

733

2013-2014 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 9, 2013

Introduced by M. of A. WEPRIN -- Multi-Sponsored by -- M. of A. BARRON,
McKEVITT, RIVERA, SCARBOROUGH, SWEENEY, TITUS, ZEBROWSKI -- read once
and referred to the Committee on Consumer Affairs and Protection

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 ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. The general business law is amended by adding a new section
2 396-11 to read as follows:
3 S 396-LL. PRODUCTS CONTAINING SMALL MAGNETS. 1. FOR PURPOSES OF THIS
4 SECTION:
5 (A) "SMALL MAGNET" SHALL MEAN A MAGNET THAT CAN FIT COMPLETELY INTO A
6 SPECIALLY DESIGNED TEST CYLINDER 2.25 INCHES LONG BY 1.25 INCHES WIDE
7 THAT APPROXIMATES THE SIZE OF THE FULLY EXPANDED THROAT OF A CHILD UNDER
8 THREE YEARS OLD, COMMONLY REFERRED TO AS THE SMALL PARTS CYLINDER, AS
9 PRESCRIBED IN 16 CFR SECTION 1501.4, FIGURE 1; AND
10 (B) "MAGNET NOVELTY CONSUMER PRODUCT" SHALL MEAN A PRODUCT MARKETING TO
11 ADULTS FOR THE PURPOSES OF LEISURE OR STRESS RELIEF THAT CONTAINS A
12 MAGNET OR MAGNETS. MAGNET NOVELTY CONSUMER PRODUCTS INCLUDE, BUT ARE NOT
13 LIMITED TO, OFFICE TOYS, DESKTOP TOYS, DESK TOYS, STRESS RELIEF TOYS,
14 AND PUZZLES.
15 2. NO PERSON, FIRM, PARTNERSHIP, ASSOCIATION OR CORPORATION SHALL
16 MANUFACTURE, SELL AT RETAIL, OFFER TO SELL, OR DISTRIBUTE AT RETAIL, ANY
17 JEWELRY PRODUCT THAT INCLUDES A SMALL MAGNET AND WHICH IS MARKETING AS A
18 PRODUCT DESIGNED TO MIMIC A TONGUE, LIP OR NOSE PIERCING.
19 3. NO PERSON, FIRM, CORPORATION OR OTHER LEGAL ENTITY SHALL MANUFAC-
20 TURE, SELL AT RETAIL, OFFER TO SELL AT RETAIL, OR DISTRIBUTE ANY MAGNET
21 NOVELTY CONSUMER PRODUCT CONTAINING A SMALL MAGNET UNLESS SUCH PERSON,
22 FIRM, CORPORATION OR OTHER LEGAL ENTITY CAUSES A NOTICE, WHICH IS CLEAR-
23 LY VISIBLE TO THE CONSUMER AND PRINTED IN CLEAR AND CONSPICUOUS TYPE, TO

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

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1 APPEAR ON THE PACKAGE IN WHICH SUCH PRODUCT IS SOLD OR OFFERED FOR SALE,
2 OR IF UNPACKAGED, ON A LABEL OR TAG AFFIXED TO THE PRODUCT. SUCH NOTICE
3 SHALL CONSIST OF THE SIGNAL WORD "WARNING" AND CONTAIN, AT A MINIMUM,
4 THE FOLLOWING TEXT OR EQUIVALENT TEXT WHICH CLEARLY CONVEYS THE SAME
5 WARNING:

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

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

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

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

33 S 2. This act shall take effect on the one hundred twentieth day after
34 it shall have become a law; provided, however, that effective immediate-
35 ly, the addition, amendment and/or repeal of any rule or regulation
36 necessary for the implementation of this act on its effective date are
37 authorized and directed to be made and completed on or before such
38 effective date.