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

4285--A

2009-2010 Regular Sessions

I N A S S E M B L Y

February 2, 2009

Introduced by M. of A. GREENE -- Multi-Sponsored by -- M. of A. TOWNS -- read once and referred to the Committee on Consumer Affairs and Protection -- reported and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general business law, in relation to notice requirements in the manufacture, assembling and sale of roller skates and skate boards

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. MANUFACTURE AND SALE OF ROLLER SKATES AND SKATE BOARDS; NOTIFICATION. 1. AS USED IN THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

(A) "ROLLER SKATE" SHALL HAVE THE SAME MEANING AS SUCH TERM IS DEFINED BY SECTION ONE HUNDRED FORTY-B OF THE VEHICLE AND TRAFFIC LAW.

(B) "SKATE BOARD" SHALL HAVE THE SAME MEANING AS SUCH TERM IS DEFINED BY SECTION ONE HUNDRED FORTY-C OF THE VEHICLE AND TRAFFIC LAW.

(C) "WARNING INSTRUCTION" SHALL MEAN A NOTICE IN SUBSTANTIALLY THE FOLLOWING FORM PRINTED IN CLEAR AND CONSPICUOUS TYPE: "WARNING! REDUCE THE RISK OF SERIOUS INJURY AND ONLY USE (INSERT 'THESE SKATES' OR 'THIS SKATE BOARD', AS APPROPRIATE) WHILE WEARING FULL PROTECTIVE GEAR - HELMET, WRIST GUARDS, ELBOW PADS AND KNEE PADS."

2. (A) NO PERSON, FIRM, CORPORATION, OR OTHER LEGAL ENTITY WHICH MANUFACTURES OR ASSEMBLES ROLLER SKATES SHALL MANUFACTURE, ASSEMBLE, SELL, OFFER TO SELL, OR DISTRIBUTE IN THIS STATE SUCH ROLLER SKATES UNLESS: (I) A WARNING INSTRUCTION CONTAINED ON A LABEL, HANGTAG, SHIELD OR PLATE CLEARLY VISIBLE TO THE CONSUMER IS PLACED EITHER ON AT LEAST ONE SUCH ROLLER SKATE IN EACH PAIR MANUFACTURED OR ASSEMBLED OR ON THE OUTSIDE OF THE BOX IN WHICH SUCH PAIR OF ROLLER SKATES IS SOLD OR OFFERED FOR SALE

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

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AT RETAIL; AND (II) EACH SUCH PAIR OF ROLLER SKATES WHICH CONTAINS A USER'S GUIDE OR BUYER'S INSTRUCTION MANUAL ALSO CONTAINS A WARNING INSTRUCTION WITHIN OR ON SUCH GUIDE OR MANUAL.

(B) NO PERSON, FIRM, CORPORATION, OR OTHER LEGAL ENTITY WHICH MANUFACTURES OR ASSEMBLES SKATE BOARDS SHALL MANUFACTURE, ASSEMBLE, SELL, OFFER TO SELL, OR DISTRIBUTE IN THIS STATE SUCH SKATE BOARDS UNLESS: (I) A WARNING INSTRUCTION CONTAINED ON A LABEL, HANGTAG, SHIELD OR PLATE CLEARLY VISIBLE TO THE CONSUMER IS PLACED EITHER ON THE SKATE BOARD OR ON THE OUTSIDE OF THE BOX IN WHICH SUCH SKATE BOARD IS SOLD OR OFFERED FOR SALE AT RETAIL; AND (II) EACH SKATE BOARD WHICH CONTAINS A USER'S GUIDE OR BUYER'S INSTRUCTION MANUAL ALSO CONTAINS A WARNING INSTRUCTION WITHIN OR ON SUCH GUIDE OR MANUAL.

(C) NO PERSON, FIRM, CORPORATION OR OTHER LEGAL ENTITY WHICH IS REGULARLY ENGAGED IN THE BUSINESS OF SELLING, OFFERING FOR SALE, OR DISTRIBUTING ROLLER SKATES AT RETAIL FOR CONSUMER USE SHALL SELL, OFFER TO SELL, OR DISTRIBUTE IN THIS STATE SUCH ROLLER SKATES UNLESS SUCH ROLLER SKATES CONFORM TO THE MANUFACTURING REQUIREMENTS SET FORTH IN PARAGRAPH (A) OF THIS SUBDIVISION.

(D) NO PERSON, FIRM, CORPORATION OR OTHER LEGAL ENTITY WHICH IS REGULARLY ENGAGED IN THE BUSINESS OF SELLING, OFFERING FOR SALE, OR DISTRIBUTING SKATE BOARDS AT RETAIL FOR CONSUMER USE SHALL SELL, OFFER TO SELL, OR DISTRIBUTE IN THIS STATE SUCH SKATE BOARDS UNLESS SUCH SKATE BOARDS CONFORM TO THE MANUFACTURING REQUIREMENTS SET FORTH IN PARAGRAPH (B) OF THIS SUBDIVISION.

3. WHENEVER IT SHALL APPEAR THAT THERE HAS BEEN 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 VIOLATION; AND IF IT SHALL APPEAR TO THE SATISFACTION OF THE COURT OR JUSTICE THAT THE DEFENDANT HAS, IN FACT, VIOLATED THIS ARTICLE, AN INJUNCTION MAY BE ISSUED BY SUCH COURT OR JUSTICE, ENJOINING AND RESTRAINING ANY FURTHER VIOLATION, 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 ARTICLE HAS OCCURRED, THE COURT MAY IMPOSE A CIVIL PENALTY OF NOT MORE THAN FIVE HUNDRED DOLLARS FOR SUCH 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.

4. NO PERSON, FIRM, CORPORATION OR OTHER LEGAL ENTITY WHICH IS REGULARLY ENGAGED IN THE BUSINESS OF MANUFACTURING, DISTRIBUTING, SELLING, OR OFFERING FOR SALE ROLLER SKATES OR SKATE BOARDS SHALL BE DEEMED TO HAVE VIOLATED THE PROVISIONS OF THIS SUBDIVISION, IF SUCH PERSON, FIRM, CORPORATION OR OTHER LEGAL ENTITY SHOWS BY A PREPONDERANCE OF EVIDENCE THAT THE VIOLATION WAS NOT INTENTIONAL AND RESULTED FROM A BONA FIDE ERROR MADE NOTWITHSTANDING THE MAINTENANCE OF PROCEDURES REASONABLY ADOPTED TO AVOID ANY SUCH ERROR.

5. THIS SECTION SHALL NOT APPLY TO THE SALE OF ROLLER SKATES OR SKATE BOARDS SOLD OR OFFERED FOR SALE BY CONSUMERS FOR CONSUMER USE.

S 2. This act shall take effect one year after it shall have become a law.