

4529--D

2011-2012 Regular Sessions

I N S E N A T E

April 11, 2011

Introduced by Sen. NOZZOLIO -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the penal law, in relation to offenses relating to possession or sale of fireworks, sparkling devices and ammunition

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Subdivisions 1, 2, and 3 of section 270.00 of the penal
2 law, as amended by chapter 180 of the laws of 1997, are amended to read
3 as follows:
4 1. Definition of "fireworks" and "dangerous fireworks".
5 (A) The term "fireworks," as used in this section, [is defined and
6 declared to be and to include any blank cartridge, blank cartridge
7 pistol, or toy cannon in which explosives are used, firecrackers, spark-
8 lers or other combustible or explosive of like construction, or any
9 preparation containing any explosive or inflammable compound or any
10 tablets or other device commonly used and sold as fireworks containing
11 nitrates, chlorates, oxalates, sulphides of lead, barium, antimony,
12 arsenic, mercury, nitroglycerine, phosphorus or any compound containing
13 any of the same or other explosives, or any substance or combination of
14 substances, or article prepared for the purpose of producing a visible
15 or an audible effect by combustion, explosion, deflagration or detona-
16 tion, or other device containing any explosive substance and the]
17 INCLUDES:
18 (I) *DISPLAY FIREWORKS, WHICH MEANS FIREWORKS DEVICES IN A FINISHED*
19 STATE, EXCLUSIVE OF MERE ORNAMENTATION, PRIMARILY INTENDED FOR COMMER-

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

LBD05241-13-1

1 CIAL DISPLAYS WHICH ARE DESIGNED TO PRODUCE VISIBLE AND/OR AUDIBLE
2 EFFECTS BY COMBUSTION, DEFLAGRATION OR DETONATION, INCLUDING, BUT NOT
3 LIMITED TO, SALUTES CONTAINING MORE THAN 130 MG (2 GRAINS) OF EXPLOSIVE
4 COMPOSITION, AERIAL SHELLS CONTAINING MORE THAN 40G OF CHEMICAL COMPOSI-
5 TION EXCLUSIVE OF LIFT CHARGE, AND OTHER EXHIBITION DISPLAY ITEMS THAT
6 EXCEED THE LIMITS OF CONSUMER FIREWORKS CONTAINED IN THE AMERICAN PYRO-
7 TECHNIC ASSOCIATION (APA) STANDARD 87-1, 2001 EDITION;

8 (II) ARTICLES PYROTECHNIC, WHICH MEANS PYROTECHNIC DEVICES FOR PROFES-
9 SIONAL USE SIMILAR TO CONSUMER FIREWORKS IN CHEMICAL COMPOSITION AND
10 CONSTRUCTION BUT NOT INTENDED FOR CONSUMER USE AND WHICH ARTICLES MEET
11 THE WEIGHT LIMITS FOR CONSUMER FIREWORKS BUT ARE NOT LABELED AS SUCH AND
12 ARE CLASSIFIED BY THE UNITED STATES DEPARTMENT OF TRANSPORTATION IN 49
13 CFR 172.101 AS UN0431;

14 (III) SPECIAL EFFECTS, WHICH MEANS ANY COMBINATION OF CHEMICAL
15 ELEMENTS OR CHEMICAL COMPOUNDS CAPABLE OF BURNING INDEPENDENTLY OF THE
16 OXYGEN OF THE ATMOSPHERE, AND DESIGNED AND INTENDED TO PRODUCE AN AUDI-
17 BLE, VISUAL, MECHANICAL, OR THERMAL EFFECT AS AN INTEGRAL PART OF A
18 MOTION PICTURE, RADIO, TELEVISION, THEATRICAL, OR OPERA PRODUCTION, OR
19 LIVE ENTERTAINMENT;

20 (IV) CONSUMER FIREWORKS WHICH ARE AERIAL IN PERFORMANCE AND ARE
21 COMMONLY REFERRED TO AS SKY ROCKETS, BOTTLE ROCKETS, MISSILE TYPE ROCK-
22 ETS, HELICOPTERS, AERIAL SPINNERS, ROMAN CANDLES, MINES, SHELL DEVICES,
23 AERIAL SHELL KITS, RELOADABLES AND AUDIBLE GROUND DEVICES WHICH ARE
24 COMMONLY REFERRED TO AS FIRECRACKERS AND CHASERS; AND

