

EXPLANATION and JUSTIFICATION OF CHANGES TO S5080—A

Section 450, Application of Article

Line 17-19: Reinstated language regarding possession of explosives remains with employer.

Purpose: This keeps and maintains responsibility with the individuals who have the responsibility and duties to keep the explosives safe and to abide by the statutes, regulations and rules. It prevents employers from pushing the responsibility and duty on to the employees.

New Language:

This language exempts holders of federal explosive licenses. (If this change is approved, then many of the following changes with respect to pyrotechnic licensing, handling and storage (as separate from other explosives classes and changes) are moot and not necessary. See "exempt" version of S5080 rewrite for specific section revisions.)

Purpose: This bill prevents duplication of the very comprehensive federal licensing scheme which previously addressed manufacture, and, as implemented post-9/11, now fully addresses intrastate storage, possession, transportation and transactions involving explosives, especially pyrotechnic materials.

Justification for deletion of pyrotechnic regulation: Following the events of 9/11, and in accordance with Congressionally-mandated reevaluation of federal Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) licensing directives, the Bureau now requires full licensing and reporting for intrastate possession and use of explosive materials. These new requirements became effective with the passage of the Safe Explosives Act of 2002, which amends Title XI of the Organized Crime Control Act of 1970.

This is a major policy revision with respect to previous federal regulation of only interstate activities in this area. Prior to implementation of the Safe Explosives Act, a federal permit to purchase explosive materials was necessary if a person wished to transport, ship, or receive explosives in interstate commerce. A permit, however, was not necessary for persons acquiring or using explosives within their own State of residence. The new legislation now requires that any person who wishes to transport, ship, cause to be transported, or receive explosive materials in either interstate or intrastate commerce must first obtain a federal permit issued by ATF. This requirement took effect on May 24, 2003.

The new legislation also requires all applicants for explosives licenses and permits to submit photographs and fingerprints on responsible persons to ATF for the purpose of performing background checks. In addition, all applicants must submit the names and identifying information for all employees who will possess explosive materials. Under the provisions of the previous law, no background checks were conducted for the employees of

Talking points, cont'd:

businesses that used explosives. All persons receiving explosive material in interstate or intrastate commerce will have to undergo a background check conducted by ATF.

With these changes, both the extant and proposed State of New York schemes for licensing pyrotechnics have become entirely duplicative and are therefore wasteful of State fiscal and personnel resources. State licensing is presently a significant burden on pyrotechnic display businesses professional display subcontractors operating in the State, and would become dramatically more so under provisions of S5080-A as originally introduced. Elimination of duplicative State pyrotechnic licensing removes this burden from businesses operating in New York State, in turn promoting business growth and employment.

Federal explosives licensing fully encompasses licensee qualification and storage safety issues. Deletion of State pyrotechnic regulation will have no appreciable impact on industry or individuals safety.

Exemption of consumer fireworks.

Purpose: It prevents inconsistent duplication of the Penal Code which already addresses possessing, using, and buying/selling of consumer fireworks.

Section 451: Definitions

Line 16: Changed impossible to highly unlikely.

Purpose: It is not feasible to limit the amount and pack explosives so that it is “impossible” for the explosives to not injure life, limb or property. It is only possible to limit the amount and pack explosives so that is highly unlikely not to injure life, limb or property.

Line 49-51: Corrected designation and added language to description of what an Explosives Dealer Manufacturer can do.

Purpose: The language conforms to the ability of what a Dealer Manufacturer can do as compared to the other types of licenses and conforms the definition to the description of the Dealer Manufacturer license in Section 458.

Line 55: Added language to what a Low Explosives Dealer Manufacturer can and can not do.

Purpose: The language conforms to the ability of what a Dealer Manufacturer can do as compared to the other types of licenses and conforms the definition to the description of the Low Explosives Dealer Manufacturer license in Section 458.

Talking points, cont'd:

Line 4: Strikes the word public.

Purpose: This clears up any confusion that this license is strictly for the display of fireworks only for municipal and/or government entity sponsored fireworks events.

Line 6: Added definitions of “Display of Fireworks”, “Public Display of Fireworks” and “Private Display of Fireworks”.

Purpose: Delineates between the different types of fireworks displays. Recognizes the ability of private persons and groups to conduct fireworks displays (weddings, baseball games, football games, other private celebrations). Does not prevent or limit the state from controlling to licensing said display, but it does prevent the state from not recognizing private fireworks displays.

Line 7: Added Low Explosive to “Explosives Handler”

Purpose: Previous definition did not include the handling of low explosives. This also conforms the ability of what an Explosive/Low Explosive Handler can do as compared to other types of licenses and conforms the definition to the description of the Explosive/Low Explosive Handler description in Section 458.

Line 13: Added language to what an Own and Possess licensee can do.

Purpose: The language conforms to the ability of what an Own and Possess licensee can do as compared to the other types of licenses and conforms the definition to the description of the Own and Possess license in Section 458.

Line 17: Added language to what an Own and Posses Low Explosives licensee can do.

Purpose: The language conforms to the ability of what a Low Explosives Own and Possess licensee can do as compared to the other types of licenses and conforms the definition to the description of the Low Explosive Own and Posses license in Section 458.

