

S T A T E   O F   N E W   Y O R K

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123--A

2011-2012 Regular Sessions

I N   S E N A T E

(PREFILED)

January 5, 2011

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Introduced by Sen. DIAZ -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection -- recommitted to the Committee on Consumer Protection in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general business law, in relation to notice requirements in the manufacture, assembling and sale of roller skates and skate boards

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-s to read as follows:  
3     S 391-S. MANUFACTURE AND SALE OF ROLLER SKATES AND SKATE BOARDS;  
4     NOTIFICATION. 1. AS USED IN THIS SECTION, THE FOLLOWING TERMS SHALL HAVE  
5     THE FOLLOWING MEANINGS:  
6     (A) "ROLLER SKATE" SHALL HAVE THE SAME MEANING AS SUCH TERM IS DEFINED  
7     BY SECTION ONE HUNDRED FORTY-B OF THE VEHICLE AND TRAFFIC LAW.  
8     (B) "SKATE BOARD" SHALL HAVE THE SAME MEANING AS SUCH TERM IS DEFINED  
9     BY SECTION ONE HUNDRED FORTY-C OF THE VEHICLE AND TRAFFIC LAW.  
10    (C) "WARNING INSTRUCTION" SHALL MEAN A NOTICE IN SUBSTANTIALLY THE  
11    FOLLOWING FORM PRINTED IN CLEAR AND CONSPICUOUS TYPE: "WARNING! REDUCE  
12    THE RISK OF SERIOUS INJURY AND ONLY USE (INSERT 'THESE SKATES' OR 'THIS  
13    SKATE BOARD', AS APPROPRIATE) WHILE WEARING FULL PROTECTIVE GEAR -  
14    HELMET, WRIST GUARDS, ELBOW PADS AND KNEE PADS."  
15    2. (A) NO PERSON, FIRM, CORPORATION, OR OTHER LEGAL ENTITY WHICH MANU-  
16    FACTURES OR ASSEMBLES ROLLER SKATES SHALL MANUFACTURE, ASSEMBLE, SELL,  
17    OFFER TO SELL, OR DISTRIBUTE IN THIS STATE SUCH ROLLER SKATES UNLESS:  
18    (I) A WARNING INSTRUCTION CONTAINED ON A LABEL, HANGTAG, SHIELD OR PLATE  
19    CLEARLY VISIBLE TO THE CONSUMER IS PLACED EITHER ON AT LEAST ONE SUCH  
20    ROLLER SKATE IN EACH PAIR MANUFACTURED OR ASSEMBLED OR ON THE OUTSIDE OF  
21    THE BOX IN WHICH SUCH PAIR OF ROLLER SKATES IS SOLD OR OFFERED FOR SALE  
22    AT RETAIL; AND (II) EACH SUCH PAIR OF ROLLER SKATES WHICH CONTAINS A

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

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1 USER'S GUIDE OR BUYER'S INSTRUCTION MANUAL ALSO CONTAINS A WARNING  
2 INSTRUCTION WITHIN OR ON SUCH GUIDE OR MANUAL.

3 (B) NO PERSON, FIRM, CORPORATION, OR OTHER LEGAL ENTITY WHICH MANUFAC-  
4 TURES OR ASSEMBLES SKATE BOARDS SHALL MANUFACTURE, ASSEMBLE, SELL, OFFER  
5 TO SELL, OR DISTRIBUTE IN THIS STATE SUCH SKATE BOARDS UNLESS: (I) A  
6 WARNING INSTRUCTION CONTAINED ON A LABEL, HANGTAG, SHIELD OR PLATE  
7 CLEARLY VISIBLE TO THE CONSUMER IS PLACED EITHER ON THE SKATE BOARD OR  
8 ON THE OUTSIDE OF THE BOX IN WHICH SUCH SKATE BOARD IS SOLD OR OFFERED  
9 FOR SALE AT RETAIL; AND (II) EACH SKATE BOARD WHICH CONTAINS A USER'S  
10 GUIDE OR BUYER'S INSTRUCTION MANUAL ALSO CONTAINS A WARNING INSTRUCTION  
11 WITHIN OR ON SUCH GUIDE OR MANUAL.

12 (C) NO PERSON, FIRM, CORPORATION OR OTHER LEGAL ENTITY WHICH IS REGU-  
13 LARLY ENGAGED IN THE BUSINESS OF SELLING, OFFERING FOR SALE, OR DISTRIB-  
14 UTING ROLLER SKATES AT RETAIL FOR CONSUMER USE SHALL SELL, OFFER TO  
15 SELL, OR DISTRIBUTE IN THIS STATE SUCH ROLLER SKATES UNLESS SUCH ROLLER  
16 SKATES CONFORM TO THE MANUFACTURING REQUIREMENTS SET FORTH IN PARAGRAPH  
17 (A) OF THIS SUBDIVISION.

