

STATE OF NEW YORK

2003-2004 Regular Sessions

IN ASSEMBLY

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

[PYROTECHNIC NONEXEMPT]

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 § 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.** (Reinstate) 4. This article shall not apply to consumer fireworks as defined
in subsection one of section four hundred fifty-one of this article. (added).
20 § 2. Section 451 of the labor law, as amended by chapter 809 of the
21 laws of 1949, subdivision 1 as amended by chapter 220 of the laws of
22 1974 and subdivision 11 as renumbered by chapter 1022 of the laws of
23 1970, is amended to read as follows:

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets
[-] is old law to be omitted.

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- 1 § 451. Definitions. Whenever used in this article: 1. "Explosives"

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Deleted: Introduced by Sens. VELELLA,
VOLKER -- (at request of the Department of
Labor) -- read twice and ordered
printed, and when printed to be
committed to the Committee on Rules
-- committee discharged, bill
amended, ordered reprinted as amended
and recommitted to said commit-
tee

2 means gunpowder, powders used for blasting, high explosives, blasting
3 materials, detonating fuses, detonators and other detonating agents,
4 smokeless powder and any chemical compound or any mechanical mixture
5 containing any oxidizing and combustible units, or other ingredients in
6 such proportions, quantities, or packing that ignition by fire, fric-
7 tion, concussion, percussion or detonation of any part thereof may cause
8 and is intended to cause an explosion, but shall not include gasoline,
9 kerosene, naphtha, turpentine, benzine, acetone, ethyl ether, benzol
10 ~~and~~, all quantities of black powder not exceeding five pounds for use
11 in firing of antique firearms or artifacts or replicas thereof. Fixed
12 ammunition and primers for small arms, ~~fire-crackers,~~ safety fuses and
13 matches shall not be deemed to be explosives when, ~~as may be determined~~
14 ~~by the board in its rules~~ **as provided by regulation**, the individual
15 units contain any of the above-mentioned articles or substances in such
16 limited quantity, of such nature and so packed that it is ~~impossible~~ **highly unlikely** (struck "impossible and
added "highly unlikely") to
17 produce an explosion of such units to the injury of life, limb or prop-
18 erty. ~~Exempt from the definition of "explosives" are 1.4G consumer fireworks, fireworks that fall under U.N.~~
~~classification number 0336 and 0337, as designated by the United States Department of Transportation under 49~~
~~CFR 172.101.~~

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

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

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

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

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

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

47 8. "Person" includes any natural person, partnership, association or
48 corporation.

49 9. ~~Manufacturer~~ **Explosives dealer manufacturer**" means any person
50 who is engaged in the ~~manufacture~~ **buying, selling, manufacturing or**
51 ~~production of~~ **producing any class of** explosives. An explosives dealer manufacturer may purchase, own,
~~transfer, transport, possess, and destroy any class of explosives.~~

52 10. ~~"Dealer" means any person engaged in the business of buying and~~
53 ~~selling explosives.~~

54 ~~11. A "farmer" is a person who occupies and cultivates land.]~~
55 "Low explosives dealer manufacturer" means any person who is engaged
56 in the buying and selling or manufacturing of low explosives such as

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1 black or smokeless powder for use in antique weapons or replicas or for
2 other sporting purposes. A low explosives dealer manufacturer may purchase, own, transfer, transport,
3 possess, and destroy low explosives and pyrotechnics.

4 11. "Pyrotechnics dealer manufacturer" means any person who is engaged
5 in the manufacturing, buying and/or selling of low explosives, finished pyrotechnics, or their explosive
6 components for the purpose of manufacturing or sale of pyrotechnics for the public (removed) display
7 of fireworks. A pyrotechnics dealer manufacturer may purchase, own, transfer, transport, possess, and
8 destroy pyrotechnics.

9 "Display of Fireworks" means any use of fireworks and/or pyrotechnics where one or more people observe
10 said fireworks and/or pyrotechnics.

11 "Public Display of Fireworks" means a display of fireworks that is either sponsored and/or conducted by a
12 municipality or government entity or uses public property or real estate for the conduction of the display.

13 "Private Display of Fireworks" means a display of fireworks that is either sponsored and/or conducted by a
14 private person, group, or entity and uses private property or real estate for the conduction of the display.

15 12. "Explosives/ Low Explosives (added "Low") handler license" means a class of explosive license
16 wherein the licensee is allowed unsupervised access or unsupervised
17 custody to explosives in the possession of his/her employer and the
18 employer possesses a valid license, issued by the commissioner, which allows the employer to
19 manufacture, own, possess, buy, sell, purchase, transfer, transport, and/or destroy those explosives.
20 Exempted from this subsection are those persons who handle pyrotechnics, pyrotechnic components, and/or low
21 explosive pyrotechnic components.

22 13. "Own and possess explosive license" means a class of explosive
23 license wherein the licensee may purchase, own, transfer (added), transport, possess, and destroy any
24 class of explosive in accordance with this article. It does not permit
25 the licensee to manufacture, sell, or give or transfer (struck "transfer") ownership of any
26 class of explosive.

