

Senator Curtis S. Bramble proposes the following substitute bill:

CONSUMER PROTECTION REVISIONS

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: John Dougall

LONG TITLE

General Description:

This bill enacts the Radio Frequency Identification Tag Control Act within the Commerce and Trade Code.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires a person who manufactures, distributes, or sells a product with a radio frequency identification tag to provide notice that meets certain criteria; and
- ▶ provides a civil cause of action for a violation.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on July 1, 2005.

Utah Code Sections Affected:

ENACTS:

13-39-101, Utah Code Annotated 1953

13-39-102, Utah Code Annotated 1953

13-39-201, Utah Code Annotated 1953

13-39-301, Utah Code Annotated 1953



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

Section 1. Section **13-39-101** is enacted to read:

CHAPTER 39. RADIO FREQUENCY IDENTIFICATION TAG CONTROL ACT

Part 1. General Provisions

13-39-101. Title.

This chapter is known as the "Radio Frequency Identification Tag Control Act."

Section 2. Section **13-39-102** is enacted to read:

13-39-102. Definitions.

As used in this chapter:

(1) "Distributor" means a person that distributes products for retail sale.

(2) (a) "Electronically tagged retail product" means a retail product that contains a radio frequency identification tag:

(i) on or within the retail product; or

(ii) on or within the packaging of the retail product.

(b) "Electronically tagged retail product" does not include livestock or other animals.

(3) "Manufacturer" means a person engaged in the business of manufacturing and distributing products for retail sale.

(4) "Radio frequency identification tag" means a tag:

(a) designed to wirelessly transmit a unique electronic product code; and

(b) comprised of:

(i) an antenna or coil;

(ii) a transceiver with decoder; and

(iii) a transponder electronically programmed with a unique electronic product code.

(5) "Retail" means the sale of products for purposes other than resale.

(6) "Retailer" means a person that sells products directly to a consumer.

(7) "Unique electronic product code" means a number or identifier:

(a) developed for retail inventory control and management;

(b) that is stored and transmitted electronically; and

(c) that uniquely identifies an individual retail product item.

Section 3. Section **13-39-201** is enacted to read:

Part 2. Requirements**13-39-201. Disclosure requirements.**

(1) A retailer shall comply with Subsection (2) if:

(a) the retailer sells an electronically tagged retail product to a consumer; and

(b) the electronically tagged retail product described in Subsection (1)(a) contains a radio frequency identification tag that is not disabled upon transfer of ownership of the electronically tagged retail product to the consumer.

(2) A retailer described in Subsection (1) shall provide notice:

(a) (i) conspicuously on an electronically tagged retail product or the product packaging for an electronically tagged retail product;

(ii) on the purchase receipt or sales order;

(iii) conspicuously posted on the premises, within the catalog, or on the Internet website from which a consumer purchases an electronically tagged retail product; or

(iv) in any other manner determined by the retailer that is conspicuous to the consumer;

and

(b) informing the consumer that a radio frequency identification tag will remain active after the consumer assumes ownership of the electronically tagged retail product.

(3) A manufacturer or distributor shall comply with Subsection (4) if the manufacturer or distributor distributes an electronically tagged retail product that eventually will be sold by a retailer to a consumer.

(4) A person described in Subsection (3) shall provide:

(a) for an electronically tagged retail product with a radio frequency identification tag that may be disabled prior to the transfer of ownership from the retailer to the consumer, information informing the retailer how to disable the radio frequency identification tag; or

(b) for an electronically tagged retail product with a radio frequency identification tag that may not be disabled prior to the transfer of ownership from the retailer to the consumer, information that will allow the retailer to comply with Subsection (2).

(5) A retailer does not violate this section if the retailer:

(a) sells an electronically tagged retail product to a consumer in violation of this section; and

(b) allows the consumer to return the electronically tagged retail product for a full

88 refund of the purchase price.

89 (6) A retailer commits a single violation of this section with respect to electronically
90 tagged retail products:

91 (a) sold to the same consumer; and

92 (b) that are identical or substantially similar.

93 Section 4. Section **13-39-301** is enacted to read:

94 **Part 3. Enforcement**

95 **13-39-301. Civil remedy.**

96 (1) (a) A consumer who purchases an electronically tagged retail product may bring a
97 private right of action against a retailer who violates Section 13-39-201.

98 (b) In each action under this Subsection (1), a consumer may recover:

99 (i) \$500 for each violation; and

100 (ii) costs.

101 (2) (a) A retailer who sells an electronically tagged retail product may bring a private
102 right of action against a manufacturer or distributor whose violation of Section 13-39-201
103 causes the retailer to violate Section 13-39-201.

104 (b) In each action under this Subsection (2), a retailer may recover:

105 (i) actual damages; and

106 (ii) costs and reasonable attorney fees.

107 (3) (a) A distributor who distributes an electronically tagged retail product may bring a
108 private right of action against a manufacturer or distributor whose violation of Section
109 13-39-201 results in a retailer violating Section 13-39-201.

110 (b) In each action under this Subsection (3), a distributor may recover:

111 (i) actual damages; and

112 (ii) costs and reasonable attorney fees.

113 (4) A person may not bring a class action under this chapter.

114 **Section 5. Effective date.**

115 This bill takes effect on July 1, 2005.