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

4718

2013-2014 Regular Sessions

I N S E N A T E

April 19, 2013

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, the executive law, and the general business law, in relation to offenses relating to possession or sale of fireworks and sparkling devices; and to repeal certain provisions of the penal law relating thereto

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

Section 1. Subdivisions 1, 2, and 3 of section 270.00 of the penal law are REPEALED and three new subdivisions 1, 2, and 3 are added to read as follows:

1. DEFINITION OF "FIREWORKS" AND "DANGEROUS FIREWORKS".

(A) THE TERM "FIREWORKS," AS USED IN THIS SECTION, INCLUDES:

(I) DISPLAY FIREWORKS, WHICH MEANS FIREWORKS DEVICES IN A FINISHED STATE, EXCLUSIVE OF MERE ORNAMENTATION, PRIMARILY INTENDED FOR COMMERCIAL DISPLAYS WHICH ARE DESIGNED TO PRODUCE VISIBLE AND/OR AUDIBLE EFFECTS BY COMBUSTION, DEFLAGRATION OR DETONATION, INCLUDING, BUT NOT LIMITED TO, SALUTES CONTAINING MORE THAN 130 MG (2 GRAINS) OF EXPLOSIVE COMPOSITION, AERIAL SHELLS CONTAINING MORE THAN 40G OF CHEMICAL COMPOSITION EXCLUSIVE OF LIFT CHARGE, AND OTHER EXHIBITION DISPLAY ITEMS THAT EXCEED THE LIMITS OF CONSUMER FIREWORKS CONTAINED IN THE AMERICAN PYROTECHNIC ASSOCIATION (APA) STANDARD 87-1, 2001 EDITION;

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

(III) SPECIAL EFFECTS, WHICH MEANS ANY COMBINATION OF CHEMICAL ELEMENTS OR CHEMICAL COMPOUNDS CAPABLE OF BURNING INDEPENDENTLY OF THE OXYGEN OF THE ATMOSPHERE, AND DESIGNED AND INTENDED TO PRODUCE AN AUDI-

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

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BLE, VISUAL, MECHANICAL, OR THERMAL EFFECT AS AN INTEGRAL PART OF A MOTION PICTURE, RADIO, TELEVISION, THEATRICAL, OR OPERA PRODUCTION, OR LIVE ENTERTAINMENT;

(IV) CONSUMER FIREWORKS WHICH ARE AERIAL IN PERFORMANCE AND ARE COMMONLY REFERRED TO AS SKY ROCKETS, BOTTLE ROCKETS, MISSILE TYPE ROCKETS, HELICOPTERS, AERIAL SPINNERS, ROMAN CANDLES, MINES, SHELL DEVICES, AERIAL SHELL KITS, RELOADABLES AND AUDIBLE GROUND DEVICES WHICH ARE COMMONLY REFERRED TO AS FIRECRACKERS AND CHASERS, AS WELL AS METAL WIRE HANDHELD SPARKLERS; AND

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

(B) THE TERM "DANGEROUS FIREWORKS" MEANS ANY FIREWORKS CAPABLE OF CAUSING SERIOUS PHYSICAL INJURY AND WHICH ARE: FIRECRACKERS CONTAINING MORE THAN FIFTY MILLIGRAMS OF ANY EXPLOSIVE SUBSTANCE, TORPEDOES, SKYROCKETS AND ROCKETS INCLUDING ALL DEVICES WHICH EMPLOY ANY COMBUSTIBLE OR EXPLOSIVE SUBSTANCE AND WHICH RISE IN THE AIR DURING DISCHARGE, ROMAN CANDLES, AND BOMBS, PROVIDED, HOWEVER, THAT IN CITIES WITH A POPULATION OF ONE MILLION OR MORE, THE TERM "DANGEROUS FIREWORKS" SHALL ALSO INCLUDE SPARKLERS MORE THAN TEN INCHES IN LENGTH OR ONE-FOURTH OF ONE INCH IN DIAMETER, OR CHASERS INCLUDING ALL DEVICES WHICH DART OR TRAVEL ABOUT THE SURFACE OF THE GROUND DURING DISCHARGE.

