

4023

2009-2010 Regular Sessions

I N S E N A T E

April 7, 2009

Introduced by Sen. WINNER -- read twice and ordered printed, and when printed to be committed to the Committee on Labor

AN ACT to amend the labor law, in relation to explosives

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

1 Section 1. Section 450 of the labor law, as amended by chapter 809 of
2 the laws of 1949, subdivision 2 as amended by chapter 1022 of the laws
3 of 1970, is amended to read as follows:
4 S 450. Application of article. 1. This article shall apply to persons
5 engaged in the manufacture, ownership, possession, storage, use, trans-
6 portation, purchase, sale or gift of explosives as defined in subdivi-
7 sion one of section four hundred fifty-one OF THIS ARTICLE.
8 2. This article shall not apply to explosives while being transported
9 in conformity with federal law or regulations, nor except as may be
10 herein otherwise provided to persons who manufacture, own, possess,
11 store, use, transport, purchase, sell or give explosives within the
12 territorial boundaries of cities having more than one million inhabit-
13 ants, [nor to] OR TO ANY OF THE FOLLOWING WHILE IN THE PERFORMANCE OF
14 THEIR OFFICIAL DUTIES: the armed forces of the United States, the
15 national guard, the state guard and duly constituted police and fire-
16 fighting forces of the state and its civil and political subdivisions.
17 3. [For all purposes of this article, explosives in the possession of
18 an employee within the scope of his duties, shall be considered to be in
19 the possession of the employer.] THE PROVISIONS OF THIS SECTION SHALL
20 NOT APPLY TO MANUFACTURING, PURCHASE, OWNERSHIP, POSSESSION, USE, TRANS-
21 PORTATION, SALE, TRANSFER, DISPOSAL, OR DESTRUCTION OF PYROTECHNICS BY
22 THOSE PERSONS, ENTITIES OR BUSINESSES THAT HOLD A CURRENT FEDERAL PYRO-
23 TECHNICS OR EXPLOSIVES LICENSE OR PERMIT ISSUED BY THE FEDERAL BUREAU OF
24 ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES. ADDITIONALLY, ANY INDIVIDUAL
25 WHO HOLDS A FEDERAL EXPLOSIVES LICENSE OR PERMIT SHALL BE ALLOWED TO

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

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1 POSSESS, STORE AND USE "CONSUMER FIREWORKS" AND/OR "ARTICLES PYROTECH-
2 NIC" AS CLASSIFIED BY THE UNITED STATES DEPARTMENT OF TRANSPORTATION.

3 S 2. Section 451 of the labor law, as amended by chapter 809 of the
4 laws of 1949, subdivision 1 as amended by chapter 220 of the laws of
5 1974 and subdivision 11 as renumbered by chapter 1022 of the laws of
6 1970, is amended to read as follows:

7 S 451. Definitions. Whenever used in this article: 1. "Explosives"
8 means gunpowder, powders used for blasting, high explosives, blasting
9 materials, detonating fuses, detonators and other detonating agents,
10 smokeless powder and any chemical compound or any mechanical mixture
11 containing any oxidizing and combustible units, or other ingredients in
12 such proportions, quantities, or packing that ignition by fire, fric-
13 tion, concussion, percussion or detonation of any part thereof may CAUSE
14 and is intended to cause an explosion, but shall not include gasoline,
15 kerosene, naphtha, turpentine, benzine, acetone, ethyl ether, benzol and
16 all quantities of black powder not exceeding five pounds for use in
17 firing of antique firearms or artifacts or replicas thereof. Fixed ammu-
18 nition and primers for small arms, [fire-crackers,] safety fuses and
19 matches shall not be deemed to be explosives when, [as may be determined
20 by the board in its rules] AS PROVIDED BY REGULATION, the individual
21 units contain any of the above-mentioned articles or substances in such
22 limited quantity, of such nature and so packed that it is [impossible]
23 HIGHLY UNLIKELY to produce an explosion of such units to the injury of
24 life, limb or property.

25 2. "Highway" means any public street, public highway, public alley or
26 navigable [stream] WATERWAY, which is open for traffic. Navigable
27 [streams] WATERWAYS shall be considered as only those [streams] suscep-
28 tible of being used, in their ordinary condition, as highways of
29 commerce.

30 3. "Railroad" or "railway" means any railroad which carries passengers
31 OR FREIGHT for hire, but shall not include auxiliary tracks, spurs and
32 sidings installed and primarily used in serving any mine, quarry or
33 plant.

34 4. "Building" means any building regularly occupied in whole or in
35 part as a habitation for human beings, and any church, school house,
36 railway station or other building or place where people are accustomed
37 to live, work or assemble, but does not mean or include any of the
38 buildings of a manufacturing plant where the business of manufacturing
39 explosives is carried on.

40 5. "Explosives factory" means any building or other structure in which
41 the manufacture of explosives or any part of the manufacture thereof is
42 carried on.

43 6. "Magazine" means any building or other structure, other than an
44 explosives factory, used to store explosives.

45 7. "Efficient barricade" means natural features of the ground, a dense
46 woods, an artificial mound or a properly revetted wall of earth not less
47 than three feet thick at the top, spaced at least three feet at the
48 bottom from any explosives factory or magazine, the height of which is
49 such that any straight line drawn from the top of any side wall of the
50 explosives factory or magazine to the top of a building or to a point
51 twelve feet above the center of a railroad or highway to be protected
52 will pass through such intervening barricade.

53 8. "Person" includes any natural person, partnership, association or
54 corporation.

1 9. "[Manufacturer] EXPLOSIVES DEALER MANUFACTURER" means any person
2 who is engaged in the [manufacture] BUYING, SELLING, MANUFACTURING or
3 [production of] PRODUCING ANY CLASS OF explosives.

4 10. ["Dealer" means any person engaged in the business of buying and
5 selling explosives.

6 11. A "farmer" is a person who occupies and cultivates land.] "LOW
7 EXPLOSIVES DEALER MANUFACTURER" MEANS ANY PERSON WHO IS ENGAGED IN THE
8 BUYING AND SELLING OR MANUFACTURING OF LOW EXPLOSIVES SUCH AS BLACK OR
9 SMOKELESS POWDER FOR USE IN ANTIQUE WEAPONS OR REPLICAS OR FOR OTHER
10 SPORTING PURPOSES.

11 11. "PYROTECHNICS DEALER MANUFACTURER" MEANS ANY PERSON WHO IS ENGAGED
12 IN THE MANUFACTURING, BUYING AND/OR SELLING OF LOW EXPLOSIVES FOR THE
13 PURPOSE OF MANUFACTURING OR SALE OF PYROTECHNICS FOR THE DISPLAY OF
14 FIREWORKS.

