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

7434

2009-2010 Regular Sessions

I N A S S E M B L Y

April 6, 2009

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

AN ACT to amend the general business law, in relation to the decibelic level of toys

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 392-j to read as follows:

S 392-J. LIMIT ON DECIBELIC LEVEL OF TOYS. 1. WHEN USED IN THIS SECTION:

(A) "TOY" SHALL MEAN ALL PRODUCTS DESIGNED OR INTENDED BY THE MANUFACTURER TO BE USED BY CHILDREN WHEN THEY PLAY. SUCH TERM SHALL NOT INCLUDE TOY PISTOL CAPS.

(B) "TOY PISTOL CAPS" SHALL MEAN SMALL CHARGES OF EXPLOSIVES CONTAINED IN A CUP OR CONFINED BETWEEN TWO SHEETS OF PAPER DESIGNED FOR USE IN A TOY PISTOL.

2. (A) NO PERSON, FIRM, CORPORATION, OR OTHER LEGAL ENTITY WHICH MANUFACTURERS OR ASSEMBLES TOYS SHALL MANUFACTURE, ASSEMBLE, SELL, OFFER TO SELL, OR DISTRIBUTE IN THIS STATE A TOY THAT MAKES OR EMITS NOISE EXCEEDING ONE HUNDRED DECIBELS MEASURED AT THE DISTANCE THAT THE PRODUCT ORDINARILY WOULD BE FROM THE EAR OF THE CHILD USING IT.

(B) NO PERSON, FIRM, CORPORATION, OR OTHER LEGAL ENTITY WHICH MANUFACTURERS OR ASSEMBLES TOY PISTOL CAPS SHALL MANUFACTURE, ASSEMBLE, SELL, OFFER TO SELL, OR DISTRIBUTE IN THIS STATE A TOY PISTOL CAP THAT MAKES OR EMITS NOISE EXCEEDING ONE HUNDRED FIFTY-THREE DECIBELS MEASURED AT THE DISTANCE THAT THE PRODUCT ORDINARILY WOULD BE FROM THE EAR OF THE CHILD USING IT.

(C) NO PERSON, FIRM, CORPORATION OR OTHER LEGAL ENTITY WHICH IS REGULARLY ENGAGED IN THE BUSINESS OF SELLING, OFFERING FOR SALE, OR DISTRIBUTING TOYS OR TOY PISTOL CAPS AT RETAIL FOR CONSUMER USE, SHALL SELL,

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

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OFFER TO SELL, OR DISTRIBUTE IN THIS STATE SUCH PRODUCTS UNLESS SUCH PRODUCTS CONFORM TO THE REQUIREMENTS SET FORTH IN THIS SUBDIVISION.

3. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO SUPERSEDE ANY PROVISION OF SECTION THREE HUNDRED NINETY-SIX-K OF THIS ARTICLE, AS ADDED BY CHAPTER SEVEN HUNDRED FIFTY-FOUR OF THE LAWS OF NINETEEN HUNDRED SEVENTY-THREE.

4. (A) WHENEVER THERE SHALL BE 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 SECTION, 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. WHENEVER THE COURT SHALL DETERMINE THAT A VIOLATION OF THIS SECTION HAS OCCURRED, THE COURT MAY IMPOSE A CIVIL PENALTY OF NOT MORE THAN FIVE HUNDRED DOLLARS FOR EACH 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.

(B) NO PERSON, FIRM, CORPORATION OR OTHER LEGAL ENTITY WHICH IS REGULARLY ENGAGED IN THE BUSINESS OF MANUFACTURING, ASSEMBLING, SELLING, OR OFFERING FOR SALE TOYS OR TOY PISTOL CAPS SHALL BE DEEMED TO HAVE VIOLATED THE PROVISIONS OF THIS SECTION, 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. THE CONSUMER PROTECTION BOARD, IN CONSULTATION WITH THE DEPARTMENT OF HEALTH, SHALL PROMULGATE RULES AND REGULATIONS TO EFFECTUATE THE PURPOSES OF THIS SECTION. SUCH RULES AND REGULATIONS SHALL INCLUDE TESTING METHODS FOR MANUFACTURERS TO USE IN ENSURING THAT THEIR PRODUCTS MEET THE REQUIREMENTS OF THIS SECTION.

6. THIS SECTION SHALL NOT APPLY TO THE SALE OF TOYS OR TOY PISTOL CAPS SOLD OR OFFERED FOR SALE BY CONSUMERS FOR CONSUMER USE.

S 2. This act shall take effect on the first of July next succeeding the date on which it shall have become a law; provided, however, that effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized and directed to be made and completed on or before such effective date.