

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

4362--C

2011-2012 Regular Sessions

I N A S S E M B L Y

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Introduced by M. of A. MORELLE, LUPARDO, ZEBROWSKI -- 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 offenses relating to possession or sale of fireworks, sparkling devices and ammunition

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

1 Section 1. Subdivisions 1, 2, and 3 of section 270.00 of the penal
2 law, as amended by chapter 180 of the laws of 1997, are amended to read
3 as follows:
4 1. Definition of "fireworks" and "dangerous fireworks".
5 (A) The term "fireworks," as used in this section, [is defined and
6 declared to be and to include any blank cartridge, blank cartridge
7 pistol, or toy cannon in which explosives are used, firecrackers, spark-
8 lers or other combustible or explosive of like construction, or any
9 preparation containing any explosive or inflammable compound or any
10 tablets or other device commonly used and sold as fireworks containing
11 nitrates, chlorates, oxalates, sulphides of lead, barium, antimony,
12 arsenic, mercury, nitroglycerine, phosphorus or any compound containing
13 any of the same or other explosives, or any substance or combination of
14 substances, or article prepared for the purpose of producing a visible
15 or an audible effect by combustion, explosion, deflagration or detona-
16 tion, or other device containing any explosive substance and the]
17 INCLUDES:
18 (I) DISPLAY FIREWORKS, WHICH MEANS FIREWORKS DEVICES IN A FINISHED
19 STATE, EXCLUSIVE OF MERE ORNAMENTATION, PRIMARILY INTENDED FOR COMMER-
20 CIAL DISPLAYS WHICH ARE DESIGNED TO PRODUCE VISIBLE AND/OR AUDIBLE

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

LBD05241-12-1

1 EFFECTS BY COMBUSTION, DEFLAGRATION OR DETONATION, INCLUDING, BUT NOT
2 LIMITED TO, SALUTES CONTAINING MORE THAN 130 MG (2 GRAINS) OF EXPLOSIVE
3 COMPOSITION, AERIAL SHELLS CONTAINING MORE THAN 40G OF CHEMICAL COMPOSI-
4 TION EXCLUSIVE OF LIFT CHARGE, AND OTHER EXHIBITION DISPLAY ITEMS THAT
5 EXCEED THE LIMITS OF CONSUMER FIREWORKS CONTAINED IN THE AMERICAN PYRO-
6 TECHNIC ASSOCIATION (APA) STANDARD 87-1, 2001 EDITION;

7 (II) ARTICLES PYROTECHNIC, WHICH MEANS PYROTECHNIC DEVICES FOR PROFES-
8 SIONAL USE SIMILAR TO CONSUMER FIREWORKS IN CHEMICAL COMPOSITION AND
9 CONSTRUCTION BUT NOT INTENDED FOR CONSUMER USE AND WHICH ARTICLES MEET
10 THE WEIGHT LIMITS FOR CONSUMER FIREWORKS BUT ARE NOT LABELED AS SUCH AND
11 ARE CLASSIFIED BY THE UNITED STATES DEPARTMENT OF TRANSPORTATION IN 49
12 CFR 172.101 AS UN0431;

13 (III) SPECIAL EFFECTS, WHICH MEANS ANY COMBINATION OF CHEMICAL
14 ELEMENTS OR CHEMICAL COMPOUNDS CAPABLE OF BURNING INDEPENDENTLY OF THE
15 OXYGEN OF THE ATMOSPHERE, AND DESIGNED AND INTENDED TO PRODUCE AN AUDI-
16 BLE, VISUAL, MECHANICAL, OR THERMAL EFFECT AS AN INTEGRAL PART OF A
17 MOTION PICTURE, RADIO, TELEVISION, THEATRICAL, OR OPERA PRODUCTION, OR
18 LIVE ENTERTAINMENT;

19 (IV) CONSUMER FIREWORKS WHICH ARE AERIAL IN PERFORMANCE AND ARE
20 COMMONLY REFERRED TO AS SKY ROCKETS, BOTTLE ROCKETS, MISSILE TYPE ROCK-
21 ETS, HELICOPTERS, AERIAL SPINNERS, ROMAN CANDLES, MINES, SHELL DEVICES,
22 AERIAL SHELL KITS, RELOADABLES AND AUDIBLE GROUND DEVICES WHICH ARE
23 COMMONLY REFERRED TO AS FIRECRACKERS AND CHASERS; AND