15 12. "DISPLAY OF FIREWORKS" MEANS ANY USE OF FIREWORKS AND/OR PYROTECH-
16 NICS WHERE ONE OR MORE PEOPLE OBSERVE SUCH FIREWORKS AND/OR PYROTECH-
17 NICS.

18 13. "PUBLIC DISPLAY OF FIREWORKS" MEANS A DISPLAY OF FIREWORKS THAT IS
19 DIRECTLY SUPERVISED BY A PYROTECHNIC OPERATOR LICENSED IN ACCORDANCE
20 WITH ALL APPLICABLE LAWS AND IS EITHER SPONSORED AND/OR CONDUCTED BY A
21 MUNICIPALITY OR GOVERNMENT ENTITY OR USES PUBLIC PROPERTY OR REAL ESTATE
22 TO CONDUCT THE DISPLAY, OR A DISPLAY OF FIREWORKS ON PRIVATE LAND WHERE
23 THE FIREWORKS DISPLAY IS ADVERTISED TO THE PUBLIC AT LARGE BY EITHER
24 PRINT MEDIA, BROADCAST MEDIA OR BOTH.

25 14. "PRIVATE DISPLAY OF FIREWORKS" MEANS A DISPLAY OF FIREWORKS THAT
26 IS DIRECTLY SUPERVISED BY A PYROTECHNIC OPERATOR LICENSED IN ACCORDANCE
27 WITH ALL APPLICABLE LAWS AND IS EITHER SPONSORED AND/OR CONDUCTED BY A
28 PRIVATE PERSON, GROUP, OR ENTITY AND USES PRIVATE PROPERTY OR REAL
29 ESTATE TO CONDUCT THE DISPLAY, AND WHERE THE ON-SITE OBSERVERS OF THE
30 FIREWORKS DISPLAY ARE LIMITED TO THOSE SPECIFIC PERSONS INVITED FOR AN
31 EVENT OR SERIES OF EVENTS WHICH INCLUDE SUCH FIREWORKS DISPLAY.

32 15. "EXPLOSIVES HANDLER LICENSE" MEANS A CLASS OF EXPLOSIVES LICENSE
33 WHEREIN THE LICENSEE IS ALLOWED UNSUPERVISED ACCESS OR UNSUPERVISED
34 CUSTODY TO EXPLOSIVES IN THE POSSESSION OF HIS/HER EMPLOYER AND THE
35 EMPLOYER POSSESSES A VALID LICENSE ISSUED BY THE COMMISSIONER, WHICH
36 ALLOWS THE EMPLOYER TO MANUFACTURE, OWN, POSSESS, BUY, SELL, PURCHASE,
37 TRANSFER, TRANSPORT, AND/OR DESTROY EXPLOSIVES.

38 16. "OWN AND POSSESS EXPLOSIVES LICENSE" MEANS A CLASS OF EXPLOSIVES
39 LICENSE WHEREIN THE LICENSEE MAY PURCHASE, OWN, TRANSPORT, POSSESS, USE,
40 DISPOSE OF AND DESTROY ANY CLASS OF EXPLOSIVES IN ACCORDANCE WITH THIS
41 ARTICLE. IT SHALL NOT PERMIT THE LICENSEE TO MANUFACTURE, SELL, GIVE OR
42 TRANSFER OWNERSHIP OF ANY CLASS OF EXPLOSIVES.

43 17. "OWN AND POSSESS LOW EXPLOSIVES LICENSE" MEANS A CLASS OF
44 EXPLOSIVES LICENSE WHEREIN THE LICENSEE MAY PURCHASE, OWN, TRANSPORT,
45 POSSESS, USE, DISPOSE OF AND DESTROY ANY LOW EXPLOSIVES IN ACCORDANCE
46 WITH THIS ARTICLE. IT SHALL NOT PERMIT THE LICENSEE TO MANUFACTURE,
47 SELL, GIVE OR TRANSFER OWNERSHIP OF ANY LOW EXPLOSIVES.

48 18. "HIGH EXPLOSIVES" MEANS EXPLOSIVE MATERIALS THAT CAN BE CAUSED TO
49 DETONATE BY MEANS OF A BLASTING CAP WHEN UNCONFINED AS, FOR EXAMPLE,
50 DYNAMITE.

51 19. "LOW EXPLOSIVES" MEANS EXPLOSIVE MATERIALS THAT CAN BE CAUSED TO
52 DEFLAGRATE WHEN CONFINED AS, FOR EXAMPLE, SMOKELESS OR BLACK POWDER.

53 20. "PYROTECHNICS" MEANS ANY COMBUSTIBLE OR EXPLOSIVE COMPOSITIONS OR
54 MANUFACTURED ARTICLES DESIGNED AND PREPARED FOR THE PURPOSE OF PRODUCING
55 AUDIBLE OR VISIBLE EFFECTS THAT ARE COMMONLY REFERRED TO AS FIREWORKS,
56 INCLUDING SIGNALING DEVICES SUCH AS FLARES AND FUSES.

1 S 3. Section 452 of the labor law, as amended by chapter 190 of the
2 laws of 1989, is amended to read as follows:

3 S 452. Packing and labeling. No person shall own, possess, store, deal
4 in, sell, give or purchase explosives unless the packing, or encasement,
5 and the marking and labeling of such explosives shall comply with the
6 [rules of the board] REGULATIONS PROMULGATED HEREUNDER.

7 S 4. Section 453 of the labor law, as added by chapter 809 of the laws
8 of 1949, the second undesignated paragraph as amended by chapter 190 of
9 the laws of 1989, is amended to read as follows:

10 S 453. Storage. No person shall store explosives except in a magazine
11 constructed [and], located AND CERTIFIED in accordance with the
12 provisions of this article and the [rules of the board and unless a
13 certificate, which] REGULATIONS PROMULGATED HEREUNDER. THE MAGAZINE
14 CERTIFICATE shall be attached to the magazine on the inside [thereof,
15 has been issued for] OF EACH such magazine. No person shall store more
16 than three hundred thousand pounds of explosives in any one magazine at
17 any time. EXPLOSIVES NOT STORED IN COMPLIANCE WITH THIS PARAGRAPH SHALL
18 BE DEEMED TO PRESENT AN IMMINENT HAZARD TO EMERGENCY RESPONDERS AND
19 OTHER PERSONS LAWFULLY FREQUENTING THE AREA AND ARE SUBJECT TO SEIZURE
20 AND DESTRUCTION UNDER SUBDIVISION FIVE OF SECTION FOUR HUNDRED SIXTY OF
21 THIS ARTICLE.

22 This section shall not apply to explosives while being legally blasted
23 or while legally in the custody of a common carrier awaiting shipment or
24 delivery to a consignee during the time permitted by federal law; nor to
25 the storage of such limited amount of sporting or smokeless powders as
26 may be permitted by the [rules of the board] REGULATIONS PROMULGATED
27 HEREUNDER.

