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LABOLA *Governor 114 R-1* *Department of Labor 1 R-2*

(Relates to the regulation of explosives)

Lab. regulation of explosives

By

Amend SENATE BILL NO. 3911 as follows:

Strike out all after "AN ACT" and insert

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 fireworks displays

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

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

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

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

18 § 2. Section 451 of the labor law, as amended by chapter 809 of the
19 laws of 1949, subdivision 1 as amended by chapter 220 of the laws of
20 1974 and subdivision 11 as renumbered by chapter 1022 of the laws of
21 1970, is amended to read as follows:

22 § 451. Definitions. Whenever used in this article: 1. "Explosives"
23 means gunpowder, powders used for blasting, high explosives, blasting
24 materials, detonating fuses, detonators, pyrotechnics and other detonat-
25 ing agents, fireworks and dangerous fireworks as defined in section
26 270.00 of the penal law, smokeless powder and any chemical compound or
27 any mechanical mixture containing any oxidizing and combustible units,

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1 or other ingredients in such proportions, quantities, or packing that
2 ignition by fire, friction, concussion, percussion or detonation of any
3 part thereof may cause and is intended to cause an explosion, but shall
4 not include gasoline, kerosene, naphtha, turpentine, benzine, acetone,
5 ethyl ether, benzol [and all] or quantities of black powder not exceed-
6 ing five pounds for use in firing of antique firearms or artifacts or
7 replicas thereof. Fixed ammunition and primers for small arms, [fire-
8 crackers,] pyrotechnic devices which are designed for and being used for
9 legitimate wildlife management or controls, safety fuses and matches
10 shall not be deemed to be explosives when, [as may be determined by the
11 board in its rules] as provided by regulation, the individual units
12 contain any of the above-mentioned articles or substances in such limit-
13 ed quantity, of such nature and so packed that it is impossible to
14 produce an explosion of such units to the injury of life, limb or prop-
15 erty.

16 2. "Highway" means any public street, public highway, public alley or
17 navigable [stream] waterway, which is open for traffic. Navigable
18 [streams] waterways shall be considered as only those [streams] suscep-
19 tible of being used, in their ordinary condition, as highways of
20 commerce.

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

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

31 5. "Explosives factory" means any building or other structure in which
32 the manufacture of explosives or any part of the manufacture thereof is
33 carried on.

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

36 7. "Efficient barricade" means natural features of the ground, a dense
37 woods, an artificial mound or a properly revetted wall of earth not less
38 than three feet thick at the top, spaced at least three feet at the
39 bottom from any explosives factory or magazine, the height of which is
40 such that any straight line drawn from the top of any side wall of the
41 explosives factory or magazine to the top of a building or to a point
42 twelve feet above the center of a railroad or highway to be protected
43 will pass through such intervening barricade.

44 8. "Person" includes any natural person, partnership, association or
45 corporation.

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

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

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

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

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

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

8 § 453. Storage. No person shall store explosives except in a magazine
9 constructed [and], located and certified in accordance with the
10 provisions of this article and the [rules of the board and unless a
11 certificate, which] regulations promulgated pursuant to this article.
12 The magazine certificate shall be attached to the magazine on the inside
13 [thereof, has been issued for] of each such magazine. No person shall
14 store more than three hundred thousand pounds of explosives in any one
15 magazine at any time. Explosives not stored in compliance with this
16 section shall be deemed to present a danger to the public, including but
17 not limited to, emergency responders and other persons lawfully frequen-
18 ting the area and as such, are subject to seizure and destruction pursu-
19 ant to subdivision five of section four hundred sixty of this article.

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

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

28 § 454. Construction of magazines. Unless otherwise prescribed by the
29 [board in its rules] regulations promulgated pursuant to this article,
30 magazines in which explosives shall be lawfully kept or stored shall be
31 constructed of brick, concrete, [iron] metal or wood covered with [iron]
32 metal, and shall have no openings except for ventilation and entrance.
33 All explosive magazines, except those in mines and tunnels, shall be
34 located above ground. All explosive magazines shall be kept clean and
35 dry at all times.

