

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

1981--A

2011-2012 Regular Sessions

I N A S S E M B L Y

January 12, 2011

Introduced by M. of A. PHEFFER, DESTITO, GABRYSZAK, DINOWITZ, HOOPER, GALEF, COOK, MAISEL, TOBACCO, BURLING, LIFTON, JAFFEE, MARKEY, P. RIVERA, KELLNER -- Multi-Sponsored by -- M. of A. BOYLE, BROOK-KRASNY, CALHOUN, DUPREY, MAGEE, MAYERSOHN, MCENENY, ROBINSON, RUSSELL, WEISENBERG -- read once and referred to the Committee on Economic Development, Job Creation, Commerce and Industry -- reference changed to the Committee on Consumer Affairs and Protection -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

1 Section 1. The general business law is amended by adding a new section
2 391-r to read as follows:
3 S 391-R. SALE AND DISTRIBUTION OF NOVELTY LIGHTERS PROHIBITED. 1.
4 DEFINITIONS:
5 (A) "AUDIO EFFECTS" INCLUDES MUSIC, ANIMAL SOUNDS, WHISTLES, BUZZERS,
6 BEEPERS OR OTHER NOISES NOT TYPICALLY CAUSED BY OR PERTINENT TO THE
7 FLAME-PRODUCING FUNCTION OF THE LIGHTER.
8 (B) "DISTRIBUTE" MEANS TO:
9 (I) DELIVER TO A PERSON OTHER THAN THE PURCHASER, FOR RETAIL SALE; OR
10 (II) PROVIDE AS PART OF A COMMERCIAL PROMOTION OR AS A PRIZE OR PREMI-
11 UM.
12 (C) "IMPORTER" MEANS A PERSON WHO CAUSES A LIGHTER TO ENTER THIS STATE
13 FROM A MANUFACTURING, WHOLESALE, DISTRIBUTION OR RETAIL SALES POINT
14 OUTSIDE THIS STATE, FOR THE PURPOSE OF SELLING OR DISTRIBUTING THE
15 LIGHTER WITHIN THIS STATE OR WITH THE RESULT THAT THE LIGHTER IS SOLD OR
16 DISTRIBUTED WITHIN THIS STATE.
17 (D) "LIGHTER" MEANS A MECHANICAL OR ELECTRICAL DEVICE OF A TYPE TYPICALLY
18 USED FOR IGNITING TOBACCO PRODUCTS BY USE OF A FLAME.

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

LBD06212-02-1

(E) "NOVELTY LIGHTER":

(I) MEANS A MECHANICAL OR ELECTRICAL DEVICE MANUFACTURED FOR THE PURPOSE OF PRODUCING A FLAME TO LIGHT CIGARETTES, CIGARS OR PIPES AND WHICH, DUE TO THE PHYSICAL OR AUDIO FEATURES OF THE DEVICE, EXCLUDING ITS CAPABILITY OF PRODUCING A FLAME, WOULD REASONABLY BE EXPECTED TO CAUSE THE LIGHTER TO BE APPEALING OR ATTRACTIVE TO A CHILD UNDER THE AGE OF TEN INCLUDING, BUT NOT LIMITED TO, LIGHTERS THAT RESEMBLE A CARTOON CHARACTER, TOY, GUN, WATCH, MUSICAL INSTRUMENT, VEHICLE, ANIMAL, BEVERAGE, SPORTING EQUIPMENT OR THAT IS CAPABLE OF PLAYING MUSICAL NOTES OR DISPLAYING FLASHING LIGHTS; AND

(II) 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; OR

(D) A DISPOSABLE OR REFILLABLE LIGHTER WITH A LOGO, LABEL, DECAL OR ARTWORK PRINTED THEREON OR ON HEAT SHRINKABLE SLEEVES ATTACHED THERETO BUT WHICH DOES NOT OTHERWISE RESEMBLE A LIGHTER DESCRIBED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH.

(F) "SELL" MEANS TO PROVIDE OR PROMISE TO PROVIDE TO A WHOLESALE, RETAIL, MAIL-ORDER OR OTHER PURCHASER IN EXCHANGE FOR CONSIDERATION.

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 DIVISION OF HOMELAND SECURITY AND EMERGENCY SERVICES SHALL ESTABLISH AND PUBLICIZE A TOLL FREE TELEPHONE HOTLINE NUMBER TO RECEIVE INFORMATION FROM THE PUBLIC ABOUT SUSPECTED VIOLATIONS OF THIS SECTION. THE DIVISION OF HOMELAND SECURITY AND EMERGENCY SERVICES 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 DIVISION 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 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 DESIGNEE.

5. ANY PERSON WHO VIOLATES THIS SECTION SHALL BE SUBJECT TO A CIVIL PENALTY AS FOLLOWS:

(A) NOT MORE THAN TEN THOUSAND DOLLARS IF THE PERSON IS A MANUFACTURER OR IMPORTER OF LIGHTERS.