25 (V) IN CITIES WITH A POPULATION OF ONE MILLION OR MORE, THE TERM
26 "FIREWORKS" SHALL ALSO INCLUDE ANY BLANK CARTRIDGE, BLANK CARTRIDGE
27 PISTOL, OR TOY CANNON IN WHICH EXPLOSIVES ARE USED, FIRECRACKERS, SPARK-
28 LERS OR OTHER COMBUSTIBLE OR EXPLOSIVE OF LIKE CONSTRUCTION, OR ANY
29 PREPARATION CONTAINING ANY EXPLOSIVE OR INFLAMMABLE COMPOUND OR ANY
30 TABLETS OR OTHER DEVICE COMMONLY USED AND SOLD AS FIREWORKS CONTAINING
31 NITRATES, CHLORATES, OXALATES, SULPHIDES OF LEAD, BARIUM, ANTIMONY,
32 ARSENIC, MERCURY, NITROGLYCERINE, PHOSPHORUS OR ANY COMPOUND CONTAINING
33 ANY OF THE SAME OR OTHER EXPLOSIVES, OR ANY SUBSTANCE OR COMBINATION OF
34 SUBSTANCES, OR ARTICLE PREPARED FOR THE PURPOSE OF PRODUCING A VISIBLE
35 OR AN AUDIBLE EFFECT BY COMBUSTION, EXPLOSION, DEFLAGRATION OR DETONA-
36 TION, OR OTHER DEVICE CONTAINING ANY EXPLOSIVE SUBSTANCE.

37 (B) THE term "dangerous fireworks" means any fireworks capable of
38 causing serious physical injury and which are: firecrackers containing
39 more than fifty milligrams of any explosive substance, torpedoes,
40 skyrockets and rockets including all devices which employ any combusti-
41 ble or explosive substance and which rise in the air during discharge,
42 Roman candles, AND bombs, PROVIDED, HOWEVER, THAT IN CITIES WITH A POPU-
43 LATION OF ONE MILLION OR MORE, THE TERM "DANGEROUS FIREWORKS" SHALL ALSO
44 INCLUDE sparklers more than ten inches in length or one-fourth of one
45 inch in diameter, or chasers including all devices which dart or travel
46 about the surface of the ground during discharge.

47 (C) "Fireworks" and "dangerous fireworks" shall not be deemed to
48 include [(1)] THE FOLLOWING NOR SHALL THE PURCHASE AND USE OF ANY ITEMS
49 LISTED BELOW BE SUBJECT TO THE PROVISIONS OF SECTION 61 OF TITLE 12 OF
50 THE NEW YORK STATE CODES, RULES AND REGULATIONS OR SECTION FOUR HUNDRED
51 EIGHTY, FOUR HUNDRED EIGHTY-ONE, FOUR HUNDRED EIGHTY-TWO OR FOUR HUNDRED
52 EIGHTY-THREE OF THE GENERAL BUSINESS LAW:

53 (I) flares of the type used by railroads or any warning lights common-
54 ly known as red flares, or marine distress signals of a type approved by
55 the United States coast guard, or

1 [(2)] (II) toy pistols, toy canes, toy guns or other devices in which
2 paper caps containing twenty-five hundredths grains or less of explosive
3 compound are used, providing they are so constructed that the hand
4 cannot come in contact with the cap when in place for use, and toy
5 pistol paper caps which contain less than twenty-hundredths grains of
6 explosive mixture, the sale and use of which shall be permitted at all
7 times, or

8 [(3)] (III) bank security devices which contain not more than fifty
9 grams of any compound or substance or any combination thereof, together
10 with an igniter not exceeding 0.2 gram, capable of producing a lachry-
11 mating and/or visible or audible effect, where such device is stored or
12 used only by banks, national banking associations, trust companies,
13 savings banks, savings and loan associations, industrial banks, or cred-
14 it unions, or by any manufacturer, wholesaler, dealer, jobber or common
15 carrier for such devices and where the total storage on any one premises
16 does not exceed one hundred devices.

