

4725

2009-2010 Regular Sessions

I N A S S E M B L Y

February 5, 2009

Introduced by M. of A. MORELLE -- read once and referred to the Committee on Codes

AN ACT to amend the penal law and the arts and cultural affairs law, in relation to fireworks, dangerous fireworks and novelty devices; repealing section 270.00 of the penal law relating thereto and providing for the repeal of such provisions upon expiration thereof

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

1 Section 1. Section 270.00 of the penal law is REPEALED.

2 S 2. The penal law is amended by adding a new article 271 to read as
3 follows:

4 ARTICLE 271

5 FIREWORKS, DANGEROUS FIREWORKS AND NOVELTY DEVICES

6 SECTION 271.00 DEFINITIONS.

7 271.05 CRIMINAL POSSESSION OR SALE OF FIREWORKS IN THE SECOND
8 DEGREE.

9 271.10 CRIMINAL POSSESSION OR SALE OF FIREWORKS IN THE FIRST
10 DEGREE.

11 271.15 UNLAWFUL POSSESSION OF FIREWORKS.

12 271.20 AGGRAVATED SALE OF FIREWORKS TO A MINOR.

13 271.25 CRIMINAL POSSESSION OF FIREWORKS; PRESUMPTION.

14 271.30 LIMITATION OF APPLICATION.

15 271.35 SALE OF AMMUNITION NOT PROHIBITED.

16 271.40 UNLAWFUL SALE OF AMMUNITION.

17 S 271.00 DEFINITIONS.

18 FOR PURPOSES OF THIS ARTICLE:

19 1. "APA STANDARD 87-1" MEANS THE 2001 APA STANDARD 87-1 PUBLISHED BY
20 THE AMERICAN PYROTECHNICS ASSOCIATION OF BETHESDA, MARYLAND, AS AMENDED,
21 AND INCORPORATED BY REFERENCE INTO THE CODE OF FEDERAL REGULATIONS, AS
22 SUCH REGULATIONS EXIST ON THE DATE THIS ARTICLE TAKES EFFECT.

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

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1 2. "CONSUMER FIREWORKS" MEANS SMALL FIREWORKS DEVICES, OTHER THAN
2 SPARKLERS AND NOVELTIES, THAT ARE DESIGNED TO PRODUCE VISIBLE EFFECTS BY
3 COMBUSTION AND THAT ARE REQUIRED TO COMPLY WITH THE CONSTRUCTION, CHEMI-
4 CAL COMPOSITION, AND LABELING REGULATIONS PROMULGATED BY THE UNITED
5 STATES CONSUMER PRODUCT SAFETY COMMISSION UNDER 16 CFR PARTS 1500 AND
6 1507 AND WHICH ARE LISTED IN THE APA STANDARD 87-1. CONSUMER FIREWORKS
7 INCLUDE, BUT ARE NOT LIMITED TO, SMALL DEVICES DESIGNED TO PRODUCE AN
8 AUDIBLE EFFECT, SUCH AS WHISTLING DEVICES, FIRECRACKERS CONTAINING FIFTY
9 MILLIGRAMS OR LESS OF PYROTECHNIC COMPOSITION, AND AERIAL DEVICES
10 CONTAINING ONE HUNDRED THIRTY MILLIGRAMS OR LESS OF EXPLOSIVE MATERIALS
11 AND CLASSIFIED AS FIREWORKS UNO336 UNDER 49 CFR 172.101 EXCEPT FOR FUSED
12 SET PIECES CONTAINING COMPONENTS THAT TOGETHER EXCEED FIFTY MILLIGRAMS
13 OF SALUTE POWDER.

