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IN SENATE

March 26, 2008

Introduced by Sen. WINNER -- read twice and ordered printed, and when printed to be committed to the Committee on Labor

AN ACT to amend the labor law, in relation to explosives

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Section 450 of the labor law, as amended by chapter 809 of
2 the laws of 1949, subdivision 2 as amended by chapter 1022 of the laws
3 of 1970, is amended to read as follows:

4 S 450. Application of article. 1. This article shall apply to persons
5 engaged in the manufacture, ownership, possession, storage, use, trans-
6 portation, purchase, sale or gift of explosives as defined in subdivi-
7 sion one of section four hundred fifty-one OF THIS ARTICLE.

8 2. This article shall not apply to explosives while being transported
9 in conformity with federal law or regulations, nor except as may be
10 herein otherwise provided to persons who manufacture, own, possess,
11 store, use, transport, purchase, sell or give explosives within the
12 territorial boundaries of cities having more than one million inhabit-
13 ants, {nor to} OR TO ANY OF THE FOLLOWING WHILE IN THE PERFORMANCE OF
14 THEIR OFFICIAL DUTIES: the armed forces of the United States, the
15 national guard, the state guard and duly constituted police and fire-
16 fighting forces of the state and its civil and political subdivisions.

17 3. {For all purposes of this article, explosives in the possession of
18 an employee within the scope of his duties, shall be considered to be in
19 the possession of the employer.} THE PROVISIONS OF THIS SECTION SHALL
20 NOT APPLY TO MANUFACTURING, PURCHASE, OWNERSHIP, POSSESSION, USE, TRANS-
21 PORTATION, SALE, TRANSFER, DISPOSAL, OR DESTRUCTION OF PYROTECHNICS BY
22 THOSE PERSONS, ENTITIES OR BUSINESSES THAT HOLD A CURRENT FEDERAL PYRO-
23 TECHNICS OR EXPLOSIVES LICENSE OR PERMIT ISSUED BY THE FEDERAL BUREAU OF
24 ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES. ADDITIONALLY, ANY INDIVIDUAL
25 WHO HOLDS A FEDERAL EXPLOSIVES LICENSE OR PERMIT SHALL BE ALLOWED TO
26 POSSESS, STORE AND USE "CONSUMER FIREWORKS" AND/OR "ARTICLES PYROTECH-
27 NIC" AS CLASSIFIED BY THE UNITED STATES DEPARTMENT OF TRANSPORTATION.

28 S 2. Section 451 of the labor law, as amended by chapter 809 of the
29 laws of 1949, subdivision 1 as amended by chapter 220 of the laws of

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets

{ } is old law to be omitted.

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1 1974 and subdivision 11 as renumbered by chapter 1022 of the laws of
2 1970, is amended to read as follows:

3 S 451. Definitions. Whenever used in this article: 1. "Explosives"
4 means gunpowder, powders used for blasting, high explosives, blasting
5 materials, detonating fuses, detonators and other detonating agents,
6 smokeless powder and any chemical compound or any mechanical mixture
7 containing any oxidizing and combustible units, or other ingredients in
8 such proportions, quantities, or packing that ignition by fire, fric-
9 tion, concussion, percussion or detonation of any part thereof may CAUSE
10 and is intended to cause an explosion, but shall not include gasoline,
11 kerosene, naphtha, turpentine, benzene, acetone, ethyl ether, benzol and
12 all quantities of black powder not exceeding five pounds for use in
13 firing of antique firearms or artifacts or replicas thereof. Fixed ammu-
14 nition and primers for small arms, {fire-crackers,} safety fuses and
15 matches shall not be deemed to be explosives when, {as may be determined
16 by the board in its rules} AS PROVIDED BY REGULATION, the individual
17 units contain any of the above-mentioned articles or substances in such
18 limited quantity, of such nature and so packed that it is {impossible}
19 HIGHLY UNLIKELY to produce an explosion of such units to the injury of
20 life, limb or property.

21 2. "Highway" means any public street, public highway, public alley or
22 navigable {stream} WATERWAY, which is open for traffic. Navigable
23 {streams} WATERWAYS shall be considered as only those {streams} suscep-
24 tible of being used, in their ordinary condition, as highways of
25 commerce.

26 3. "Railroad" or "railway" means any railroad which carries passengers
27 OR FREIGHT for hire, but shall not include auxiliary tracks, spurs and
28 sidings installed and primarily used in serving any mine, quarry or
29 plant.

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

36 5. "Explosives factory" means any building or other structure in which
37 the manufacture of explosives or any part of the manufacture thereof is
38 carried on.

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

41 7. "Efficient barricade" means natural features of the ground, a dense
42 woods, an artificial mound or a properly revetted wall of earth not less
43 than three feet thick at the top, spaced at least three feet at the
44 bottom from any explosives factory or magazine, the height of which is

45 such that any straight line drawn from the top of any side wall of the
46 explosives factory or magazine to the top of a building or to a point
47 twelve feet above the center of a railroad or highway to be protected
48 will pass through such intervening barricade.

49 8. "Person" includes any natural person, partnership, association or
50 corporation.

51 9. "{Manufacturer} EXPLOSIVES DEALER MANUFACTURER" means any person
52 who is engaged in the {manufacture} BUYING, SELLING, MANUFACTURING or
53 {production of} PRODUCING ANY CLASS OF explosives.

54 10. {"Dealer" means any person engaged in the business of buying and
55 selling explosives.

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1 11. A "farmer" is a person who occupies and cultivates land.} "LOW
2 EXPLOSIVES DEALER MANUFACTURER" MEANS ANY PERSON WHO IS ENGAGED IN THE
3 BUYING AND SELLING OR MANUFACTURING OF LOW EXPLOSIVES SUCH AS BLACK OR
4 SMOKELESS POWDER FOR USE IN ANTIQUE WEAPONS OR REPLICAS OR FOR OTHER
5 SPORTING PURPOSES.

6 11. "PYROTECHNICS DEALER MANUFACTURER" MEANS ANY PERSON WHO IS ENGAGED
7 IN THE MANUFACTURING, BUYING AND/OR SELLING OF LOW EXPLOSIVES FOR THE
8 PURPOSE OF MANUFACTURING OR SALE OF PYROTECHNICS FOR THE DISPLAY OF
9 FIREWORKS.

10 12. "DISPLAY OF FIREWORKS" MEANS ANY USE OF FIREWORKS AND/OR PYROTECH-
11 NICS WHERE ONE OR MORE PEOPLE OBSERVE SUCH FIREWORKS AND/OR PYROTECH-
12 NICS.