27 14. "Own and possess low explosives license" means a class of
28 explosive license wherein the licensee may purchase, own, transfer (added), transport, possess, and
29 destroy any low explosive in accordance with this article. It does not
30 permit the licensee to manufacture, sell or give or transfer (struck "transfer") ownership of
31 any low explosive.

32 15. "Own and possess pyrotechnics license" means a class of explosive license where the licensee can
33 transport, possess or destroy any pyrotechnic in accordance with this article. It does not permit the licensee
34 to manufacture, sell, give or transfer ownership of any finished pyrotechnic.

35 ~~16. "High explosives" means explosive materials that can be caused to~~
36 ~~detonate by means of a blasting cap when unconfined as, for example,~~
37 ~~dynamite.~~

38 ~~17. "Low explosives" means explosive materials that can be caused to~~
39 ~~deflagrate when confined as, for example, smokeless or black powder.~~

40 ~~18. "Pyrotechnics" means any combustible or explosive compositions of~~
41 ~~manufactured articles designed and prepared for the purpose of producing~~
42 ~~audible or visible effects that are commonly referred to as fireworks,~~
43 ~~including signaling devices such as flares and fuses. This definition includes 1.3G display fireworks, U.N.~~
44 ~~classification numbers 0333, 0334, and 0335 as designated by the U.S. Department of Transportation under 49 CFR~~
45 ~~172.101. This definition excludes 1.4G consumer fireworks, fireworks that fall under U.N. classification number~~
46 ~~0336 and 0337, as designated by the United States Department of Transportation under 49 CFR 172.101.~~

31 § 3. Section 452 of the labor law, as amended by chapter 190 of the

32 laws of 1989, is amended to read as follows:

33 § 452. Packing and labeling. No person shall own, possess, store, deal
34 in, sell, give or purchase explosives unless the packing, or encasement,
35 and the marking and labeling of such explosives shall comply with the
36 ~~rules of the board~~ **regulations promulgated hereunder.**

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

40 § 453. Storage. No person shall store explosives except in a magazine
41 constructed ~~and~~, located **and certified** in accordance with the
42 provisions of this article and the ~~rules of the board and unless a~~
43 ~~certificate, which~~ **regulations promulgated hereunder. The magazine**
44 **certificate** shall be attached to the magazine on the inside ~~thereof,~~
45 ~~has been issued for~~ **of each** such magazine. No person shall store more
46 than three hundred thousand pounds of explosives in any one magazine at
47 any time. **Explosives not stored in compliance with this paragraph shall**
48 **be deemed to present an imminent hazard to emergency responders and**
49 **other persons lawfully frequenting the area and are subject to seizure**
50 **and destruction under subdivision five of section four hundred sixty of**
51 **this article.**

52 This section shall not apply to explosives while being legally blasted
53 or while legally in the custody of a common carrier awaiting shipment or
54 delivery to a consignee during the time permitted by federal law; nor to
55 the storage of such limited amount of sporting or smokeless powders as

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1 may be permitted by the ~~rules of the board~~ **regulations promulgated**
2 **hereunder.**

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

5 § 454. Construction of magazines. Unless otherwise prescribed by the
6 ~~board in its rules~~ **regulations promulgated hereunder**, magazines in
7 which explosives shall be lawfully kept or stored shall be constructed

8 of brick, concrete, ~~iron~~ **metal (struck "iron" and added "metal")** or wood covered with ~~iron~~ **metal (struck**
9 **"iron" and added "metal")**, and shall have no

10 openings except for ventilation and entrance. All **explosive** magazines,
11 except those in mines and tunnels, shall be located above ground. All
12 **explosive** magazines shall be kept clean and dry at all times.

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

15 § 455. Magazine precautions. 1. No ~~person~~ **individual** shall unlock
16 ~~or~~, open the doors of, **or access the contents of, explosive** magazines,
17 ~~except~~ **unless a license has been issued therefor to the individual by**
18 **the commissioner as provided for in this article or the individual is**
19 **under the direct supervision of a license holder. No employer shall**
20 **allow any individual access to their explosive magazines or explosives**
21 **unless a license has been issued therefor to the individual by the**
22 **commissioner as provided for in this article or the individual is under**
23 **the direct supervision of a license holder.**

24 **2. Exceptions. (a) In the case of employees of retail establishments**
25 **where black and/or smokeless powder is sold and where storage is limited**
26 **to fifty pound indoor storage magazines and an on-site responsible**
27 **employee, manager or owner has a valid explosives dealer manufacturing**
28 **license issued by the commissioner, such employees, while performing**

28 their assigned duties for such store, shall not be required to have a
29 license. The material shall be stored in a magazine certified by the
30 commissioner and such explosives shall be considered at all times to be
31 in the possession of the employer. The licensee shall be responsible for
32 training employees in the proper storage and handling of the explosive
33 materials and shall be responsible for ensuring that employees comply
34 with this article.

b) In the case of employees of establishments where pyrotechnics are manufactured and where storage is limited to the storage of pyrotechnics and low explosive in magazines only and an on-site responsible employee, manager or owner has a valid pyrotechnics dealer manufacturing license or a pyrotechnic own and possess license issued by the commissioner, such employees, while performing their assigned duties for such person, shall not be required to have a license. The material shall be stored in a magazine certified by the commissioner and such pyrotechnics and low explosives shall be considered at all times to be in the possession of the employer. The licensee shall be responsible for training employees in the proper storage and handling of the explosive materials and shall be responsible for ensuring that employees comply with this article.

