

2001 DRAFTING REQUEST

Assembly Amendment (AA-ASA1-AB889)

Received: 03/06/2002

Received By: rkite

Wanted: As time permits

Identical to LRB:

For: Marlin Schneider (608) 266-0215

By/Representing: Judy

This file may be shown to any legislator: NO

Drafter: rkite

May Contact:

Addl. Drafters:

Subject: Trade Regulation - other

Extra Copies:

Submit via email: NO

Pre Topic:

No specific pre topic given

Topic:

Prohibiting encryption of certain broadcast and cable service programming

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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FE Sent For:

<END>

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<END>

2001 BILL

#. Page 2, line 3: after "rates;" insert

1 AN ACT to create 100.2065 of the statutes, relating to prohibiting persons who
2 provide broadcast and cable television services from transmitting
3 programming that is encrypted in a certain manner.

Analysis by the Legislative Reference Bureau

This bill prohibits the provider of any broadcast audio or video service or any cable television telecommunications service from transmitting from this state any programming that is encrypted in such a manner that the programming may not be recorded by the recipient of the programming for the recipient's personal use. Current federal law specifies the extent to which a recipient may record programming for personal use.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

#. Page 5, line 2: after that line insert:

4 "SECTION 100.2065 of the statutes is created to read:
5 100.2065 Encryption of audio and video programming prohibited. (1)
6 In this section:
7 (a) "Broadcast service" has the meaning given in s. 196.01 (1m).

BILL

1 (b) "Cable television service" has the meaning given s. 196.01 (1p).

2 (2) No person who provides a broadcast service or a cable television service may
3 transmit from this state programming that is encrypted in such a manner that the
4 programming may not be recorded by a recipient of the programming for the
5 recipient's personal use, unless the personal use is prohibited under federal law.))

6 (END)

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

February 26, 2002

a 1473/1
LRB-382/1dr
RNK:1/1h:K

95

I have placed the encryption prohibition created in this draft in chapter 100 of the statutes. That chapter is generally administered by DATCP. If it was not your intention to have DATCP administer this prohibition, please let me know and I will redraft accordingly.

It is possible that a court might conclude that the encryption prohibition created in this draft is preempted by federal law. Generally, federal law preempts state law if Congress has expressed an intent to occupy a given field. The encryption issue concerns the fields of radio and television broadcasting and of copyright. Both of these complicated areas are heavily regulated under federal law. Furthermore, the FCC has been involved in the proposed license for an encryption technology for digital television known as DFAST (Dynamic Feedback Arrangement Scrambling Technique). This technology would enable the program provider to mark a given program with instructions about whether the program may be recorded. The recording device will not be able to record a program for which a "no copy" instruction is given. Because the FCC appears to support the right of a content provider to scramble or encrypt its programming, and because the broadcasting and copyright fields are heavily regulated under federal law, it is possible that a challenge to the prohibition created in this draft on preemption grounds might be successful. If you would like me to research this area in greater depth, please let me know.

Robin N. Kite
Legislative Attorney
Phone: (608) 266-7291
E-mail: robin.kite@legis.state.wi.us

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRBa1473/1dn
RNK:cjs:kjf

March 6, 2002

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