STATE OF NEW YORK

6837

2021-2022 Regular Sessions

IN ASSEMBLY

April 12, 2021

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

AN ACT to amend the general business law, the executive law, the penal law and the tax law, in relation to authorizing the sale of consumer fireworks in the state

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

Section 1. The section heading and subdivision 1 of section 392-j of the general business law, as added by chapter 477 of the laws of 2014, are amended and three new subdivisions 1-a, 1-b and 1-c are added to read as follows:

Sales of sparkling devices **or consumer fireworks**. 1. [~~Sales~~] **For the first two years succeeding the effective date of subdivisions one-a and one-b of this section, sales** of sparkling devices as defined in subparagraph (vi) of paragraph (a) of subdivision one of section 270.00 of the penal law shall be lawful only for **a** business registered by the state under section one hundred fifty-six-h of the executive law between [~~June first and July fifth or from December twenty-sixth through January second of each year~~] **the Friday preceding Memorial Day and Labor Day, and between December twenty-sixth and January second**.

1-a. For purposes of this section, "consumer fireworks" shall mean any combustible or explosive composition or any substance or combination of substances which is intended to produce visible or audible effects by combustion, is suitable for use by the public, complies with the construction, performance, composition and labeling requirements promulgated by part 1507 of title sixteen of the code of federal regulations, or any successor regulation. No consumer fireworks sold in this state shall exceed a powder weight of five hundred grams. For the first two years succeeding the effective date of this subdivision, sales of consumer fireworks shall be lawful only for a business registered by the state under section one hundred fifty-six-h of the executive law between

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

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the Friday preceding Memorial Day and Labor Day, and between December twenty-sixth and January second.

1-b. For every year after the first two years succeeding the effective date of this subdivision, sales of consumer fireworks and sparkling devices from permanent structures shall be lawful for a business registered by the state under section one hundred fifty-six-h of the executive law between January first and December thirty-first. In the case of sales of sparkling devices from a temporary structure, as defined in paragraph (i) of subdivision one of section one hundred fifty-six-h of the executive law, such sales shall be lawful for a business registered by the state under section one hundred fifty-six-h of the executive law between June twentieth and July fifth, and December twenty-sixth and January second.

1-c. The sale of consumer fireworks shall not be lawful in a city with a population of one million or more or a county with a population of one million two hundred fifty thousand or more which is not wholly contained within a city at any time.

§ 2. Section 156-h of the executive law, as added by chapter 477 of the laws of 2014, is amended to read as follows:

§ 156-h. Registration and fees for manufacturers, distributors, wholesalers, and retailers of sparkling devices or consumer fireworks. 1. Definitions. As used in this section, the term:

(a) "Distributor" means any person or entity engaged in the business of selling sparkling devices or consumer fireworks to wholesalers, specialty retailers, permanent retailers or temporary seasonal retailers for resale.

(b) "Manufacturer" means any person or entity engaged in the manufacture or construction of sparkling devices or consumer fireworks.

(c) "Specialty retailer" means any person or entity who, at a fixed place of business, is engaged solely in selling sparkling devices or consumer fireworks at retail. For purposes of this section, a person or entity is engaged solely in selling sparkling devices or consumer fireworks if fifty-one percent or more of such person's or entity's annual gross sales are from the sale of sparkling devices or consumer fireworks.

(d) "Permanent retailer" means any person or entity who, at a fixed place of business, is engaged in selling sparkling devices or consumer fireworks at retail.

(e) "Sparkling devices" means any item defined in subparagraph (vi) of paragraph (a) of subdivision one of section 270.00 of the penal law.

(f) "Temporary seasonal retailer" means any person or entity who, at a temporary stand or tent, is engaged in selling sparkling devices from June twentieth through July fifth or from December tenth through January second of each year at retail, or any person or entity who, at a temporary location, is engaged in selling consumer fireworks or sparkling devices from May first through December thirty-first of each year. Any temporary location used by a temporary seasonal retailer of consumer fireworks must be a stand-alone permanent structure, and must otherwise meet the criteria for facilities used to sell consumer fireworks required by paragraph (c) of subdivision three of this section.