13 13. "PUBLIC DISPLAY OF FIREWORKS" MEANS A DISPLAY OF FIREWORKS THAT IS
14 DIRECTLY SUPERVISED BY A PYROTECHNIC OPERATOR LICENSED IN ACCORDANCE
15 WITH ALL APPLICABLE LAWS AND IS EITHER SPONSORED AND/OR CONDUCTED BY A
16 MUNICIPALITY OR GOVERNMENT ENTITY OR USES PUBLIC PROPERTY OR REAL ESTATE
17 TO CONDUCT THE DISPLAY, OR A DISPLAY OF FIREWORKS ON PRIVATE LAND WHERE
18 THE FIREWORKS DISPLAY IS ADVERTISED TO THE PUBLIC AT LARGE BY EITHER
19 PRINT MEDIA, BROADCAST MEDIA OR BOTH.

20 14. "PRIVATE DISPLAY OF FIREWORKS" MEANS A DISPLAY OF FIREWORKS THAT
21 IS DIRECTLY SUPERVISED BY A PYROTECHNIC OPERATOR LICENSED IN ACCORDANCE
22 WITH ALL APPLICABLE LAWS AND IS EITHER SPONSORED AND/OR CONDUCTED BY A
23 PRIVATE PERSON, GROUP, OR ENTITY AND USES PRIVATE PROPERTY OR REAL
24 ESTATE TO CONDUCT THE DISPLAY, AND WHERE THE ON-SITE OBSERVERS OF THE
25 FIREWORKS DISPLAY ARE LIMITED TO THOSE SPECIFIC PERSONS INVITED FOR AN
26 EVENT OR SERIES OF EVENTS WHICH INCLUDE SUCH FIREWORKS DISPLAY.

27 15. "EXPLOSIVES HANDLER LICENSE" MEANS A CLASS OF EXPLOSIVES LICENSE
28 WHEREIN THE LICENSEE IS ALLOWED UNSUPERVISED ACCESS OR UNSUPERVISED
29 CUSTODY TO EXPLOSIVES IN THE POSSESSION OF HIS/HER EMPLOYER AND THE
30 EMPLOYER POSSESSES A VALID LICENSE ISSUED BY THE COMMISSIONER, WHICH
31 ALLOWS THE EMPLOYER TO MANUFACTURE, OWN, POSSESS, BUY, SELL, PURCHASE,
32 TRANSFER, TRANSPORT, AND/OR DESTROY EXPLOSIVES.

33 16. "OWN AND POSSESS EXPLOSIVES LICENSE" MEANS A CLASS OF EXPLOSIVES
34 LICENSE WHEREIN THE LICENSEE MAY PURCHASE, OWN, TRANSPORT, POSSESS, USE,
35 DISPOSE OF AND DESTROY ANY CLASS OF EXPLOSIVES IN ACCORDANCE WITH THIS

36 ARTICLE. IT SHALL NOT PERMIT THE LICENSEE TO MANUFACTURE, SELL, GIVE OR
37 TRANSFER OWNERSHIP OF ANY CLASS OF EXPLOSIVES.

38 17. "OWN AND POSSESS LOW EXPLOSIVES LICENSE" MEANS A CLASS OF
39 EXPLOSIVES LICENSE WHEREIN THE LICENSEE MAY PURCHASE, OWN, TRANSPORT,
40 POSSESS, USE, DISPOSE OF AND DESTROY ANY LOW EXPLOSIVES IN ACCORDANCE
41 WITH THIS ARTICLE. IT SHALL NOT PERMIT THE LICENSEE TO MANUFACTURE,
42 SELL, GIVE OR TRANSFER OWNERSHIP OF ANY LOW EXPLOSIVES.

43 18. "HIGH EXPLOSIVES" MEANS EXPLOSIVE MATERIALS THAT CAN BE CAUSED TO
44 DETONATE BY MEANS OF A BLASTING CAP WHEN UNCONFINED AS, FOR EXAMPLE,
45 DYNAMITE.

46 19. "LOW EXPLOSIVES" MEANS EXPLOSIVE MATERIALS THAT CAN BE CAUSED TO
47 DEFLAGRATE WHEN CONFINED AS, FOR EXAMPLE, SMOKELESS OR BLACK POWDER.

48 20. "PYROTECHNICS" MEANS ANY COMBUSTIBLE OR EXPLOSIVE COMPOSITIONS OR
49 MANUFACTURED ARTICLES DESIGNED AND PREPARED FOR THE PURPOSE OF
PRODUCING

50 AUDIBLE OR VISIBLE EFFECTS THAT ARE COMMONLY REFERRED TO AS FIREWORKS,
51 INCLUDING SIGNALING DEVICES SUCH AS FLARES AND FUSES.

52 S 3. Section 452 of the labor law, as amended by chapter 190 of the
53 laws of 1989, is amended to read as follows:

54 S 452. Packing and labeling. No person shall own, possess, store, deal
55 in, sell, give or purchase explosives unless the packing, or encasement,

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1 and the marking and labeling of such explosives shall comply with the
2 {rules of the board} REGULATIONS PROMULGATED HEREUNDER.

3 S 4. Section 453 of the labor law, as added by chapter 809 of the laws
4 of 1949, the second undesignated paragraph as amended by chapter 190 of
5 the laws of 1989, is amended to read as follows:

6 S 453. Storage. No person shall store explosives except in a magazine
7 constructed {and}, located AND CERTIFIED in accordance with the
8 provisions of this article and the {rules of the board and unless a
9 certificate, which} REGULATIONS PROMULGATED HEREUNDER. THE MAGAZINE
10 CERTIFICATE shall be attached to the magazine on the inside {thereof,
11 has been issued for} OF EACH such magazine. No person shall store more
12 than three hundred thousand pounds of explosives in any one magazine at
13 any time. EXPLOSIVES NOT STORED IN COMPLIANCE WITH THIS PARAGRAPH SHALL
14 BE DEEMED TO PRESENT AN IMMINENT HAZARD TO EMERGENCY RESPONDERS AND
15 OTHER PERSONS LAWFULLY FREQUENTING THE AREA AND ARE SUBJECT TO SEIZURE
16 AND DESTRUCTION UNDER SUBDIVISION FIVE OF SECTION FOUR HUNDRED SIXTY OF
17 THIS ARTICLE.

18 This section shall not apply to explosives while being legally blasted
19 or while legally in the custody of a common carrier awaiting shipment or
20 delivery to a consignee during the time permitted by federal law; nor to
21 the storage of such limited amount of sporting or smokeless powders as
22 may be permitted by the {rules of the board} REGULATIONS PROMULGATED
23 HEREUNDER.

24 S 5. Section 454 of the labor law, as amended by chapter 477 of the
25 laws of 1943, is amended to read as follows:

26 S 454. Construction of magazines. Unless otherwise prescribed by the
27 {board in its rules} REGULATIONS PROMULGATED HEREUNDER, magazines in
28 which explosives shall be lawfully kept or stored shall be constructed
29 of brick, concrete, {iron} METAL or wood covered with {iron} METAL, and
30 shall have no openings except for ventilation and entrance. All
31 EXPLOSIVES magazines, except those in mines and tunnels, shall be
32 located above ground. All EXPLOSIVES magazines shall be kept clean and
33 dry at all times.

