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

3162

2009-2010 Regular Sessions

I N S E N A T E

March 12, 2009

Introduced by Sen. STACHOWSKI -- read twice and ordered printed, and when printed to be committed 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:

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 Section 270.00 of the penal law is REPEALED.

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

ARTICLE 271

FIREWORKS, DANGEROUS FIREWORKS AND NOVELTY DEVICES

SECTION 271.00 DEFINITIONS.
271.05 CRIMINAL POSSESSION OR SALE OF FIREWORKS IN THE SECOND DEGREE.
271.10 CRIMINAL POSSESSION OR SALE OF FIREWORKS IN THE FIRST DEGREE.
271.15 UNLAWFUL POSSESSION OF FIREWORKS.
271.20 AGGRAVATED SALE OF FIREWORKS TO A MINOR.
271.25 CRIMINAL POSSESSION OF FIREWORKS; PRESUMPTION.
271.30 LIMITATION OF APPLICATION.
271.35 SALE OF AMMUNITION NOT PROHIBITED.
271.40 UNLAWFUL SALE OF AMMUNITION.

S 271.00 DEFINITIONS.

FOR PURPOSES OF THIS ARTICLE:

1. "APA STANDARD 87-1" MEANS THE 2001 APA STANDARD 87-1 PUBLISHED BY THE AMERICAN PYROTECHNICS ASSOCIATION OF BETHESDA, MARYLAND, AS AMENDED, AND INCORPORATED BY REFERENCE INTO THE CODE OF FEDERAL REGULATIONS, AS 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.

LBD00826-01-9

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

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

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

(A) SPARKLERS AND NOVELTIES;

(B) 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

(C) 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.

5. "SPARKLERS AND NOVELTIES" MEANS:

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

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

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

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

6. "PYROTECHNIC COMPOSITION" MEANS A MIXTURE OF CHEMICALS THAT PRODUCES A VISIBLE OR AUDIBLE EFFECT BY COMBUSTION RATHER THAN RAPID DEFLAGRATION OR DETONATION AND WHICH CANNOT EXPLODE ON IGNITION UNLESS SEVERELY CONFINED.

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

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

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

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

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

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

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

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

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

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

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

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

S 271.15 UNLAWFUL POSSESSION OF FIREWORKS.

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

UNLAWFUL POSSESSION OF FIREWORKS IS A VIOLATION.

S 271.20 AGGRAVATED SALE OF FIREWORKS TO A MINOR.

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

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

S 271.25 CRIMINAL POSSESSION OF FIREWORKS; PRESUMPTION.

EXCEPT WHERE A PERMIT IS OBTAINED PURSUANT TO SECTION 405.00 OF THIS CHAPTER, POSSESSION OF CONSUMER FIREWORKS OR DISPLAY 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.

S 271.30 LIMITATION OF APPLICATION.

1. THIS ARTICLE SHALL NOT APPLY TO:

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

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

(B) 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;

(C) HIGH EXPLOSIVES FOR BLASTING OR SIMILAR PURPOSES;

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

(E) THE USE, TRANSPORTATION AND STORAGE OF FIREWORKS, PYROTECHNICS 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.

(F) THE USE, TRANSPORTATION AND STORAGE OF EXPLOSIVES IN THE PRODUCTION OF MOTION PICTURES, TELEVISION PROGRAMS, COMMERCIALS AND SIMILAR ENTERTAINMENT MEDIA PRODUCTION PROVIDED THE USE, TRANSPORTATION AND STORAGE OF EXPLOSIVES ARE UNDER THE CONTROL OF ONE OR MORE INDIVIDUALS AUTHORIZED BY FEDERAL LAW OR REGULATION TO HANDLE SUCH MATERIAL AND THAT SUCH EXPLOSIVE MATERIAL IS USED, TRANSPORTED AND STORED AND OTHERWISE HANDLED IN ACCORDANCE WITH FEDERAL LAW OR REGULATION.

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

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

(B) 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;

(C) THE USE, STORAGE, TRANSPORTATION OR SALE OR TRANSFER FOR USE OF FIREWORKS 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

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

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

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

S 271.35 SALE OF AMMUNITION NOT PROHIBITED.

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

S 271.40 UNLAWFUL SALE OF AMMUNITION.

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

UNLAWFUL SALE OF AMMUNITION IS A CLASS B MISDEMEANOR.

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

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

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

Notwithstanding the provisions of [section 270.00] ARTICLE TWO HUNDRED SEVENTY-ONE OF THIS CHAPTER, the permit authority of a state park, county park, city, village or town may upon application in writing, grant a permit for the public display of fireworks by municipalities, fair associations, amusement parks or organizations of individuals. The application for such permit shall set forth:

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

S 405.05 Seizure and destruction of fireworks.

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

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

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

of a musical, dramatic, dance, operatic or other stage performance by performers who appear in person in the immediate presence of an audience, which is held in any building or part of a building adapted and used for such purpose or which has a stage for such performances used with scenery or other stage appliances, and to which admission is limited to persons holding admission tickets or other evidence of permission to enter, or in connection with the production of motion pictures.

S 7. This act shall take effect on the first of November next succeeding the date on which it shall have become a law and shall remain in full force and effect until November 1, 2014, at which time the provisions of this act shall expire and be deemed repealed.