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

38 §. 455. Magazine precautions. 1. No [person] individual shall unlock
39 [or], open the doors of, or access the contents of, explosive magazines,
40 except for the lawful storage or removal of explosives and in accordance
41 with regulations of the commissioner. No employer shall allow any indi-
42 vidual access to the explosive magazines or explosives of the employer
43 unless a license has been issued to the individual by the commissioner
44 as provided in this article, or the individual is under the direct
45 supervision of the license holder.

46 No person shall have matches or fire of any kind in any magazine. No
47 person shall store or keep blasting caps, detonating or fulminating
48 caps, or detonators in a magazine in which any other type of explosive
49 is stored or kept. No person shall open any package of explosives within
50 fifty feet of any magazine, nor shall any explosives be kept in a maga-
51 zine except in the original containers, or as otherwise provided by
52 regulations promulgated under this article. No person shall discharge
53 firearms within five hundred feet of a magazine or explosives factory,
54 or at or against any such building or magazine. Any theft or loss of
55 explosives from a storage magazine or otherwise, shall immediately be

1 reported to the [industrial] commissioner and the state or local police
2 or county sheriff.

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

5 § 456. Location of magazines. The quantity of explosives that may be
6 stored in any explosives factory or magazine shall depend upon its
7 distances from the nearest building, railroad or highway or other maga-
8 zine. The distances that a quantity of explosives may be stored from the
9 nearest magazine, building, railroad or highway, shall be as determined
10 by the [rules of the board] regulations promulgated pursuant to this
11 article. All such distances may be reduced one-half when the magazine,
12 building, railroad or highway to be protected is adequately screened
13 from the explosives factory or magazine by an efficient barricade as
14 defined in subdivision seven of section four hundred fifty-one of this
15 article.

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

18 § 457. Relocation of magazines. 1. When any magazine is moved from the
19 location for which it was certified according to section four hundred
20 fifty-six of this article, and the magazine is or is intended to be used
21 for the storage of explosives and will be in the new location for more
22 than twenty-four hours, the commissioner shall be notified as to the new
23 location of the magazine. Such notification shall be made no later than
24 one business day prior to the move. The notification shall contain all
25 of the information required by the commissioner.

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

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

37 § 9. Section 458 of the labor law, as added by chapter 809 of the laws
38 of 1949, subdivisions 1 and 2 as amended by chapter 61 of the laws of
39 1989, subdivision 3 as amended by section 10 of part A of chapter 57 of
40 the laws of 2004, subdivision 4 as amended by chapter 164 of the laws of
41 2003, subdivisions 5, 6, 7 and 9 as added and subdivisions 10 and 11 as
42 renumbered by chapter 1022 of the laws of 1970 and subdivision 8 as
43 added by chapter 150 of the laws of 1971, is amended to read as follows:

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

47 Application for such a license shall be made to the commissioner on
48 forms provided and shall contain such information as the commissioner
49 may require. Where the commissioner finds that the applicant has
50 complied with the requirements of this article and the rules promulgated
51 hereunder, the commissioner shall issue [a] such license or renewal
52 thereof which shall be valid for not less than one year from the date of
53 issuance. Such application and each renewal thereof shall be accompanied
54 by a fee of not less than fifty dollars non-refundable to be payable to
55 the commissioner.

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

7 Application for such a license[, which shall be renewed annually,]
8 shall be made to the commissioner on forms provided and shall contain
9 such information as the commissioner may require. The commissioner,
10 after investigation of the application, shall issue a license or renewal
11 thereof, which shall be valid for not less than one year from the date
12 of issuance, where the commissioner finds that the applicant has
13 complied with the requirements of this article and the rules promulgated
14 hereunder. Each application for such a license, or for its renewal,
15 shall be accompanied by a fee of not less than one hundred dollars non-
16 refundable to be payable to the commissioner.

