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

3380

2009-2010 Regular Sessions

I N S E N A T E

March 17, 2009

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

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:

Section 1. The general business law is amended by adding a new section 391-q to read as follows:

S 391-Q. SALE AND DISTRIBUTION OF NOVELTY LIGHTERS PROHIBITED. 1. FOR PURPOSES OF THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

(A) "AUDIO EFFECTS" MEANS MUSIC, ANIMAL SOUNDS, WHISTLES, BUZZERS, BEEPERS OR OTHER NOISES NOT TYPICALLY CAUSED BY OR PERTINENT TO THE FLAME-PRODUCING FUNCTION OF THE LIGHTER.

(B) "DISTRIBUTE" MEANS TO:

(I) DELIVER TO A PERSON OTHER THAN THE PURCHASER, FOR RETAIL SALE; OR

(II) PROVIDE AS PART OF A COMMERCIAL PROMOTION OR AS A PRIZE OR PREMIUM.

(C) "IMPORTER" MEANS A PERSON WHO CAUSES A LIGHTER TO ENTER THIS STATE FROM A MANUFACTURING, WHOLESALE, DISTRIBUTION OR RETAIL SALES POINT OUTSIDE THIS STATE, FOR THE PURPOSE OF SELLING OR DISTRIBUTING THE LIGHTER WITHIN THIS STATE OR WITH THE RESULT THAT THE LIGHTER IS SOLD OR DISTRIBUTED WITHIN THIS STATE.

(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" MEANS (I) A LIGHTER THAT HAS AUDIO EFFECTS OR VISUAL EFFECTS, OR THAT HAS OTHER FEATURES OF A TYPE THAT WOULD REASONABLY BE EXPECTED TO MAKE THE LIGHTER APPEALING OR ATTRACTIVE TO A CHILD OF TWELVE YEARS OF AGE OR YOUNGER. NOVELTY LIGHTER INCLUDES, BUT IS NOT LIMITED TO, THE FOLLOWING LIGHTERS THAT RESEMBLE OR IMITATE:

(A) CARTOON CHARACTERS, FIGURINES OR ACTION FIGURES;

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

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(B) TOYS OR GAME PIECES;
(C) MUSICAL INSTRUMENTS;
(D) VEHICLES;
(E) ANIMALS;
(F) HUMAN BODY PARTS;
(G) FOOD, BEVERAGES OR FOOD OR BEVERAGE PACKAGES;
(H) WEAPONRY;
(I) FURNITURE;
(J) SPORTS EQUIPMENT;
(K) HOLIDAY DECORATIONS;
(L) TOOLS;
(M) HOUSEHOLD AND OFFICE PRODUCTS; OR
(N) COSMETICS OR PERSONAL CARE PRODUCTS.
(II) "NOVELTY LIGHTER" 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.
(G) "VISUAL EFFECT" INCLUDES (I) FLASHING LIGHTS, COLOR-CHANGING LIGHTS AND CHANGING IMAGES; AND (II) LOGOS, DECALS, DECORATIVE ARTWORK OR HEAT-SHRINKABLE SLEEVES DEPICTING ITEMS THAT ARE OF A TYPE MARKETED PREDOMINANTLY TO CHILDREN TWELVE YEARS OF AGE OR YOUNGER.
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 OR HER DESIGNEE.
5. ANY PERSON WHO VIOLATES THIS SECTION SHALL BE SUBJECT TO A CIVIL PENALTY AS FOLLOWS:
(A) TEN THOUSAND DOLLARS IF THE PERSON IS A MANUFACTER OR IMPORTER OF LIGHTERS.
(B) ONE THOUSAND DOLLARS IF THE PERSON IS A WHOLESALER OF LIGHTERS OR DISTRIBUTES LIGHTERS BY MEANS OTHER THAN DISTRIBUTION DIRECTLY TO CONSUMERS.
(C) 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 WHOLESALER.

(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 PROVIDED A 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.

7. THE STATE FIRE ADMINISTRATOR IS AUTHORIZED TO PROMULGATE SUCH REGULATIONS AS ARE DEEMED NECESSARY TO IMPLEMENT THE PROVISIONS OF THIS SECTION.

8. 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 THE COURT OR JUSTICE, ENJOINING AND RESTRAINING ANY FURTHER VIOLATIONS, 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 SECTION HAS OCCURRED, THE COURT MAY IMPOSE A CIVIL PENALTY AS SET FORTH IN SUBDIVISION FIVE OF THIS SECTION. 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.

S 2. This act shall take effect immediately; provided, however, that notwithstanding the effective date of this act, no person shall be subject to a civil penalty for any violation that occurs before the thirty-first day after enactment.