

9 Section 1. Subdivisions 1 and 2 of section 450 of the labor law,
10 subdivision 1 as amended by chapter 809 of the laws of 1949 and subdivi-
11 sion 2 as amended by chapter 1022 of the laws of 1970, are amended to
12 read as follows:

13 1. This article shall apply to persons engaged in the manufacture,
14 ownership, possession, storage, use, transportation, purchase, sale or
15 gift of explosives as defined in subdivision one of section four hundred
16 fifty-one of this article.

17 2. This article shall not apply to explosives while being transported
18 in conformity with federal law or regulations, nor except as may be
19 herein otherwise provided to persons who manufacture, own, possess,
20 store, use, transport, purchase, sell or give explosives within the
21 territorial boundaries of cities having more than one million inhabit-
22 ants, nor to any of the following while in the performance of their
23 official duties: the armed forces of the United States, the national
24 guard, the state guard and duly constituted police and firefighting
25 forces of the state and its civil and political subdivisions.

26 § 2. Section 451 of the labor law, as amended by chapter 809 of the
27 laws of 1949, subdivision 1 as amended by chapter 220 of the laws of
28 1974 and subdivision 11 as renumbered by chapter 1022 of the laws of
29 1970, is amended to read as follows:

30 § 451. Definitions. Whenever used in this article: 1. "Explosives"
31 means gunpowder, powders used for blasting, high explosives, blasting
32 materials, detonating fuses, detonators, pyrotechnics and other detonat-
33 ing agents, fireworks and dangerous fireworks as defined in section
34 270.00 of the penal law, smokeless powder and any chemical compound or
35 any mechanical mixture containing any oxidizing and combustible units,
36 or other ingredients in such proportions, quantities, or packing that
37 ignition by fire, friction, concussion, percussion or detonation of any
38 part thereof may cause and is intended to cause an explosion, but shall
39 not include gasoline, kerosene, naphtha, turpentine, benzine, acetone,
40 ethyl ether, benzol [and all] or quantities of black powder not exceed-
41 ing five pounds for use in firing of antique firearms or artifacts or
42 replicas thereof. Fixed ammunition and primers for small arms, [fire-
43 crackers,] pyrotechnic devices which are designed for and being used for
44 legitimate wildlife management or controls, safety fuses and matches
45 shall not be deemed to be explosives when, [as may be determined by the
46 board in its rules] as provided by regulation, the individual units
47 contain any of the above-mentioned articles or substances in such limit-
48 ed quantity, of such nature and so packed that it is impossible to
49 produce an explosion of such units to the injury of life, limb or prop-
50 erty.

51 2. "Highway" means any public street, public highway, public alley or
52 navigable [stream] waterway, which is open for traffic. Navigable
53 [streams] waterways shall be considered as only those [streams] suscep-

1 tible of being used, in their ordinary condition, as highways of
2 commerce.

3 3. "Railroad" or "railway" means any railroad [which] that carries
4 passengers or freight for hire, but shall not include auxiliary tracks,
5 spurs and sidings installed and primarily used in serving any mine,
6 quarry or plant.

7 4. "Building" means any building regularly occupied in whole or in
8 part as a habitation for human beings, and any church, school house,
9 railway station or other building or place where people are accustomed
10 to live, work or assemble, but does not mean or include any of the
11 buildings of a manufacturing plant where the business of manufacturing
12 explosives is carried on.

13 5. "Explosives factory" means any building or other structure in which
14 the manufacture of explosives or any part of the manufacture thereof is
15 carried on.

16 6. "Magazine" means any building or other structure, other than an
17 explosives factory, used to store explosives.

18 7. "Efficient barricade" means natural features of the ground, a dense
19 woods, an artificial mound or a properly revetted wall of earth not less
20 than three feet thick at the top, spaced at least three feet at the
21 bottom from any explosives factory or magazine, the height of which is
22 such that any straight line drawn from the top of any side wall of the
23 explosives factory or magazine to the top of a building or to a point
24 twelve feet above the center of a railroad or highway to be protected
25 will pass through such intervening barricade.

26 8. "Person" includes any natural person, partnership, association or
27 corporation.

28 9. "Manufacturer" means any person who is engaged in the manufacture
29 or production of explosives.

30 10. "Dealer" means any person engaged in the business of buying and
31 selling explosives.

32 11. [A "farmer" is a person who occupies and cultivates land.] "Pyro-
33 technics" means any combustible or explosive compositions of manufac-
34 tured articles designed and prepared for the purpose of producing audi-
35 ble or visible effects that are commonly referred to as fireworks.

36 § 3. Section 452 of the labor law, as amended by chapter 190 of the
37 laws of 1989, is amended to read as follows:

38 § 452. Packing and labeling. No person shall own, possess, store, deal
39 in, sell, give or purchase explosives unless the packing, or encasement,
40 and the marking and labeling of such explosives shall comply with the
41 [rules of the board] regulations promulgated pursuant to this article.

42 § 4. Section 453 of the labor law, as added by chapter 809 of the laws
43 of 1949, the second undesignated paragraph as amended by chapter 190 of
44 the laws of 1989, is amended to read as follows:

45 § 453. Storage. No person shall store explosives except in a magazine
46 constructed [and], located and certified in accordance with the
47 provisions of this article and the [rules of the board and unless a
48 certificate, which] regulations promulgated pursuant to this article.
49 The magazine certificate shall be attached to the magazine on the inside
50 [thereof, has been issued for] of each such magazine. No person shall
51 store more than three hundred thousand pounds of explosives in any one
52 magazine at any time. Explosives not stored in compliance with this
53 section shall be deemed to present a danger to the public, including but
54 not limited to, emergency responders and other persons lawfully frequen-
55 ting the area and as such, are subject to seizure and destruction pursu-
56 ant to subdivision five of section four hundred sixty of this article.

