

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

6875--B

2009-2010 Regular Sessions

I N A S S E M B L Y

March 13, 2009

Introduced by M. of A. FIELDS, PHEFFER, GABRYSZAK, DINOWITZ, HOOPER, GALEF, COOK, GORDON, MAISEL, CARROZZA, CHRISTENSEN, TOBACCO, BURLING, ERRIGO -- Multi-Sponsored by -- M. of A. BROOK-KRASNY, CALHOUN, DUPREY, MAGEE, MCENENY, ROBINSON, RUSSELL, WEISENBERG -- read once and referred to the Committee on Economic Development, Job Creation, Commerce and Industry -- reference changed to the Committee on Consumer Affairs and Protection -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

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.
4 DEFINITIONS:
5 (A) "AUDIO EFFECTS" INCLUDES MUSIC, ANIMAL SOUNDS, WHISTLES, BUZZERS,
6 BEEPERS OR OTHER NOISES NOT TYPICALLY CAUSED BY OR PERTINENT TO THE
7 FLAME-PRODUCING FUNCTION OF THE LIGHTER.
8 (B) "DISTRIBUTE" MEANS TO:
9 (I) DELIVER TO A PERSON OTHER THEN THE PURCHASER, FOR RETAIL SALE; OR
10 (II) PROVIDE AS PART OF A COMMERCIAL PROMOTION OR AS A PRIZE OR PREMI-
11 UM.
12 (C) "IMPORTER" MEANS A PERSON WHO CAUSES A LIGHTER TO ENTER THIS STATE
13 FROM A MANUFACTURING, WHOLESALE, DISTRIBUTION OR RETAIL SALES POINT
14 OUTSIDE THIS STATE, FOR THE PURPOSE OF SELLING OR DISTRIBUTING THE
15 LIGHTER WITHIN THIS STATE OR WITH THE RESULT THAT THE LIGHTER IS SOLD OR
16 DISTRIBUTED WITHIN THIS STATE.

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

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(D) "LIGHTER" MEANS A MECHANICAL OR ELECTRICAL DEVICE OF A TYPE TYPICALLY USED FOR IGNITING TOBACCO PRODUCTS BY USE OF A FLAME.

(E) "NOVELTY LIGHTER":

(I) MEANS A MECHANICAL OR ELECTRICAL DEVICE TYPICALLY USED FOR LIGHTING CIGARETTES, CIGARS OR PIPES THAT IS DESIGNED TO APPEAR TO BE A TOY, OR DESIGNED TO RESEMBLE A CARTOON CHARACTER, GUN, WATCH, MUSICAL INSTRUMENT, VEHICLE, ANIMAL, FOOD OR BEVERAGE OR FEATURE A FLASHING LIGHT OR CREATE AUDIO EFFECTS; AND

(II) DOES NOT INCLUDE:

(A) A LIGHTER MANUFACTURED BEFORE JANUARY FIRST, NINETEEN HUNDRED EIGHTY; OR

(B) A LIGHTER THAT HAS BEEN RENDERED PERMANENTLY INCAPABLE OF PRODUCING A FLAME OR OTHERWISE CAUSING COMBUSTION; OR

(C) ANY MECHANICAL OR ELECTRICAL DEVICE PRIMARILY USED TO IGNITE FUEL FOR FIREPLACES OR FOR CHARCOAL OR GAS GRILLS.

(F) "SELL" MEANS TO PROVIDE OR PROMISE TO PROVIDE TO A WHOLESALE, RETAIL, MAIL-ORDER OR OTHER PURCHASER IN EXCHANGE FOR CONSIDERATION.

2. NO PERSON, FIRM, PARTNERSHIP, ASSOCIATION OR CORPORATION SHALL DISTRIBUTE, SELL AT RETAIL OR OFFER FOR RETAIL SALE IN THIS STATE, OR TO ANY PERSON LOCATED IN THIS STATE, A NOVELTY LIGHTER.