~~35 (b) (c)~~ In the case of employees of an explosive manufacturer, while
36 performing their assigned duties within and upon the grounds of a manu-
37 facturing facility under the supervision of a person possessing a
38 current explosive dealer manufacturers license issued by the commission-
39 er, such explosives shall be considered to be in the possession of the
40 employer and such employees shall not be required to possess a license.

~~41 (e) (d)~~ Explosive magazines shall only be opened to allow for the lawful
42 storage or removal of explosives.

~~43 (d) (e)~~ No person shall have matches or fire of any kind in any magazine.

44 No person shall store or keep blasting caps, detonating or fulminating
45 caps, or detonators in a magazine in which any other type of explosive
46 is stored or kept. No person shall open any package of explosives within
47 fifty feet of any magazine, nor shall any explosives be kept in a maga-

48 zine except in the original containers. Such a prohibition on opening packages of magazines and storage of
explosives in magazines does not apply to pyrotechnics. No person shall discharge

49 firearms within five hundred feet of a magazine or explosives factory,
50 or at or against any such building or magazine. Any theft or loss of
51 explosives from a storage magazine or otherwise, shall immediately be
52 reported to the ~~industrial~~ commissioner and the state or local police
53 or county sheriff.

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

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1 § 456. Location of magazines. The quantity of explosives that may be
2 stored in any explosives factory or magazine shall depend upon its
3 distances from the nearest building, railroad or highway or other maga-
4 zine. The distances that a quantity of explosives may be stored from the
5 nearest magazine, building, railroad or highway, shall be as determined
6 by the ~~rules of the board~~ regulations promulgated hereunder. All such
7 distances may be reduced one-half when the magazine, building, railroad
8 or highway to be protected is adequately screened from the explosives

9 factory or magazine by an efficient barricade as defined in subdivision
10 seven of section four hundred fifty-one **of this article**.
11 § 8. The labor law is amended by adding a new section 457 to read as
12 follows:

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

21 **2. This provision shall not apply where the relocation has been**
22 **ordered by police, fire or other authorized emergency personnel, or**
23 **where the continued storage in the current location would constitute a**
24 **threat to life or property. In such cases the commissioner shall be**
25 **notified as soon as practical after the relocation but in no case more**
26 **than two business days following such relocation.**

27 **3. When a magazine is moved to storage, abandoned, sold or removed**
28 **from service the certificate holder shall notify the commissioner within**
29 **five business days of the date that such magazine was abandoned, moved**
30 **to storage, sold, or removed from service and shall surrender the**
31 **certificate to the commissioner.**

32 § 9. Section 458 of the labor law, as added by chapter 809 of the laws
33 of 1949, subdivisions 1, 2 and 3 as amended by chapter 61 of the laws of
34 1989, subdivisions 4, 5, 6, 7 and 9 as added and subdivisions 10 and 11
35 as renumbered by chapter 1022 of the laws of 1970 and subdivision 8 as
36 added by chapter 150 of the laws of 1971, is amended to read as follows:

37 § 458. Licenses and certificates. 1. **"Own and possess explosives**
38 **license."** No person shall purchase, own, possess, **transfer (added)** transport, **destroy** or
39 use explosives unless a license therefor shall have been issued as
40 provided in this article. **Such license shall not permit the licensee to**
41 **manufacture, sell, give or transfer (removed)** ownership of any class of explosive.

42 ~~**[Application for such a license shall be made to the commissioner on**~~
43 ~~**forms provided and shall contain such information as the commissioner**~~
44 ~~**may require. Where the commissioner finds that the applicant has**~~
45 ~~**complied with the requirements of this article and the rules promulgated**~~
46 ~~**hereunder, the commissioner shall issue a license or renewal thereof**~~
47 ~~**which shall be valid for one year from the date of issuance. Such appli-**~~
48 ~~**cation and each renewal thereof shall be accompanied by a fee of fifty**~~
49 ~~**dollars non-refundable to be payable to the commissioner.]**~~

50 2. **"Explosives dealer manufacturer license."** No person shall ~~**manufac-**~~
51 ~~**ture, deal in, sell, give or dispose]**~~ **buy, sell, manufacture or produce**
52 **any class** of explosives unless a license therefor shall have been issued
53 to such person for that purpose by the commissioner as provided in this
54 article, nor shall any person sell, give, or ~~**dispose**~~ destroy of explosives to, or
55 manufacture explosives for any person who does not hold a license as
56 provided by ~~**subdivision one of**~~ this section. **A person carrying an explosives dealer manufacturer license**
may own, transfer, transport, and/or possess any class of explosives.