S. 57

100

A. 157

1 This section shall not apply to explosives while being legally blasted
2 or while legally in the custody of a common carrier awaiting shipment or
3 delivery to a consignee during the time permitted by federal law; nor to
4 the storage of such limited amount of sporting or smokeless powders as
5 may be permitted by the [rules of the board] regulations promulgated
6 pursuant to this article.

7 § 5. Section 454 of the labor law, as amended by chapter 477 of the
8 laws of 1943, is amended to read as follows:

9 § 454. Construction of magazines. Unless otherwise prescribed by the
10 [board in its rules] regulations promulgated pursuant to this article,
11 magazines in which explosives shall be lawfully kept or stored shall be
12 constructed of brick, concrete, [iron] metal or wood covered with [iron]
13 metal, and shall have no openings except for ventilation and entrance.
14 All explosive magazines, except those in mines and tunnels, shall be
15 located above ground. All explosive magazines shall be kept clean and
16 dry at all times.

17 § 6. Section 455 of the labor law, as amended by chapter 809 of the
18 laws of 1949, is amended to read as follows:

19 § 455. Magazine precautions. 1. No [person] individual shall unlock
20 [or], open the doors of, or access the contents of, explosive magazines,
21 except for the lawful storage or removal of explosives and in accordance
22 with regulations of the commissioner. No employer shall allow any indi-
23 vidual access to the explosive magazines or explosives of the employer
24 unless a license has been issued to the individual by the commissioner
25 as provided in this article, or the individual is under the direct
26 supervision of the license holder.

27 No person shall have matches or fire of any kind in any magazine. No
28 person shall store or keep blasting caps, detonating or fulminating
29 caps, or detonators in a magazine in which any other type of explosive
30 is stored or kept. No person shall open any package of explosives within
31 fifty feet of any magazine, nor shall any explosives be kept in a maga-

32 zine except in the original containers, or as otherwise provided by
33 regulations promulgated under this article. No person shall discharge
34 firearms within five hundred feet of a magazine or explosives factory,
35 or at or against any such building or magazine. Any theft or loss of
36 explosives from a storage magazine or otherwise, shall immediately be
37 reported to the [industrial] commissioner and the state or local police
38 or county sheriff.

39 § 7. Section 456 of the labor law, as amended by chapter 461 of the
40 laws of 1950, is amended to read as follows:

41 § 456. Location of magazines. The quantity of explosives that may be
42 stored in any explosives factory or magazine shall depend upon its
43 distances from the nearest building, railroad or highway or other maga-
44 zine. The distances that a quantity of explosives may be stored from the
45 nearest magazine, building, railroad or highway, shall be as determined
46 by the [rules of the board] regulations promulgated pursuant to this
47 article. All such distances may be reduced one-half when the magazine,
48 building, railroad or highway to be protected is adequately screened
49 from the explosives factory or magazine by an efficient barricade as
50 defined in subdivision seven of section four hundred fifty-one of this
51 article.

52 § 8. The labor law is amended by adding a new section 457 to read as
53 follows:

54 § 457. Relocation of magazines. 1. When any magazine is moved from the
55 location for which it was certified according to section four hundred
56 fifty-six of this article, and the magazine is or is intended to be used

S. 57

101

A. 157

1 for the storage of explosives and will be in the new location for more
2 than twenty-four hours, the commissioner shall be notified as to the new
3 location of the magazine. Such notification shall be made no later than
4 one business day prior to the move. The notification shall contain all
5 of the information required by the commissioner.

6 2. The provisions of subdivision one of this section shall not apply
7 where the relocation has been ordered by police, fire or other author-
8 ized emergency personnel, or where the continued storage in the current
9 location would constitute a threat to life or property. In such cases
10 the commissioner shall be notified as soon as practicable after the
11 relocation but in no case more than two business days following such
12 relocation.

13 3. When a magazine is abandoned, sold or removed from service, the
14 certificate holder shall notify the commissioner no later than three
15 business days from the date of such action and shall surrender the
16 certificate to the commissioner.

17 § 9. Section 458 of the labor law, as added by chapter 809 of the laws
18 of 1949, subdivisions 1 and 2 as amended by chapter 61 of the laws of

19 1989, subdivision 3 as amended by section 10 of part A of chapter 57 of
20 the laws of 2004, subdivision 4 as amended by chapter 164 of the laws of
21 2003, subdivisions 5, 6, 7 and 9 as added and subdivisions 10 and 11 as
22 renumbered by chapter 1022 of the laws of 1970 and subdivision 8 as
23 added by chapter 150 of the laws of 1971, is amended to read as follows:

24 § 458. Licenses and certificates. 1. No person shall purchase, own,
25 possess, transport or use explosives unless a license therefor shall
26 have been issued as provided in this article.

27 Application for such a license shall be made to the commissioner on
28 forms provided and shall contain such information as the commissioner
29 may require. Where the commissioner finds that the applicant has
30 complied with the requirements of this article and the rules promulgated
31 hereunder, the commissioner shall issue [a] such license or renewal
32 thereof which shall be valid for not less than one year from the date of
33 issuance. Such application and each renewal thereof shall be accompanied
34 by a non-refundable fee of not less than fifty dollars [non-refundable]
35 to be payable to the commissioner.

36 2. No person shall manufacture, deal in, sell, give, test, or dispose
37 of explosives unless a license therefor shall have been issued to such
38 person for that purpose by the commissioner as provided in this article,
39 nor shall any person sell, give, test, or dispose of explosives to, or
40 manufacture explosives for any person who does not hold a license as
41 provided by subdivision one of this section.

