

2009 DRAFTING REQUEST

Assembly Substitute Amendment (ASA-AB29)

Received: 09/28/2009

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:

Revised definition of RFID

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 10/02/2009 chanaman 10/15/2009 csundber 10/16/2009	csicilia 10/21/2009		_____			
/1	csundber 11/04/2009	csicilia 11/04/2009	mduchek 10/21/2009	_____	cduerst 10/21/2009	cduerst 10/21/2009	

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/2			mduchek 11/04/2009	_____	mbarman 11/04/2009	mbarman 11/04/2009	

FE Sent For:

<END>

2009 DRAFTING REQUEST

Assembly Substitute Amendment (ASA-AB29)

Received: 09/28/2009

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:

Revised definition of RFID

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 10/02/2009 chanaman 10/15/2009 csundber 10/16/2009	csicilia 10/21/2009					
		2 cjs 11/4 MD 09 11/4		11/4 11/4			
/1			mduchek 10/21/2009		cduerst 10/21/2009	cduerst 10/21/2009	

FE Sent For:

<END>

2009 DRAFTING REQUEST

Assembly Substitute Amendment (ASA-AB29)

Received: 09/28/2009

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:

Revised definition of RFID

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>
1/?	csundber	1/9/09	10/16/09		_____	_____	_____

FE Sent For:

<END>

Sundberg, Christopher

From: Frechette, Heidi
Sent: Monday, September 28, 2009 9:59 AM
To: Sundberg, Christopher
Subject: FW: RFID definitions

Hello Chris, below is the language proposed by Staskunas office. I am getting clarification from them whether (f) is necessary. I would appreciate your thoughts on whether this is a good definition but not too broad. Thanks-Heidi

From: Kelly, Tom
Sent: Thursday, September 24, 2009 10:05 AM
To: Kieper, Cynthia; Frechette, Heidi
Subject: RFID definitions

Information for creating statutory definitions:

- (a) 'radio frequency identification' (RFID) means the use of electromagnetic radiating waves or reactive field coupling in the radio frequency portion of the spectrum to communicate to or from a tag through a variety of modulation and encoding schemes to uniquely read the identity of a radio frequency tag or other data stored on it;
- (b) 'RFID tag' or 'tag' means either a RFID device having the ability to produce a radio signal or a RFID device which re-couples, back-scatters or reflects (depending on the type of device) and modulates a carrier signal received from a reader or writer;
- (c) 'RFID reader or writer' or 'reader' means a fixed or mobile data capture and identification device using a radio frequency electromagnetic wave or reactive field coupling to stimulate and effect a modulated data response from a tag or group of tags;
- (d) 'RFID application' or 'application' means an application that processes data through the use of tags and readers, and which is supported by a back-end system and a networked communication infrastructure;
- (e) 'RFID application operator' or 'operator' means the natural or legal person, public authority, agency, or any other body, which, alone or jointly with others, determines the purposes and means of operating an application, including controllers of personal data using an RFID application;
- (f) 'Automatic Identification and Data Capture (AIDC)' refers to the methods of automatically identifying objects, collecting data about them, and entering that data directly into computer systems without any human involvement. AIDC is also commonly referred to as "Automatic Identification," "Auto-ID," and "Automatic Data Capture."

Tom Kelly
Office of Rep. Staskunas
Speaker Pro Tempore
212-North, State Capitol
608-266-0620

9/28 Heidi/ Leg Council 6-0680

Committee changes to LRB 0129/3.

1. p. 2 l. 20: add "seller" before "provide"

2. p. 2 l. 24-25: strike

3. p. 6 l. 12-13: strike

4. RFID definition: see email



ln: 10/15/09

SOON

State of Wisconsin
2009 - 2010 LEGISLATURE

FROM: s0129/3
0134/1
LRBs0129/3
CTS&CMH:cjs&kjf:ph RMNR
shays

ASA

ASSEMBLY SUBSTITUTE AMENDMENT ~~2~~
TO 2009 ASSEMBLY BILL 29

full list
SA ✓

~~September 24, 2009 - Offered by Representative SCHNEIDER.~~

negot

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 devices
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 (1) In this section:
tags devices

11 (a) "Goods" includes all of the following:

2

device

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

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

(13n).

means a device intended for use in radio frequency identification as defined under

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

device

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

tags
devices

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

tags
devices

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

tags
devices

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

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

100.576 Radio frequency identification tags; databases and marketing profiles.

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

(2) Except as provided in sub. (1), no person may provide to another a database consisting of information collected using radio frequency identification tags, unless the information was collected with the consent of the persons to whom the information pertains.

sell or

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

x

1

2

~~④ The prohibition in sub. (2) does not apply to a database created for academic 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" ^{has the meaning given in s. 968.27(13n)} 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~~ ^{by} radio frequency identification ~~tag~~ ^{intentionally} intent

11

facilitate the commission of a crime. ^{STET: no changes}

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.

