S T A T E O F N E W Y O R K

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I N A S S E M B L Y

February 9, 2010

Introduced by M. of A. ORTIZ, M. MILLER, MAYERSOHN, COOK, CASTRO, DINOWITZ, ERRIGO, McDONOUGH, FINCH -- Multi-Sponsored by -- M. of A. CALHOUN, HIKIND, MENG -- read once and referred to the Committee on Economic Development, Job Creation, Commerce and Industry

AN ACT to amend the general business law, in relation to prohibiting the sale of alcoholic energy drinks

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

Section 1. The general business law is amended by adding a new section 399-ddd to read as follows:

S 399-DDD. PROHIBITION ON THE IMPORTATION, DISTRIBUTION OR SALE OF ALCOHOLIC ENERGY DRINKS. 1. NO PERSON, FIRM, CORPORATION, OR ASSOCIATION SHALL IMPORT, DISTRIBUTE, SELL OR OFFER TO SELL ANY ALCOHOLIC ENERGY DRINK.

2. FOR THE PURPOSES OF THIS SECTION, THE TERM "ALCOHOLIC ENERGY DRINK" MEANS ANY ALCOHOLIC BEVERAGES TO WHICH CAFFEINE OR OTHER STIMULANTS WHICH ARE METABOLIZED AS CAFFEINE ARE ADDED.

3. WHENEVER THERE SHALL BE A VIOLATION OF THIS SECTION AN APPLICATION MAY BE MADE BY THE ATTORNEY GENERAL IN THE NAME OF THE PEOPLE OF THE STATE OF NEW YORK TO A COURT OR JUSTICE HAVING JURISDICTION BY A SPECIAL PROCEEDING TO ISSUE AN INJUNCTION, AND UPON NOTICE TO THE DEFENDANT OF NOT LESS THAN FIVE DAYS, TO ENJOIN AND RESTRAIN THE CONTINUANCE OF SUCH VIOLATIONS; AND IF IT SHALL APPEAR TO THE SATISFACTION OF THE COURT OR JUSTICE THAT THE DEFENDANT HAS, IN FACT, VIOLATED THIS SECTION, AN INJUNCTION MAY BE ISSUED BY THE COURT OR JUSTICE, ENJOINING AND RESTRAINING ANY FURTHER VIOLATIONS, WITHOUT REQUIRING PROOF THAT ANY PERSON HAS, IN FACT, BEEN INJURED OR DAMAGED THEREBY. IN ANY SUCH PROCEEDING, THE COURT MAY MAKE ALLOWANCES TO THE ATTORNEY GENERAL AS PROVIDED IN PARAGRAPH SIX OF SUBDIVISION (A) OF SECTION EIGHTY-THREE HUNDRED THREE OF THE CIVIL PRACTICE LAW AND RULES, AND DIRECT RESTITUTION. WHENEVER THE COURT SHALL DETERMINE THAT A VIOLATION OF THIS SECTION HAS OCCURRED, THE COURT MAY IMPOSE A CIVIL PENALTY OF NOT MORE THAN ONE THOUSAND DOLLARS FOR EACH VIOLATION. EACH SALE OF AN ALCOHOLIC ENERGY DRINK IN VIOLATION OF THIS SECTION SHALL CONSTITUTE A SEPARATE

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

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VIOLATION. IN CONNECTION WITH ANY SUCH PROPOSED APPLICATION, THE ATTORNEY GENERAL IS AUTHORIZED TO TAKE PROOF AND MAKE A DETERMINATION OF THE RELEVANT FACTS AND TO ISSUE SUBPOENAS IN ACCORDANCE WITH THE CIVIL PRACTICE LAW AND RULES.

S 2. This act shall take effect immediately.