

MEMORANDUM

AN ACT to amend the labor law, in relation to explosives; to amend the labor law and the general business law, in relation to misdemeanor penalties; and to amend the penal law, in relation to permits for firework displays

Purpose:

This bill: (1) imposes more specific licensing requirements on the ownership, manufacture, possession, storage, use, transportation, purchase, sale or gift of explosives; (2) applies certain licensing and enforcement provisions to pyrotechnicians; (3) creates civil penalties and augments certain related criminal penalties; and (4) allows licensed pyrotechnic companies to apply for firework display permits.

Summary of Provisions:

Section 1 of the bill amends Labor Law § 450 to clarify the language permitting police officers and firefighters to take possession of explosives without a license while in the performance of their official duties, in order to remove the explosives from an unsafe location.

Section 2 of the bill amends Labor Law § 451 to add a definition for pyrotechnics, and to clarify the definitions of explosives subject to regulation by the New York Department of Labor.

Section 3 of the bill amends Labor Law § 452 to make clear that packaging and labeling of explosives must be in conformity with regulations issued by the Department of Labor.

Section 4 of the bill amends Labor Law § 453 to provide that explosives that are not stored in a magazine will be deemed to present an imminent hazard and are subject to seizure and destruction.

Section 5 of the bill amends Labor Law § 454 to make clear that construction of magazines must be in conformity with regulations issued by the Department of Labor, and to allow magazines to be constructed of other metals besides iron, to reflect materials currently used by the explosives industry.

Section 6 of the bill amends Labor Law § 455 to provide that no individual shall access the contents of a magazine unless that individual has a license.

Section 7 of the bill amends Labor Law § 456 to make clear that the location of magazines must be in conformity with regulations issued by the Department of Labor.

Section 8 of the bill adds a new Labor Law §457 to require that the Commissioner be notified no later than 24 hours after a magazine is moved from the location for which it was certified if it is to remain in that new location for more than 24 hours.

Section 9 of the bill amends Labor Law § 458 to allow the Commissioner of Labor to establish the time periods for licenses and renewals by regulation, to waive the criminal history check of license applicants if such information is provided by a federal agency, and to allow applications for licenses or certificates to be affirmed as true under penalty or perjury.

Section 10 of the bill amends Labor Law § 459 to allow the Commissioner to summarily suspend a license pending a revocation hearing where continued possession poses a danger to the public health or safety.

Section 11 of the bill amends Labor Law § 460 to make clear that the location, seizure and destruction of explosives must be in conformity with regulations issued by the Department of Labor, and permits the Commissioner to dispose of explosives that are being stored in violation of regulations or that endanger public safety without liability.

Section 12 of the bill amends Labor Law § 461 to provide that the Commissioner of Labor shall give written notice to any city with more than one million inhabitants of any shipment or transport of explosives there, and sets time limits on the period for which certain records of shipment must be maintained.

Section 13 of the bill amends Labor Law § 462 to require the Commissioner of Labor to adopt rules based on the National Fire Protection Association (NFPA) distance standards for firework displays.

Section 14 of the bill amends Labor Law § 463 to provide that appeals from an order of the Commissioner of Labor involving licenses or seizures be commenced pursuant to CPLR Article 78 following a hearing.

Section 15 of the bill amends Labor Law § 464 to provide for civil penalties for violations of Article 16, and for appeals of an order of the Commissioner of Labor involving costs or penalties pursuant to CPLR Article 78 following a hearing.

Section 16 of the bill amends General Business Law § 480 to reflect the danger of the preparation and firing of pyrotechnics in the legislative findings.

Section 17 of the bill amends General Business Law § 481 to define "pyrotechnician."

Section 18 of the bill amends General Business Law § 482 to subject pyrotechnicians to the licensing requirements of this provision.

Section 19 of the bill amends General Business Law § 483 to authorize the Commission of Labor to issue regulations relating to licensing of pyrotechnicians.

Section 20 of the bill amends General Business Law § 484 to provide for enhanced criminal penalties for persons who violate article 28-D of the General Business Law or any rule or regulation issued thereunder.

Section 21 of the bill amends Penal Law § 405 to allow localities to grant firework display permits to licensed pyrotechnic companies; require that distance requirements for such displays conform to NFPA standards; and increase the bond amount from \$5000 to \$1 million.

Section 22 of the bill provides that the bill shall be effective immediately except for sections one through fifteen and twenty-one, which shall take effect 180 days from enactment.

Existing Law:

Article 16 of the Labor Law provides for the regulation of explosive material, the requirements for licenses and certificates for possession of such material, and the penalties for violating the article.

Article 28-D of the General Business Law regulates occupations that involve elements of potential danger to lives, health and safety, and imposes licensing requirements on those occupations.

Section 405 of the Penal Law allows state and county parks and municipalities to grant permits for firework displays to municipalities, fair associations, amusement parks, or organizations of individuals, and sets the minimum amount of the bond for a permit at \$5000.

Legislative History:

In 2003, a bill with certain provisions of this bill and other provisions (S.5080) passed the Senate, but did not pass the Assembly. It was again introduced in the Senate in 2005, and in both the Senate and Assembly in 2007.

Statement In Support:

Article 16 of the Labor Law was last amended in 1989, and some sections have not been amended since 1949. As a result, many of its provisions are insufficient to address today's threats, such as terrorism, or to meet other security concerns, which require special scrutiny and oversight of the handling and availability of explosive materials. This bill strengthens Article 16 to address those concerns. For example, the bill requires that anyone who handles or transports explosives for their employer have a license, and that explosives that are not stored in a magazine will be deemed to present an imminent hazard and are subject to seizure and destruction. It also requires that large municipalities receive notice of shipments of explosives through their territory, so that they are fully aware of any resulting dangers. In addition, given the large numbers of seizures of consumer pyrotechnics in recent years, the bill adds a provision for licensing pyrotechnicians. The careless use of pyrotechnics that killed 100 people in a Rhode

Island night club five years ago underscores the need to regulate pyrotechnics to avoid similar tragedies in New York.

The bill also heightens criminal penalties, so that the criminal sanctions for violations of the statutes and regulations regarding explosives are consistent with standard misdemeanor penalties. In addition, the bill allows for assessment of civil penalties, to provide greater flexibility in enforcement.

Finally, the bill allows licensed pyrotechnic companies to obtain permits to show firework displays. The Commissioner of Labor will also be allowed to update the safety distance requirements for firework shows based on revised standards under the National Fire Prevention Association Code, to insure that these requirements are consistent with actual public safety needs.

Budget Implications:

None.

Effective Date

This bill takes effect immediately, except for sections one through fifteen and twenty-one, which shall take effect 180 days from enactment.