

For the third time in the past four years, the state's house of representatives wants to require businesses to notify consumers if items have RFID tags, and to provide restrictions regarding how those tags are used.

By Claire Swedberg

Jan. 8, 2010—The [New Hampshire State House of Representatives](#) passed a bill on Wednesday to restrict the use of radio frequency identification technology in order to protect the privacy of consumers. The legislation, known as House Bill 478, is similar to two previous bills that failed to pass twice. HB 478, which will now be sent to the state's senate for consideration, differs from a recommendation made by the State of New Hampshire Commission on the Use of Radio Frequency Technology, established in 2006.

In that year, another house bill—HB 203, which was originally similar to the current bill—had passed the house (see [N. H. Reps Approve 'Tracking Device' Bill](#)). All but one of its provisions, however, were gutted by the state's senate. The version of HB 203 that was ultimately signed by the governor called for the creation of a commission to study RFID, with 18 members including representatives from the [Retail Merchants Association of New Hampshire](#), the state's [High Technology Council](#), the [New Hampshire Grocers' Association](#) and the university system of New Hampshire.

The commission met several times each year before completing its report in 2008, recommending restrictions of some RFID usage, such as implantable devices, but steering away from recommending other regulations that it believed could negatively impact businesses ([click here to read the commission's final report](#)). The group submitted the report to New Hampshire's [House Commerce and Consumer Affairs Committee](#), and was then adjourned. In the meantime, the house passed a similar RFID privacy bill in 2008, which was again rejected by the senate, according to the bills' author, Rep. Neal Kurk, who is not a member of the commerce committee. House members can reintroduce a bill only once every two-year session. The commerce committee recommended a draft bill to the house of representatives in 2009 based on that report, but the representatives never acted on that draft.

In January 2009, Kurk introduced HB 478, which did not include many of the commission's recommendations. After passing from one committee to another during the next 12 months, HB 478 was finally approved by the house with a vote of 186-170. The bill requires that RFID-tagged items (whether for sale, loan or rent) also carry consumer notification labels indicating that radio frequency technology was attached to a product or item. It also mandates that a business disable RFID tags on an item if so demanded by a consumer. The commission had recommended against both of those restrictions, indicating its members could not form a consensus regarding how labeling could be accomplished, or who would be required to do so. The commission could also not agree whether labeling requirements would violate federal interstate commerce. The commission did not recommend that businesses be required to disable RFID tags at a consumer's request either, indicating such a dictate would be unfeasible for small businesses.

There were some areas in which the bill and the commission's findings agreed—for example, both would prohibit the human implantation of RFID tags without an individual's written consent. What's more, a state or political department or agency would not be able to issue ID documents (such as driver's licenses or ID cards) containing embedded RFID transponders, except in the case of an incarcerated prisoner, or for use on toll roads for collecting funds, or as access control to a secured public building or parking lot. The state would also be restricted from issuing identification documents with any personal information other than a unique ID number, and could not install readers on roadways to track individuals or vehicles.

Additionally, HB 478 and the commission's version both prohibit tracking people with RFID. Doing so would be prosecuted as a class B felony.

Kurk says he has hopes that the bill will pass the senate this year, based on greater public awareness of RFID and its privacy risks, as well as the presence of many new senate members, including a majority of Democrats who he believes may be more likely to vote in accordance with consumer privacy rights. While opponents of the bill—including retail associations—warn that it is still too early in RFID's adoption to place restrictions on the technology's use, Kurk likens that to adopting a lion cub. "You take it in as a pet," he says, "and as it grows up, it mauls you and eats you."

The commission spent many hours discussing the subtleties of privacy concerns that could develop from RFID, says Richard Varn, the City of San Antonio's chief information officer and the founder of RJV Consulting, an IT and business strategy consulting firm. Varn has expertise in information technology, privacy and identity security, and was appointed to the commission by the Retail Merchants Association of New Hampshire. Despite the amount of time spent by the commission members to create a consistent recommendation accommodating both business and privacy groups, he says, the bill does not take much of their work into account.

"This is not a black-and-white question," Varn states. "We spent two years working through the subtleties of these issues." For example, he says, the group considered who would be responsible for attaching notification labeling on all products in New Hampshire with RFID tags. Another question the bill raises, he adds, is whether it would be possible for retailers such as small-business owners to deactivate tags on the products they sell.

"The cost for that would be high," Varn says, "while the benefit would be low." He adds that the penalties are unduly restrictive, with a \$1,000 fine allocated for each violation. Varn points to the potential for misuse of this penalty, such as fining a retailer for unknowingly selling products containing RFID tags, and charging that company \$1,000 for every item it had sold.

Requiring retailers to place notification labels on RFID-enabled products may cause sales to drop in the state, warns John Dumais, a commission member and president and CEO of the [New Hampshire Grocers Association](#), a trade organization representing the entire food-distribution system within the state. His fear is that retailers may decline to sell products with RFID tags because of the added costs

to comply with the law. "They may not want to carry certain products at all," he says, which in the future is likely to include pharmaceuticals, wines and other high-value items.

"What we're trying to do is allow the industry to take advantage of what RFID can offer," Kurk says. "But where it could be abused, that's where consumers need protection." The bill has not yet been scheduled for senate discussion, he says. If it fails there, he expects to reintroduce the bill in 2011.

"I knock at the door [of the senate] because I expect it to open and be invited in," Kurk says, adding that he's willing to continue reintroducing the bill if the senate defeats it.