34 S 6. Section 455 of the labor law, as amended by chapter 809 of the
35 laws of 1949, is amended to read as follows:

36 S 455. Magazine precautions. 1. No {person} INDIVIDUAL shall unlock
37 {or}, open the doors of, OR ACCESS THE CONTENTS OF, EXPLOSIVES maga-
38 zines, {except} UNLESS A LICENSE HAS BEEN ISSUED THEREFOR TO THE INDI-
39 VIDUAL BY THE COMMISSIONER AS PROVIDED FOR IN THIS ARTICLE OR THE INDI-
40 VIDUAL IS UNDER THE DIRECT SUPERVISION OF A LICENSE HOLDER. NO EMPLOYER
41 SHALL ALLOW ANY INDIVIDUAL ACCESS TO THEIR EXPLOSIVES MAGAZINES OR
42 EXPLOSIVES UNLESS A LICENSE HAS BEEN ISSUED THEREFOR TO THE INDIVIDUAL
43 BY THE COMMISSIONER AS PROVIDED FOR IN THIS ARTICLE OR THE INDIVIDUAL IS
44 UNDER THE DIRECT SUPERVISION OF A LICENSE HOLDER.

45 2. EXCEPTIONS. (A) IN THE CASE OF EMPLOYEES OF RETAIL ESTABLISHMENTS
46 WHERE BLACK AND/OR SMOKELESS POWDER IS SOLD AND WHERE STORAGE IS LIMITED
47 TO FIFTY POUND INDOOR STORAGE MAGAZINES AND AN ON-SITE RESPONSIBLE
48 EMPLOYEE, MANAGER OR OWNER HAS A VALID EXPLOSIVES DEALER
MANUFACTURING
49 LICENSE ISSUED BY THE COMMISSIONER, SUCH EMPLOYEES, WHILE PERFORMING
50 THEIR ASSIGNED DUTIES FOR SUCH STORE, SHALL NOT BE REQUIRED TO HAVE A
51 LICENSE. THE MATERIAL SHALL BE STORED IN A MAGAZINE CERTIFIED BY THE
52 COMMISSIONER AND SUCH EXPLOSIVES SHALL BE CONSIDERED AT ALL TIMES TO BE
53 IN THE POSSESSION OF THE EMPLOYER. THE LICENSEE SHALL BE RESPONSIBLE FOR
54 TRAINING EMPLOYEES IN THE PROPER STORAGE AND HANDLING OF THE EXPLOSIVE
55 MATERIALS AND SHALL BE RESPONSIBLE FOR ENSURING THAT EMPLOYEES COMPLY
56 WITH THIS ARTICLE.

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1 (B) IN THE CASE OF EMPLOYEES OF AN EXPLOSIVES MANUFACTURER, WHILE
2 PERFORMING THEIR ASSIGNED DUTIES WITHIN AND UPON THE GROUNDS OF A MANU-
3 FACTURING FACILITY UNDER THE SUPERVISION OF A PERSON POSSESSING A
4 CURRENT EXPLOSIVES DEALER MANUFACTURERS LICENSE ISSUED BY THE COMMIS-
5 SIONER, SUCH EXPLOSIVES SHALL BE CONSIDERED TO BE IN THE POSSESSION OF
6 THE EMPLOYER AND SUCH EMPLOYEES SHALL NOT BE REQUIRED TO POSSESS A
7 LICENSE.

8 (C) EXPLOSIVES MAGAZINES SHALL ONLY BE OPENED TO ALLOW for the lawful
9 storage or removal of explosives.

10 (D) No person shall have matches or fire of any kind in any magazine.
11 No person shall store or keep blasting caps, detonating or fulminating
12 caps, or detonators in a magazine in which any other type of explosive
13 is stored or kept. No person shall open any package of explosives within
14 fifty feet of any magazine, nor shall any explosives be kept in a maga-

15 zine except in the original containers. No person shall discharge
16 firearms within five hundred feet of a magazine or explosives factory,
17 or at or against any such building or magazine. Any theft or loss of
18 explosives from a storage magazine or otherwise, shall immediately be
19 reported to the {industrial} commissioner and the state or local police
20 or county sheriff.

21 S 7. Section 456 of the labor law, as amended by chapter 461 of the
22 laws of 1950, is amended to read as follows:

23 S 456. Location of magazines. The quantity of explosives that may be
24 stored in any explosives factory or magazine shall depend upon its
25 distances from the nearest building, railroad or highway or other maga-
26 zine. The distances that a quantity of explosives may be stored from the
27 nearest magazine, building, railroad or highway, shall be as determined
28 by the {rules of the board} REGULATIONS PROMULGATED HEREUNDER. All such
29 distances may be reduced one-half when the magazine, building, railroad
30 or highway to be protected is adequately screened from the explosives
31 factory or magazine by an efficient barricade as defined in subdivision
32 seven of section four hundred fifty-one OF THIS ARTICLE.

33 S 8. The labor law is amended by adding a new section 457 to read as
34 follows:

35 S 457. RELOCATION OF MAGAZINES. 1. WHEN ANY MAGAZINE IS MOVED FROM THE
36 LOCATION FOR WHICH IT WAS CERTIFIED ACCORDING TO SECTION FOUR HUNDRED
37 FIFTY-SIX OF THIS ARTICLE AND THE MAGAZINE IS OR IS INTENDED TO BE USED
38 FOR THE STORAGE OF EXPLOSIVES AND WILL BE IN THE NEW LOCATION FOR MORE
39 THAN TWENTY-FOUR HOURS, THE COMMISSIONER SHALL BE NOTIFIED AS TO THE NEW
40 LOCATION OF THE MAGAZINE. SUCH NOTIFICATION SHALL BE MADE NO LATER THAN
41 ONE BUSINESS DAY PRIOR TO THE MOVE. THE NOTIFICATION SHALL CONTAIN ALL
42 OF THE INFORMATION REQUIRED BY THE COMMISSIONER.
43 2. THIS PROVISION SHALL NOT APPLY WHERE THE RELOCATION HAS BEEN
44 ORDERED BY POLICE, FIRE OR OTHER AUTHORIZED EMERGENCY PERSONNEL, OR
45 WHERE THE CONTINUED STORAGE IN THE CURRENT LOCATION WOULD CONSTITUTE A
46 THREAT TO LIFE OR PROPERTY. IN SUCH CASES THE COMMISSIONER SHALL BE
47 NOTIFIED AS SOON AS PRACTICAL AFTER THE RELOCATION BUT IN NO CASE MORE
48 THAN TWO BUSINESS DAYS FOLLOWING SUCH RELOCATION.
49 3. WHEN A MAGAZINE IS MOVED TO STORAGE, ABANDONED, SOLD OR REMOVED
50 FROM SERVICE THE CERTIFICATE HOLDER SHALL NOTIFY THE COMMISSIONER WITHIN
51 FIVE BUSINESS DAYS OF THE DATE THAT SUCH MAGAZINE WAS ABANDONED, MOVED
52 TO STORAGE, SOLD, OR REMOVED FROM SERVICE AND SHALL SURRENDER THE
53 CERTIFICATE TO THE COMMISSIONER.

