S T A T E O F N E W Y O R K

6856

I N S E N A T E

March 29, 2012

Introduced by Sen. NOZZOLIO -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the penal law, in relation to issuing permits for outdoor use of certain consumer fireworks

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

Section 1. The penal law is amended by adding a new section 405.02 to read as follows:

S 405.02 PERMITS FOR OUTDOOR USE OF CERTAIN CONSUMER FIREWORKS.

1. NOTWITHSTANDING THE PROVISIONS OF SECTION 270.00 OF THIS CHAPTER CONSUMER FIREWORKS AS DEFINED IN THIS SECTION MAY BE POSSESSED AND USED OUTDOORS BY A PERSON HOLDING A VALID PERMIT ISSUED BY A LOCAL MUNICIPALITY UNDER THIS SECTION.

2. THE PERMIT AUTHORITY OF A CITY, VILLAGE OR TOWN MAY UPON APPLICATION IN WRITING AND THE PAYMENT OF A REASONABLE FEE NOT TO EXCEED FIFTY DOLLARS, AS DETERMINED BY THE PERMITTING AUTHORITY, ISSUE A PERMIT FOR THE OUTDOOR USE OF PERMISSIBLE CONSUMER FIREWORKS AS DEFINED IN THIS SECTION. A PERMIT MAY BE ISSUED TO A PERSON WHO IS EIGHTEEN YEARS OF AGE OR OLDER. THE PERMIT AUTHORITY SHALL RESERVE THE RIGHT TO DENY OR REVOKE ANY PERMIT FOR WEATHER, SPACE, RISK OF FIRE OR OTHER SPECIFIC SAFETY CONCERNS. IN THE EVENT THE PERMIT IS DENIED, THE ISSUING BODY SHALL STATE IN WRITING THE REASON THEREFOR.

3. "PERMISSIBLE CONSUMER FIREWORKS" SHALL MEAN AND INCLUDE:

(A) (I) "MINE" DEVICES, WHICH ARE HEAVY CARDBOARD OR PAPER TUBES USUALLY ATTACHED TO A WOODEN OR PLASTIC BASE AND CONTAINING NOT MORE THAN SIXTY GRAMS OF TOTAL CHEMICAL COMPOSITION (LIFT CHARGE, BURST CHARGE, AND VISIBLE/AUDIBLE EFFECT COMPOSITION). UPON IGNITION STARS, COMPONENTS PRODUCING REPORTS CONTAINING UP TO ONE HUNDRED THIRTY MILLIGRAMS OF EXPLOSIVE COMPOSITION PER REPORT, OR OTHER DEVICES, ARE PROPELLED INTO THE AIR. THE TERM MINE REFERS TO A DEVICE WITH NO INTERNAL COMPONENTS CONTAINING A BURSTING CHARGE. A MINE DEVICE MAY CONTAIN MORE THAN ONE TUBE PROVIDED THAT THE TUBES FIRE IN SEQUENCE UPON IGNITION OF ONE EXTERNAL FUSE; AND

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

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(II) "CAKE" DEVICES, WHICH REFER TO A DENSELY-PACKED COLLECTION OF MINE TUBES, THE TOTAL CHEMICAL COMPOSITION OF WHICH MAY NOT EXCEED TWO HUNDRED GRAMS, INCLUDING LIFT CHARGES. THE MAXIMUM QUANTITY OF LIFT CHARGE IN ANY ONE TUBE OF A MINE DEVICE SHALL NOT EXCEED TWENTY GRAMS, AND THE MAXIMUM QUANTITY OF BREAK OR BURSTING CHARGE IN ANY COMPONENT SHALL NOT EXCEED TWENTY-FIVE PERCENT OF THE TOTAL WEIGHT OF CHEMICAL COMPOSITION IN THE COMPONENT; AND

(III) "MULTIPLE TUBE DEVICES" WHICH ARE DEVICES CONTAINING MORE THAN ONE CARDBOARD TUBE, WHEREBY THE IGNITION OF ONE EXTERNAL FUSE CAUSES ALL OF THE TUBES TO FUNCTION IN SEQUENCE. THE TUBES ARE EITHER INDIVIDUALLY ATTACHED TO A WOOD BASE OR PLASTIC BASE, OR ARE DENSELY-PACKED AND HELD TOGETHER BY GLUE, WIRE, STRING OR OTHER MEANS THAT SECURELY HOLDS THE TUBES TOGETHER DURING OPERATION. MULTIPLE TUBE DEVICES ARE NORMALLY LIMITED TO A MAXIMUM OF TWO HUNDRED GRAMS OF TOTAL PYROTECHNIC COMPOSITION FOR APPROVAL AS FIREWORKS. 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 ONE-HALF INCH, A MAXIMUM TOTAL WEIGHT OF FIVE HUNDRED GRAMS OF PYROTECHNIC COMPOSITION SHALL BE PERMITTED; AND

