of 1993” (Acts 1993, No. 93-713, § 1.)

#### § 8-17-241. Definitions.

The following words and phrases used in this article shall have the following meanings:

- (1) Act. Alabama Explosives Safety Act of 1993.
- (2) Blast. The firing or detonating of explosives.
- (3) Blaster. A person qualified by reason of training, knowledge, and experience to design, supervise, or detonate explosives in blasting operations, who has obtained a valid blaster certification card issued by the office.
- (4) Blasting Contractor. A person employed, hired or contracted by a client or other person to plan, organize, supervise, and conduct blasting operations.
- (5) Blasting Operation. The use of explosives in the blasting of stone, rock, or any other natural formation, or in any construction, quarry work, or demolition of man-made structures.
- (6) Blasting Privileges. Blasting certification, blasting contractor licensing and blasting permits.

#### § 8-17-242 REGULATION OF CERTAIN GOODS AND PRODUCTS § 8-17-242

- (7) Explosives. 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 proportions or quantities that ignition by detonation may produce an explosion, capable of causing injury to persons or damage to property.
- (8) Issuing Authority. A municipality or other governmental entity authorized to issue permits and conduct the duties provided by this article.
- (9) License. An authorization issued pursuant to Section 8-17-247 that identifies person eligible to do business as a blasting contractor or a quarry operator where explosives will be involved in blasting operations.
- (10) Office. The State Fire Marshal’s Office.
- (11) Permit. A municipal explosives use permit.
- (12) Seismograph. An instrument designed to measure and record the surface vibrations produced by blasting in three mutually perpendicular (transverse, vertical, and longitudinal) directions. The instrument may

also have the capability of measuring and recording air blast over-pressure produced by blasting. (Acts 1993, No. 93-713, § 2.)

**§ 8-17-242. Rules and regulations; orders; employment of personnel and purchasing of equipment.**

- (a) In addition to any other legal powers, the State Fire Marshal may adopt, amend, suspend, repeal, and enforce reasonably necessary rules and regulations governing the use of explosives in the blasting of stone, rock, or any other natural formation, or in any construction, quarry work, or demolition of man-made structures. The rules and regulations adopted shall not be more stringent than those promulgated by federal law, rule, or regulation to control surface coal mining operations. The rules and regulations may apply to the state as a whole or may vary from area to area in order to take into account varying local conditions.
- (b) The authority granted to the State Fire Marshal shall not extend to surface coal mining operations, which shall continue to be regulated by the Alabama Surface Mining Commission, pursuant to the Alabama Surface Mining Control and Reclamation Act (Chapter 16 (commencing with Section 9-16-2) of Title 9).
- (c) The office may issue reasonable orders as necessary to implement the purposes of this act and to enforce this act through appropriate administrative and judicial proceedings.
- (d) The office may employ personnel and consultants, purchase equipment and supplies, and lease or otherwise acquire property as may be reasonably necessary to perform its duties under this article. (Acts 1993, No. 93-713, § 3.)

§ 8-17-243 COMMERCIAL LAW AND CONSUMER PROTECTION § 8-17-244

**§ 8-17-243. Blaster certification.**

- (a) Every person engaged in any use of explosives regulated by this article shall apply for and obtain certification from the office prior to using any explosives. No person shall detonate explosive materials or supervise the conduct of blasting operations unless that person has obtained certification from the office.
- (b) The following persons are eligible for certification:
  - (1) Any person who is 21 years of age or older, with not less than two years experience as a blaster in this state, may be certified without examination up to one year from October 1, 1993. The applicant shall furnish proof of experience satisfactory to the office.
  - (2) Any person engaged in any use of explosives regulated by this article on October 1, 1993 shall have one year after October 1, 1993 to obtain a blaster certification required under this article.

- (3) After this act has been in effect for one year, any person who is 21 years of age or older with two or more years experience as a blaster may be certified only by passing a written comprehensive examination given by the office relating to the use of explosives.
- (4) Certifications may be granted by the office to any person holding a certification in that state are equivalent to, or more stringent than, those of the State of Alabama, as determined by the State Fire Marshal.
- (c) No person may detonate explosive materials or supervise the conduct of a blasting operation unless that person has obtained certification card from the office.
- (d) Each person certified shall pay a one hundred dollar (\$100.00) fee to the office.
- (e) Certification shall expire one year following the date of its issuance, or renewal, and shall become invalid unless renewed by payment of the certification fee. (Acts 1993, No. 93-713, § 4.)