3. THE STATE FIRE ADMINISTRATOR SHALL ESTABLISH AND PUBLICIZE A TOLL FREE TELEPHONE HOTLINE NUMBER TO RECEIVE INFORMATION FROM THE PUBLIC ABOUT SUSPECTED VIOLATIONS OF THIS SECTION. THE STATE FIRE ADMINISTRATOR SHALL PROVIDE INFORMATION ON ITS AGENCY WEBSITE REGARDING THIS SECTION AND THE DANGERS OF NOVELTY LIGHTERS, AND PROVIDE THE OPPORTUNITY FOR PERSONS SUSPECTING VIOLATIONS OF THIS SECTION TO TRANSMIT SUCH INFORMATION TO THE OFFICE OF FIRE PREVENTION AND CONTROL THROUGH THE INTERNET.

4. WHENEVER ANY POLICE OFFICER DESIGNATED IN SECTION 1.20 OF THE CRIMINAL PROCEDURE LAW OR A PEACE OFFICER DESIGNATED IN SUBDIVISION FOUR AND SUBDIVISION SEVENTY-NINE PERTAINING TO THE DEPARTMENT OF STATE'S OFFICE OF FIRE PREVENTION AND CONTROL, OF SECTION 2.10 OF SUCH LAW, ACTING PURSUANT TO HIS OR HER SPECIAL DUTIES, SHALL DISCOVER A NOVELTY LIGHTER IN VIOLATION OF THIS SECTION, SUCH OFFICER IS HEREBY AUTHORIZED AND EMPOWERED FORTHWITH TO SEIZE AND TAKE POSSESSION OF SUCH ITEMS. SUCH SEIZED ITEMS SHALL BE TURNED OVER TO THE STATE FIRE ADMINISTRATOR OR HIS DESIGNEE.

5. ANY PERSON WHO VIOLATES THIS SECTION SHALL BE SUBJECT TO A CIVIL PENALTY AS FOLLOWS:

(A) NOT MORE THAN TEN THOUSAND DOLLARS IF THE PERSON IS A MANUFACTURER OR IMPORTER OF LIGHTERS.

(B) NOT MORE THAN ONE THOUSAND DOLLARS IF THE PERSON IS A WHOLESALE OF LIGHTERS OR DISTRIBUTES LIGHTERS BY MEANS OTHER THAN DISTRIBUTION DIRECTLY TO CONSUMERS.

(C) NOT MORE THAN FIVE HUNDRED DOLLARS IF THE PERSON IS:

(I) A RETAIL SELLER OF LIGHTERS; OR

(II) A PERSON DISTRIBUTING LIGHTERS, IF THE PERSON IS OTHER THAN A MANUFACTURER, IMPORTER OR WHOLESALE.

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

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

1 7. THE STATE FIRE ADMINISTRATOR IS HEREBY AUTHORIZED TO PROMULGATE
2 SUCH RULES AND REGULATIONS AS ARE DEEMED NECESSARY TO IMPLEMENT THE
3 PROVISIONS OF THIS SECTION, INCLUDING PRESCRIBING MINIMUM STANDARDS FOR
4 ADMINISTRATION AND ENFORCEMENT OF THIS SECTION. THE STATE FIRE ADMINIS-
5 TRATOR MAY ASSESS MONETARY PENALTIES AS ESTABLISHED HEREIN, SUCH PENAL-
6 TIES COMMENCING ON THE FIRST DAY FOLLOWING THE ABATEMENT DATE SPECIFIED
7 IN AN ORDER, AND CONTINUING UNTIL THE VIOLATION HAS BEEN ABATED. ABATE-
8 MENT OF VIOLATIONS SHALL BE VERIFIED BY THE STATE FIRE ADMINISTRATOR.

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

29 S 2. This act shall take effect immediately. Notwithstanding such
30 effective date, no person shall be subject to a civil penalty for any
31 violation that occurs before the ninetieth day after such effective
32 date.