28 S 5. Section 454 of the labor law, as amended by chapter 477 of the
29 laws of 1943, is amended to read as follows:

30 S 454. Construction of magazines. Unless otherwise prescribed by the
31 [board in its rules] REGULATIONS PROMULGATED HEREUNDER, magazines in
32 which explosives shall be lawfully kept or stored shall be constructed
33 of brick, concrete, [iron] METAL or wood covered with [iron] METAL, and
34 shall have no openings except for ventilation and entrance. All
35 EXPLOSIVES magazines, except those in mines and tunnels, shall be
36 located above ground. All EXPLOSIVES magazines shall be kept clean and
37 dry at all times.

38 S 6. Section 455 of the labor law, as amended by chapter 809 of the
39 laws of 1949, is amended to read as follows:

40 S 455. Magazine precautions. 1. No [person] INDIVIDUAL shall unlock
41 [or], open the doors of, OR ACCESS THE CONTENTS OF, EXPLOSIVES maga-
42 zines, [except] UNLESS A LICENSE HAS BEEN ISSUED THEREFOR TO THE INDI-
43 VIDUAL BY THE COMMISSIONER AS PROVIDED FOR IN THIS ARTICLE OR THE INDI-
44 VIDUAL IS UNDER THE DIRECT SUPERVISION OF A LICENSE HOLDER. NO EMPLOYER
45 SHALL ALLOW ANY INDIVIDUAL ACCESS TO THEIR EXPLOSIVES MAGAZINES OR
46 EXPLOSIVES UNLESS A LICENSE HAS BEEN ISSUED THEREFOR TO THE INDIVIDUAL
47 BY THE COMMISSIONER AS PROVIDED FOR IN THIS ARTICLE OR THE INDIVIDUAL IS
48 UNDER THE DIRECT SUPERVISION OF A LICENSE HOLDER.

49 2. EXCEPTIONS. (A) IN THE CASE OF EMPLOYEES OF RETAIL ESTABLISHMENTS
50 WHERE BLACK AND/OR SMOKELESS POWDER IS SOLD AND WHERE STORAGE IS LIMITED
51 TO FIFTY POUND INDOOR STORAGE MAGAZINES AND AN ON-SITE RESPONSIBLE
52 EMPLOYEE, MANAGER OR OWNER HAS A VALID EXPLOSIVES DEALER MANUFACTURING
53 LICENSE ISSUED BY THE COMMISSIONER, SUCH EMPLOYEES, WHILE PERFORMING
54 THEIR ASSIGNED DUTIES FOR SUCH STORE, SHALL NOT BE REQUIRED TO HAVE A
55 LICENSE. THE MATERIAL SHALL BE STORED IN A MAGAZINE CERTIFIED BY THE
56 COMMISSIONER AND SUCH EXPLOSIVES SHALL BE CONSIDERED AT ALL TIMES TO BE

1 IN THE POSSESSION OF THE EMPLOYER. THE LICENSEE SHALL BE RESPONSIBLE FOR
2 TRAINING EMPLOYEES IN THE PROPER STORAGE AND HANDLING OF THE EXPLOSIVE
3 MATERIALS AND SHALL BE RESPONSIBLE FOR ENSURING THAT EMPLOYEES COMPLY
4 WITH THIS ARTICLE.

5 (B) IN THE CASE OF EMPLOYEES OF AN EXPLOSIVES MANUFACTURER, WHILE
6 PERFORMING THEIR ASSIGNED DUTIES WITHIN AND UPON THE GROUNDS OF A MANU-
7 FACTURING FACILITY UNDER THE SUPERVISION OF A PERSON POSSESSING A
8 CURRENT EXPLOSIVES DEALER MANUFACTURERS LICENSE ISSUED BY THE COMMIS-
9 SIONER, SUCH EXPLOSIVES SHALL BE CONSIDERED TO BE IN THE POSSESSION OF
10 THE EMPLOYER AND SUCH EMPLOYEES SHALL NOT BE REQUIRED TO POSSESS A
11 LICENSE.

12 (C) EXPLOSIVES MAGAZINES SHALL ONLY BE OPENED TO ALLOW for the lawful
13 storage or removal of explosives.

14 (D) No person shall have matches or fire of any kind in any magazine.
15 No person shall store or keep blasting caps, detonating or fulminating
16 caps, or detonators in a magazine in which any other type of explosive
17 is stored or kept. No person shall open any package of explosives within
18 fifty feet of any magazine, nor shall any explosives be kept in a maga-
19 zine except in the original containers. No person shall discharge
20 firearms within five hundred feet of a magazine or explosives factory,
21 or at or against any such building or magazine. Any theft or loss of
22 explosives from a storage magazine or otherwise, shall immediately be
23 reported to the [industrial] commissioner and the state or local police
24 or county sheriff.

25 S 7. Section 456 of the labor law, as amended by chapter 461 of the
26 laws of 1950, is amended to read as follows:

27 S 456. Location of magazines. The quantity of explosives that may be
28 stored in any explosives factory or magazine shall depend upon its
29 distances from the nearest building, railroad or highway or other maga-
30 zine. The distances that a quantity of explosives may be stored from the
31 nearest magazine, building, railroad or highway, shall be as determined
32 by the [rules of the board] REGULATIONS PROMULGATED HEREUNDER. All such
33 distances may be reduced one-half when the magazine, building, railroad
34 or highway to be protected is adequately screened from the explosives
35 factory or magazine by an efficient barricade as defined in subdivision
36 seven of section four hundred fifty-one OF THIS ARTICLE.

37 S 8. The labor law is amended by adding a new section 457 to read as
38 follows:

39 S 457. RELOCATION OF MAGAZINES. 1. WHEN ANY MAGAZINE IS MOVED FROM THE
40 LOCATION FOR WHICH IT WAS CERTIFIED ACCORDING TO SECTION FOUR HUNDRED
41 FIFTY-SIX OF THIS ARTICLE AND THE MAGAZINE IS OR IS INTENDED TO BE USED
42 FOR THE STORAGE OF EXPLOSIVES AND WILL BE IN THE NEW LOCATION FOR MORE
43 THAN TWENTY-FOUR HOURS, THE COMMISSIONER SHALL BE NOTIFIED AS TO THE NEW
44 LOCATION OF THE MAGAZINE. SUCH NOTIFICATION SHALL BE MADE NO LATER THAN
45 ONE BUSINESS DAY PRIOR TO THE MOVE. THE NOTIFICATION SHALL CONTAIN ALL
46 OF THE INFORMATION REQUIRED BY THE COMMISSIONER.