14 3. "DISPLAY FIREWORKS" MEANS LARGE FIREWORKS DESIGNED PRIMARILY TO
15 PRODUCE VISIBLE OR AUDIBLE EFFECTS BY COMBUSTION, DEFLAGRATION, OR DETO-
16 NATION AND INCLUDES, BUT IS NOT LIMITED TO, SALUTES CONTAINING MORE THAN
17 TWO GRAINS (ONE HUNDRED THIRTY MILLIGRAMS) OF EXPLOSIVE MATERIALS, AERI-
18 AL SHELLS CONTAINING MORE THAN FORTY GRAMS OF PYROTECHNIC COMPOSITIONS,
19 AND OTHER DISPLAY PIECES THAT EXCEED THE LIMITS OF EXPLOSIVE MATERIALS
20 FOR CLASSIFICATION AS CONSUMER FIREWORKS, AND WHICH ARE CLASSIFIED AS
21 FIREWORKS UNO333, UNO334, OR UNO335 UNDER 49 CFR 172.101 AND INCLUDING
22 FUSED SET PIECES CONTAINING COMPONENTS THAT EXCEED FIFTY MILLIGRAMS OF
23 SALUTE POWDER.

24 4. "FIREWORKS" MEANS AND INCLUDES ANY CONSUMER FIREWORKS, DISPLAY
25 FIREWORKS, ARTICLES PYROTECHNIC, AND SPECIAL EFFECTS PROVIDED, HOWEVER,
26 THAT SUCH TERM SHALL NOT INCLUDE:

27 (A) SPARKLERS AND NOVELTIES;

28 (B) FLARES OF THE TYPE USED BY RAILROADS OR ANY WARNING LIGHTS COMMON-
29 LY KNOWN AS RED FLARES, OR MARINE DISTRESS SIGNALS OF A TYPE APPROVED BY
30 THE UNITED STATES COAST GUARD; OR

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

40 5. "SPARKLERS AND NOVELTIES" MEANS:

41 (A) GROUND AND HANDHELD SPARKLING DEVICES AS DEFINED IN APA STANDARD
42 87-1 3.1.

43 (B) NOVELTIES, INCLUDING PARTY POPPERS, SNAPPERS, TOY SMOKE DEVICES,
44 SNAKES, GLOW WORMS, WIRE SPARKLERS AND DIPPED STICKS, ALL AS DEFINED IN
45 APA STANDARD 87-1 3.2.

46 (C) TOY CAPS AS DEFINED IN APA STANDARD 87-1 3.3, AND

47 (D) SIMILARLY EXPLOSIVE FIREWORKS NOT SPECIFICALLY DESCRIBED HEREIN,
48 BUT RECOGNIZED BY THE AMERICAN PYROTECHNICS ASSOCIATION OF BETHESDA,
49 MARYLAND, AS BEING ALMOST IDENTICAL IN AN INCENDIARY OR EXPLOSIVE NATURE
50 SO AS TO SUBSTANTIALLY REPLICATE ANYTHING DEFINED IN PARAGRAPHS (A), (B)
51 OR (C) OF THIS SUBDIVISION.

52 6. "PYROTECHNIC COMPOSITION" MEANS A MIXTURE OF CHEMICALS THAT PRODUC-
53 ES A VISIBLE OR AUDIBLE EFFECT BY COMBUSTION RATHER THAN RAPID DEFLAGRA-
54 TION OR DETONATION AND WHICH CANNOT EXPLODE ON IGNITION UNLESS SEVERELY
55 CONFINED.

1 7. "EXPLOSIVE COMPOSITION" MEANS A CHEMICAL OR MIXTURE OF CHEMICALS
2 THAT PRODUCES AN AUDIBLE EFFECT AND SUBSTANTIAL EXPLOSIVE FORCE BY
3 DEFLAGRATION OR DETONATION WHEN IGNITED.

4 8. "LOCAL GOVERNMENTAL SUBDIVISION" MEANS A COUNTY, CITY, TOWN OR
5 VILLAGE.

