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

894

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 -- Multi-Sponsored by -- M. of A. DINOWITZ -- read once and referred to the Committee on Consumer Affairs and Protection

AN ACT to amend the general business law, in relation to requiring the labeling of retail products or packages containing a radio frequency identification tag

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 article 12-C to read as follows:

ARTICLE 12-C

RADIO FREQUENCY IDENTIFICATION TAG LABELS

SECTION 219. RADIO FREQUENCY IDENTIFICATION TAG LABELS.

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

A. "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.

B. "RADIO FREQUENCY IDENTIFICATION" MEANS ANY TECHNOLOGY THAT USES RADIO WAVES OR OTHER WIRELESS MEANS TO TRANSMIT IDENTIFYING INFORMATION BETWEEN A TAG, BADGE, OR OTHER DEVICE AND A READER WITHOUT PHYSICAL CONTACT.

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

D. "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.

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

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2. ANY PERSON OR ENTITY THAT PRODUCES, MANUFACTURES, PACKAGES, DISTRIBUTES, OR SELLS A RETAIL PRODUCT AND CAUSES A RADIO FREQUENCY IDENTIFICATION TAG TO BE ATTACHED TO, EMBEDDED IN, OR MADE PART OF THE RETAIL PRODUCT OR ITS PACKAGE SHALL LABEL SUCH PRODUCT OR ITS PACKAGING WITH A NOTICE REGARDING THE EXISTENCE OF THE RADIO FREQUENCY IDENTIFICATION TAG.

A. IT SHALL BE UNLAWFUL FOR ANY RETAILER, WHO KNOWS OR REASONABLY SHOULD KNOW, THAT A RETAIL PRODUCT OR ITS PACKAGE CONTAINS A RADIO FREQUENCY IDENTIFICATION TAG TO SELL SUCH RETAIL PRODUCT TO A CONSUMER UNLESS THE RETAIL PRODUCT OR ITS PACKAGE BEARS THE LABEL REQUIRED BY THIS SECTION.

B. THE LABEL REQUIRED PURSUANT TO THIS SECTION MUST, AT A MINIMUM:

(1) INFORM THE CONSUMER THAT THE RETAIL PRODUCT OR ITS PACKAGE HAS A RADIO FREQUENCY IDENTIFICATION TAG WHICH CAN TRANSMIT UNIQUE IDENTIFICATION INFORMATION BEFORE AND AFTER PURCHASE OF THE RETAIL PRODUCT;

(2) BE IN A CONSPICUOUS LOCATION ON THE RETAIL PRODUCT OR ITS PACKAGE; AND

(3) BE PRINTED IN A SIZE OF TYPE AND IN A MANNER THAT IS CONSPICUOUS AND CONTRASTS WITH THE BACKGROUND ON WHICH THE NOTICE APPEARS.

3. ANY PERSON, FIRM, CORPORATION, LIMITED LIABILITY COMPANY, ASSOCIATION, OR OTHER ENTITY WHO VIOLATES THIS SECTION SHALL BE SUBJECT TO A CIVIL PENALTY OF NOT LESS THAN ONE HUNDRED DOLLARS NOR MORE THAN ONE THOUSAND DOLLARS FOR EACH SUCH VIOLATION. EACH SALE OF AN ITEM IN VIOLATION OF THIS SECTION SHALL CONSTITUTE A SEPARATE VIOLATION.

4. 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 PURSUANT TO SUBDIVISION THREE 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 on the first of September next succeeding the date on which it shall have become a law.