47 2. THIS PROVISION SHALL NOT APPLY WHERE THE RELOCATION HAS BEEN
48 ORDERED BY POLICE, FIRE OR OTHER AUTHORIZED EMERGENCY PERSONNEL, OR
49 WHERE THE CONTINUED STORAGE IN THE CURRENT LOCATION WOULD CONSTITUTE A
50 THREAT TO LIFE OR PROPERTY. IN SUCH CASES THE COMMISSIONER SHALL BE
51 NOTIFIED AS SOON AS PRACTICAL AFTER THE RELOCATION BUT IN NO CASE MORE
52 THAN TWO BUSINESS DAYS FOLLOWING SUCH RELOCATION.

53 3. WHEN A MAGAZINE IS MOVED TO STORAGE, ABANDONED, SOLD OR REMOVED
54 FROM SERVICE THE CERTIFICATE HOLDER SHALL NOTIFY THE COMMISSIONER WITHIN
55 FIVE BUSINESS DAYS OF THE DATE THAT SUCH MAGAZINE WAS ABANDONED, MOVED

1 TO STORAGE, SOLD, OR REMOVED FROM SERVICE AND SHALL SURRENDER THE
2 CERTIFICATE TO THE COMMISSIONER.

3 S 9. Section 458 of the labor law, as added by chapter 809 of the laws
4 of 1949, subdivisions 1 and 2 as amended by chapter 61 of the laws of
5 1989, subdivision 3 as amended by section 10 of part A of chapter 57 of
6 the laws of 2004, subdivision 4 as amended by chapter 164 of the laws of
7 2003, subdivisions 5, 6, 7 and 9 as added and subdivisions 10 and 11 as
8 renumbered by chapter 1022 of the laws of 1970 and subdivision 8 as
9 added by chapter 150 of the laws of 1971, is amended to read as follows:

10 S 458. Licenses and certificates. 1. "OWN AND POSSESS EXPLOSIVES
11 LICENSE." No person shall purchase, own, possess, transport [or], use,
12 DISPOSE OF OR DESTROY explosives unless a license therefor shall have
13 been issued as provided in this article. SUCH LICENSE SHALL NOT PERMIT
14 THE LICENSEE TO MANUFACTURE, SELL, GIVE OR TRANSFER OWNERSHIP OF ANY
15 CLASS OF EXPLOSIVES.

16 [Application for such a license shall be made to the commissioner on
17 forms provided and shall contain such information as the commissioner
18 may require. Where the commissioner finds that the applicant has
19 complied with the requirements of this article and the rules promulgated
20 hereunder, the commissioner shall issue a license or renewal thereof
21 which shall be valid for one year from the date of issuance. Such appli-
22 cation and each renewal thereof shall be accompanied by a fee of fifty
23 dollars non-refundable to be payable to the commissioner.]

24 2. "EXPLOSIVES DEALER MANUFACTURER LICENSE." No person shall [manufac-
25 ture, deal in, sell, give or dispose] BUY, SELL, MANUFACTURE OR PRODUCE
26 ANY CLASS of explosives unless a license therefor shall have been issued
27 to such person for that purpose by the commissioner as provided in this
28 article, nor shall any person sell, give or dispose of explosives to, or
29 manufacture explosives for any person who does not hold a license as
30 provided by [subdivision one of] this section.

31 [Application for such a license, which shall be renewed annually,
32 shall be made to the commissioner on forms provided and shall contain
33 such information as the commissioner may require. The commissioner,
34 after investigation of the application, shall issue a license or renewal
35 thereof, which shall be valid for one year from the date of issuance,
36 where the commissioner finds that the applicant has complied with the
37 requirements of this article and the rules promulgated hereunder. Each
38 application for such a license, or for its renewal, shall be accompanied
39 by a fee of one hundred dollars non-refundable to be payable to the
40 commissioner.]

41 3. "PYROTECHNICS DEALER MANUFACTURER LICENSE." NO PERSON SHALL MANU-
42 FACTURE, BUY AND/OR SELL FINISHED PYROTECHNICS OR THEIR EXPLOSIVE COMPO-
43 NENTS, UNLESS A LICENSE THEREFOR HAS BEEN ISSUED FOR THAT PURPOSE BY THE
44 COMMISSIONER AS PROVIDED FOR IN THIS ARTICLE.

45 4. "LOW EXPLOSIVES DEALER MANUFACTURER LICENSE." NO PERSON SHALL BUY,
46 SELL, MANUFACTURE OR PRODUCE LOW EXPLOSIVES SUCH AS BLACK OR SMOKELESS
47 POWDER UNLESS A LICENSE HAS BEEN ISSUED THEREFOR BY THE COMMISSIONER AS
48 PROVIDED FOR IN THIS ARTICLE.

49 5. "OWN AND POSSESS LOW EXPLOSIVES LICENSE." NO PERSON SHALL PURCHASE,
50 OWN, POSSESS, TRANSPORT, USE, DISPOSE OF OR DESTROY ANY LOW EXPLOSIVES
51 UNLESS A LICENSE HAS BEEN ISSUED THEREFOR BY THE COMMISSIONER AS
52 PROVIDED FOR IN THIS ARTICLE. SUCH LICENSE SHALL NOT PERMIT THE LICENSEE
53 TO MANUFACTURE, SELL, GIVE OR TRANSFER OWNERSHIP OF ANY LOW EXPLOSIVES.

54 6. "EXPLOSIVES HANDLERS LICENSE." NO INDIVIDUAL SHALL HAVE UNSUPER-
55 VISED ACCESS TO OR UNSUPERVISED CUSTODY OF EXPLOSIVES ON BEHALF OF A
56 LICENSE HOLDER UNLESS HE OR SHE HAS BEEN ISSUED AN EXPLOSIVES HANDLERS

LICENSE BY THE COMMISSIONER AS PROVIDED FOR IN THIS ARTICLE. SUCH LICENSE SHALL NOT PERMIT THE LICENSEE TO PURCHASE, OWN, POSSESS, AND/OR USE EXPLOSIVES.