42 Application for such a license[, which shall be renewed annually,]
43 shall be made to the commissioner on forms provided and shall contain
44 such information as the commissioner may require. The commissioner,
45 after investigation of the application, shall issue a license or renewal
46 thereof, which shall be valid for not less than one year from the date
47 of issuance, where the commissioner finds that the applicant has
48 complied with the requirements of this article and the rules promulgated
49 hereunder. Each application for such a license, or for its renewal,
50 shall be accompanied by a fee of not less than one hundred dollars non-
51 refundable to be payable to the commissioner.

52 3. No person shall keep or store explosives unless a certificate
53 therefor shall have been issued by the commissioner as [herein]
54 provided[, but this requirement shall not apply to the storage at any
55 one time by farmers of two hundred pounds or less of blasting explosives
56 for agricultural purposes] in this section.

S. 57

102

A. 157

1 Application for such a certificate shall be made to the commissioner
2 on forms provided and shall contain such information as the commissioner
3 may require. The commissioner, where it is found that the applicant has
4 complied with the requirements of this article, [and], the rules promul-
5 gated hereunder and all other applicable sections of this chapter and

6 regulations promulgated by the commissioner, shall issue a certificate
7 or a renewal thereof, which shall be valid for not less than one year
8 from the date of issuance. In addition to any other causes for revoca-
9 tion of a certificate hereinafter provided, the commissioner may revoke
10 or modify such certificate because of any change in the conditions under
11 which it was granted, or for failure to pay the [annual] required fee
12 [hereinafter provided]. The owner or user of a magazine shall [annually]
13 pay to the commissioner [in advance] a fee[, subject to the discretion
14 of the commissioner and] of not less than fifty dollars, which shall be
15 proportioned according to the quantity and type of explosives authorized
16 by the certificate to be stored in the magazine.

17 4. An application for a license or a certificate pursuant to [subdivi-
18 sion one, two or three of] this section [shall be sworn to under oath
19 and] shall contain information sufficient to identify the applicant, and
20 the purpose for which and the place where the explosives are to be used,
21 manufactured, dealt in, given, disposed of or stored, as the case may
22 be, and to demonstrate the eligibility of such applicant for the license
23 or certificate requested. The commissioner may require that the applica-
24 tion include, among other things, photographs, fingerprints and personal
25 references. Such fingerprints shall be submitted to the division of
26 criminal justice services for a state criminal history record check, as
27 defined in subdivision one of section three thousand thirty-five of the
28 education law, and may be submitted to the federal bureau of investi-
29 gation for a national criminal history record check. An application for
30 a license or certificate required to be filed with the department pursu-
31 ant to this section shall be signed by the applicant and affirmed by him
32 or her as true under penalty of perjury.

33 5. Before a license or certificate is issued, the commissioner shall
34 investigate the eligibility of the applicant. The commissioner shall
35 have the authority to request and receive from any department, division,
36 board, bureau, commission or agency of the state or local government
37 thereof such assistance and information as will enable [him] the commis-
38 sioner to properly and effectively [to] carry out [his] the powers and
39 duties under this article.

40 6. (a) The investigation prescribed in subdivision five of this
41 section may include, but is not limited to the following:

42 (1) a personal interview of the applicant by a designated agent of the
43 commissioner if the commissioner is unable to make a determination on
44 the basis of the factors contained in the application;

45 (2) an examination as to the applicant's knowledge and ability with
46 respect to basic safety precautions in the possession, handling, stor-
47 age, manufacture and transportation of explosives, and for such purpose
48 the commissioner may prescribe tests which the applicant shall be
49 required to pass as a prerequisite to the issuance of the license or
50 certificate. The test may be administered by any person or agency
51 designated by the commissioner.

52 (b) The investigation prescribed in subdivision five of this section
53 shall include a report from the New York state identification and intel-
54 ligence system, and such other identification services of the state or
55 federal government as may be necessary or appropriate for this purpose.

S. 57

103

A. 157

1 7. The commissioner may waive any of the procedures set forth in para-
2 graph (b) of subdivision six [(a)] of this section with respect to any
3 applicant [who has a license or certificate which was issued pursuant to
4 this section at any time prior to March first, nineteen hundred seventy,
5 and which was legally valid and effective on such date. The commissioner
6 also may waive fingerprinting of an applicant who has a valid license
7 for a pistol or revolver in accordance with section 400.00 of the penal
8 law] for whom criminal history or other information has been obtained
9 from any federal bureau or agency.

10 8. [Exceptions.] Except for the provisions of subdivision eleven of
11 this section, this section shall not apply to smokeless powder.

12 9. Within thirty days after the issuance of a license or certificate
13 under this section, the commissioner shall notify the chief executive
14 officer of the municipality where the licensee resides or where the
15 certificate holder has his or her place of business of the issuance of
16 such license or certificate, and provide such officer with such other
17 information pertaining thereto [as the board may from time to time
18 prescribe] as the commissioner may prescribe.

19 10. Agencies of the United States, the state and its political and
20 civil subdivisions which are subject to the requirements of this article
21 and which, in the exercise of their functions, are required to purchase,
22 own, store, use or transport explosives shall not be liable for the
23 payment of any fee required by this section.

24 11. No explosives shall be sold, given or delivered to any [person]
25 individual under eighteen years of age, whether such [person] individual
26 is acting for himself, herself or for another person, nor shall any such
27 [person] individual be eligible to obtain any license or certificate
28 required under this section.

