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

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I N A S S E M B L Y

March 3, 2011

Introduced by M. of A. BURLING, FINCH, GIGLIO, McKEVITT, HAWLEY, TOBACCO, CASTELLI, MONTESANO, McLAUGHLIN -- Multi-Sponsored by -- M. of A. BARCLAY, BUTLER, CALHOUN, CONTE, CROUCH, DUPREY, JORDAN, KOLB, MAGEE, McDONOUGH, D. MILLER, OAKS, PALMESANO, RAIA, SAYWARD, SPANO, TEDISCO, THIELE -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, in relation to increasing criminal penalties for crimes relating to terrorism

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

Section 1. Section 265.00 of the penal law is amended by adding a new subdivision 24 to read as follows:

24. "EXPLOSIVE SUBSTANCE" MEANS GUNPOWDER, POWDERS USED FOR BLASTING, HIGH EXPLOSIVES, BLASTING MATERIALS, DETONATING FUSES, DETONATORS AND OTHER DETONATING AGENTS, SMOKELESS POWDER, ANY CHEMICAL COMPOUND OR ANY MECHANICAL MIXTURE CONTAINING ANY OXIDIZING AND COMBUSTIBLE UNITS, OR OTHER INGREDIENTS IN SUCH PROPORTIONS, QUANTITIES, OR PACKING THAT IGNITION BY FIRE, FRICTION, CONCUSSION, PERCUSSION OR DETONATION, OF ANY PART THEREOF, MAY AND IS INTENDED TO CAUSE AN EXPLOSION, OR ANY SUBSTANCE OR CHEMICAL COMPOUND OR COMBINATION OF SUBSTANCES OR CHEMICAL COMPOUNDS WHICH WHEN COMBINED OR WHEN COMBINED AND DETONATED, MAY AND IS INTENDED TO CAUSE AN EXPLOSION. AN EXPLOSIVE SUBSTANCE SHALL NOT INCLUDE GASOLINE, KEROSENE, NAPHTHA, TURPENTINE, BENZINE, ACETONE, ETHYL ETHER, BENZOL, DIESEL FUEL, FERTILIZER, OR ANY OTHER PETROLEUM OR PETROCHEMICAL BASED PRODUCT, WHEN THE POSSESSOR STORES OR MAINTAINS THE SAME FOR PURPOSES OF ITS NORMAL AND ACCEPTED USE, AND NOT WITH THE INTENT TO USE SUCH SUBSTANCE OR SUBSTANCES TO CAUSE OR PRODUCE AN EXPLOSION TO THE INJURY OF LIFE, LIMB OR PROPERTY, OR ALL QUANTITIES OF BLACK POWDER NOT EXCEEDING FIVE POUNDS FOR USE IN FIRING ANTIQUE FIREARMS OR ARTIFACTS OR REPLICAS THEREOF, OR FIXED AMMUNITION AND PRIMERS FOR SMALL ARMS, FIRE CRACKERS, SAFETY FUSES AND MATCHES WHEN DETERMINED TO BE OF SUCH LIMITED QUANTITY, OF SUCH NATURE AND SO PACKED THAT IT IS IMPOSSIBLE TO PRODUCE

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

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AN EXPLOSION OF SUCH UNITS TO THE INJURY OF LIFE, LIMB OR PROPERTY, OR ANY EXPLOSIVE SUBSTANCE FOR WHICH THE POSSESSOR MAINTAINS A VALID PERMIT OR OTHER EXPRESS LEGAL AUTHORIZATION TO POSSESS, OWN, MAINTAIN OR STORE THE SAME.

