

**S4816—B (2006—NYSPA final version for session)  
/A7539—B**

STATE OF NEW YORK

---

2005-2006 Regular Sessions

IN SENATE

April 18, 2005

---

Introduced by Sen. WINNER -- read twice and ordered printed, and when printed to be committed to the Committee on Labor -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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

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

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

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

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

17 3. [For all purposes of this article, explosives in the possession of  
18 an employee within the scope of his duties, shall be considered to be in  
19 the possession of the employer.] The provisions of this section shall  
20 not apply to manufacturing, purchase, ownership, possession, use, trans-  
21 portation, sale, transfer, disposal, or destruction of pyrotechnics by

22 those persons, entities or businesses that hold a current federal pyro-  
23 technics or explosives license or permit issued by the federal bureau of  
24 alcohol, tobacco, firearms and explosives. Additionally, any individual

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

LBD11235-02-5

S. 4816--A

2

1 who holds a federal explosives license or permit shall be allowed to  
2 possess, store and use "common fireworks" or "articles pyrotechnic" as  
defined by the U.S. Department of Transportation .

4 § 2. Section 451 of the labor law, as amended by chapter 809 of the  
5 laws of 1949, subdivision 1 as amended by chapter 220 of the laws of  
6 1974 and subdivision 11 as renumbered by chapter 1022 of the laws of  
7 1970, is amended to read as follows:

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

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

31 3. "Railroad" or "railway" means any railroad which carries passengers  
32 or freight for hire, but shall not include auxiliary tracks, spurs and  
33 sidings installed and primarily used in serving any mine, quarry or

34 plant.

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

41 5. "Explosives factory" means any building or other structure in which  
42 the manufacture of explosives or any part of the manufacture thereof is  
43 carried on.

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

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

54 8. "Person" includes any natural person, partnership, association or  
55 corporation.

S. 4816--A

3

1 9. "[Manufacturer] Explosives dealer manufacturer" means any person  
2 who is engaged in the [manufacture] buying, selling, manufacturing or  
3 [production of] producing any class of explosives.

4 10. ["Dealer" means any person engaged in the business of buying and  
5 selling explosives.

6 11. A "farmer" is a person who occupies and cultivates land.] "Low  
7 explosives dealer manufacturer" means any person who is engaged in the  
8 buying and selling or manufacturing of low explosives such as black or  
9 smokeless powder for use in antique weapons or replicas or for other  
10 sporting purposes.

11 11. "Pyrotechnics dealer manufacturer" means any person who is engaged  
12 in the manufacturing, buying and/or selling of low explosives for the  
13 purpose of manufacturing or sale of pyrotechnics for the display of  
14 fireworks.

15 12. "Display of fireworks" means any use of fireworks and/or pyrotech-  
16 nics where one or more people observe such fireworks and/or pyrotech-  
17 nics.

18 13. "Public display of fireworks" means a display of fireworks that is

19 either sponsored and/or conducted by a municipality or government entity  
20 or uses public property or real estate to conduct the display, or a  
21 display of fireworks on private land where the fireworks display is  
22 advertised to the public at large by either print media, broadcast media  
23 or both.

24 14. "Private display of fireworks" means a display of fireworks that  
25 is either sponsored and/or conducted by a private person, group, or  
26 entity and uses private property or real estate to conduct the display,  
27 and where the on-site observers of the fireworks display are limited to  
28 those specific persons invited for an event or series of events which  
29 include such fireworks display.

30 15. "Explosives handler license" means a class of explosives license  
31 wherein the licensee is allowed unsupervised access or unsupervised  
32 custody to explosives in the possession of his/her employer and the  
33 employer possesses a valid license issued by the commissioner, which  
34 allows the employer to manufacture, own, possess, buy, sell, purchase,  
35 transfer, transport, and/or destroy explosives.

36 16. "Own and possess explosives license" means a class of explosives  
37 license wherein the licensee may purchase, own, transport, possess, use,  
38 dispose of and destroy any class of explosives in accordance with this  
39 article. It shall not permit the licensee to manufacture, sell, give or  
40 transfer ownership of any class of explosives.

41 17. "Own and possess low explosives license" means a class of  
42 explosives license wherein the licensee may purchase, own, transport,  
43 possess, use, dispose of and destroy any low explosives in accordance  
44 with this article. It shall not permit the licensee to manufacture,  
45 sell, give or transfer ownership of any low explosives.

