

# N. H. Reps Approve 'Tracking Device' Bill

The state's house of representatives passed a bill that would require notification of tracking devices, including RFID, used in consumer goods and IDs, while restricting certain uses of the devices.

By Mary Catherine O'Connor

Jan. 19, 2006—The New Hampshire House of Representatives approved a bill, HB-203, that would require warning labels on consumer goods and identity documents containing RFID tags or other tracking devices; regulate the use of RFID or other technology for tracking individuals; and establish a commission on the use of tracking devices in government and business. The bill now heads to the New Hampshire Senate, where it will be assigned a hearing committee.

At least two industry groups—the American Electronics Association (AeA) and the Retail Merchants Association of New Hampshire (RMANH)—oppose the bill. These groups claim that despite amendments softening the restrictions originally placed on the use of tracking devices such as RFID, the bill remains too limiting of the technology and places overly onerous requirements on companies looking to use the technology. Despite this opposition, New Hampshire Representative Neal Kurk (D, R), one of the bill's supporters, says he stands behind the proposed law.

"This is a simple notification bill, which is something that industry groups keep saying they support," says Kurk, surprised to discover that industry groups still object to the bill after numerous amendments. He declined to detail how those amendments have changed during the life of the bill, however.

The bill in question is an amendment to the state's Consumer Protection Act (RSA 358-A). If passed, it would require that all consumer goods or identification documents (such as driver's licenses, credit cards or library cards) with an embedded "tracking device" to be labeled with a "universally accepted symbol" to denote the inclusion of the device. The bill defines such a symbol as "a graphical system designed to provide a standard way to show the presence of an RFID transponder, its frequency and data structure" used on the tag. It adds that any party selling, offering for sale or providing a consumer with goods that include an RFID device, but not the universally accepted symbol, can be charged with a misdemeanor.

"The foundation of our position is that legislature should not pass laws directed at [RFID] technology, but [rather at the] inappropriate use of the technology," says Curtis Barry, a lobbyist for the Retail Merchants Association of New Hampshire. Now that the bill has passed through the house, he says, the group's first concern is to make sure New Hampshire senators have a full understanding of RFID technology and how it can be used.

In late December, the AeA sent a letter to Sheila Francoeur, chair of the House Commerce Committee, where the bill originated. The letter claims the amended bill contains language that is overly broad. For instance, it says, the bill defines RFID as "technologies that use radio waves to identify individual physical objects," with tracking devices described as "any item or application that is passively or actively capable of transmitting unique identification or location information."

"These definitions," the letter states, "would naturally capture cellular telephones and a myriad of other technologies within the breadth of the legislation—surely an unintended consequence."

Marc-Anthony Signorino, director and counsel of technology policy for the AeA, says the legal penalties for noncompliance with the bill's consumer products labeling requirement would put an onus on retailers, large and small, to place those labels on products that include RFID tags in the event that manufacturers fail to do so. He adds that the AeA knows of no universally accepted symbol to denote the presence of RFID technology. "This legislation puts the cart before the horse," he says.

However, Kurk says, if retailers find that having to place notification on goods is onerous, "they will push it upon wholesalers, who will push it upon the manufacturers."

"Manufacturers will comply with notification because it is in their own best interest to do so," Kurk adds, noting that consumers want to know where technology such as RFID is being used. If a product is sold with an embedded RFID tag but does not include notification, he argues, and if consumers learn through other means about the presence of the tag, this will negatively impact the consumers.

In addition to requiring notice of tracking devices on consumer goods, HB203 would prohibit the state of New Hampshire or any of its political subdivisions or agencies from using RFID to track individuals. Exceptions include incarcerated prisoners and patients in hospitals, nursing homes or assisted-living facilities. The bill also states that no state-issued identity document could contain, transmit or enable the remote reading of any personal information other than a unique personal identifying number issued by the state.

Additionally, the bill's latest amendments prohibit the implantation of an RFID tag into any person without their consent or that of a legal guardian. It also calls for a commission to study RFID devices in government and business, and monitor their effects on the economy and society.

At least 12 states in 2005 introduced privacy legislation relating to the use of RFID, according to the [National Conference of State Legislatures](#). Last year, the [California State Senate](#) approved the Identity Information Protection Act of 2005, which would put a three-year moratorium on the use of RFID in California-issued identity documents (see [Calif. RFID Bill Assumes New Identity](#)). The [California State Assembly](#) is set to vote on it some time this year. Washington has also introduced legislation aimed at regulating the use of RFID in IDs.

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