**§ 8-17-244. Refusing, suspending, revoking, or failing to renew certification.**

- (a) A person may be refused certification, a duly issued blaster certification may be suspended or revoked, or the renewal of certification may be refused by the office if it finds that the applicant for, or the holder of, the certification:
  - (1) Has violated this article or any other state or federal law relating to explosives, or has violated any regulation duly promulgated by the office.
  - (2) Has misrepresented or concealed any material fact in the application for a certificate, or identification card, or any document filed in support of those documents.

**§ 8-17-244. Refusing, suspending, revoking, or failing to renew certification.**

- (3) Has permitted any employee of the person, either by direct instruction or by reasonable implication, to violate this article.
- (4) Has been convicted by final judgment in any state or federal court of a felony.
- (5) Has been terminated from employment due to possessing or being under the influence of intoxicants, or possessing or using illegal drugs.
- (6) Has used explosives in an unsafe manner.
- (b) Prior to the office refusing, suspending, revoking, or failing to renew a blaster certification card, the office shall notify the applicant or holder of a blaster certification card of the specific reason or reasons for the intended action. The applicant or holder of a blaster certification card shall have 10 days after the receipt of the notice to respond to the office notice of proposed action by filing a written notification to the office and requesting a hearing before the office pursuant to the rules of the office.

- (c) The office shall have 10 days after its receipt of the applicant's or the holder's response to either take the proposed action or issue the blaster certification card and notify the blaster of the decision. If the blaster disagrees with the action taken by the office, a hearing for the purpose of reconsidering the matter shall be set within 30 days of the action of the office. (Acts 1993, No. 93-713, § 5.)

**§ 8-17-245. Office may reissue certification card.**

In the event a blaster certification card is revoked, suspended, or the original application for certification is denied, the office may reissue a blaster certification card provided that all requirements of this article have been met. (Acts 1993, No. 93-713, § 6.)

**§ 8-17-246. Records to be maintained on blasting operations.**

- (a) A record of each blast shall be kept in accordance with rules and regulations promulgated by the office.
- (b) It is unlawful for any person to make any false entry in any record required to be kept by this section. (Acts 1993, No. 93-713, § 7.)

**§ 8-17-247. Blasting contractor license.**

- (a) Unless otherwise exempted by this article, no person shall engage in blasting or other use of explosives for commercial purposes, without first obtaining a blasting contractor license. Any person desiring to be licensed or desiring a renewal of an existing license as a blasting contractor in this state shall make and file with the office a written application on a form prescribed by the office. The office shall have 30 days to investigate and review the application, and either issue or deny a license. A denial shall state the reasons why the license was not issued and what corrective action, if any, may be taken.
- (b) The license shall expire one year following the date of its issuance or renewal and shall become invalid, unless renewed by payment of the license fee.
- (c) A fee of two thousand dollars (\$2,000) shall be paid to the office by any person issued a license under this section.
- (d) No person with a blaster certification card may conduct any blasting operations which require certification and licensure under this article unless the person has, or is employed by an employer who has a blasting contractor license. (Acts 1193, No. 93-713, § 8.)

**§ 8-17-248. Municipal explosives use permit.**

- (a) No person, unless otherwise exempted by this article, shall engage in blasting or other use of explosives for commercial purposes without first obtaining a municipal explosives use permit from the appropriate local issuing authority.

The appropriate local issuing authority for the municipal explosives use permit shall be the municipality within police jurisdiction of which the proposed blasting would take place. Copies of all permits shall be forwarded to the office.