17 (C-1) EXCEPT IN CITIES WITH A POPULATION OF ONE MILLION OF MORE,
18 "FIREWORKS" AND "DANGEROUS FIREWORKS" SHALL NOT BE DEEMED TO INCLUDE THE
19 FOLLOWING, NOR SHALL THE PURCHASE AND USE OF ANY ITEMS LISTED BELOW BE
20 SUBJECT TO THE PROVISIONS OF SECTION 61 OF TITLE 12 OF THE NEW YORK
21 STATE CODES, RULES AND REGULATIONS OR SECTION FOUR HUNDRED EIGHTY, FOUR
22 HUNDRED EIGHTY-ONE, FOUR HUNDRED EIGHTY-TWO OR FOUR HUNDRED EIGHTY-THREE
23 OF THE GENERAL BUSINESS LAW:

24 (I) SPARKLING DEVICES WHICH ARE GROUND-BASED OR HAND-HELD DEVICES THAT
25 PRODUCE A SHOWER OF WHITE, GOLD, OR COLORED SPARKS AS THEIR PRIMARY
26 PYROTECHNIC EFFECT. ADDITIONAL EFFECTS MAY INCLUDE A COLORED FLAME, AN
27 AUDIBLE CRACKLING EFFECT, AN AUDIBLE WHISTLE EFFECT, AND SMOKE. THESE
28 DEVICES DO NOT RISE INTO THE AIR, DO NOT FIRE INSERTS OR PROJECTILES
29 INTO THE AIR, AND DO NOT EXPLODE OR PRODUCE A REPORT (AN AUDIBLE CRACK-
30 LING-TYPE EFFECT IS NOT CONSIDERED TO BE A REPORT). GROUND-BASED OR
31 HAND-HELD DEVICES THAT PRODUCE A CLOUD OF SMOKE AS THEIR SOLE PYROTECH-
32 NIC EFFECT ARE ALSO INCLUDED IN THIS CATEGORY. TYPES OF DEVICES IN THIS
33 CATEGORY INCLUDE:

34 (A) CYLINDRICAL FOUNTAIN: CYLINDRICAL TUBE CONTAINING NOT MORE THAN 75
35 G OF PYROTECHNIC COMPOSITION THAT MAY BE CONTAINED IN A DIFFERENT SHAPED
36 EXTERIOR SUCH AS A SQUARE, RECTANGLE, CYLINDER OR OTHER SHAPE BUT THE
37 INTERIOR TUBES ARE CYLINDRICAL IN SHAPE. UPON IGNITION, A SHOWER OF
38 COLORED SPARKS, AND SOMETIMES A WHISTLING EFFECT OR SMOKE, IS PRODUCED.
39 THIS DEVICE MAY BE PROVIDED WITH A SPIKE FOR INSERTION INTO THE GROUND
40 (SPIKE FOUNTAIN), A WOOD OR PLASTIC BASE FOR PLACING ON THE GROUND (BASE
41 FOUNTAIN), OR A WOOD OR CARDBOARD HANDLE TO BE HAND HELD (HANDLE FOUN-
42 TAIN). WHEN MORE THAN ONE TUBE IS MOUNTED ON A COMMON BASE, TOTAL PYRO-
43 TECHNIC COMPOSITION MAY NOT EXCEED 200 G, AND WHEN TUBES ARE SECURELY
44 ATTACHED TO A BASE AND THE TUBES ARE SEPARATED FROM EACH OTHER ON THE
45 BASE BY A DISTANCE OF AT LEAST HALF AN INCH (12.7 MILLIMETERS), A MAXI-
46 MUM TOTAL WEIGHT OF 500 G OF PYROTECHNIC COMPOSITION SHALL BE ALLOWED.

47 (B) CONE FOUNTAIN: CARDBOARD OR HEAVY PAPER CONE CONTAINING NOT MORE
48 THAN 50 G OF PYROTECHNIC COMPOSITION. THE EFFECT IS THE SAME AS THAT OF
49 A CYLINDRICAL FOUNTAIN. WHEN MORE THAN ONE CONE IS MOUNTED ON A COMMON
50 BASE, TOTAL PYROTECHNIC COMPOSITION MAY NOT EXCEED 200 G, AS IS OUTLINED
51 IN SUBPARAGRAPH (I) OF THIS PARAGRAPH.

