

2009-2010 Regular Sessions

I N   A S S E M B L Y

(PREFILED)

January 7, 2009

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Introduced by M. of A. PHEFFER, DESTITO -- read once and referred to the  
Committee on Consumer Affairs and Protection

AN ACT to amend the general business law, in relation to regulating the  
use of radio frequency identification tags by retail mercantile estab-  
lishments

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-  
BLY, DO ENACT AS FOLLOWS:

1     Section 1. Short title. This act shall be known and may be cited as  
2     the "radio frequency identification right to know act".

3     S 2. The general business law is amended by adding a new article 12-C  
4     to read as follows:

5                                     ARTICLE 12-C

6                     RADIO FREQUENCY IDENTIFICATION RIGHT TO KNOW  
7     SECTION 219. RADIO FREQUENCY IDENTIFICATION RIGHT TO KNOW.

8     S 219. RADIO FREQUENCY IDENTIFICATION RIGHT TO KNOW. 1. DEFINITIONS.  
9     AS USED IN THIS ARTICLE, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING  
10    MEANINGS:

11    A. "AFFILIATE" MEANS A PERSON RELATED TO A RETAIL MERCANTILE ESTAB-  
12    LISHMENT THAT CARRIES ON DIRECT OR RELATED FUNCTIONS OF SUCH ESTABLISH-  
13    MENT.

14    B. "DEACTIVATE" MEANS TO DISABLE OR OTHERWISE RENDER UNUSABLE.

15    C. "PACKAGE" MEANS ANY TYPE OF CONTAINER, ARTICLE, OR ITEM THAT IS  
16    USED TO CONTAIN OR HOLD A RETAIL PRODUCT IN THE FORM IN WHICH THE RETAIL  
17    PRODUCT IS SOLD TO CONSUMERS. SUCH TERM SHALL NOT APPLY TO PETS OR  
18    DOMESTICATED ANIMALS.

19    D. "PERSONAL INFORMATION" MEANS ANY INFORMATION CONCERNING A NATURAL  
20    PERSON WHICH, BECAUSE OF NAME, NUMBER, SYMBOL, MARK, OR OTHER IDENTIFI-  
21    ER, CAN BE USED TO IDENTIFY THAT NATURAL PERSON.

22    E. "RADIO FREQUENCY IDENTIFICATION" MEANS ANY TECHNOLOGY THAT USES  
23    RADIO WAVES OR OTHER WIRELESS MEANS TO TRANSMIT IDENTIFYING INFORMATION

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

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1 BETWEEN A TAG, BADGE, OR OTHER DEVICE AND A READER WITHOUT PHYSICAL  
2 CONTACT.

3 F. "RADIO FREQUENCY IDENTIFICATION TAG" MEANS A DEVICE THAT IS  
4 ATTACHED TO, EMBEDDED IN, OR MADE PART OF A RETAIL PRODUCT OR ITS PACK-  
5 AGE THAT USES RADIO FREQUENCY IDENTIFICATION TECHNOLOGY TO TRANSMIT A  
6 UNIQUE NUMBER OR IDENTIFIER TO A READER.

7 G. "READER" MEANS A DEVICE THAT IS CAPABLE OF USING RADIO WAVES OR  
8 OTHER WIRELESS MEANS TO COMMUNICATE WITH, AND READ THE INFORMATION TRAN-  
9 SMITTED BY, A RADIO FREQUENCY IDENTIFICATION TAG.

10 2. NOTICES. A. EVERY RETAIL MERCANTILE ESTABLISHMENT THAT SELLS OR  
11 OFFERS FOR SALE MERCHANDISE CONTAINING RADIO FREQUENCY IDENTIFICATION  
12 TAGS SHALL POST A NOTICE SO INFORMING CONSUMERS. SUCH NOTICE SHALL  
13 DISCLOSE THAT:

14 (1) THE ESTABLISHMENT OFFERS ITEMS WITH RADIO FREQUENCY IDENTIFICATION  
15 TAGS;

16 (2) NEW YORK STATE LAW REQUIRES THE ESTABLISHMENT TO REMOVE OR DISABLE  
17 ALL RADIO FREQUENCY IDENTIFICATION TAGS BEFORE TAGGED ITEMS LEAVE THE  
18 ESTABLISHMENT; AND

19 (3) THE ESTABLISHMENT IS REQUIRED TO PROVIDE CONSUMERS, ON REQUEST,  
20 WITH PERSONAL INFORMATION GATHERED WITHIN THE ESTABLISHMENT THROUGH THE  
21 RADIO FREQUENCY IDENTIFICATION TAGS USED IN THE ESTABLISHMENT.

22 SUCH NOTICE SHALL BE POSTED ON A SIGN AFFIXED TO EACH CASH REGISTER OR  
23 POINT OF SALE AT WHICH SUCH GOODS ARE OFFERED FOR SALE OR ON A SIGN SO  
24 SITUATED AS TO BE CLEARLY VISIBLE TO THE BUYER FROM EACH CASH REGISTER.