(B) WHICH IS SUITABLE FOR USE BY THE PUBLIC BY COMPLYING WITH THE CONSTRUCTION, PERFORMANCE, COMPOSITION AND LABELING REQUIREMENTS PROMULGATED BY THE CONSUMER PRODUCT SAFETY COMMISSION (CPSC) IN 16 CFR, RELATING TO COMMERCIAL PRACTICE, OR ANY SUCCESSOR REGULATION, AND WHICH COMPLIES WITH THE PROVISIONS FOR "CONSUMER FIREWORKS" AS DEFINED IN THE AMERICAN PYROTECHNICS ASSOCIATION (APA) STANDARD 87-1, 2001 EDITION OR ANY SUCCESSOR STANDARD.

4. THE USE AND POSSESSION OF CONSUMER FIREWORKS SHALL NOT BE SUBJECT TO THE PROVISIONS OF PART 61 OF TITLE 12 OF THE NYCRR OR TO SECTION FOUR HUNDRED EIGHTY, FOUR HUNDRED EIGHTY-ONE, FOUR HUNDRED EIGHTY-TWO OR FOUR HUNDRED EIGHTY-THREE OF THE GENERAL BUSINESS LAW.

5. ANY PERMIT ISSUED PURSUANT TO THIS SECTION SHALL NOT BE DEEMED TO PERMIT:

(A) THE USE OF SKY ROCKETS, BOTTLE ROCKETS, MISSILE TYPE ROCKETS, HELICOPTERS, AERIAL SPINNERS, ROMAN CANDLES, SHELL DEVICES, AERIAL SHELL KITS (RELOADABLE TUBES), FIRECRACKERS AND CHASERS AS DEFINED IN APA SECTIONS 87-1, 3.1.2.1 THROUGH 3.1.2.4, 3.1.2.5 (SHELL DEVICES) AND 3.1.2.6 THROUGH 3.1.3.2 AND IN 16 CFR, AND GROUND BASED FIREWORKS AS DEFINED IN APA SECTIONS 87-1, 3.1.1.1 THROUGH 3.1.1.8 AND 3.2 THROUGH 3.3; OR

(B) THE HOLDER TO VIOLATE ANY OTHER LOCAL ORDINANCES.

6. THIS SECTION SHALL NOT APPLY TO CITIES WITH A POPULATION OF ONE MILLION OR MORE PEOPLE.

S 2. Subdivision 2 of section 270.00 of the penal law, as amended by chapter 180 of the laws of 1997, is amended to read as follows:

2. Offense. (a) Except as herein otherwise provided, or except where a permit is obtained pursuant to section 405.00 OR 405.02; (i) any person who shall offer or expose for sale, sell or furnish, any fireworks or dangerous fireworks is guilty of a class B misdemeanor;

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

(b) (i) Except as herein otherwise stated, or except where a permit is obtained pursuant to section 405.00 OR 405.02, any person who shall

possess, use, explode or cause to explode any fireworks or dangerous fireworks is guilty of a violation.

(ii) A person who shall offer or expose for sale, sell or furnish, any dangerous fireworks to any person who is under the age of eighteen is guilty of a class A misdemeanor.

(iii) A person who has previously been convicted of a violation of subparagraph (ii) of this paragraph within the preceding five years and who shall offer or expose for sale, sell or furnish, any dangerous fireworks to any person who is under the age of eighteen, shall be guilty of a class E felony.

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

S 3. Section 405.00 of the penal law is amended by adding a new subdivision 6 to read as follows:

6. SECTION NOT APPLICABLE TO CONSUMER FIREWORKS. THE PROVISIONS OF THIS SECTION SHALL NOT APPLY TO THE USE AND POSSESSION OF PERMISSIBLE CONSUMER FIREWORKS AS SUCH TERM IS DEFINED IN SECTION 405.02 OF THIS ARTICLE.

S 4. This act shall take effect immediately.