



State of Wisconsin
2009 - 2010 LEGISLATURE

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**ASSEMBLY SUBSTITUTE AMENDMENT 2,
TO 2009 ASSEMBLY BILL 29**

September 24, 2009 - Offered by Representative SCHNEIDER.

1 **AN ACT** *to amend* 940.32 (2m) (d), 968.27 (intro.), 968.27 (10), 968.31 (2) (intro.)
2 and 968.31 (3); and *to create* 100.575, 100.576, 947.014, 968.27 (13n) and
3 968.375 of the statutes; **relating to:** use of radio frequency identification tags,
4 sale of consumer goods containing radio frequency identification tags,
5 application to a court to use a radio frequency identification tag, radio
6 frequency identification databases and marketing profiles, requiring the
7 exercise of rule-making authority, and providing penalties.

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

8 **SECTION 1.** 100.575 of the statutes is created to read:
9 **100.575 Consumer and farm goods; radio frequency identification**
10 **tags. (1)** In this section:
11 (a) "Goods" includes all of the following:

1 1. Consumer goods, as defined in s. 409.102 (1) (fm).

2 2. Farm products, as defined in s. 409.102 (1) (ig), other than livestock.

3 (b) “Radio frequency identification tag” has the meaning given in s. 968.27
4 (13n).

5 **(2)** No person may knowingly sell to a purchaser in this state goods that contain
6 a radio frequency identification tag, unless all of the following apply:

7 (a) The person has posted a notice regarding radio frequency identification tags
8 at the entrance to the person’s place of business.

9 (b) A notice regarding the presence of radio frequency identification tags in the
10 goods has been attached to the goods by the person or the manufacturer of the goods.

11 (c) The person issues a receipt for the goods to the purchaser that contains a
12 notice regarding the presence of radio frequency identification tags in the goods.

13 **(3)** The department shall promulgate rules that establish the content to be
14 included in a notice required under sub. (2) and the means for providing notice under
15 sub. (2) (b) for different categories of goods.

16 **SECTION 2.** 100.576 of the statutes is created to read:

17 **100.576 Radio frequency identification tags; databases and marketing**
18 **profiles.** (1) In this section, “radio frequency identification tag” has the meaning
19 given in s. 968.27 (13n).

20 **(2)** Except as provided in sub. (4), no person may provide to another a database
21 consisting of information collected using radio frequency identification tags, unless
22 the information was collected with the consent of the persons to whom the
23 information pertains.

24 **(3)** No person may use a radio frequency identification tag to create a
25 marketing profile that pertains to an individual.

1 (4) The prohibition in sub. (2) does not apply to a database created for academic
2 research or for academic demonstration purposes.

3 **SECTION 3.** 940.32 (2m) (d) of the statutes is amended to read:

4 940.32 **(2m)** (d) The person violates s. 968.31 (1) ~~or~~, 968.34 (1), or 968.375 (1)
5 in order to facilitate the violation.

6 **SECTION 4.** 947.014 of the statutes is created to read:

7 **947.014 Unlawful use of radio frequency identification tag. (1)** In this
8 section, “radio frequency identification tag” means a device encoded with a unique
9 serial number that receives or transmits a signal over radio waves.

10 **(2)** No person may use a radio frequency identification tag with intent to
11 facilitate the commission of a crime.

12 **(3)** Except as provided in s. 940.32 (2m) (d), a person who violates sub. (2) is
13 guilty of the following:

14 (a) If the violation is the person’s first violation, a Class C misdemeanor.

15 (b) If the violation is the person’s 2nd violation, a Class B misdemeanor.

16 (c) If the violation is the person’s 3rd or subsequent violation, a Class A
17 misdemeanor.

18 **SECTION 5.** 968.27 (intro.) of the statutes is amended to read:

19 **968.27 Definitions.** (intro.) In ss. 968.28 to ~~968.37~~ 968.375:

20 **SECTION 6.** 968.27 (10) of the statutes is amended to read:

21 968.27 **(10)** “Investigative or law enforcement officer” means any officer of this
22 state or political subdivision thereof, who is empowered by the laws of this state to
23 conduct investigations of or to make arrests for offenses enumerated in ss. 968.28 to
24 ~~968.37~~ 968.375, and any attorney authorized by law to prosecute or participate in the
25 prosecution of those offenses.

1 **SECTION 7.** 968.27 (13n) of the statutes is created to read:

2 **968.27 (13n)** “Radio frequency identification tag” means a device encoded with
3 a unique serial number that receives or transmits a signal over radio waves.