(C) "FIREWORKS" AND "DANGEROUS FIREWORKS" SHALL NOT BE DEEMED TO INCLUDE THE FOLLOWING NOR SHALL THE PURCHASE AND USE OF ANY ITEMS LISTED BELOW BE SUBJECT TO THE PROVISIONS OF SECTION 61 OF TITLE 12 OF THE NEW YORK STATE CODES, RULES AND REGULATIONS OR SECTION FOUR HUNDRED EIGHTY, FOUR HUNDRED EIGHTY-ONE, FOUR HUNDRED EIGHTY-TWO OR FOUR HUNDRED EIGHTY-THREE OF THE GENERAL BUSINESS LAW;

(I) FLARES OF THE TYPE USED BY RAILROADS OR ANY WARNING LIGHTS COMMONLY KNOWN AS RED FLARES, OR MARINE DISTRESS SIGNALS OF A TYPE APPROVED BY THE UNITED STATES COAST GUARD, OR

(II) TOY PISTOLS, TOY CANES, TOY GUNS OR OTHER DEVICES IN WHICH PAPER CAPS CONTAINING TWENTY-FIVE HUNDREDTHS GRAINS OR LESS OF EXPLOSIVE COMPOUND ARE USED, PROVIDING THEY ARE SO CONSTRUCTED THAT THE HAND CANNOT COME IN CONTACT WITH THE CAP WHEN IN PLACE FOR USE, AND TOY PISTOL PAPER CAPS WHICH CONTAIN LESS THAN TWENTY-HUNDREDTHS GRAINS OF EXPLOSIVE MIXTURE, THE SALE AND USE OF WHICH SHALL BE PERMITTED AT ALL TIMES, OR

(III) BANK SECURITY DEVICES WHICH CONTAIN NOT MORE THAN FIFTY GRAMS OF ANY COMPOUND OR SUBSTANCE OR ANY COMBINATION THEREOF, TOGETHER WITH AN IGNITER NOT EXCEEDING 0.2 GRAM, CAPABLE OF PRODUCING A LACHRYMATING AND/OR VISIBLE OR AUDIBLE EFFECT, WHERE SUCH DEVICE IS STORED OR USED ONLY BY BANKS, NATIONAL BANKING ASSOCIATIONS, TRUST COMPANIES, SAVINGS BANKS, SAVINGS AND LOAN ASSOCIATIONS, INDUSTRIAL BANKS, OR CREDIT UNIONS, OR BY ANY MANUFACTURER, WHOLESALER, DEALER, JOBBER OR COMMON CARRIER FOR SUCH DEVICES AND WHERE THE TOTAL STORAGE ON ANY ONE PREMISES DOES NOT EXCEED ONE HUNDRED DEVICES.

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

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

(A) CYLINDRICAL FOUNTAIN: CYLINDRICAL TUBE CONTAINING NOT MORE THAN 75 G OF PYROTECHNIC COMPOSITION THAT MAY BE CONTAINED IN A DIFFERENT SHAPED EXTERIOR SUCH AS A SQUARE, RECTANGLE, CYLINDER OR OTHER SHAPE BUT THE INTERIOR TUBES ARE CYLINDRICAL IN SHAPE. UPON IGNITION, A SHOWER OF COLORED SPARKS, AND SOMETIMES A WHISTLING EFFECT OR SMOKE, IS PRODUCED. THIS DEVICE MAY BE PROVIDED WITH A SPIKE FOR INSERTION INTO THE GROUND (SPIKE FOUNTAIN), A WOOD OR PLASTIC BASE FOR PLACING ON THE GROUND (BASE FOUNTAIN), OR A WOOD OR CARDBOARD HANDLE TO BE HAND HELD (HANDLE FOUNTAIN). WHEN MORE THAN ONE TUBE IS MOUNTED ON A COMMON BASE, TOTAL PYROTECHNIC COMPOSITION MAY NOT EXCEED 200 G, AND WHEN TUBES ARE SECURELY ATTACHED TO A 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 ALLOWED.

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

(C) ILLUMINATING TORCH: CYLINDRICAL TUBE CONTAINING NOT MORE THAN 100 G OF PYROTECHNIC COMPOSITION THAT PRODUCES A COLORED FLAME UPON IGNITION AND MAY HAVE A SPIKE, BASE, OR HAND HELD FOUNTAIN. WHEN MORE THAN ONE TUBE IS MOUNTED ON A COMMON BASE, TOTAL PYROTECHNIC COMPOSITION MAY NOT 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) WOODEN SPARKLER/DIPPED STICK: THESE DEVICES CONSIST OF A 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.