6 S 271.05 CRIMINAL POSSESSION OR SALE OF FIREWORKS IN THE SECOND DEGREE.

7 A PERSON IS GUILTY OF CRIMINAL POSSESSION OR SALE OF FIREWORKS IN THE
8 SECOND DEGREE WHEN, EXCEPT WHERE A PERMIT IS OBTAINED PURSUANT TO
9 SECTION 405.00 OF THIS CHAPTER:

10 1. HE OR SHE SHALL OFFER OR EXPOSE FOR SALE, SELL OR FURNISH, ANY
11 CONSUMER FIREWORKS OR DISPLAY FIREWORKS; OR

12 2. HE OR SHE SHALL OFFER OR EXPOSE FOR SALE, SELL OR FURNISH ANY
13 SPARKLERS AND NOVELTIES TO ANY PERSON WHO IS UNDER THE AGE OF EIGHTEEN.

14 CRIMINAL POSSESSION OR SALE OF FIREWORKS IN THE SECOND DEGREE IS A
15 CLASS B MISDEMEANOR.

16 S 271.10 CRIMINAL POSSESSION OR SALE OF FIREWORKS IN THE FIRST DEGREE.

17 A PERSON IS GUILTY OF CRIMINAL POSSESSION OR SALE OF FIREWORKS IN THE
18 FIRST DEGREE WHEN:

19 1. HE OR SHE SHALL OFFER OR EXPOSE FOR SALE, SELL OR FURNISH, ANY
20 CONSUMER FIREWORKS OR DISPLAY FIREWORKS VALUED AT FIVE HUNDRED DOLLARS
21 EXCEPT WHERE A PERMIT IS OBTAINED PURSUANT TO SECTION 405.00 OF THIS
22 CHAPTER; OR

23 2. HE OR SHE SHALL OFFER OR EXPOSE FOR SALE, SELL OR FURNISH, ANY
24 SPARKLERS AND NOVELTIES, CONSUMER FIREWORKS OR DISPLAY FIREWORKS TO ANY
25 PERSON WHO IS UNDER THE AGE OF EIGHTEEN.

26 CRIMINAL POSSESSION OR SALE OF FIREWORKS IN THE FIRST DEGREE IS A
27 CLASS A MISDEMEANOR.

28 S 271.15 UNLAWFUL POSSESSION OF FIREWORKS.

29 A PERSON IS GUILTY OF UNLAWFUL POSSESSION OF FIREWORKS WHEN, EXCEPT AS
30 HEREIN OTHERWISE STATED, OR EXCEPT WHERE A PERMIT IS OBTAINED PURSUANT
31 TO SECTION 405.00 OF THIS CHAPTER, HE OR SHE SHALL POSSESS, USE, EXPLODE
32 OR CAUSE TO EXPLODE ANY CONSUMER FIREWORKS OR DISPLAY FIREWORKS.

33 UNLAWFUL POSSESSION OF FIREWORKS IS A VIOLATION.

34 S 271.20 AGGRAVATED SALE OF FIREWORKS TO A MINOR.

35 A PERSON IS GUILTY OF AGGRAVATED SALE OF FIREWORKS TO A MINOR WHEN HE
36 OR SHE COMMITS THE CRIME OF CRIMINAL SALE OF FIREWORKS IN THE FIRST
37 DEGREE AS DEFINED IN SUBDIVISION TWO OF SECTION 271.10 OF THIS ARTICLE
38 OR THE CRIME OF CRIMINAL POSSESSION OR SALE OF FIREWORKS IN THE SECOND
39 DEGREE AS DEFINED IN SUBDIVISION TWO OF SECTION 271.05 OF THIS ARTICLE
40 AND HAS WITHIN THE PAST FIVE YEARS BEEN PREVIOUSLY CONVICTED OF CRIMINAL
41 SALE OF FIREWORKS IN THE FIRST DEGREE OR CRIMINAL POSSESSION OR SALE OF
42 FIREWORKS IN THE SECOND DEGREE AS DEFINED IN SUBDIVISION TWO OF SECTION
43 271.05 OF THIS ARTICLE.