46 18. "High explosives" means explosive materials that can be caused to  
47 detonate by means of a blasting cap when unconfined as, for example,  
48 dynamite.

49 19. "Low explosives" means explosive materials that can be caused to  
50 deflagrate when confined as, for example, smokeless or black powder.

51 20. "Pyrotechnics" means any combustible or explosive compositions or  
52 manufactured articles designed and prepared for the purpose of producing  
53 audible or visible effects that are commonly referred to as fireworks,  
54 including signaling devices such as flares and fuses.

55 § 3. Section 452 of the labor law, as amended by chapter 190 of the  
56 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 hereunder.

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 hereunder. The magazine  
12 certificate shall be attached to the magazine on the inside [thereof,  
13 has been issued for] of each such magazine. No person shall store more  
14 than three hundred thousand pounds of explosives in any one magazine at  
15 any time. Explosives not stored in compliance with this paragraph shall  
16 be deemed to present an imminent hazard to emergency responders and  
17 other persons lawfully frequenting the area and are subject to seizure  
18 and destruction under subdivision five of section four hundred sixty of  
19 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 hereunder.

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 hereunder, magazines in  
30 which explosives shall be lawfully kept or stored shall be constructed  
31 of brick, concrete, [iron] metal or wood covered with [iron] metal, and  
32 shall have no openings except for ventilation and entrance. All  
33 explosives magazines, except those in mines and tunnels, shall be  
34 located above ground. All explosives 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, explosives maga-  
40 zines, [except] unless a license has been issued therefor to the indi-  
41 vidual by the commissioner as provided for in this article or the indi-  
42 vidual is under the direct supervision of a license holder. No employer  
43 shall allow any individual access to their explosives magazines or  
44 explosives unless a license has been issued therefor to the individual  
45 by the commissioner as provided for in this article or the individual is  
46 under the direct supervision of a license holder.

47 2. Exceptions. (a) In the case of employees of retail establishments

48 where black and/or smokeless powder is sold and where storage is limited  
49 to fifty pound indoor storage magazines and an on-site responsible  
50 employee, manager or owner has a valid explosives dealer manufacturing  
51 license issued by the commissioner, such employees, while performing  
52 their assigned duties for such store, shall not be required to have a  
53 license. The material shall be stored in a magazine certified by the  
54 commissioner and such explosives shall be considered at all times to be  
55 in the possession of the employer. The licensee shall be responsible for  
56 training employees in the proper storage and handling of the explosive

S. 4816--A

5

1 materials and shall be responsible for ensuring that employees comply  
2 with this article.

3 (b) In the case of employees of an explosives manufacturer, while  
4 performing their assigned duties within and upon the grounds of a manu-  
5 facturing facility under the supervision of a person possessing a  
6 current explosives dealer manufacturers license issued by the commis-  
7 sioner, such explosives shall be considered to be in the possession of  
8 the employer and such employees shall not be required to possess a  
9 license.

10 (c) Explosives magazines shall only be opened to allow for the lawful  
11 storage or removal of explosives.

12 (d) No person shall have matches or fire of any kind in any magazine.  
13 No person shall store or keep blasting caps, detonating or fulminating  
14 caps, or detonators in a magazine in which any other type of explosive  
15 is stored or kept. No person shall open any package of explosives within  
16 fifty feet of any magazine, nor shall any explosives be kept in a maga-  
17 zine except in the original containers. No person shall discharge  
18 firearms within five hundred feet of a magazine or explosives factory,  
19 or at or against any such building or magazine. Any theft or loss of  
20 explosives from a storage magazine or otherwise, shall immediately be  
21 reported to the [industrial] commissioner and the state or local police  
22 or county sheriff.

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

25 § 456. Location of magazines. The quantity of explosives that may be  
26 stored in any explosives factory or magazine shall depend upon its  
27 distances from the nearest building, railroad or highway or other maga-  
28 zine. The distances that a quantity of explosives may be stored from the  
29 nearest magazine, building, railroad or highway, shall be as determined  
30 by the [rules of the board] regulations promulgated hereunder. All such  
31 distances may be reduced one-half when the magazine, building, railroad

32 or highway to be protected is adequately screened from the explosives  
33 factory or magazine by an efficient barricade as defined in subdivision  
34 seven of section four hundred fifty-one of this article.