29 § 10. Section 459 of the labor law, as added by chapter 809 of the
30 laws of 1949, subdivision 1 as amended by chapter 1022 of the laws of
31 1970, is amended to read as follows:

32 § 459. Denial or revocation of license or certificate. 1. A license
33 or certificate, [its] or the renewal [or continuation] thereof may be
34 denied where the commissioner has probable reason to believe, based on
35 knowledge or reliable information, or finds, after [due] investigation,
36 that the applicant or any officer, servant, agent or employee of the
37 applicant is not sufficiently reliable and experienced to be authorized
38 to own, possess, store, transport, use, manufacture, deal in, sell,
39 purchase or otherwise handle, as the case may be, explosives, lacks

40 suitable facilities therefor, has been convicted of a [crime for which
41 he has been sentenced to serve one or more years in prison] felony, is
42 disloyal or hostile to the United States [or], has been confined as a
43 patient or inmate in a public or private institution for the treatment
44 of mental diseases or has been convicted under section four hundred
45 eighty-four of the general business law. Whenever the commissioner
46 denies an application for a license or certificate or the renewal there-
47 of, [he shall,] within five days of such denial, [give] notice thereof
48 and the reasons therefor shall be provided in writing to the applicant
49 [personally or by mail to the address given in the application]. Such
50 denial may be appealed to the commissioner who shall follow the proce-
51 dure provided by subdivision [three] four of this section.
52 2. The commissioner may revoke any certificate or license on any
53 ground or grounds authorized in subdivision one of this section for the
54 denial of a license or certificate, or for a violation of the terms of
55 such license or certificate, or for a violation of any provision of this
56 article or [of the rules of the board] regulations promulgated

S. 57

104

A. 157

1 hereunder, or for non-compliance with any order issued by the commis-
2 sioner within the time specified in such order.
3 [Where the] The commissioner may, where he or she has probable reason
4 to believe, based on knowledge or reliable information, that a licensee
5 or certificate holder is disloyal to the United States, [he may] summar-
6 ily revoke the license or certificate or may[, in his discretion,] give
7 such licensee or certificate holder notice and opportunity to be heard
8 as provided in subdivision [three] four of this section. Revocation of a
9 license or certificate for any other ground may be ordered only after
10 giving written notice and an opportunity to be heard to the holder ther-
11 eof. Such notice [may be given to the holder personally or by mail and]
12 shall specify the ground or grounds on which it is proposed to revoke
13 the license or certificate. When a license or certificate is revoked,
14 the commissioner may direct the seizure and/or disposition of explosives
15 held by such licensee or certificate holder. Upon revocation of a
16 license or certificate by the commissioner, the holder thereof shall
17 surrender [his] the license or certificate to the commissioner at once.
18 3. The commissioner may summarily suspend the license or certificate
19 pending proceedings for revocation or other action, where he or she has
20 reason to believe, based on knowledge or reliable information, that the
21 continued possession of a license or certificate poses a danger to
22 public health, safety or welfare, and incorporates a finding to that
23 effect in his or her order. These proceedings shall be promptly insti-
24 tuted and determined. Such suspension shall be effective on the date
25 specified in the order or upon service of a certified copy of such order
26 on the license or certificate holder, whichever shall be later.

27 [3. Hearings] 4. Unless, within fifteen days from the date of notice,
28 the applicant for a license or certificate or the recipient of a notice
29 stating that the commissioner proposes to revoke a license or certifi-
30 cate held by him or her, shall file a written answer with the commis-
31 sioner denying the ground or grounds on which a license or certificate
32 has been denied or not renewed or ground or grounds on which revocation
33 of a license or certificate is sought, and shall request a hearing, the
34 commissioner may make a final determination respecting the application
35 for a license or certificate, or may revoke a license or certificate
36 forthwith. If, within such fifteen days, the applicant, licensee or
37 certificate holder files such answer and request for hearing, the
38 commissioner shall schedule a hearing. The notice of hearing shall state
39 the time, place, and subject of the hearing, and shall be mailed to the
40 applicant, certificate holder or licensee at his or her last known
41 address at least five days before the date of hearing. Hearings shall be
42 held by the commissioner or his or her representative, and the appli-
43 cant, certificate holder or licensee may appear in person or may be
44 represented by an agent. After such hearing, the commissioner shall
45 render [his] a decision in writing.

46 § 11. Section 460 of the labor law, as added by chapter 809 of the
47 laws of 1949, is amended to read as follows:

48 § 460. Seizure, impounding, destruction or disposition of explosives.

49 1. The commissioner is hereby authorized and empowered, without applica-
50 tion to any court, to seize and impound any explosives found within this
51 state, except in cities having a population of more than one million
52 inhabitants, which are in apparent violation of any of the provisions of
53 this article, [rules of the board] regulations promulgated hereunder or
54 laws or regulations of the federal government, or which have been aban-
55 doned or lost, or where the commissioner has reason to believe that
56 public safety is endangered by such explosives. Such explosives may be

S. 57

105

A. 157

1 removed and transported by the commissioner and stored in magazines
2 provided or obtained for that purpose by the state or by the commission-
3 er.

4 2. The owner of such explosives may, within five days of such seizure,
5 make written demand upon the commissioner for a hearing. Upon such
6 demand, the commissioner shall give the owner written notice [in person
7 or by mail,] of the time and place of such hearing to be held not less
8 than ten days thereafter.

9 3. Where no hearing is demanded within the time herein prescribed or
10 where, after hearing, the commissioner finds that there has been a
11 violation of the provisions of this article, [rules of the board] regu-
12 lations promulgated hereunder or laws or regulations of the federal
13 government, or that public safety is endangered, [he] the commissioner

14 may destroy or order the destruction of such explosives without liabil-
15 ity, or direct such other disposition of the explosives [as he deems
16 proper]. If the commissioner finds there has been no such violation and
17 that public safety has not been endangered, [he shall return] such
18 explosives shall be returned to the owner thereof.

19 4. Where such explosives have been abandoned or lost, and no claimant
20 has appeared within thirty days, demanded the return of the explosives
21 and proved, to the satisfaction of the commissioner, [his] the claim-
22 ant's title to and right of possession of such explosives, the commis-
23 sioner may destroy or direct the destruction thereof, or direct such
24 other disposition thereof as [he deems] is deemed proper.