52 (C) ILLUMINATING TORCH: CYLINDRICAL TUBE CONTAINING NOT MORE THAN 100
53 G OF PYROTECHNIC COMPOSITION THAT PRODUCES A COLORED FLAME UPON IGNITION
54 AND MAY HAVE A SPIKE, BASE, OR HAND HELD FOUNTAIN. WHEN MORE THAN ONE
55 TUBE IS MOUNTED ON A COMMON BASE, TOTAL PYROTECHNIC COMPOSITION MAY NOT
56 EXCEED 200 G, AS IS OUTLINED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH.

(D) WHEEL: PYROTECHNIC DEVICE INTENDED TO BE ATTACHED TO A POST OR TREE BY MEANS OF A NAIL OR STRING WHICH MAY HAVE ONE OR MORE DRIVERS, EACH OF WHICH MAY CONTAIN NOT MORE THAN 60 G OF PYROTECHNIC COMPOSITION. NO WHEEL MAY CONTAIN MORE THAN 200 G OF TOTAL PYROTECHNIC COMPOSITION. UPON IGNITION, THE WHEEL REVOLVES, PRODUCING A SHOWER OF COLOR AND SPARKS AND, SOMETIMES, A WHISTLING EFFECT.

(E) GROUND SPINNER: SMALL DEVICE CONTAINING NOT MORE THAN 20 G OF PYROTECHNIC COMPOSITION, VENTING OUT AN ORIFICE USUALLY ON THE SIDE OF THE TUBE AND IS SIMILAR IN OPERATION TO A WHEEL BUT INTENDED TO BE PLACED FLAT ON THE GROUND AND IGNITED. A SHOWER OF SPARKS AND COLOR IS PRODUCED BY THE RAPIDLY SPINNING DEVICE.

(F) FLITTER SPARKLER: NARROW PAPER TUBE ATTACHED TO A STICK OR WIRE AND FILLED WITH NOT MORE THAN 5 G OF PYROTECHNIC COMPOSITION THAT PRODUCES COLOR AND SPARKS UPON IGNITION. THE PAPER AT ONE END OF THE TUBE IS IGNITED TO MAKE THE DEVICE FUNCTION.

(G) TOY SMOKE DEVICE: SMALL PLASTIC OR PAPER ITEM CONTAINING NOT MORE THAN 100 G OF PYROTECHNIC COMPOSITION THAT, UPON IGNITION, PRODUCES WHITE OR COLORED SMOKE AS THE PRIMARY EFFECT. TOY SMOKE DEVICES, WHEN COMPLYING WITH THE PROVISIONS OF THIS SECTION, ARE CLASSED AS FIREWORKS, 1.4G UNLESS CLASSED AS 1.4S OR NOT REGULATED AS AN EXPLOSIVE ON THE BASIS OF EXAMINATION AND TESTING AS SPECIFIED IN TITLE 49 CFR, S 173.56.

(H) WIRE SPARKLER/DIPPED STICK: THESE DEVICES CONSIST OF A METAL WIRE OR WOOD DOWEL THAT HAS BEEN COATED WITH PYROTECHNIC COMPOSITION. UPON IGNITION OF THE TIP OF THE DEVICE, A SHOWER OF SPARKS IS PRODUCED. SPARKLERS MAY CONTAIN UP TO 100 G OF PYROTECHNIC COMPOSITION PER ITEM.