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

22 Application for such a certificate shall be made to the commissioner
23 on forms provided and shall contain such information as the commissioner
24 may require. The commissioner, where it is found that the applicant has
25 complied with the requirements of this article, [and], the rules promul-
26 gated hereunder and all other applicable sections of this chapter and
27 regulations promulgated by the commissioner, shall issue a certificate
28 or a renewal thereof, which shall be valid for not less than one year
29 from the date of issuance. In addition to any other causes for revoca-
30 tion of a certificate hereinafter provided, the commissioner may revoke
31 or modify such certificate because of any change in the conditions under
32 which it was granted, or for failure to pay the [annual] required fee
33 [hereinafter provided]. The owner or user of a magazine shall [annually]
34 pay to the commissioner [in advance] a fee[, subject to the discretion
35 of the commissioner and] of not less than fifty dollars, which shall be
36 proportioned according to the quantity and type of explosives authorized
37 by the certificate to be stored in the magazine.

38 4. An application for a license or a certificate pursuant to [subdivi-
39 sion one, two or three of] this section [shall be sworn to under oath
40 and] shall contain information sufficient to identify the applicant, and
41 the purpose for which and the place where the explosives are to be used,
42 manufactured, dealt in, given, disposed of or stored, as the case may
43 be, and to demonstrate the eligibility of such applicant for the license
44 or certificate requested. The commissioner may require that the applica-
45 tion include, among other things, photographs, fingerprints and personal
46 references. Such fingerprints shall be submitted to the division of
47 criminal justice services for a state criminal history record check, as
48 defined in subdivision one of section three thousand thirty-five of the
49 education law, and may be submitted to the federal bureau of investi-
50 gation for a national criminal history record check. An application for
51 a license or certificate required to be filed with the department pursu-
52 ant to this section shall be signed by the applicant and affirmed by him
53 or her as true under penalty of perjury.

54 5. Before a license or certificate is issued, the commissioner shall
55 investigate the eligibility of the applicant. The commissioner shall
56 have the authority to request and receive from any department, division,

1 board, bureau, commission or agency of the state or local government
2 thereof such assistance and information as will enable [him] the commis-
3 sioner to properly and effectively [to] carry out [his] the powers and
4 duties under this article.

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

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

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

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

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

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

32 9. Within thirty days after the issuance of a license or certificate
33 under this section, the commissioner shall notify the chief executive
34 officer of the municipality where the licensee resides or where the
35 certificate holder has his or her place of business of the issuance of
36 such license or certificate, and provide such officer with such other
37 information pertaining thereto [as the board may from time to time
38 prescribe] as the commissioner may prescribe.

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

44 11. No explosives shall be sold, given or delivered to any [person]
45 individual under eighteen years of age, whether such [person] individual
46 is acting for himself, herself or for another person, nor shall any such
47 [person] individual be eligible to obtain any license or certificate
48 required under this section.

49 § 10. Section 459 of the labor law, as added by chapter 809 of the
50 laws of 1949, subdivision 1 as amended by chapter 1022 of the laws of
51 1970, is amended to read as follows:

52 § 459. Denial or revocation of license or certificate. 1. A license
53 or certificate, [its] or the renewal [or continuation] thereof may be
54 denied where the commissioner has probable reason to believe, based on
55 knowledge or reliable information, or finds, after [due] investigation,
56 that the applicant or any officer, servant, agent or employee of the

1 applicant is not sufficiently reliable and experienced to be authorized
2 to own, possess, store, transport, use, manufacture, deal in, sell,
3 purchase or otherwise handle, as the case may be, explosives, lacks
4 suitable facilities therefor, has been convicted of a [crime for which
5 he has been sentenced to serve one or more years in prison] felony, is
6 disloyal or hostile to the United States [or], has been confined as a
7 patient or inmate in a public or private institution for the treatment
8 of mental diseases or has been convicted under section four hundred
9 eighty-four of the general business law. Whenever the commissioner
10 denies an application for a license or certificate or the renewal there-
11 of, [he shall,] within five days of such denial, [give] notice thereof
12 and the reasons therefor shall be provided in writing to the applicant
13 [personally or by mail, to the address given in the application]. Such
14 denial may be appealed to the commissioner who shall follow the proce-
15 dure provided by subdivision [three] four of this section.