1 ~~**[Application for such a license, which shall be renewed annually,**~~
2 ~~**shall be made to the commissioner on forms provided and shall contain**~~
3 ~~**such information as the commissioner may require. The commissioner,**~~

4 after investigation of the application, shall issue a license or renewal
5 thereof, which shall be valid for one year from the date of issuance,
6 where the commissioner finds that the applicant has complied with the
7 requirements of this article and the rules promulgated hereunder. Each
8 application for such a license, or for its renewal, shall be accompanied
9 by a fee of one hundred dollars non-refundable to be payable to the
10 commissioner.]

11 **3. "Pyrotechnics dealer manufacturer license." No person shall manu-**
12 **facture, buy and/or sell, finished pyrotechnics and/ or low explosives, for the purpose of manufacturing**
13 **pyrotechnics, their explosive compo-**
14 **nents, unless a license therefor has been issued for that purpose by the**
15 **commissioner as provided for in this article. A person carrying a pyrotechnics dealer manufacturer license**
16 **may own, purchase, transfer, transport, possess, and/or destroy pyrotechnics,**

17 **4. "Low explosives dealer manufacturer license." No person shall buy,**
18 **sell or manufacture low explosives such as black or smokeless powder**
19 **unless a license has been issued therefor by the commissioner as**
20 **provided for in this article. A person carrying a low explosives dealer manufacturer license may own,**
21 **purchase, transfer, transport, possess, and/or destroy low explosives and pyrotechnics.**

22 **5. "Own and possess pyrotechnics license." No person shall trans-**
23 **port, possess or destroy any finished pyrotechnic unless a license has been**
24 **issued therefor by the commissioner as provided for in this article.**
25 **Such license shall not permit the licensee to manufacture, sell, give or**
26 **transfer ownership of any finished pyrotechnic.**

27 **5. "Own and possess low explosives license." No person shall own, purchase, transfer, trans-**
28 **port, possess or destroy any low explosive unless a license has been**
29 **issued therefor by the commissioner as provided for in this article.**
30 **Such license shall not permit the licensee to manufacture, sell or give or**
31 **transfer ownership of any low explosive. [Added "purchase and transfer, struck transfer from second**
32 **sentence.]**

33 **6. "Explosives handlers license." No individual shall have unsuper-**
34 **vised access to or unsupervised custody of explosives on behalf of a**
35 **license holder unless he or she has been issued an explosive handlers**
36 **license by the commissioner as provided for in this article. Such**
37 **license shall not permit the licensee to purchase, own, possess, and/or**
38 **use explosives. Exempted from this subsection are persons who handle pyrotechnics defined under subsection**
39 **seventeen of section four hundred fifty-one of this article, pyrotechnic components, and/or low explosive**
40 **components.**

41 **7. "Applications." Application for all explosive licenses shall be**
42 **made to the commissioner on forms provided and shall contain such infor-**
43 **mation as the commissioner may require. Where the commissioner finds**
44 **that the applicant has complied with the requirements of this article,**
45 **the rules promulgated hereunder and all other applicable sections of**
46 **this chapter and regulations promulgated by the commissioner, the**
47 **commissioner shall issue a license or renewal thereof which shall be**
48 **valid for one three years (added - from Assembly Bill A00293) from the date of issuance. Such**
49 **application and each**
50 **renewal thereof shall be accompanied by a non-refundable fee to be pava-**
51 **ble to the commissioner. The license fee schedule shall be subject to**
52 **the discretion of the commissioner and not less than the following**
53 **amounts:**
54 **(a) own and possess explosives license - one hundred dollars;**
55 **(b) explosives dealer manufacturer license - one thousand dollars;**
56 **(c) pyrotechnics dealer manufacturer license - one hundred dollars;**
57 **(d) low explosives dealer manufacturer license - fifty dollars;**

46 **(e) own and possess low explosives license - fifty dollars;**
 47 **(f) explosive handlers license - fifty dollars.**
 48 **[3-] 8. "Explosive magazine certificate."** No person shall keep or
 49 store explosives unless a certificate therefor shall have been issued by
 50 the commissioner as herein provided, **but this requirement shall not**
 51 **apply to the storage at any one time by farmers of two hundred pounds or**
 52 **less of blasting explosives for agricultural purposes.**
 53 Application for such a certificate shall be made to the commissioner
 54 on forms provided and shall contain such information as the commissioner
 55 may require. The commissioner, where it is found that the applicant has
 56 complied with the requirements of this article **and**, the rules promul-

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1 gated hereunder **and all other applicable sections of this chapter and**
 2 **regulations promulgated by the commissioner,** shall issue a certificate
 3 or a renewal thereof, which shall be valid for ~~one year~~ **three years (from Assembly Bill A00293)** from the date
 of
 4 issuance. In addition to any other causes for revocation of a certif-
 5 icate hereinafter provided, the commissioner may revoke or modify such
 6 certificate because of any change in the conditions under which it was
 7 granted, or for failure to pay the annual fee hereinafter provided. The
 8 owner or user of a magazine shall annually pay to the commissioner in
 9 advance a fee, **[not exceeding one hundred dollars] subject to the**
 10 **discretion of the commissioner and not less than two hundred dollars,**
 11 which shall be proportioned according to the quantity **and type** of
 12 explosives authorized by the certificate to be stored in the magazine.