- (b) The issuing authority shall issue permits in accordance with this article and the rules and regulations promulgated by the office.
- (c) Terms of the permit shall be effective for one year or at the termination of the commercial purpose, whichever occurs first, with the right of successive renewal upon expiration of the terms of the permit unless the permit has been suspended or revoked.
- (d) The issuing authority shall collect a municipal explosives use permit fee of \$25 to be paid by each applicant to cover the expense of the municipality for processing and issuing the municipal explosives use permit.
- (e) No municipal explosives use permit shall be issued unless the applicant has liability insurance with a company licensed to do business as an insurer in this state in an amount not less than \$500,000 with identical limits for explosion, collapse, and underground coverage to protect the public against property damage and personal injury. This insurance shall be continued in effect during the period of the permit. (Acts 1993, No. 93-713, § 9.)

**§ 8-17-249. Suspension or revocation of certification or license for certain actions.**

- (a) The office may suspend or revoke the certification or license of any person issued under this article who is found guilty of any fraud or deceit in obtaining a certification or license, or gross negligence, incompetence, or gross misconduct in the conduct of blasting activities. The office may file charges of fraud, deceit, negligence, incompetence, or misconduct against any licensed person or firm. The charges shall be made in writing and the charged party shall have at least 10 days notice prior to the date of a formal hearing. A time and place for the hearing shall be fixed by the office, a copy of the charges, along with the notice of time and place of hearing, shall be legally served on the person at least 10 days prior to the date of the hearing. At the hearing, the accused shall have the right to produce evidence or witnesses in his or her defense. If, after the hearing, the State Fire Marshal finds the person in violation, the office shall suspend or revoke the certification or license. The accused shall have a right to appeal the hearing to the circuit court of the county of residence of the person pursuant to the laws of civil procedure.
- (b) The office may reissue a license to any person whose license has been suspended or revoked, provided the person complies with this article, and the rules and regulations promulgated by the office.
- (c) The issuing authority, upon a final and binding decision of the State Fire Marshal, may reissue certification to any person whose certification has been suspended or revoked, provided the person complies with this article and the rules and regulations promulgated by the office. (Acts 1993, No. 93-713, § 10.)

**§ 8-17-250. Variations from requirements.**

- (a) The office may approve variations from the requirements of this article where it finds, as the result of a written request, that an emergency exists and that the proposed variations:
  - (1) Are reasonable and necessary.
  - (2) Will not hinder the effective administration of the article.
  - (3) Will not be contrary to any other applicable state or federal law.
  - (4) Will not cause injury to any person or damage to public or private property.
  - (5) Are ordered by a circuit or district court judge after a hearing upon the record of the finding of the office.
- (b) The office shall establish a fee not to exceed \$50 to be paid by each applicant requesting a variation. (Acts 1993, No. 93-713, § 11.)

**§ 8-17-251. Article preempts certain ordinances and regulations.**

This article is intended to and shall preempt and supersede all county, town, city, or municipal ordinances or regulations enacted after January 1, 1993, or which may be enacted in the future with respect to the subjects covered by this article. Any municipal ordinance regulating blasting or other use of explosives which was in effect on January 1, 1993, shall continue in effect. Any municipality with a more stringent ordinance or resolution relating to the use of explosives or on blasting activities in effect on January 1, 1993 is exempt from this article. (Acts 1993, NO. 93-713, § 12.)

**§ 8-17-252. Inspection where reasonable belief of violation; notification; citation; civil action for relief.**

- (a) Whenever the office or local issuing authority has reason to believe that any person has engaged in, or is engaging in, or is about to engage in, any practice or activity that is prohibited by this article, the office or issuing authority shall conduct an inspection of the blasting operations and may order the permittee to monitor blast effects, with seismographic readings, unless the same information is available to the office or issuing authority as a result of a previous inspection.
- (b) When, on the basis of an inspection by the office or issuing authority or seismic monitoring, it is determined by the office or issuing authority that any person is in violations of any requirements of this article, and the violation creates an imminent danger to the health, or safety of the public, or private property, the local issuing authority shall immediately notify the office to the violation. The office may immediately order a cessation of the blasting operation. The order shall remain in effect until the office determines that the condition, practice, or violation has been abated.
- (c) When it is determined by the office that any person is in violation of any requirement of this article, and the violations can be reasonably expected to

create a danger to the health or safety of the public or private property, the office may issue a citation to the person in violation. If, upon expiration of the period of time as originally fixed in the citation, the abatement of the violation has not been accomplished, the office may order a cessation of the blasting operation. Those orders shall remain in effect until modified, vacated, or terminated by the office or a competent court of law.