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

(D) SNAKES, GLOW WORM: PRESSED PELLETS OF PYROTECHNIC COMPOSITION THAT CONTAIN 2 G OR LESS OF COMPOSITION PER ARTICLE. UPON BURNING, THEY

PRODUCE A SNAKE-LIKE ASH THAT EXPANDS IN LENGTH AS THE PELLET BURNS. CHEMICAL COMPOSITIONS VARY, BUT TYPICALLY CONTAIN AMMONIUM PERCHLORATE, NITRATE PITCH, ASPHALTUM, AND SIMILAR CARBONACEOUS MATERIALS. THESE DEVICES ARE LIMITED TO A MAXIMUM OF TWENTY-FIVE PELLETS PER INNER PACKAGE IN ORDER TO BE TRANSPORTED AS NOT REGULATED DEVICES.

(E) WOODEN SPARKLER/DIPPED STICKS: THESE DEVICES CONSIST OF A 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 COMPOSITION PER ITEM. SPARKLERS TYPICALLY USE BARIUM NITRATE AS THE OXIDIZER, WITH ALUMINUM AND DEXTRINE AS FUELS. IRON FILINGS PRODUCE THE SPARK EFFECT. COLOR-PRODUCING SPARKLERS USE POTASSIUM PERCHLORATE OXIDIZER. ANY SPARKLER CONTAINING A CHLORATE OR PERCHLORATE AS AN OXIDIZER IS LIMITED TO A MAXIMUM OF 5 G OF COMPOSITION PER ARTICLE. SPARKLERS MUST BE PACKAGED IN INNER PACKAGING THAT CONTAIN EIGHT DEVICES OR LESS TO BE TRANSPORTED AS NOT REGULATED DEVICES, OR

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

2. OFFENSE. (A) EXCEPT AS HEREIN OTHERWISE PROVIDED, OR EXCEPT WHERE A PERMIT IS OBTAINED PURSUANT TO SECTION 405.00 OF THIS CHAPTER; (I) ANY PERSON WHO SHALL OFFER OR EXPOSE FOR SALE, SELL OR FURNISH, ANY FIRE-WORKS 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;

(III) ANY PERSON WHO SHALL POSSESS, USE, EXPLODE OR CAUSE TO EXPLODE ANY FIREWORKS OR DANGEROUS FIREWORKS IS GUILTY OF A VIOLATION;

(IV) ANY PERSON WHO SHALL OFFER OR EXPOSE FOR SALE, SELL OR FURNISH, ANY DANGEROUS FIREWORKS, FIREWORKS OR DEVICES AS DEFINED IN PARAGRAPH (C-1) OF SUBDIVISION ONE OF THIS SECTION TO ANY PERSON WHO IS UNDER THE AGE OF EIGHTEEN IS GUILTY OF A CLASS A MISDEMEANOR.

(B) A PERSON WHO HAS PREVIOUSLY BEEN CONVICTED OF A VIOLATION OF SUBPARAGRAPH (IV) OF PARAGRAPH (A) OF THIS SUBDIVISION 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 ONE HUNDRED FIFTY DOLLARS OR MORE SHALL BE A PRESUMPTION THAT SUCH FIREWORKS WERE INTENDED TO BE OFFERED OR EXPOSED FOR SALE.

3. EXCEPTIONS. (A) THE PROVISIONS OF THIS SECTION SHALL NOT APPLY TO:

(I) FIREWORKS, DANGEROUS FIREWORKS, AND DEVICES DEFINED IN PARAGRAPH (C-1) OF SUBDIVISION ONE OF THIS SECTION WHILE IN POSSESSION OF RAILROADS, COMMON OR CONTRACT CARRIERS, RETAILERS, WHOLESALERS, DISTRIBUTORS, JOBBERS AND TRANSPORTATION COMPANIES OR TRANSPORTATION AGENCIES FOR THE PURPOSE OF TRANSPORTATION TO POINTS WITHOUT THE STATE, THE SHIPMENT OF WHICH IS NOT PROHIBITED BY INTERSTATE COMMERCE COMMISSION REGULATIONS AS FORMULATED AND PUBLISHED FROM TIME TO TIME, UNLESS THEY BE HELD VOLUNTARILY BY SUCH RAILROADS, COMMON OR CONTRACT CARRIERS, RETAILERS, WHOLESALERS, DISTRIBUTORS, JOBBERS AND TRANSPORTATION AGENCIES OR TRANSPORTING COMPANIES AS WAREHOUSEMEN FOR DELIVERY TO POINTS WITHIN THE STATE;

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

(III) HIGH EXPLOSIVES FOR BLASTING OR SIMILAR PURPOSES;

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

(V) THE USE, TRANSPORTATION AND STORAGE OF FIREWORKS, DANGEROUS FIREWORKS 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 OR LATER.

