

**CONSUMER PROTECTION REVISIONS**

2004 GENERAL SESSION

STATE OF UTAH

**Sponsor: John Dougall**

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**LONG TITLE**

**General Description:**

This bill enacts the Electronic Privacy 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 unique electronic identifier or product location information 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 January 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:*



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

29 **CHAPTER 39. ELECTRONIC PRIVACY ACT**

30 **Part 1. General Provisions**

31 **13-39-101. Title.**

32 This chapter is known as the "Electronic Privacy Act."

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

34 **13-39-102. Definitions.**

35 As used in this chapter:

36 (1) "Identified product" means a product that is available for retail purchase and:

37 (a) contains or bears a unique electronic identifier; or

38 (b) provides product location information.

39 (2) "Product location information" means information based on a unique electronic

40 identifier:

41 (a) providing:

42 (i) global positioning information of an identified product; or

43 (ii) relative positioning information of an identified product; and

44 (b) that may be:

45 (i) transmitted external to an identified product; or

46 (ii) determined using remote product location techniques that are based on a unique

47 electronic identifier.

48 (3) "Unique electronic identifier" means an identification number that:

49 (a) may be electronically transmitted external to an identified product; and

50 (b) is:

51 (i) universally unique; or

52 (ii) unique within the context in which the unique electronic identifier is used.

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

54 **Part 2. Disclosure Requirements**

55 **13-39-201. Consumer disclosure requirements.**

56 (1) A person shall comply with Subsection (2) if the person manufactures, distributes,  
57 or sells an identified product.

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

- 59 (a) (i) on an identified product; or
- 60 (ii) (A) for a person who sells an identified product, conspicuously posted on the
- 61 premises at which a consumer purchases an identified product; or
- 62 (B) for a person who manufactures or distributes an identified product, by including
- 63 with the identified product a notice that a seller may use to satisfy Subsection (2)(a)(ii)(A); and
- 64 (b) informing a consumer who purchases an identified product:
  - 65 (i) of the existence of a unique electronic identifier on or within the identified product;
  - 66 (ii) how the consumer may obtain additional information about the unique electronic
  - 67 identifier, including:
    - 68 (A) if possible, how the consumer may discard, disable, or remove the unique
    - 69 electronic identifier; or
    - 70 (B) if the unique electronic identifier may not be discarded, disabled, or removed, how
    - 71 the unique electronic identifier is used;
    - 72 (iii) of the ability for product location information to be determined and collected; and
    - 73 (iv) how the consumer may obtain additional information about the product location
    - 74 information, including:
      - 75 (A) if possible, how the consumer may avoid generating product location information
      - 76 by discarding, disabling, or removing that ability; or
      - 77 (B) if generation of product location information may not be discarded, disabled, or
      - 78 removed, how the product location information is generated and used.
  - 79 (3) A person does not violate this section if the person:
    - 80 (a) sells an identified product to a consumer in violation of this section; and
    - 81 (b) allows the consumer to return the identified product for a full refund of the
    - 82 purchase price.
  - 83 (4) A person commits a single violation of this section with respect to identified
  - 84 products:
    - 85 (a) sold to the same consumer; and
    - 86 (b) that are identical or substantially similar.

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

88 **Part 3. Enforcement**

89 **13-39-301. Civil remedy.**

90 (1) (a) A consumer who purchases an identified product may bring an action against a  
91 person who violates Section 13-39-201.

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

93 (i) \$100 for a first violation;

94 (ii) \$500 for each subsequent violation; and

95 (iii) costs.

96 (2) (a) A retailer who sells an identified product may bring an action against a  
97 manufacturer or distributor who violates Section 13-39-201.

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

99 (i) the greater of:

100 (A) actual damages; or

101 (B) (I) \$100 for a first violation; and

102 (II) \$500 for each subsequent violation; and

103 (ii) costs and reasonable attorney fees.

104 (3) A person may not bring a class action under this chapter.

105 **Section 5. Effective date.**

106 This bill takes effect on January 1, 2005.

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**Legislative Review Note**  
**as of 2-9-04 10:11 AM**

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

**Office of Legislative Research and General Counsel**

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**Fiscal Note**  
**Bill Number HB0314**

**Consumer Protection Revisions**

*13-Feb-04*

*11:14 AM*

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**State Impact**

No fiscal impact.

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**Individual and Business Impact**

Individual and business impacts will vary according to individual circumstances.

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**Office of the Legislative Fiscal Analyst**