- (d) Citations and orders issued under this section shall set forth with specific explanation the nature of the violation and the corrective action required. The citation or order shall be served or delivered promptly to the person in violation of this article.
- (e) The office may institute a civil action for relief including a permanent or temporary injunction, restraining order, or any other appropriate relief in the circuit court for the county in which the blasting operation is located, whenever that person:
  - (1) Violates, fails, or refuses to comply with any reasonable order issued by the office under this article.
  - (2) Interferes with, hinders, or delays the office in carrying out this article.
  - (3) Refuses to permit entry to or inspection of the blasting operation by an authorized representative of the office.
  - (4) Refuses to furnish pertinent information required by the office under this article that is deemed necessary to implement this article. The court shall have jurisdiction to provide relief as may appropriate. (Acts 1993, No. 93-713, § 13.)

**§ 8-17-253. Penalty for violation of act.**

Any person found guilty of violating this article, or any reasonable rule or regulation promulgated by the State Fire Marshal pursuant to this article, is subject to a penalty of up to \$500 for each violation. (Acts 1993, No. 93-713, § 14.)

§ 8-17-254 REGULATION OF CERTAIN GOODS AND PRODUCTS § 8-17-255

**§ 8-17-254. Exceptions.**

- (a) Nothing contained in this article shall apply to:
  - (1) Personnel of regular law enforcement agencies, 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 official duties.
  - (2) The possession and storage of black powder, percussion caps, safety and pyrotechnic fuses, matches and friction primers, intended to be used solely for sporting, recreational, or cultural purposes in antique firearms, or antique devices as defined in Section 921(a)(16) of Title 18 of the United States Code.
  - (3) The possession and storage of smokeless powder, primers used for reloading rifles, or pistol cartridges, shot shells, percussion caps, and smokeless propellants intended for personal use.

- (4) Coal mining.
- (5) Public utilities.
- (6) Railroads.
- (7) The use of explosives for occasional personal agricultural blasting or other noncommercial use of explosives.
- (8) The use of explosives for blasting tree stumps for forest products production.
- (9) The use of explosives for oil and gas exploration purposes.
- (10) The occasional use of explosives in highway construction or maintenance.
- (11) Persons engaged in the homebuilding industry, the home remodeling industry, or the plumbing industry, or any combination of these industries. (Acts 1993, No. 93-713, § 15.)

**§ 8-17-255. Sums collected to be credited to State Fire Marshal's Fund.**

All sums received through the payment of fees, the recovery of civil penalties, grants, and appropriations by the Legislature shall be deposited in the State Treasury and credited to the State Fire Marshal's Fund. This fund shall be available to the State Fire Marshal for expenditure in the administration and enforcement of the act, training, and research programs. Provided, however, that no funds shall be withdrawn or expended except as budgeted and allocated according to Sections 41-4-80 to 41-4-96 and Sections 41-19-1 to 41-19-12, inclusive, and only in amounts as stipulated in the general appropriations bills or other appropriations bills. Any unencumbered and any unexpended balance of this fund remaining at the end of fiscal year shall not lapse or revert to the General Fund, but shall be carried forward for the purposes of this article until expended. (Acts 1193, No. 93-713, § 16.)

§ 8-17-256 COMMERCIAL LAW AND CONSUMER PROTECTION § 8-17-256

**§ 8-17-256. Determining compliance with article.**

In determining compliance with this article, the authorized representatives of the State Fire Marshal or issuing authority shall have the right of entry to, upon, and through any premises, or the site of any permitted or unpermitted commercial blasting operation without advance notice. Upon entry, the person or persons shall immediately notify the blaster in charge at the blasting operation of his or her presence so that appropriate safety instructions, if any, may be communicated, so that persons may comply with all applicable federal and state safety regulations pertaining to persons in or about a blasting operations. (Acts 1993, No. 93-713, § 17.)