

**RADIO FREQUENCY IDENTIFICATION -
RIGHT TO KNOW ACT
2004 GENERAL SESSION
STATE OF UTAH
Sponsor: David L. Hogue**

LONG TITLE

General Description:

This bill modifies the Utah Consumer Sales Practices Act to enact provisions related to a radio frequency identification tag.

Highlighted Provisions:

This bill:

- ▶ requires a product containing a radio frequency identification tag to contain a label describing the radio frequency identification tag; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

⌚ ~~None~~ THIS BILL TAKES EFFECT ON MAY 5, 2005. ⌚

Utah Code Sections Affected:

AMENDS:

- 13-11-3**, as last amended by Chapter 57, Laws of Utah 2000
 - 13-11-4**, as last amended by Chapter 196, Laws of Utah 2001
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-

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **13-11-3** is amended to read:

13-11-3. Definitions.



28 As used in this chapter:

29 (1) ~~(a)~~ "Charitable solicitation" means any request directly or indirectly for money,
30 credit, property, financial assistance, or any other thing of value on the plea or representation
31 that it will be used for a charitable purpose. A charitable solicitation may be made in any
32 manner, including:

33 ~~[(a)]~~ (i) any oral or written request, including a telephone request;

34 ~~[(b)]~~ (ii) the distribution, circulation, or posting of any handbill, written advertisement,
35 or publication; or

36 ~~[(c)]~~ (iii) the sale of, offer or attempt to sell, or request of donations for any book, card,
37 chance, coupon, device, magazine, membership, merchandise, subscription, ticket, flower, flag,
38 button, sticker, ribbon, token, trinket, tag, souvenir, candy, or any other article in connection
39 with which any appeal is made for any charitable purpose, or where the name of any charitable
40 organization or movement is used or referred to as an inducement or reason for making any
41 purchase donation, or where, in connection with any sale or donation, any statement is made
42 that the whole or any part of the proceeds of any sale or donation will go to or be donated to
43 any charitable purpose.

44 (b) A charitable solicitation is considered complete when made, whether or not the
45 organization or person making the solicitation receives any contribution or makes any sale.

46 (2) "Consumer transaction" means a sale, lease, assignment, award by chance, or other
47 written or oral transfer or disposition of goods, services, or other property, both tangible and
48 intangible (except securities and insurance), including the use or misuse of personal identifying
49 information of any person in relation to a consumer transaction to, or apparently to, a person
50 for primarily personal, family, or household purposes, or for purposes that relate to a business
51 opportunity that requires both his expenditure of money or property and his personal services
52 on a continuing basis and in which he has not been previously engaged, or a solicitation or
53 offer by a supplier with respect to any of these transfers or dispositions. It includes any offer or
54 solicitation, any agreement, any performance of an agreement with respect to any of these
55 transfers or dispositions, and any charitable solicitation as defined in this section.

56 (3) "Enforcing authority" means the Division of Consumer Protection.

57 (4) "Final judgment" means a judgment, including any supporting opinion, that
58 determines the rights of the parties and concerning which appellate remedies have been

59 exhausted or the time for appeal has expired.

60 (5) "Person" means an individual, corporation, government, governmental subdivision
61 or agency, business trust, estate, trust, partnership, association, cooperative, or any other legal
62 entity.

63 (6) "Radio frequency identification tag" means a device ~~that is able to transmit~~ ~~AND~~
63a ~~COLLECT~~ ~~information~~ ~~ON A MICROCHIP~~ ~~through radio waves.~~ :
64

64a (a) MADE OF A MICROCHIP; AND

64b (b) THAT CONTAINS A UNIQUE NUMBER OR IDENTIFIER:

64c (i) RELATED TO AN ITEM OR PRODUCT; AND

64d (ii) THAT CAN BE READ BY OR TRANSMITTED TO AN EXTERNAL DEVICE USING RADIO
64e WAVES.

65 ~~(6)~~ (7) "Supplier" means a seller, lessor, assignor, offeror, broker, or other person
66 who regularly solicits, engages in, or enforces consumer transactions, whether or not ~~he~~ the
67 person deals directly with the consumer.

68 Section 2. Section **13-11-4** is amended to read:

69 **13-11-4. Deceptive act or practice by supplier.**

70 (1) A deceptive act or practice by a supplier in connection with a consumer transaction
71 violates this chapter whether it occurs before, during, or after the transaction.

