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

1099

2011-2012 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 5, 2011

Introduced by M. of A. KOLB, REILICH, SPANO -- Multi-Sponsored by -- M. of A. BARCLAY, BURLING, CALHOUN, CROUCH, GIGLIO, JORDAN, OAKS, RABBITT -- read once and referred to the Committee on Consumer Affairs and Protection

AN ACT to amend the general business law, in relation to prohibiting the sale or rental of certain video games, which are pornographic or promote violence or illegal drug use, to minors and requiring warning labels on such video games

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Legislative findings. The legislature hereby finds that the youth of New York state are entitled to grow up in a positive setting and be shielded from graphic violence and offensive depictions now found in video games. It is a well known fact that children between the ages of seven and seventeen play video games for an average of eight hours a week. A subset of video games feature violence, gore, and illegal activity, which has raised concern among parents, educators, child advocates, medical professionals, and policy makers. The legislature also finds that in order to raise a healthy, well adjusted child, parents must be aware of what their children are doing for fun, specifically what types of influences are in their lives. Legislation is an appropriate remedy to aid parents in protecting the physical and emotional health of their children. The legislature also finds that although the Entertainment Software Rating Board (ESRB) has a rating system in place, it is an insufficient warning for parents. Further, the ESRB rating system is a voluntary system and such board's voluntary participation in such a system shows that there is a problem such board feels needs to be addressed. This legislation would ensure that New York's children are protected and a more specific warning regarding the actual content of certain video games are in order.

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

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Concern about violent video games is based upon the assumption that they contribute to aggression and violence among young players. The legislature finds that scientific evidence shows a cause-effect relationship between television violence and aggression among children who watch such violence and aggression. Based upon this research, similar findings are expected concerning video games. These games are believed to have an even greater impact because: (1) children like to imitate the actions of characters such as the characters such children play as or against in a video game; (2) video games include much repetition and with repetition comes a behavioral rehearsal for violent activity as violent games are played over and over again; and (3) rewards increase learning, and video games are based upon a reward system. The legislature finds that concern about video game violence is warranted. In an Anderson & Bushman study of 2001 there is a consistent pattern of results concerning violent video games' effect on children. It has been shown that exposure to violent video games increases: (1) physiological arousal; (2) aggressive thoughts; (3) aggressive emotions; and (4) aggressive actions in those children and youths who play violent video games. It has also been established that even limited amounts of sexual violence can desensitize viewers. In a study conducted in 1995, viewers of films containing sexual violence expressed significantly less sympathy for domestic violence victims, and rated their injuries less severe, than did a group not exposed to these films. It is most alarming to apply the results of this study to violent video games, which are played over and over again, while a film may be watched only once or twice. With increased repetition comes an even greater chance of desensitization to violence, especially against women. As children play these games on a daily basis, it may cause some children to lose touch with reality. In some cases, it has been reported that children become addicted to playing these games. In a study of 387 children, twenty percent of 12-16 year olds were classified as currently addicted to playing computer-based video games and one in four adolescents had been addicted at some point in his or her life.

The legislature recognizes the United States supreme court's inclination to protect first amendment rights; however the state of New York has a compelling interest to protect the emotional health of the state's children and assist parents to be the guardians of their children's well-being. A specific warning label will function as a crucial reminder to those parents who would otherwise be unaware of the violent content contained in video games.

Further, the legislature recognizes the fundamental rights of adults to purchase a video game for themselves or as a custodial adult for their children, therefore this legislation does not infringe on an adult's right to make such a purchase. However, the legislature does recognize that minors are purchasing violent video games with little or no resistance from retailers, as such this legislation would restrict the sale of select video games to minors in order to protect them from an adult rated game with offensive, mature and violent content.

S 2. The general business law is amended by adding a new section 391-r to read as follows:

S 391-R. SALE OF CERTAIN VIDEO GAMES TO MINORS PROHIBITED; WARNING LABELS REQUIRED. 1. NO PERSON, PARTNERSHIP OR CORPORATION SHALL SELL OR RENT OR OFFER TO SELL OR RENT TO ANY PERSON UNDER THE AGE OF EIGHTEEN YEARS ANY VIDEO GAME THAT CONTAINS DEPICTIONS DESCRIPTIVE OF, ADVOCATING OR GLAMORIZING COMMISSION OF A VIOLENT CRIME, SUICIDE, SODOMY, RAPE, INCEST, BESTIALITY, SADO-MASOCHISM, ANY FORM OF SEXUAL ACTIVITY IN A

VIOLENT CONTEXT, OR ADVOCATING OR ENCOURAGING MURDER, VIOLENT RACISM, RELIGIOUS VIOLENCE, MORBID VIOLENCE OR THE ILLEGAL USE OF DRUGS OR ALCOHOL.

