

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

As Engrossed: S2/26/09
A Bill

HOUSE BILL 1338

5 By: Representative Pierce
6
7

8 **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.

15
16 **Subtitle**

17 AN ACT TO AMEND THE CRIMINAL OFFENSE OF
18 POSSESSION OF EXPLOSIVES BY CERTAIN
19 PERSONS, TO ADD PROHIBITED CATEGORIES,
20 AND TO CREATE A DEFENSE TO PROSECUTION.
21
22

23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
24

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)~~ (B) Is a fugitive from justice;

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

13 ~~(E)~~ (D) 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 (E) Is under twenty-one (21) years of age;

17 (F) 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 (G) Has been dishonorably discharged from any branch of
9 the United States armed forces; or

10 (H) 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 a fugitive from justice;

28 (C) Is an unlawful user of or addicted to any controlled
29 substance;

30 (D) Has been adjudicated to have a mental disease or
31 defect or has been committed to an institution or residential treatment
32 facility because of a mental disease or defect;

33 (E) Is under twenty-one (21) years of age;

34 (F) Is an alien, other than an alien who is:

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

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

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

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

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

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

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

29 (H) Has renounced his or her United States citizenship.

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

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

36 ~~(d)~~(e) It is a Class A misdemeanor for any person to store any

1 explosive material in a manner not in conformity with the Arkansas Fire
2 Prevention Code.

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

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

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

11

12

/s/ Pierce

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

33

34

35

36