25 5. Any provision herein to the contrary notwithstanding, where, in the
26 opinion of the commissioner, the manufacture, condition, storage, pack-
27 ing or location of explosives is such that its continued existence or
28 transportation is a danger to public safety, [he] the commissioner may,
29 without hearing and without liability therefor to the owner thereof,
30 seize and destroy or direct the seizure and destruction of such
31 explosives.

32 § 12. Section 461 of the labor law, as added by chapter 809 of the
33 laws of 1949, subdivision 1 as amended by chapter 150 of the laws of
34 1971 and subdivision 3 as amended by chapter 1022 of the laws of 1970,
35 is amended to read as follows:

36 § 461. Record and notice of sales, deliveries or gifts. 1. Every
37 person selling, delivering [or], giving away [an explosive] or otherwise
38 transferring or disposing of explosives shall keep at his or her princi-
39 pal office or place of business within the state, a record of the trans-
40 action, including the name or type and quantity of the explosive, such
41 identification of the explosive as may be required by [rules of the
42 board] the regulations promulgated pursuant to this article, the date of
43 each sale, delivery [or], gift, transfer or disposition, the name and
44 business address of the purchaser, donee, recipient or person to whom
45 delivered, the number of the license [to own or possess explosives], if
46 such license is required by section four hundred fifty-eight of this
47 article, and the name and address of the person taking the explosives
48 away. A report of all such transactions, when requested [by him], shall
49 be submitted to the commissioner. Such record shall be open to
50 inspection by the commissioner or by federal, state and local enforce-
51 ment officers at all times. No person shall have in his or her
52 possession any explosives unless he or she has a bill of sale or other
53 evidence of title thereto.

54 2. Any provision in this article to the contrary notwithstanding, no
55 person in a city having more than one million inhabitants shall ship or
56 transport or cause to be shipped or transported explosives from such

1 city to any other place within the state, unless such person shall, at
2 least twenty-four hours prior to such shipment, transmit to the commis-
3 sioner a statement in writing giving the weight, name or brand and type
4 of explosives, the name and address of the person to whom such
5 explosives are to be sold, shipped, transported or delivered and the
6 date thereof. Upon receipt of such statement, the commissioner shall
7 provide immediate written notice of such shipment or transportation of
8 explosives to the mayor of a city having more than one million inhabit-
9 ants, or to the designee of the mayor. No person shall make any such
10 shipment except to a holder of a license issued hereunder.

11 3. No person within the state shall purchase, receive or accept deliv-
12 ery of explosives from any place outside the state, and no person shall
13 bring explosives into the state from any place outside the state,
14 unless, [in addition to holding a license issued hereunder, such person
15 shall, not more than twenty-four hours thereafter, transmit to the
16 commissioner by mail a written statement giving] he or she is in
17 possession of a valid license issued by the commissioner. The licensee
18 receiving the explosives shall maintain a record including the weight,
19 name or brand and type of the explosives, the name and address of the
20 shipper and the date of shipment, for a period of three years from the
21 date of receipt or two years from the date of final disposition of the
22 explosives whichever occurs last.

23 § 13. Section 462 of the labor law, as amended by chapter 190 of the
24 laws of 1989, is amended to read as follows:

25 § 462. Rules and regulations. The commissioner may make rules supple-
26 mental to this article as [he shall deem] deemed necessary or desirable
27 to assure the public safety as well as to provide reasonable and
28 adequate protection of the lives, health and safety of persons employed
29 in the manufacture, storage, handling [and], use, purchase, sale, dispo-
30 sition and ownership of explosives. The commissioner may prescribe such
31 regulations as [he may deem] are deemed necessary and proper for the
32 administration of this article. The commissioner shall by rule adopt
33 the codes, standards and recommended practices promulgated by the most
34 recent edition of National Fire Protection Association, 1123 and 1126
35 Standards on Fireworks Displays and Use of Pyrotechnics Before a Proxi-
36 mate Audience, in accordance with the provisions of this article and
37 article twenty-eight-D of the general business law.

38 § 14. Section 463 of the labor law, as added by chapter 809 of the
39 laws of 1949, is amended to read as follows:

40 § 463. Review. All questions of fact arising under this article shall
41 be decided by the commissioner and there shall be no appeal from [his]
42 such decision on any such question of fact[, but there shall be a right
43 of review by the board of standards and appeals of any decision of the
44 commissioner denying an application for a license or certificate, or
45 denying the renewal thereof, or revoking a license or certificate, as
46 provided in section one hundred ten, article three of the labor law].

47 Upon the entry of an order issued under sections four hundred fifty-nine
48 and four hundred sixty of this article, any party aggrieved thereby may
49 commence a proceeding for review thereof pursuant to article seventy-
50 eight of the civil practice law and rules within thirty days from the
51 notice of the filing of the said order in the office of the commission-
52 er. Said proceeding shall be commenced directly in the appellate divi-
53 sion of the supreme court. Nothing in this section shall in any way
54 limit, qualify or prevent the commissioner from destroying explosives as
55 provided under section four hundred sixty of this article.

S. 57

107

A. 157

1 § 15. Section 464 of the labor law, as amended by chapter 307 of the
2 laws of 1984, is amended to read as follows:

3 § 464. [Penalties] Costs and penalties. 1. If the commissioner
4 directs the storage, destruction or other disposition of explosives
5 pursuant to the provisions of section four hundred fifty-nine or four
6 hundred sixty of this article, the commissioner may issue an order which
7 shall set forth the costs of such storage, transportation, handling,
8 destruction or other disposition and assess such costs against the owner
9 of such explosives, which shall be in addition to any other penalties
10 imposed.