7. "APPLICATIONS." APPLICATION FOR ALL EXPLOSIVES LICENSES SHALL BE MADE TO THE COMMISSIONER ON FORMS PROVIDED AND SHALL CONTAIN SUCH INFORMATION AS THE COMMISSIONER MAY REQUIRE. WHERE THE COMMISSIONER FINDS THAT THE APPLICANT HAS COMPLIED WITH THE REQUIREMENTS OF THIS ARTICLE, THE RULES PROMULGATED HEREUNDER AND ALL OTHER APPLICABLE SECTIONS OF THIS CHAPTER AND REGULATIONS PROMULGATED BY THE COMMISSIONER, THE COMMISSIONER SHALL ISSUE A LICENSE OR RENEWAL THEREOF WHICH SHALL BE VALID FOR THREE YEARS FROM THE DATE OF ISSUANCE. SUCH APPLICATION AND EACH RENEWAL THEREOF SHALL BE ACCOMPANIED BY A NON-REFUNDABLE FEE TO BE PAYABLE TO THE COMMISSIONER. THE LICENSE FEE SCHEDULE SHALL BE SUBJECT TO THE DISCRETION OF THE COMMISSIONER AND NOT LESS THAN THE FOLLOWING AMOUNTS:

- (A) OWN AND POSSESS EXPLOSIVES LICENSE - ONE HUNDRED DOLLARS;
- (B) EXPLOSIVES DEALER MANUFACTURER LICENSE - ONE THOUSAND DOLLARS;
- (C) PYROTECHNICS DEALER MANUFACTURER LICENSE - ONE HUNDRED DOLLARS;
- (D) LOW EXPLOSIVES DEALER MANUFACTURER LICENSE - FIFTY DOLLARS;
- (E) OWN AND POSSESS LOW EXPLOSIVES LICENSE - FIFTY DOLLARS;
- (F) EXPLOSIVES HANDLERS LICENSE - FIFTY DOLLARS.

8. "EXPLOSIVES MAGAZINE CERTIFICATE." No person shall keep or store explosives unless a certificate therefor shall have been issued by the commissioner as herein provided, but this requirement shall not apply to the storage [at any one time by farmers of two hundred pounds or less of blasting explosives for agricultural purposes] OF PYROTECHNIC MATERIALS BY THOSE PERSONS AND BUSINESSES THAT HOLD A VALID PYROTECHNICS OR EXPLOSIVES LICENSE OR PERMIT ISSUED BY THE FEDERAL BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES, AND SUCH MATERIALS ARE STORED IN AN APPROPRIATE MAGAZINE AS SPECIFIED, APPROVED AND INSPECTED BY THE PERMITTING AUTHORITY. SUCH PERSONS OR BUSINESSES SHALL NOTIFY THE COMMISSIONER AND THE AUTHORITY HAVING JURISDICTION FOR FIRE SAFETY IN THE LOCALITY IN WHICH SUCH MATERIALS ARE BEING STORED OF THE TYPE, MAGAZINE CAPACITY, AND LOCATION OF EACH SITE WHERE SUCH MATERIALS ARE STORED. SUCH NOTIFICATION SHALL BE MADE ORALLY TO THE AUTHORITY HAVING JURISDICTION FOR FIRE SAFETY IN THE LOCALITY BEFORE THE END OF THE DAY AND IN WRITING TO THE COMMISSIONER AND THE AUTHORITY HAVING JURISDICTION FOR FIRE SAFETY IN THE LOCALITY WITHIN FORTY-EIGHT HOURS FROM THE TIME SUCH STORAGE COMMENCED.

Application for such a certificate shall be made to the commissioner on forms provided and shall contain such information as the commissioner may require. The commissioner, where it is found that the applicant has complied with the requirements of this article, and the rules promulgated hereunder and all other applicable sections of this chapter and regulations promulgated by the commissioner, shall issue a certificate or a renewal thereof, which shall be valid for [one year] THREE YEARS from the date of issuance. In addition to any other causes for revocation of a certificate hereinafter provided, the commissioner may revoke or modify such certificate because of any change in the conditions under which it was granted, or for failure to pay the annual fee hereinafter provided. The owner or user of a magazine shall annually pay to the commissioner in advance a fee, subject to the discretion of the commissioner and not less than fifty dollars, which shall be proportioned according to the quantity and type of explosives authorized by the certificate to be stored in the magazine.

1 [4.] 9. An application for a license or a certificate pursuant to
2 [subdivision] SUBDIVISIONS one[, two or three] THROUGH EIGHT of this
3 section shall be sworn to under oath and shall contain information
4 sufficient to identify the applicant, INCLUDING, BUT NOT LIMITED TO THE
5 FINGERPRINTS OF THE APPLICANT, and the purpose for which and the place
6 where the explosives are to be used, manufactured, dealt in, given,
7 disposed of or stored, as the case may be, and to demonstrate the eligi-
8 bility of such applicant for the license or certificate requested. [The
9 commissioner may require that the application include, among other
10 things, photographs, fingerprints and personal references.] Such finger-
11 prints shall be submitted to the division of criminal justice services
12 for a state criminal history record check, as defined in subdivision one
13 of section three thousand thirty-five of the education law, and may be
14 submitted to the federal bureau of investigation for a national criminal
15 history record check. ANY APPLICATION FOR A LICENSE, CERTIFICATE OR
16 REGISTRATION REQUIRED TO BE FILED WITH THE DEPARTMENT PURSUANT TO THIS
17 SECTION MAY, IN LIEU OF BEING SWORN UNDER OATH, BE SUBSCRIBED BY THE
18 APPLICANT AND AFFIRMED BY HIM OR HER AS TRUE UNDER PENALTIES OF PERJURY.

19 [5.] 10. Before a license or certificate is issued, the commissioner
20 shall investigate the eligibility of the applicant. The commissioner
21 shall have the authority to request and receive from any department,
22 division, board, bureau, commission or agency of the state or local
23 government thereof such assistance and information as will enable [him]
24 THE COMMISSIONER TO properly and effectively [to] carry out [his] THE
25 powers and duties ASSIGNED under this article.

26 [6.] 11. (a) The investigation prescribed in subdivision [five] TEN of
27 this section may include, but is not limited to the following:

28 (1) a personal interview of the applicant by a designated agent of the
29 commissioner if the commissioner is unable to make a determination on
30 the basis of the factors contained in the application;

31 (2) an examination as to the applicant's knowledge and ability with
32 respect to basic safety precautions in the possession, handling, stor-
33 age, and transportation of explosives, and for such purpose the commis-
34 sioner may prescribe tests which the applicant shall be required to pass
35 as a prerequisite to the issuance of the license or certificate. The
36 test may be administered by any person or agency designated by the
37 commissioner.

38 (b) The investigation prescribed in subdivision [five] TEN of this
39 section shall include a report from the New York state identification
40 and intelligence system, and such other identification services of the
41 state or federal government as may be necessary or appropriate for this
42 purpose. STATE AND NATIONAL CRIMINAL HISTORY RECORD CHECKS MUST BE
43 PERFORMED CONSISTENT WITH THE PROCEDURE ESTABLISHED IN SUBDIVISION NINE
44 OF THIS SECTION.

45 [7. The commissioner may waive any of the procedures set forth in
46 subdivision six (a) of this section with respect to any applicant who
47 has a license or certificate which was issued pursuant to this section
48 at anytime prior to March first, nineteen hundred seventy, and which was
49 legally valid and effective on such date. The commissioner also may
50 waive fingerprinting of an applicant who has a valid license for a
51 pistol or revolver in accordance with section 400.00 of the penal law.