24 (V) IN CITIES WITH A POPULATION OF ONE MILLION OR MORE, THE TERM
25 "FIREWORKS" SHALL ALSO INCLUDE ANY BLANK CARTRIDGE, BLANK CARTRIDGE
26 PISTOL, OR TOY CANNON IN WHICH EXPLOSIVES ARE USED, FIRECRACKERS, SPARK-
27 LERS OR OTHER COMBUSTIBLE OR EXPLOSIVE OF LIKE CONSTRUCTION, OR ANY
28 PREPARATION CONTAINING ANY EXPLOSIVE OR INFLAMMABLE COMPOUND OR ANY
29 TABLETS OR OTHER DEVICE COMMONLY USED AND SOLD AS FIREWORKS CONTAINING
30 NITRATES, CHLORATES, OXALATES, SULPHIDES OF LEAD, BARIUM, ANTIMONY,
31 ARSENIC, MERCURY, NITROGLYCERINE, PHOSPHORUS OR ANY COMPOUND CONTAINING
32 ANY OF THE SAME OR OTHER EXPLOSIVES, OR ANY SUBSTANCE OR COMBINATION OF
33 SUBSTANCES, OR ARTICLE PREPARED FOR THE PURPOSE OF PRODUCING A VISIBLE
34 OR AN AUDIBLE EFFECT BY COMBUSTION, EXPLOSION, DEFLAGRATION OR DETONA-
35 TION, OR OTHER DEVICE CONTAINING ANY EXPLOSIVE SUBSTANCE.

36 (B) THE term "dangerous fireworks" means any fireworks capable of
37 causing serious physical injury and which are: firecrackers containing
38 more than fifty milligrams of any explosive substance, torpedoes,
39 skyrockets and rockets including all devices which employ any combusti-
40 ble or explosive substance and which rise in the air during discharge,
41 Roman candles, AND bombs, PROVIDED, HOWEVER, THAT IN CITIES WITH A POPU-
42 LATION OF ONE MILLION OR MORE, THE TERM "DANGEROUS FIREWORKS" SHALL ALSO
43 INCLUDE sparklers more than ten inches in length or one-fourth of one
44 inch in diameter, or chasers including all devices which dart or travel
45 about the surface of the ground during discharge.

46 (C) "Fireworks" and "dangerous fireworks" shall not be deemed to
47 include [(1)] THE FOLLOWING NOR SHALL THE PURCHASE AND USE OF ANY ITEMS
48 LISTED BELOW BE SUBJECT TO THE PROVISIONS OF SECTION 61 OF TITLE 12 OF
49 THE NEW YORK STATE CODES, RULES AND REGULATIONS OR SECTION FOUR HUNDRED
50 EIGHTY, FOUR HUNDRED EIGHTY-ONE, FOUR HUNDRED EIGHTY-TWO OR FOUR HUNDRED
51 EIGHTY-THREE OF THE GENERAL BUSINESS LAW:

52 (I) flares of the type used by railroads or any warning lights common-
53 ly known as red flares, or marine distress signals of a type approved by
54 the United States coast guard, or

55 [(2)] (II) toy pistols, toy canes, toy guns or other devices in which
56 paper caps containing twenty-five hundredths grains or less of explosive

1 compound are used, providing they are so constructed that the hand
2 cannot come in contact with the cap when in place for use, and toy
3 pistol paper caps which contain less than twenty-hundredths grains of
4 explosive mixture, the sale and use of which shall be permitted at all
5 times, or

6 [(3)] (III) bank security devices which contain not more than fifty
7 grams of any compound or substance or any combination thereof, together
8 with an igniter not exceeding 0.2 gram, capable of producing a lachry-
9 mating and/or visible or audible effect, where such device is stored or
10 used only by banks, national banking associations, trust companies,
11 savings banks, savings and loan associations, industrial banks, or cred-
12 it unions, or by any manufacturer, wholesaler, dealer, jobber or common
13 carrier for such devices and where the total storage on any one premises
14 does not exceed one hundred devices.