Chart of Annual Fees for Pyrotechnics

Up to 2000 pounds	\$25.00
2001 to 20,000 pounds	\$50.00
20,001 to 100,000 pounds	\$75.00
100,001 to 150,000 pounds	\$100.00
150,001 to 200,000 pounds	\$150.00
Anything over 200,000 pounds	\$200.00

Chart of Annual Fees for Low Explosives

Up to 2000 pounds	\$ 25.00
2001 to 20,000 pounds	\$ 100.00
20,001 to 100,000 pounds	\$ 200.00
100,001 to 150,000 pounds	\$ 250.00
150,001 to 200,000 pounds	\$ 300.00
Anything over 200,000 pounds	\$ 350.00

Chart of Annual Fees for Explosives

Up to 2000 pounds	\$ 100.00
2001 to 20,000 pounds	\$ 150.00
20,001 to 100,000 pounds	\$ 300.00
100,001 to 150,000 pounds	\$ 350.00
150,001 to 200,000 pounds	\$ 400.00
Anything over 200,000 pounds	\$ 500.00

13 **[4-] 9.** An **initial (added)** application for a license or a certificate pursuant to
 14 **[subdivision] subdivisions** one, ~~two or three~~ **through eight** of this
 15 section shall be sworn to under oath and shall contain information
 16 sufficient to identify the applicant, **including but not limited to the**
 17 **fingerprints of the applicant,** and the purpose for which and the place

18 where the explosives are to be used, manufactured, dealt in, given,
19 disposed of or stored, as the case may be, and to demonstrate the eligi-
20 bility of such applicant for the license or certificate requested,
21 together with such further information as the commissioner may require.
22 ~~[The commissioner may require that the application include, among other~~
23 ~~things, photographs, fingerprints and personal references.] The finger-~~
24 prints accompanying the application shall be submitted to the division
25 of criminal justice services for a state check and, if necessary, to the
26 federal bureau of investigation. Any application for a license, certifi-
27 cate or registration required to be filed with the department pursuant
28 to this section may, in lieu of being sworn under oath, be subscribed by
29 the applicant and affirmed by him or her as true under penalties of
30 perjury.
31 ~~[5.]~~ 10. Before a license or certificate is issued, the commissioner
32 shall investigate the eligibility of the applicant. The commissioner
33 shall have the authority to request and receive from any department,
34 division, board, bureau, commission or agency of the state or local
35 government thereof such assistance and information as will enable ~~[him]~~
36 the commissioner to properly and effectively to carry out ~~[his]~~ the
37 powers and duties assigned under this article.
38 ~~[6.]~~ 11. (a) The investigation prescribed in subdivision ~~[five]~~ ten of
39 this section may include, but is not limited to the following:
40 (1) a personal interview of the applicant by a designated agent of the
41 commissioner if the commissioner is unable to make a determination on
42 the basis of the factors contained in the application;
43 (2) an examination as to the applicant's knowledge and ability with
44 respect to basic safety precautions in the possession, handling, stor-
45 age, and transportation of explosives, and for such purpose the commis-
46 sioner may prescribe tests which the applicant shall be required to pass
47 as a prerequisite to the issuance of the license or certificate. The
48 test may be administered by any person or agency designated by the
49 commissioner.
50 (b) The investigation prescribed in subdivision ~~[five]~~ ten of this
51 section shall include a report from the New York state identification
52 and intelligence system, and such other identification services of the
53 state or federal government as may be necessary or appropriate for this
54 purpose. State and national criminal history record checks must be
55 performed consistent with the procedure established in subdivision nine
56 of this section.

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1 ~~[7. The commissioner may waive any of the procedures set forth in~~
2 ~~subdivision six (a) of this section with respect to any applicant who~~
3 ~~has a license or certificate which was issued pursuant to this section~~
4 ~~at anytime prior to March first, nineteen hundred seventy, and which was~~
5 ~~legally valid and effective on such date. The commissioner also may~~
6 ~~waive fingerprinting of an applicant who has a valid license for a~~
7 ~~pistol or revolver in accordance with section 400.00 of the penal law.]~~
8 ~~[8.]~~ 12. Exceptions. Except for the provisions of subdivision ~~[elev-~~
9 ~~en.]~~ fifteen, this section shall not apply to ~~[smokeless powder]~~ indi-
10 viduals who are storing no more than fifty pounds of smokeless powder and/or ten pounds of black powder
11 for personal
12 sporting or recreational purposes, as determined by the commissioner.
13 ~~[9.]~~ 13. Within thirty days after the issuance of a license or certif-

