

## STATE OF NEW YORK

275

2009-2010 Regular Sessions

## IN ASSEMBLY

(Prefiled)

January 7, 2009

Introduced by M. of A. PHEFFER, DESTITO, KAVANAGH -- Multi-Sponsored by  
-- M. of A. BOYLAND, FARRELL, WALKER -- read once and referred to the  
Committee on Consumer Affairs and Protection

AN ACT to establish a task force on the privacy implications of radio  
frequency identification technology

The People of the State of New York, represented in Senate and Assem-  
bly, do enact as follows:

1 Section 1. Legislative intent. The legislature finds that the right to  
2 privacy is a personal and fundamental right protected by the United  
3 States constitution. The legislature additionally finds that systems  
4 used to transmit the identity of an object or person using radio waves  
5 or other wireless means, commonly referred to as radio frequency iden-  
6 tification technology, are increasingly being used by public and private  
7 entities, including retailers, manufacturers, and hospitals. Moreover,  
8 the legislature recognizes that as the price of radio frequency iden-  
9 tification technology decreases, the employment of this technology is  
10 expected to increase rapidly. The legislature recognizes that radio  
11 frequency identification technology may have numerous privacy impli-  
12 cations affecting consumers and the general public. The legislature  
13 further recognizes that radio frequency identification technology may  
14 have numerous applications beneficial to public and private entities and  
15 shared by consumers and the general public. The legislature further  
16 recognizes that radio frequency identification technology needs to  
17 undergo a formal technology assessment. The legislature additionally  
18 finds that an assessment of the need to review the privacy implications  
19 and protections and practical applications of this technology is  
20 warranted.

21 § 2. The New York state radio frequency identification privacy task  
22 force is hereby established. The role of the task force includes, but is  
23 not limited to:

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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1 (a) assessing the privacy issues associated with the use of radio  
2 frequency identification technologies by public and private entities,  
3 including but not limited to, state, county, and local governments,  
4 retailers, manufacturers, employers, and schools;

5 (b) assessing the practical applications associated with radio  
6 frequency identification technologies, including, but not limited to,  
7 the tracking of merchandise within a chain of distribution, protection  
8 of merchandise against theft, and other beneficial uses by state, county  
9 and local governments, retailers, manufacturers, employers and schools;

10 (c) assessing whether or not the use of radio frequency identification  
11 technology by businesses and the state and its political subdivisions  
12 should be prohibited or restricted and whether or not legislation is  
13 necessary to regulate the use of such technology; and

14 (d) preparing a report for submission to the governor and the legisla-  
15 ture that provides specific recommendations regarding: existing state  
16 laws, regulations, programs, policies, and practices related to the use  
17 of radio frequency identification technology; the privacy issues associ-  
18 ated with the use of radio frequency identification technology by public  
19 and private entities; research on privacy issues associated with the use  
20 of radio frequency identification technology; current and anticipated or  
21 possible future uses of radio frequency identification technology; the  
22 benefits to consumers and businesses from the use of radio frequency  
23 identification technology; the need to prohibit or restrict the use of  
24 radio frequency identification technology in certain situations; and  
25 public awareness on the use of radio frequency identification technolo-  
26 gy.

27 § 3. The task force shall issue its findings, in the form of a report,  
28 no later than November 30, 2011.

29 § 4. The task force shall consist of a total of seventeen members and  
30 shall include the chairperson of the consumer protection board, the  
31 secretary of state, the commissioner of education, the director of the  
32 office for technology, the attorney general, and the mayor of the city  
33 of New York, or a designee of any of said officers. The remaining elev-  
34 en, at-large members shall be appointed as follows: three shall be  
35 appointed by the governor; three shall be appointed by the temporary  
36 president of the senate and one by the minority leader of the senate;  
37 three shall be appointed by the speaker of the assembly and one by the  
38 minority leader of the assembly. One each of the appointments of the  
39 governor, temporary president of the senate, and the speaker of the  
40 assembly shall be a member, officer, or employee of a consumer advocacy  
41 organization.