54 S 9. Section 458 of the labor law, as added by chapter 809 of the laws
55 of 1949, subdivisions 1 and 2 as amended by chapter 61 of the laws of
56 1989, subdivision 3 as amended by section 10 of part A of chapter 57 of

1 the laws of 2004, subdivision 4 as amended by chapter 164 of the laws of
2 2003, subdivisions 5, 6, 7 and 9 as added and subdivisions 10 and 11 as
3 renumbered by chapter 1022 of the laws of 1970 and subdivision 8 as
4 added by chapter 150 of the laws of 1971, is amended to read as follows:

5 S 458. Licenses and certificates. 1. "OWN AND POSSESS EXPLOSIVES
6 LICENSE." No person shall purchase, own, possess, transport {or}, use,
7 DISPOSE OF OR DESTROY explosives unless a license therefor shall have
8 been issued as provided in this article. SUCH LICENSE SHALL NOT PERMIT
9 THE LICENSEE TO MANUFACTURE, SELL, GIVE OR TRANSFER OWNERSHIP OF ANY
10 CLASS OF EXPLOSIVES.

11 {Application for such a license shall be made to the commissioner on
12 forms provided and shall contain such information as the commissioner
13 may require. Where the commissioner finds that the applicant has
14 complied with the requirements of this article and the rules promulgated
15 hereunder, the commissioner shall issue a license or renewal thereof
16 which shall be valid for one year from the date of issuance. Such appli-
17 cation and each renewal thereof shall be accompanied by a fee of fifty
18 dollars non-refundable to be payable to the commissioner.}

19 2. "EXPLOSIVES DEALER MANUFACTURER LICENSE." No person shall {manufac-
20 ture, deal in, sell, give or dispose} BUY, SELL, MANUFACTURE OR PRODUCE
21 ANY CLASS of explosives unless a license therefor shall have been issued
22 to such person for that purpose by the commissioner as provided in this
23 article, nor shall any person sell, give or dispose of explosives to, or
24 manufacture explosives for any person who does not hold a license as
25 provided by {subdivision one of} this section.

26 {Application for such a license, which shall be renewed annually,
27 shall be made to the commissioner on forms provided and shall contain
28 such information as the commissioner may require. The commissioner,
29 after investigation of the application, shall issue a license or renewal
30 thereof, which shall be valid for one year from the date of issuance,
31 where the commissioner finds that the applicant has complied with the
32 requirements of this article and the rules promulgated hereunder. Each
33 application for such a license, or for its renewal, shall be accompanied
34 by a fee of one hundred dollars non-refundable to be payable to the
35 commissioner.}

36 3. "PYROTECHNICS DEALER MANUFACTURER LICENSE." NO PERSON SHALL MANU-
37 FACTURE, BUY AND/OR SELL FINISHED PYROTECHNICS OR THEIR EXPLOSIVE COMPO-
38 NENTS, UNLESS A LICENSE THEREFOR HAS BEEN ISSUED FOR THAT PURPOSE BY THE
39 COMMISSIONER AS PROVIDED FOR IN THIS ARTICLE.

40 4. "LOW EXPLOSIVES DEALER MANUFACTURER LICENSE." NO PERSON SHALL BUY,
41 SELL, MANUFACTURE OR PRODUCE LOW EXPLOSIVES SUCH AS BLACK OR SMOKELESS
42 POWDER UNLESS A LICENSE HAS BEEN ISSUED THEREFOR BY THE COMMISSIONER AS
43 PROVIDED FOR IN THIS ARTICLE.

44 5. "OWN AND POSSESS LOW EXPLOSIVES LICENSE." NO PERSON SHALL PURCHASE,
45 OWN, POSSESS, TRANSPORT, USE, DISPOSE OF OR DESTROY ANY LOW EXPLOSIVES
46 UNLESS A LICENSE HAS BEEN ISSUED THEREFOR BY THE COMMISSIONER AS
47 PROVIDED FOR IN THIS ARTICLE. SUCH LICENSE SHALL NOT PERMIT THE LICENSEE
48 TO MANUFACTURE, SELL, GIVE OR TRANSFER OWNERSHIP OF ANY LOW EXPLOSIVES.

49 6. "EXPLOSIVES HANDLERS LICENSE." NO INDIVIDUAL SHALL HAVE UNSUPER-
50 VISED ACCESS TO OR UNSUPERVISED CUSTODY OF EXPLOSIVES ON BEHALF OF A
51 LICENSE HOLDER UNLESS HE OR SHE HAS BEEN ISSUED AN EXPLOSIVES HANDLERS
52 LICENSE BY THE COMMISSIONER AS PROVIDED FOR IN THIS ARTICLE. SUCH
53 LICENSE SHALL NOT PERMIT THE LICENSEE TO PURCHASE, OWN, POSSESS, AND/OR

54 USE EXPLOSIVES.

55 7. "APPLICATIONS." APPLICATION FOR ALL EXPLOSIVES LICENSES SHALL BE
56 MADE TO THE COMMISSIONER ON FORMS PROVIDED AND SHALL CONTAIN SUCH INFOR-

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1 MATION AS THE COMMISSIONER MAY REQUIRE. WHERE THE COMMISSIONER FINDS
2 THAT THE APPLICANT HAS COMPLIED WITH THE REQUIREMENTS OF THIS ARTICLE,
3 THE RULES PROMULGATED HEREUNDER AND ALL OTHER APPLICABLE SECTIONS OF
4 THIS CHAPTER AND REGULATIONS PROMULGATED BY THE COMMISSIONER, THE
5 COMMISSIONER SHALL ISSUE A LICENSE OR RENEWAL THEREOF WHICH SHALL BE
6 VALID FOR THREE YEARS FROM THE DATE OF ISSUANCE. SUCH APPLICATION AND
7 EACH RENEWAL THEREOF SHALL BE ACCOMPANIED BY A NON-REFUNDABLE FEE TO BE
8 PAYABLE TO THE COMMISSIONER. THE LICENSE FEE SCHEDULE SHALL BE SUBJECT
9 TO THE DISCRETION OF THE COMMISSIONER AND NOT LESS THAN THE FOLLOWING
10 AMOUNTS:

- 11 (A) OWN AND POSSESS EXPLOSIVES LICENSE - ONE HUNDRED DOLLARS;
- 12 (B) EXPLOSIVES DEALER MANUFACTURER LICENSE - ONE THOUSAND DOLLARS;
- 13 (C) PYROTECHNICS DEALER MANUFACTURER LICENSE - ONE HUNDRED DOLLARS;
- 14 (D) LOW EXPLOSIVES DEALER MANUFACTURER LICENSE - FIFTY DOLLARS;
- 15 (E) OWN AND POSSESS LOW EXPLOSIVES LICENSE - FIFTY DOLLARS;
- 16 (F) EXPLOSIVES HANDLERS LICENSE - FIFTY DOLLARS.

