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

3028

2009-2010 Regular Sessions

I N A S S E M B L Y

January 22, 2009

Introduced by M. of A. BENJAMIN -- read once and referred to the Committee on Transportation

AN ACT to amend the general business law, the vehicle and traffic law and the multiple dwelling law, in relation to banning the sale of gas powered motorized scooters and regulating the storage of such scooters in multiple dwellings in the city of New York

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 396-ll to read as follows:

S 396-LL. SALE OF GAS POWERED MOTORIZED SCOOTERS. 1. NO PERSON, FIRM, CORPORATION, ASSOCIATION OR AGENT OR EMPLOYEE THEREOF SHALL IMPORT, MANUFACTURE, SELL, HOLD FOR SALE, RENT OR LEASE A GAS POWERED MOTORIZED SCOOTER IN A CITY OF ONE MILLION OR MORE PERSONS.

2. THE FOLLOWING DEFINITION IS APPLICABLE TO THIS SECTION: A "MOTORIZED SCOOTER" MEANS ANY TWO-WHEELED DEVICE THAT HAS HANDLEBARS, IS DESIGNED TO BE STOOD OR SAT UPON BY THE OPERATOR, AND IS POWERED BY A GAS MOTOR THAT IS CAPABLE OF PROPELLING THE DEVICE WITHOUT HUMAN PROPULSION AND IS NOT PRIMARILY DESIGNED TO BE PROPELLED BY HUMAN PROPULSION.

3. WHENEVER THE ATTORNEY GENERAL SHALL BELIEVE FROM EVIDENCE SATISFACTORY TO HIM OR HER THAT ANY PERSON, FIRM, CORPORATION OR ASSOCIATION OR AGENT OR EMPLOYEE THEREOF HAS VIOLATED ANY PROVISION OF THIS SECTION, HE OR SHE MAY BRING AN ACTION IN THE SUPREME COURT OF THE STATE OF NEW YORK FOR A JUDGMENT ENJOINING THE CONTINUANCE OF SUCH VIOLATION AND FOR A CIVIL PENALTY OF NOT MORE THAN ONE THOUSAND DOLLARS FOR EACH VIOLATION, EXCEPT THAT THE COURT MAY IMPOSE A CIVIL PENALTY OF NOT MORE THAN FOUR THOUSAND DOLLARS IF THE VIOLATION IS KNOWING AND WILLFUL. IF IT SHALL APPEAR TO THE SATISFACTION OF THE COURT OR JUSTICE THAT THE DEFENDANT HAS VIOLATED ANY PROVISION OF THIS SECTION, NO PROOF SHALL BE REQUIRED THAT ANY PERSON HAS BEEN INJURED THEREBY NOR THAT THE DEFENDANT KNOWINGLY OR INTENTIONALLY VIOLATED SUCH PROVISION. IN SUCH ACTION PRELIMINARY

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

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RELIEF MAY BE GRANTED UNDER ARTICLE SIXTY-THREE OF THE CIVIL PRACTICE LAW AND RULES.

4. BEFORE ANY VIOLATION OF THIS SECTION IS SOUGHT TO BE ENJOINED, THE ATTORNEY GENERAL SHALL BE REQUIRED TO GIVE THE PERSON AGAINST WHOM SUCH PROCEEDING IS CONTEMPLATED NOTICE BY CERTIFIED MAIL AND AN OPPORTUNITY TO SHOW IN WRITING WITHIN FIVE BUSINESS DAYS AFTER RECEIPT OF NOTICE WHY PROCEEDINGS SHOULD NOT BE INSTITUTED AGAINST HIM OR HER, UNLESS THE ATTORNEY GENERAL SHALL FIND, IN ANY CASE IN WHICH HE OR SHE SEEKS PRELIMINARY RELIEF, THAT TO GIVE SUCH NOTICE AND OPPORTUNITY IS NOT IN THE PUBLIC INTEREST.

5. IN CONNECTION WITH ANY SUCH PROPOSED APPLICATION, THE ATTORNEY GENERAL IS AUTHORIZED TO TAKE PROOF, ISSUE SUBPOENAS AND ADMINISTER OATHS IN THE MANNER PROVIDED IN THE CIVIL PRACTICE LAW AND RULES.

