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

4758

2011-2012 Regular Sessions

I N A S S E M B L Y

February 7, 2011

Introduced by M. of A. TOWNS, JAFFEE, N. RIVERA, HOYT, MILLMAN, TITUS, P. RIVERA, PERRY, GIBSON, GABRYSZAK -- Multi-Sponsored by -- M. of A. GLICK, MONTESANO, ROBINSON -- read once and referred to the Committee on Economic Development

AN ACT to amend the general business law, in relation to the sale of imitation weapons

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

Section 1. Subdivision 2 of section 871 of the general business law, as added by chapter 475 of the laws of 1988, is amended to read as follows:

2. "Imitation weapon" means any device or object made of plastic, wood, metal or any other material which substantially duplicates or can reasonably be perceived to be an actual firearm, air rifle, pellet gun, or "B-B" gun; unless such imitation weapon (a) is colored [other than black, blue, silver or aluminum, (b) is marked with a non-removable orange stripe which is at least one inch in width and runs the entire length of the barrel on each side and the front end of the barrel, and (c) has a barrel at least one inch in diameter that is closed for a distance of not less than one-half inch from the front-end of its barrel with the same material of which the imitation weapon is made] *WHITE, BRIGHT RED, BRIGHT ORANGE, BRIGHT YELLOW, BRIGHT GREEN, BRIGHT BLUE, BRIGHT PINK, OR BRIGHT PURPLE, EITHER SINGLY OR AS THE PREDOMINANT COLOR IN COMBINATION WITH OTHER COLORS IN ANY PATTERN; (B) HAS PERMANENTLY AFFIXED TO THE MUZZLE, A BLAZE ORANGE PLUG INSERTED IN THE BARREL OF SUCH IMITATION FIREARM. SUCH PLUG SHALL BE RECESSED NO MORE THAN SIX MILLIMETERS FROM THE MUZZLE END OF THE BARREL OF SUCH FIREARM; (C) IS CONSTRUCTED ENTIRELY OF TRANSPARENT OR TRANSLUCENT MATERIALS WHICH PERMITS UNMISTAKABLE OBSERVATION OF THE DEVICE'S COMPLETE CONTENTS; OR (D) HAS A BLAZE ORANGE MARKING PERMANENTLY AFFIXED TO THE EXTERIOR SURFACE OF THE BARREL, COVERING THE CIRCUMFERENCE OF THE BARREL FROM THE*

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

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MUZZLE END FOR DEPTH OF AT LEAST SIX MILLIMETERS. "Imitation weapon" does not include any TRADITIONAL B-B, PAINT BALL, OR PELLET-FIRING AIR GUN THAT EXPELS A PROJECTILE THROUGH THE FORCE OF AIR PRESSURE OR ANY nonfiring replica of an antique firearm, the original of which was designed, manufactured and produced prior to eighteen hundred ninety-eight.

S 2. Section 873 of the general business law, as added by chapter 475 of the laws of 1988, is amended to read as follows:

S 873. Enforcement. 1. Whenever the attorney general shall believe from evidence satisfactory to him OR HER that any person, firm, corporation or association or agent or employee thereof has violated any provision of this article, he OR SHE may bring an action or special proceeding in the supreme court for a judgment enjoining the continuance of such violation and for a civil penalty of not more than one thousand dollars for each violation. If it shall appear to the satisfaction of the court or justice that the defendant has violated any provision of this article, no proof shall be required that any person has been injured thereby nor that the defendant knowingly or intentionally violated such provision. In such action preliminary relief may be granted under article sixty-three of the civil practice law and rules. In connection with any such proposed application, the attorney general is authorized to take proof, issue subpoenas and administer oaths in the manner provided in the civil practice law and rules.

2. IN ADDITION TO ANY ACTION GRANTED TO THE ATTORNEY GENERAL PURSUANT TO THIS ARTICLE, ANY PERSON WHO HAS BEEN INJURED BY REASON OF ANY VIOLATION OF THIS ARTICLE; OTHER THAN A PERSON INJURED WHILE COMMITTING OR ENGAGING IN AN UNLAWFUL ACTIVITY; MAY BRING AN ACTION IN HIS OR HER OWN NAME TO ENJOIN SUCH UNLAWFUL ACT OR PRACTICE, AN ACTION TO RECOVER HIS OR HER ACTUAL DAMAGES OR TWO HUNDRED FIFTY DOLLARS, WHICHEVER IS GREATER, OR BOTH SUCH ACTIONS. THE COURT MAY, IN ITS DISCRETION, AWARD THE PREVAILING PLAINTIFF IN SUCH ACTION A PENALTY UP TO ONE THOUSAND DOLLARS, IF THE COURT FINDS THE DEFENDANT WILLFULLY AND KNOWINGLY VIOLATED THE PROVISIONS OF THIS SECTION. THE COURT MAY AWARD REASONABLE ATTORNEY'S FEES TO A PREVAILING PLAINTIFF.

S 3. This act shall take effect on the ninetieth day after it shall have become a law.