

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 87th General Assembly
3 Regular Session, 2009
4

A Bill

HOUSE BILL 1338

5 By: Representative Pierce
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For An Act To Be Entitled

9 AN ACT TO AMEND THE CRIMINAL OFFENSE OF
10 POSSESSION OF EXPLOSIVES BY CERTAIN PERSONS; TO
11 ADD PROHIBITED CATEGORIES; TO CREATE A DEFENSE TO
12 PROSECUTION IF A PERSON IS ACTING IN THE SCOPE OF
13 HIS OR HER EMPLOYMENT WITH AN AUTHORIZED COMPANY;
14 AND FOR OTHER PURPOSES.

Subtitle

16 AN ACT TO AMEND THE CRIMINAL OFFENSE OF
17 POSSESSION OF EXPLOSIVES BY CERTAIN
18 PERSONS, TO ADD PROHIBITED CATEGORIES,
19 AND TO CREATE A DEFENSE TO PROSECUTION.
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23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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25 SECTION 1. Arkansas Code § 5-73-108 is amended to read as follows:

26 (a)(1) A person commits the offense of criminal possession of
27 explosive material or a destructive device if the person:

28 (A) Sells, possesses, manufactures, transfers, or
29 transports explosive material or a destructive device; and

30 (B) Either:

31 (i) Has the purpose of using that explosive material
32 or destructive device to commit an offense; or

33 (ii) Knows or should know that another person
34 intends to use that explosive material or destructive device to commit an
35 offense.

36 (2) Criminal possession of explosive material or a destructive



1 device is a Class B felony.

2 (b)(1) A person commits the offense of criminal distribution of
 3 explosive material if he or she knowingly distributes explosive material to
 4 any individual who:

5 (A) Has pleaded guilty or nolo contendere to or been found
 6 guilty of a crime in state or federal court punishable by imprisonment for a
 7 term exceeding one (1) year;

8 (B) Is under indictment or has been formally charged for a
 9 crime punishable by imprisonment for a term exceeding one (1) year;

10 (C) Is a fugitive from justice;

11 (D) Is an unlawful user of or addicted to any controlled
 12 substance; ~~or~~

13 (E) Has been adjudicated as having a mental disease or
 14 defect or has been committed to an institution or residential treatment
 15 facility because of a mental disease or defect ~~mentally incompetent~~;

16 (F) Is under twenty-one (21) years of age;

17 (G) Is an alien, other than an alien who is:

18 (i) Lawfully admitted for permanent residence as
 19 defined in 8 U.S.C. § 1101(a)(20), as it existed on January 1, 2009;

20 (ii) In lawful nonimmigrant status, a refugee
 21 admitted under 8 U.S.C. § 1157, as it existed on January 1, 2009, or in
 22 asylum status under 8 U.S.C. § 1158, as it existed on January 1, 2009, and
 23 either:

24 (a) A foreign law enforcement officer of a
 25 friendly foreign government, as determined by the Secretary of State under 18
 26 U.S.C. § 842, entering the United States on official law enforcement
 27 business, and the distribution of explosive material is in furtherance of
 28 this official law enforcement business; or

29 (b) A person having the power to direct or
 30 cause the direction of the management and policies of a corporation,
 31 partnership, or association licensed under 18 U.S.C. § 843, as it existed on
 32 January 1, 2009, and the distribution of explosive material is in furtherance
 33 of the person's power;

34 (iii) A member of a North Atlantic Treaty
 35 Organization or other friendly foreign military force, as determined by the
 36 Attorney General of the United States in consultation with the Secretary of

1 Defense under 18 U.S.C. § 842, who is present in the United States under
2 military orders for training or other military purpose authorized by the
3 United States and distribution of explosive material is in furtherance of the
4 military orders for training or authorized military purpose; or

5 (iv) Lawfully present in the United States in
6 cooperation with the Director of the Central Intelligence Agency, and the
7 distribution of explosive material is in furtherance of the cooperation;

8 (H) Has been dishonorably discharged from any branch of
9 the United States armed forces; or

10 (I) Has renounced his or her United States citizenship.

