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

1033

2011-2012 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 5, 2011

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 establishments

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

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

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

ARTICLE 12-C

RADIO FREQUENCY IDENTIFICATION RIGHT TO KNOW

SECTION 219. RADIO FREQUENCY IDENTIFICATION RIGHT TO KNOW.

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

A. "AFFILIATE" MEANS A PERSON RELATED TO A RETAIL MERCANTILE ESTABLISHMENT THAT CARRIES ON DIRECT OR RELATED FUNCTIONS OF SUCH ESTABLISHMENT.

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

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

D. "PERSONAL INFORMATION" MEANS ANY INFORMATION CONCERNING A NATURAL PERSON WHICH, BECAUSE OF NAME, NUMBER, SYMBOL, MARK, OR OTHER IDENTIFIER, CAN BE USED TO IDENTIFY THAT NATURAL PERSON.

E. "RADIO FREQUENCY IDENTIFICATION" MEANS ANY TECHNOLOGY THAT USES 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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BETWEEN A TAG, BADGE, OR OTHER DEVICE AND A READER WITHOUT PHYSICAL CONTACT.

F. "RADIO FREQUENCY IDENTIFICATION TAG" MEANS A DEVICE THAT IS ATTACHED TO, EMBEDDED IN, OR MADE PART OF A RETAIL PRODUCT OR ITS PACKAGE THAT USES RADIO FREQUENCY IDENTIFICATION TECHNOLOGY TO TRANSMIT A UNIQUE NUMBER OR IDENTIFIER TO A READER.

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

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

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

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

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

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

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

C. UPON WRITTEN REQUEST OF A CONSUMER, A RETAIL MERCANTILE ESTABLISHMENT THAT HAS GATHERED PERSONAL INFORMATION THROUGH RADIO FREQUENCY IDENTIFICATION TAGS SHALL RELEASE TO THE REQUESTER ALL OF THE STORED PERSONAL INFORMATION PERTAINING TO THE REQUESTER. EVERY RETAIL MERCANTILE ESTABLISHMENT SHALL MAKE AVAILABLE TO CONSUMERS A FORM FOR SUCH REQUESTS.

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

A. ALL COSTS OF WHATSOEVER NAME OR NATURE FOR THE REMOVAL OR DEACTIVATION OF A RADIO FREQUENCY IDENTIFICATION TAG SHALL BE BORNE BY THE RETAIL MERCANTILE ESTABLISHMENT;

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

C. A RADIO FREQUENCY IDENTIFICATION TAG, ONCE REMOVED OR DEACTIVATED, SHALL NOT BE REACTIVATED WITHOUT EXPRESS CONSENT OF THE CONSUMER ASSOCIATED WITH THE TAGGED ITEM.

4. AGGREGATION OF PERSONAL INFORMATION AND RADIO FREQUENCY IDENTIFICATION TAG INFORMATION. A. NO RETAIL MERCANTILE ESTABLISHMENT SHALL COMBINE OR LINK A CONSUMER'S PERSONAL INFORMATION WITH INFORMATION GATHERED BY, OR CONTAINED WITHIN, A RADIO FREQUENCY IDENTIFICATION TAG.

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

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

5. ENFORCEMENT. 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 OF NOT MORE THAN FIVE HUNDRED DOLLARS FOR EACH VIOLATION. EACH SALE, OR OFFERING FOR SALE, OF AN ITEM OR PACKAGE IN VIOLATION OF THIS SECTION SHALL CONSTITUTE A SEPARATE VIOLATION. 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 3. If any item, clause, sentence, subparagraph, subdivision, section, or other part of this act, or the application thereof to any person or circumstances shall be held to be invalid, such holding shall not affect, impair or invalidate the remainder of this act, or the application of such section or part of a section held invalid, to any other person or circumstances, but shall be confined in its operation to the item, clause, sentence, subparagraph, subdivision, section, or other part of this act directly involved in such holding, or to the person and circumstances therein involved.

S 4. This act shall take effect January 1, 2013.