15 (C-1) EXCEPT IN CITIES WITH A POPULATION OF ONE MILLION OF MORE,
16 "FIREWORKS" AND "DANGEROUS FIREWORKS" SHALL NOT BE DEEMED TO INCLUDE THE
17 FOLLOWING, NOR SHALL THE PURCHASE AND USE OF ANY ITEMS LISTED BELOW BE
18 SUBJECT TO THE PROVISIONS OF SECTION 61 OF TITLE 12 OF THE NEW YORK
19 STATE CODES, RULES AND REGULATIONS OR SECTION FOUR HUNDRED EIGHTY, FOUR
20 HUNDRED EIGHTY-ONE, FOUR HUNDRED EIGHTY-TWO OR FOUR HUNDRED EIGHTY-THREE
21 OF THE GENERAL BUSINESS LAW:

22 (I) SPARKLING DEVICES WHICH ARE GROUND-BASED OR HAND-HELD DEVICES THAT
23 PRODUCE A SHOWER OF WHITE, GOLD, OR COLORED SPARKS AS THEIR PRIMARY
24 PYROTECHNIC EFFECT. ADDITIONAL EFFECTS MAY INCLUDE A COLORED FLAME, AN
25 AUDIBLE CRACKLING EFFECT, AN AUDIBLE WHISTLE EFFECT, AND SMOKE. THESE
26 DEVICES DO NOT RISE INTO THE AIR, DO NOT FIRE INSERTS OR PROJECTILES
27 INTO THE AIR, AND DO NOT EXPLODE OR PRODUCE A REPORT (AN AUDIBLE CRACK-
28 LING-TYPE EFFECT IS NOT CONSIDERED TO BE A REPORT). GROUND-BASED OR
29 HAND-HELD DEVICES THAT PRODUCE A CLOUD OF SMOKE AS THEIR SOLE PYROTECH-
30 NIC EFFECT ARE ALSO INCLUDED IN THIS CATEGORY. TYPES OF DEVICES IN THIS
31 CATEGORY INCLUDE:

32 (A) CYLINDRICAL FOUNTAIN: CYLINDRICAL TUBE CONTAINING NOT MORE THAN 75
33 G OF PYROTECHNIC COMPOSITION THAT MAY BE CONTAINED IN A DIFFERENT SHAPED
34 EXTERIOR SUCH AS A SQUARE, RECTANGLE, CYLINDER OR OTHER SHAPE BUT THE
35 INTERIOR TUBES ARE CYLINDRICAL IN SHAPE. UPON IGNITION, A SHOWER OF
36 COLORED SPARKS, AND SOMETIMES A WHISTLING EFFECT OR SMOKE, IS PRODUCED.
37 THIS DEVICE MAY BE PROVIDED WITH A SPIKE FOR INSERTION INTO THE GROUND
38 (SPIKE FOUNTAIN), A WOOD OR PLASTIC BASE FOR PLACING ON THE GROUND (BASE
39 FOUNTAIN), OR A WOOD OR CARDBOARD HANDLE TO BE HAND HELD (HANDLE FOUN-
40 TAIN). WHEN MORE THAN ONE TUBE IS MOUNTED ON A COMMON BASE, TOTAL PYRO-
41 TECHNIC COMPOSITION MAY NOT EXCEED 200 G, AND WHEN TUBES ARE SECURELY
42 ATTACHED TO A BASE AND THE TUBES ARE SEPARATED FROM EACH OTHER ON THE
43 BASE BY A DISTANCE OF AT LEAST HALF AN INCH (12.7 MILLIMETERS), A MAXI-
44 MUM TOTAL WEIGHT OF 500 G OF PYROTECHNIC COMPOSITION SHALL BE ALLOWED.