4 **SECTION 8.** 968.31 (2) (intro.) of the statutes is amended to read:

5 **968.31 (2)** (intro.) It is not unlawful under ss. 968.28 to ~~968.37~~ 968.375:

6 **SECTION 9.** 968.31 (3) of the statutes is amended to read:

7 **968.31 (3)** Good faith reliance on a court order or on s. 968.30 (7) shall constitute
8 a complete defense to any civil or criminal action brought under ss. 968.28 to ~~968.37~~
9 968.375.

10 **SECTION 10.** 968.375 of the statutes is created to read:

11 **968.375 Use of radio frequency identification tags restricted. (1)**
12 **PROHIBITION.** Except as provided in sub. (5), no person may use a radio frequency
13 identification tag to monitor or track or engage in surveillance of a person’s
14 movements or location without first obtaining a court authorization under sub. (3).

15 **(2) APPLICATION TO USE RADIO FREQUENCY IDENTIFICATION TAG.** (a) The attorney
16 general or a district attorney may apply for an order or an extension of an order under
17 sub. (3) that authorizes or approves, in writing, the use of a radio frequency
18 identification tag to monitor or track or engage in surveillance of a person’s
19 movements or location. The application shall be submitted to a circuit court for the
20 county in which the radio frequency identification tag is to be installed.

21 (b) An application under par. (a) shall include the identity of the applicant and
22 the identity of the law enforcement agency conducting the investigation and a
23 certification by the applicant that the information likely to be obtained is relevant
24 to an ongoing criminal investigation that the law enforcement agency is conducting.

1 **(3) AUTHORIZATION.** (a) Upon receiving an application under sub. (2) (a), the
2 court shall enter an ex parte order authorizing or approving the use of a radio
3 frequency identification tag to monitor or track or engage in surveillance of a person's
4 movements or location if the court determines that the applicant has demonstrated
5 that the information likely to be obtained by the use of the radio frequency
6 identification tag is relevant to an ongoing criminal investigation. An order or
7 extension entered under this paragraph may not authorize or approve the use of a
8 radio frequency identification tag for more than 90 days.

9 (b) An order authorizing or approving the use of a radio frequency identification
10 tag shall direct the following:

11 1. That the order be sealed until otherwise ordered by the court.

12 2. That the person who has been ordered by the court to provide assistance to
13 the applicant not disclose the existence of the radio frequency identification tag or
14 the existence of the investigation to any other person unless or until otherwise
15 ordered by the court.

16 **(4) ASSISTANCE.** (a) Upon the request of the attorney general, a district
17 attorney, or a law enforcement agency authorized or approved under sub. (3) to use
18 a radio frequency identification tag to monitor or track or engage in surveillance of
19 a person's movements, a provider of radio frequency identification services, landlord,
20 custodian, or other person shall furnish the investigative or law enforcement officer
21 all information, facilities, and technical assistance, including installation and
22 operation of the radio frequency identification tag unobtrusively.

23 (b) A provider of radio frequency identification services, landlord, custodian,
24 or other person who furnishes information, facilities, or technical assistance under

1 par. (a) shall be reasonably compensated for the reasonable expenses incurred in
2 providing the information, facilities and assistance.

3 (c) No cause of action may lie in any court against any provider of radio
4 frequency identification services, its officers, employees or agents or other specified
5 persons for providing information, facilities or assistance in accordance with par. (a).

6 **(5) EXCEPTIONS.** The prohibition in sub. (1) does not apply to a person using a
7 radio frequency identification tag to monitor or track or engage in surveillance of a
8 person's movements or location if any of the following applies:

9 (a) The use is for academic research or for academic demonstration purposes
10 and occurs with the consent of the person whose movements or location are being
11 monitored, tracked, or surveilled.

12 (b) The use conforms to an exemption created by a state agency or an institution
13 of higher education.

14 (c) The use is by a hospital or nursing home only if any of the following applies:

15 1. The person being monitored, tracked, or surveilled is a patient or resident
16 of the hospital or nursing home.

17 2. If the person being monitored, tracked, or surveilled is a former patient or
18 resident of the nursing home, a physician has ordered the monitoring, tracking, or
19 surveillance.

20 **(6) PENALTY.** (a) Whoever knowingly violates sub. (1) may be fined not more
21 than \$10,000 or imprisoned for not more than 9 months or both.

22 (b) Any device used in violation of sub. (1) may be seized as contraband by any
23 law enforcement officer and forfeited to this state in an action by the department of
24 justice under ch. 778.

25 **SECTION 11. Effective date.**