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

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

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

51 3. When a magazine is moved to storage, abandoned, sold or removed  
52 from service the certificate holder shall notify the commissioner within  
53 five business days of the date that such magazine was abandoned, moved  
54 to storage, sold, or removed from service and shall surrender the  
55 certificate to the commissioner.

S. 4816--A

6

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

8 § 458. Licenses and certificates. 1. "Own and possess explosives  
9 license." No person shall purchase, own, possess, transport [or], use,  
10 dispose of or destroy explosives unless a license therefor shall have  
11 been issued as provided in this article. Such license shall not permit  
12 the licensee to manufacture, sell, give or transfer ownership of any  
13 class of explosives.

14 [Application for such a license shall be made to the commissioner on  
15 forms provided and shall contain such information as the commissioner  
16 may require. Where the commissioner finds that the applicant has

17 complied with the requirements of this article and the rules promulgated  
18 hereunder, the commissioner shall issue a license or renewal thereof  
19 which shall be valid for one year from the date of issuance. Such appli-  
20 cation and each renewal thereof shall be accompanied by a fee of fifty  
21 dollars non-refundable to be payable to the commissioner.]

22 2. "Explosives dealer manufacturer license." No person shall [manufac-  
23 ture, deal in, sell, give or dispose] buy, sell, manufacture or produce  
24 any class of explosives unless a license therefor shall have been issued  
25 to such person for that purpose by the commissioner as provided in this  
26 article, nor shall any person sell, give or dispose of explosives to, or  
27 manufacture explosives for any person who does not hold a license as  
28 provided by [subdivision one of] this section.

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

39 3. "Pyrotechnics dealer manufacturer license." No person shall manu-  
40 facture, buy and/or sell finished pyrotechnics or their explosive compo-  
41 nents, unless a license therefor has been issued for that purpose by the  
42 commissioner as provided for in this article.

43 4. "Low explosives dealer manufacturer license." No person shall buy,  
44 sell, manufacture or produce low explosives such as black or smokeless  
45 powder unless a license has been issued therefor by the commissioner as  
46 provided for in this article.

47 5. "Own and possess low explosives license." No person shall purchase,  
48 own, possess, transport, use, dispose of or destroy any low explosives  
49 unless a license has been issued therefor by the commissioner as  
50 provided for in this article. Such license shall not permit the licensee  
51 to manufacture, sell, give or transfer ownership of any low explosives.

52 6. "Explosives handlers license." No individual shall have unsuper-  
53 vised access to or unsupervised custody of explosives on behalf of a  
54 license holder unless he or she has been issued an explosives handlers  
55 license by the commissioner as provided for in this article. Such

2 use explosives.

3 7. "Applications." Application for all explosives licenses shall be  
4 made to the commissioner on forms provided and shall contain such infor-  
5 mation as the commissioner may require. Where the commissioner finds  
6 that the applicant has complied with the requirements of this article,  
7 the rules promulgated hereunder and all other applicable sections of  
8 this chapter and regulations promulgated by the commissioner, the  
9 commissioner shall issue a license or renewal thereof which shall be  
10 valid for three years from the date of issuance. Such application and  
11 each renewal thereof shall be accompanied by a non-refundable fee to be  
12 payable to the commissioner. The license fee schedule shall be subject  
13 to the discretion of the commissioner and not less than the following  
14 amounts:

- 15 (a) own and possess explosives license - one hundred dollars;
- 16 (b) explosives dealer manufacturer license - one thousand dollars;
- 17 (c) pyrotechnics dealer manufacturer license - one hundred dollars;
- 18 (d) low explosives dealer manufacturer license - fifty dollars;
- 19 (e) own and possess low explosives license - fifty dollars;
- 20 (f) explosives handlers license - fifty dollars.

21 8. "Explosives magazine certificate." No person shall keep or store  
22 explosives unless a certificate therefor shall have been issued by the  
23 commissioner as herein provided, but this requirement shall not apply to  
24 the storage of pyrotechnic materials  
26 by those persons and businesses that hold a valid pyrotechnics or  
27 explosives license or permit issued by the federal bureau of alcohol,  
28 tobacco, firearms and explosives, and such materials are stored in an  
29 appropriate magazine as specified, approved and inspected by the permit-  
30 ting authority. Such persons or businesses shall notify the Commissioner  
and the authority having jurisdiction for fire safety in the locality in which such  
materials are being stored of the type, magazine capacity, and location of each  
site where such materials are stored. Such notification shall be made orally to the  
authority having jurisdiction for fire safety in the locality before the end of the  
day and in writing to the Commissioner and the authority having jurisdiction for  
fire safety in the locality within 48 hours from the time such storage commenced.

