

3380

2009-2010 Regular Sessions

I N S E N A T E

March 17, 2009

Introduced by Sen. AUBERTINE -- 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 prohibiting the retail sale and distribution of novelty lighters

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

- 1 Section 1. The general business law is amended by adding a new section
2 391-q to read as follows:
3 S 391-Q. SALE AND DISTRIBUTION OF NOVELTY LIGHTERS PROHIBITED. 1. FOR
4 PURPOSES OF THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING
5 MEANINGS:
6 (A) "AUDIO EFFECTS" MEANS MUSIC, ANIMAL SOUNDS, WHISTLES, BUZZERS,
7 BEEPERS OR OTHER NOISES NOT TYPICALLY CAUSED BY OR PERTINENT TO THE
8 FLAME-PRODUCING FUNCTION OF THE LIGHTER.
9 (B) "DISTRIBUTE" MEANS TO:
10 (I) DELIVER TO A PERSON OTHER THAN THE PURCHASER, FOR RETAIL SALE; OR
11 (II) PROVIDE AS PART OF A COMMERCIAL PROMOTION OR AS A PRIZE OR PREMI-
12 UM.
13 (C) "IMPORTER" MEANS A PERSON WHO CAUSES A LIGHTER TO ENTER THIS STATE
14 FROM A MANUFACTURING, WHOLESALE, DISTRIBUTION OR RETAIL SALES POINT
15 OUTSIDE THIS STATE, FOR THE PURPOSE OF SELLING OR DISTRIBUTING THE
16 LIGHTER WITHIN THIS STATE OR WITH THE RESULT THAT THE LIGHTER IS SOLD OR
17 DISTRIBUTED WITHIN THIS STATE.
18 (D) "LIGHTER" MEANS A MECHANICAL OR ELECTRICAL DEVICE OF A TYPE TYPI-
19 CALLY USED FOR IGNITING TOBACCO PRODUCTS BY USE OF A FLAME.
20 (E) "NOVELTY LIGHTER" MEANS (I) A LIGHTER THAT HAS AUDIO EFFECTS OR
21 VISUAL EFFECTS, OR THAT HAS OTHER FEATURES OF A TYPE THAT WOULD REASON-
22 ABLY BE EXPECTED TO MAKE THE LIGHTER APPEALING OR ATTRACTIVE TO A CHILD
23 OF TWELVE YEARS OF AGE OR YOUNGER. NOVELTY LIGHTER INCLUDES, BUT IS NOT
24 LIMITED TO, THE FOLLOWING LIGHTERS THAT RESEMBLE OR IMITATE:
25 (A) CARTOON CHARACTERS, FIGURINES OR ACTION FIGURES;

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

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1 (B) TOYS OR GAME PIECES;
2 (C) MUSICAL INSTRUMENTS;
3 (D) VEHICLES;
4 (E) ANIMALS;
5 (F) HUMAN BODY PARTS;
6 (G) FOOD, BEVERAGES OR FOOD OR BEVERAGE PACKAGES;
7 (H) WEAPONRY;
8 (I) FURNITURE;
9 (J) SPORTS EQUIPMENT;
10 (K) HOLIDAY DECORATIONS;
11 (L) TOOLS;
12 (M) HOUSEHOLD AND OFFICE PRODUCTS; OR
13 (N) COSMETICS OR PERSONAL CARE PRODUCTS.
14 (II) "NOVELTY LIGHTER" DOES NOT INCLUDE:
15 (A) A LIGHTER MANUFACTURED BEFORE JANUARY FIRST, NINETEEN HUNDRED
16 EIGHTY; OR
17 (B) A LIGHTER THAT HAS BEEN RENDERED PERMANENTLY INCAPABLE OF PRODUC-
18 ING A FLAME OR OTHERWISE CAUSING COMBUSTION; OR
19 (C) ANY MECHANICAL OR ELECTRICAL DEVICE PRIMARILY USED TO IGNITE FUEL
20 FOR FIREPLACES OR FOR CHARCOAL OR GAS GRILLS.
21 (F) "SELL" MEANS TO PROVIDE OR PROMISE TO PROVIDE TO A WHOLESALE,
22 RETAIL, MAIL-ORDER OR OTHER PURCHASER IN EXCHANGE FOR CONSIDERATION.
23 (G) "VISUAL EFFECT" INCLUDES (I) FLASHING LIGHTS, COLOR-CHANGING
24 LIGHTS AND CHANGING IMAGES; AND (II) LOGOS, DECALS, DECORATIVE ARTWORK
25 OR HEAT-SHRINKABLE SLEEVES DEPICTING ITEMS THAT ARE OF A TYPE MARKETING
26 PREDOMINANTLY TO CHILDREN TWELVE YEARS OF AGE OR YOUNGER.
27 2. NO PERSON, FIRM, PARTNERSHIP, ASSOCIATION OR CORPORATION SHALL
28 DISTRIBUTE, SELL AT RETAIL OR OFFER FOR RETAIL SALE IN THIS STATE, OR TO
29 ANY PERSON LOCATED IN THIS STATE, A NOVELTY LIGHTER.
30 3. THE STATE FIRE ADMINISTRATOR SHALL ESTABLISH AND PUBLICIZE A TOLL
31 FREE TELEPHONE HOTLINE NUMBER TO RECEIVE INFORMATION FROM THE PUBLIC
32 ABOUT SUSPECTED VIOLATIONS OF THIS SECTION. THE STATE FIRE ADMINISTRATOR
33 SHALL PROVIDE INFORMATION ON ITS AGENCY WEBSITE REGARDING THIS SECTION
34 AND THE DANGERS OF NOVELTY LIGHTERS, AND PROVIDE THE OPPORTUNITY FOR
35 PERSONS SUSPECTING VIOLATIONS OF THIS SECTION TO TRANSMIT SUCH INFORMA-
36 TION TO THE OFFICE OF FIRE PREVENTION AND CONTROL THROUGH THE INTERNET.
37 4. WHENEVER ANY POLICE OFFICER DESIGNATED IN SECTION 1.20 OF THE CRIM-
38 INAL PROCEDURE LAW OR A PEACE OFFICER DESIGNATED IN SUBDIVISION FOUR AND
39 SUBDIVISION SEVENTY-NINE PERTAINING TO THE DEPARTMENT OF STATE'S OFFICE
40 OF FIRE PREVENTION AND CONTROL, OF SECTION 2.10 OF SUCH LAW, ACTING
41 PURSUANT TO HIS OR HER SPECIAL DUTIES, SHALL DISCOVER A NOVELTY LIGHTER
42 IN VIOLATION OF THIS SECTION, SUCH OFFICER IS HEREBY AUTHORIZED AND
43 EMPOWERED FORTHWITH TO SEIZE AND TAKE POSSESSION OF SUCH ITEMS. SUCH
44 SEIZED ITEMS SHALL BE TURNED OVER TO THE STATE FIRE ADMINISTRATOR OR HIS
45 OR HER DESIGNEE.
46 5. ANY PERSON WHO VIOLATES THIS SECTION SHALL BE SUBJECT TO A CIVIL
47 PENALTY AS FOLLOWS:
48 (A) TEN THOUSAND DOLLARS IF THE PERSON IS A MANUFACTURER OR IMPORTER OF
49 LIGHTERS.
50 (B) ONE THOUSAND DOLLARS IF THE PERSON IS A WHOLESALE OF LIGHTERS OR
51 DISTRIBUTES LIGHTERS BY MEANS OTHER THAN DISTRIBUTION DIRECTLY TO
52 CONSUMERS.
53 (C) FIVE HUNDRED DOLLARS IF THE PERSON IS:
54 (I) A RETAIL SELLER OF LIGHTERS; OR
55 (II) A PERSON DISTRIBUTING LIGHTERS, IF THE PERSON IS OTHER THAN A
56 MANUFACTURER, IMPORTER OR WHOLESALE.