16 2. The commissioner may revoke any certificate or license on any
17 ground or grounds authorized in subdivision one of this section for the
18 denial of a license or certificate, or for a violation of the terms of
19 such license or certificate, or for a violation of any provision of this
20 article or [of the rules of the board] regulations promulgated
21 hereunder, or for non-compliance with any order issued by the commis-
22 sioner within the time specified in such order.

23 [Where the] The commissioner may, where he or she has probable reason
24 to believe, based on knowledge or reliable information, that a licensee
25 or certificate holder is disloyal to the United States, [he may] summar-
26 ily revoke the license or certificate or may[, in his discretion,] give
27 such licensee or certificate holder notice and opportunity to be heard
28 as provided in subdivision [three] four of this section. Revocation of a
29 license or certificate for any other ground may be ordered only after
30 giving written notice and an opportunity to be heard to the holder ther-
31 eof. Such notice [may be given to the holder personally or by mail and]
32 shall specify the ground or grounds on which it is proposed to revoke
33 the license or certificate. When a license or certificate is revoked,
34 the commissioner may direct the seizure and/or disposition of explosives
35 held by such licensee or certificate holder. Upon revocation of a
36 license or certificate by the commissioner, the holder thereof shall
37 surrender [his] the license or certificate to the commissioner at once.

38 3. The commissioner may summarily suspend the license or certificate
39 pending proceedings for revocation or other action, where he or she has
40 reason to believe, based on knowledge or reliable information, that the
41 continued possession of a license or certificate poses a danger to
42 public health, safety or welfare, and incorporates a finding to that
43 effect in his or her order. These proceedings shall be promptly insti-
44 tuted and determined. Such suspension shall be effective on the date
45 specified in the order or upon service of a certified copy of such order
46 on the license or certificate holder, whichever shall be later.

47 [3. Hearings] 4. Unless, within fifteen days from the date of notice,
48 the applicant for a license or certificate or the recipient of a notice
49 stating that the commissioner proposes to revoke a license or certif-
50 icate held by him or her, shall file a written answer with the commis-
51 sioner denying the ground or grounds on which a license or certificate
52 has been denied or not renewed or ground or grounds on which revocation
53 of a license or certificate is sought, and shall request a hearing, the
54 commissioner may make a final determination respecting the application
55 for a license or certificate, or may revoke a license or certificate
56 forthwith. If, within such fifteen days, the applicant, licensee or

1 certificate holder files such answer and request for hearing, the
2 commissioner shall schedule a hearing. The notice of hearing shall state
3 the time, place, and subject of the hearing, and shall be mailed to the
4 applicant, certificate holder or licensee at his or her last known
5 address at least five days before the date of hearing. Hearings shall be
6 held by the commissioner or his or her representative, and the appli-
7 cant, certificate holder or licensee may appear in person or may be
8 represented by an agent. After such hearing, the commissioner shall
9 render [his] a decision in writing.

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

12 § 460. Seizure, impounding, destruction or disposition of explosives.
13 1. The commissioner is hereby authorized and empowered, without applica-
14 tion to any court, to seize and impound any explosives found within this
15 state, except in cities having a population of more than one million
16 inhabitants, which are in apparent violation of any of the provisions of
17 this article, [rules of the board] regulations promulgated hereunder or
18 laws or regulations of the federal government, or which have been aban-
19 doned or lost, or where the commissioner has reason to believe that
20 public safety is endangered by such explosives. Such explosives may be
21 removed and transported by the commissioner and stored in magazines
22 provided or obtained for that purpose by the state or by the commis-
23 er.

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

29 3. Where no hearing is demanded within the time herein prescribed or
30 where, after hearing, the commissioner finds that there has been a
31 violation of the provisions of this article, [rules of the board] regu-
32 lations promulgated hereunder or laws or regulations of the federal
33 government, or that public safety is endangered, [he] the commissioner
34 may destroy or order the destruction of such explosives without liabil-
35 ity, or direct such other disposition of the explosives [as he deems
36 proper]. If the commissioner finds there has been no such violation and
37 that public safety has not been endangered, [he shall return] such
38 explosives shall be returned to the owner thereof.