44 AGGRAVATED SALE OF FIREWORKS TO A MINOR IS A CLASS E FELONY.

45 S 271.25 CRIMINAL POSSESSION OF FIREWORKS; PRESUMPTION.

46 EXCEPT WHERE A PERMIT IS OBTAINED PURSUANT TO SECTION 405.00 OF THIS
47 CHAPTER, POSSESSION OF CONSUMER FIREWORKS OR DISPLAY FIREWORKS VALUED AT
48 ONE HUNDRED FIFTY DOLLARS OR MORE SHALL BE A PRESUMPTION THAT SUCH FIRE-
49 WORKS WERE INTENDED TO BE OFFERED OR EXPOSED FOR SALE.

50 S 271.30 LIMITATION OF APPLICATION.

51 1. THIS ARTICLE SHALL NOT APPLY TO:

52 (A) CONSUMER FIREWORKS OR SPARKLERS AND NOVELTIES WHILE IN POSSESSION
53 OF RAILROADS AND TRANSPORTATION AGENCIES FOR THE PURPOSE OF TRANSPORTA-
54 TION TO POINTS WITHOUT THE STATE, THE SHIPMENT OF WHICH IS NOT PROHIBIT-
55 ED BY THE INTERSTATE COMMERCE COMMISSION REGULATIONS AS FORMULATED AND
56 PUBLISHED FROM TIME TO TIME, UNLESS THEY BE HELD VOLUNTARILY BY SUCH

1 RAILROADS OR TRANSPORTATION COMPANIES AS WAREHOUSEMEN FOR DELIVERY TO
2 POINTS WITHIN THE STATE;

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

6 (C) HIGH EXPLOSIVES FOR BLASTING OR SIMILAR PURPOSES;

7 (D) FIREWORKS, FOR THE USE THEREOF BY THE UNITED STATES MILITARY, AND
8 DEPARTMENTS OF THE STATE AND FEDERAL GOVERNMENT; OR

9 (E) THE USE, TRANSPORTATION AND STORAGE OF FIREWORKS, PYROTECHNICS AND
10 SPECIAL EFFECTS MATERIALS IN CONNECTION WITH THE PRODUCTION OF MOTION
11 PICTURES, TELEVISION PROGRAMS, COMMERCIALS, AND ALL ENTERTAINMENT MEDIA
12 RECORDED IN ANY CURRENT OR TO BE DESIGNED FORMAT WHEN SUCH USE, TRANS-
13 PORTATION AND STORAGE HAS BEEN APPROPRIATELY PERMITTED BY THE LOCAL
14 GOVERNMENTAL SUBDIVISION HAVING JURISDICTION.

15 (F) THE USE, TRANSPORTATION AND STORAGE OF EXPLOSIVES IN THE
16 PRODUCTION OF MOTION PICTURES, TELEVISION PROGRAMS, COMMERCIALS AND
17 SIMILAR ENTERTAINMENT MEDIA PROVIDED THE USE, TRANSPORTATION
18 AND STORAGE OF EXPLOSIVES ARE UNDER THE CONTROL OF ONE OR MORE INDIVID-
19 UALS AUTHORIZED BY FEDERAL LAW OR REGULATION TO HANDLE SUCH MATERIAL AND
20 THAT SUCH EXPLOSIVE MATERIAL IS USED, TRANSPORTED AND STORED AND OTHER-
21 WISE HANDLED IN ACCORDANCE WITH FEDERAL LAW OR REGULATION.