45 (B) CONE FOUNTAIN: CARDBOARD OR HEAVY PAPER CONE CONTAINING NOT MORE
46 THAN 50 G OF PYROTECHNIC COMPOSITION. THE EFFECT IS THE SAME AS THAT OF
47 A CYLINDRICAL FOUNTAIN. WHEN MORE THAN ONE CONE IS MOUNTED ON A COMMON
48 BASE, TOTAL PYROTECHNIC COMPOSITION MAY NOT EXCEED 200 G, AS IS OUTLINED
49 IN SUBPARAGRAPH (I) OF THIS PARAGRAPH.

50 (C) ILLUMINATING TORCH: CYLINDRICAL TUBE CONTAINING NOT MORE THAN 100
51 G OF PYROTECHNIC COMPOSITION THAT PRODUCES A COLORED FLAME UPON IGNITION
52 AND MAY HAVE A SPIKE, BASE, OR HAND HELD FOUNTAIN. WHEN MORE THAN ONE
53 TUBE IS MOUNTED ON A COMMON BASE, TOTAL PYROTECHNIC COMPOSITION MAY NOT
54 EXCEED 200 G, AS IS OUTLINED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH.

55 (D) WHEEL: PYROTECHNIC DEVICE INTENDED TO BE ATTACHED TO A POST OR
56 TREE BY MEANS OF A NAIL OR STRING WHICH MAY HAVE ONE OR MORE DRIVERS,

1 EACH OF WHICH MAY CONTAIN NOT MORE THAN 60 G OF PYROTECHNIC COMPOSITION.
2 NO WHEEL MAY CONTAIN MORE THAN 200 G OF TOTAL PYROTECHNIC COMPOSITION.
3 UPON IGNITION, THE WHEEL REVOLVES, PRODUCING A SHOWER OF COLOR AND
4 SPARKS AND, SOMETIMES, A WHISTLING EFFECT.

5 (E) GROUND SPINNER: SMALL DEVICE CONTAINING NOT MORE THAN 20 G OF
6 PYROTECHNIC COMPOSITION, VENTING OUT AN ORIFICE USUALLY ON THE SIDE OF
7 THE TUBE AND IS SIMILAR IN OPERATION TO A WHEEL BUT INTENDED TO BE
8 PLACED FLAT ON THE GROUND AND IGNITED. A SHOWER OF SPARKS AND COLOR IS
9 PRODUCED BY THE RAPIDLY SPINNING DEVICE.

10 (F) FLITTER SPARKLER: NARROW PAPER TUBE ATTACHED TO A STICK OR WIRE
11 AND FILLED WITH NOT MORE THAN 5 G OF PYROTECHNIC COMPOSITION THAT
12 PRODUCES COLOR AND SPARKS UPON IGNITION. THE PAPER AT ONE END OF THE
13 TUBE IS IGNITED TO MAKE THE DEVICE FUNCTION.

14 (G) TOY SMOKE DEVICE: SMALL PLASTIC OR PAPER ITEM CONTAINING NOT MORE
15 THAN 100 G OF PYROTECHNIC COMPOSITION THAT, UPON IGNITION, PRODUCES
16 WHITE OR COLORED SMOKE AS THE PRIMARY EFFECT. TOY SMOKE DEVICES, WHEN
17 COMPLYING WITH THE PROVISIONS OF THIS SECTION, ARE CLASSED AS FIREWORKS,
18 1.4G UNLESS CLASSED AS 1.4S OR NOT REGULATED AS AN EXPLOSIVE ON THE
19 BASIS OF EXAMINATION AND TESTING AS SPECIFIED IN TITLE 49 CFR, S 173.56.

20 (H) WIRE SPARKLER/DIPPED STICK: THESE DEVICES CONSIST OF A METAL WIRE
21 OR WOOD DOWEL THAT HAS BEEN COATED WITH PYROTECHNIC COMPOSITION. UPON
22 IGNITION OF THE TIP OF THE DEVICE, A SHOWER OF SPARKS IS PRODUCED.
23 SPARKLERS MAY CONTAIN UP TO 100 G OF PYROTECHNIC COMPOSITION PER ITEM.