13 icate under this section, the commissioner shall notify the chief execu-
14 tive officer of the municipality where the licensee resides or where the
15 certificate holder has his or her place of business of the issuance of
16 such license or certificate, and provide such officer with such other
17 information pertaining thereto ~~[as the board may from time to time~~
18 ~~prescribe] as the commissioner may prescribe. The chief elected official~~
19 ~~of each municipality should provide such information to the fire, police~~
20 ~~and emergency medical services of the municipality.~~
21 ~~[40.] 14.~~ Agencies of the United States, the state and its political
22 and civil subdivisions which are subject to the requirements of this
23 article and which, in the exercise of their functions, are required to
24 purchase, own, store, use or transport explosives shall not be liable
25 for the payment of any fee required by this section.
26 ~~[41.] 15.~~ No explosives shall be sold, given or delivered to any
27 ~~[person] individual~~ under eighteen years of age, whether such ~~[person]~~
28 ~~individual~~ is acting for himself, herself or for another person, nor
29 shall any such ~~[person] individual~~ be eligible to obtain any license or
30 certificate required under this section.
31 § 10. Section 459 of the labor law, as added by chapter 809 of the
32 laws of 1949, subdivision 1 as amended by chapter 1022 of the laws of
33 1970, is amended to read as follows:
34 § 459. Denial or revocation of license or certificate. 1. Denial. A
35 license or certificate, its renewal or continuation may be denied where
36 the commissioner has probable reason to believe, based on knowledge or
37 reliable information, or finds, after ~~[due]~~ investigation, that the
38 applicant or any officer, servant, agent or employee of the applicant is
39 not sufficiently reliable and experienced to be authorized to own,
40 possess, store, transport, use, manufacture, deal in, sell, purchase or
41 otherwise handle, as the case may be, explosives, lacks suitable facili-
42 ties therefor, has been convicted of a ~~[crime for which he has been~~
43 ~~sentenced to serve one or more years in prison] felony~~, is disloyal or
44 hostile to the United States or has been confined as a patient or inmate
45 in a public or private institution for the treatment of mental diseases.
46 Whenever the commissioner denies an application for a license or certifi-
47 cate or the renewal thereof, ~~[he shall,]~~ within five days of such
48 denial, ~~[give]~~ notice thereof and the reasons therefor shall be provided
49 in writing to the applicant ~~[personally or by mail to the address given~~
50 ~~in the application]~~. Such denial may be appealed to the commissioner who
51 shall follow the procedure provided by subdivision three of this
52 section.
53 2. Revocation. The commissioner may revoke any certificate or license
54 on any ground or grounds authorized in subdivision one of this section
55 for the denial of a license or certificate, or for a violation of the
56 terms of such license or certificate, or for a violation of any

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1 provision of this article or ~~[of the rules of the board] regulations~~
2 promulgated hereunder, or for non-compliance with any order issued by
3 the commissioner within the time specified in such order.
4 ~~[Where the] The~~ commissioner ~~[has probable reason to believe, based on~~
5 ~~knowledge or reliable information, that a licensee or certificate holder~~
6 ~~is disloyal to the United States, he may summarily revoke the license or~~
7 ~~certificate or may, in his discretion, give such licensee or certificate~~
8 ~~holder notice and opportunity to be heard as provided in subdivision~~

9 ~~three of this section~~ may, where there is reason to believe, based on
10 knowledge or reliable information, that a licensee or certificate holder
11 is disloyal to the United States, summarily revoke the license or
12 certificate or may give such licensee or certificate holder notice and
13 opportunity to be heard as provided in subdivision three of this
14 section. Revocation of a license or certificate for any other ground may
15 be ordered only after giving written notice and an opportunity to be
16 heard to the holder thereof. Such notice ~~[may be given to the holder~~
17 ~~personally or by mail and]~~ shall specify the ground or grounds on which
18 it is proposed to revoke the license or certificate. When a license or
19 certificate is revoked, the commissioner may direct the seizure and/or
20 disposition of explosives held by such licensee or certificate holder.
21 Upon revocation of a license or certificate by the commissioner, the
22 holder thereof shall surrender ~~[his] the~~ license or certificate to the
23 commissioner at once.

24 3. Hearings. Unless, within fifteen days from the date of notice, the
25 applicant for a license or certificate or the recipient of a notice
26 stating that the commissioner proposes to revoke a license or certifi-
27 cate held by him or her, shall file a written answer with the commis-
28 sioner denying the ground or grounds on which a license or certificate
29 has been denied or ground or grounds on which revocation of a license or
30 certificate is sought, and shall request a hearing, the commissioner may
31 make a final determination respecting the application for a license or
32 certificate, or may revoke a license or certificate forthwith. If, with-
33 in such fifteen days, the applicant, licensee or certificate holder
34 files such answer and request for hearing, the commissioner shall sched-
35 ule a hearing. The notice of hearing shall state the time, place, and
36 subject of the hearing, and shall be mailed to the applicant, certifi-
37 cate holder or licensee at his or her last known address at least five
38 days before the date of hearing. Hearings shall be held by the commis-
39 sioner or his or her representative, and the applicant, certificate
40 holder or licensee may appear in person or may be represented by an
41 agent. After such hearing, the commissioner shall render ~~[his] a~~ deci-
42 sion in writing.