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

45 5. Any provision herein to the contrary notwithstanding, where, in the
46 opinion of the commissioner, the manufacture, condition, storage, pack-
47 ing or location of explosives is such that its continued existence or
48 transportation is a danger to public safety, [he] the commissioner may,
49 without hearing and without liability therefor to the owner thereof,
50 seize and destroy or direct the seizure and destruction of such
51 explosives.

52 § 12. Section 461 of the labor law, as added by chapter 809 of the
53 laws of 1949, subdivision 1 as amended by chapter 150 of the laws of
54 1971 and subdivision 3 as amended by chapter 1022 of the laws of 1970,
55 is amended to read as follows:

1 § 461. Record and notice of sales, deliveries or gifts. 1. Every
2 person selling, delivering [or], giving away [an explosive] or otherwise
3 transferring or disposing of explosives shall keep at his or her princi-
4 pal office or place of business within the state, a record of the trans-
5 action, including the name or type and quantity of the explosive, such
6 identification of the explosive as may be required by [rules of the
7 board] the regulations promulgated pursuant to this article, the date of
8 each sale, delivery [or], gift, transfer or disposition, the name and
9 business address of the purchaser, donee, recipient or person to whom
10 delivered, the number of the license [to own or possess explosives], if
11 such license is required by section four hundred fifty-eight of this
12 article, and the name and address of the person taking the explosives
13 away. A report of all such transactions, when requested [by him], shall
14 be submitted to the commissioner. Such record shall be open to
15 inspection by the commissioner or by federal, state and local enforce-
16 ment officers at all times. No person shall have in his or her
17 possession any explosives unless he or she has a bill of sale or other
18 evidence of title thereto.

19 2. Any provision in this article to the contrary notwithstanding, no
20 person in a city having more than one million inhabitants shall ship or
21 transport or cause to be shipped or transported explosives from such
22 city to any other place within the state, unless such person shall, at
23 least twenty-four hours prior to such shipment, transmit to the commis-
24 sioner a statement in writing giving the weight, name or brand and type
25 of explosives, the name and address of the person to whom such
26 explosives are to be sold, shipped, transported or delivered and the
27 date thereof. Upon receipt of such statement, the commissioner shall
28 provide immediate written notice of such shipment or transportation of
29 explosives to the mayor of a city having more than one million inhabit-
30 ants, or to the designee of the mayor. No person shall make any such
31 shipment except to a holder of a license issued hereunder.

32 3. No person within the state shall purchase, receive or accept deliv-
33 ery of explosives from any place outside the state, and no person shall
34 bring explosives into the state from any place outside the state,
35 unless, [in addition to holding a license issued hereunder, such person
36 shall, not more than twenty-four hours thereafter, transmit to the
37 commissioner by mail a written statement giving] he or she is in
38 possession of a valid license issued by the commissioner. The licensee
39 receiving the explosives shall maintain a record including the weight,
40 name or brand and type of the explosives, the name and address of the
41 shipper and the date of shipment, for a period of three years from the
42 date of receipt or two years from the date of final disposition of the
43 explosives whichever occurs last.

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

46 § 462. Rules and regulations. The commissioner may make rules supple-
47 mental to this article as [he shall deem] deemed necessary or desirable
48 to assure the public safety as well as to provide reasonable and
49 adequate protection of the lives, health and safety of persons employed
50 in the manufacture, storage, handling [and], use, purchase, sale, dispo-
51 sition and ownership of explosives. The commissioner may prescribe such
52 regulations as [he may deem] are deemed necessary and proper for the
53 administration of this article. The commissioner shall by rule adopt
54 the codes, standards and recommended practices promulgated by the most
55 recent edition of National Fire Protection Association, 1123 and 1126
56 Standards on Fireworks Displays and Use of Pyrotechnics Before a Proxi-

1 mate Audience, in accordance with the provisions of this article and
2 article twenty-eight-D of the general business law.

