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

8397

2015-2016 Regular Sessions

I N A S S E M B L Y

October 2, 2015

Introduced by M. of A. CLARK -- read once and referred to the Committee on Codes

AN ACT to amend the penal law and the executive law, in relation to flamethrowing devices

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 26 to read as follows:

26. "FLAMETHROWING DEVICE" MEANS ANY NON-STATIONARY AND TRANSPORTABLE DEVICE DESIGNED OR INTENDED TO EMIT OR PROPEL A BURNING STREAM OF COMBUSTIBLE OR FLAMMABLE LIQUID A DISTANCE OF AT LEAST TEN FEET.

S 2. The penal law is amended by adding a new section 265.38 to read as follows:

S 265.38 UNLAWFUL POSSESSION OF A FLAMETHROWING DEVICE.

1. IT SHALL BE UNLAWFUL FOR A PERSON TO KNOWINGLY SELL, PURCHASE, POSSESS, TRANSPORT, STORE, OR USE A FLAMETHROWING DEVICE, AS DEFINED BY SUBDIVISION TWENTY-SIX OF SECTION 265.00 OF THIS ARTICLE.

2. ANY PERSON WHO USES OR POSSESSES ANY FLAMETHROWING DEVICE WITHOUT A VALID FLAMETHROWING DEVICE PERMIT ISSUED PURSUANT TO SECTION 402.00 OF THIS CHAPTER, SHALL BE GUILTY OF A CLASS B FELONY.

3. THIS SECTION SHALL NOT APPLY TO THE SALE, PURCHASE, POSSESSION, TRANSPORTATION, STORAGE, OR USE OF A FLAMETHROWING DEVICE BY A PERSON, IF THE FOLLOWING CRITERIA ARE MET:

(A) THE PERSON IS REGULARLY EMPLOYED BY OR A PAID OFFICER, EMPLOYEE, OR MEMBER OF A FIRE DEPARTMENT, FIRE PROTECTION DISTRICT, OR FIREFIGHTING AGENCY OF THE FEDERAL GOVERNMENT, THE STATE, A CITY, A COUNTY, A CITY AND COUNTY, DISTRICT, PUBLIC OR MUNICIPAL CORPORATION, OR POLITICAL SUBDIVISION OF THIS STATE;

(B) THE PERSON IS ON DUTY AND ACTING WITHIN THE COURSE AND SCOPE OF HIS OR HER EMPLOYMENT; AND

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

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(C) THE FLAMETHROWING DEVICE IS USED BY THE FIRE DEPARTMENT, FIRE PROTECTION DISTRICT, OR FIREFIGHTING AGENCY DESCRIBED IN THIS SUBDIVISION IN THE COURSE OF FIRE SUPPRESSION.

S 3. The penal law is amended by adding a new article 402 to read as follows:

ARTICLE 402

LICENSING RELATING TO FLAMETHROWING DEVICES

SECTION 402.00 LICENSES TO SELL, PURCHASE, POSSESS, TRANSPORT, STORE, OR USE A FLAMETHROWING DEVICE.

S 402.00 LICENSES TO SELL, PURCHASE, POSSESS, TRANSPORT, STORE, OR USE A FLAMETHROWING DEVICE.

1. NO PERSON SHALL SELL, PURCHASE, POSSESS, TRANSPORT, STORE, OR USE A FLAMETHROWING DEVICE WITHOUT A VALID FLAMETHROWING DEVICE LICENSE ISSUED BY THE DIRECTOR OF FIRE PREVENTION AND CONTROL, PURSUANT TO THIS SECTION.

2. THE STATE FIRE ADMINISTRATOR OF THE OFFICE OF FIRE PREVENTION AND CONTROL SHALL ADOPT REGULATIONS TO ADMINISTER THIS SECTION AND ESTABLISH STANDARDS FOR THE BACKGROUND INVESTIGATION OF AN APPLICANT FOR, AND HOLDER OF, A FLAMETHROWING DEVICE LICENSE, AND FOR THE USE, STORAGE, AND TRANSPORTATION OF A FLAMETHROWING DEVICE.

3. THE STATE FIRE ADMINISTRATOR OF THE OFFICE OF FIRE PREVENTION AND CONTROL SHALL, IN CONJUNCTION WITH THE STANDARDS ESTABLISHED PURSUANT TO SUBDIVISION TWO OF THIS SECTION, REQUIRE AT A MINIMUM THE FOLLOWING CRITERIA BE MET PRIOR TO ISSUING OR RENEWING A FLAMETHROWING DEVICE LICENSE. THE APPLICANT OR LICENSE HOLDER:

(A) IS TWENTY-ONE YEARS OF AGE OR OLDER;

(B) HAS NOT BEEN CONVICTED ANYWHERE OF A FELONY OR SERIOUS OFFENSE;

(C) IS NOT A FUGITIVE FROM JUSTICE;

(D) IS NOT AN UNLAWFUL USER OF OR ADDICTED TO ANY CONTROLLED SUBSTANCE AS DEFINED IN SECTION 21 U.S.C. 802; AND

(E) HAS STATED WHETHER HE OR SHE HAS EVER SUFFERED ANY MENTAL ILLNESS.

4. THE STATE FIRE ADMINISTRATOR OF THE OFFICE OF FIRE PREVENTION AND CONTROL SHALL REVOKE A FLAMETHROWING DEVICE LICENSE IF SUCH LICENSE HOLDER DOES NOT COMPLY WITH THE REQUIREMENTS OF THIS SECTION AND ANY REGULATIONS CREATED PURSUANT TO THIS SECTION.

5. THE STATE FIRE ADMINISTRATOR OF THE OFFICE OF FIRE PREVENTION AND CONTROL SHALL ESTABLISH FEES PURSUANT TO THIS SECTION THAT SHALL BE USED FOR AUTHORIZED ARSON, FIRE PREVENTION AND CONTROL EXPENDITURES.

S 4. Section 156 of the executive law is amended by adding a new subdivision 22 to read as follows:

22. ADOPT REGULATIONS TO ADMINISTER SECTION 402.00 OF THE PENAL LAW, AND ESTABLISH STANDARDS FOR THE BACKGROUND INVESTIGATION OF AN APPLICANT FOR, AND HOLDER OF, A FLAMETHROWING DEVICE LICENSE, AND FOR THE USE, STORAGE, AND TRANSPORTATION OF A FLAMETHROWING DEVICE.

S 5. This act shall take effect on the one hundred eightieth day after it shall have become a law, provided, however, that the state fire administrator of the office of fire prevention and control is authorized and directed to promulgate any rules or regulations necessary to implement the provisions of this act on or before such effective date.