

2009 DRAFTING REQUEST

Assembly Substitute Amendment (ASA-AB29)

Received: **09/23/2009**

Received By: **csundber**

Wanted: **As time permits**

Identical to LRB:

For: **Marlin Schneider (608) 266-0215**

By/Representing: **Heidi Frechette**

This file may be shown to any legislator: **NO**

Drafter: **csundber**

May Contact:

Addl. Drafters:

Subject: **Trade Regulation - other**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Schneider@legis.wisconsin.gov**

Carbon copy (CC:) to: **christopher.sundberg@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Notice provisions, rulemaking, surveillance, exemptions

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>
/?	csundber 09/23/2009 chanaman 09/23/2009	kfollett 09/23/2009		_____			
/1	chanaman 09/23/2009	kfollett 09/23/2009	phenry 09/23/2009	_____	lparisi 09/23/2009	lparisi 09/23/2009	
/2	chanaman 09/23/2009	csicilia 09/24/2009	chanaman 09/23/2009	_____	lparisi 09/23/2009	lparisi 09/23/2009	

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/3			pherry 09/24/2009	_____	mbarman 09/24/2009	mbarman 09/24/2009	

FE Sent For:

<END>

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/2			chanaman 09/23/2009	_____	lparisi 09/23/2009	lparisi 09/23/2009	

1/3 9/24/09
9/24 ph ph/JF

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/1			phenry 09/23/2009	_____	lparisi 09/23/2009	lparisi 09/23/2009	

FE Sent For:

MD
KF
9/23

2009 DRAFTING REQUEST

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/?	csundber	1/15f 9/23	g bz ph	g 7/23			
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FE Sent For:

ph <END> ph/np

9/23 Heidi Frechette/LC

Sub to AB 29 for Schneider:

1. start w/ LRBs 0070/PI
- ✓ 2. Notice require posting @ merchant's door, tags on finished product by manufacturer, and notice on receipt
- ✓ 3. DATCP to promulgate rules on content of notice, how notice to be provided on various products
- ✓ 4. Incorporate AAI (does not apply to livestock)
5. Add to criminal prohibitions on p. 3 l. 12 "or engage surveillance" (also p. 3 l. 17, p. 4 l. 1, p. 4 l. 16, p. 5 l. 5)
- * 6. Exemption for hospitals/nursing homes, but RFID must be removed at discharge, unless ordered by physician
- * 7. Other exemption to criminal prohibition granted by agencies? Example: DPI creates exemption for school IDs.
8. Prohibit use of RFID to create an individual marketing profile.

Wanted TODAY 9/23/09



State of Wisconsin
2009 - 2010 LEGISLATURE

0129/1
LRBs0070/P1
CTS&CMH:cjs:jf RmNR
↓
EJF

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION
ASSEMBLY SUBSTITUTE AMENDMENT,
TO 2009 ASSEMBLY BILL 29

and marketing profiles

requiring the exercise of rule-making authority

Regen

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, 968.27 (13n) and 968.375 of the
3 statutes; **relating to:** use of radio frequency identification tags, sale of
4 consumer goods containing radio frequency identification tags, application to
5 a court to use a radio frequency identification tag, radio frequency
6 identification databases, and providing a penalty.

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

7 SECTION 1. 100.575 of the statutes is created to read:
8 **100.575 Consumer and farm goods; radio frequency identification**
9 **tags. (1)** In this section:
10 (a) "Goods" includes all of the following:
11 1. Consumer goods, as defined in s. 409.102 (1) (fm).

INS
2-5

↑ other than livestock

1

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

2

(b) "Radio frequency identification tag" has the meaning given in s. 968.27

3

(13n).

4

(2) No person may knowingly sell to a purchaser in this state goods that contain

5

a radio frequency identification tag, unless the person discloses to the purchaser that

6

the goods contain a radio frequency identification tag.

and marketing profiles

INS
2-11

7

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

8

100.576 Radio frequency identification tags; databases. (1) In this

9

section, "radio frequency identification tag" has the meaning given in s. 968.27 (13n).

10

(2) Except as provided in sub. (3), no person may provide to another a database

11

consisting of information collected using radio frequency identification tags.

12

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

13

14

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

15

940.32 (2m) (d) The person violates s. 968.31 (1) or 968.34 (1), or 968.375 (1)

16

in order to facilitate the violation.