17 8. "EXPLOSIVES MAGAZINE CERTIFICATE." No person shall keep or store
18 explosives unless a certificate therefor shall have been issued by the
19 commissioner as herein provided, but this requirement shall not apply to
20 the storage {at any one time by farmers of two hundred pounds or less of
21 blasting explosives for agricultural purposes} OF PYROTECHNIC MATERIALS
22 BY THOSE PERSONS AND BUSINESSES THAT HOLD A VALID PYROTECHNICS OR
23 EXPLOSIVES LICENSE OR PERMIT ISSUED BY THE FEDERAL BUREAU OF ALCOHOL,
24 TOBACCO, FIREARMS AND EXPLOSIVES, AND SUCH MATERIALS ARE STORED IN AN
25 APPROPRIATE MAGAZINE AS SPECIFIED, APPROVED AND INSPECTED BY THE PERMIT-
26 TING AUTHORITY. SUCH PERSONS OR BUSINESSES SHALL NOTIFY THE COMMISSIONER
27 AND THE AUTHORITY HAVING JURISDICTION FOR FIRE SAFETY IN THE LOCALITY IN
28 WHICH SUCH MATERIALS ARE BEING STORED OF THE TYPE, MAGAZINE CAPACITY,
29 AND LOCATION OF EACH SITE WHERE SUCH MATERIALS ARE STORED. SUCH NOTIFI-
30 CATION SHALL BE MADE ORALLY TO THE AUTHORITY HAVING JURISDICTION FOR
31 FIRE SAFETY IN THE LOCALITY BEFORE THE END OF THE DAY AND IN WRITING TO
32 THE COMMISSIONER AND THE AUTHORITY HAVING JURISDICTION FOR FIRE SAFETY
33 IN THE LOCALITY WITHIN FORTY-EIGHT HOURS FROM THE TIME SUCH STORAGE
34 COMMENCED.

35 Application for such a certificate shall be made to the commissioner
36 on forms provided and shall contain such information as the commissioner
37 may require. The commissioner, where it is found that the applicant has
38 complied with the requirements of this article, and the rules promulgat-
39 ed hereunder and all other applicable sections of this chapter and regu-
40 lations promulgated by the commissioner, shall issue a certificate or a
41 renewal thereof, which shall be valid for {one year} THREE YEARS from
42 the date of issuance. In addition to any other causes for revocation of
43 a certificate hereinafter provided, the commissioner may revoke or modi-

44 fy such certificate because of any change in the conditions under which
45 it was granted, or for failure to pay the annual fee hereinafter
46 provided. The owner or user of a magazine shall annually pay to the
47 commissioner in advance a fee, subject to the discretion of the commis-
48 sioner and not less than fifty dollars, which shall be proportioned
49 according to the quantity and type of explosives authorized by the
50 certificate to be stored in the magazine.

51 {4.} 9. An application for a license or a certificate pursuant to
52 {subdivision} SUBDIVISIONS one{, two or three} THROUGH EIGHT of this
53 section shall be sworn to under oath and shall contain information
54 sufficient to identify the applicant, INCLUDING, BUT NOT LIMITED TO THE
55 FINGERPRINTS OF THE APPLICANT, and the purpose for which and the place
56 where the explosives are to be used, manufactured, dealt in, given,

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1 disposed of or stored, as the case may be, and to demonstrate the eligi-
2 bility of such applicant for the license or certificate requested. {The
3 commissioner may require that the application include, among other
4 things, photographs, fingerprints and personal references.} Such finger-
5 prints shall be submitted to the division of criminal justice services
6 for a state criminal history record check, as defined in subdivision one
7 of section three thousand thirty-five of the education law, and may be
8 submitted to the federal bureau of investigation for a national criminal
9 history record check. ANY APPLICATION FOR A LICENSE, CERTIFICATE OR
10 REGISTRATION REQUIRED TO BE FILED WITH THE DEPARTMENT PURSUANT TO THIS
11 SECTION MAY, IN LIEU OF BEING SWORN UNDER OATH, BE SUBSCRIBED BY THE
12 APPLICANT AND AFFIRMED BY HIM OR HER AS TRUE UNDER PENALTIES OF PERJURY.

13 {5.} 10. Before a license or certificate is issued, the commissioner
14 shall investigate the eligibility of the applicant. The commissioner
15 shall have the authority to request and receive from any department,
16 division, board, bureau, commission or agency of the state or local
17 government thereof such assistance and information as will enable {him}
18 THE COMMISSIONER TO properly and effectively {to} carry out {his} THE
19 powers and duties ASSIGNED under this article.

20 {6.} 11. (a) The investigation prescribed in subdivision {five} TEN of
21 this section may include, but is not limited to the following:

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

25 (2) an examination as to the applicant's knowledge and ability with
26 respect to basic safety precautions in the possession, handling, stor-
27 age, and transportation of explosives, and for such purpose the commis-
28 sioner may prescribe tests which the applicant shall be required to pass
29 as a prerequisite to the issuance of the license or certificate. The
30 test may be administered by any person or agency designated by the
31 commissioner.

32 (b) The investigation prescribed in subdivision {five} TEN of this
33 section shall include a report from the New York state identification

34 and intelligence system, and such other identification services of the
35 state or federal government as may be necessary or appropriate for this
36 purpose. STATE AND NATIONAL CRIMINAL HISTORY RECORD CHECKS MUST BE
37 PERFORMED CONSISTENT WITH THE PROCEDURE ESTABLISHED IN SUBDIVISION NINE
38 OF THIS SECTION.

39 {7. The commissioner may waive any of the procedures set forth in
40 subdivision six (a) of this section with respect to any applicant who
41 has a license or certificate which was issued pursuant to this section
42 at anytime prior to March first, nineteen hundred seventy, and which was
43 legally valid and effective on such date. The commissioner also may
44 waive fingerprinting of an applicant who has a valid license for a
45 pistol or revolver in accordance with section 400.00 of the penal law.

46 8.) 12. Exceptions. Except for the provisions of subdivision {eleven}
47 FIFTEEN OF THIS SECTION, this section shall not apply to {smokeless
48 powder} INDIVIDUALS WHO ARE STORING LIMITED AMOUNTS OF SMOKELESS POWDER
49 FOR PERSONAL SPORTING OR RECREATIONAL PURPOSES, AS DETERMINED BY THE
50 COMMISSIONER.