(g) "Wholesaler" means any person or entity engaged in the business of selling sparkling devices or consumer fireworks to specialty retailers, permanent retailers or temporary seasonal retailers at wholesale.

(h) "Consumer fireworks" means the same as such term is defined in section three hundred ninety-two-j of the general business law.

(i) "Temporary structure" means any structure or facility other than a permanent facility with fixed utility connections, which is in use or in place for a period of twenty consecutive calendar days or less and is dedicated to the storage and sale of sparkling devices. The term includes, but is not limited to, temporary retail sales stands, tents, canopies and membrane structures meeting the specifications of the national fire protection association code number one thousand one hundred twenty-four. The term shall not include a facility that is registered to sell consumer fireworks under this section.

2. Registration requirements. Any manufacturer, distributor, wholesaler, specialty retailer, permanent retailer or temporary seasonal retailer of sparkling devices or consumer fireworks who wishes to do business in this state or to otherwise sell, ship, or assign for sale its products in this state must register annually with the office of fire prevention and control on forms prescribed by such office. Any specialty retailer, permanent retailer or temporary seasonal retailer that sells sparkling devices or consumer fireworks at more than one retail location may submit one registration form for all such locations but must provide the address of each location with the registration form; however, any retailer may submit multiple registration forms.

3. Registration form. (a) The registration form filed with the office of fire prevention and control must be notarized and must include the following information: business name; address; telephone number; officers, if the business is a corporation; and an individual designated as a contact person.

(b) To be approved for registration to sell consumer fireworks, a manufacturer, distributor, wholesaler, specialty retailer, permanent retailer, or temporary seasonal retailer shall submit the following information with the registration form:

(1) The name of the distributor selling the consumer fireworks and the names of the persons actually on site to be in charge of the sales.

(2) Proof that the sales facility complies with the provisions of paragraph (c) of this subdivision.

(3) The number and kind of consumer fireworks to be sold.

(4) Whether the business will be permanent or temporary.

(5) Such other information as the office of fire prevention and control may deem necessary to protect persons or property.

(c) Facilities used to sell consumer fireworks shall meet the following criteria, and proof of compliance with such criteria shall be submitted with the registration form:

(1) The facility shall be a stand-alone permanent structure.

(2) Storage areas shall be separated from wholesale or retail sales areas to which a purchaser shall not be admitted by appropriately rated fire separation.

(3) The facility shall be located no closer than five hundred feet from a facility selling or dispensing gasoline, propane or other flammable products.

(4) The facility shall be located at least two thousand five hundred feet from another facility registered to sell consumer fireworks.

(5) The facility shall have a monitored burglar and fire alarm system.

(6) Quarterly fire drills and preplanning meetings shall be conducted as required by the primary fire department.

(7) Any sales facility selling consumer fireworks shall not sell any products other than consumer fireworks and/or sparkling devices. No facility selling products other than consumer fireworks or sparkling devices shall be approved for registration to sell consumer fireworks.

3-a. Operation requirements of sales facilities. Sales facilities shall operate in accordance with the following rules:

(a) There shall be security personnel on the premises for the seven days preceding and including July fourth and for the three days preceding and including January second.

(b) No smoking shall be permitted in the facility.

(c) No cigarettes or tobacco products, matches, lighters or any other flame-producing devices shall be permitted to be taken into the facility.

(d) No minors shall be permitted in the facility unless accompanied by an adult, and each minor shall stay with the adult in the facility.

(e) All facilities shall carry at least two million dollars in public and product liability insurance.

(f) A facility shall provide its employees with documented training in the area of operational safety of a facility. The certificate holder shall provide to the office of fire prevention and control written documentation that each employee has received the training.

(g) No display fireworks shall be stored or located at a facility.

(h) No person who appears to be under the influence of intoxicating liquor or drugs shall be admitted to the facility, and no liquor, beer or wine shall be permitted in the facility.

