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SENATE BILL NO. 1255

Offered January 14, 2009

Prefiled January 14, 2009

A BILL to amend the Code of Virginia by adding in Title 59.1 a chapter numbered 50, consisting of sections numbered 59.1-550 through 59.1-552, relating to the use of radio frequency identification systems; penalties.

Patron—Marsh

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 59.1 a chapter numbered 50, consisting of sections numbered 59.1-550 through 59.1-552, as follows:

CHAPTER 50.

RADIO FREQUENCY IDENTIFICATION SYSTEMS.

§ 59.1-550. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Consumer" means an individual in the Commonwealth who purchases or uses consumer products.

"Consumer product" means any tangible personal property that is distributed in commerce and that is normally intended to be offered for sale or provided for personal, family, or household purposes.

"Identification device" means a card or other device that stores personal information about the person to whom the device is issued and that uses an RFID tag to transmit information that is required to perform certain protocols or functions.

"Personal information" means an individual's name, address, date of birth, social security number, financial account numbers, driver's license number, telephone number, credit card or debit card information, personal identification number associated with a credit card or debit card, digital photographic image, fingerprint or other biometric identification, or any other unique personal identifier or number.

"Purchase" includes acquisition of possession by lease, license, gift, or other lawful means.

"Radio frequency identification" or "RFID" means a technology that incorporates the use of electromagnetic or electrostatic coupling in the radio frequency portion of the electromagnetic spectrum to communicate to or from an RFID tag.

"Radio frequency identification reader" or "RFID reader" means an electronic device capable of reading, activating, triggering, or receiving personal information or other data from a radio frequency identification tag.

"Radio frequency identification system" or "RFID system" means a combination of electronic and other devices including, but not limited to, RFID readers, tags, transmitters, processors, antennae, computers, visual displays, and automated checkout systems that enable the owner or user of the devices to track, monitor, record, identify, process, read, encode, decode, or disable a radio frequency identification tag.

"Radio frequency identification tag" or "RFID tag" means an electronic identifier comprised of electronic tags, electronic product codes, electronic chips, circuits, or other triggering devices that contain information related to the object to which it is attached, embedded, or associated, and which information or data is capable of being wirelessly transmitted to or read by an RFID reader or system.

"Remotely" means that no physical contact between the identification device and a reader is necessary in order to transmit data using an RFID tag.

"Supplier" means a person who in the normal course of its business sells, leases, or licenses, or offers to sell, lease, or license, consumer products to consumers.

"Track" means to locate or follow by means of a remotely readable device, but shall not include the use of locating technology used by the enhanced 911 system or commercial mobile radio service pursuant to 47 U.S.C. Section 332.

§ 59.1-551. Notice to consumers of use of radio frequency identification system; use and removal of RFID tags; penalty.

A. A supplier shall not permit the purchase of a consumer product to which it knows or reasonably should know that an RFID tag has been affixed or implanted unless there is affixed to the consumer product or its packaging a label, placed in a conspicuous location and printed in a conspicuous type size, containing the following text: "This product may contain a remotely readable device with information about the product that can be read without your knowledge if it is brought within range of

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SB1255

59 a reader device both before and after its purchase."

60 B. A supplier that uses an RFID system in the normal course of its business shall display a sign
61 placed in a conspicuous location at which consumer products are available to consumers, printed in a
62 conspicuous type size that is readable by a consumer before the consumer comes in contact with the
63 tagged consumer products, stating that: (i) the supplier's establishment uses radio frequency
64 identification technology; (ii) a radio frequency identification tag affixed to or implanted in a product
65 contains information about the product that can be accessed by an RFID reader both before and after
66 its purchase; and (iii) a description of the purpose of the RFID system.

67 C. RFID tags that are not components essential to the tagged consumer product's operation shall be
68 attached in such a way as to allow individuals to remove the tag after the product has been purchased
69 without damaging the consumer product.

70 D. An RFID reader or system used by a supplier in the normal course of its business shall only
71 store, encode, or track RFID tags attached to a consumer product that is listed in the inventory of that
72 supplier as not purchased, except in cases of product returns, product recalls, or for warranty purposes.

73 E. A label required to be affixed to a consumer product or its packaging pursuant to subsection A
74 shall not be removed by its supplier until the consumer product has been purchased by a consumer.

75 F. A person who violates this section is guilty of a Class 1 misdemeanor.

76 § 59.1-552. Remotely obtaining personal information from an identification device prohibited;
77 penalty.

78 A. A person shall not use an RFID reader remotely to access, read, obtain, memorize, or store,
79 temporarily or permanently, personal information encoded on or in an individual's identification device
80 (i) without the permission and prior consent of the authorized user of the identification device and (ii)
81 with the intent to defraud the authorized user, the issuer of the identification device, or a supplier or to
82 use any such personal information in furtherance of any activity prohibited by § 18.2-186.3.

83 B. Subsection A shall not apply to the reading of an individual's identification device by:

84 1. A health care professional for reasons relating to the health or safety of that individual;

85 2. Law-enforcement or government personnel who need to read a lost identification device when the
86 individual is unavailable for notice, knowledge, or consent, or those parties specifically authorized by
87 law-enforcement or government personnel for the limited purpose of reading a lost identification
88 document when the individual is unavailable for notice, knowledge, or consent;

89 3. Law-enforcement personnel who need to read an individual's identification device after an
90 accident in which the individual is unavailable for notice, knowledge, or consent; or

91 4. Law-enforcement personnel who need to read an individual's identification device pursuant to a
92 search warrant.

93 C. A person who violates this section is guilty of a Class 1 misdemeanor.