

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

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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:

1     Section 1. Legislative intent. The legislature hereby finds that while  
2     there are important uses for substances like nitric acid, it is impor-  
3     tant that we safeguard these substances in order to prevent them from  
4     being used to harm both people and property. Nitric acid can be used to  
5     cause harmful explosions and its use carries the ability, if fallen in  
6     the wrong hands, of resulting in massive destruction.  
7     Currently, the sale of nitric acid is not regulated on an appropriate  
8     level. Retailers are not required to check the identification of the  
9     buyers when selling them nitric acid. They are also not required to  
10    maintain records of the sale. This act would require that retailers  
11    check the identification of buyers purchasing nitric acid and record  
12    their name and address.  
13    In addition, there are no standard rules or requirements maintaining  
14    the security of nitric acid in academia. While this act does not hinder  
15    the important academic work that surrounds the use of nitric acid in  
16    colleges, universities and even high schools, it would provide a set  
17    standard ensuring we do our part in not allowing our academic insti-  
18    tutions 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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 S 270.40 DISSEMINATING MATERIAL ON THE MANUFACTURE OF AN EXPLOSIVE.

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

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

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