72 (2) Without limiting the scope of Subsection (1), a supplier commits a deceptive act or
73 practice if the supplier knowingly or intentionally:

74 (a) indicates that the subject of a consumer transaction has sponsorship, approval,
75 performance characteristics, accessories, uses, or benefits, if it has not;

76 (b) indicates that the subject of a consumer transaction is of a particular standard,
77 quality, grade, style, or model, if it is not;

78 (c) indicates that the subject of a consumer transaction is new, or unused, if it is not, or
79 has been used to an extent that is materially different from the fact;

80 (d) indicates that the subject of a consumer transaction is available to the consumer for
81 a reason that does not exist;

82 (e) indicates that the subject of a consumer transaction has been supplied in accordance
83 with a previous representation, if it has not;

84 (f) indicates that the subject of a consumer transaction will be supplied in greater
85 quantity than the supplier intends;

86 (g) indicates that replacement or repair is needed, if it is not;

87 (h) indicates that a specific price advantage exists, if it does not;

88 (i) indicates that the supplier has a sponsorship, approval, or affiliation the supplier
89 does not have;

90 (j) indicates that a consumer transaction involves or does not involve a warranty, a
91 disclaimer of warranties, particular warranty terms, or other rights, remedies, or obligations, if
92 the representation is false;

93 (k) indicates that the consumer will receive a rebate, discount, or other benefit as an
94 inducement for entering into a consumer transaction in return for giving the supplier the names
95 of prospective consumers or otherwise helping the supplier to enter into other consumer
96 transactions, if receipt of the benefit is contingent on an event occurring after the consumer
97 enters into the transaction;

98 (l) after receipt of payment for goods or services, fails to ship the goods or furnish the
99 services within the time advertised or otherwise represented or, if no specific time is advertised
100 or represented, fails to ship the goods or furnish the services within 30 days, unless within the
101 applicable time period the supplier provides the buyer with the option to either cancel the sales
102 agreement and receive a refund of all previous payments to the supplier or to extend the
103 shipping date to a specific date proposed by the supplier, but any refund shall be mailed or
104 delivered to the buyer within ten business days after the seller receives written notification
105 from the buyer of the buyer's right to cancel the sales agreement and receive the refund;

106 (m) fails to furnish a notice of the purchaser's right to cancel a direct solicitation sale
107 within three business days of the time of purchase if the sale is made other than at the supplier's
108 established place of business pursuant to the supplier's personal contact, whether through mail,
109 electronic mail, facsimile transmission, telephone, or any other form of direct solicitation and if
110 the sale price exceeds \$25, unless the supplier's cancellation policy is communicated to the
111 buyer and the policy offers greater rights to the buyer than this Subsection (2)(m), which notice
112 shall be a conspicuous statement written in dark bold at least 12 point type, on the first page of
113 the purchase documentation, and shall read as follows: "YOU, THE BUYER, MAY CANCEL
114 THIS CONTRACT AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS
115 DAY (or time period reflecting the supplier's cancellation policy but not less than three
116 business days) AFTER THE DATE OF THE TRANSACTION OR RECEIPT OF THE
117 PRODUCT, WHICHEVER IS LATER.";

118 (n) promotes, offers, or grants participation in a pyramid scheme as defined under Title
119 76, Chapter 6a, Pyramid Scheme Act;

120 (o) represents that the funds or property conveyed in response to a charitable

121 solicitation will be donated or used for a particular purpose or will be donated to or used by a
 122 particular organization, if the representation is false;

123 (p) if a consumer indicates [~~his~~] the consumer's intention of making a claim for a motor
 124 vehicle repair against [~~his~~] the consumer's motor vehicle insurance policy:

125 (i) commences the repair without first giving the consumer oral and written notice of:

126 (A) the total estimated cost of the repair; and

127 (B) the total dollar amount the consumer is responsible to pay for the repair, which
 128 dollar amount may not exceed the applicable deductible or other copay arrangement in the
 129 consumer's insurance policy; or

130 (ii) requests or collects from a consumer an amount that exceeds the dollar amount a
 131 consumer was initially told [~~he~~] the consumer was responsible to pay as an insurance
 132 deductible or other copay arrangement for a motor vehicle repair under Subsection (2)(p)(i),
 133 even if that amount is less than the full amount the motor vehicle insurance policy requires the
 134 insured to pay as a deductible or other copay arrangement, unless:

135 (A) the consumer's insurance company denies that coverage exists for the repair, in
 136 which case, the full amount of the repair may be charged and collected from the consumer; or

137 (B) the consumer misstates, before the repair is commenced, the amount of money the
 138 insurance policy requires the consumer to pay as a deductible or other copay arrangement, in
 139 which case, the supplier may charge and collect from the consumer an amount that does not
 140 exceed the amount the insurance policy requires the consumer to pay as a deductible or other
 141 copay arrangement;

142 (q) includes in any contract, receipt, or other written documentation of a consumer
 143 transaction, or any addendum to any contract, receipt, or other written documentation of a
 144 consumer transaction, any confession of judgment or any waiver of any of the rights to which a
 145 consumer is entitled under this chapter; [~~or~~]

146 (r) charges a consumer for a consumer transaction that has not previously been agreed
 147 to by the consumer[~~;~~]; ~~H~~ [~~or~~] ~~h~~

148 (s) ~~H~~ **IN A CONSUMER TRANSACTION, h** sells any product ~~H~~ **AT RETAIL h** that:

149 (i) contains a radio frequency identification tag; and

150 (ii) does not contain a ~~H~~ [~~label~~] **NOTICE ON THE PRODUCT OR THE PRODUCT PACKAGING**

150a **USING h** :