11 2. (a) If the commissioner determines that any person has violated any
12 provision of this article, section four hundred eighty-two of the gener-
13 al business law relating to blasters and pyrotechnicians, or any rule or
14 regulation promulgated thereunder, the commissioner may issue an order
15 which shall describe the nature of the violation and assess such person
16 a civil penalty of up to ten thousand dollars per violation per day
17 until the violation is corrected. The penalty authorized pursuant to
18 this paragraph shall be paid to the commissioner for deposit in the
19 treasury of the state. In assessing the amount of the penalty, the
20 commissioner shall give due consideration to the size of the person's
21 business, the good faith effort of the person, the gravity of the
22 violation, and the history of previous violations.

23 (b) Whenever the commissioner issues an order under this section
24 against a person, the commissioner shall serve notice of the order by
25 registered mail upon the person at his or her last known address. Within
26 five days of service of the order, the person may make written demand
27 upon the commissioner for a hearing whereupon the commissioner shall
28 give such person written notice of the time and place of the hearing to
29 be held not less than ten days thereafter.

30 (c) Upon the entry of an order issued following a hearing under this
31 section, any party aggrieved by an order issued under this subdivision
32 or subdivision one of this section may commence a proceeding for review
33 thereof pursuant to article seventy-eight of the civil practice law and
34 rules within thirty days from the notice of the filing of the said order

35 in the office of the commissioner. Said proceeding shall be commenced
36 directly in the Appellate Division of the Supreme Court.

37 (d) Provided that no proceeding for judicial review as provided for in
38 this section shall then be pending and the time for initiation of such
39 proceeding shall have expired, the commissioner may file with the county
40 clerk of the county where the person resides or has a place of business,
41 the order of the commissioner, containing the amount of the civil penal-
42 ty. The filing of such order or decision shall have the full force and
43 effect of a judgment duly docketed in the office of such clerk, the
44 order or decision may be enforced by and in the name of the commissioner
45 in the same manner, and with like effect, as that prescribed by the
46 civil practice law and rules for the enforcement of a money judgment.

47 (e) A civil penalty provided for in this subdivision shall be in addi-
48 tion to and may be imposed concurrently with any other penalty or remedy
49 provided for in this article.

50 3. Any person violating any provision of this article, or any rule or
51 regulation made hereunder, shall be guilty of a class E felony;
52 provided, however, that any person who possesses an explosive without
53 being duly licensed or otherwise authorized to do so under the
54 provisions of this article shall be guilty of a class D felony. Whenev-
55 er, as a result of a plea bargaining agreement the charge is reduced to
56 a lesser offense, such offense may, in addition to any term of imprison-

S. 57

108

A. 157

1 ment prescribed by such offense, be punishable by a fine not to exceed
2 twenty-five hundred dollars.

3 § 16. Section 480 of the general business law, as added by chapter 754
4 of the laws of 1975, is amended to read as follows:

5 § 480. Legislative findings. The legislature hereby finds that the use
6 of lasers and radioactive materials, the operation of cranes [and], the
7 detonation of explosives, and the preparation and firing of pyrotechnics
8 involve such elements of potential danger to the lives, health and safe-
9 ty of the citizens of this state and to their property that special
10 regulations are necessary to insure that only persons of proper ability
11 and experience shall engage in such uses and operations.

12 The legislature hereby declares that this article shall be deemed an
13 exercise of the police power of this state for the protection of the
14 lives, health and safety of citizens in this state and of their proper-
15 ty.

16 § 17. Section 481 of the general business law, as added by chapter
17 754 of the laws of 1975, subdivision 3 as amended by chapter 569 of the
18 laws of 1982 and subdivision 5 as amended by section 1 of part B of
19 chapter 58 of the laws of 2006, is amended to read as follows:

20 § 481. Definitions. As used in this article:

21 1. "Laser" means light amplification by simulated emission of radi-

22 ation.

23 2. "Radioactive material" means any material in any form that emits
24 ionizing radiation spontaneously. "Radiation equipment" means any equip-
25 ment or device which can emit ionizing or non-ionizing radiation.

26 3. "Crane" includes but is not limited to cranes and equipment of the
27 following types: a mobile, carrier-mounted, power-operated hoisting
28 machine utilizing a power-operated boom which moves laterally by rota-
29 tion of the machine on the carrier, tower cranes, hydraulic cranes and
30 power-operated derricks; provided, however, that "crane" shall not
31 include public utility company line trucks used by a public utility
32 company in the construction and maintenance of its generation, trans-
33 mission and distribution facilities.

34 4. "Blaster" means a person who performs the act of preparation for
35 detonation and the detonation of an explosive.

36 5. "Pyrotechnician" means a person who performs the preparation for
37 and the firing of pyrotechnics, as defined in article sixteen of the
38 labor law.

39 6. "Commissioner" means the commissioner of labor of the state of New
40 York, except that any reference to the commissioner with respect to
41 radioactive material, as defined in this article, or radiation equip-
42 ment, as defined in this article, shall be a reference to the commis-
43 sioner of health of the state of New York.

44 § 18. Section 482 of the general business law, as amended by section 2
45 of part B of chapter 58 of the laws of 2006, is amended to read as
46 follows:

47 § 482. Licensing and registration. 1. No individual shall use lasers,
48 operate a crane [or], act as a blaster or as a pyrotechnician without
49 holding a valid certificate of competence issued by the commissioner of
50 labor.

51 2. No person shall possess or use any radioactive material without a
52 valid license issued by the commissioner of health. Every installation
53 and mobile source consisting of radiation equipment shall be registered
54 with the commissioner of health.

55 3. No employer, contractor or agent thereof shall knowingly permit any
56 individual to use lasers, operate a crane or act as a blaster or as a

S. 57

109

A. 157

1 pyrotechnician without holding a valid certificate of competence issued
2 by the commissioner of labor.