24 (I) MULTIPLE TUBE DEVICES CONTAINING MORE THAN ONE CARDBOARD TUBE: THE
25 IGNITION OF ONE EXTERNAL FUSE CAUSES ALL OF THE TUBES TO FUNCTION IN
26 SEQUENCE. THE TUBES ARE EITHER INDIVIDUALLY ATTACHED TO A WOOD OR PLAS-
27 TIC BASE, OR ARE DENSE-PACKED AND ARE HELD TOGETHER BY GLUE, WIRE,
28 STRING, OR OTHER MEANS THAT SECURELY HOLDS THE TUBES TOGETHER DURING
29 OPERATION. THE WEIGHT OF CHEMICAL COMPOSITION PER TUBE IS LIMITED TO THE
30 WEIGHT LIMIT FOR THE SPECIFIC TYPE OF DEVICE IN THE TUBE. THE CONNECTING
31 FUSES ON MULTIPLE TUBE DEVICES MUST BE FUSED IN SEQUENCE SO THAT THE
32 TUBES FIRE SEQUENTIALLY RATHER THAN ALL AT ONCE. WHEN THE TUBES ARE
33 SECURELY ATTACHED TO A WOOD OR PLASTIC BASE, AND THE TUBES ARE SEPARATED
34 FROM EACH OTHER ON THE BASE BY A DISTANCE OF AT LEAST HALF AN INCH (12.7
35 MILLIMETERS), A MAXIMUM TOTAL WEIGHT OF 500 G OF PYROTECHNIC COMPOSITION
36 SHALL BE PERMITTED FOR APPROVAL AS 1.4G, OR

37 (II) NOVELTIES WHICH DO NOT REQUIRE APPROVAL FROM USDOT AND ARE NOT
38 REGULATED AS EXPLOSIVES, PROVIDED THAT THEY ARE MANUFACTURED AND PACK-
39 AGED AS DESCRIBED BELOW:

40 (A) PARTY POPPER: SMALL DEVICES WITH PAPER OR PLASTIC EXTERIORS THAT
41 ARE ACTUATED BY MEANS OF FRICTION (A STRING OR TRIGGER IS TYPICALLY
42 PULLED TO ACTUATE THE DEVICE). THEY FREQUENTLY RESEMBLE CHAMPAGNE
43 BOTTLES OR TOY PISTOLS IN SHAPE. UPON ACTIVATION, THE DEVICE EXPELS
44 FLAME-RESISTANT PAPER STREAMERS, CONFETTI, OR OTHER NOVELTIES AND
45 PRODUCES A SMALL REPORT. DEVICES MAY CONTAIN NOT MORE THAN 16 MG (0.25
46 GRAINS) OF EXPLOSIVE COMPOSITION, WHICH IS LIMITED TO POTASSIUM CHLORATE
47 AND RED PHOSPHORUS. THESE DEVICES MUST BE PACKAGED IN AN INNER PACKAGING
48 WHICH CONTAINS A MAXIMUM OF SEVENTY-TWO DEVICES.

49 (B) SNAPPER: SMALL, PAPER-WRAPPED DEVICES CONTAINING NOT MORE THAN ONE
50 MILLIGRAM OF SILVER FULMINATE COATED ON SMALL BITS OF SAND OR GRAVEL.
51 WHEN DROPPED, THE DEVICE EXPLODES, PRODUCING A SMALL REPORT. SNAPPERS
52 MUST BE IN INNER PACKAGES NOT TO EXCEED FIFTY DEVICES EACH, AND THE
53 INNER PACKAGES MUST CONTAIN SAWDUST OR A SIMILAR, IMPACT-ABSORBING MATE-
54 RIAL.

55 (C) TOY SMOKE DEVICES: SMALL DEVICES CONSISTING OF CORK-LIKE SPHERES,
56 OR CARDBOARD OR PLASTIC TUBES, CONTAINING NOT MORE THAN 5 G OF PYROTECH-