22 2. NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO PROHIBIT:

23 (A) ANY MANUFACTURER, WHOLESALER, DEALER OR JOBBER FROM MANUFACTURING,
24 POSSESSING OR SELLING AT WHOLESALE SUCH FIREWORKS OR SPARKLERS AND
25 NOVELTIES TO MUNICIPALITIES, RELIGIOUS OR CIVIC ORGANIZATIONS, FAIR
26 ASSOCIATIONS, AMUSEMENT PARKS, OR OTHER ORGANIZATIONS AUTHORIZED BY THE
27 STATE TO POSSESS AND USE FIREWORKS OR TO INDIVIDUALS TO POSSESS AND USE
28 SPARKLERS AND NOVELTIES;

29 (B) THE SALE OR USE OF BLANK CARTRIDGES FOR A MOTION PICTURE, TELE-
30 VISION PROGRAM, COMMERCIAL AND ALL ENTERTAINMENT MEDIA, OR FOR SIGNAL
31 PURPOSES IN ATHLETIC SPORTS, OR FOR DOG TRIALS OR DOG TRAINING;

32 (C) THE USE, STORAGE, TRANSPORTATION OR SALE OR TRANSFER FOR USE OF
33 FIREWORKS IN THE PREPARATION FOR OR IN CONNECTION WITH MOTION PICTURES,
34 TELEVISION PROGRAMS, COMMERCIALS, AND ALL ENTERTAINMENT MEDIA RECORDED
35 IN ANY CURRENT OR TO BE DESIGNED FORMAT WHEN SUCH USE, TRANSPORTATION
36 AND STORAGE HAS BEEN APPROPRIATELY PERMITTED BY THE LOCAL GOVERNMENTAL
37 SUBDIVISION HAVING JURISDICTION; OR

38 (D) THE MANUFACTURE OR SALE OF FIREWORKS OR SPARKLERS AND NOVELTIES,
39 PROVIDED THEY ARE TO BE SHIPPED DIRECTLY OUT OF THE STATE AND ANY SUCH
40 SPARKLERS AND NOVELTIES ARE SOLD IN ACCORDANCE WITH THE PROVISIONS OF
41 THIS ARTICLE.

42 (E) EXCEPT AS SPECIFICALLY PROHIBITED BY ANY OTHER PROVISION OF THIS
43 ARTICLE, THE SALE BY RETAILERS, OR THE USE, STORAGE, AND POSSESSION OF
44 SPARKLERS AND NOVELTIES THROUGHOUT THE STATE.

45 3. NOTWITHSTANDING ANY OTHER PROVISION OF THIS ARTICLE, THE MANUFAC-
46 TURE, SALE, POSSESSION, USE OR STORAGE OF SPARKLERS AND NOVELTIES SHALL
47 BE PROHIBITED IN CITIES WITH A POPULATION OF ONE MILLION OR MORE.

48 S 271.35 SALE OF AMMUNITION NOT PROHIBITED.

49 NOTHING CONTAINED IN THIS ARTICLE SHALL BE CONSTRUED TO PREVENT, OR
50 INTERFERE IN ANY WAY WITH, THE SALE OF AMMUNITION FOR REVOLVERS OR
51 PISTOLS OF ANY KIND, OR FOR RIFLES, SHOTGUNS, OR OTHER ARMS, BELONGING
52 OR WHICH MAY BELONG TO ANY PERSONS WHETHER AS SPORTING OR HUNTING WEAP-
53 ONS OR FOR THE PURPOSE OF PROTECTION TO THEM IN THEIR HOMES, OR, AS THEY
54 MAY GO ABROAD; AND MANUFACTURERS ARE AUTHORIZED TO CONTINUE TO MANUFAC-
55 TURE, AND WHOLESALERS AND DEALERS TO CONTINUE TO DEAL IN AND FREELY TO
56 SELL AMMUNITION TO ALL SUCH PERSONS FOR SUCH PURPOSES.

1 S 271.40 UNLAWFUL SALE OF AMMUNITION.

2 NOTWITHSTANDING THE PROVISIONS OF SECTION 271.35 OF THIS ARTICLE, IT
3 SHALL BE UNLAWFUL FOR ANY DEALER IN FIREARMS TO SELL ANY AMMUNITION
4 DESIGNED EXCLUSIVELY FOR USE IN A PISTOL OR REVOLVER TO ANY PERSON, NOT
5 AUTHORIZED TO POSSESS A PISTOL OR REVOLVER.