17

SECTION 4. 968.27 (intro.) of the statutes is amended to read:

18

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

19

SECTION 5. 968.27 (10) of the statutes is amended to read:

20

968.27 (10) "Investigative or law enforcement officer" means any officer of this

21

state or political subdivision thereof, who is empowered by the laws of this state to

22

conduct investigations of or to make arrests for offenses enumerated in ss. 968.28 to

23

968.37 968.375, and any attorney authorized by law to prosecute or participate in the

24

prosecution of those offenses.

25

SECTION 6. 968.27 (13n) of the statutes is created to read:

1 968.27 **(13n)** "Radio frequency identification tag" means a device encoded with
2 a unique serial number that receives or transmits a signal over radio waves.

3 **SECTION 7.** 968.31 (2) (intro.) of the statutes is amended to read:

4 968.31 **(2)** (intro.) It is not unlawful under ss. 968.28 to ~~968.37~~ 968.375:

5 **SECTION 8.** 968.31 (3) of the statutes is amended to read:

6 968.31 **(3)** Good faith reliance on a court order or on s. 968.30 (7) shall constitute
7 a complete defense to any civil or criminal action brought under ss. 968.28 to ~~968.37~~
8 968.375.

9 **SECTION 9.** 968.375 of the statutes is created to read:

10 **968.375 Use of radio frequency identification tags restricted. (1)**

11 PROHIBITION. Except as provided in sub. (5), no person may use a radio frequency
12 identification tag to monitor or track a person's movements or location without first
13 obtaining a court authorization under sub. (3).

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

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

24 **(3) AUTHORIZATION.** (a) Upon receiving an application under sub. (2) (a), the
25 court shall enter an ex parte order authorizing or approving the use of a radio

*or
or engage in surveillance of*

or or engage in surveillance of

1 frequency identification tag to monitor or track a person's movements or location if
2 the court determines that the applicant has demonstrated that the information
3 likely to be obtained by the use of the radio frequency identification tag is relevant
4 to an ongoing criminal investigation. An order or extension entered under this
5 paragraph may not authorize or approve the use of a radio frequency identification
6 tag for more than 90 days.

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

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

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

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

21 (b) A provider of radio frequency identification services, landlord, custodian,
22 or other person who furnishes information, facilities, or technical assistance under
23 par. (a) shall be reasonably compensated for the reasonable expenses incurred in
24 providing the information, facilities and assistance.

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

4 (5) EXCEPTION. The prohibition in sub. (1) does not apply to persons using a
5 radio frequency identification tag to monitor or track a person's movements or
6 location if the use is for academic research or for academic demonstration purposes
7 and occurs with the consent of the person whose movements or location are being
8 monitored or tracked, or surveilled

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

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

14 (END)

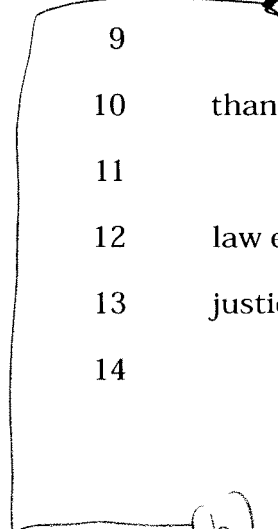
(b) The use conforms to an exemption created by
a state agency or an institution of higher education only

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

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

any of the following apply: (a)

or engage in surveillance of



**2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRBs0129/lins
CTS:.....

1 **Insert 2-5:**

2 all of the following apply:

3 (a) The person has posted a notice regarding radio frequency identification tags
4 at the entrance to the person's place of business.

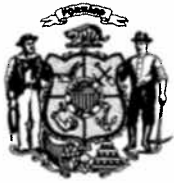
5 (b) A notice regarding the presence of radio frequency identification tags in the
6 goods has been attached to the goods by the manufacturer of the goods.

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

9 **(3)** The department[✓] shall promulgate rules that establish the content to be
10 included in a notice required under sub. (2)[✓] and the means for providing notice under
11 sub. (2) (b)[✓] for different categories of goods.

12 **Insert 2-11:**

13 **(3)** No person may use a radio frequency[✓] identification tag to create a
14 marketing profile that pertains to an individual.