150b **~~H~~ (A) A LOGO IF THE SUPPLIER ALSO PROVIDES NOTICE:**

150c **(I) POSTED NEAR THE PRODUCT AND AT THE LOCATION WHERE THE CONSUMER**
 150d **TRANSACTION IS COMPLETED;**

150e **(II) INFORMING A CONSUMER OF THE MEANING OF THE LOGO; AND**

150f **(II) CONTAINING THE INFORMATION DESCRIBED IN SUBSECTION (2)(s)(ii)(B); OR**

150g **(B) ANOTHER TYPE OF IDENTIFIER; h**

151 ~~H~~ [~~(A)~~] **(I) h** stating that ~~H~~ [~~;~~] ~~h~~

152 ~~It~~ ~~is~~ ~~that~~ ~~the~~ ~~product~~ ~~contains~~ ~~a~~ ~~radio~~ ~~frequency~~ ~~identification~~ ~~tag~~ ~~and~~ ~~that~~ ~~the~~

153 ~~radio~~ ~~frequency~~ ~~identification~~ ~~tag~~ ~~can~~ ~~transmit~~ ~~information~~ ~~to~~ ~~a~~ ~~reader~~ ~~both~~
154 ~~before~~ ~~and~~ ~~after~~ ~~the~~ ~~purchase~~;

155 ~~It~~ ~~is~~ ~~that~~ ~~the~~ ~~text~~ ~~is~~ ~~in~~ ~~a~~ ~~conspicuous~~ ~~type~~ ~~size~~ ~~and~~ ~~location~~; ~~and~~

156 ~~It~~ ~~is~~ ~~that~~ ~~the~~ ~~text~~ ~~is~~ ~~in~~ ~~print~~ ~~that~~ ~~contrasts~~ ~~with~~ ~~the~~ ~~background~~ ~~against~~ ~~which~~ ~~it~~ ~~appears~~

156a1 ~~It~~ ~~is~~ ~~that~~ ~~the~~ ~~text~~ ~~is~~ ~~in~~ ~~print~~ ~~that~~ ~~contrasts~~ ~~with~~ ~~the~~ ~~background~~ ~~against~~ ~~which~~ ~~it~~ ~~appears~~ ~~;~~ ~~OR~~

156a2 ~~It~~ ~~is~~ ~~that~~ ~~the~~ ~~text~~ ~~is~~ ~~in~~ ~~print~~ ~~that~~ ~~contrasts~~ ~~with~~ ~~the~~ ~~background~~ ~~against~~ ~~which~~ ~~it~~ ~~appears~~ ~~;~~ ~~OR~~
156a3 ~~It~~ ~~is~~ ~~that~~ ~~the~~ ~~text~~ ~~is~~ ~~in~~ ~~print~~ ~~that~~ ~~contrasts~~ ~~with~~ ~~the~~ ~~background~~ ~~against~~ ~~which~~ ~~it~~ ~~appears~~ ~~;~~ ~~OR~~
156a4 ~~It~~ ~~is~~ ~~that~~ ~~the~~ ~~text~~ ~~is~~ ~~in~~ ~~print~~ ~~that~~ ~~contrasts~~ ~~with~~ ~~the~~ ~~background~~ ~~against~~ ~~which~~ ~~it~~ ~~appears~~ ~~;~~ ~~OR~~

156a ~~It~~ ~~is~~ ~~that~~ ~~the~~ ~~text~~ ~~is~~ ~~in~~ ~~print~~ ~~that~~ ~~contrasts~~ ~~with~~ ~~the~~ ~~background~~ ~~against~~ ~~which~~ ~~it~~ ~~appears~~ ~~;~~ ~~OR~~
~~Section 3. Effective date~~

156b ~~It~~ ~~is~~ ~~that~~ ~~the~~ ~~text~~ ~~is~~ ~~in~~ ~~print~~ ~~that~~ ~~contrasts~~ ~~with~~ ~~the~~ ~~background~~ ~~against~~ ~~which~~ ~~it~~ ~~appears~~ ~~;~~ ~~OR~~
~~THIS BILL TAKES EFFECT ON MAY 5, 2005.~~

Legislative Review Note
as of 1-26-04 3:01 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel

AMENDED BILL

State Impact

By amendment, the bill's effective date has been moved so that the fiscal impact will, as a practical matter, be postponed until FY 2006. Enforcement of the provisions of this bill would require two additional investigators at a cost of \$145,500 from the Commerce Service Fund. Spending from the Commerce Service Fund could affect revenue available to the General Fund.

| | <u>FY 2005</u> <u>Approp.</u> | <u>FY 2006</u> <u>Approp.</u> | <u>FY 2005</u> <u>Revenue</u> | <u>FY 2006</u> <u>Revenue</u> |
|-----------------------|----------------------------------|----------------------------------|----------------------------------|----------------------------------|
| Commerce Service Fund | \$0 | \$145,500 | \$0 | \$0 |
| TOTAL | \$0 | \$145,500 | \$0 | \$0 |

Individual and Business Impact

No fiscal impact.
