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

S. 2228 A. 5405

2009-2010 Regular Sessions

S E N A T E - A S S E M B L Y

February 13, 2009

IN SENATE -- Introduced by Sen. LAVALLE -- read twice and ordered printed, and when printed to be committed to the Committee on Veterans, Homeland Security and Military Affairs

IN ASSEMBLY -- Introduced by M. of A. RAMOS -- Multi-Sponsored by -- M. of A. MARKEY, ORTIZ -- read once and referred to the Committee on Economic Development, Job Creation, Commerce and Industry

AN ACT to amend the executive law, in relation to providing for the regulation of the sale, use and storage of nitric acid; and to amend the penal law, in relation to disseminating material on the manufacture of an explosive

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

Section 1. Legislative intent. The legislature hereby finds that while there are important uses for substances like nitric acid, it is important that we safeguard these substances in order to prevent them from being used to harm both people and property. Nitric acid can be used to cause harmful explosions and its use carries the ability, if fallen in the wrong hands, of resulting in massive destruction.

Currently, the sale of nitric acid is not regulated on an appropriate level. Retailers are not required to check the identification of the buyers when selling them nitric acid. They are also not required to maintain records of the sale. This act would require that retailers check the identification of buyers purchasing nitric acid and record their name and address.

In addition, there are no standard rules or requirements maintaining the security of nitric acid in academia. While this act does not hinder the important academic work that surrounds the use of nitric acid in colleges, universities and even high schools, it would provide a set standard ensuring we do our part in not allowing our academic institutions to become tools for potential terrorists.

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

LBD07670-01-9

Finally, while the advent of the internet has provided us countless benefits, it has also increased the threat we face from people looking to harm Americans, using information widely available on the web. This act bans websites that provide guides on taking nitric acid and turning it into explosives.

S 2. The executive law is amended by adding a new section 716 to read as follows:

S 716. NITRIC ACID SECURITY. 1. (A) FOR THE PURPOSES OF THIS SECTION, "NITRIC ACID" SHALL INCLUDE NITRIC ACID OR ANY PREPARATION CONTAINING FREE OR CHEMICALLY UNNEUTRALIZED NITRIC ACID (HN03) IN A CONCENTRATION OF FIVE PER CENTUM OR MORE.

(B) THE PROVISIONS OF THIS SECTION SHALL APPLY TO THE RETAIL SALE, STORAGE AND USE OF NITRIC ACID, NOTWITHSTANDING ANY PROVISION OF SECTION ONE HUNDRED FORTY-SIX-F OR ARTICLE FOURTEEN-A OF THE AGRICULTURE AND MARKETS LAW TO THE CONTRARY.

2. (A) EVERY PERSON WHO SELLS ANY QUANTITY OF NITRIC ACID AT RETAIL SHALL RECORD THE DATE OF SALE AND QUANTITY OF NITRIC ACID SOLD TO A PURCHASER, ALONG WITH THE VALID STATE OR FEDERAL DRIVER LICENSE NUMBER, OR OTHER PICTURE IDENTIFICATION CARD NUMBER APPROVED FOR PURCHASER IDENTIFICATION BY THE DIRECTOR OF THE STATE OFFICE OF HOMELAND SECURITY, AS WELL AS THE NAME, CURRENT PHYSICAL ADDRESS AND TELEPHONE NUMBER OF SUCH PURCHASER OF NITRIC ACID.

(B) SUCH INFORMATION AND ANY ADDITIONAL INFORMATION, AS SHALL BE DETERMINED BY THE DIRECTOR, SHALL BE MAINTAINED BY THE RETAIL SELLER OF NITRIC ACID AT THE PLACE OF SALE OF THE NITRIC ACID FOR A PERIOD OF NOT LESS THAN THREE YEARS IN A FORM OR USING A FORMAT DEVELOPED BY THE DIRECTOR.

(C) EVERY PERSON WHO SELLS NITRIC ACID AT RETAIL SHALL, IN COMPLIANCE WITH ANY FEDERAL AND STATE REQUIREMENTS REGARDING THE DISSEMINATION OF SUCH INFORMATION, PROVIDE THE DIRECTOR, OR ANY OFFICER OR EMPLOYEE OF THE STATE OFFICE OF HOMELAND SECURITY ACCESS TO SUCH RECORDS.