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

5 § 463. Review. All questions of fact arising under this article shall
6 be decided by the commissioner and there shall be no appeal from [his]
7 such decision on any such question of fact[, but there shall be a right
8 of review by the board of standards and appeals of any decision of the
9 commissioner denying an application for a license or certificate, or
10 denying the renewal thereof, or revoking a license or certificate, as
11 provided in section one hundred ten, article three of the labor law].
12 Upon the entry of an order issued under sections four hundred fifty-nine
13 and four hundred sixty of this article, any party aggrieved thereby may
14 commence a proceeding for review thereof pursuant to article seventy-
15 eight of the civil practice law and rules within thirty days from the
16 notice of the filing of the said order in the office of the commissioner-
17 er. Said proceeding shall be commenced directly in the appellate divi-
18 sion of the supreme court. Nothing in this section shall in any way
19 limit, qualify or prevent the commissioner from destroying explosives as
20 provided under section four hundred sixty of this article.

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

23 § 464. [Penalties] Costs and penalties. 1. If the commissioner directs
24 the storage, destruction or other disposition of explosives pursuant to
25 the provisions of section four hundred fifty-nine or four hundred sixty
26 of this article, the commissioner may issue an order which shall set
27 forth the costs of such storage, transportation, handling, destruction
28 or other disposition and assess such costs against the owner of such
29 explosives, which shall be in addition to any other penalties imposed.

30 2. (a) If the commissioner determines that any person has violated any
31 provision of this article, section four hundred eighty-two of the gener-
32 al business law, or any rule or regulation promulgated thereunder, the
33 commissioner may issue an order which shall describe the nature of the
34 violation and assess such person a civil penalty of up to ten thousand
35 dollars per violation per day until the violation is corrected. The
36 penalty authorized pursuant to this paragraph shall be paid to the
37 commissioner for deposit in the treasury of the state. In assessing the
38 amount of the penalty, the commissioner shall give due consideration to
39 the size of the person's business, the good faith effort of the person,
40 the gravity of the violation, and the history of previous violations.

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

48 (c) Upon the entry of an order issued following a hearing under this
49 section, any party aggrieved by an order issued under this subdivision
50 or subdivision one of this section may commence a proceeding for review
51 thereof pursuant to article seventy-eight of the civil practice law and
52 rules within thirty days from the notice of the filing of the said order
53 in the office of the commissioner. Said proceeding shall be commenced
54 directly in the Appellate Division of the Supreme Court.

55 (d) Provided that no proceeding for judicial review as provided for in
56 this section shall then be pending and the time for initiation of such

1 proceeding shall have expired, the commissioner may file with the county
2 clerk of the county where the person resides or has a place of business,
3 the order of the commissioner, containing the amount of the civil penal-
4 ty. The filing of such order or decision shall have the full force and
5 effect of a judgment duly docketed in the office of such clerk, the
6 order or decision may be enforced by and in the name of the commissioner
7 in the same manner, and with like effect, as that prescribed by the
8 civil practice law and rules for the enforcement of a money judgment.

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

12 3. Any person violating any provision of this article, or any rule or
13 regulation made hereunder, shall be guilty of a class E felony;
14 provided, however, that any person who possesses an explosive without
15 being duly licensed or otherwise authorized to do so under the
16 provisions of this article shall be guilty of a class D felony. Whenev-
17 er, as a result of a plea bargaining agreement the charge is reduced to
18 a lesser offense, such offense may, in addition to any term of imprison-
19 ment prescribed by such offense, be punishable by a fine not to exceed
20 twenty-five hundred dollars.

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

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

30 The legislature hereby declares that this article shall be deemed an
31 exercise of the police power of this state for the protection of the
32 lives, health and safety of citizens in this state and of their proper-
33 ty.

34 § 17. Section 481 of the general business law, as added by chapter
35 754 of the laws of 1975, subdivision 3 as amended by chapter 569 of the
36 laws of 1982 and subdivision 5 as amended by section 1 of part B of
37 chapter 58 of the laws of 2006, is amended to read as follows:

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

39 1. "Laser" means light amplification by simulated emission of radi-
40 ation.

