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2013-2014 Regular Sessions

I N S E N A T E

(PREFILED)

January 9, 2013

Introduced by Sen. SAMPSON -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection

AN ACT to amend the general business law, in relation to the sale of imitation weapons

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Subdivision 2 of section 871 of the general business law,
2 as added by chapter 475 of the laws of 1988, is amended to read as
3 follows:
4 2. "Imitation weapon" means any device or object made of plastic,
5 wood, metal or any other material which substantially duplicates or can
6 reasonably be perceived to be an actual firearm, air rifle, pellet gun,
7 or "B-B" gun; unless such imitation weapon (a) is colored [other than
8 black, blue, silver or aluminum, (b) is marked with a non-removable
9 orange stripe which is at least one inch in width and runs the entire
10 length of the barrel on each side and the front end of the barrel, and
11 (c) has a barrel at least one inch in diameter that is closed for a
12 distance of not less than one-half inch from the front-end of its barrel
13 with the same material of which the imitation weapon is made] WHITE,
14 BRIGHT RED, BRIGHT ORANGE, BRIGHT YELLOW, BRIGHT GREEN, BRIGHT BLUE,
15 BRIGHT PINK, OR BRIGHT PURPLE, EITHER SINGLY OR AS THE PREDOMINANT COLOR
16 IN COMBINATION WITH OTHER COLORS IN ANY PATTERN; (B) HAS PERMANENTLY
17 AFFIXED TO THE MUZZLE, A BLAZE ORANGE PLUG INSERTED IN THE BARREL OF
18 SUCH IMITATION FIREARM. SUCH PLUG SHALL BE RECESSED NO MORE THAN SIX
19 MILLIMETERS FROM THE MUZZLE END OF THE BARREL OF SUCH FIREARM; (C) IS
20 CONSTRUCTED ENTIRELY OF TRANSPARENT OR TRANSLUCENT MATERIALS WHICH
21 PERMITS UNMISTAKABLE OBSERVATION OF THE DEVICE'S COMPLETE CONTENTS; OR
22 (D) HAS A BLAZE ORANGE MARKING PERMANENTLY AFFIXED TO THE EXTERIOR
23 SURFACE OF THE BARREL, COVERING THE CIRCUMFERENCE OF THE BARREL FROM THE
24 MUZZLE END FOR DEPTH OF AT LEAST SIX MILLIMETERS. "Imitation weapon"

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

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1 does not include any TRADITIONAL B-B, PAINT BALL, OR PELLET-FIRING AIR
2 GUN THAT EXPELS A PROJECTILE THROUGH THE FORCE OF AIR PRESSURE OR ANY
3 nonfiring replica of an antique firearm, the original of which was
4 designed, manufactured and produced prior to eighteen hundred ninety-
5 eight.

6 S 2. Section 873 of the general business law, as added by chapter 475
7 of the laws of 1988, is amended to read as follows:

8 S 873. Enforcement. 1. Whenever the attorney general shall believe
9 from evidence satisfactory to him OR HER that any person, firm, corpo-
10 ration or association or agent or employee thereof has violated any
11 provision of this article, he OR SHE may bring an action or special
12 proceeding in the supreme court for a judgment enjoining the continuance
13 of such violation and for a civil penalty of not more than one thousand
14 dollars for each violation. If it shall appear to the satisfaction of
15 the court or justice that the defendant has violated any provision of
16 this article, no proof shall be required that any person has been
17 injured thereby nor that the defendant knowingly or intentionally
18 violated such provision. In such action preliminary relief may be grant-
19 ed under article sixty-three of the civil practice law and rules. In
20 connection with any such proposed application, the attorney general is
21 authorized to take proof, issue subpoenas and administer oaths in the
22 manner provided in the civil practice law and rules.

23 2. IN ADDITION TO ANY ACTION GRANTED TO THE ATTORNEY GENERAL PURSUANT
24 TO THIS ARTICLE, ANY PERSON WHO HAS BEEN INJURED BY REASON OF ANY
25 VIOLATION OF THIS ARTICLE; OTHER THAN A PERSON INJURED WHILE COMMITTING
26 OR ENGAGING IN AN UNLAWFUL ACTIVITY; MAY BRING AN ACTION IN HIS OR HER
27 OWN NAME TO ENJOIN SUCH UNLAWFUL ACT OR PRACTICE, AN ACTION TO RECOVER
28 HIS OR HER ACTUAL DAMAGES OR TWO HUNDRED FIFTY DOLLARS, WHICHEVER IS
29 GREATER, OR BOTH SUCH ACTIONS. THE COURT MAY, IN ITS DISCRETION, AWARD
30 THE PREVAILING PLAINTIFF IN SUCH ACTION A PENALTY UP TO ONE THOUSAND
31 DOLLARS, IF THE COURT FINDS THE DEFENDANT WILLFULLY AND KNOWINGLY
32 VIOLATED THE PROVISIONS OF THIS SECTION. THE COURT MAY AWARD REASONABLE
33 ATTORNEY'S FEES TO A PREVAILING PLAINTIFF.

34 S 3. This act shall take effect on the ninetieth day after it shall
35 have become a law.