

# STATE OF NEW YORK

724--A

Cal. No. 1019

2017-2018 Regular Sessions

## IN SENATE

January 4, 2017

Introduced by Sen. O'MARA -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the penal law, in relation to authorizing the sale and possession of sparkling devices outside of cities with a population of one million or more

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subparagraph (iv) of paragraph (c) of subdivision 1 and  
2 subparagraph (v) of paragraph (b) of subdivision 3 of section 270.00 of  
3 the penal law, as added by chapter 477 of the laws of 2014, are amended  
4 to read as follows:

5 (iv) except in cities with a population of one million or more, [~~in~~  
6 ~~those counties and cities that opt by local law pursuant to paragraph~~  
7 ~~(b) of subdivision five of section 405.00 of this chapter,~~] "fireworks"  
8 and "dangerous fireworks" shall not be deemed to include "sparkling  
9 devices" as defined in subparagraph (vi) of paragraph (a) of this subdivi-  
10 sion. The storage and retail sale of sparkling devices shall be regu-  
11 lated in a manner that is not in conflict with the provisions of NFPA  
12 1124, 2006 edition.

13 (v) except in cities with a population of one million or more,  
14 possession of sparkling devices lawfully obtained in [~~a jurisdiction~~  
15 ~~that did opt by local law pursuant to paragraph (b) of subdivision five~~  
16 ~~of section 405.00 of this chapter to exclude "sparkling devices" from~~  
17 ~~the definitions of "fireworks" and "dangerous fireworks", for the~~  
18 ~~purpose of lawful use in another jurisdiction that did opt by local law~~  
19 ~~pursuant to paragraph (b) of subdivision five of section 405.00 of this~~  
20 ~~chapter to exclude "sparkling devices" from the definitions of "fire-~~  
21 ~~works" and "dangerous fireworks". The superintendent of state police~~

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

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1 ~~shall annually publish a list of those jurisdictions that have opted by~~  
2 ~~local law pursuant to paragraph (b) of subdivision five of section~~  
3 ~~405.00 of this chapter to exclude "sparkling devices" from the defi-~~  
4 ~~nitions of "fireworks" and "dangerous fireworks"]~~ another jurisdiction.

5 § 2. Paragraphs (b) and (c) of subdivision 5 of section 405.00 of the  
6 penal law, paragraph (b) as amended and paragraph (c) as added by chap-  
7 ter 458 of the laws of 2016, are amended to read as follows:

8 (b) [~~Further, no city or county shall be bound to include "sparkling~~  
9 ~~device" in the definitions of "fireworks" and "dangerous fireworks" in~~  
10 ~~section 270.00 of this chapter, if such city or county shall so author-~~  
11 ~~ize the exemption of "sparkling device" by law. If any such city or~~  
12 ~~county so elects, it and such other local jurisdictions that lie within~~  
13 ~~its geographical boundaries shall not enact any other local law that is~~  
14 ~~inconsistent with the provisions of subparagraph (iv) of paragraph (c)~~  
15 ~~of subdivision one of section 270.00 of this chapter, nor to regulate~~  
16 ~~sparkling devices in a manner that is in conflict with the provisions of~~  
17 ~~NFPA 1124, 2006 edition.]~~ Notwithstanding any inconsistent provision of

18 law, a county may enact a local law to prohibit the sale and use of  
19 "sparkling devices", as such term is defined in section 270.00 of this  
20 chapter, provided, however, any such local law shall not establish:

21 (i) an offense greater than a violation for a person who shall use,  
22 explode or cause to be exploded a sparkling device; or

23 (ii) an offense greater than a class B misdemeanor for a person who  
24 shall offer or expose for sale, sell or furnish a sparkling device  
25 valued at less than five hundred dollars unless such offer, sale or  
26 furnishing is to a person less than eighteen years of age.

27 (c) Notwithstanding paragraph (b) of this subdivision, any city wholly  
28 contained within the county of Orange may enact a local law to [~~include~~  
29 ~~"sparkling device" within the definitions of "fireworks" and "dangerous~~  
30 ~~fireworks"]~~ prohibit the sale and use of "sparkling devices" as defined  
31 in section 270.00 of this chapter, in accordance with subparagraphs (i)  
32 and (ii) of paragraph (b) of this subdivision, notwithstanding [any  
33 local law enacted by] that such county [that authorizes the exemption of  
34 "sparkling device" from such definition] has not enacted a local law to  
35 prohibit the sale and use of such sparkling devices.

36 § 3. This act shall take effect on the ninetieth day after it shall  
37 have become a law.