52 8.] 12. Exceptions. Except for the provisions of subdivision [eleven]
53 FIFTEEN OF THIS SECTION, this section shall not apply to [smokeless
54 powder] INDIVIDUALS WHO ARE STORING LIMITED AMOUNTS OF SMOKELESS POWDER
55 FOR PERSONAL SPORTING OR RECREATIONAL PURPOSES, AS DETERMINED BY THE
56 COMMISSIONER.

[9.] 13. Within thirty days after the issuance of a license or certificate under this section, the commissioner shall notify the chief executive officer of the municipality where the licensee resides or where the certificate holder has his OR HER place of business of the issuance of such license or certificate, and provide such officer with such other information pertaining thereto [as the board may from time to time prescribe] AS THE COMMISSIONER MAY PRESCRIBE. THE CHIEF ELECTED OFFICIAL OF EACH MUNICIPALITY SHOULD PROVIDE SUCH INFORMATION TO THE FIRE, POLICE AND EMERGENCY MEDICAL SERVICES OF THE MUNICIPALITY.

[10.] 14. Agencies of the United States, the state and its political and civil subdivisions which are subject to the requirements of this article and which, in the exercise of their functions, are required to purchase, own, store, use or transport explosives shall not be liable for the payment of any fee required by this section.

[11.] 15. No explosives shall be sold, given or delivered to any [person] INDIVIDUAL under eighteen years of age, whether such [person] INDIVIDUAL is acting for himself, HERSELF or for another [person] INDIVIDUAL, nor shall any such [person] INDIVIDUAL be eligible to obtain any license or certificate required under this section.

S 10. Section 459 of the labor law, as added by chapter 809 of the laws of 1949, subdivision 1 as amended by chapter 1022 of the laws of 1970, is amended to read as follows:

S 459. Denial or revocation of license or certificate. 1. DENIAL. A license or certificate, its renewal or continuation may be denied where the commissioner has probable reason to believe, based on knowledge or reliable information, or finds, after [due] investigation, that the applicant or any officer, servant, agent or employee of the applicant is not sufficiently reliable and experienced to be authorized to own, possess, store, transport, use, manufacture, deal in, sell, purchase or otherwise handle, as the case may be, explosives, lacks suitable facilities therefor, has been convicted of a [crime for which he has been sentenced to serve one or more years in prison] FELONY, is disloyal or hostile to the United States or has been confined as a patient or inmate in a public or private institution for the treatment of mental diseases. Whenever the commissioner denies an application for a license or certificate or the renewal thereof, [he shall,] within five days of such denial, [give] notice thereof and the reasons therefor SHALL BE PROVIDED in writing to the applicant [personally or by mail to the address given in the application]. Such denial may be appealed to the commissioner who shall follow the procedure provided by subdivision three of this section.

2. REVOCATION. The commissioner may revoke any certificate or license on any ground or grounds authorized in subdivision one of this section for the denial of a license or certificate, or for a violation of the terms of such license or certificate, or for a violation of any provision of this article or [of the rules of the board] REGULATIONS PROMULGATED HEREUNDER, or for non-compliance with any order issued by the commissioner within the time specified in such order.

[Where the] THE commissioner [has probable reason to believe, based on knowledge or reliable information, that a licensee or certificate holder is disloyal to the United States, he may summarily revoke the license or certificate or may, in his discretion, give such licensee or certificate holder notice and opportunity to be heard as provided in subdivision three of this section] MAY, WHERE THERE IS REASON TO BELIEVE, BASED ON KNOWLEDGE OR RELIABLE INFORMATION, THAT A LICENSEE OR CERTIFICATE HOLDER IS DISLOYAL TO THE UNITED STATES, SUMMARILY REVOKE THE LICENSE OR

1 CERTIFICATE OR MAY GIVE SUCH LICENSEE OR CERTIFICATE HOLDER NOTICE AND
2 OPPORTUNITY TO BE HEARD AS PROVIDED IN SUBDIVISION THREE OF THIS
3 SECTION. Revocation of a license or certificate for any other ground may
4 be ordered only after giving written notice and an opportunity to be
5 heard to the holder thereof. Such notice [may be given to the holder
6 personally or by mail and] shall specify the ground or grounds on which
7 it is proposed to revoke the license or certificate. When a license or
8 certificate is revoked, the commissioner may direct the SEIZURE AND/OR
9 disposition of explosives held by such licensee or certificate holder.
10 Upon revocation of a license or certificate by the commissioner, the
11 holder thereof shall surrender [his] THE license or certificate to the
12 commissioner at once.

13 3. Hearings. Unless, within fifteen days from the date of notice, the
14 applicant for a license or certificate or the recipient of a notice
15 stating that the commissioner proposes to revoke a license or certifi-
16 cate held by him OR HER, shall file a written answer with the commis-
17 sioner denying the ground or grounds on which a license or certificate
18 has been denied or ground or grounds on which revocation of a license or
19 certificate is sought, and shall request a hearing, the commissioner may
20 make a final determination respecting the application for a license or
21 certificate, or may revoke a license or certificate forthwith. If, with-
22 in such fifteen days, the applicant, licensee or certificate holder
23 files such answer and request for hearing, the commissioner shall sched-
24 ule a hearing. The notice of hearing shall state the time, place, and
25 subject of the hearing, and shall be mailed to the applicant, certifi-
26 cate holder or licensee at his OR HER last known address at least five
27 days before the date of hearing. Hearings shall be held by the commis-
28 sioner or his OR HER representative, and the applicant, certificate
29 holder or licensee may appear in person or may be represented by an
30 agent. After such hearing, the commissioner shall render [his] A deci-
31 sion in writing.

32 S 11. Section 460 of the labor law, as added by chapter 809 of the
33 laws of 1949, is amended to read as follows:

34 S 460. Seizure, impounding, destruction or disposition of explosives.
35 1. The commissioner is hereby authorized and empowered, without applica-
36 tion to any court, to seize and impound any explosives found within this
37 state, except in cities having a population of more than one million
38 inhabitants, which are in apparent violation of any of the provisions of
39 this article, [rules of the board] REGULATIONS PROMULGATED HEREUNDER or
40 laws or regulations of the federal government, or which have been aban-
41 doned or lost, or where the commissioner has reason to believe that
42 public safety is endangered by such explosives. Such explosives may be
43 removed and transported by the commissioner and stored in magazines
44 provided or obtained for that purpose by the state or by the commission-
45 er.

46 2. The owner of such explosives may, within [five] FIFTEEN days of
47 such seizure, make written demand upon the commissioner for a hearing.
48 Upon such demand, the commissioner shall give the owner written notice
49 [in person or by mail,] of the time and place of such hearing to be held
50 not less than ten days thereafter.

