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

S. 753 A. 2288

2009-2010 Regular Sessions

S E N A T E - A S S E M B L Y

January 15, 2009

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

IN ASSEMBLY -- Introduced by M. of A. GREENE -- read once and referred to the Committee on Consumer Affairs and Protection

AN ACT to amend the general business law, in relation to prohibiting sale of certain video games to minors containing racist stereotypes, derogatory language and/or actions toward specific groups of persons

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 391-q to read as follows:

S 391-Q. SALE OF CERTAIN VIDEO GAMES TO MINORS PROHIBITED. 1. NO PERSON, PARTNERSHIP OR CORPORATION SHALL SELL OR RENT OR OFFER TO SELL OR RENT TO ANY PERSON UNDER THE AGE OF EIGHTEEN YEARS ANY VIDEO GAME THAT HAS A RATING CONTAINING RACIST STEREOTYPES, DEROGATORY LANGUAGE AND/OR ACTIONS TOWARD A SPECIFIC GROUP OR GROUPS OF PERSONS. SUCH VIDEO GAMES MAY CONTAIN, BUT SHALL NOT BE LIMITED TO, PROFANE SLANG, PROFANE RELIGIOUS EXCLAMATIONS, OBSCENE SLANG, OBSCENE REFERENCES TO BODY PARTS, CHARACTER OR RELIGIOUS SLURS, PROFANE CHARACTER SLURS, OR RACIAL SLURS OR VIOLENT BEHAVIOR TOWARD SPECIFIC PERSONS OR GROUPS OF PERSONS BASED UPON RACE.

2. EVERY PERSON, PARTNERSHIP OR CORPORATION ENGAGED IN THE RETAIL SALE OR RENTAL OF VIDEO GAMES SHALL STORE AND DISPLAY SUCH VIDEO GAMES CONTAINING CONTENTS LISTED IN SUBDIVISION ONE OF THIS SECTION IN A LOCATION DESIGNATED FOR PERSONS OVER THE AGE OF EIGHTEEN, IN A MANNER WHICH RESTRICTS ACCESS TO SUCH VIDEO GAMES.

3. SALE OR RENTAL OF ANY VIDEO GAME THAT CONTAINS ANY CONTENTS LISTED IN SUBDIVISION ONE OF THIS SECTION, SHALL BE MADE ONLY TO AN INDIVIDUAL WHO DEMONSTRATES, THROUGH (A) A VALID DRIVER'S LICENSE OR NON-DRIVER'S

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

LBD00169-02-9

IDENTIFICATION AND ISSUED BY THE COMMISSIONER OF MOTOR VEHICLES, THE FEDERAL GOVERNMENT, ANY UNITED STATES TERRITORY, COMMONWEALTH OR POSSESSION, THE DISTRICT OF COLUMBIA, A STATE GOVERNMENT WITHIN THE UNITED STATES OR A PROVINCIAL GOVERNMENT OF THE DOMINION OF CANADA; OR (B) A VALID PASSPORT ISSUED BY THE UNITED STATES GOVERNMENT OR ANY OTHER COUNTRY; OR (C) AN IDENTIFICATION CARD ISSUED BY THE UNITED STATES, INDICATING THAT THE INDIVIDUAL IS AT LEAST EIGHTEEN YEARS OF AGE. SUCH IDENTIFICATION NEED NOT BE REQUIRED OF ANY INDIVIDUAL WHO REASONABLY APPEARS TO BE AT LEAST THIRTY YEARS OF AGE, PROVIDED, HOWEVER, THAT SUCH APPEARANCE SHALL NOT CONSTITUTE A DEFENSE IN ANY PROCEEDING INVOLVING SALE OR RENTAL OF ANY VIDEO GAME, TO AN INDIVIDUAL UNDER EIGHTEEN YEARS OF AGE.

4. IN ANY PROCEEDING PURSUANT TO THIS SECTION, IT SHALL BE AN AFFIRMATIVE DEFENSE THAT A PERSON PURCHASING OR RENTING OR ATTEMPTING TO PURCHASE OR RENT ANY VIDEO GAME DESCRIBED IN SUBDIVISION ONE OF THIS SECTION PRODUCED A DRIVER'S LICENSE OR A NON-DRIVER IDENTIFICATION CARD APPARENTLY ISSUED BY A GOVERNMENT ENTITY OR OTHER IDENTIFICATION PURSUANT TO SUBDIVISION THREE OF THIS SECTION, SUCCESSFULLY COMPLETED THE TRANSACTION, AND THAT THE VIDEO GAME SOLD OR RENTED TO SUCH PERSON WITH REASONABLE RELIANCE UPON SUCH IDENTIFICATION AND TRANSACTION. IN EVALUATING THE APPLICABILITY OF SUCH AFFIRMATIVE DEFENSE, CONSIDERATION SHALL BE GIVEN TO ANY WRITTEN POLICY ADOPTED AND IMPLEMENTED BY THE SELLER TO EFFECTUATE THE PROVISIONS OF THIS SECTION. USE OF ANY METHOD OF AN ELECTRONIC TRANSACTION SCAN SHALL NOT EXCUSE ANY PERSON OPERATING A PLACE OF BUSINESS WHEREIN VIDEO GAMES ARE SOLD OR RENTED, OR THE AGENT OR EMPLOYEE OF SUCH PERSON, FROM THE EXERCISE OF DUE DILIGENCE. NOTWITHSTANDING THE PROVISIONS OF THIS SUBDIVISION, ANY SUCH AFFIRMATIVE DEFENSE SHALL NOT BE APPLICABLE IN ANY CIVIL OR CRIMINAL PROCEEDING, OR IN ANY OTHER FORUM.

5. FOR THE PURPOSES OF THIS SECTION "RATING" MEANS THE STANDARDIZED DESIGNATION COMMONLY USED TO INFORM PARENTS ABOUT VIDEO GAMES REGARDING LISTENING AND VIEWING BY THEIR CHILDREN.

S 2. Severability. If any clause, sentence, paragraph, subdivision or part of this act, or the application thereof to any person or circumstance, shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision or part of this act, or in its application to the person or circumstance, directly involved in the controversy in which such judgment shall have been rendered.

S 3. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.