

5552

2015-2016 Regular Sessions

I N   S E N A T E

May 14, 2015

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Introduced by Sen. BOYLE -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer 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 ASSEMBLY, 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  
24    APPEAR ON THE PACKAGE IN WHICH SUCH PRODUCT IS SOLD OR OFFERED FOR SALE,  
25    OR IF UNPACKAGED, ON A LABEL OR TAG AFFIXED TO THE PRODUCT. SUCH NOTICE

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

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1 SHALL CONSIST OF THE SIGNAL WORD "WARNING" AND CONTAIN, AT A MINIMUM,  
2 THE FOLLOWING TEXT OR EQUIVALENT TEXT WHICH CLEARLY CONVEYS THE SAME  
3 WARNING:

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

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

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

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

31 S 2. This act shall take effect on the one hundred twentieth day after  
32 it shall have become a law. Effective immediately, the addition, amend-  
33 ment and/or repeal of any rule or regulation necessary for the implemen-  
34 tation of this act on its effective date are authorized to be made on or  
35 before such effective date.