TODAY

stays

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

refer car

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, 968.27 (13n) and 968.375 of the
3 statutes; **relating to:** use of radio frequency identification tags, sale of
4 consumer goods containing radio frequency identification tags, application to
5 a court to use a radio frequency identification tag, radio frequency
6 identification databases and marketing profiles, requiring the exercise of
7 rule-making authority, and providing a penalty *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 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.

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

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

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

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

125
34
4 **SECTION 4.** 968.27 (intro.) of the statutes is amended to read:

5 **968.27 Definitions.** (intro.) In ss. 968.28 to ~~968.37~~ 968.375:

6 **SECTION 5.** 968.27 (10) of the statutes is amended to read:

7 968.27 **(10)** "Investigative or law enforcement officer" means any officer of this
8 state or political subdivision thereof, who is empowered by the laws of this state to
9 conduct investigations of or to make arrests for offenses enumerated in ss. 968.28 to
10 ~~968.37~~ 968.375, and any attorney authorized by law to prosecute or participate in the
11 prosecution of those offenses.

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23 **PROHIBITION.** Except as provided in sub. (5), no person may use a radio frequency
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2 general or a district attorney may apply for an order or an extension of an order under
3 sub. (3) that authorizes or approves, in writing, the use of a radio frequency
4 identification tag to monitor or track or engage in surveillance of a person's
5 movements or location. The application shall be submitted to a circuit court for the
6 county in which the radio frequency identification tag is to be installed.

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

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12 court shall enter an ex parte order authorizing or approving the use of a radio
13 frequency identification tag to monitor or track or engage in surveillance of a person's
14 movements or location if the court determines that the applicant has demonstrated
15 that the information likely to be obtained by the use of the radio frequency
16 identification tag is relevant to an ongoing criminal investigation. An order or
17 extension entered under this paragraph may not authorize or approve the use of a
18 radio frequency identification tag for more than 90 days.

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

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22 2. That the person who has been ordered by the court to provide assistance to
23 the applicant not disclose the existence of the radio frequency identification tag or
24 the existence of the investigation to any other person unless or until otherwise
25 ordered by the court.

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

8 (b) A provider of radio frequency identification services, landlord, custodian,
9 or other person who furnishes information, facilities, or technical assistance under
10 par. (a) shall be reasonably compensated for the reasonable expenses incurred in
11 providing the information, facilities and assistance.

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

15 (5) EXCEPTION³ The prohibition in sub. (1) does not apply to ^aperson^s using a
16 radio frequency identification tag to monitor or track or engage in surveillance of a
17 person's movements or location if any of the following apply: *applies*

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

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

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

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



State of Wisconsin
2009 - 2010 LEGISLATURE

LRBs0060/1
CMH:nwn:rs

ASSEMBLY SUBSTITUTE AMENDMENT,
TO 2009 ASSEMBLY BILL 29

1 AN ACT *to create* 947.014 of the statutes; **relating to:** use of radio frequency
2 identification tags to facilitate a crime and providing penalties.

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

3 SECTION ~~2~~ 947.014 of the statutes is created to read:

4 **947.014 Unlawful use of radio frequency identification tag.** (1) In this
5 section, "radio frequency identification tag" means a device encoded with a unique
6 serial number that receives or transmits a signal over radio waves.

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

9 (3) ~~(A)~~ ^{Except as provided in s. 940.32 (2m)(d),} person who violates sub. (2) is guilty of the following:

10 (a) If the violation is the person's first violation, a Class C misdemeanor.

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

1A3
3-4



Barman, Mike

From: Hanaman, Cathlene
Sent: Wednesday, September 23, 2009 4:12 PM
To: Christina Duerst; Lori Northrop; Mike Barman; Sarah Basford
Subject: FW: LRB 09s0129 Topic: Notice provisions, rulemaking, surveillance, exemptions

Just so you know--the jacket's on its way, so no need to call.

From: Dumas, Aaron
Sent: Wednesday, September 23, 2009 4:09 PM
To: Hanaman, Cathlene
Subject: RE: LRB 09s0129 Topic: Notice provisions, rulemaking, surveillance, exemptions

It's on its way, Cathlene. Thanks!

Aaron

From: Hanaman, Cathlene
Sent: Wednesday, September 23, 2009 4:06 PM
To: Dumas, Aaron
Subject: FW: LRB 09s0129 Topic: Notice provisions, rulemaking, surveillance, exemptions

Aaron:

If you have not already, could you send the jacket back?