(I) MULTIPLE TUBE DEVICES CONTAINING MORE THAN ONE CARDBOARD TUBE: THE IGNITION OF ONE EXTERNAL FUSE CAUSES ALL OF THE TUBES TO FUNCTION IN SEQUENCE. THE TUBES ARE EITHER INDIVIDUALLY ATTACHED TO A WOOD OR PLASTIC BASE, OR ARE DENSE-PACKED AND ARE HELD TOGETHER BY GLUE, WIRE, STRING, OR OTHER MEANS THAT SECURELY HOLDS THE TUBES TOGETHER DURING OPERATION. THE WEIGHT OF CHEMICAL COMPOSITION PER TUBE IS LIMITED TO THE WEIGHT LIMIT FOR THE SPECIFIC TYPE OF DEVICE IN THE TUBE. THE CONNECTING FUSES ON MULTIPLE TUBE DEVICES MUST BE FUSED IN SEQUENCE SO THAT THE TUBES FIRE SEQUENTIALLY RATHER THAN ALL AT ONCE. WHEN THE TUBES ARE SECURELY ATTACHED TO A WOOD OR PLASTIC BASE, AND THE TUBES ARE SEPARATED FROM EACH OTHER ON THE BASE BY A DISTANCE OF AT LEAST HALF AN INCH (12.7 MILLIMETERS), A MAXIMUM TOTAL WEIGHT OF 500 G OF PYROTECHNIC COMPOSITION SHALL BE PERMITTED FOR APPROVAL AS 1.4G, OR

(II) NOVELTIES WHICH DO NOT REQUIRE APPROVAL FROM USDOT AND ARE NOT REGULATED AS EXPLOSIVES, PROVIDED THAT THEY ARE MANUFACTURED AND PACKAGED AS DESCRIBED BELOW:

(A) PARTY POPPER: SMALL DEVICES WITH PAPER OR PLASTIC EXTERIORS THAT ARE ACTUATED BY MEANS OF FRICTION (A STRING OR TRIGGER IS TYPICALLY PULLED TO ACTUATE THE DEVICE). THEY FREQUENTLY RESEMBLE CHAMPAGNE BOTTLES OR TOY PISTOLS IN SHAPE. UPON ACTIVATION, THE DEVICE EXPELS FLAME-RESISTANT PAPER STREAMERS, CONFETTI, OR OTHER NOVELTIES AND PRODUCES A SMALL REPORT. DEVICES MAY CONTAIN NOT MORE THAN 16 MG (0.25 GRAINS) OF EXPLOSIVE COMPOSITION, WHICH IS LIMITED TO POTASSIUM CHLORATE AND RED PHOSPHORUS. THESE DEVICES MUST BE PACKAGED IN AN INNER PACKAGING WHICH CONTAINS A MAXIMUM OF SEVENTY-TWO DEVICES.

(B) SNAPPER: SMALL, PAPER-WRAPPED DEVICES CONTAINING NOT MORE THAN ONE MILLIGRAM OF SILVER FULMINATE COATED ON SMALL BITS OF SAND OR GRAVEL. WHEN DROPPED, THE DEVICE EXPLODES, PRODUCING A SMALL REPORT. SNAPPERS MUST BE IN INNER PACKAGES NOT TO EXCEED FIFTY DEVICES EACH, AND THE INNER PACKAGES MUST CONTAIN SAWDUST OR A SIMILAR, IMPACT-ABSORBING MATERIAL.

1 (C) TOY SMOKE DEVICES: SMALL DEVICES CONSISTING OF CORK-LIKE SPHERES,
2 OR CARDBOARD OR PLASTIC TUBES, CONTAINING NOT MORE THAN 5 G OF PYROTECH-
3 NIC COMPOSITION THAT PRODUCES A SMALL CLOUD OF SMOKE AFTER ACTIVATION.
4 THE DEVICES ARE TYPICALLY IGNITED BY MEANS OF SAFETY FUSE. THE OUTER
5 CONFIGURATION IS USUALLY A SPHERE (SMOKE BALL), CYLINDRICAL TUBE, OR
6 PAPER CONE. THE CHEMICAL COMPOSITION FOR WHITE SMOKE CONSISTS OF POTAS-
7 SIUM NITRATE AND SULFUR, WHILE COLORED SMOKES ARE PRODUCED BY MIXTURES
8 CONSISTING OF POTASSIUM CHLORATE, SULFUR OR SUGAR, AND A SUBLIMABLE
9 ORGANIC DYE. MIXTURES CONTAINING POTASSIUM CHLORATE MUST ALSO CONTAIN A
10 NEUTRALIZER/COOLANT SUCH AS SODIUM BICARBONATE. TO BE ELIGIBLE FOR
11 UNREGULATED STATUS, THESE DEVICES MUST PRODUCE SMOKE AS THEIR SOLE PYRO-
12 TECHNIC EFFECT FOLLOWING IGNITION, AND MUST BE PACKAGED IN INNER UNITS
13 CONTAINING A MAXIMUM OF SEVENTY-TWO DEVICES.