S 3. Subdivision 19 of section 156 of the executive law, as renumbered by chapter 615 of the laws of 2006, is renumbered subdivision 20 and a new subdivision 19 is added to read as follows:

19. LICENSE THE MANUFACTURERS, DISTRIBUTORS, WHOLESALERS, RETAILERS AND SEASONAL RETAILERS OF SPARKLING DEVICES WHO WISH TO DO BUSINESS WITH THE STATE.

S 4. The executive law is amended by adding a new section 156-h to read as follows:

S 156-H. REGISTRATION AND FEES FOR MANUFACTURERS, DISTRIBUTORS, WHOLESALERS, AND RETAILERS OF SPARKLING DEVICES. 1. DEFINITIONS. AS USED IN THIS SECTION, THE TERM:

(A) "DISTRIBUTOR" MEANS ANY PERSON OR ENTITY ENGAGED IN THE BUSINESS OF SELLING SPARKLING DEVICES TO WHOLESALERS, SPECIALTY RETAILERS, PERMANENT RETAILERS OR TEMPORARY SEASONAL RETAILERS FOR RESALE.

(B) "MANUFACTURER" MEANS ANY PERSON OR ENTITY ENGAGED IN THE MANUFACTURE OR CONSTRUCTION OF SPARKLING DEVICES.

(C) "SPECIALTY RETAILER" MEANS ANY PERSON OR ENTITY WHO, AT A FIXED PLACE OF BUSINESS, IS ENGAGED SOLELY IN SELLING SPARKLING DEVICES AT RETAIL. FOR PURPOSES OF THIS SECTION, A PERSON OR ENTITY IS ENGAGED SOLELY IN SELLING SPARKLING DEVICES IF FIFTY-ONE PERCENT OR MORE OF SUCH PERSON'S OR ENTITY'S ANNUAL GROSS SALES ARE FROM THE SALE OF SPARKLING DEVICES.

(D) "PERMANENT RETAILER" MEANS ANY PERSON OR ENTITY WHO, AT A FIXED PLACE OF BUSINESS, IS ENGAGED IN SELLING SPARKLING DEVICES AT RETAIL.

(E) "SPARKLING DEVICES" MEANS ANY ITEM DEFINED IN PARAGRAPH (C) OF SUBDIVISION ONE OF SECTION 270.00 OF THE PENAL LAW.

(F) "TEMPORARY SEASONAL RETAILER" MEANS ANY PERSON OR ENTITY WHO, AT A TEMPORARY STAND OR TENT, IS ENGAGED IN SELLING SPARKLING DEVICES FROM JUNE TWENTIETH THROUGH JULY FIFTH OR FROM DECEMBER TENTH THROUGH JANUARY SECOND OF EACH YEAR AT RETAIL.

(G) "WHOLESALER" MEANS ANY PERSON OR ENTITY ENGAGED IN THE BUSINESS OF SELLING SPARKLING DEVICES TO SPECIALTY RETAILERS, PERMANENT RETAILERS OR TEMPORARY SEASONAL RETAILERS AT WHOLESALE.

2. REGISTRATION REQUIREMENTS. ANY MANUFACTURER, DISTRIBUTOR, WHOLESALER, SPECIALTY RETAILER, PERMANENT RETAILER OR TEMPORARY SEASONAL RETAILER OF SPARKLING DEVICES WHO WISHES TO DO BUSINESS IN THIS STATE OR TO OTHERWISE SELL, SHIP, OR ASSIGN FOR SALE ITS PRODUCTS IN THIS STATE MUST REGISTER ANNUALLY WITH THE OFFICE OF FIRE PREVENTION AND CONTROL ON FORMS PRESCRIBED BY THE OFFICE. ANY SPECIALTY RETAILER, PERMANENT RETAILER OR TEMPORARY SEASONAL RETAILER THAT SELLS SPARKLING DEVICES AT MORE THAN ONE RETAIL LOCATION MAY SUBMIT ONE REGISTRATION FORM FOR ALL SUCH LOCATIONS BUT MUST PROVIDE THE ADDRESS OF EACH LOCATION WITH THE REGISTRATION FORM; HOWEVER, ANY RETAILER MAY SUBMIT MULTIPLE REGISTRATION FORMS.