1 NIC COMPOSITION THAT PRODUCES A SMALL CLOUD OF SMOKE AFTER ACTIVATION.
2 THE DEVICES ARE TYPICALLY IGNITED BY MEANS OF SAFETY FUSE. THE OUTER
3 CONFIGURATION IS USUALLY A SPHERE (SMOKE BALL), CYLINDRICAL TUBE, OR
4 PAPER CONE. THE CHEMICAL COMPOSITION FOR WHITE SMOKE CONSISTS OF POTAS-
5 SIUM NITRATE AND SULFUR, WHILE COLORED SMOKES ARE PRODUCED BY MIXTURES
6 CONSISTING OF POTASSIUM CHLORATE, SULFUR OR SUGAR, AND A SUBLIMABLE
7 ORGANIC DYE. MIXTURES CONTAINING POTASSIUM CHLORATE MUST ALSO CONTAIN A
8 NEUTRALIZER/COOLANT SUCH AS SODIUM BICARBONATE. TO BE ELIGIBLE FOR
9 UNREGULATED STATUS, THESE DEVICES MUST PRODUCE SMOKE AS THEIR SOLE PYRO-
10 TECHNIC EFFECT FOLLOWING IGNITION, AND MUST BE PACKAGED IN INNER UNITS
11 CONTAINING A MAXIMUM OF SEVENTY-TWO DEVICES.

12 (D) SNAKES, GLOW WORM: PRESSED PELLETS OF PYROTECHNIC COMPOSITION THAT
13 CONTAIN 2 G OR LESS OF COMPOSITION PER ARTICLE. UPON BURNING, THEY
14 PRODUCE A SNAKE-LIKE ASH THAT EXPANDS IN LENGTH AS THE PELLET BURNS.
15 CHEMICAL COMPOSITIONS VARY, BUT TYPICALLY CONTAIN AMMONIUM PERCHLORATE,
16 NITRATE PITCH, ASPHALTUM, AND SIMILAR CARBONACEOUS MATERIALS. THESE
17 DEVICES ARE LIMITED TO A MAXIMUM OF TWENTY-FIVE PELLETS PER INNER PACK-
18 AGE IN ORDER TO BE TRANSPORTED AS NOT REGULATED DEVICES.

19 (E) WIRE SPARKERS/DIPPED STICKS: THESE DEVICES CONSIST OF A METAL WIRE
20 OR WOOD DOWEL THAT HAS BEEN COATED WITH PYROTECHNIC COMPOSITION. UPON
21 IGNITION OF THE TIP OF THE DEVICE, A SHOWER OF SPARKS IS PRODUCED.
22 SPARKLERS MAY CONTAIN UP TO 100 G OF COMPOSITION PER ITEM. SPARKLERS
23 TYPICALLY USE BARIUM NITRATE AS THE OXIDIZER, WITH ALUMINUM AND DEXTRINE
24 AS FUELS. IRON FILINGS PRODUCE THE SPARK EFFECT. COLOR-PRODUCING SPARK-
25 LERS USE POTASSIUM PERCHLORATE AS AN OXIDIZER. ANY SPARKLER CONTAINING A
26 CHLORATE OR PERCHLORATE OXIDIZER IS LIMITED TO A MAXIMUM OF 5 G OF
27 COMPOSITION PER ARTICLE. SPARKLERS MUST BE PACKAGED IN INNER PACKAGING
28 THAT CONTAIN EIGHT DEVICES OR LESS TO BE TRANSPORTED AS NOT REGULATED
29 DEVICES, OR

30 (III) TOY PLASTIC OR PAPER CAPS FOR TOY PISTOLS IN SHEETS, STRIPS,
31 ROLLS, OR INDIVIDUAL CAPS, CONTAINING NOT MORE THAN AN AVERAGE OF 0.25
32 GRAINS (16 MG) OF EXPLOSIVE COMPOSITION PER CAP. TOY CAPS ARE DESCRIBED
33 AS TOY CAPS NA0037 AND CLASSED AS 1.4S. TOY CAPS SHALL ONLY BE APPROVED
34 FOR TRANSPORTATION USING THE PROCEDURE SPECIFIED IN TITLE 49 CFR, S
35 173.56(B).