25 B. NO RETAIL MERCANTILE ESTABLISHMENT SHALL SELL OR OFFER FOR SALE  
26 ANY ITEM OR PACKAGE THAT CONTAINS OR BEARS A RADIO FREQUENCY IDENTIFICA-  
27 TION TAG UNLESS SUCH ITEM OR PACKAGE IS LABELED WITH A NOTICE STATING  
28 THAT SUCH ITEM OR PACKAGE CONTAINS OR BEARS A RADIO FREQUENCY IDENTIFI-  
29 CATION TAG, AND THAT THE RADIO FREQUENCY IDENTIFICATION TAG CAN TRANSMIT  
30 UNIQUE IDENTIFICATION INFORMATION TO AN INDEPENDENT READER BOTH BEFORE  
31 AND AFTER PURCHASE. SUCH LABEL SHALL BE POSTED ON THE ITEM OR PACKAGE IN  
32 A CONSPICUOUS TYPE SIZE AND LOCATION AND IN PRINT THAT CONTRASTS WITH  
33 THE BACKGROUND AGAINST WHICH IT APPEARS.

34 C. UPON WRITTEN REQUEST OF A CONSUMER, A RETAIL MERCANTILE ESTABLISH-  
35 MENT THAT HAS GATHERED PERSONAL INFORMATION THROUGH RADIO FREQUENCY  
36 IDENTIFICATION TAGS SHALL RELEASE TO THE REQUESTER ALL OF THE STORED  
37 PERSONAL INFORMATION PERTAINING TO THE REQUESTER. EVERY RETAIL MERCAN-  
38 TILE ESTABLISHMENT SHALL MAKE AVAILABLE TO CONSUMERS A FORM FOR SUCH  
39 REQUESTS.

40 3. REMOVAL. EVERY RETAIL MERCANTILE ESTABLISHMENT THAT OFFERS ITEMS OR  
41 PACKAGES THAT CONTAIN OR BEAR RADIO FREQUENCY IDENTIFICATION TAGS SHALL  
42 REMOVE OR DEACTIVATE ALL TAGS AT THE POINT OF SALE. IN ADDITION:

43 A. ALL COSTS OF WHATSOEVER NAME OR NATURE FOR THE REMOVAL OR DEACTI-  
44 VATION OF A RADIO FREQUENCY IDENTIFICATION TAG SHALL BE BORNE BY THE  
45 RETAIL MERCANTILE ESTABLISHMENT;

46 B. A RETAIL MERCANTILE ESTABLISHMENT SHALL NOT COERCE CONSUMERS INTO  
47 KEEPING RADIO FREQUENCY IDENTIFICATION TAGS ON ITEMS OR PACKAGES BY  
48 REQUIRING ITEMS OR PACKAGES TO BE EXCHANGED, RETURNED, REPAIRED, OR  
49 SERVICED TO CONTAIN OR BEAR ACTIVE TAGS; AND

50 C. A RADIO FREQUENCY IDENTIFICATION TAG, ONCE REMOVED OR DEACTIVATED,  
51 SHALL NOT BE REACTIVATED WITHOUT EXPRESS CONSENT OF THE CONSUMER ASSOCI-  
52 ATED WITH THE TAGGED ITEM.

53 4. AGGREGATION OF PERSONAL INFORMATION AND RADIO FREQUENCY IDENTIFICA-  
54 TION TAG INFORMATION. A. NO RETAIL MERCANTILE ESTABLISHMENT SHALL  
55 COMBINE OR LINK A CONSUMER'S PERSONAL INFORMATION WITH INFORMATION GATH-  
56 ERED BY, OR CONTAINED WITHIN, A RADIO FREQUENCY IDENTIFICATION TAG.

1 B. NO RETAIL MERCANTILE ESTABLISHMENT SHALL, DIRECTLY OR THROUGH AN  
2 AFFILIATE, DISCLOSE TO A NONAFFILIATED THIRD PARTY A CONSUMER'S PERSONAL  
3 INFORMATION ASSOCIATED WITH INFORMATION GATHERED BY, OR CONTAINED WITH-  
4 IN, A RADIO FREQUENCY IDENTIFICATION TAG.

5 C. NO RETAIL MERCANTILE ESTABLISHMENT SHALL, DIRECTLY OR THROUGH AN  
6 AFFILIATE OR NONAFFILIATED THIRD PARTY, USE INFORMATION GATHERED BY, OR  
7 CONTAINED WITHIN, A RADIO FREQUENCY IDENTIFICATION TAG TO IDENTIFY A  
8 CONSUMER.

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

30 S 3. If any item, clause, sentence, subparagraph, subdivision,  
31 section, or other part of this act, or the application thereof to any  
32 person or circumstances shall be held to be invalid, such holding shall  
33 not affect, impair or invalidate the remainder of this act, or the  
34 application of such section or part of a section held invalid, to any  
35 other person or circumstances, but shall be confined in its operation to  
36 the item, clause, sentence, subparagraph, subdivision, section, or other  
37 part of this act directly involved in such holding, or to the person and  
38 circumstances therein involved.

39 S 4. This act shall take effect January 1, 2011.