3. REGISTRATION FORM. THE REGISTRATION FORM FILED WITH THE OFFICE MUST BE NOTARIZED AND MUST INCLUDE THE FOLLOWING INFORMATION: BUSINESS NAME; ADDRESS; TELEPHONE NUMBER; OFFICERS, IF THE BUSINESS IS A CORPORATION; AND AN INDIVIDUAL DESIGNATED AS A CONTACT PERSON.

4. FEES. (A) EACH MANUFACTURER, DISTRIBUTOR OR WHOLESALER MUST PAY AN ANNUAL REGISTRATION FEE TO BE SET BY THE OFFICE NOT TO EXCEED FIVE THOUSAND DOLLARS. EACH SPECIALTY RETAILER MUST PAY AN ANNUAL REGISTRATION FEE TO BE SET BY THE OFFICE NOT TO EXCEED TWO THOUSAND FIVE HUNDRED DOLLARS. EACH PERMANENT RETAILER SHALL PAY AN ANNUAL REGISTRATION FEE TO BE SET BY THE OFFICE NOT TO EXCEED TWO HUNDRED DOLLARS FOR EACH RETAIL LOCATION REGISTERED. EACH TEMPORARY SEASONAL RETAILER MUST PAY A REGISTRATION FEE TO BE SET BY THE OFFICE NOT TO EXCEED TWO HUNDRED FIFTY DOLLARS PER SEASON. EACH CERTIFICATE-HOLDER WISHING TO HAVE A DUPLICATE CERTIFICATE ISSUED FOR ONE WHICH IS LOST OR TO REFLECT A CHANGE OF ADDRESS SHALL REQUEST SUCH DUPLICATE IN WRITING AND SHALL PAY A FEE OF FIVE DOLLARS.

(B) REVENUE FROM REGISTRATION FEE PAYMENTS SHALL BE USED FOR THE PURPOSES OF IMPLEMENTING FIREFIGHTER SAFETY AND TRAINING PROGRAMS AS WELL AS REGISTRATION AND TESTING PROVISIONS OF THIS CHAPTER.

(C) NO CITY, MUNICIPALITY OR OTHER LOCAL JURISDICTION SHALL CHARGE ANY FEE OR REQUIRE ANY PERMIT WHATSOEVER FOR THE SALE AND USE OF SPARKLING DEVICES.

5. RECORD AND REPORTS. EACH MANUFACTURER, DISTRIBUTOR AND WHOLESALER SHALL MAINTAIN AND MAKE AVAILABLE TO THE STATE FIRE ADMINISTRATOR, UPON THE STATE FIRE ADMINISTRATOR'S REASONABLE REQUEST, FULL AND COMPLETE, TRUE, AND ACCURATE RECORDS SHOWING THE NAME AND QUANTITY OF ANY SPARKLING DEVICE PRODUCED IN, IMPORTED TO, EXPORTED FROM, OR SOLD IN THIS STATE.

6. RULES. THE STATE FIRE ADMINISTRATOR SHALL PROMULGATE RULES PRESCRIBING REGISTRATION FORMS REQUIRED BY THIS SECTION.

S 5. The general business law is amended by adding a new section 392-j to read as follows:

S 392-J. SALES OF SPARKLING DEVICES. SALES OF SPARKLING DEVICES AS DEFINED IN PARAGRAPH (C) OF SUBDIVISION ONE OF SECTION 270.00 OF THE PENAL LAW SHALL BE LAWFUL ONLY FOR BUSINESS LICENSED BY THE STATE UNDER SECTION ONE HUNDRED FIFTY-SIX-H OF THE EXECUTIVE LAW BETWEEN JUNE FIRST AND JULY FIFTH OR FROM DECEMBER TWENTY-SIXTH THROUGH JANUARY SECOND OF EACH YEAR.

S 6. This act shall take effect on the sixtieth day after it shall have become a law.