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

1102--C

2011-2012 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 5, 2011

Introduced by M. of A. KOLB -- Multi-Sponsored by -- M. of A. CALHOUN, GIGLIO, HAWLEY -- read once and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the penal law, in relation to issuing permits for outdoor use of certain consumer fireworks

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

Section 1. The penal law is amended by adding a new section 405.02 to read as follows:

S 405.02 PERMITS FOR OUTDOOR USE OF CERTAIN CONSUMER FIREWORKS.

1. NOTWITHSTANDING THE PROVISIONS OF SECTION 270.00 OF THIS CHAPTER CONSUMER FIREWORKS AS DEFINED IN THIS SECTION MAY BE POSSESSED AND USED OUTDOORS BY A PERSON HOLDING A VALID PERMIT ISSUED BY A LOCAL MUNICIPALITY UNDER THIS SECTION.

2. THE PERMIT AUTHORITY OF A CITY, VILLAGE OR TOWN MAY UPON APPLICATION IN WRITING AND THE PAYMENT OF A REASONABLE FEE, AS DETERMINED BY THE PERMITTING AUTHORITY, ISSUE A PERMIT FOR THE OUTDOOR USE OF CONSUMER FIREWORKS. A PERMIT MAY BE ISSUED TO A PERSON WHO IS EIGHTEEN YEARS OF AGE OR OLDER AND HAS VALID PROOF OF COMPLETION OF A CONSUMER FIREWORKS SAFETY COURSE WITHIN THE PAST THREE YEARS, PURSUANT TO SUBDIVISION THREE OF THIS SECTION. THE PERMIT AUTHORITY SHALL RESERVE THE RIGHT TO DENY OR REVOKE ANY PERMIT FOR ANY LEGITIMATE REASON INCLUDING, BUT NOT LIMITED TO, SPACE, WEATHER, NOISE, COMPETING EVENT(S) OR OTHER.

3. THE CONSUMER FIREWORKS SAFETY COURSE MUST BE TAUGHT BY A FIREWORKS GROUP, ORGANIZATION OR COMPANY RECOGNIZED BY THE AMERICAN PYROTECHNICS ASSOCIATION. UPON THE COMPLETION OF SUCH SAFETY COURSE, A PROOF OF

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

COMPLETION SHALL BE ISSUED AND SHALL BE VALID FOR THREE YEARS FROM THE DATE OF ISSUANCE.

4. "CONSUMER FIREWORKS" SHALL MEAN AND INCLUDE:

(A) ANY COMBUSTIBLE OR EXPLOSIVE COMPOSITION OR ANY SUBSTANCE OR COMBINATION OF SUBSTANCES, INTENDED TO PRODUCE VISIBLE AND/OR AUDIBLE EFFECTS BY COMBUSTION; AND

(B) WHICH IS SUITABLE FOR USE BY THE PUBLIC BY COMPLYING WITH THE CONSTRUCTION, PERFORMANCE, COMPOSITION AND LABELING REQUIREMENTS PROMULGATED BY THE CONSUMER PRODUCTS SAFETY COMMISSION (CPSC) IN 16 CFR, RELATING TO COMMERCIAL PRACTICE, OR ANY SUCCESSOR REGULATION, AND WHICH COMPLIES WITH THE PROVISIONS FOR "CONSUMER FIREWORKS" AS DEFINED IN THE AMERICAN PYROTECHNICS ASSOCIATION (APA) STANDARD 87-1, 2001 EDITION 3.1.1.1 THROUGH 3.1.1.8, 3.1.2.3 THROUGH 3.1.2.5 AND 3.2.1 THROUGH 3.2.5 OR ANY SUCCESSOR STANDARD.

5. THE USE AND POSSESSION OF CONSUMER FIREWORKS SHALL NOT BE SUBJECT TO THE PROVISIONS OF PART 61 OF TITLE 12 OF THE NYCRR OR TO SECTIONS FOUR HUNDRED EIGHTY-ONE, FOUR HUNDRED EIGHTY-TWO OR FOUR HUNDRED EIGHTY-THREE OF THE GENERAL BUSINESS LAW.

6. ANY PERMIT ISSUED PURSUANT TO THIS SECTION SHALL NOT BE DEEMED TO PERMIT:

(A) THE USE OF FIRECRACKERS, CHASERS, SKY ROCKETS, BOTTLE ROCKETS, MISSILE TYPE ROCKETS OR RELOADABLE TUBE AERIAL SHELL KITS AS DEFINED IN APA SECTIONS 87-1, 3.1.2.1 THROUGH 3.1.2.2 AND 3.1.2.6 THROUGH 3.1.3.2 AND IN 16 CFR, S405, AND GROUND BASED FIREWORKS AS DEFINED IN APA SECTIONS 87-1, 3.1.1.1 THROUGH 3.1.1.8 AND 3.2.1 THROUGH 3.25; OR

(B) THE HOLDER TO VIOLATE ANY LOCAL ORDINANCES.

7. THIS SECTION SHALL NOT APPLY TO CITIES WITH A POPULATION OVER ONE MILLION OR MORE PEOPLE.

S 2. Subdivision 2 of section 270.00 of the penal law, as amended by chapter 180 of the laws of 1997, is amended to read as follows:

2. Offense. (a) Except as herein otherwise provided, or except where a permit is obtained pursuant to section 405.00 OR 405.02; (i) any person who shall offer or expose for sale, sell or furnish, any fireworks or dangerous fireworks is guilty of a class B misdemeanor;

(ii) any person who shall offer or expose for sale, sell or furnish any fireworks or dangerous fireworks valued at five hundred dollars or more shall be guilty of a class A misdemeanor;

(b) (i) Except as herein otherwise stated, or except where a permit is obtained pursuant to section 405.00 OR 405.02, any person who shall possess, use, explode or cause to explode any fireworks or dangerous fireworks is guilty of a violation.

(ii) A person who shall offer or expose for sale, sell or furnish, any dangerous fireworks to any person who is under the age of eighteen is guilty of a class A misdemeanor.

(iii) A person who has previously been convicted of a violation of subparagraph (ii) of this paragraph within the preceding five years and who shall offer or expose for sale, sell or furnish, any dangerous fireworks to any person who is under the age of eighteen, shall be guilty of a class E felony.

(c) Possession of fireworks or dangerous 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 3. Section 405.00 of the penal law is amended by adding a new subdivision 6 to read as follows:

6. SECTION NOT APPLICABLE TO CONSUMER FIREWORKS. THE PROVISIONS OF THIS SECTION SHALL NOT APPLY TO THE USE AND POSSESSION OF CONSUMER FIREWORKS AS SUCH TERM IS DEFINED IN SECTION 405.02 OF THIS ARTICLE.

S 4. This act shall take effect on the ninetieth day after it shall have become a law.