31 Application for such a certificate shall be made to the commissioner  
32 on forms provided and shall contain such information as the commissioner  
33 may require. The commissioner, where it is found that the applicant has  
34 complied with the requirements of this article, and the rules promulgat-  
35 ed hereunder and all other applicable sections of this chapter and regu-  
36 lations promulgated by the commissioner, shall issue a certificate or a  
37 renewal thereof, which shall be valid for [one year] three years from  
38 the date of issuance. In addition to any other causes for revocation of  
39 a certificate hereinafter provided, the commissioner may revoke or modi-  
40 fy such certificate because of any change in the conditions under which  
41 it was granted, or for failure to pay the annual fee hereinafter

42 provided. The owner or user of a magazine shall annually pay to the  
43 commissioner in advance a fee, subject to the discretion of the commis-  
44 sioner and not less than fifty dollars, which shall be proportioned  
45 according to the quantity and type of explosives authorized by the  
46 certificate to be stored in the magazine.

47 [4.] 9. An application for a license or a certificate pursuant to  
48 [subdivision] subdivisions one[, two or three] through eight of this  
49 section shall be sworn to under oath and shall contain information  
50 sufficient to identify the applicant, including, but not limited to the  
51 fingerprints of the applicant, and the purpose for which and the place  
52 where the explosives are to be used, manufactured, dealt in, given,  
53 disposed of or stored, as the case may be, and to demonstrate the eligi-  
54 bility of such applicant for the license or certificate requested. [The  
55 commissioner may require that the application include, among other  
56 things, photographs, fingerprints and personal references.] Such finger-

S. 4816--A

8

1 prints shall be submitted to the division of criminal justice services  
2 for a state criminal history record check, as defined in subdivision one  
3 of section three thousand thirty-five of the education law, and may be  
4 submitted to the federal bureau of investigation for a national criminal  
5 history record check. Any application for a license, certificate or  
6 registration required to be filed with the department pursuant to this  
7 section may, in lieu of being sworn under oath, be subscribed by the  
8 applicant and affirmed by him or her as true under penalties of perjury.

9 [5.] 10. Before a license or certificate is issued, the commissioner  
10 shall investigate the eligibility of the applicant. The commissioner  
11 shall have the authority to request and receive from any department,  
12 division, board, bureau, commission or agency of the state or local  
13 government thereof such assistance and information as will enable [him]  
14 the commissioner to properly and effectively [to] carry out [his] the  
15 powers and duties assigned under this article.

16 [6.] 11. (a) The investigation prescribed in subdivision [five] ten of  
17 this section may include, but is not limited to the following:

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

21 (2) an examination as to the applicant's knowledge and ability with  
22 respect to basic safety precautions in the possession, handling, stor-  
23 age, and transportation of explosives, and for such purpose the commis-  
24 sioner may prescribe tests which the applicant shall be required to pass  
25 as a prerequisite to the issuance of the license or certificate. The

26 test may be administered by any person or agency designated by the  
27 commissioner.

28 (b) The investigation prescribed in subdivision [five] ten of this  
29 section shall include a report from the New York state identification  
30 and intelligence system, and such other identification services of the  
31 state or federal government as may be necessary or appropriate for this  
32 purpose. State and national criminal history record checks must be  
33 performed consistent with the procedure established in subdivision nine  
34 of this section.

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

42 8.] 12. Exceptions. Except for the provisions of subdivision [eleven]  
43 fifteen of this section, this section shall not apply to [smokeless  
44 powder] individuals who are storing limited amounts of smokeless powder  
45 for personal sporting or recreational purposes, as determined by the  
46 commissioner.

47 [9.] 13. Within thirty days after the issuance of a license or certifi-  
48 cate under this section, the commissioner shall notify the chief execu-  
49 tive officer of the municipality where the licensee resides or where the  
50 certificate holder has his or her place of business of the issuance of  
51 such license or certificate, and provide such officer with such other  
52 information pertaining thereto [as the board may from time to time  
53 prescribe] as the commissioner may prescribe. The chief elected official  
54 of each municipality should provide such information to the fire, police  
55 and emergency medical services of the municipality.