(i) Emergency evacuation plans shall be conspicuously posted in appropriate locations within the facility.

3-b. Temporary structures. No manufacturer, distributor, wholesaler, specialty retailer, permanent retailer, or temporary seasonal retailer shall sell or store consumer fireworks in a temporary structure. A temporary structure may be registered to sell sparkling devices if such temporary structure meets all of the following requirements, and proof of compliance with such requirements is submitted with the registration form:

(a) The temporary structure is located no closer than five hundred feet from a facility storing, selling or dispensing gasoline, propane or other flammable products.

(b) An evacuation plan is posted in a conspicuous location for a temporary structure in accordance with the national fire protection association code number one thousand one hundred twenty-four.

(c) The outdoor storage unit, if any, is separated from the wholesale or retail sales area to which a purchaser shall not be admitted by appropriately rated fire separation.

(d) The temporary structure is located at least ten miles from a permanent facility registered to sell consumer fireworks.

(e) The temporary structure does not exceed two thousand five hundred square feet.

(f) The temporary structure is secured at all times during which sparkling devices are displayed within the structure.

(g) The temporary structure has a minimum of two million dollars in public and product liability insurance.

(h) Sparkling devices not on display for retail sale are to be stored in a secure outdoor storage unit and shall be not placed under tables, to prevent damage to such devices due to water or weather.

3-c. Inspections, terms, and conditions. (a) All sales facilities shall be inspected by the office of fire prevention and control within thirty days of receipt of a complete registration application. Such office shall issue or deny a certificate within fourteen days of completing the inspection.

(b) The office of fire prevention and control shall issue or deny registration for a facility no later than ten days prior to the first day of sale. Such facility shall be available for inspection by such office at all times during the registration period.

(c) Registration for the sale of consumer fireworks shall be effective for one year from the date the certificate is issued.

(d) Registration renewal shall be automatic upon payment of the appropriate annual registration fee but each facility shall be subject to annual inspections by the office of fire prevention and control and at other times as such office may deem appropriate.

(e) No certificate shall be issued to a convicted felon or to an entity in which a convicted felon owns a percentage of the equity interest.

4. Fees. (a) Each manufacturer, distributor, specialty retailer, permanent retailer, temporary seasonal retailer or wholesaler of sparkling devices or consumer fireworks must pay [~~an~~] annual registration [~~fee to be set by the office of fire prevention and control not to exceed five thousand dollars~~] fees. [~~Each specialty retailer must pay an annual registration fee to be set by such office not to exceed two thousand five hundred dollars. Each permanent retailer shall pay an annual registration fee to be set by such office not to exceed two hundred dollars for each retail location registered. Each temporary seasonal retailer must pay a registration fee to be set by such office not to exceed two hundred fifty dollars per season.~~]

(i) The annual registration fees for any manufacturer, distributor, specialty retailer, permanent retailer, temporary seasonal retailer or wholesaler of consumer fireworks registered to sell from a permanent structure shall be as follows:

(A) For the first two years succeeding the effective date of subdivisions one-a and one-b of section three hundred ninety-two-j of the general business law, such manufacturer, distributor, specialty retailer, permanent retailer, temporary seasonal retailer or wholesaler registers:

(1) One thousand dollars for any facility not exceeding ten thousand square feet in size.

(2) Two thousand five hundred dollars for any facility exceeding ten thousand square feet in size but not exceeding fifteen thousand square feet in size.

(3) Five thousand dollars for any facility exceeding fifteen thousand square feet in size.

(B) For every year thereafter, such manufacturer, distributor, specialty retailer, permanent retailer, temporary seasonal retailer or wholesaler registers:

(1) Seven thousand five hundred dollars for any facility not exceeding ten thousand square feet in size.

(2) Ten thousand dollars for any facility exceeding ten thousand square feet in size but not exceeding fifteen thousand square feet in size.

(3) Twenty thousand dollars for any facility exceeding fifteen thousand square feet in size.