11 (2) Criminal distribution of explosive material is a Class C
12 felony.

13 (c)(1) A person commits the offense of possession of stolen explosive
14 material if he or she:

15 (A) Receives, possesses, transports, ships, conceals,
16 stores, barter, sells, disposes of, or pledges or accepts as security for a
17 loan any stolen explosive materials; and

18 (B) Knows or has reasonable cause to believe that the
19 explosive material was stolen.

20 (2) Possession of stolen explosive material is a Class C felony.

21 (d)(1) A person commits the offense of unlawful receipt or possession
22 of an explosive material if the person receives or possesses explosive
23 material and:

24 (A) Has pleaded guilty or nolo contendere to or has been
25 found guilty in any state or federal court of a crime punishable by
26 imprisonment for a term exceeding one (1) year;

27 (B) Is under indictment or has been formally charged for a
28 crime punishable by imprisonment for a term exceeding one (1) year;

29 (C) Is a fugitive from justice;

30 (D) Is an unlawful user of or addicted to any controlled
31 substance;

32 (E) Has been adjudicated to have a mental disease or
33 defect or has been committed to an institution or residential treatment
34 facility because of a mental disease or defect;

35 (F) Is under twenty-one (21) years of age;

36 (G) Is an alien, other than an alien who is:

1 (i) Lawfully admitted for permanent residence as
 2 defined in 8 U.S.C. § 1101(a)(20), as it existed on January 1, 2009; or

3 (ii) In lawful nonimmigrant status, a refugee
 4 admitted under 8 U.S.C. § 1157, as it existed on January 1, 2009, or in
 5 asylum status under 8 U.S.C. § 1158, as it existed on January 1, 2009, and
 6 either:

7 (a) A foreign law enforcement officer of a
 8 friendly foreign government, as determined by the Secretary of State under 18
 9 U.S.C. § 842, entering the United States on official law enforcement
 10 business, and the receipt or possession of the explosive material is in
 11 furtherance of this official law enforcement business; or

12 (2) A person having the power to direct
 13 or cause the direction of the management and policies of a corporation,
 14 partnership, or association licensed under 18 U.S.C. § 843, as it existed on
 15 January 1, 2009, and the receipt or possession of the explosive material is
 16 in furtherance of the person's power;

17 (iii) A member of a North Atlantic Treaty
 18 Organization or other friendly foreign military force, as determined by the
 19 Attorney General of the United States in consultation with the Secretary of
 20 Defense under 18 U.S.C. § 842, who is present in the United States under
 21 military orders for training or other military purpose authorized by the
 22 United States, and the receipt or possession of the explosive material is in
 23 furtherance of the authorized military purpose; or

24 (iv) Lawfully present in the United States in
 25 cooperation with the Director of the Central Intelligence Agency, and the
 26 receipt or possession of the explosive material is in furtherance of the
 27 cooperation;

28 (H) Has been dishonorably discharged from any branch of
 29 the United States armed forces; or

30 (I) Has renounced his or her United States citizenship.

31 (2) Unlawful receipt or possession of explosive material is a
 32 Class C felony.

33 (3) It is a defense to prosecution under this subsection if at
 34 the time of the receiving or possessing the explosive material the person was
 35 acting within the scope of his or her employment with a business authorized
 36 to use explosive material.

1 ~~(d)~~(e) It is a Class A misdemeanor for any person to store any
2 explosive material in a manner not in conformity with the Arkansas Fire
3 Prevention Code.

4 ~~(e)~~(f) A person who commits theft of any explosive material with the
5 ~~intent~~ purpose to cause harm to a person or property is guilty of a Class B
6 felony.

7 ~~(f)~~(g) Any explosive material determined to be contraband is subject
8 to seizure by a law enforcement officer and to being destroyed in conformity
9 with the Arkansas Fire Prevention Code.

10 (h) As used in this section, "alien" means a person not a citizen or
11 national of the United States.

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