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

9140--C

I N A S S E M B L Y

January 27, 2012

Introduced by M. of A. WEPRIN -- read once and referred 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 -- reported and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general business law, in relation to products containing small magnets

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 396-ll to read as follows:

S 396-LL. PRODUCTS CONTAINING SMALL MAGNETS. 1. FOR PURPOSES OF THIS SECTION:

(A) "SMALL MAGNET" SHALL MEAN A MAGNET THAT CAN FIT COMPLETELY INTO A SPECIALLY DESIGNED TEST CYLINDER 2.25 INCHES LONG BY 1.25 INCHES WIDE THAT APPROXIMATES THE SIZE OF THE FULLY EXPANDED THROAT OF A CHILD UNDER THREE YEARS OLD, COMMONLY REFERRED TO AS THE SMALL PARTS CYLINDER, AS PRESCRIBED IN 16 CFR SECTION 1501.4, FIGURE 1; AND

(B) "MAGNET NOVELTY CONSUMER PRODUCT" SHALL MEAN A PRODUCT MARKETED TO ADULTS FOR THE PURPOSES OF LEISURE OR STRESS RELIEF THAT CONTAINS A MAGNET OR MAGNETS. MAGNET NOVELTY CONSUMER PRODUCTS INCLUDE, BUT ARE NOT LIMITED TO, OFFICE TOYS, DESKTOP TOYS, DESK TOYS, STRESS RELIEF TOYS, AND PUZZLES.

2. NO PERSON, FIRM, PARTNERSHIP, ASSOCIATION OR CORPORATION SHALL MANUFACTURE, SELL AT RETAIL, OFFER TO SELL, OR DISTRIBUTE AT RETAIL, ANY JEWELRY PRODUCT THAT INCLUDES A SMALL MAGNET AND WHICH IS MARKETED AS A PRODUCT DESIGNED TO MIMIC A TONGUE, LIP OR NOSE PIERCING.

3. NO PERSON, FIRM, CORPORATION OR OTHER LEGAL ENTITY SHALL MANUFACTURE, SELL AT RETAIL, OFFER TO SELL AT RETAIL, OR DISTRIBUTE ANY MAGNET NOVELTY CONSUMER PRODUCT CONTAINING A SMALL MAGNET UNLESS SUCH PERSON, FIRM, CORPORATION OR OTHER LEGAL ENTITY CAUSES A NOTICE, WHICH IS CLEAR-

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

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LY VISIBLE TO THE CONSUMER AND PRINTED IN CLEAR AND CONSPICUOUS TYPE, TO APPEAR ON THE PACKAGE IN WHICH SUCH PRODUCT IS SOLD OR OFFERED FOR SALE, OR IF UNPACKAGED, ON A LABEL OR TAG AFFIXED TO THE PRODUCT. SUCH NOTICE SHALL CONSIST OF THE SIGNAL WORD "WARNING" AND CONTAIN, AT A MINIMUM, THE FOLLOWING TEXT OR EQUIVALENT TEXT WHICH CLEARLY CONVEYS THE SAME WARNING:

"THIS PRODUCT CONTAINS (A) SMALL MAGNET(S). SWALLOWED MAGNETS CAN STICK TOGETHER ACROSS INTESTINES CAUSING SERIOUS INFECTIONS AND DEATH. SEEK IMMEDIATE MEDICAL ATTENTION IF MAGNET(S) ARE SWALLOWED OR INHALED."

4. THIS SECTION SHALL NOT APPLY TO PRODUCTS THAT COMPLY WITH THE MAGNET SAFETY AND LABELING REQUIREMENTS OF ASTM F963-11 OR ANY SUBSEQUENT REVISIONS OF SUCH STANDARD.

5. THE DEPARTMENT OF STATE SHALL PROMULGATE RULES AND REGULATIONS NECESSARY TO CARRY OUT THE PROVISIONS OF THIS SECTION.

6. 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 OF NOT MORE THAN TWO THOUSAND DOLLARS. 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 on the one hundred twentieth day after 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.