51 3. (A) Where no hearing is demanded within the time herein prescribed
52 [or where, after hearing,] AND the commissioner finds that there has
53 been a violation of the provisions of this article, [rules of the board]
54 REGULATIONS PROMULGATED HEREUNDER or laws or regulations of the federal
55 government, [or] AND that public safety is endangered, [he] THE COMMIS-
56 SIONER may destroy or order the destruction of such explosives WITHOUT

1 HEARING AND WITHOUT LIABILITY, or direct such other disposition of the
2 explosives [as he deems proper]. If the commissioner finds there has
3 been no such violation and that public safety has not been endangered,
4 [he shall return] such explosives SHALL BE RETURNED to the owner there-
5 of.

6 (B) WHERE A HEARING IS DEMANDED WITHIN THE TIME HEREIN PRESCRIBED, THE
7 COMMISSIONER SHALL NOT BE ALLOWED TO DESTROY OR ORDER THE DESTRUCTION OF
8 SUCH EXPLOSIVES UNTIL THE OWNER OF SUCH EXPLOSIVES HAS HAD THE OPPORTU-
9 NITY TO APPEAL ALL ADMINISTRATIVE REMEDIES AND EXHAUST DUE PROCESS
10 THROUGH JUDICIAL REVIEW. AFTER ALL SUCH REMEDIES HAVE BEEN EXHAUSTED,
11 THE COMMISSIONER MAY THEN DESTROY OR ORDER THE DESTRUCTION OF SUCH
12 EXPLOSIVES. IF THE COMMISSIONER FINDS THAT THERE HAS BEEN NO SUCH
13 VIOLATION AND THAT PUBLIC SAFETY HAS NOT BEEN ENDANGERED, SUCH
14 EXPLOSIVES SHALL BE RETURNED TO THE OWNER THEREOF.

15 4. Where such explosives have been abandoned or lost, and no claimant
16 has appeared within thirty days, demanded the return of the explosives
17 and proved, to the satisfaction of the commissioner, [his] THE CLAIM-
18 ANT'S title to and right of possession of such explosives, the commis-
19 sioner may destroy or direct the destruction thereof, or direct such
20 other disposition thereof as [he deems] IS DEEMED proper.

21 5. Any provision herein to the contrary notwithstanding, where[, in
22 the opinion of] the commissioner[,] DEMONSTRATES THAT the manufacture,
23 condition, packing or location of explosives is such that its continued
24 existence or transportation is a danger to public safety, [he] THE
25 COMMISSIONER may, without hearing [and without liability therefor to the
26 owner thereof], seize and destroy or direct the seizure and destruction
27 of such explosives.

28 S 12. Section 461 of the labor law, as added by chapter 809 of the
29 laws of 1949, subdivision 1 as amended by chapter 150 of the laws of
30 1971 and subdivision 3 as amended by chapter 1022 of the laws of 1970,
31 is amended to read as follows:

32 S 461. Record and notice of sales, deliveries or gifts. 1. Every
33 person selling, delivering [or], giving away [an explosive] OR OTHERWISE
34 TRANSFERRING, DISPOSING OF OR DESTROYING EXPLOSIVES shall keep at his OR
35 HER principal office or place of business within the state, a record of
36 the transaction, including the name or type and quantity of the
37 explosive, such identification of the explosive as may be required by
38 [rules of the board] THE REGULATIONS PROMULGATED HEREUNDER, the date of
39 each sale, delivery [or], gift, TRANSFER OR DISPOSITION, the name and
40 business address of the purchaser, donee, RECIPIENT or person to whom
41 delivered, the number of the license [to own or possess explosives, if
42 such license is] required by section four hundred fifty-eight of this
43 article, and the name and address of the person taking the explosives
44 away. A report of all such transactions, when requested [by him], shall
45 be submitted to the commissioner. Such record shall be open to
46 inspection by the commissioner or by federal, state and local enforce-
47 ment officers at all times. No person shall have in his OR HER
48 possession any explosives unless he OR SHE has a bill of sale or other
49 evidence of title thereto.

50 2. Any provision in this article to the contrary notwithstanding, no
51 person in a city having more than one million inhabitants shall ship or
52 transport or cause to be shipped or transported explosives from such
53 city to any other place within the state, unless such person shall, at
54 least twenty-four hours prior to such shipment, transmit to the commis-
55 sioner a statement in writing giving the weight, name or brand and type
56 of explosives, the name and address of the person to whom such

explosives are to be sold, shipped, transported or delivered and the date thereof. UPON RECEIPT OF SUCH STATEMENT, THE COMMISSIONER SHALL PROVIDE WRITTEN NOTICE TO THE CITY HAVING MORE THAN ONE MILLION INHABITANTS OF SUCH SHIPMENT OR TRANSPORTATION OF EXPLOSIVES. No person shall make any such shipment except to a holder of a license issued hereunder.

3. No person within the state shall purchase, receive or accept delivery of explosives from any place outside the state, and no person shall bring explosives into the state from any place outside the state, unless, [in addition to holding a license issued hereunder, such person shall, not more than twenty-four hours thereafter, transmit to the commissioner by mail a written statement giving] HE OR SHE IS IN POSSESSION OF A VALID LICENSE ISSUED BY THE COMMISSIONER. THE LICENSEE IN RECEIVING THE EXPLOSIVES SHALL MAINTAIN A RECORD INCLUDING THE weight, name or brand and type of the explosives, the name and address of the shipper and the date of shipment, FOR A PERIOD OF THREE YEARS FROM THE DATE OF RECEIPT OR TWO YEARS FROM THE DATE OF FINAL DISPOSITION OF THE EXPLOSIVES WHICHEVER OCCURS LAST.

S 13. Section 462 of the labor law, as amended by chapter 190 of the laws of 1989, is amended to read as follows:

S 462. Rules and regulations. The commissioner may make rules supplemental to this article as [he shall deem] DEEMED necessary or desirable to assure the public safety as well as to provide reasonable and adequate protection of the lives, health and safety of persons employed in the manufacture, storage, handling and use of explosives. The commissioner may prescribe such regulations as [he may deem] ARE DEEMED necessary and proper for the administration of this article.

S 14. Section 463 of the labor law, as added by chapter 809 of the laws of 1949, is amended to read as follows:

S 463. Review. All questions of fact arising under this article shall be decided by the commissioner and there shall be no appeal from [his] SUCH decision on any such question of fact[, but there shall be a right of review by the board of standards and appeals of any decision of the commissioner denying an application for a license or certificate, or denying the renewal thereof, or revoking a license or certificate, as provided in section one hundred ten, article three of the labor law]. UPON THE ENTRY OF AN ORDER ISSUED UNDER THIS ARTICLE, ANY PARTY AGGRIEVED THEREBY MAY COMMENCE A PROCEEDING FOR REVIEW THEREOF PURSUANT TO ARTICLE SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND RULES WITHIN THIRTY DAYS FROM THE NOTICE OF THE FILING OF THE SAID ORDER IN THE OFFICE OF THE COMMISSIONER. SAID PROCEEDING SHALL BE COMMENCED DIRECTLY IN THE APPELLATE DIVISION OF THE SUPREME COURT.