36 2. Offense. (a) Except as herein otherwise provided, or except where a
37 permit is obtained pursuant to section 405.00 OF THIS CHAPTER; (i) any
38 person who shall offer or expose for sale, sell or furnish, any fire-
39 works or dangerous fireworks is guilty of a class B misdemeanor;

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

43 [(b) (i) Except as herein otherwise stated, or except where a permit
44 is obtained pursuant to section 405.00,] (III) any person who shall
45 possess, use, explode or cause to explode any fireworks or dangerous
46 fireworks is guilty of a violation[.];

47 [(ii) A] (IV) ANY person who shall offer or expose for sale, sell or
48 furnish, any dangerous fireworks, FIREWORKS OR DEVICES AS DEFINED IN
49 PARAGRAPH (C-1) OF SUBDIVISION ONE OF THIS SECTION to any person who is
50 under the age of eighteen is guilty of a class A misdemeanor.

51 [(iii)] (B) A person who has previously been convicted of a violation
52 of subparagraph [(ii)] (IV) of [this] paragraph (A) OF THIS SUBDIVISION
53 within the preceding five years and who shall offer or expose for sale,
54 sell or furnish, any dangerous fireworks to any person who is under the
55 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.

3. [The provisions of this section shall not apply to articles of the kind and nature herein mentioned, 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 the same be held voluntarily by such railroads or transportation companies as warehousemen for delivery to points within the state; provided, that none of the provisions of this section shall apply to 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, or to high explosives for blasting or similar purposes; provided that none of the provisions of this section shall apply to fireworks or dangerous fireworks and the use thereof by the army and navy departments of the state and federal government; nor shall anything in this act contained be construed to prohibit any manufacturer, wholesaler, dealer or jobber from manufacturing, possessing or selling at wholesale such fireworks or dangerous fireworks to municipalities, religious or civic organizations, fair associations, amusement parks, or other organizations or groups of individuals authorized to possess and use fireworks or dangerous fireworks under this act, or the sale or use of blank cartridges for a show or theatre, or for signal purposes in athletic sports, or for dog trials or dog training, or the use, or the storage, transportation or sale for use of fireworks or dangerous fireworks in the preparation for or in connection with television broadcasts; nor shall anything in this act contained be construed to prohibit the manufacture of fireworks or dangerous fireworks, nor the sale of any kind of fireworks or dangerous fireworks, provided the same are to be shipped directly out of the state.] EXCEPTIONS. (A) THE PROVISIONS OF THIS SECTION SHALL NOT APPLY TO:

(I) FIREWORKS, DANGEROUS FIREWORKS, AND DEVICES DEFINED IN PARAGRAPH (C-1) OF SUBDIVISION ONE OF THIS SECTION WHILE IN POSSESSION OF RAILROADS, COMMON OR CONTRACT CARRIERS, RETAILERS, WHOLESALERS, DISTRIBUTORS, JOBBERS AND TRANSPORTATION COMPANIES OR TRANSPORTATION AGENCIES FOR THE PURPOSE OF TRANSPORTATION TO POINTS WITHOUT THE STATE, THE SHIPMENT OF WHICH IS NOT PROHIBITED BY INTERSTATE COMMERCE COMMISSION REGULATIONS AS FORMULATED AND PUBLISHED FROM TIME TO TIME, UNLESS THEY BE HELD VOLUNTARILY BY SUCH RAILROADS, COMMON OR CONTRACT CARRIERS, RETAILERS, WHOLESALERS, DISTRIBUTORS, JOBBERS AND TRANSPORTATION AGENCIES OR TRANSPORTING COMPANIES AS WAREHOUSEMEN FOR DELIVERY TO POINTS WITHIN THE STATE;

(II) 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;

(III) HIGH EXPLOSIVES FOR BLASTING OR SIMILAR PURPOSES;

(IV) FIREWORKS, DANGEROUS FIREWORKS AND DEVICES DEFINED IN PARAGRAPH (C-1) OF SUBDIVISION ONE OF THIS SECTION FOR THE USE THEREOF BY THE UNITED STATES MILITARY, AND DEPARTMENTS OF THE STATE AND FEDERAL GOVERNMENT;

(V) THE USE, TRANSPORTATION AND STORAGE OF FIREWORKS, DANGEROUS FIREWORKS AND DEVICES DEFINED IN PARAGRAPH (C-1) OF SUBDIVISION ONE OF THIS SECTION AND SPECIAL EFFECTS MATERIALS IN CONNECTION WITH THE PRODUCTION OF MOTION PICTURES, TELEVISION PROGRAMS, COMMERCIALS, AND ALL ENTER-

1 TAINMENT MEDIA RECORDED IN ANY CURRENT OR TO BE DESIGNED FORMAT WHEN
2 SUCH USE, TRANSPORTATION AND STORAGE HAS BEEN APPROPRIATELY PERMITTED BY
3 THE LOCAL GOVERNMENTAL SUBDIVISION HAVING JURISDICTION.