51 {9.} 13. Within thirty days after the issuance of a license or certif-
52 icate under this section, the commissioner shall notify the chief execu-
53 tive officer of the municipality where the licensee resides or where the
54 certificate holder has his OR HER place of business of the issuance of
55 such license or certificate, and provide such officer with such other
56 information pertaining thereto {as the board may from time to time

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1 prescribe} AS THE COMMISSIONER MAY PRESCRIBE. THE CHIEF ELECTED OFFICIAL
2 OF EACH MUNICIPALITY SHOULD PROVIDE SUCH INFORMATION TO THE FIRE, POLICE
3 AND EMERGENCY MEDICAL SERVICES OF THE MUNICIPALITY.

4 {10.} 14. Agencies of the United States, the state and its political
5 and civil subdivisions which are subject to the requirements of this
6 article and which, in the exercise of their functions, are required to
7 purchase, own, store, use or transport explosives shall not be liable
8 for the payment of any fee required by this section.

9 {11.} 15. No explosives shall be sold, given or delivered to any
10 {person} INDIVIDUAL under eighteen years of age, whether such {person}
11 INDIVIDUAL is acting for himself, HERSELF or for another {person} INDI-
12 VIDUAL, nor shall any such {person} INDIVIDUAL be eligible to obtain any
13 license or certificate required under this section.

14 S 10. Section 459 of the labor law, as added by chapter 809 of the
15 laws of 1949, subdivision 1 as amended by chapter 1022 of the laws of
16 1970, is amended to read as follows:

17 S 459. Denial or revocation of license or certificate. 1. DENIAL. A
18 license or certificate, its renewal or continuation may be denied where
19 the commissioner has probable reason to believe, based on knowledge or
20 reliable information, or finds, after {due} investigation, that the
21 applicant or any officer, servant, agent or employee of the applicant is
22 not sufficiently reliable and experienced to be authorized to own,
23 possess, store, transport, use, manufacture, deal in, sell, purchase or

24 otherwise handle, as the case may be, explosives, lacks suitable facili-
25 ties therefor, has been convicted of a {crime for which he has been
26 sentenced to serve one or more years in prison} FELONY, is disloyal or
27 hostile to the United States or has been confined as a patient or inmate
28 in a public or private institution for the treatment of mental diseases.
29 Whenever the commissioner denies an application for a license or certifi-
30 cate or the renewal thereof, {he shall,} within five days of such
31 denial, {give} notice thereof and the reasons therefor SHALL BE PROVIDED
32 in writing to the applicant {personally or by mail to the address given
33 in the application}. Such denial may be appealed to the commissioner who
34 shall follow the procedure provided by subdivision three of this
35 section.

36 2. REVOCATION. The commissioner may revoke any certificate or license
37 on any ground or grounds authorized in subdivision one of this section
38 for the denial of a license or certificate, or for a violation of the
39 terms of such license or certificate, or for a violation of any
40 provision of this article or {of the rules of the board} REGULATIONS
41 PROMULGATED HEREUNDER, or for non-compliance with any order issued by
42 the commissioner within the time specified in such order.

43 {Where the} THE commissioner {has probable reason to believe, based on
44 knowledge or reliable information, that a licensee or certificate holder
45 is disloyal to the United States, he may summarily revoke the license or
46 certificate or may, in his discretion, give such licensee or certificate
47 holder notice and opportunity to be heard as provided in subdivision
48 three of this section} MAY, WHERE THERE IS REASON TO BELIEVE, BASED ON
49 KNOWLEDGE OR RELIABLE INFORMATION, THAT A LICENSEE OR CERTIFICATE HOLDER
50 IS DISLOYAL TO THE UNITED STATES, SUMMARILY REVOKE THE LICENSE OR
51 CERTIFICATE OR MAY GIVE SUCH LICENSEE OR CERTIFICATE HOLDER NOTICE AND
52 OPPORTUNITY TO BE HEARD AS PROVIDED IN SUBDIVISION THREE OF THIS
53 SECTION. Revocation of a license or certificate for any other ground may
54 be ordered only after giving written notice and an opportunity to be
55 heard to the holder thereof. Such notice {may be given to the holder
56 personally or by mail and} shall specify the ground or grounds on which

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1 it is proposed to revoke the license or certificate. When a license or
2 certificate is revoked, the commissioner may direct the SEIZURE AND/OR
3 disposition of explosives held by such licensee or certificate holder.
4 Upon revocation of a license or certificate by the commissioner, the
5 holder thereof shall surrender {his} THE license or certificate to the
6 commissioner at once.

7 3. Hearings. Unless, within fifteen days from the date of notice, the
8 applicant for a license or certificate or the recipient of a notice
9 stating that the commissioner proposes to revoke a license or certifi-
10 cate held by him OR HER, shall file a written answer with the commis-
11 sioner denying the ground or grounds on which a license or certificate
12 has been denied or ground or grounds on which revocation of a license or
13 certificate is sought, and shall request a hearing, the commissioner may

14 make a final determination respecting the application for a license or
15 certificate, or may revoke a license or certificate forthwith. If, with-
16 in such fifteen days, the applicant, licensee or certificate holder
17 files such answer and request for hearing, the commissioner shall sched-
18 ule a hearing. The notice of hearing shall state the time, place, and
19 subject of the hearing, and shall be mailed to the applicant, certif-
20 icate holder or licensee at his OR HER last known address at least five
21 days before the date of hearing. Hearings shall be held by the commis-
22 sioner or his OR HER representative, and the applicant, certificate
23 holder or licensee may appear in person or may be represented by an
24 agent. After such hearing, the commissioner shall render {his} A deci-
25 sion in writing.

26 S 11. Section 460 of the labor law, as added by chapter 809 of the
27 laws of 1949, is amended to read as follows:

28 S 460. Seizure, impounding, destruction or disposition of explosives.

29 1. The commissioner is hereby authorized and empowered, without applica-
30 tion to any court, to seize and impound any explosives found within this
31 state, except in cities having a population of more than one million
32 inhabitants, which are in apparent violation of any of the provisions of
33 this article, {rules of the board} REGULATIONS PROMULGATED HEREUNDER or
34 laws or regulations of the federal government, or which have been aban-
35 doned or lost, or where the commissioner has reason to believe that
36 public safety is endangered by such explosives. Such explosives may be
37 removed and transported by the commissioner and stored in magazines
38 provided or obtained for that purpose by the state or by the commission-
39 er.

40 2. The owner of such explosives may, within {five} FIFTEEN days of
41 such seizure, make written demand upon the commissioner for a hearing.
42 Upon such demand, the commissioner shall give the owner written notice
43 {in person or by mail,} of the time and place of such hearing to be held
44 not less than ten days thereafter.