S 15. Section 464 of the labor law, as amended by chapter 307 of the laws of 1984, is amended to read as follows:

S 464. Penalties. 1. CIVIL PENALTIES. (A) IF THE COMMISSIONER DIRECTS THE STORAGE, DESTRUCTION OR OTHER DISPOSITION OF EXPLOSIVES PURSUANT TO THE PROVISIONS OF SECTION FOUR HUNDRED FIFTY-NINE OR FOUR HUNDRED SIXTY OF THIS ARTICLE, THE COMMISSIONER MAY ISSUE AN ORDER WHICH SHALL SET FORTH THE COSTS OF SUCH STORAGE, TRANSPORTATION, HANDLING, DESTRUCTION OR OTHER DISPOSITION AND ASSESS THE OWNER OF SUCH EXPLOSIVES A CIVIL PENALTY IN THE AMOUNT OF SUCH COSTS, WHICH SHALL BE IN ADDITION TO ANY OTHER PENALTIES IMPOSED.

(B) IF THE COMMISSIONER DETERMINES THAT ANY PERSON OR INDIVIDUAL HAS VIOLATED ANY PROVISION OF THIS ARTICLE, SECTION FOUR HUNDRED EIGHTY-TWO OF THE GENERAL BUSINESS LAW, OR ANY RULE OR REGULATION PROMULGATED THEREUNDER, THE COMMISSIONER MAY ISSUE AN ORDER WHICH SHALL DESCRIBE THE NATURE OF THE VIOLATION AND ASSESS SUCH PERSON A CIVIL PENALTY OF UP TO

1 TWO THOUSAND FIVE HUNDRED DOLLARS PER VIOLATION PER DAY UNTIL THE
2 VIOLATION IS CORRECTED, NOT TO EXCEED A TOTAL CIVIL PENALTY OF TEN THOU-
3 SAND DOLLARS.

4 (C) IF THE COMMISSIONER DETERMINES THAT ANY BUSINESS AND/OR CORPO-
5 RATION HAS VIOLATED ANY PROVISION OF THIS ARTICLE, SECTION FOUR HUNDRED
6 EIGHTY-TWO OF THE GENERAL BUSINESS LAW, OR ANY RULE OR REGULATION
7 PROMULGATED THEREUNDER, THE COMMISSIONER MAY ISSUE AN ORDER WHICH SHALL
8 DESCRIBE THE NATURE OF THE VIOLATION AND ASSESS SUCH BUSINESS AND/OR
9 CORPORATION A CIVIL PENALTY OF UP TO TEN THOUSAND DOLLARS PER VIOLATION
10 PER DAY UNTIL THE VIOLATION IS CORRECTED, NOT TO EXCEED A TOTAL CIVIL
11 PENALTY OF FIFTY THOUSAND DOLLARS. THE PENALTIES AUTHORIZED PURSUANT TO
12 THIS SECTION SHALL BE PAID TO THE COMMISSIONER FOR DEPOSIT IN THE TREAS-
13 URY OF THE STATE. IN ASSESSING THE AMOUNT OF THE PENALTY, THE COMMIS-
14 SIONER SHALL GIVE DUE CONSIDERATION TO THE SIZE OF THE PERSON'S BUSI-
15 NESS, THE GOOD FAITH EFFORT OF THE PERSON, THE GRAVITY OF THE VIOLATION,
16 AND THE HISTORY OF PREVIOUS VIOLATIONS.

17 (D) ANY PARTY AGGRIEVED BY AN ORDER ISSUED UNDER THIS SUBDIVISION MAY
18 COMMENCE A PROCEEDING FOR REVIEW THEREOF PURSUANT TO ARTICLE
19 SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND RULES WITHIN THIRTY DAYS
20 FROM THE NOTICE OF THE FILING OF THE SAID ORDER IN THE OFFICE OF THE
21 COMMISSIONER. SAID PROCEEDING SHALL BE COMMENCED DIRECTLY IN THE APPEL-
22 LATE DIVISION OF THE SUPREME COURT.

23 (E) PROVIDED THAT NO PROCEEDING FOR JUDICIAL REVIEW AS PROVIDED FOR IN
24 THIS SECTION SHALL THEN BE PENDING AND THE TIME FOR INITIATION OF SUCH
25 PROCEEDING SHALL HAVE EXPIRED, THE COMMISSIONER MAY FILE WITH THE COUNTY
26 CLERK OF THE COUNTY WHERE THE PERSON RESIDES OR HAS A PLACE OF BUSINESS,
27 THE ORDER OF THE COMMISSIONER, CONTAINING THE AMOUNT OF THE CIVIL PENAL-
28 TY. THE FILING OF SUCH ORDER OR DECISION SHALL HAVE THE FULL FORCE AND
29 EFFECT OF A JUDGMENT DULY DOCKETED IN THE OFFICE OF SUCH CLERK, THE
30 ORDER OR DECISION MAY BE ENFORCED BY AND IN THE NAME OF THE COMMISSIONER
31 IN THE SAME MANNER, AND WITH LIKE EFFECT, AS THAT PRESCRIBED BY THE
32 CIVIL PRACTICE LAW AND RULES FOR THE ENFORCEMENT OF A MONEY JUDGMENT.

33 (F) A CIVIL PENALTY PROVIDED FOR IN THIS SUBDIVISION SHALL BE IN ADDI-
34 TION TO AND MAY BE IMPOSED CONCURRENTLY WITH ANY OTHER PENALTY OR REMEDY
35 PROVIDED FOR IN THIS ARTICLE.

36 2. CRIMINAL PENALTIES. Any person violating any provision of this
37 article, or any rule or regulation made hereunder, shall be guilty of a
38 class E felony; provided, however, that any person who possesses an
39 explosive without being duly licensed or otherwise authorized to do so
40 under the provisions of this article shall be guilty of a class D felo-
41 ny. Whenever, as a result of a plea bargaining agreement the charge is
42 reduced to a lesser offense, such offense may, in addition to any term
43 of imprisonment prescribed by such offense, be punishable by a fine not
44 to exceed twenty-five hundred dollars.

45 S 16. This act shall take effect on the one hundred eightieth day
46 after it shall have become a law; provided, however, all licenses and
47 certificates issued pursuant to article 16 of the labor law prior to the
48 effective date of this act shall remain in full force and effect until
49 such licenses and certificates expire.