3. NITRIC ACID, WHILE UPON THE PREMISES OF A PERSON ENGAGED IN THE RETAIL SALE THEREOF, SHALL BE SECURED TO PROVIDE REASONABLE PROTECTION AGAINST VANDALISM, THEFT OR OTHER UNAUTHORIZED ACCESS. REASONABLE PROTECTION MAY INCLUDE, BUT NOT BE LIMITED TO, ENSURING THAT STORAGE FACILITIES ARE LOCKED WHEN UNATTENDED, AND INSPECTED DAILY FOR SIGNS OF ATTEMPTED ENTRY, VANDALISM AND STRUCTURAL INTEGRITY. THE DIRECTOR OF THE STATE OFFICE OF HOMELAND SECURITY MAY REQUIRE SUCH SECURITY MEASURES FOR THE STORAGE OF NITRIC ACID AS HE OR SHE SHALL DEEM NECESSARY.

4. (A) EVERY ELEMENTARY AND SECONDARY SCHOOL, AND EVERY INSTITUTION OF HIGHER EDUCATION, AS DEFINED IN SUBDIVISION EIGHT OF SECTION TWO OF THE EDUCATION LAW, WHICH HAS NITRIC ACID UPON ITS PREMISES OR IN ITS POSSESSION, SHALL SECURE SUCH ACID WHEN IT IS NOT IN USE FOR ACADEMIC PURPOSES TO PREVENT THE VANDALISM, THEFT OR OTHER UNAUTHORIZED USE THEREOF. IN ADDITION, ALL ACADEMIC USES OF NITRIC ACID SHALL BE MONITORED TO PREVENT THEFT AND UNAUTHORIZED USES THEREOF. THE SECURING OF NITRIC ACID, WHEN NOT IN USE, SHALL INCLUDE, BUT NOT BE LIMITED TO, THE PLACEMENT OF ALL NITRIC ACID IN A STORAGE CONTAINER WHICH IS LOCKED AND ACCESSIBLE BY MEANS OF A KEY OR SPECIAL COMBINATION MAINTAINED SOLELY BY THE EMPLOYEE RESPONSIBLE FOR SUCH STORAGE CONTAINER.

(B) IN THE EVENT ANY QUANTITY OF NITRIC ACID IS TO BE TAKEN FROM THE PREMISES OF ANY SUCH SCHOOL OR INSTITUTION, THE EMPLOYEE RESPONSIBLE FOR THE STORAGE OF SUCH ACID SHALL RECORD THE NAME OF THE PERSON TAKING THE ACID. SUCH RECORDS AND ANY ADDITIONAL INFORMATION, AS SHALL BE DETERMINED BY THE DIRECTOR OF THE STATE OFFICE OF HOMELAND SECURITY, SHALL BE MAINTAINED FOR A PERIOD OF NOT LESS THAN THREE YEARS IN A FORM OR USING

A FORMAT DEVELOPED BY THE DIRECTOR. FURTHERMORE, THESE RECORDS SHALL BE MADE AVAILABLE TO THE DIRECTOR, AND ANY OFFICER OR EMPLOYEE OF THE STATE OFFICE OF HOMELAND SECURITY.

5. THE DIRECTOR OF THE STATE OFFICE OF HOMELAND SECURITY MAY, IN HIS OR HER DISCRETION, PROMULGATE ANY RULES AND REGULATIONS NECESSARY TO IMPLEMENT THE PROVISIONS OF THIS SECTION.

6. ANY VIOLATION OF THE PROVISIONS OF THIS SECTION SHALL CONSTITUTE A CLASS A MISDEMEANOR.

S 3. The penal law is amended by adding a new section 270.40 to read as follows:

S 270.40 DISSEMINATING MATERIAL ON THE MANUFACTURE OF AN EXPLOSIVE.

A PERSON IS GUILTY OF DISSEMINATING MATERIAL ON THE MANUFACTURE OF AN EXPLOSIVE WHEN KNOWING THE CHARACTER AND CONTENT OF THE COMMUNICATION WHICH, IN WHOLE OR PART, DESCRIBES OR EXPLAINS THE PROCESS OR MEANS OF CONSTRUCTING OR MANUFACTURING AN EXPLOSIVE USING NITRIC ACID, HE OR SHE INTENTIONALLY USES ANY COMPUTER COMMUNICATION SYSTEM ALLOWING INPUT, OUTPUT, EXAMINATION OR TRANSFER OF COMPUTER DATA OR COMPUTER PROGRAMS FROM ONE COMPUTER TO ANOTHER.

DISSEMINATING MATERIAL ON THE MANUFACTURE OF AN EXPLOSIVE IS A CLASS D FELONY.

S 4. This act shall take effect on the first of September next succeeding the date on which it shall have become a law, provided that the director of the state office of homeland security is authorized and directed to promulgate any rules and regulations necessary to implement the provisions of section two of this act on its effective date on or before such date.