

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:

1 Section 1. The penal law is amended by adding a new section 405.02 to
2 read as follows:
3 S 405.02 PERMITS FOR OUTDOOR USE OF CERTAIN CONSUMER FIREWORKS.
4 1. NOTWITHSTANDING THE PROVISIONS OF SECTION 270.00 OF THIS CHAPTER
5 CONSUMER FIREWORKS AS DEFINED IN THIS SECTION MAY BE POSSESSED AND USED
6 OUTDOORS BY A PERSON HOLDING A VALID PERMIT ISSUED BY A LOCAL MUNICI-
7 PALITY UNDER THIS SECTION.
8 2. THE PERMIT AUTHORITY OF A CITY, VILLAGE OR TOWN MAY UPON APPLICA-
9 TION IN WRITING AND THE PAYMENT OF A REASONABLE FEE, AS DETERMINED BY
10 THE PERMITTING AUTHORITY, ISSUE A PERMIT FOR THE OUTDOOR USE OF CONSUMER
11 FIREWORKS. A PERMIT MAY BE ISSUED TO A PERSON WHO IS EIGHTEEN YEARS OF
12 AGE OR OLDER AND HAS VALID PROOF OF COMPLETION OF A CONSUMER FIREWORKS
13 SAFETY COURSE WITHIN THE PAST THREE YEARS, PURSUANT TO SUBDIVISION THREE
14 OF THIS SECTION. THE PERMIT AUTHORITY SHALL RESERVE THE RIGHT TO DENY
15 OR REVOKE ANY PERMIT FOR ANY LEGITIMATE REASON INCLUDING, BUT NOT LIMIT-
16 ED TO, SPACE, WEATHER, NOISE, COMPETING EVENT(S) OR OTHER.
17 3. THE CONSUMER FIREWORKS SAFETY COURSE MUST BE TAUGHT BY A FIREWORKS
18 GROUP, ORGANIZATION OR COMPANY RECOGNIZED BY THE AMERICAN PYROTECHNICS
19 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.

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

3 4. "CONSUMER FIREWORKS" SHALL MEAN AND INCLUDE:

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

7 (B) WHICH IS SUITABLE FOR USE BY THE PUBLIC BY COMPLYING WITH THE
8 CONSTRUCTION, PERFORMANCE, COMPOSITION AND LABELING REQUIREMENTS PROMUL-
9 GATED BY THE CONSUMER PRODUCTS SAFETY COMMISSION (CPSC) IN 16 CFR,
10 RELATING TO COMMERCIAL PRACTICE, OR ANY SUCCESSOR REGULATION, AND WHICH
11 COMPLIES WITH THE PROVISIONS FOR "CONSUMER FIREWORKS" AS DEFINED IN THE
12 AMERICAN PYROTECHNICS ASSOCIATION (APA) STANDARD 87-1, 2001 EDITION
13 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
14 OR ANY SUCCESSOR STANDARD.

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

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

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

26 (B) THE HOLDER TO VIOLATE ANY LOCAL ORDINANCES.

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

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

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

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

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

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

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

50 (c) Possession of fireworks or dangerous fireworks valued at ONE
51 HUNDRED fifty dollars or more shall be a presumption that such fireworks
52 were intended to be offered or exposed for sale.

53 S 3. Section 405.00 of the penal law is amended by adding a new subdi-
54 vision 6 to read as follows:

1 6. SECTION NOT APPLICABLE TO CONSUMER FIREWORKS. THE PROVISIONS OF
2 THIS SECTION SHALL NOT APPLY TO THE USE AND POSSESSION OF CONSUMER FIRE-
3 WORKS AS SUCH TERM IS DEFINED IN SECTION 405.02 OF THIS ARTICLE.
4 S 4. This act shall take effect on the ninetieth day after it shall
5 have become a law.