42 One of the appointments of the governor shall be a member, officer, or  
43 employee of a national high technology trade association with a signif-  
44 icant presence in the state representing the radio frequency identifica-  
45 tion technology manufacturing industry. One of the appointments of the  
46 governor shall be a member, officer, or employee of a statewide associ-  
47 ation representing and advocating for the interests of local govern-  
48 ments. One of the appointments of the speaker of the assembly shall be  
49 a member, officer, or employee of a statewide trade association repres-  
50 enting primarily retail businesses. One of the appointments of the  
51 speaker of the assembly shall be a member, officer, or employee of a  
52 manufacturer of radio frequency identification systems. One of the  
53 appointments of the temporary president of the senate shall be a member,  
54 officer, or employee of a statewide trade association representing the  
55 grocery industry. One of the appointments of the temporary president of  
56 the senate shall be a member, officer, or employee of a financial insti-

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1 tution that employs radio frequency identification systems in one or  
2 more of its products. An organization shall be considered a consumer  
3 advocacy organization if it advocates for enhanced consumer protection  
4 in the marketplace, educates consumers, and researches and analyzes  
5 consumer issues, including consumers' right to privacy.

6 § 5. The chairperson of the consumer protection board and the director  
7 of the office for technology or their designees shall serve as joint  
8 chairpersons of the task force.

9 § 6. The task force may consult with any organization, educational  
10 institution, governmental agency, or person including, but not limited  
11 to, the federal trade commission, the federal communications commission,  
12 and the Electronic Privacy Information Center, a public interest  
13 research center that advocates for first amendment and individual priva-  
14 cy rights.

15 § 7. The chairpersons of the task force may reconvene the task force,  
16 with the same or different members, after issuance of the report, to  
17 address any other or further privacy issues associated with the use of  
18 radio frequency identification technology.

19 § 8. The members of the task force shall serve without compensation,  
20 except that at-large members shall be allowed their necessary and actual  
21 expenses incurred in the performance of their duties under this act.

22 § 9. The consumer protection board shall provide the task force with  
23 such facilities, assistance, and data as will enable the task force to  
24 carry out its powers and duties. Additionally, all other departments or  
25 agencies of the state or subdivisions thereof shall, at the request of  
26 the chairpersons, provide the task force with such facilities, assist-  
27 ance, and data as will enable the task force to carry out its powers and  
28 duties.

29 § 10. This act shall take effect immediately.

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**NEW YORK STATE ASSEMBLY  
MEMORANDUM IN SUPPORT OF LEGISLATION  
submitted in accordance with Assembly Rule III, Sec 1(f)**

**BILL NUMBER:** A275

**SPONSOR:** Pheffer (MS)

**TITLE OF BILL:** An act to establish a task force on the privacy implications of radio frequency identification technology

**PURPOSE OR GENERAL IDEA OF BILL:**

The purpose of this bill is to establish a task force that would assess various privacy issues associated with the use of radio frequency identification technologies by public and private entities.

**SUMMARY OF SPECIFIC PROVISIONS:**

This bill would authorize and direct the establishment of the New York state radio frequency identification privacy task force. The task force would be charged with providing a report to the governor and legislature with specific findings and recommendations, including the need to prohibit or restrict the use of radio frequency identification technology in certain situations, no later than November 30, 2009. The bill would direct the chairperson of the consumer protection board and the director of the office for technology to serve as joint chairpersons of the 17 member task force.

**JUSTIFICATION:**

The right to privacy is a personal and fundamental right protected by the United States Constitution. Systems used to transmit the identity of an object or person using radio waves or other wireless means, commonly referred to as radio frequency identification technology (RFID), are increasingly being used by public and private entities, including retailers, manufacturers, and hospitals. As the price of radio frequency identification technology decreases, the employment of this technology is expected to increase rapidly. Several major retailers, including Wal-Mart, Target and Best Buy, are moving rapidly to add RFID tags to products they sell. This new technology has several privacy implications, including the potential for the tracking of movements of a person who possesses or handles objects containing radio frequency identification tags and the profiling of citizens without their consent.

The New York state radio frequency identification task force would subject RFID to a formal technology assessment and determine the need for the State to regulate this technology in order to ensure personal privacy.

**PRIOR LEGISLATIVE HISTORY:**

2007-2008: A.225-B - Passed Assembly 2005-2006: A.9506 - Passed Assem-

bly.

**FISCAL IMPLICATIONS:**

Minimal.

**EFFECTIVE DATE:**

Immediately.

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