45 3. (A) Where no hearing is demanded within the time herein prescribed
46 {or where, after hearing,} AND the commissioner finds that there has
47 been a violation of the provisions of this article, {rules of the board}
48 REGULATIONS PROMULGATED HEREUNDER or laws or regulations of the federal
49 government, {or} AND that public safety is endangered, {he} THE COMMIS-
50 SIONER may destroy or order the destruction of such explosives WITHOUT
51 HEARING AND WITHOUT LIABILITY, or direct such other disposition of the
52 explosives {as he deems proper}. If the commissioner finds there has
53 been no such violation and that public safety has not been endangered,
54 {he shall return} such explosives SHALL BE RETURNED to the owner there-
55 of.

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1 (B) WHERE A HEARING IS DEMANDED WITHIN THE TIME HEREIN PRESCRIBED, THE
2 COMMISSIONER SHALL NOT BE ALLOWED TO DESTROY OR ORDER THE DESTRUCTION
OF
3 SUCH EXPLOSIVES UNTIL THE OWNER OF SUCH EXPLOSIVES HAS HAD THE OPPORTU-

4 NITY TO APPEAL ALL ADMINISTRATIVE REMEDIES AND EXHAUST DUE PROCESS
5 THROUGH JUDICIAL REVIEW. AFTER ALL SUCH REMEDIES HAVE BEEN EXHAUSTED,
6 THE COMMISSIONER MAY THEN DESTROY OR ORDER THE DESTRUCTION OF SUCH
7 EXPLOSIVES. IF THE COMMISSIONER FINDS THAT THERE HAS BEEN NO SUCH
8 VIOLATION AND THAT PUBLIC SAFETY HAS NOT BEEN ENDANGERED, SUCH
9 EXPLOSIVES SHALL BE RETURNED TO THE OWNER THEREOF.

10 4. Where such explosives have been abandoned or lost, and no claimant
11 has appeared within thirty days, demanded the return of the explosives
12 and proved, to the satisfaction of the commissioner, {his} THE CLAIM-
13 ANT'S title to and right of possession of such explosives, the commis-
14 sioner may destroy or direct the destruction thereof, or direct such
15 other disposition thereof as {he deems} IS DEEMED proper.

16 5. Any provision herein to the contrary notwithstanding, where{, in
17 the opinion of} the commissioner{,} DEMONSTRATES THAT the manufacture,
18 condition, packing or location of explosives is such that its continued
19 existence or transportation is a danger to public safety, {he} THE
20 COMMISSIONER may, without hearing {and without liability therefor to the
21 owner thereof}, seize and destroy or direct the seizure and destruction
22 of such explosives.

23 S 12. Section 461 of the labor law, as added by chapter 809 of the
24 laws of 1949, subdivision 1 as amended by chapter 150 of the laws of
25 1971 and subdivision 3 as amended by chapter 1022 of the laws of 1970,
26 is amended to read as follows:

27 S 461. Record and notice of sales, deliveries or gifts. 1. Every
28 person selling, delivering {or}, giving away {an explosive} OR OTHERWISE
29 TRANSFERRING, DISPOSING OF OR DESTROYING EXPLOSIVES shall keep at his OR
30 HER principal office or place of business within the state, a record of
31 the transaction, including the name or type and quantity of the
32 explosive, such identification of the explosive as may be required by
33 {rules of the board} THE REGULATIONS PROMULGATED HEREUNDER, the date of
34 each sale, delivery {or}, gift, TRANSFER OR DISPOSITION, the name and
35 business address of the purchaser, donee, RECIPIENT or person to whom
36 delivered, the number of the license {to own or possess explosives, if
37 such license is} required by section four hundred fifty-eight of this
38 article, and the name and address of the person taking the explosives
39 away. A report of all such transactions, when requested {by him}, shall
40 be submitted to the commissioner. Such record shall be open to
41 inspection by the commissioner or by federal, state and local enforce-
42 ment officers at all times. No person shall have in his OR HER
43 possession any explosives unless he OR SHE has a bill of sale or other
44 evidence of title thereto.

45 2. Any provision in this article to the contrary notwithstanding, no
46 person in a city having more than one million inhabitants shall ship or
47 transport or cause to be shipped or transported explosives from such
48 city to any other place within the state, unless such person shall, at
49 least twenty-four hours prior to such shipment, transmit to the commis-
50 sioner a statement in writing giving the weight, name or brand and type
51 of explosives, the name and address of the person to whom such
52 explosives are to be sold, shipped, transported or delivered and the

53 date thereof. UPON RECEIPT OF SUCH STATEMENT, THE COMMISSIONER SHALL
54 PROVIDE WRITTEN NOTICE TO THE CITY HAVING MORE THAN ONE MILLION INHABIT-
55 ANTS OF SUCH SHIPMENT OR TRANSPORTATION OF EXPLOSIVES. No person shall
56 make any such shipment except to a holder of a license issued hereunder.

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1 3. No person within the state shall purchase, receive or accept deliv-
2 ery of explosives from any place outside the state, and no person shall
3 bring explosives into the state from any place outside the state,
4 unless, {in addition to holding a license issued hereunder, such person
5 shall, not more than twenty-four hours thereafter, transmit to the
6 commissioner by mail a written statement giving} HE OR SHE IS IN
7 POSSESSION OF A VALID LICENSE ISSUED BY THE COMMISSIONER. THE LICENSEE
8 IN RECEIVING THE EXPLOSIVES SHALL MAINTAIN A RECORD INCLUDING THE
9 weight, name or brand and type of the explosives, the name and address
10 of the shipper and the date of shipment, FOR A PERIOD OF THREE YEARS
11 FROM THE DATE OF RECEIPT OR TWO YEARS FROM THE DATE OF FINAL DISPOSITION
12 OF THE EXPLOSIVES WHICHEVER OCCURS LAST.

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

15 S 462. Rules and regulations. The commissioner may make rules supple-
16 mental to this article as {he shall deem} DEEMED necessary or desirable
17 to assure the public safety as well as to provide reasonable and
18 adequate protection of the lives, health and safety of persons employed
19 in the manufacture, storage, handling and use of explosives. The commis-
20 sioner may prescribe such regulations as {he may deem} ARE DEEMED neces-
21 sary and proper for the administration of this article.

22 S 14. Section 463 of the labor law, as added by chapter 809 of the
23 laws of 1949, is amended to read as follows:

24 S 463. Review. All questions of fact arising under this article shall
25 be decided by the commissioner and there shall be no appeal from {his}
26 SUCH decision on any such question of fact{, but there shall be a right
27 of review by the board of standards and appeals of any decision of the
28 commissioner denying an application for a license or certificate, or
29 denying the renewal thereof, or revoking a license or certificate, as
30 provided in section one hundred ten, article three of the labor law}.

