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:

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

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

(v) except in cities with a population of one million or more, possession of sparkling devices lawfully obtained in [~~a jurisdiction that did opt by local law pursuant to paragraph (b) of subdivision five of section 405.00 of this chapter to exclude "sparkling devices" from the definitions of "fireworks" and "dangerous fireworks", for the purpose of lawful use in another jurisdiction that did opt by local law pursuant to paragraph (b) of subdivision five of section 405.00 of this chapter to exclude "sparkling devices" from the definitions of "fireworks" 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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~~shall annually publish a list of those jurisdictions that have opted by local law pursuant to paragraph (b) of subdivision five of section 405.00 of this chapter to exclude "sparkling devices" from the definitions of "fireworks" and "dangerous fireworks"~~] another jurisdiction.

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

(b) [~~Further, no city or county shall be bound to include "sparkling device" in the definitions of "fireworks" and "dangerous fireworks" in section 270.00 of this chapter, if such city or county shall so authorize the exemption of "sparkling device" by law. If any such city or county so elects, it and such other local jurisdictions that lie within its geographical boundaries shall not enact any other local law that is inconsistent with the provisions of subparagraph (iv) of paragraph (c) of subdivision one of section 270.00 of this chapter, nor to regulate sparkling devices in a manner that is in conflict with the provisions of NFPA 1124, 2006 edition.~~] Notwithstanding any inconsistent provision of law, a county may enact a local law to prohibit the sale and use of "sparkling devices", as such term is defined in section 270.00 of this chapter, provided, however, any such local law shall not establish:

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

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

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

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