14 (D) SNAKES, GLOW WORM: PRESSED PELLETS OF PYROTECHNIC COMPOSITION THAT
15 CONTAIN 2 G OR LESS OF COMPOSITION PER ARTICLE. UPON BURNING, THEY
16 PRODUCE A SNAKE-LIKE ASH THAT EXPANDS IN LENGTH AS THE PELLET BURNS.
17 CHEMICAL COMPOSITIONS VARY, BUT TYPICALLY CONTAIN AMMONIUM PERCHLORATE,
18 NITRATE PITCH, ASPHALTUM, AND SIMILAR CARBONACEOUS MATERIALS. THESE
19 DEVICES ARE LIMITED TO A MAXIMUM OF TWENTY-FIVE PELLETS PER INNER PACK-
20 AGE IN ORDER TO BE TRANSPORTED AS NOT REGULATED DEVICES.

21 (E) WIRE SPARKERS/DIPPED STICKS: THESE DEVICES CONSIST OF A METAL WIRE
22 OR WOOD DOWEL THAT HAS BEEN COATED WITH PYROTECHNIC COMPOSITION. UPON
23 IGNITION OF THE TIP OF THE DEVICE, A SHOWER OF SPARKS IS PRODUCED.
24 SPARKLERS MAY CONTAIN UP TO 100 G OF COMPOSITION PER ITEM. SPARKLERS
25 TYPICALLY USE BARIUM NITRATE AS THE OXIDIZER, WITH ALUMINUM AND DEXTRINE
26 AS FUELS. IRON FILINGS PRODUCE THE SPARK EFFECT. COLOR-PRODUCING SPARK-
27 LERS USE POTASSIUM PERCHLORATE AS AN OXIDIZER. ANY SPARKLER CONTAINING A
28 CHLORATE OR PERCHLORATE OXIDIZER IS LIMITED TO A MAXIMUM OF 5 G OF
29 COMPOSITION PER ARTICLE. SPARKLERS MUST BE PACKAGED IN INNER PACKAGING
30 THAT CONTAIN EIGHT DEVICES OR LESS TO BE TRANSPORTED AS NOT REGULATED
31 DEVICES, OR

32 (III) TOY PLASTIC OR PAPER CAPS FOR TOY PISTOLS IN SHEETS, STRIPS,
33 ROLLS, OR INDIVIDUAL CAPS, CONTAINING NOT MORE THAN AN AVERAGE OF 0.25
34 GRAINS (16 MG) OF EXPLOSIVE COMPOSITION PER CAP. TOY CAPS ARE DESCRIBED
35 AS TOY CAPS NA0037 AND CLASSED AS 1.4S. TOY CAPS SHALL ONLY BE APPROVED
36 FOR TRANSPORTATION USING THE PROCEDURE SPECIFIED IN TITLE 49 CFR, S
37 173.56(B).

38 2. Offense. (a) Except as herein otherwise provided, or except where a
39 permit is obtained pursuant to section 405.00 OF THIS CHAPTER; (i) any
40 person who shall offer or expose for sale, sell or furnish, any fire-
41 works or dangerous fireworks is guilty of a class B misdemeanor;

42 (ii) any person who shall offer or expose for sale, sell or furnish
43 any fireworks or dangerous fireworks valued at five hundred dollars or
44 more shall be guilty of a class A misdemeanor;

45 [(b) (i) Except as herein otherwise stated, or except where a permit
46 is obtained pursuant to section 405.00,] (III) any person who shall
47 possess, use, explode or cause to explode any fireworks or dangerous
48 fireworks is guilty of a violation[.];

49 [(ii) A] (IV) ANY person who shall offer or expose for sale, sell or
50 furnish, any dangerous fireworks, FIREWORKS OR DEVICES AS DEFINED IN
51 PARAGRAPH (C-1) OF SUBDIVISION ONE OF THIS SECTION to any person who is
52 under the age of eighteen is guilty of a class A misdemeanor.