31 UPON THE ENTRY OF AN ORDER ISSUED UNDER THIS ARTICLE, ANY PARTY
32 AGGRIEVED THEREBY MAY COMMENCE A PROCEEDING FOR REVIEW THEREOF
PURSUANT

33 TO ARTICLE SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND RULES WITHIN
34 THIRTY DAYS FROM THE NOTICE OF THE FILING OF THE SAID ORDER IN THE
35 OFFICE OF THE COMMISSIONER. SAID PROCEEDING SHALL BE COMMENCED DIRECTLY
36 IN THE APPELLATE DIVISION OF THE SUPREME COURT.

37 S 15. Section 464 of the labor law, as amended by chapter 307 of the
38 laws of 1984, is amended to read as follows:

39 S 464. Penalties. 1. CIVIL PENALTIES. (A) IF THE COMMISSIONER DIRECTS
40 THE STORAGE, DESTRUCTION OR OTHER DISPOSITION OF EXPLOSIVES PURSUANT TO
41 THE PROVISIONS OF SECTION FOUR HUNDRED FIFTY-NINE OR FOUR HUNDRED SIXTY

42 OF THIS ARTICLE, THE COMMISSIONER MAY ISSUE AN ORDER WHICH SHALL SET
43 FORTH THE COSTS OF SUCH STORAGE, TRANSPORTATION, HANDLING, DESTRUCTION
44 OR OTHER DISPOSITION AND ASSESS THE OWNER OF SUCH EXPLOSIVES A CIVIL
45 PENALTY IN THE AMOUNT OF SUCH COSTS, WHICH SHALL BE IN ADDITION TO ANY
46 OTHER PENALTIES IMPOSED.

47 (B) IF THE COMMISSIONER DETERMINES THAT ANY PERSON OR INDIVIDUAL HAS
48 VIOLATED ANY PROVISION OF THIS ARTICLE, SECTION FOUR HUNDRED EIGHTY-TWO
49 OF THE GENERAL BUSINESS LAW, OR ANY RULE OR REGULATION PROMULGATED THERE-
50 UNDER, THE COMMISSIONER MAY ISSUE AN ORDER WHICH SHALL DESCRIBE THE
51 NATURE OF THE VIOLATION AND ASSESS SUCH PERSON A CIVIL PENALTY OF UP TO
52 TWO THOUSAND FIVE HUNDRED DOLLARS PER VIOLATION PER DAY UNTIL THE
53 VIOLATION IS CORRECTED, NOT TO EXCEED A TOTAL CIVIL PENALTY OF TEN THOU-
54 SAND DOLLARS.

55 (C) IF THE COMMISSIONER DETERMINES THAT ANY BUSINESS AND/OR CORPO-
56 RATION HAS VIOLATED ANY PROVISION OF THIS ARTICLE, SECTION FOUR HUNDRED

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1 EIGHTY-TWO OF THE GENERAL BUSINESS LAW, OR ANY RULE OR REGULATION
2 PROMULGATED THEREUNDER, THE COMMISSIONER MAY ISSUE AN ORDER WHICH
SHALL

3 DESCRIBE THE NATURE OF THE VIOLATION AND ASSESS SUCH BUSINESS AND/OR
4 CORPORATION A CIVIL PENALTY OF UP TO TEN THOUSAND DOLLARS PER VIOLATION
5 PER DAY UNTIL THE VIOLATION IS CORRECTED, NOT TO EXCEED A TOTAL CIVIL
6 PENALTY OF FIFTY THOUSAND DOLLARS. THE PENALTIES AUTHORIZED PURSUANT TO
7 THIS SECTION SHALL BE PAID TO THE COMMISSIONER FOR DEPOSIT IN THE TREAS-
8 URY OF THE STATE. IN ASSESSING THE AMOUNT OF THE PENALTY, THE COMMIS-
9 SIONER SHALL GIVE DUE CONSIDERATION TO THE SIZE OF THE PERSON'S BUSI-
10 NESS, THE GOOD FAITH EFFORT OF THE PERSON, THE GRAVITY OF THE VIOLATION,
11 AND THE HISTORY OF PREVIOUS VIOLATIONS.

12 (D) ANY PARTY AGGRIEVED BY AN ORDER ISSUED UNDER THIS SUBDIVISION MAY
13 COMMENCE A PROCEEDING FOR REVIEW THEREOF PURSUANT TO ARTICLE
14 SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND RULES WITHIN THIRTY DAYS
15 FROM THE NOTICE OF THE FILING OF THE SAID ORDER IN THE OFFICE OF THE
16 COMMISSIONER. SAID PROCEEDING SHALL BE COMMENCED DIRECTLY IN THE APPEL-
17 LATE DIVISION OF THE SUPREME COURT.

18 (E) PROVIDED THAT NO PROCEEDING FOR JUDICIAL REVIEW AS PROVIDED FOR IN
19 THIS SECTION SHALL THEN BE PENDING AND THE TIME FOR INITIATION OF SUCH
20 PROCEEDING SHALL HAVE EXPIRED, THE COMMISSIONER MAY FILE WITH THE COUNTY
21 CLERK OF THE COUNTY WHERE THE PERSON RESIDES OR HAS A PLACE OF BUSINESS,
22 THE ORDER OF THE COMMISSIONER, CONTAINING THE AMOUNT OF THE CIVIL PENAL-
23 TY. THE FILING OF SUCH ORDER OR DECISION SHALL HAVE THE FULL FORCE AND
24 EFFECT OF A JUDGMENT DULY DOCKETED IN THE OFFICE OF SUCH CLERK, THE
25 ORDER OR DECISION MAY BE ENFORCED BY AND IN THE NAME OF THE COMMISSIONER
26 IN THE SAME MANNER, AND WITH LIKE EFFECT, AS THAT PRESCRIBED BY THE
27 CIVIL PRACTICE LAW AND RULES FOR THE ENFORCEMENT OF A MONEY JUDGMENT.

28 (F) A CIVIL PENALTY PROVIDED FOR IN THIS SUBDIVISION SHALL BE IN ADDI-
29 TION TO AND MAY BE IMPOSED CONCURRENTLY WITH ANY OTHER PENALTY OR
REMEDY

30 PROVIDED FOR IN THIS ARTICLE.

31 2. CRIMINAL PENALTIES. Any person violating any provision of this
32 article, or any rule or regulation made hereunder, shall be guilty of a
33 class E felony; provided, however, that any person who possesses an
34 explosive without being duly licensed or otherwise authorized to do so
35 under the provisions of this article shall be guilty of a class D felo-
36 ny. Whenever, as a result of a plea bargaining agreement the charge is
37 reduced to a lesser offense, such offense may, in addition to any term
38 of imprisonment prescribed by such offense, be punishable by a fine not
39 to exceed twenty-five hundred dollars.

40 S 16. This act shall take effect on the one hundred eightieth day
41 after it shall have become a law; provided, however, all licenses and
42 certificates issued pursuant to article 16 of the labor law prior to the
43 effective date of this act shall remain in full force and effect until
44 such licenses and certificates expire.