S 2. Subdivision 2 of section 265.02 of the penal law, as amended by chapter 764 of the laws of 2005, is amended to read as follows:

(2) Such person possesses any EXPLOSIVE SUBSTANCE, explosive or incendiary bomb, bombshell, firearm silencer, machine-gun or any other firearm or weapon simulating a machine-gun and which is adaptable for such use; or

S 3. Section 270.05 of the penal law, the section heading and the closing paragraph as amended and subdivisions 5 and 6 as added by chapter 354 of the laws of 1996, subdivision 1 as amended by chapter 452 of the laws of 1969 and subdivision 4 as added by chapter 286 of the laws of 1978, is amended to read as follows:

S 270.05 Unlawfully possessing or selling noxious material.

1. As used in this section, "noxious material" means any container which contains any drug or other substance capable of generating offensive, noxious or suffocating fumes, gases or vapors, [or capable of immobilizing a person] WHICH UPON INHALATION OR EXPOSURE WILL CAUSE THE IMMOBILIZATION OR SEVERE DISCOMFORT OR SICKNESS OF A HUMAN BEING.

2. A person is guilty of unlawfully possessing noxious material when he OR SHE possesses such material under circumstances evincing an intent to use it or to cause it to be used to inflict physical injury upon or to cause annoyance to a person, or to damage property of another, or to disturb the public peace.

3. Possession of noxious material is presumptive evidence of intent to use it or cause it to be used in violation of this section.

4. Bank security devices not prohibited. Notwithstanding the provisions of [subdivision] SUBDIVISIONS one, TWO AND THREE of this section, it shall not be unlawful for any bank, national banking association, trust company, savings bank, savings and loan association, industrial bank, or credit union to store, possess, transport, use or cause to discharge any bank security device as described in subdivision one of section 270.00 of this [chapter] ARTICLE; nor shall it be unlawful for any manufacturer, wholesaler, dealer, jobber or common carrier to manufacture, store, possess, transport, or sell such a device to banks, national banking associations, trust companies, savings banks, savings and loan associations, industrial banks or credit unions.

5. Self-defense spray devices not prohibited. Notwithstanding the provisions of subdivisions two and three of this section, it shall not be unlawful for a person eighteen years of age or older to possess a self-defense spray device as defined in paragraph fourteen of subdivision a of section 265.20 of this chapter in accordance with the provisions set forth therein.

6. A person is guilty of unlawfully selling a noxious material when he or she sells a self-defense spray device as defined in paragraph fourteen of subdivision a of section 265.20 of this chapter and such sale was not authorized in accordance with the provisions of paragraph fifteen of subdivision a of section 265.20 of this chapter.

Unlawfully possessing or selling noxious material is a class [B] A misdemeanor.

S 4. The penal law is amended by adding two new sections 270.06 and 270.07 to read as follows:

S 270.06 UNLAWFULLY POSSESSING HIGHLY NOXIOUS MATERIAL.

1. AS USED IN THIS SECTION, "HIGHLY NOXIOUS MATERIAL" MEANS ANY CONTAINER WHICH CONTAINS ANY DRUG OR OTHER SUBSTANCE CAPABLE OF GENERATING OFFENSIVE, NOXIOUS OR SUFFOCATING FUMES, GASES OR VAPORS, WHICH UPON INHALATION OR EXPOSURE CAUSES THE SEVERE DISFIGUREMENT, PERMANENT INJURY OR DEATH TO A HUMAN BEING.

2. A PERSON IS GUILTY OF UNLAWFULLY POSSESSING HIGHLY NOXIOUS MATERIAL WHEN HE OR SHE POSSESSES SUCH MATERIAL UNDER CIRCUMSTANCES EVINCING AN INTENT TO USE IT OR TO CAUSE IT TO BE USED TO INFLICT PERMANENT PHYSICAL INJURY, SEVERE DISFIGUREMENT OR DEATH TO A PERSON, OR TO DAMAGE PROPERTY OF ANOTHER, OR TO DISTURB THE PUBLIC PEACE.

3. POSSESSION OF HIGHLY NOXIOUS MATERIAL IS PRESUMPTIVE EVIDENCE OF INTENT TO USE IT OR CAUSE IT TO BE USED IN VIOLATION OF THIS SECTION.