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

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

46 1. The commissioner is hereby authorized and empowered, without applica-
47 tion to any court, to seize and impound any explosives found within this
48 state, except in cities having a population of more than one million
49 inhabitants, which are in apparent violation of any of the provisions of
50 this article, ~~[rules of the board] regulations promulgated hereunder~~ or
51 laws or regulations of the federal government, or which have been aban-
52 doned or lost, ~~or~~ and (struck "or" and added "and") where the commissioner has reason to believe
demonstrates (struck "has reason..." and added "demonstrates") that

53 public safety is endangered by such explosives. Such explosives may be
54 removed and transported by the commissioner and stored in magazines
55 provided or obtained for that purpose by the state or by the commission-
56 er.

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1 2. The owner of such explosives may, within five fifteen (struck "five and added "fifteen") days of such
seizure,

2 make written demand upon the commissioner for a hearing. Upon such

3 demand, the commissioner shall give the owner written notice [~~in person~~
4 ~~or by mail,~~] of the time and place of such hearing to be held not less
5 than ten days thereafter.

6 3. (a) Where no hearing is demanded within the time herein prescribed and

~~7 where, after hearing,~~ the commissioner finds that there has been a

8 violation of the provisions of this article, [~~rules of the board~~] ~~regu-~~

9 ~~lations promulgated hereunder~~ or laws or regulations of the federal

10 government, ~~or~~ and (struck "or" and added "and") that public safety is endangered, [~~he~~] the commissioner

11 may destroy or order the destruction of such explosives ~~without hearing~~

12 ~~and without liability,~~ or direct such other disposition of the

13 explosives [~~as he deems proper~~]. If the commissioner finds there has

14 been no such violation and that public safety has not been endangered,

15 [~~he shall return~~] such explosives **shall be returned** to the owner there-

16 of. (b) Where a hearing is demanded within the time herein prescribed, the commissioner shall not be allowed

to destroy or order the destruction of such explosives until the owner of such explosives has had the opportunity to

appeal all administrative remedies and exhaust due process through judicial review. After all such remedies have

been exhausted, the commissioner may then destroy or order the destruction of such explosives. If the

commissioner finds that there has been no such violation and that public safety has not been endangered, such

explosives shall be returned to the owner thereof

17 4. Where such explosives have been abandoned or lost, and no claimant

18 has appeared within thirty days, demanded the return of the explosives

19 and proved, to the satisfaction of the commissioner, [~~his~~] the claim-

20 ant's title to and right of possession of such explosives, the commis-

21 sioner may destroy or direct the destruction thereof, or direct such

22 other disposition thereof as [~~he deems~~] **is deemed** proper.

23 5. Any provision herein to the contrary notwithstanding, where, ~~in the~~

~~24 opinion of the commissioner,~~ the commissioner demonstrates that (struck "in the..." and added "the

comm'r...") the manufacture, condition, packing or

25 location of explosives is such that its continued existence or transpor-

26 tation is a danger to public safety, [~~he~~] the commissioner may, without

27 hearing ~~and without liability therefor to the owner thereof~~ (struck "without liability...") seize and

28 destroy or direct the seizure and destruction of such explosives.

29 § 12. Section 461 of the labor law, as added by chapter 809 of the

30 laws of 1949, subdivision 1 as amended by chapter 150 of the laws of

31 1971 and subdivision 3 as amended by chapter 1022 of the laws of 1970,

32 is amended to read as follows:

33 § 461. Record and notice of sales, deliveries or gifts. 1. Every

34 person selling, delivering [~~or~~], giving away [~~an explosive~~] **or otherwise**

35 **transferring or disposing of explosives** shall keep at his ~~or her~~ princi-

36 pal office or place of business within the state, a record of the trans-

37 action, including the name or type and quantity of the explosive, such

38 identification of the explosive as may be required by [~~rules of the~~

39 ~~board~~] **the regulations promulgated hereunder**, the date of each sale,

40 delivery [~~or~~], gift, **transfer or disposition**, the name and business

41 address of the purchaser, donee, **recipient** or person to whom delivered,

42 the number of the license [~~to own or possess explosives, if such license~~

43 ~~is~~] required by section four hundred fifty-eight of this article, and

44 the name and address of the person taking the explosives away. A report

45 of all such transactions, when requested [~~by him~~], shall be submitted to

46 the commissioner. Such record shall be open to inspection by the commis-

47 sioner or by federal, state and local enforcement officers at all times.

48 No person shall have in his ~~or her~~ possession any explosives unless he

49 ~~or she~~ has a bill of sale or other evidence of title thereto.