53 [(iii)] (B) A person who has previously been convicted of a violation
54 of subparagraph [(ii)] (IV) of [this] paragraph (A) OF THIS SUBDIVISION
55 within the preceding five years and who shall offer or expose for sale,

1 sell or furnish, any dangerous fireworks to any person who is under the
2 age of eighteen, shall be guilty of a class E felony.

3 (c) Possession of fireworks or dangerous fireworks valued at ONE
4 HUNDRED fifty dollars or more shall be a presumption that such fireworks
5 were intended to be offered or exposed for sale.

6 3. [The provisions of this section shall not apply to articles of the
7 kind and nature herein mentioned, while in possession of railroads and
8 transportation agencies for the purpose of transportation to points
9 without the state, the shipment of which is not prohibited by the inter-
10 state commerce commission regulations as formulated and published from
11 time to time, unless the same be held voluntarily by such railroads or
12 transportation companies as warehousemen for delivery to points within
13 the state; provided, that none of the provisions of this section shall
14 apply to signaling devices used by railroad companies or motor vehicles
15 referred to in subdivision seventeen of section three hundred seventy-
16 five of the vehicle and traffic law, or to high explosives for blasting
17 or similar purposes; provided that none of the provisions of this
18 section shall apply to fireworks or dangerous fireworks and the use
19 thereof by the army and navy departments of the state and federal
20 government; nor shall anything in this act contained be construed to
21 prohibit any manufacturer, wholesaler, dealer or jobber from manufactur-
22 ing, possessing or selling at wholesale such fireworks or dangerous
23 fireworks to municipalities, religious or civic organizations, fair
24 associations, amusement parks, or other organizations or groups of indi-
25 viduals authorized to possess and use fireworks or dangerous fireworks
26 under this act, or the sale or use of blank cartridges for a show or
27 theatre, or for signal purposes in athletic sports, or for dog trials or
28 dog training, or the use, or the storage, transportation or sale for use
29 of fireworks or dangerous fireworks in the preparation for or in
30 connection with television broadcasts; nor shall anything in this act
31 contained be construed to prohibit the manufacture of fireworks or
32 dangerous fireworks, nor the sale of any kind of fireworks or dangerous
33 fireworks, provided the same are to be shipped directly out of the
34 state.] EXCEPTIONS. (A) THE PROVISIONS OF THIS SECTION SHALL NOT APPLY
35 TO:

36 (I) FIREWORKS, DANGEROUS FIREWORKS, AND DEVICES DEFINED IN PARAGRAPH
37 (C-1) OF SUBDIVISION ONE OF THIS SECTION WHILE IN POSSESSION OF RAIL-
38 ROADS, COMMON OR CONTRACT CARRIERS, RETAILERS, WHOLESALERS, DISTRIBUTU-
39 TORS, JOBBERS AND TRANSPORTATION COMPANIES OR TRANSPORTATION AGENCIES
40 FOR THE PURPOSE OF TRANSPORTATION TO POINTS WITHOUT THE STATE, THE SHIP-
41 MENT OF WHICH IS NOT PROHIBITED BY INTERSTATE COMMERCE COMMISSION REGU-
42 LATIONS AS FORMULATED AND PUBLISHED FROM TIME TO TIME, UNLESS THEY BE
43 HELD VOLUNTARILY BY SUCH RAILROADS, COMMON OR CONTRACT CARRIERS, RETAIL-
44 ERS, WHOLESALERS, DISTRIBUTORS, JOBBERS AND TRANSPORTATION AGENCIES OR
45 TRANSPORTING COMPANIES AS WAREHOUSEMEN FOR DELIVERY TO POINTS WITHIN THE
46 STATE;

47 (II) SIGNALING DEVICES USED BY RAILROAD COMPANIES OR MOTOR VEHICLES
48 REFERRED TO IN SUBDIVISION SEVENTEEN OF SECTION THREE HUNDRED
49 SEVENTY-FIVE OF THE VEHICLE AND TRAFFIC LAW;

50 (III) HIGH EXPLOSIVES FOR BLASTING OR SIMILAR PURPOSES;

51 (IV) FIREWORKS, DANGEROUS FIREWORKS AND DEVICES DEFINED IN PARAGRAPH
52 (C-1) OF SUBDIVISION ONE OF THIS SECTION FOR THE USE THEREOF BY THE
53 UNITED STATES MILITARY, AND DEPARTMENTS OF THE STATE AND FEDERAL GOVERN-
54 MENT;