18 (D) NO PERSON, FIRM, CORPORATION OR OTHER LEGAL ENTITY WHICH IS REGU-  
19 LARLY ENGAGED IN THE BUSINESS OF SELLING, OFFERING FOR SALE, OR DISTRIB-  
20 UTING SKATE BOARDS AT RETAIL FOR CONSUMER USE SHALL SELL, OFFER TO SELL,  
21 OR DISTRIBUTE IN THIS STATE SUCH SKATE BOARDS UNLESS SUCH SKATE BOARDS  
22 CONFORM TO THE MANUFACTURING REQUIREMENTS SET FORTH IN PARAGRAPH (B) OF  
23 THIS SUBDIVISION.

24 3. WHENEVER IT SHALL APPEAR THAT THERE HAS BEEN A VIOLATION OF THIS  
25 SECTION, AN APPLICATION MAY BE MADE BY THE ATTORNEY GENERAL IN THE NAME  
26 OF THE PEOPLE OF THE STATE OF NEW YORK TO A COURT OR JUSTICE HAVING  
27 JURISDICTION BY A SPECIAL PROCEEDING TO ISSUE AN INJUNCTION, AND UPON  
28 NOTICE TO THE DEFENDANT OF NOT LESS THAN FIVE DAYS, TO ENJOIN AND  
29 RESTRAIN THE CONTINUANCE OF SUCH VIOLATION; AND IF IT SHALL APPEAR TO  
30 THE SATISFACTION OF THE COURT OR JUSTICE THAT THE DEFENDANT HAS, IN  
31 FACT, VIOLATED THIS ARTICLE, AN INJUNCTION MAY BE ISSUED BY SUCH COURT  
32 OR JUSTICE, ENJOINING AND RESTRAINING ANY FURTHER VIOLATION, WITHOUT  
33 REQUIRING PROOF THAT ANY PERSON HAS, IN FACT, BEEN INJURED OR DAMAGED  
34 THEREBY. IN ANY SUCH PROCEEDING, THE COURT MAY MAKE ALLOWANCES TO THE  
35 ATTORNEY GENERAL AS PROVIDED IN PARAGRAPH SIX OF SUBDIVISION (A) OF  
36 SECTION EIGHTY-THREE HUNDRED THREE OF THE CIVIL PRACTICE LAW AND RULES,  
37 AND DIRECT RESTITUTION. WHENEVER THE COURT SHALL DETERMINE THAT A  
38 VIOLATION OF THIS ARTICLE HAS OCCURRED, THE COURT MAY IMPOSE A CIVIL  
39 PENALTY OF NOT MORE THAN FIVE HUNDRED DOLLARS FOR SUCH VIOLATION. IN  
40 CONNECTION WITH ANY SUCH PROPOSED APPLICATION, THE ATTORNEY GENERAL IS  
41 AUTHORIZED TO TAKE PROOF AND MAKE A DETERMINATION OF THE RELEVANT FACTS  
42 AND TO ISSUE SUBPOENAS IN ACCORDANCE WITH THE CIVIL PRACTICE LAW AND  
43 RULES.

44 4. NO PERSON, FIRM, CORPORATION OR OTHER LEGAL ENTITY WHICH IS REGU-  
45 LARLY ENGAGED IN THE BUSINESS OF MANUFACTURING, DISTRIBUTING, SELLING,  
46 OR OFFERING FOR SALE ROLLER SKATES OR SKATE BOARDS SHALL BE DEEMED TO  
47 HAVE VIOLATED THE PROVISIONS OF THIS SUBDIVISION, IF SUCH PERSON, FIRM,  
48 CORPORATION OR OTHER LEGAL ENTITY SHOWS BY A PREPONDERANCE OF EVIDENCE  
49 THAT THE VIOLATION WAS NOT INTENTIONAL AND RESULTED FROM A BONA FIDE  
50 ERROR MADE NOTWITHSTANDING THE MAINTENANCE OF PROCEDURES REASONABLY  
51 ADOPTED TO AVOID ANY SUCH ERROR.

52 5. THIS SECTION SHALL NOT APPLY TO THE SALE OF ROLLER SKATES OR SKATE  
53 BOARDS SOLD OR OFFERED FOR SALE BY CONSUMERS FOR CONSUMER USE.

54 S. 2. This act shall take effect one year after it shall have become a  
55 law.