INS - 4 -
4-2

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

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

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

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

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

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

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

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

PROHIBITION. Except as provided in sub. (5), no person may use a radio frequency identification tag to monitor or track or engage in surveillance of a person's movements or location ^{by radio frequency identification} without first obtaining a court authorization under sub. (3).

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

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

3/10

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 ^{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, ^{by} a provider of radio frequency identification services, landlord,
20 custodian, or other person shall ^{unobtrusively} furnish the investigative or law enforcement officer
21 all information, facilities, and technical assistance, including ^{any unobtrusive} 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

necessary

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 ^{who s} monitor ^s or track ^s or engage ^s in surveillance of a
8 person's movements or location ^{by a} 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.

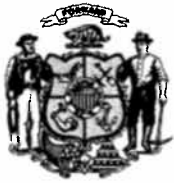
25 SECTION 11. Effective date.

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

LRBs0134/plins
CTS,CMH:.....

1 Insert 4-2

2 “Radio frequency identification” means the use of a device to generate a radio
3 frequency electromagnetic signal in order to cause a 2nd device to transmit, using
4 the energy contained in the signal received from the first device, an electromagnetic
5 signal that contains information identifying the 2nd device.



Lu: 11/4 Wanted: Tomorrow (Thurs)

State of Wisconsin
2009 - 2010 LEGISLATURE

LRBs0134/1
CTS&CMH:cjs&kjf:ma
Stays
2
RM NR

ASSEMBLY SUBSTITUTE AMENDMENT,
TO 2009 ASSEMBLY BILL 29

(B)

Radio Frequency identification devices

SW

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, sale
4 of consumer goods containing radio frequency identification devices,
5 application to a court to use radio frequency identification, radio frequency
6 identification databases and marketing profiles, requiring the exercise of
7 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 devices (1) In this section:

↑ period stays

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 device" means a device intended for use in
4 radio frequency identification, as defined under s. 968.27 (13n).

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

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

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

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

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

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

18 **100.576 Radio frequency identification; databases and marketing**

19 **profiles.** (1) In this section, "radio frequency identification" has the meaning given
20 in s. 968.27 (13n).
period stays

21 (2) No person may sell or provide to another a database consisting of
22 information collected using radio frequency identification, unless the information
23 was collected with the consent of the persons to whom the information pertains.

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

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

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

4 **947.014 Unlawful radio frequency identification.** (1) In this section,
5 “radio frequency identification” has the meaning given in s. 968.27 (13n).

6 **(2)** No person may intentionally facilitate by radio frequency identification the
7 commission of a crime.

8 **(3)** Except as provided in s. 940.32 (2m) (d), a person who violates sub. (2) is
9 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.

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

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

15 **968.27 Definitions.** (intro.) In ss. 968.28 to ~~968.37~~ 968.375: ✓

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

17 968.27 **(10)** “Investigative or law enforcement officer” means any officer of this
18 state or political subdivision thereof, who is empowered by the laws of this state to
19 conduct investigations of or to make arrests for offenses enumerated in ss. 968.28 to
20 ~~968.37~~ 968.375, and any attorney authorized by law to prosecute or participate in the
21 prosecution of those offenses.

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

23 968.27 **(13n)** “Radio frequency identification” means the use of a device to
24 generate a radio frequency electromagnetic signal in order to cause a 2nd device to

1 transmit, using the energy contained in the signal received from the first device, an
2 electromagnetic signal that contains information identifying the 2nd device.

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 restricted. (1)**

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

14 (2) APPLICATION TO USE RADIO FREQUENCY IDENTIFICATION. (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, radio frequency identification to
17 monitor or track or engage in surveillance of 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 is to occur initially.

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 radio frequency

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

6 (b) An order authorizing or approving radio frequency identification shall
7 direct the following:

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

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

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

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

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

