



**ASSEMBLY SUBSTITUTE AMENDMENT 3,
TO 2009 ASSEMBLY BILL 29**

September 24, 2009 – Offered by COMMITTEE ON PERSONAL PRIVACY.

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, requiring the exercise of rule-making authority, and
7 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 Radio frequency identification devices; consumer and farm**
10 **goods.** (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 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.** **(1)** In this section,
19 “radio frequency identification” has the meaning given in s. 968.27 (13n).

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

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

24 940.32 **(2m)** (d) The person violates s. 968.31 (1) ~~or~~, 968.34 (1), or 968.375 (1)
25 in order to facilitate the violation.

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

2 **947.014 Unlawful radio frequency identification.** (1) In this section,
3 “radio frequency identification” has the meaning given in s. 968.27 (13n).

4 (2) No person may intentionally facilitate by radio frequency identification the
5 commission of a crime.

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

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

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

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

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

13 **968.27 Definitions.** (intro.) In ss. 968.28 to ~~968.37~~ 968.375:

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

15 968.27 (10) “Investigative or law enforcement officer” means any officer of this
16 state or political subdivision thereof, who is empowered by the laws of this state to
17 conduct investigations of or to make arrests for offenses enumerated in ss. 968.28 to
18 ~~968.37~~ 968.375, and any attorney authorized by law to prosecute or participate in the
19 prosecution of those offenses.

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

21 968.27 (13n) “Radio frequency identification” means the use of a device to
22 generate a radio frequency electromagnetic signal in order to cause a 2nd device to
23 transmit, using the energy contained in the signal received from the first device, an
24 electromagnetic signal that contains information identifying the 2nd device.

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

1 968.31 (2) (intro.) It is not unlawful under ss. 968.28 to ~~968.37~~ 968.375:

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

3 968.31 (3) Good faith reliance on a court order or on s. 968.30 (7) shall constitute
4 a complete defense to any civil or criminal action brought under ss. 968.28 to ~~968.37~~
5 968.375.

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

7 **968.375 Use of radio frequency identification restricted. (1)**

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

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

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

21 (3) AUTHORIZATION. (a) Upon receiving an application under sub. (2) (a), the
22 court shall enter an ex parte order authorizing or approving radio frequency
23 identification to monitor or track or engage in surveillance of a person's movements
24 or location if the court determines that the applicant has demonstrated that the
25 information likely to be obtained by radio frequency identification is relevant to an

1 ongoing criminal investigation. An order or extension entered under this paragraph
2 may not authorize or approve radio frequency identification for more than 90 days.

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

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

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

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

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

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

23 (5) EXCEPTIONS. The prohibition in sub. (1) does not apply to a person who
24 monitors or tracks or engages in surveillance of a person's movements or location by
25 radio frequency identification if any of the following applies:

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

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

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

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

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

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

15 **SECTION 11. Effective date.**

16 (1) This act takes effect on the first day of the 12th month beginning after
17 publication.

18 (END)