(B) NOT MORE THAN ONE THOUSAND DOLLARS IF THE PERSON IS A WHOLESALE OF LIGHTERS OR DISTRIBUTES LIGHTERS BY MEANS OTHER THAN DISTRIBUTION DIRECTLY TO CONSUMERS.

(C) NOT MORE THAN 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 WHOLESALE.

(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 GIVEN WRITTEN NOTICE OF THE VIOLATION, EACH DAY

1 THAT THE VIOLATION CONTINUES IS A SEPARATE OFFENSE SUBJECT TO A CIVIL
2 PENALTY.

3 6. THIS SECTION SHALL NOT APPLY TO A MANUFACTURER, IMPORTER, DISTRIBUTOR OR WHOLESALE SELLER WHO CAN DEMONSTRATE THAT THE NOVELTY LIGHTERS
4 ARE NOT INTENDED FOR SALE WITHIN THE STATE.
5

6 7. THE DIVISION OF HOMELAND SECURITY AND EMERGENCY SERVICES IS HEREBY
7 AUTHORIZED TO PROMULGATE SUCH RULES AND REGULATIONS AS ARE DEEMED NECES-
8 SARY TO IMPLEMENT THE PROVISIONS OF THIS SECTION, INCLUDING PRESCRIBING
9 MINIMUM STANDARDS FOR ADMINISTRATION AND ENFORCEMENT OF THIS SECTION.
10 THE DIVISION OF HOMELAND SECURITY AND EMERGENCY SERVICES MAY ASSESS
11 MONETARY PENALTIES AS ESTABLISHED HEREIN, SUCH PENALTIES COMMENCING ON
12 THE FIRST DAY FOLLOWING THE ABATEMENT DATE SPECIFIED IN AN ORDER, AND
13 CONTINUING UNTIL THE VIOLATION HAS BEEN ABATED. ABATEMENT OF VIOLATIONS
14 SHALL BE VERIFIED BY THE STATE FIRE ADMINISTRATOR.

15 8. IN ADDITION TO THE ENFORCEMENT AUTHORITY GRANTED TO THE DIVISION OF
16 HOMELAND SECURITY AND EMERGENCY SERVICES IN THIS SECTION, WHENEVER THERE
17 SHALL BE A VIOLATION OF THIS SECTION, AN APPLICATION MAY BE MADE BY THE
18 ATTORNEY GENERAL IN THE NAME OF THE PEOPLE OF THE STATE OF NEW YORK, TO
19 A COURT OR JUSTICE HAVING JURISDICTION BY A SPECIAL PROCEEDING TO ISSUE
20 AN INJUNCTION, AND UPON NOTICE TO THE DEFENDANT OF NOT LESS THAN FIVE
21 DAYS, TO ENJOIN AND RESTRAIN THE CONTINUANCE OF SUCH VIOLATION; AND IF
22 IT SHALL APPEAR TO THE SATISFACTION OF THE COURT OR JUSTICE THAT THE
23 DEFENDANT HAS, IN FACT, VIOLATED THIS SECTION, AN INJUNCTION MAY BE
24 ISSUED BY THE COURT OR JUSTICE, ENJOINING AND RESTRAINING ANY FURTHER
25 VIOLATIONS, WITHOUT REQUIRING PROOF THAT ANY PERSON HAS, IN FACT, BEEN
26 INJURED OR DAMAGED THEREBY. IN ANY SUCH PROCEEDING, THE COURT MAY MAKE
27 ALLOWANCES TO THE ATTORNEY GENERAL AS PROVIDED IN PARAGRAPH SIX OF
28 SUBDIVISION (A) OF SECTION EIGHTY-THREE HUNDRED THREE OF THE CIVIL PRACTICE
29 LAW AND RULES, AND DIRECT RESTITUTION. WHENEVER THE COURT SHALL
30 DETERMINE THAT A VIOLATION OF THIS SECTION HAS OCCURRED, THE COURT MAY
31 IMPOSE A CIVIL PENALTY AS SET FORTH IN SUBDIVISION FIVE OF THIS SECTION.
32 IN CONNECTION WITH ANY SUCH PROPOSED APPLICATION, THE ATTORNEY GENERAL
33 IS AUTHORIZED TO TAKE PROOF AND MAKE A DETERMINATION OF THE RELEVANT
34 FACTS AND TO ISSUE SUBPOENAS IN ACCORDANCE WITH THE CIVIL PRACTICE LAW
35 AND RULES.

36 S 2. This act shall take effect immediately. Notwithstanding such
37 effective date, no person shall be subject to a civil penalty for any
38 violation that occurs before the ninetieth day after such effective
39 date.