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2013-2014 Regular Sessions

I N   S E N A T E

(PREFILED)

January 9, 2013

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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.