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

1011--A

2013-2014 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 9, 2013

Introduced by M. of A. DINOWITZ, GABRYSZAK, HOOPER, GALEF, COOK, MAISEL, LIFTON, JAFFEE, MARKEY, KELLNER, MILLER, PAULIN, LAVINE, ORTIZ, WEPRIN, GUNTHER, BARCLAY, BRINDISI, BUCHWALD -- Multi-Sponsored by -- M. of A. ARROYO, BLANKENBUSH, BOYLAND, BROOK-KRASNY, DUPREY, GIBSON, GLICK, GOODELL, MAGEE, McDONALD, ROBINSON, RUSSELL, SCHIMEL, TENNEY, WEISENBERG -- read once and referred to the Committee on Consumer Affairs and Protection -- reported and referred to the Committee on Codes -- reported and referred to the Committee on Rules -- Rules Committee discharged, bill amended, ordered reprinted as amended and recommitted to the Committee on Rules

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:

Section 1. The general business law is amended by adding a new section 391-s to read as follows:

S 391-S. SALE AND DISTRIBUTION OF NOVELTY LIGHTERS PROHIBITED. 1. DEFINITIONS:

(A) "AUDIO EFFECTS" MEANS MUSIC, ANIMAL SOUNDS, WHISTLES, BUZZERS, BEEPERS OR OTHER NOISES NOT TYPICALLY CAUSED BY OR PERTINENT TO THE FLAME-PRODUCING FUNCTION OF THE LIGHTER.

(B) "DISTRIBUTE" MEANS TO:

(I) DELIVER TO A PERSON OTHER THAN THE PURCHASER, FOR RETAIL SALE; OR

(II) PROVIDE AS PART OF A COMMERCIAL PROMOTION OR AS A PRIZE OR PREMIUM.

(C) "IMPORTER" MEANS A PERSON WHO CAUSES A LIGHTER TO ENTER THIS STATE FROM A MANUFACTURING, WHOLESALE, DISTRIBUTION OR RETAIL SALES POINT OUTSIDE THIS STATE, FOR THE PURPOSE OF SELLING OR DISTRIBUTING THE LIGHTER WITHIN THIS STATE OR WITH THE RESULT THAT THE LIGHTER IS SOLD OR DISTRIBUTED WITHIN THIS STATE.

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

LBD02934-03-3

(D) "LIGHTER" MEANS A MECHANICAL OR ELECTRICAL DEVICE OF A TYPE TYPICALLY USED FOR IGNITING TOBACCO PRODUCTS BY USE OF A FLAME.

(E) "NOVELTY LIGHTER" MEANS A MECHANICAL OR ELECTRICAL DEVICE TYPICALLY USED 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 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 CREATING AUDIO EFFECTS OR DISPLAYING FLASHING LIGHTS.

(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. THIS SECTION SHALL NOT APPLY: (A) TO A NOVELTY LIGHTER MANUFACTURED BEFORE JANUARY FIRST, NINETEEN HUNDRED EIGHTY AND WHICH IS CONSIDERED A COLLECTIBLE ITEM WITHIN THE COLLECTIBLE TRADE; (B) TO 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 NOVELTY LIGHTER; OR (C) IF NOT INTENDED FOR SALE OR USE IN THE STATE, TO THE INTERSTATE TRANSPORTATION OF A NOVELTY LIGHTER OR TO THE TEMPORARY STORAGE OF A NOVELTY LIGHTER WHILE IN INTERSTATE COMMERCE.

4. 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.

5. 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.

6. 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 WHOLESALER 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 WHOLESALER.

(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

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

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

8. IN ADDITION TO THE ENFORCEMENT AUTHORITY GRANTED TO THE DIVISION OF HOMELAND SECURITY AND EMERGENCY SERVICES IN THIS SECTION, 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 AS SET FORTH IN SUBDIVISION SIX OF THIS SECTION. 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 immediately. Notwithstanding such effective date, no person shall be subject to a civil penalty for any violation that occurs before the ninetieth day after such effective date.