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

44 3. "Crane" includes but is not limited to cranes and equipment of the
45 following types: a mobile, carrier-mounted, power-operated hoisting
46 machine utilizing a power-operated boom which moves laterally by rota-
47 tion of the machine on the carrier, tower cranes, hydraulic cranes and
48 power-operated derricks; provided, however, that "crane" shall not
49 include public utility company line trucks used by a public utility
50 company in the construction and maintenance of its generation, trans-
51 mission and distribution facilities.

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

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

1 6. "Commissioner" means the commissioner of labor of the state of New
2 York, except that any reference to the commissioner with respect to
3 radioactive material, as defined in this article, or radiation equip-
4 ment, as defined in this article, shall be a reference to the commis-
5 sioner of health of the state of New York.

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

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

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

17 3. No employer, contractor or agent thereof shall knowingly permit any
18 individual to use lasers, operate a crane or act as a blaster or as a
19 pyrotechnician without holding a valid certificate of competence issued
20 by the commissioner of labor.

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

26 a. The commissioner of labor is hereby authorized and directed to
27 prescribe such rules and regulations as may be necessary and proper for
28 the administration and enforcement of this article with respect to
29 lasers, crane operators [and], blasters and pyrotechnicians.

30 2. Such regulations may provide for examinations, categories of
31 certificates, licenses, or registrations, age and experience require-
32 ments, payment of fees, and may also provide for such limitations and
33 exemptions as the commissioner finds necessary and proper. In the case
34 of blasters and pyrotechnicians, such regulations may require finger-
35 printing, and in the case of users of radioactive material, such regu-
36 lations may require the posting of a bond or other security.

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

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

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

52 2. [A violation of] Any person who violates any provision of this
53 article or of any rule or regulation of the commissioner promulgated
54 hereunder or of any rule or regulation promulgated pursuant to paragraph
55 b of subdivision two of section four hundred eighty-five of this article
56 shall be guilty of a misdemeanor, and upon conviction shall be punished,

1 by a fine of not more than one thousand dollars; for a second offense by
2 a fine of not less than one thousand nor more than three thousand
3 dollars, or by imprisonment for not more than one year or by both such
4 fine and imprisonment; for a subsequent offense by a fine of not less
5 than three thousand dollars, or by imprisonment for not more than one
6 year, or by both such fine and imprisonment.

7 3. Where the employer, contractor or agent thereof permitting a
8 violation of any provision of this article or of any rule or regulation
9 of the commissioner promulgated hereunder or of any rule or regulation
10 promulgated pursuant to paragraph b of subdivision two of section four
11 hundred eighty-five of this article shall be a corporation, then in
12 addition to the corporation, the officer or agent of such corporation
13 who knowingly permits the corporation to violate such provisions is
14 guilty of a misdemeanor; and upon conviction thereof shall be punished
15 for a first offense by a fine of not more than one [hundred] thousand
16 dollars; for a second offense by a fine of not less than one [hundred]
17 thousand nor more than [five hundred] three thousand dollars, or by
18 imprisonment for not more than [thirty days] one year or by both such
19 fine and imprisonment; for a subsequent offense by a fine of not less
20 than three [hundred] thousand dollars or by imprisonment for not more
21 than [sixty days] one year, or by both such fine and imprisonment.

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

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

32 (a) The name of the body sponsoring the display and the names of the
33 persons actually to be in charge of the firing of the display who shall
34 possess a valid certificate of competence as a pyrotechnician as
35 required under the general business law and article sixteen of the labor
36 law. The permit application shall further contain a verified statement
37 from the applicant identifying the individuals who are authorized to
38 fire the display including their certificate numbers, and that such
39 individuals possess a valid certificate of competence as a pyrotechni-
40 cian.

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

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

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

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

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

48 [(g)] (f) A diagram of the grounds on which the display is to be held
49 showing the point at which the fireworks are to be discharged, the
50 location of all buildings, highways and other lines of communication,
51 the lines behind which the audience will be restrained and the location
52 of all nearby trees, telegraph or telephone lines or other overhead
53 obstructions.