S. 4816--A

9

1 [10.] 14. Agencies of the United States, the state and its political  
2 and civil subdivisions which are subject to the requirements of this  
3 article and which, in the exercise of their functions, are required to  
4 purchase, own, store, use or transport explosives shall not be liable  
5 for the payment of any fee required by this section.

6 [11.] 15. No explosives shall be sold, given or delivered to any  
7 [person] individual under eighteen years of age, whether such [person]  
8 individual is acting for himself, herself or for another [person] indi-  
9 vidual, nor shall any such [person] individual be eligible to obtain any  
10 license or certificate required under this section.

11 § 10. Section 459 of the labor law, as added by chapter 809 of the  
12 laws of 1949, subdivision 1 as amended by chapter 1022 of the laws of  
13 1970, is amended to read as follows:

14 § 459. Denial or revocation of license or certificate. 1. Denial. A  
15 license or certificate, its renewal or continuation may be denied where  
16 the commissioner has probable reason to believe, based on knowledge or  
17 reliable information, or finds, after [due] investigation, that the  
18 applicant or any officer, servant, agent or employee of the applicant is  
19 not sufficiently reliable and experienced to be authorized to own,  
20 possess, store, transport, use, manufacture, deal in, sell, purchase or  
21 otherwise handle, as the case may be, explosives, lacks suitable facili-  
22 ties therefor, has been convicted of a [crime for which he has been  
23 sentenced to serve one or more years in prison] felony, is disloyal or  
24 hostile to the United States or has been confined as a patient or inmate  
25 in a public or private institution for the treatment of mental diseases.  
26 Whenever the commissioner denies an application for a license or certif-  
27 icate or the renewal thereof, [he shall,] within five days of such  
28 denial, [give] notice thereof and the reasons therefor shall be provided  
29 in writing to the applicant [personally or by mail to the address given  
30 in the application]. Such denial may be appealed to the commissioner who  
31 shall follow the procedure provided by subdivision three of this  
32 section.

33 2. Revocation. The commissioner may revoke any certificate or license  
34 on any ground or grounds authorized in subdivision one of this section  
35 for the denial of a license or certificate, or for a violation of the  
36 terms of such license or certificate, or for a violation of any  
37 provision of this article or [of the rules of the board] regulations  
38 promulgated hereunder, or for non-compliance with any order issued by  
39 the commissioner within the time specified in such order.

40 [Where the] The commissioner [has probable reason to believe, based on  
41 knowledge or reliable information, that a licensee or certificate holder  
42 is disloyal to the United States, he may summarily revoke the license or  
43 certificate or may, in his discretion, give such licensee or certificate  
44 holder notice and opportunity to be heard as provided in subdivision  
45 three of this section] may, where there is reason to believe, based on  
46 knowledge or reliable information, that a licensee or certificate holder  
47 is disloyal to the United States, summarily revoke the license or  
48 certificate or may give such licensee or certificate holder notice and  
49 opportunity to be heard as provided in subdivision three of this  
50 section. Revocation of a license or certificate for any other ground may  
51 be ordered only after giving written notice and an opportunity to be  
52 heard to the holder thereof. Such notice [may be given to the holder  
53 personally or by mail and] shall specify the ground or grounds on which  
54 it is proposed to revoke the license or certificate. When a license or  
55 certificate is revoked, the commissioner may direct the seizure and/or

56 disposition of explosives held by such licensee or certificate holder.

S. 4816--A

10

1 Upon revocation of a license or certificate by the commissioner, the  
2 holder thereof shall surrender [his] the license or certificate to the  
3 commissioner at once.

4 3. Hearings. Unless, within fifteen days from the date of notice, the  
5 applicant for a license or certificate or the recipient of a notice  
6 stating that the commissioner proposes to revoke a license or certifi-  
7 cate held by him or her, shall file a written answer with the commis-  
8 sioner denying the ground or grounds on which a license or certificate  
9 has been denied or ground or grounds on which revocation of a license or  
10 certificate is sought, and shall request a hearing, the commissioner may  
11 make a final determination respecting the application for a license or  
12 certificate, or may revoke a license or certificate forthwith. If, with-  
13 in such fifteen days, the applicant, licensee or certificate holder  
14 files such answer and request for hearing, the commissioner shall sched-  
15 ule a hearing. The notice of hearing shall state the time, place, and  
16 subject of the hearing, and shall be mailed to the applicant, certifi-  
17 cate holder or licensee at his or her last known address at least five  
18 days before the date of hearing. Hearings shall be held by the commis-  
19 sioner or his or her representative, and the applicant, certificate  
20 holder or licensee may appear in person or may be represented by an  
21 agent. After such hearing, the commissioner shall render [his] a deci-  
22 sion in writing.