-Cathlene

From: Sundberg, Christopher
Sent: Wednesday, September 23, 2009 3:51 PM
To: Hanaman, Cathlene
Subject: FW: LRB 09s0129 Topic: Notice provisions, rulemaking, surveillance, exemptions

See the request for a redraft below.

From: Dumas, Aaron
Sent: Wednesday, September 23, 2009 3:49 PM
To: Sundberg, Christopher
Cc: Frechette, Heidi; Schneider, Marlin; Kieper, Cynthia
Subject: FW: LRB 09s0129 Topic: Notice provisions, rulemaking, surveillance, exemptions

Hi Chris,

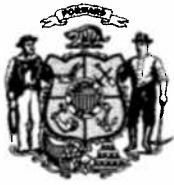
Thanks a ton for the sub on short notice. There's one more thing we'd like added--could you include the language from the sub below into ours as well?

<< File: 09s00601.pdf >>
Thanks much!

Aaron Dumas

Office of Representative Marlin Schneider
72nd Assembly District
Aaron.Dumas@legis.wisconsin.gov
(608) 266-0215 Toll Free 1-888-529-0072
Capitol 204 North

P.O. Box 8953 Madison, WI 53708



State of Wisconsin
2009 - 2010 LEGISLATURE

3

LRBs0129/2

CTS&CMH:cjs&kjfa

THURS
ASAP

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ASSEMBLY SUBSTITUTE AMENDMENT,
TO 2009 ASSEMBLY BILL 29

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1 AN ACT ~~to amend~~ 940.32 (2m) (d), 968.27 (intro.), 968.27 (10), 968.31 (2) (intro.)
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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.

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

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

A unless the information was collected with the consent of the persons to whom the information pertains

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

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

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

5 **947.014 Unlawful use of radio frequency identification tag.** (1) In this
6 section, “radio frequency identification tag” means a device encoded with a unique
7 serial number that receives or transmits a signal over radio waves.

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

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

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

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

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

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

17 **968.27 Definitions.** (intro.) In ss. 968.28 to ~~968.37~~ 968.375:

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

19 968.27 **(10)** “Investigative or law enforcement officer” means any officer of this
20 state or political subdivision thereof, who is empowered by the laws of this state to
21 conduct investigations of or to make arrests for offenses enumerated in ss. 968.28 to
22 ~~968.37~~ 968.375, and any attorney authorized by law to prosecute or participate in the
23 prosecution of those offenses.

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

1 968.27 (13n) "Radio frequency identification tag" means a device encoded with
2 a unique serial number that receives or transmits a signal over radio waves.

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

4 968.31 (2) (intro.) It is not unlawful under ss. 968.28 to ~~968.37~~ 968.375:

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

6 968.31 (3) Good faith reliance on a court order or on s. 968.30 (7) shall constitute
7 a complete defense to any civil or criminal action brought under ss. 968.28 to ~~968.37~~
8 968.375.

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

10 **968.375 Use of radio frequency identification tags restricted. (1)**
11 PROHIBITION. Except as provided in sub. (5), no person may use a radio frequency
12 identification tag to monitor or track or engage in surveillance of a person's
13 movements or location without first obtaining a court authorization under sub. (3).

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

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

24 **(3) AUTHORIZATION.** (a) Upon receiving an application under sub. (2) (a), the
25 court shall enter an ex parte order authorizing or approving the use of a radio

1 frequency identification tag to monitor or track or engage in surveillance of a person's
2 movements or location if the court determines that the applicant has demonstrated
3 that the information likely to be obtained by the use of the radio frequency
4 identification tag is relevant to an ongoing criminal investigation. An order or
5 extension entered under this paragraph may not authorize or approve the use of a
6 radio frequency identification tag for more than 90 days.

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

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

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

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

21 (b) A provider of radio frequency identification services, landlord, custodian,
22 or other person who furnishes information, facilities, or technical assistance under
23 par. (a) shall be reasonably compensated for the reasonable expenses incurred in
24 providing the information, facilities and assistance.

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

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

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

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

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

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

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

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

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

23

(END)

Section #. Effective Date.
⑨

(#) This act takes effect on the first day of the 10th month beginning after publication.

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date