Line 22: Added another definition of a new type of license, Own and Possess Pyrotechnic License.

Purpose: Allows those individuals who do not want to own and possess any other type of explosive to obtain a license for more then they need. This is geared primarily display fireworks operators and hobbyists.

Talking points, cont'd:

Line 31: Added language to what a Pyrotechnic Dealer Manufacturer can do.

Purpose: The language conforms to the ability of what a Pyrotechnic Dealer Manufacturer can do as compared to the other types of licenses and conforms the definition to the description of the Dealer Manufacturer license in Section 458.

Additional language limits the manufacturing or sale of pyrotechnics to the display of fireworks and defines fireworks displays.

Purpose: Ensures that the large and dangerous display fireworks are within the control of the state and allows municipalities within the state to reasonably regulate them. Because the New York State Penal Code already addresses the issue of possessing, purchasing, selling, and using consumer fireworks, it would be redundant, confusing and conflicting to have this statute also address consumer fireworks.

Section 453: Storage

Line 2: Adds language exempting pyrotechnics.

Purpose: All storage of explosives, including hazardous pyrotechnics, is now federally regulated by the ATF (Bureau of Alcohol, Tobacco, Firearms and Explosives). Storage exemption of pyrotechnics from state oversight is consistent with added section 450, line 17 exemption from pyrotechnic regulation.

Section 454: Construction of Magazines

Line 8: Changes the word iron to metal.

Purpose: recognizes the modern technological advancements beyond iron. Would allow the use of different types of steel or other appropriate modern day metals.

Section 457: Relocation of Magazines

Line 17: Defines how the commissioner shall be notified of location change.

Purpose: the prior language did not specify how or the manner in which the commissioner was to be or could be notified of a change of a magazine location. By adding the language any potential confusion is eliminated.

Section 458: Licenses and Certificates

Talking points, cont'd:

Lines 37, 50, 11, 15, 18, 19, 24:

Added language to the different licenses to ensure that a hierarchy exists between the licenses.

Purpose: The added language conforms the definition of the different licenses in Section 451 with the description of the license in this section.

Line 37: Changed the application and license renewal from annually to once every 3 years.

Purpose: This conforms the bill to Assembly Bill A00293.

Line 50: Removed the language allowing the storage of 200 pounds of explosives for agricultural purposes, added exemption language for pyrotechnics.

Purpose: Pursuant to federal laws, all explosives must be stored in the appropriate magazines. The old language would have been contrary to the federal law.

Line 10: Language was added to exempt a limited amount of smokeless and black powder from these requirements.

Purpose: This will allow individuals who load and reload rounds for sporting purposes to have very limited amounts of smokeless and black powder without having to be a license holder and have a magazine.

Section 460: Seizure, Impounding, Destruction or Disposition of Explosives

Line 52: Removed the word “or” and then added the word “and”. Removed the words “has reason” and added the word “demonstrates”.

Purpose: This language requires that the Commissioner demonstrate or show that the statute, regulations or rules have been violated or that explosives have been lost or abandoned AND the commissioner DEMONSTRATES public safety is endangered. This places slightly more of a burden on the Commissioner to show that public safety is at risk. This gives owners and users of explosives a little more due process protection from arbitrary and capricious decisions of the commissioner to seize and destroy explosives.

Line 1: Gives 10 additional days to appeal the commissioner’s action on the seizure of explosives.

Talking points, cont'd:

Purpose: Conforms and makes uniform the amount of time a person has to appeal an action by the commissioner. Other sub-sections allow 15 days to appeal the commissioner's decisions and actions.

Lines 7 and 16:

Removed some language in Line 7 to allow for the language added at Line 16.

Purpose: Divided and made clearer what the commissioner can and can not do with and without a hearing. This also gives more protection to license holders and explosive owners from actions of the commissioner. Also protects the commissioner as it clarifies the authority of the commissioner.

Line 24: Removes the language of “ in the opinion of the commissioner” and replaces it with “the commissioner demonstrates”.

Purpose: Places a slight restriction on the commissioner's ability to act arbitrarily and gives explosive license holders and explosive owners more due process protection.

Line 27: Removed the language of “without liability”

Purpose: The commissioner already has a large degree of immunity for any acts he does in his official capacity. As a state actor, the commissioner is entitled to the immunity of the state for official acts. The language is redundant. Additionally, if the commissioner acts outside the scope of his authority and capacity, he should be liable for those actions, removal of the language ensures that he can be held liable for said acts.

Section 464: Penalties

Line 52: Added the language of “and/or individual”.

Purpose: Allows for the change which occurs in following lines

Line 56: Removes “ten thousand” and replaces it with “twenty-five hundred dollars” and adds the language “not to exceed a total civil penalty of ten thousand dollars”.

Purpose: These changes are part of a change in the civil penalty scheme to make a distinction and different fining scheme between individual persons and businesses or corporations.

Talking points, cont'd:

Line 26: Added language of “knowingly or purposefully”.

Purpose: Requires an intent to violate the rules to make it a criminal act. Prior language did not require any intent. Thus an unintentional violation was a felony act. By requiring an intent, innocent and unintentional violations are not a crime, but can still be liable for civil penalties.