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

25 § 460. Seizure, impounding, destruction or disposition of explosives.  
26 1. The commissioner is hereby authorized and empowered, without applica-  
27 tion to any court, to seize and impound any explosives found within this  
28 state, except in cities having a population of more than one million  
29 inhabitants, which are in apparent violation of any of the provisions of  
30 this article, [rules of the board] regulations promulgated hereunder or  
31 laws or regulations of the federal government, or which have been aban-  
32 doned or lost, or where the commissioner has reason to believe that  
33 public safety is endangered by such explosives. Such explosives may be  
34 removed and transported by the commissioner and stored in magazines  
35 provided or obtained for that purpose by the state or by the commission-  
36 er.

37 2. The owner of such explosives may, within [five] fifteen days of  
38 such seizure, make written demand upon the commissioner for a hearing.  
39 Upon such demand, the commissioner shall give the owner written notice

40 [in person or by mail,] of the time and place of such hearing to be held  
41 not less than ten days thereafter.

42 3. (a) Where no hearing is demanded within the time herein prescribed  
43 [or where, after hearing,] and the commissioner finds that there has  
44 been a violation of the provisions of this article, [rules of the board]  
45 regulations promulgated hereunder or laws or regulations of the federal  
46 government, [or] and that public safety is endangered, [he] the commis-  
47 sioner may destroy or order the destruction of such explosives without  
48 hearing and without liability, or direct such other disposition of the  
49 explosives [as he deems proper]. If the commissioner finds there has  
50 been no such violation and that public safety has not been endangered,  
51 [he shall return] such explosives shall be returned to the owner there-  
52 of.

53 (b) Where a hearing is demanded within the time herein prescribed, the  
54 commissioner shall not be allowed to destroy or order the destruction of  
55 such explosives until the owner of such explosives has had the opportu-  
56 nity to appeal all administrative remedies and exhaust due process

S. 4816--A

11

1 through judicial review. After all such remedies have been exhausted,  
2 the commissioner may then destroy or order the destruction of such  
3 explosives. If the commissioner finds that there has been no such  
4 violation and that public safety has not been endangered, such  
5 explosives shall be returned to the owner thereof.

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

12 5. Any provision herein to the contrary notwithstanding, where[, in  
13 the opinion of] the commissioner[, ] demonstrates that the manufacture,  
14 condition, packing or location of explosives is such that its continued  
15 existence or transportation is a danger to public safety, [he] the  
16 commissioner may, without hearing [and without liability therefor to the  
17 owner thereof], seize and destroy or direct the seizure and destruction  
18 of such explosives.

19 § 12. Section 461 of the labor law, as added by chapter 809 of the  
20 laws of 1949, subdivision 1 as amended by chapter 150 of the laws of  
21 1971 and subdivision 3 as amended by chapter 1022 of the laws of 1970,  
22 is amended to read as follows:

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

24 person selling, delivering [or], giving away [an explosive] or otherwise  
25 transferring, disposing of or destroying explosives shall keep at his or  
26 her principal office or place of business within the state, a record of  
27 the transaction, including the name or type and quantity of the  
28 explosive, such identification of the explosive as may be required by  
29 [rules of the board] the regulations promulgated hereunder, the date of  
30 each sale, delivery [or], gift, transfer or disposition, the name and  
31 business address of the purchaser, donee, recipient or person to whom  
32 delivered, the number of the license [to own or possess explosives, if  
33 such license is] required by section four hundred fifty-eight of this  
34 article, and the name and address of the person taking the explosives  
35 away. A report of all such transactions, when requested [by him], shall  
36 be submitted to the commissioner. Such record shall be open to  
37 inspection by the commissioner or by federal, state and local enforce-  
38 ment officers at all times. No person shall have in his or her  
39 possession any explosives unless he or she has a bill of sale or other  
40 evidence of title thereto.