(ii) The annual registration fees for any manufacturer, distributor, specialty retailer, permanent retailer, or temporary seasonal retailer of sparkling devices registered to sell sparkling devices shall be as follows:

(A) Two hundred dollars per permanent facility.

(B) Two hundred fifty dollars per temporary facility.

(C) Two thousand five hundred dollars per specialty facility.

(iii) The annual registration fees for any wholesaler of sparkling devices registered to sell from a temporary structure shall be as follows:

(A) One thousand dollars for any in-state wholesaler with a New York state owners and possession license and a federal explosives license from the bureau of alcohol, tobacco and firearms.

(B) Three thousand dollars for any in-state wholesaler without both licenses.

(C) Six thousand dollars for any out of state wholesaler selling from a temporary structure in this state.

Each certificate-holder wishing to have a duplicate certificate issued for one which is lost or to reflect a change of address shall request such duplicate in writing and shall pay a fee of five dollars.

(b) Revenue from all registration fee payments required by this subdivision shall be used for the purposes of implementing firefighter safety and training programs as well as registration and testing provisions of this chapter.

(c) No city, municipality or other local jurisdiction shall charge any fee or require any permit whatsoever for the sale and use of sparkling devices or consumer fireworks.

5. Record and reports. Each manufacturer, distributor and wholesaler shall maintain and make available to the state fire administrator, upon the state fire administrator's reasonable request, full and complete, true, and accurate records showing the name and quantity of any sparkling device or consumer fireworks produced in, imported to, exported from, or sold in this state.

6. Rules. The state fire administrator shall promulgate rules prescribing registration forms required by this section.

§ 3. The opening paragraph of paragraph (a) of subdivision 2 of section 270.00 of the penal law, as added by chapter 477 of the laws of 2014, is amended to read as follows:

Except as herein otherwise provided, or except where a permit is obtained pursuant to section 405.00 of this chapter or where a manufacturer, distributor, wholesaler, or retailer is registered to sell consumer fireworks pursuant to section one hundred fifty-six-j of the executive law:

§ 4. Subdivision 20 of section 156 of the executive law, as added by chapter 477 of the laws of 2014, is amended to read as follows:

20. Register the manufacturers, distributors, wholesalers, retailers and seasonal retailers of sparkling devices or consumer fireworks who wish to do business within the state.

§ 5. The tax law is amended by adding a new article 15 to read as follows:

ARTICLE 15
EXCISE TAX ON CONSUMER FIREWORKS

Section 330. Definitions.
331. Imposition of tax.
332. Records.
333. Deposit and disposition of revenue.
334. Rules and regulations.
335. Severability

§ 330. Definitions. As used in this article "consumer fireworks" means the same as such term is defined in section three hundred ninety-two-j of the general business law.

§ 331. Imposition of tax. There is hereby levied and imposed on the retail sale of consumer fireworks an excise tax at a rate of fifteen percent of the purchase price per item sold. The taxes imposed by this section are in addition to any other taxes that may apply to such sale. Such tax shall be imposed on each separate sale at retail of consumer fireworks and shall be collected by the retailer from the consumer at the time of such sale.

§ 332. Records. Every retailer of consumer fireworks shall keep a complete and accurate record of all purchases and sales or other dispositions of consumer fireworks. Such records shall be in such form and contain such other information as the commissioner shall prescribe.

§ 333. Deposit and disposition of revenue. All taxes, interest and penalties collected or received by the commissioner under this article shall be deposited and disposed of pursuant to the provisions of section one hundred seventy-one-a of this chapter; provided however, the comptroller shall on or before the twelfth day of each month, pay all such taxes, interest and penalties collected under this article and remaining to the comptroller's credit in such banks, banking houses or trust companies at the close of business on the last day of the preceding month, into the general fund of the state treasury.

§ 334. Rules and regulations. The commissioner shall promulgate any rules and regulations necessary to carry out the provisions of this article.

§ 335. Severability. If any clause, sentence, paragraph, section or part of this article shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

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