2. THE MANUFACTURER OF ANY VIDEO GAME AS DESCRIBED IN SUBDIVISION ONE OF THIS SECTION, SHALL AFFIX TO THE FRONT OF THE OUTSIDE PACKAGING OF ANY SUCH VIDEO GAME TO BE SOLD IN NEW YORK STATE, AND THE RETAILER OF ANY VIDEO GAME AS DESCRIBED IN SUBDIVISION ONE OF THIS SECTION SHALL AFFIX TO THE FRONT OF THE OUTSIDE PACKAGING OF ANY SUCH VIDEO GAME OFFERED FOR RENTAL OR RESALE, A WARNING LABEL TO READ SUBSTANTIALLY AS FOLLOWS:

"18+ WARNING, SALE OR RENTAL TO ADULTS ONLY. MAY CONTAIN EXPLICIT DEPICTIONS DESCRIPTIVE OF OR ADVOCATING ONE OR MORE OF THE FOLLOWING:

COMMISSION OF A VIOLENT CRIME
SUICIDE
SODOMY
RAPE
INCEST
BESTIALITY
VIOLENT RACISM
RELIGIOUS VIOLENCE
SADO-MASOCHISM
SEXUAL ASSAULT
SEXUAL ACTIVITY
MURDER
MORBID VIOLENCE
ILLEGAL USE OF DRUGS OR ALCOHOL

PARENTAL ADVISORY." THIS LABEL SHALL BE AFFIXED TO ANY VIDEO GAME THAT CONTAINS ANY OF THE ITEMS ENUMERATED ABOVE IN THIS SUBDIVISION, REGARDLESS OF INDUSTRY RATINGS. THE PACKAGE MUST ALSO CONTAIN ANY RATING THAT THE MANUFACTURER OR THE ENTERTAINMENT SOFTWARE RATING BOARD HAS DETERMINED TO BE AFFIXED ON ANY VIDEO GAME. THE LABEL SHALL BE PRINTED IN BLACK OR RED INK AND SHALL CONTAIN LETTERS OF EIGHT POINT OR LARGER TYPE, EXCEPT THAT THE WORDS "18+ WARNING" AND "SALE OR RENTAL TO ADULTS ONLY" SHALL BE PRINTED IN LETTERS OF TEN POINT OR LARGER TYPE. THE LABEL SHALL NOT READILY BE REMOVABLE FROM THE PACKAGE.

3. EVERY PERSON, PARTNERSHIP OR CORPORATION ENGAGED IN THE RETAIL SALE OR RENTAL OF VIDEO GAMES SHALL STORE AND DISPLAY SUCH VIDEO GAMES CONTAINING CONTENTS LISTED IN SUBDIVISION TWO OF THIS SECTION IN A SEALED AND LOCKED CONTAINER, BEHIND A SERVICE COUNTER IN AN AREA INACCESSIBLE BY THE GENERAL PUBLIC, OR IN ANY OTHER MANNER WHICH RESTRICTS ACCESS TO SUCH VIDEO GAMES.

4. A VIOLATION OF THE PROVISIONS OF SUBDIVISION ONE OR TWO OF THIS SECTION SHALL BE A VIOLATION AS DEFINED IN THE PENAL LAW.

5. ANY PERSON, MANUFACTURER, RETAILER, OWNER, PARTNERSHIP, CORPORATION, PROPRIETOR OR MANAGER OF A RETAIL COMMERCIAL ESTABLISHMENT WHO KNOWINGLY VIOLATES THE PROVISIONS OF THIS SECTION SHALL BE SUBJECT TO A CIVIL PENALTY NOT TO EXCEED ONE THOUSAND DOLLARS FOR EACH RETAIL UNIT SOLD OR RENTED.

6. A NON-CUSTODIAL ADULT, EIGHTEEN YEARS OF AGE OR OLDER, WHO BUYS OR RENTS FOR A MINOR A VIDEO GAME REGULATED BY THIS SECTION SHALL BE SUBJECT TO A CIVIL PENALTY NOT TO EXCEED ONE THOUSAND DOLLARS FOR EACH RETAIL UNIT PURCHASED OR RENTED AND SUCH ACT SHALL BE A VIOLATION AS DEFINED IN THE PENAL LAW.

7. A COURT MAY UPON CONVICTION OF A PERSON FOR VIOLATION OF THIS SECTION, ORDER THE CONFISCATION OF ANY MATERIALS IN THE DEFENDANT'S

POSSESSION OR CONTROL WHICH DO NOT BEAR THE LABELING REQUIRED BY THIS SECTION AND WHICH DOES NOT BEAR THE RATING CLEARLY DISPLAYED.