3 § 19. Paragraph a of subdivision 1 and subdivision 2 of section 483 of
4 the general business law, paragraph a of subdivision 1 as amended by
5 section 3 of part B of chapter 58 of the laws of 2006, subdivision 2 as
6 added by chapter 754 of the laws of 1975, are amended to read as
7 follows:

8 a. The commissioner of labor is hereby authorized and directed to

9 prescribe such rules and regulations as may be necessary and proper for
10 the administration and enforcement of this article with respect to
11 lasers, crane operators [and], blasters and pyrotechnicians.

12 2. Such regulations may provide for examinations, categories of
13 certificates, licenses, or registrations, age and experience require-
14 ments, payment of fees, and may also provide for such limitations and
15 exemptions as the commissioner finds necessary and proper. In the case
16 of blasters and pyrotechnicians, such regulations may require finger-
17 printing, and in the case of users of radioactive material, such regu-
18 lations may require the posting of a bond or other security.

19 § 20. Section 484 of the general business law, as added by chapter 754
20 of the laws of 1975, subdivision 1 as amended by section 4 of part B of
21 chapter 58 of the laws of 2006 and subdivision 2 as amended and subdivi-
22 sion 3 as added by chapter 569 of the laws of 1982, is amended to read
23 as follows:

24 § 484. Enforcement. 1. a. For the purpose of administering and enforc-
25 ing the provisions of this article with respect to lasers, cranes [and],
26 blasters and pyrotechnicians, the commissioner of labor shall have and
27 may use all of the powers conferred upon him or her by the labor law, in
28 addition to the powers conferred herein.

29 b. For the purpose of administering and enforcing the provisions of
30 this article with respect to radioactive material and radiation equip-
31 ment the commissioner of health shall have and may use all of the powers
32 conferred upon him or her by the public health law, in addition to the
33 powers conferred in this article.

34 2. [A violation of] Any person who violates any provision of this
35 article or of any rule or regulation of the commissioner promulgated
36 hereunder or of any rule or regulation promulgated pursuant to paragraph
37 b of subdivision two of section four hundred eighty-five of this article
38 shall be guilty of a misdemeanor, and upon conviction shall be punished,
39 by a fine of not more than one thousand dollars; for a second offense by
40 a fine of not less than one thousand nor more than three thousand
41 dollars, or by imprisonment for not more than one year or by both such
42 fine and imprisonment; for a subsequent offense by a fine of not less
43 than three thousand dollars, or by imprisonment for not more than one
44 year, or by both such fine and imprisonment.

45 3. Where the employer, contractor or agent thereof permitting a
46 violation of any provision of this article or of any rule or regulation
47 of the commissioner promulgated hereunder or of any rule or regulation
48 promulgated pursuant to paragraph b of subdivision two of section four
49 hundred eighty-five of this article shall be a corporation, then in
50 addition to the corporation, the officer or agent of such corporation
51 who knowingly permits the corporation to violate such provisions is
52 guilty of a misdemeanor; and upon conviction thereof shall be punished
53 for a first offense by a fine of not more than one [hundred] thousand
54 dollars; for a second offense by a fine of not less than one [hundred]

55 thousand nor more than [five hundred] three thousand dollars, or by
56 imprisonment for not more than [thirty days] one year or by both such

S. 57

110

A. 157

1 fine and imprisonment; for a subsequent offense by a fine of not less
2 than three [hundred] thousand dollars or by imprisonment for not more
3 than [sixty days] one year, or by both such fine and imprisonment.

4 § 21. Subdivisions 2, 3, 3-a and 4 of section 405.00 of the penal law,
5 subdivision 3-a as added by chapter 151 of the laws of 2002, are amended
6 to read as follows:

7 2. Permits for [public] fireworks displays. Notwithstanding the
8 provisions of section 270.00 of this chapter, the permit authority of a
9 state park, county park, city, village or town may [upon application in
10 writing,] grant a permit for the [public] display of fireworks [by] to
11 municipalities, fair associations, amusement parks, persons, or organ-
12 izations of individuals that submit an application in writing. The
13 application for such permit shall set forth:

14 (a) The name of the body sponsoring the display and the names of the
15 persons actually to be in charge of the firing of the display who shall
16 possess a valid certificate of competence as a pyrotechnician as
17 required under the general business law and article sixteen of the labor
18 law. The permit application shall further contain a verified statement
19 from the applicant identifying the individuals who are authorized to
20 fire the display including their certificate numbers, and that such
21 individuals possess a valid certificate of competence as a pyrotechni-
22 cian.

23 (b) The date and time of day at which the display is to be held.

24 (c) The exact location planned for the display.

25 (d) [The age, experience and physical characteristics of the persons
26 who are to do the actual discharging of the fireworks.

27 (e)] The number and kind of fireworks to be discharged.

28 [(f)] (e) The manner and place of storage of such fireworks prior to
29 the display.

30 [(g)] (f) A diagram of the grounds on which the display is to be held
31 showing the point at which the fireworks are to be discharged, the
32 location of all buildings, highways and other lines of communication,
33 the lines behind which the audience will be restrained and the location
34 of all nearby trees, telegraph or telephone lines or other overhead
35 obstructions.

36 [(h)] (g) Such other information as the permit authority may deem
37 necessary to protect persons or property.