6. IF ANY PROVISIONS OF THIS SECTION OR THE APPLICATION THEREOF TO ANY PERSON OR CIRCUMSTANCES IS HELD UNCONSTITUTIONAL, SUCH INVALIDITY SHALL NOT AFFECT OTHER PROVISIONS OR APPLICATIONS OF THIS SECTION WHICH CAN BE GIVEN EFFECT WITHOUT THE INVALID PROVISION OR APPLICATION, AND TO THIS END THE PROVISIONS OF THIS SECTION ARE SEVERABLE.

S 2. The vehicle and traffic law is amended by adding a new section 124 to read as follows:

S 124. MOTORIZED SCOOTER. ANY TWO-WHEELED DEVICE THAT HAS HANDLEBARS, IS DESIGNED TO BE STOOD OR SAT UPON BY THE OPERATOR, AND IS POWERED BY AN ELECTRIC MOTOR OR POWERED BY A GAS MOTOR THAT IS CAPABLE OF PROPELLING THE DEVICE WITHOUT HUMAN PROPULSION AND IS NOT PRIMARILY DESIGNED TO BE PROPELLED BY HUMAN PROPULSION.

S 3. Section 125 of the vehicle and traffic law, as amended by chapter 365 of the laws of 2008, is amended to read as follows:

S 125. Motor vehicles. Every vehicle operated or driven upon a public highway which is propelled by any power other than muscular power, except (a) electrically-driven mobility assistance devices operated or driven by a person with a disability, (a-1) electric personal assistive mobility devices operated outside a city with a population of one million or more, (b) vehicles which run only upon rails or tracks, (c) snowmobiles as defined in article forty-seven of this chapter, [and] (d) all terrain vehicles as defined in article forty-eight-B of this chapter AND (E) A MOTORIZED SCOOTER AS DEFINED IN SECTION ONE HUNDRED TWENTY-FOUR OF THIS ARTICLE. For the purposes of title four of this chapter, the term motor vehicle shall exclude fire and police vehicles other than ambulances. For the purposes of titles four and five of this chapter the term motor vehicles shall exclude farm type tractors and all terrain type vehicles used exclusively for agricultural purposes, or for snow plowing, other than for hire, farm equipment, including self-propelled machines used exclusively in growing, harvesting or handling farm produce, and self-propelled caterpillar or crawler-type equipment while being operated on the contract site.

S 4. The multiple dwelling law is amended by adding a new section 60-a to read as follows:

S 60-A. MOTORIZED SCOOTER STORAGE. 1. IT SHALL BE UNLAWFUL TO STORE A GAS POWERED MOTORIZED SCOOTER, AS DEFINED IN SECTION ONE HUNDRED TWENTY-FOUR OF THE VEHICLE AND TRAFFIC LAW, IN A MULTIPLE DWELLING LOCATED IN A CITY OF ONE MILLION OR MORE PERSONS, EXCEPT AS PROVIDED IN SECTION SIXTY OF THIS TITLE.

2. ANY PERSON WHO VIOLATES SUBDIVISION ONE OF THIS SECTION SHALL BE SUBJECT TO A CIVIL PENALTY OF NOT MORE THAN ONE HUNDRED DOLLARS, PER VIOLATION, EXCEPT THAT UPON A FINDING OF A THIRD VIOLATION, THE SUBJECT

GAS POWERED MOTORIZED SCOOTER SHALL BE IMPOUNDED AND SUBJECT TO CIVIL FORFEITURE PROCEEDINGS IN ACCORDANCE WITH EXISTING LAW.

S 5. Nothing in this act shall be deemed to limit the authority of a county, city, town or village from adopting or amending a local law or ordinance which imposes stricter restrictions and conditions on the sale and/or storage of gas powered motorized scooters than are provided or authorized by this act, so long as such local law or ordinance is consistent with its authority to protect the order, conduct, health and safety and general welfare of persons or property. Nothing in this act shall be deemed to alter or invalidate any local law or ordinance already in effect as of the effective date of this act.

S 6. This act shall take effect on the one hundred twentieth day after it shall have become a law; provided, however, that effective immediately, the amendment, addition or repeal of any rule or regulation necessary for the timely implementation of this act on its effective date is hereby authorized and directed to be made on or before such effective date.