8. ANY RETAILER, OWNER, PARTNERSHIP OR CORPORATION THAT SELLS OR RENTS OR OFFERS TO SELL OR RENT ANY VIDEO GAME DESCRIBED IN SUBDIVISION ONE OF THIS SECTION, SHALL HAVE AVAILABLE FOR EXAMINATION A COPY OF SUCH VIDEO GAME WHICH CAN BE REVIEWED AT THE PLACE OF SALE OR RENTAL AND SUCH RETAILER SHOULD SUPPLY THE NECESSARY EQUIPMENT NEEDED TO REVIEW THE VIDEO GAME, INCLUDING BUT NOT LIMITED TO, A WORKING TELEVISION, THE NECESSARY GAME SYSTEM AND/OR ANY OTHER EQUIPMENT NEEDED TO REVIEW THE VIDEO GAME.

9. SALE OR RENTAL OF ANY VIDEO GAME THAT CONTAINS ANY CONTENTS LISTED IN SUBDIVISION TWO OF THIS SECTION, SHALL BE MADE ONLY TO AN INDIVIDUAL WHO DEMONSTRATES, THROUGH (A) A VALID DRIVER'S LICENSE OR NON-DRIVER'S IDENTIFICATION AND ISSUED BY THE COMMISSIONER OF MOTOR VEHICLES, THE FEDERAL GOVERNMENT, ANY UNITED STATES TERRITORY, COMMONWEALTH OR POSSESSION, THE DISTRICT OF COLUMBIA, A STATE GOVERNMENT WITHIN THE UNITED STATES OR A PROVINCIAL GOVERNMENT OF THE DOMINION OF CANADA; OR (B) A VALID PASSPORT ISSUED BY THE UNITED STATES GOVERNMENT OR ANY OTHER COUNTRY; OR (C) AN IDENTIFICATION CARD ISSUED BY THE UNITED STATES, INDICATING THAT THE INDIVIDUAL IS AT LEAST EIGHTEEN YEARS OF AGE. SUCH IDENTIFICATION NEED NOT BE REQUIRED OF ANY INDIVIDUAL WHO REASONABLY APPEARS TO BE AT LEAST THIRTY YEARS OF AGE, PROVIDED, HOWEVER, THAT SUCH APPEARANCE SHALL NOT CONSTITUTE A DEFENSE IN ANY PROCEEDING INVOLVING SALE OR RENTAL OF ANY VIDEO GAME, TO AN INDIVIDUAL UNDER EIGHTEEN YEARS OF AGE.

10. IN ANY PROCEEDING PURSUANT TO THIS SECTION, IT SHALL BE AN AFFIRMATIVE DEFENSE THAT A PERSON PURCHASING OR RENTING OR ATTEMPTING TO PURCHASE OR RENT ANY VIDEO GAME DESCRIBED IN SUBDIVISION ONE OF THIS SECTION PRODUCED A DRIVER'S LICENSE OR A NON-DRIVER IDENTIFICATION CARD APPARENTLY ISSUED BY A GOVERNMENT ENTITY OR OTHER IDENTIFICATION PURSUANT TO SUBDIVISION NINE OF THIS SECTION, SUCCESSFULLY COMPLETED THE TRANSACTION, AND THAT THE VIDEO GAME SOLD OR RENTED TO SUCH PERSON WAS REASONABLE RELIANCE UPON SUCH IDENTIFICATION AND TRANSACTION. IN EVALUATING THE APPLICABILITY OF SUCH AFFIRMATIVE DEFENSE, CONSIDERATION SHALL BE GIVEN TO ANY WRITTEN POLICY ADOPTED AND IMPLEMENTED BY THE SELLER TO EFFECTUATE THE PROVISIONS OF THIS SECTION. USE OF ANY METHOD OF AN ELECTRONIC TRANSACTION SCAN SHALL NOT EXCUSE ANY PERSON OPERATING A PLACE OF BUSINESS WHEREIN VIDEO GAMES ARE SOLD OR RENTED, OR THE AGENT OR EMPLOYEE OF SUCH PERSON, FROM THE EXERCISE OF DUE DILIGENCE. NOTWITHSTANDING THE PROVISIONS OF THIS SUBDIVISION, ANY SUCH AFFIRMATIVE DEFENSE SHALL NOT BE APPLICABLE IN ANY CIVIL OR CRIMINAL PROCEEDING, OR IN ANY OTHER FORUM.

11. FOR THE PURPOSES OF THIS SECTION "RATING" MEANS THE STANDARDIZED DESIGNATION COMMONLY USED TO INFORM PARENTS ABOUT VIDEO GAMES REGARDING LISTENING AND VIEWING BY THEIR CHILDREN.

S 3. Severability. If any clause, sentence, paragraph, subdivision or part of this act, or the application thereof to any person or circumstance, shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such judgement shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision or part of this act, or in its application to the person or circumstance, directly involved in the controversy in which such judgement shall have been rendered.

S 4. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.