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

1 3. Applications for permits. All applications for permits for the
2 [public] display of fireworks shall be made at least five days in
3 advance of the date of the display and the permit shall contain
4 provisions that the actual point at which the fireworks are to be fired
5 [shall be at least two hundred feet from the nearest permanent building,
6 public highway or railroad or other means of travel and at least fifty
7 feet from the nearest above ground telephone or telegraph line, tree or
8 other overhead obstruction, that the audience at such display shall be
9 restrained behind lines at least one hundred and fifty feet from the
10 point at which the fireworks are discharged and only persons in active
11 charge of the display shall be allowed inside these lines, that all
12 fireworks that fire a projectile shall be so set up that the projectile
13 will go into the air as nearby as possible in a vertical direction,
14 unless such fireworks are to be fired from the shore of a lake or other
15 large body of water, when they may be directed in such manner that the
16 falling residue from the deflagration will fall into such lake or body
17 of water, that any fireworks that remain unfired after the display is
18 concluded shall be immediately disposed of in a way safe for the partic-
19 ular type of fireworks remaining, that no fireworks display shall be
20 held during any wind storm in which the wind reaches a velocity of more
21 than thirty miles per hour,] be in accordance with the rules promulgated
22 by the commissioner of labor pursuant to section four hundred sixty-two
23 of the labor law and that all the persons in actual charge of firing the
24 fireworks shall be over the age of eighteen years, competent and phys-
25 ically fit for the task, that there shall be at least two such operators
26 constantly on duty during the discharge and that at least two [sodaacid
27 or other] approved type fire extinguishers [of at least two and one-half
28 gallons capacity each] shall be kept at as widely separated points as
29 possible within the actual area of the display. The legislative body of
30 a state park, county park, city, village or town may provide for
31 approval of such permit by the head of the police or fire department or
32 both where there are such departments. No permit granted and issued
33 hereunder shall be transferable. After such permit shall have been
34 granted, sales, possession, use and distribution of fireworks for such
35 display shall be lawful solely therefor.

36 3-a. Notwithstanding the provisions of subdivision three of this
37 section, no permit may be issued to conduct a [public] display of fire-
38 works upon any property where the boundary line of such property is less
39 than five hundred yards from the boundary line of any property which is
40 owned, leased or operated by any breeder as defined in subdivision four
41 of section [two hundred forty-four] two hundred fifty-one of the racing,
42 pari-mutuel wagering and breeding law.

43 4. Bonds. Before granting and issuing a permit for a [public] display
44 of fireworks as herein provided, the permit authority shall require an
45 adequate bond from the applicant therefor, unless it is a state park,
46 county park, city, village or town, [or from the person to whom a
47 contract for such display shall be awarded,] in a sum to be fixed by the
48 permit authority, which, however, shall not be less than [five thousand]
49 one million dollars, conditioned for the payment of all damages, which
50 may be caused to a person or persons or to property, by reason of the
51 display so permitted and arising from any acts of the permittee, his
52 agents, employees, contractors or subcontractors. Such bond shall run to
53 the state park, county park, city, village or town in which the permit
54 is granted and issued and shall be for the use and benefit of any person
55 or persons or any owner or owners of any property so injured or damaged,
56 and such person or persons or such owner or owners are hereby authorized

1 to maintain an action thereon, which right of action also shall accrue
2 to the heirs, executors, administrators, successors or assigns of such
3 person or persons or such owner or owners. The permit authority may
4 accept, in lieu of such bond, an indemnity insurance policy with liabil-
5 ity coverage and indemnity protection equivalent to the terms and condi-
6 tions upon which such bond is predicated and for the purposes [herein]
7 provided in this section.

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

9 1. sections one, two, three, four, five, six, seven, eight, nine, ten,
10 eleven, twelve, thirteen, fourteen, fifteen and twenty-one of this act
11 shall take effect on the one hundred eightieth day after it shall have
12 become a law; and

13 2. all licenses and certificates issued pursuant to article 16 of the
14 labor law prior to the effective date of this act shall remain in full
15 force and effect until such licenses and certificates expire.