



# State Legislative Activities & Identity Management

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*Smart Cards in Government Conference & Expo*

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# Agenda

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- **Why all the fuss?**
- **Legislative Approaches in the States**
- **Coordinating The Message**



# Why All the Fuss?

# What's the Fuss?

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- Sutter, CA School's Student ID System
- REAL ID Act
- ePassport
- US VISIT, WHTI
- Katherine Albrecht
  - *SPYCHiPs: How Major Corporations and Gov't Plan to Track Your Every Move with RFID*
  - *The Spychips Threat: Why Christians Should Resist RFID and Electronic Surveillance*

# What we'd like to avoid





# Legislative Approaches In The States

So far.

# Why States Legislate

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**“Any sufficiently advanced technology is indistinguishable from magic.”**

- Arthur C. Clarke, *Profiles of The Future*, 1961  
(*Clarke's third law*)

# The RFID Legislative Mix

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- **Attacks on Identity Management**
  - Flat out bans on gov't use of contactless ICs
  - Bans on human implantation
- **Attacks on Supply Chain Management**
  - Mandatory Labeling
  - Mandatory Notice
  - Mandatory Kill at PoS
- **Privacy Protection**
  - Anti-Skimming legislation
  - Best Practices Commissions for Gov't agencies



# **New Mexico HB 215 (2005)**

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- **Focused on retail RFID Tags**
- **Required notice posted in store**
  - 72 words long
  - Must be readable at 10 ft.
- **Required item-level tags**
- **Mandatory removal or deactivation**
- **Private right of action**
  
- **Similar bill in Massachusetts, SB 181**

# Illinois SB 2558

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- Bans use of Contactless ICs from gov't issued identity documents
- Retail provisions removed
- Carve-outs for:
  - I-Pass Toll Collection
  - Public Safety ID Badges
  - Prisoner ID Documents
  - State Vehicle GPS Systems
  - Building Access Cards
  - Library Cards
  - Mass Transit Cards

***But what uses did they forget?***

# NH HB 203 – Maj.Ldr Clegg Amend

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- **Incredibly Broad Definitions**
  - “Personal Information” includes party affiliation
  - “Tracking Device” sweeps up all RFID
  - “Universally Accepted Symbol”
- **Requires labels; Criminal Penalties**
- **Bans human implantation w/o consent**
- **Bans “tracking devices” a la California**
- **Sets up a commission after the fact**
- **Criminalizes tracking w/o court order (exempts e911 & mobile phone service)**

# NH HB 203 - Hassan/Burling Amend.

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- **Criminalizes tracking w/o court order**
  - Exempts e911 & mobile phone service
- **Creates Study Commission**

***Guess which one has traction in NH?***

# California's Evolving RFID Legislation

## ■ SB 682 (Simitian) v.1.0

- 3yr Ban on Contactless ICs in Gov't issued IDs
- Carve-Outs for
  - Toll Collection
  - Those in Prison, Mental Health Facilities
  - Orphans under 4 yrs
- Only Unique IDs allowed for above users
- Allowed users must give:
  - Notice of IC, Countermeasures available, location of every possible scanner and reader in California
- Criminal & Civil penalties for skimming

# California's Evolving RFID Legislation

- **SB 682 (Simitian) v.1.2 – v1.9**
  - New iterations kept coming, including:
    - Firefighter use, but not other first responders
    - One that banned use for toll-collection (a reversal),
    - Allowed RFID as long as it used 1024-bit encryption
      - Protecting the men's room with same security as hardened nuke missile sites
    - A three-year ban on RFID technology
  - Stalled in Legislature

# California's Evolving RFID Legislation

## ■ SB 768 (Simitian)

- *“The Marine Finfish Aquaculture Bill”*
- Actually, SB 682 v.2.0
- Gut & Replace

***Good faith negotiations ensue, yet in early April, existing legislation amended...***

## ■ SB 433 (Simitian)

- Will amend the vehicle code to ban RFID in CA Drivers' Licenses. Hearing in June.

# California's Evolving RFID Legislation

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- **TORRICO: Gov't ID Document Legislation**
  - Anti-Skimming Provision
  - 20+ Member Study Commission
  - Interim protections and guidance for agencies:
    - Tamper-resistant to prevent duplication & forgery
    - Requires authentication between the card and an authorized reader
    - Credentials w/ PII shall employ effective protections for data stored on the credential as well as for data transmissions between the card and reader.



# Other Bills

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- **Missouri SB 638**
  - Mandatory Retail Labels
- **New Hampshire HB 1738**
  - Prohibits Highway Tracking
  - 2/23/2006 Transportation Cmtee: Ought not to pass.
- **Rhode Island HB 5929 (2005)**
  - Bans Gov't use of RFID
  - Vetoed by Gov
- **Tennessee**
  - Mandatory Retail Labeling: SB 699, HB 300
  - Mandatory Retail Removal: SB 3816, HB 3848
- **Utah HB 185 (2005)**
  - Anti-Skimming added to Computer Fraud & Abuse Act

# Keeping a Positive Attitude

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**“They got us surrounded –  
the poor bastards.”**

- **Cpl. Gordon Carson, *Easy Company, 505<sup>th</sup> Regiment, 101<sup>st</sup> Airborne, at the Battle of the Bulge, Dec. 20, 1944***

# The Hit List Who's Who

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- **People facing similar problems as us.**
  - Retailers
  - Wholesalers
  - Manufacturers
  - Standards Grps
  - Healthcare
  - Universities
  - Pharma
  - Gov't Agencies
  - RFID Tag & Reader Mfrs
  - RFID System Integrators
  - Smartcard Companies
  - Banking/Credit Card biz
  - Law Enforcement
  - Librarians
  - Cell Phone/WiFi Mfrs
- **The good news is that they hate everybody.**



# **Coordinated Messaging** *for* **Battlefront: RFID**



# The Real Question:

*“When a government agency implements secure smart cards, how do they determine the right level of security to protect personal privacy?”*

# Ban Bad Behavior, Not Technology

- **Make Skimming a Crime**
  - The unauthorized, intentional and surreptitious scanning of a person's ID document and/or product tags without their knowledge or without the authority of a court-issued warrant.
- **Establish Strong Criminal & Civil Penalties**



# Don't Mandate Labels or Notice

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- **It's an expense that small mom & pop stores can't bear**
  - Local economies *depend* on small business
- **At first, it freaks out consumers**
- **Then, it only becomes noise**
  - An expensive noise that benefits none
- ***Consumer confidence is key to a state's economic development – and acceptance of gov't issued identity documents***

# Use Best Practices, Not Laws

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- **Laws tend to set standards in stone**
  - Technology is constantly evolving for the better
  - Flexibility and access to expertise is key
- **Insist on Best Practices**
  - Gives a great blue print as to goals & ideals
  - Allows flexibility for future improvements
  - Allows flexibility for technologies and applications not yet even dreamed of
  - Encourage “standards-based solutions,” but not *specific* standards



# Best Practices to Protect Consumers

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- **Identify The Stakeholders**
  - Implementing Government Agencies
  - Technologists
  - Public Advocacy Groups
- **Set Strict Guidelines for Protecting PII**
  - Methods to protect transmission & storage of data on government issued ID documents
  - Methods to prevent skimming & unauth'd tracking
  - Designing appropriate security for the tech app
- **Strengthen Privacy Laws & Fill the Gaps**

# Why We're Here Today

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**“We must all hang together, or assuredly we shall all hang separately.”**

- Benjamin Franklin, *at the signing of the Declaration of Independence, July 4, 1776*



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