4. BANK SECURITY DEVICES NOT PROHIBITED. NOTWITHSTANDING THE PROVISIONS OF SUBDIVISIONS ONE, TWO AND THREE OF THIS SECTION, IT SHALL NOT BE UNLAWFUL FOR ANY BANK, NATIONAL BANKING ASSOCIATION, TRUST COMPANY, SAVINGS BANK, SAVINGS AND LOAN ASSOCIATION, INDUSTRIAL BANK, OR CREDIT UNION TO STORE, POSSESS, TRANSPORT, USE OR CAUSE TO DISCHARGE ANY BANK SECURITY DEVICE AS DESCRIBED IN SUBDIVISION ONE OF SECTION 270.00 OF THIS ARTICLE; NOR SHALL IT BE UNLAWFUL FOR ANY MANUFACTURER, WHOLESALER, DEALER, JOBBER OR COMMON CARRIER TO MANUFACTURE, STORE, POSSESS, TRANSPORT, OR SELL SUCH A DEVICE TO BANKS, NATIONAL BANKING ASSOCIATIONS, TRUST COMPANIES, SAVINGS BANKS, SAVINGS AND LOAN ASSOCIATIONS, INDUSTRIAL BANKS OR CREDIT UNIONS.

UNLAWFULLY POSSESSING HIGHLY NOXIOUS MATERIAL IS A CLASS D FELONY.

S 270.07 UNLAWFUL DEFILEMENT OF A WATER SUPPLY.

1. AS USED IN THIS SECTION:

(A) "WATER SUPPLY" MEANS ANY PUBLIC OR PRIVATE TRANSMISSION FACILITY, TREATMENT FACILITY, SOURCE OF SUPPLY FACILITY, WELL OR RESERVOIR, WHICH PROVIDES POTABLE WATER FOR RESIDENTIAL, COMMERCIAL, INDUSTRIAL AND/OR SERVICE NEEDS.

(B) "DEFILING AGENT" MEANS ANY CHEMICAL, BIOLOGICAL OR RADIOACTIVE AGENT OR SUBSTANCE, WHICH IS CAPABLE, WHEN INTRODUCED OR PLACED INTO A WATER SUPPLY, OF CAUSING THE SICKNESS, PHYSICAL INJURY, SEVERE DISFIGUREMENT OR DEATH OF A HUMAN BEING, OR CAUSING IRREPARABLE HARM TO SUCH WATER SUPPLY, OR CAUSING A DISTURBANCE TO THE PUBLIC PEACE. A DEFILING AGENT SHALL NOT INCLUDE A SUBSTANCE WHICH IS INTRODUCED OR PLACED INTO A WATER SUPPLY BY ANY MUNICIPAL OR STATE ENTITY, OR WHICH IS INTRODUCED OR PLACED INTO A WATER SUPPLY BY ANY AGRICULTURAL OR INDUSTRIAL ENTITY AS A RESULT OF ITS ORDINARY LAWFUL OPERATIONS.

2. A PERSON IS GUILTY OF UNLAWFUL DEFILEMENT OF A WATER SUPPLY WHEN HE OR SHE INTENTIONALLY INTRODUCES, PLACES, OR CAUSES TO BE INTRODUCED OR PLACED, INTO A WATER SUPPLY, A DEFILING AGENT WITH THE INTENT TO CAUSE THE SICKNESS, PHYSICAL INJURY, SEVERE DISFIGUREMENT OR DEATH OF ANOTHER HUMAN BEING, OR WITH THE RECKLESS DISREGARD OF CAUSING THE SICKNESS, PHYSICAL INJURY, SEVERE DISFIGUREMENT, OR DEATH OF ANOTHER HUMAN BEING, OR WITH THE INTENT TO CAUSE IRREPARABLE HARM TO SUCH WATER SUPPLY, OR TO DISTURB THE PUBLIC PEACE.

UNLAWFUL DEFILEMENT OF A WATER SUPPLY IS A CLASS B FELONY.

S 5. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.