38 3. Applications for permits. All applications for permits for the
39 [public] display of fireworks shall be made at least five days in
40 advance of the date of the display and the permit shall contain
41 provisions that the actual point at which the fireworks are to be fired

42 [shall be at least two hundred feet from the nearest permanent building,
43 public highway or railroad or other means of travel and at least fifty
44 feet from the nearest above ground telephone or telegraph line, tree or
45 other overhead obstruction, that the audience at such display shall be
46 restrained behind lines at least one hundred and fifty feet from the
47 point at which the fireworks are discharged and only persons in active
48 charge of the display shall be allowed inside these lines, that all
49 fireworks that fire a projectile shall be so set up that the projectile
50 will go into the air as nearby as possible in a vertical direction,
51 unless such fireworks are to be fired from the shore of a lake or other
52 large body of water, when they may be directed in such manner that the
53 falling residue from the deflagration will fall into such lake or body
54 of water, that any fireworks that remain unfired after the display is
55 concluded shall be immediately disposed of in a way safe for the partic-
56 ular type of fireworks remaining, that no fireworks display shall be

S. 57

111

A. 157

1 held during any wind storm in which the wind reaches a velocity of more
2 than thirty miles per hour,] be in accordance with the rules promulgated
3 by the commissioner of labor pursuant to section four hundred sixty-two
4 of the labor law and that all the persons in actual charge of firing the
5 fireworks shall be over the age of eighteen years, competent and phys-
6 ically fit for the task, that there shall be at least two such operators
7 constantly on duty during the discharge and that at least two [sodaacid
8 or other] approved type fire extinguishers [of at least two and one-half
9 gallons capacity each] shall be kept at as widely separated points as
10 possible within the actual area of the display. The legislative body of
11 a state park, county park, city, village or town may provide for
12 approval of such permit by the head of the police or fire department or
13 both where there are such departments. No permit granted and issued
14 hereunder shall be transferable. After such permit shall have been
15 granted, sales, possession, use and distribution of fireworks for such
16 display shall be lawful solely therefor.

17 3-a. Notwithstanding the provisions of subdivision three of this
18 section, no permit may be issued to conduct a [public] display of fire-
19 works upon any property where the boundary line of such property is less
20 than five hundred yards from the boundary line of any property which is
21 owned, leased or operated by any breeder as defined in subdivision four
22 of section [two hundred forty-four] two hundred fifty-one of the racing,
23 pari-mutuel wagering and breeding law.

24 4. Bonds. Before granting and issuing a permit for a [public] display
25 of fireworks as herein provided, the permit authority shall require an
26 adequate bond from the applicant therefor, unless it is a state park,
27 county park, city, village or town, [or from the person to whom a
28 contract for such display shall be awarded,] in a sum to be fixed by the

29 permit authority, which, however, shall not be less than [five thousand]
30 one million dollars, conditioned for the payment of all damages, which
31 may be caused to a person or persons or to property, by reason of the
32 display so permitted and arising from any acts of the permittee, his
33 agents, employees, contractors or subcontractors. Such bond shall run to
34 the state park, county park, city, village or town in which the permit
35 is granted and issued and shall be for the use and benefit of any person
36 or persons or any owner or owners of any property so injured or damaged,
37 and such person or persons or such owner or owners are hereby authorized
38 to maintain an action thereon, which right of action also shall accrue
39 to the heirs, executors, administrators, successors or assigns of such
40 person or persons or such owner or owners. The permit authority may
41 accept, in lieu of such bond, an indemnity insurance policy with liabil-
42 ity coverage and indemnity protection equivalent to the terms and condi-
43 tions upon which such bond is predicated and for the purposes [herein]
44 provided in this section.

45 § 22. This act shall take effect immediately; provided that:

46 1. section eight of this act shall take effect on the thirtieth day
47 after it shall have become a law, and sections eighteen and twenty-one
48 of this act shall take effect on the one hundred eightieth day after it
49 shall have become a law;

50 2. all licenses and certificates issued pursuant to article 16 of the
51 labor law and article 28-D of the general business law prior to the
52 effective date of this act shall remain in full force and effect until
53 such licenses and certificates expire; and

54 3. sections fifteen and twenty of this act shall apply to offenses
55 committed on or after the effective date of such sections.

S. 57

112

A. 157

1

PART DD

2 Section 1. Section 484 of the general business law is amended by
3 adding a new subdivision 4 to read as follows:

4 4. (a) Any person who operates a crane without a certificate of compe-
5 tence issued by the commissioner of labor as required by section four
6 hundred eighty-two of this article shall be deemed to have violated this
7 article. The commissioner may impose a civil penalty upon such person of
8 no more than one thousand dollars for the initial violation, no more
9 than two thousand dollars for the second violation, and no more than
10 three thousand dollars for a third or subsequent violation.

11 (b) Any employer, contractor or agent thereof who willfully permits a
12 person to operate a crane without a certificate of competence issued by
13 the commissioner of labor as required by section four hundred eighty-two
14 of this article shall be deemed to have violated this article. The
15 commissioner may impose a civil penalty upon such employer, contractor,

16 or agent of no more than five thousand dollars for the initial
17 violation, and no more than ten thousand dollars for a second or subse-
18 quent violation.

19 (c) When two final determinations have been rendered under this
20 section against a person who operates a crane in violation of this arti-
21 cle, such person shall be ineligible to apply for a certificate of
22 competence from the commissioner of labor for a period of two years from
23 the date of the second final determination.

24 § 2. This act shall take effect immediately and shall apply to
25 violations occurring on and after such effective date.

26 § 2. Severability clause. If any clause, sentence, paragraph, subdivi-
27 sion, section or part of this act shall be adjudged by any court of
28 competent jurisdiction to be invalid, such judgment shall not affect,
29 impair, or invalidate the remainder thereof, but shall be confined in
30 its operation to the clause, sentence, paragraph, subdivision, section
31 or part thereof directly involved in the controversy in which such judg-
32 ment shall have been rendered. It is hereby declared to be the intent of
33 the legislature that this act would have been enacted even if such
34 invalid provisions had not been included herein.

35 § 3. This act shall take effect immediately provided, however, that
36 the applicable effective date of Parts A through DD of this act shall be
37 as specifically set forth in the last section of such Parts.