6 UNLAWFUL SALE OF AMMUNITION IS A CLASS B MISDEMEANOR.

7 S 3. Subdivision 4 of section 270.05 of the penal law, as added by
8 chapter 286 of the laws of 1978, is amended to read as follows:

9 4. Bank security devices not prohibited. Notwithstanding the
10 provisions of subdivision one of this section, it shall not be unlawful
11 for any bank, national banking association, trust company, savings bank,
12 savings and loan association, industrial bank, or credit union to store,
13 possess, transport, use or cause to discharge any bank security device
14 as described in subdivision [one] SIX of section [270.00] 271.00 of this
15 chapter; nor shall it be unlawful for any manufacturer, wholesaler,
16 dealer, jobber or common carrier to manufacture, store, possess, trans-
17 port, or sell such a device to banks, national banking associations,
18 trust companies, savings banks, savings and loan associations, indus-
19 trial banks or credit unions.

20 S 4. The opening paragraph of subdivision 2 of section 405.00 of the
21 penal law is amended to read as follows:

22 Notwithstanding the provisions of [section 270.00] ARTICLE TWO HUNDRED
23 SEVENTY-ONE OF THIS CHAPTER, the permit authority of a state park, coun-
24 ty park, city, village or town may upon application in writing, grant a
25 permit for the public display of fireworks by municipalities, fair asso-
26 ciations, amusement parks or organizations of individuals. The applica-
27 tion for such permit shall set forth:

28 S 5. Section 405.05 of the penal law, as amended by chapter 843 of the
29 laws of 1980, is amended to read as follows:

30 S 405.05 Seizure and destruction of fireworks.

31 Fireworks possessed unlawfully may be seized by any peace officer,
32 acting pursuant to his OR HER special duties, or police officer, who
33 must deliver the same to the magistrate before whom the person arrested
34 is required to be taken. The magistrate must, upon the examination of
35 the defendant, or if such examination is delayed or prevented, without
36 awaiting such examination, determine whether the fireworks had been
37 possessed by the defendant in violation of the provisions of [section
38 270.00] ARTICLE TWO HUNDRED SEVENTY-ONE OF THIS CHAPTER; and if he OR
39 SHE finds that the fireworks had been so possessed by the defendant, he
40 OR SHE must cause such fireworks to be destroyed, in a way safe for the
41 particular type of such fireworks, or to be delivered to the district
42 attorney of the county in which the defendant is liable to indictment or
43 trial, as the interests of justice and public safety may, in his OR HER
44 opinion, require. Upon the conviction of the defendant, the district
45 attorney must cause to be destroyed, in a way safe for the particular
46 type of such fireworks, the fireworks in respect whereof the defendant
47 stands convicted, and which remain in the possession or under the
48 control of the district attorney.

49 S 6. Section 61.07 of the arts and cultural affairs law is amended to
50 read as follows:

51 S 61.07. Use of fireworks in entertainment productions in certain
52 cities. Notwithstanding any other provision of law, a city having a
53 population of one million or more may enact a local law permitting and
54 regulating the storage, transportation, sale for use or use of fire-
55 works, as defined in subdivision [one] TWO of section [270.00] 271.00 of
56 the penal law, in connection with the presentation in whole or in part

1 of a musical, dramatic, dance, operatic or other stage performance by
2 performers who appear in person in the immediate presence of an audi-
3 ence, which is held in any building or part of a building adapted and
4 used for such purpose or which has a stage for such performances used
5 with scenery or other stage appliances, and to which admission is limit-
6 ed to persons holding admission tickets or other evidence of permission
7 to enter, or in connection with the production of motion pictures.
8 S 7. This act shall take effect on the first of November next succeed-
9 ing the date on which it shall have become a law and shall remain in
10 full force and effect until November 1, 2014, at which time the
11 provisions of this act shall expire and be deemed repealed.