55 (V) THE USE, TRANSPORTATION AND STORAGE OF FIREWORKS, DANGEROUS FIRE-
56 WORKS AND DEVICES DEFINED IN PARAGRAPH (C-1) OF SUBDIVISION ONE OF THIS

SECTION AND SPECIAL EFFECTS MATERIALS IN CONNECTION WITH THE PRODUCTION OF MOTION PICTURES, TELEVISION PROGRAMS, COMMERCIALS, AND ALL ENTERTAINMENT MEDIA RECORDED IN ANY CURRENT OR TO BE DESIGNED FORMAT WHEN SUCH USE, TRANSPORTATION AND STORAGE HAS BEEN APPROPRIATELY PERMITTED BY THE LOCAL GOVERNMENTAL SUBDIVISION HAVING JURISDICTION.

(B) NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO PROHIBIT:

(I) ANY MANUFACTURER, WHOLESALER, RETAILER, DEALER OR JOBBER FROM MANUFACTURING, POSSESSING OR SELLING AT WHOLESALE A DEVICE DEFINED IN PARAGRAPH (C-1) OF SUBDIVISION ONE OF THIS SECTION TO MUNICIPALITIES, RELIGIOUS OR CIVIC ORGANIZATIONS, FAIR ASSOCIATIONS, AMUSEMENT PARKS, OR OTHER ORGANIZATIONS AUTHORIZED BY THE STATE TO STORE, TRANSPORT, POSSESS AND USE OR TO INDIVIDUALS TO STORE, TRANSPORT, POSSESS AND USE;

(II) THE SALE OR USE OF BLANK CARTRIDGES FOR A MOTION PICTURE, TELEVISION PROGRAM, COMMERCIAL AND ALL ENTERTAINMENT MEDIA, OR FOR SIGNAL PURPOSES IN ATHLETIC SPORTS, OR FOR DOG TRIALS OR DOG TRAINING;

(III) THE USE, STORAGE, TRANSPORTATION OR SALE OR TRANSFER FOR USE OF FIREWORKS AND DEVICES DEFINED IN PARAGRAPH (C-1) OF SUBDIVISION ONE OF THIS SECTION IN THE PREPARATION FOR OR IN CONNECTION WITH MOTION PICTURES, TELEVISION PROGRAMS, COMMERCIALS, AND ALL ENTERTAINMENT MEDIA RECORDED IN ANY CURRENT OR TO BE DESIGNED FORMAT WHEN SUCH USE, TRANSPORTATION AND STORAGE HAS BEEN APPROPRIATELY PERMITTED BY THE LOCAL GOVERNMENTAL SUBDIVISION HAVING JURISDICTION; OR

(IV) THE MANUFACTURE OR SALE OF DEVICES DEFINED IN PARAGRAPH (C-1) OF SUBDIVISION ONE OF THIS SECTION PROVIDED THEY ARE TO BE SHIPPED DIRECTLY OUT OF SUCH CITY AND ANY SUCH ITEMS ARE SOLD IN ACCORDANCE WITH THE PROVISIONS OF THIS ARTICLE.

S 2. Subdivision 5 of section 405.00 of the penal law is amended to read as follows:

5. Local ordinances superseded. (A) All local ordinances regulating or prohibiting the display of fireworks are hereby superseded by the provisions of this section. Every city, town or village shall have the power to enact ordinances or local laws regulating or prohibiting the use, or the storage, transportation or sale for use of fireworks in the preparation for or in connection with television broadcasts.

(B) FURTHER, NO CITY, MUNICIPALITY OR OTHER LOCAL JURISDICTION SHALL ENACT A LOCAL LAW THAT IS INCONSISTENT WITH THE PROVISIONS OF SECTION 270.00 OF THIS CHAPTER NOR TO REGULATE DEVICES DEFINED IN PARAGRAPH (C-1) OF SUBDIVISION ONE OF SECTION 270.00 OF THIS CHAPTER THAT IS IN CONFLICT WITH THE PROVISIONS OF NFPA 1124, 2006 EDITION ONLY.

S 3. This act shall take effect immediately.