41 2. Any provision in this article to the contrary notwithstanding, no  
42 person in a city having more than one million inhabitants shall ship or  
43 transport or cause to be shipped or transported explosives from such  
44 city to any other place within the state, unless such person shall, at  
45 least twenty-four hours prior to such shipment, transmit to the commis-  
46 sioner a statement in writing giving the weight, name or brand and type  
47 of explosives, the name and address of the person to whom such  
48 explosives are to be sold, shipped, transported or delivered and the  
49 date thereof. Upon receipt of such statement, the commissioner shall  
50 provide written notice to the city having more than one million inhabit-  
51 ants of such shipment or transportation of explosives. No person shall  
52 make any such shipment except to a holder of a license issued hereunder.

53 3. No person within the state shall purchase, receive or accept deliv-  
54 ery of explosives from any place outside the state, and no person shall  
55 bring explosives into the state from any place outside the state,  
56 unless, [in addition to holding a license issued hereunder, such person

1 shall, not more than twenty-four hours thereafter, transmit to the  
2 commissioner by mail a written statement giving] he or she is in  
3 possession of a valid license issued by the commissioner. The licensee  
4 in receiving the explosives shall maintain a record including the  
5 weight, name or brand and type of the explosives, the name and address  
6 of the shipper and the date of shipment, for a period of three years  
7 from the date of receipt or two years from the date of final disposition

8 of the explosives whichever occurs last.

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

11 § 462. Rules and regulations. The commissioner may make rules supple-  
12 mental to this article as [he shall deem] deemed necessary or desirable  
13 to assure the public safety as well as to provide reasonable and  
14 adequate protection of the lives, health and safety of persons employed  
15 in the manufacture, storage, handling and use of explosives. The commis-  
16 sioner may prescribe such regulations as [he may deem] are deemed neces-  
17 sary and proper for the administration of this article.

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

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

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

35 § 464. Penalties. 1. Civil penalties. (a) If the commissioner directs  
36 the storage, destruction or other disposition of explosives pursuant to  
37 the provisions of section four hundred fifty-nine or four hundred sixty  
38 of this article, the commissioner may issue an order which shall set  
39 forth the costs of such storage, transportation, handling, destruction  
40 or other disposition and assess the owner of such explosives a civil  
41 penalty in the amount of such costs, which shall be in addition to any  
42 other penalties imposed.

43 (b) If the commissioner determines that any person or individual has  
44 violated any provision of this article, section four hundred eighty-two  
45 of the general business law, or any rule or regulation promulgated ther-  
46 eunder, the commissioner may issue an order which shall describe the  
47 nature of the violation and assess such person a civil penalty of up to  
48 two thousand five hundred dollars per violation per day until the  
49 violation is corrected, not to exceed a total civil penalty of ten thou-  
50 sand dollars.

51 (c) If the commissioner determines that any business and/or corpo-  
52 ration has violated any provision of this article, section four hundred

53 eighty-two of the general business law, or any rule or regulation  
54 promulgated thereunder, the commissioner may issue an order which shall  
55 describe the nature of the violation and assess such business and/or  
56 corporation a civil penalty of up to ten thousand dollars per violation

S. 4816--A

13

1 per day until the violation is corrected, not to exceed a total civil  
2 penalty of fifty thousand dollars. The penalties authorized pursuant to  
3 this section shall be paid to the commissioner for deposit in the treas-  
4 ury of the state. In assessing the amount of the penalty, the commis-  
5 sioner shall give due consideration to the size of the person's busi-  
6 ness, the good faith effort of the person, the gravity of the violation,  
7 and the history of previous violations.

8 (d) Any party aggrieved by an order issued under this subdivision may  
9 commence a proceeding for review thereof pursuant to article seventy-  
10 eight of the civil practice law and rules within thirty days from the  
11 notice of the filing of the said order in the office of the commis-  
12 sioner. Said proceeding shall be commenced directly in the appellate divi-  
13 sion of the supreme court.

14 (e) Provided that no proceeding for judicial review as provided for in  
15 this section shall then be pending and the time for initiation of such  
16 proceeding shall have expired, the commissioner may file with the county  
17 clerk of the county where the person resides or has a place of business,  
18 the order of the commissioner, containing the amount of the civil penal-  
19 ty. The filing of such order or decision shall have the full force and  
20 effect of a judgment duly docketed in the office of such clerk, the  
21 order or decision may be enforced by and in the name of the commissioner  
22 in the same manner, and with like effect, as that prescribed by the  
23 civil practice law and rules for the enforcement of a money judgment.