1 (D) POSSESSION OF EACH NOVELTY LIGHTER IN VIOLATION OF THIS SECTION
2 SHALL CONSTITUTE A SEPARATE VIOLATION. IF A PERSON CONTINUES TO VIOLATE
3 THIS SECTION AFTER BEING PROVIDED A WRITTEN NOTICE OF THE VIOLATION,
4 EACH DAY THAT THE VIOLATION CONTINUES IS A SEPARATE OFFENSE SUBJECT TO A
5 CIVIL PENALTY.

6 6. THIS SECTION SHALL NOT APPLY TO A MANUFACTURER, IMPORTER, DISTRIBUTOR
7 OR WHOLESALE SELLER WHO CAN DEMONSTRATE THAT THE NOVELTY LIGHTERS
8 ARE NOT INTENDED FOR SALE WITHIN THE STATE.

9 7. THE STATE FIRE ADMINISTRATOR IS AUTHORIZED TO PROMULGATE SUCH REGU-
10 LATIONS AS ARE DEEMED NECESSARY TO IMPLEMENT THE PROVISIONS OF THIS
11 SECTION.

12 8. WHENEVER THERE SHALL BE A VIOLATION OF THIS SECTION, AN APPLICATION
13 MAY BE MADE BY THE ATTORNEY GENERAL IN THE NAME OF THE PEOPLE OF THE
14 STATE OF NEW YORK, TO A COURT OR JUSTICE HAVING JURISDICTION BY A
15 SPECIAL PROCEEDING TO ISSUE AN INJUNCTION, AND UPON NOTICE TO THE
16 DEFENDANT OF NOT LESS THAN FIVE DAYS, TO ENJOIN AND RESTRAIN THE CONTIN-
17 UANCE OF SUCH VIOLATION; AND IF IT SHALL APPEAR TO THE SATISFACTION OF
18 THE COURT OR JUSTICE THAT THE DEFENDANT HAS, IN FACT, VIOLATED THIS
19 SECTION, AN INJUNCTION MAY BE ISSUED BY THE COURT OR JUSTICE, ENJOINING
20 AND RESTRAINING ANY FURTHER VIOLATIONS, WITHOUT REQUIRING PROOF THAT ANY
21 PERSON HAS, IN FACT, BEEN INJURED OR DAMAGED THEREBY. IN ANY SUCH
22 PROCEEDING, THE COURT MAY MAKE ALLOWANCES TO THE ATTORNEY GENERAL AS
23 PROVIDED IN PARAGRAPH SIX OF SUBDIVISION (A) OF SECTION EIGHTY-THREE
24 HUNDRED THREE OF THE CIVIL PRACTICE LAW AND RULES, AND DIRECT RESTITU-
25 TION. WHENEVER THE COURT SHALL DETERMINE THAT A VIOLATION OF THIS
26 SECTION HAS OCCURRED, THE COURT MAY IMPOSE A CIVIL PENALTY AS SET FORTH
27 IN SUBDIVISION FIVE OF THIS SECTION. IN CONNECTION WITH ANY SUCH
28 PROPOSED APPLICATION, THE ATTORNEY GENERAL IS AUTHORIZED TO TAKE PROOF
29 AND MAKE A DETERMINATION OF THE RELEVANT FACTS AND TO ISSUE SUBPOENAS IN
30 ACCORDANCE WITH THE CIVIL PRACTICE LAW AND RULES.

31 S 2. This act shall take effect immediately; provided, however, that
32 notwithstanding the effective date of this act, no person shall be
33 subject to a civil penalty for any violation that occurs before the
34 thirty-first day after enactment.