4 (B) NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO PROHIBIT:

5 (I) ANY MANUFACTURER, WHOLESALER, RETAILER, DEALER OR JOBBER FROM
6 MANUFACTURING, POSSESSING OR SELLING AT WHOLESALE A DEVICE DEFINED IN
7 PARAGRAPH (C-1) OF SUBDIVISION ONE OF THIS SECTION TO MUNICIPALITIES,
8 RELIGIOUS OR CIVIC ORGANIZATIONS, FAIR ASSOCIATIONS, AMUSEMENT PARKS, OR
9 OTHER ORGANIZATIONS AUTHORIZED BY THE STATE TO STORE, TRANSPORT, POSSESS
10 AND USE OR TO INDIVIDUALS TO STORE, TRANSPORT, POSSESS AND USE;

11 (II) THE SALE OR USE OF BLANK CARTRIDGES FOR A MOTION PICTURE, TELE-
12 VISION PROGRAM, COMMERCIAL AND ALL ENTERTAINMENT MEDIA, OR FOR SIGNAL
13 PURPOSES IN ATHLETIC SPORTS, OR FOR DOG TRIALS OR DOG TRAINING;

14 (III) THE USE, STORAGE, TRANSPORTATION OR SALE OR TRANSFER FOR USE OF
15 FIREWORKS AND DEVICES DEFINED IN PARAGRAPH (C-1) OF SUBDIVISION ONE OF
16 THIS SECTION IN THE PREPARATION FOR OR IN CONNECTION WITH MOTION
17 PICTURES, TELEVISION PROGRAMS, COMMERCIALS, AND ALL ENTERTAINMENT MEDIA
18 RECORDED IN ANY CURRENT OR TO BE DEIGNED FORMAT WHEN SUCH USE, TRANSPOR-
19 TATION AND STORAGE HAS BEEN APPROPRIATELY PERMITTED BY THE LOCAL GOVERN-
20 MENTAL SUBDIVISION HAVING JURISDICTION; OR

21 (IV) THE MANUFACTURE OR SALE OF DEVICES DEFINED IN PARAGRAPH (C-1) OF
22 SUBDIVISION ONE OF THIS SECTION PROVIDED THEY ARE TO BE SHIPPED DIRECTLY
23 OUT OF SUCH CITY AND ANY SUCH ITEMS ARE SOLD IN ACCORDANCE WITH THE
24 PROVISIONS OF THIS ARTICLE.

25 S 2. Subdivision 5 of section 405.00 of the penal law is amended to
26 read as follows:

27 5. Local ordinances superseded. (A) All local ordinances regulating or
28 prohibiting the display of fireworks are hereby superseded by the
29 provisions of this section. Every city, town or village shall have the
30 power to enact ordinances or local laws regulating or prohibiting the
31 use, or the storage, transportation or sale for use of fireworks in the
32 preparation for or in connection with television broadcasts.

33 (B) FURTHER, NO CITY, MUNICIPALITY OR OTHER LOCAL JURISDICTION SHALL
34 ENACT A LOCAL LAW THAT IS INCONSISTENT WITH THE PROVISIONS OF SECTION
35 270.00 OF THIS CHAPTER NOR TO REGULATE DEVICES DEFINED IN PARAGRAPH
36 (C-1) OF SUBDIVISION ONE OF SECTION 270.00 OF THIS CHAPTER THAT IS IN
37 CONFLICT WITH THE PROVISIONS OF NFPA 1124, 2006 EDITION ONLY.

38 S 3. This act shall take effect immediately.