24 (f) A civil penalty provided for in this subdivision shall be in addi-  
25 tion to and may be imposed concurrently with any other penalty or remedy  
26 provided for in this article.

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

36 § 16. This act shall take effect on the one hundred eightieth day

37 after it shall have become a law; provided, however, all licenses and  
38 certificates issued pursuant to article 16 of the labor law prior to the  
39 effective date of this act shall remain in full force and effect until  
40 such licenses and certificates expire.

SPONSORS MEMO:

NEW YORK STATE SENATE

INTRODUCER'S MEMORANDUM IN SUPPORT

submitted in accordance with Senate Rule VI. Sec 1

BILL NUMBER: S4816A

SPONSOR: WINNER

TITLE OF BILL: An act to amend the labor law, in relation to  
explosives

PURPOSE: To amend Article 16 of the Labor Law with regard to the  
ownership, manufacture, possession, storage, use, transportation,  
purchase, sale or gift of explosives.

SUMMARY OF PROVISIONS: This bill would amend various sections of Arti-  
cle 16 of the Labor Law as follows:

Amends Section 450 to permit members of duly constituted police and  
firefighters to take possession of explosives without a license while in  
the performance of their official duties in order to remove the  
explosives from an unsafe location.

Amends Section 450 to exempt persons holding current federal pyrotech-  
nics or explosives license or permit issued by the Bureau of Alcohol,  
Tobacco, Firearms and Explosives.

Amends Section 451 to add definitions for explosives dealer manufactur-  
er; low explosives dealer manufacturer; explosives handler license; own  
and possess explosives license; own and possess low explosives license;  
high explosives; low explosives; and pyrotechnics. Defines display fire-  
works, public display of fireworks, and private display of fireworks.

Amends Section 453 to provide that explosives that are not stored in a magazine will be deemed to present an imminent hazard and are subject to seizure and destruction under Section 460.5. Amends Section 453 to exempt persons and businesses holding current federal pyrotechnics or explosives license or permit issued by the Bureau of Alcohol, Tobacco, Firearms and Explosives, and such materials are stored in an appropriate magazine as specified, approved and inspected by the permitting authority. Harmonizes state magazine requirements with federal safety and security requirements.

Amends Section 455 to provide that no individual shall access the contents of a magazine unless they have a license or are under the direct supervision of a license holder. It provides for two exceptions employees of retail establishments where black and/or smokeless powder is sold will not be required to have a license where a responsible employee, manager or owner has a valid license. In addition, employees of an explosive manufacturer, while on the grounds of 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 federal legislation, which took effect on May 24, 2003, 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.

The new federal legislation also requires all applicants for explosives licenses or permits, and their employees, if any, submit photographs and fingerprints of responsible persons to ATF for the purpose of performing background checks. Additionally a person receiving explosive material in interstate or intrastate commerce will have to undergo a background check conducted by ATF.

Under the new federal regulations many of the existing State of New York licensing provisions have become duplicative of existing federal requirements. State licensing can be a significant burden on pyrotechnic display businesses and professional display subcontractors operating in the State. 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 now fully encompasses licensee qualification and storage safety issues and the deletion of State pyrotechnic regulation will have no appreciable impact on industry or individuals' safety.

The State DOL licensing scheme is also deficient with regard to low explosive use, such as black powder. Under the current state licensing structure, anyone who has a state Own and Possess license can purchase any type of explosives that they wish. For example, an individual can represent himself to be a gun dealer who wishes to sell black powder in his shop. Once that individual has a license he is free to buy and sell dynamite or any other type of high or low explosive desired. This change would restrict the gunshop owner to only purchase low explosives. By providing for differing classes of license, persons will be able to engage in the businesses they have historically operated, while recognizing that there is a difference between low and high explosives. In addition, by requiring that anyone that handles or transports explosives for their employer to have a license, the department will be required to perform a background check and be assured that the individuals who are handling or transporting such material do not have a criminal background.

**LEGISLATIVE HISTORY:** New bill.

**FISCAL IMPLICATIONS:** There may be some increase in fees collected due to changes in the Section 458 fee structure. The significant costs associated with duplicating federal oversight for low explosives users will be eliminated.

**EFFECTIVE DATE:** This act shall take effect on the one hundred eightieth day after it shall have become a law, however, all licenses and certificates issued pursuant to article 16 of this chapter prior to the effective date of this act shall remain in full force until such licenses and certificates expire.