50 2. Any provision in this article to the contrary notwithstanding, no

51 person in a city having more than one million inhabitants shall ship or

52 transport or cause to be shipped or transported explosives from such

53 city to any other place within the state, unless such person shall, at
54 least twenty-four hours prior to such shipment, transmit to the commis-
55 sioner a statement in writing giving the weight, name or brand and type
56 of explosives, the name and address of the person to whom such

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1 explosives are to be sold, shipped, transported or delivered and the
2 date thereof. **Upon receipt of such statement, the commissioner shall**
3 **provide written notice to the city having more than one million inhabit-**
4 **ants of such shipment or transportation of explosives.** No person shall
5 make any such shipment except to a holder of a license issued hereunder.
6 3. No person within the state shall purchase, receive or accept deliv-
7 ery of explosives from any place outside the state, and no person shall
8 bring explosives into the state from any place outside the state,
9 unless, ~~[in addition to holding a license issued hereunder, such person~~
10 ~~shall, not more than twenty-four hours thereafter, transmit to the~~
11 ~~commissioner by mail a written statement giving] he or she is in~~
12 ~~possession of a valid license issued by the commissioner. The licensee~~
13 ~~in receiving the explosives shall maintain a record including the~~
14 weight, name or brand and type of the explosives, the name and address
15 of the shipper and the date of shipment, **for a period of three years**
16 **from the date of receipt or two years from the date of final disposition**
17 **of the explosives whichever occurs last.**

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

20 § 462. Rules and regulations. The commissioner may make rules supple-
21 mental to this article as ~~[he shall deem] deemed~~ necessary or desirable
22 to assure the public safety as well as to provide reasonable and
23 adequate protection of the lives, health and safety of persons employed
24 in the manufacture, storage, handling and use of explosives. The commis-
25 sioner may prescribe such regulations as ~~[he may deem] are deemed~~ neces-
26 sary and proper for the administration of this article.

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

29 § 463. Review. All questions of fact arising under this article shall
30 be decided by the commissioner and there shall be no appeal from ~~[his]~~
31 ~~such~~ decision on any such question of fact~~], but there shall be a right~~
32 ~~of review by the board of standards and appeals of any decision of the~~
33 ~~commissioner denying an application for a license or certificate, or~~
34 ~~denying the renewal thereof, or revoking a license or certificate, as~~
35 ~~provided in section one hundred ten, article three of the labor law].~~
36 **Upon the entry of an order issued under this article, any party**
37 **aggrieved thereby may commence a proceeding for review thereof pursuant**
38 **to article seventy-eight of the civil practice law and rules within**
39 **thirty days from the notice of the filing of the said order in the**
40 **office of the commissioner. Said proceeding shall be commenced directly**
41 **in the appellate division of the supreme court.**

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

44 § 464. Penalties. **1. Civil penalties. (a) If the commissioner directs**
45 **the storage, destruction or other disposition of explosives pursuant to**
46 **the provisions of section four hundred fifty-nine or four hundred sixty**
47 **of this article, the commissioner may issue an order which shall set**
48 **forth the costs of such storage, transportation, handling, destruction**

49 or other disposition and assess the owner of such explosives a civil
50 penalty in the amount of such costs, which shall be in addition to any
51 other penalties imposed.
52 (b) If the commissioner determines that any person and/or individual has violated any
53 provision of this article, section four hundred eighty-two of the gener-
54 al business law, or any rule or regulation promulgated thereunder, the
55 commissioner may issue an order which shall describe the nature of the
56 violation and assess such person a civil penalty of up to ten thousand

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1 dollars twenty-five hundred dollars per violation per day until the violation is corrected not to exceed a
2 total civil penalty of ten thousand dollars.

(c) If the commissioner determines that any business and/or corporation has violated any
53 provision of this article, section four hundred eighty-two of the gener-
54 al business law, or any rule or regulation promulgated thereunder, the
55 commissioner may issue an order which shall describe the nature of the
56 violation and assess such business and/or corporation a civil penalty of up to ten thousand dollars per
violation per day until the violation is corrected not to exceed a total civil penalty of fifty thousand dollars.

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56 The
7 penalties authorized pursuant to subsections (a) and (b) shall be paid to the
8 commissioner for deposit in the treasury of the state. In assessing the
9 amount of the penalty, the commissioner shall give due consideration to
10 the size of the person's business, the good faith effort of the person,
11 the gravity of the violation, and the history of previous violations.
12 (c) Any party aggrieved by an order issued under this subdivision may
13 commence a proceeding for review thereof pursuant to article seventy-
14 eight of the civil practice law and rules within thirty days from the
15 notice of the filing of the said order in the office of the commission-
16 er. Said proceeding shall be commenced directly in the appellate divi-
17 sion of the supreme court.
18 (d) 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 (e) 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 who knowingly or purposefully (added) violates 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 knowingly (added) possesses an
explosive without being duly licensed or otherwise authorized to do so
under the provisions of this article shall be guilty of a class D felo-
ny. Whenever, as a result of a plea bargaining agreement the charge is
reduced to a lesser offense, such offense may, in addition to any term
of imprisonment prescribed by such offense, be punishable by a fine not

34 to exceed twenty-five hundred dollars.

35 § 16. This act shall take effect on the one hundred eightieth day
36 after it shall have become a law; provided, however, all licenses and
37 certificates issued pursuant to article 16 of the labor law prior to the
38 effective date of this act shall remain in full force and effect until
39 such licenses and certificates expire.
