

Senate Bill No. 31

Passed the Senate August 19, 2008

Secretary of the Senate

Passed the Assembly August 12, 2008

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2008, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to add Title 1.80 (commencing with Section 1798.79) to Part 4 of Division 3 of the Civil Code, relating to privacy.

LEGISLATIVE COUNSEL'S DIGEST

SB 31, Simitian. Identification documents.

The Information Practices Act of 1977 regulates the collection and disclosure of personal information regarding individuals by state agencies, except as specified. Existing law also prohibits certain business entities, as defined, from making specified disclosures in relation to individual consumer records.

This bill would provide that a person or entity that intentionally remotely reads or attempts to remotely read a person's identification document using radio frequency identification (RFID) without his or her knowledge and prior consent, as described, shall be punished by imprisonment in a county jail for up to one year, a fine of not more than \$1,500, or both that fine and imprisonment, except as specified. The bill would also provide that a person or entity that knowingly discloses, or causes to be disclosed, specified operational system keys shall be punished by imprisonment in a county jail for up to one year, a fine of not more than \$1,500, or both that fine and imprisonment. By creating new crimes, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. The Legislature hereby finds and declares all of the following:

(a) The right to privacy is a personal and fundamental right protected by Section 1 of Article I of the California Constitution

and by the United States Constitution. All individuals have a right of privacy in information pertaining to them.

(b) This state has previously recognized the importance of protecting the confidentiality and privacy of an individual's personal information contained in identification documents such as driver's licenses.

SEC. 2. Title 1.80 (commencing with Section 1798.79) is added to Part 4 of Division 3 of the Civil Code, to read:

TITLE 1.80. IDENTIFICATION DOCUMENTS

1798.79. (a) Except as provided in this section, a person or entity that intentionally remotely reads or attempts to remotely read a person's identification document using radio frequency identification (RFID), for the purpose of reading that person's identification document without that person's knowledge and prior consent, shall be punished by imprisonment in a county jail for up to one year, a fine of not more than one thousand five hundred dollars (\$1,500), or both that fine and imprisonment.

(b) A person or entity that knowingly discloses, or causes to be disclosed, the operational system keys used in a contactless identification document system shall be punished by imprisonment in a county jail for up to one year, a fine of not more than one thousand five hundred dollars (\$1,500), or both that fine and imprisonment.

(c) Subdivision (a) shall not apply to:

(1) The reading of a person's identification document for triage or medical care during a disaster and immediate hospitalization or immediate outpatient care directly related to a disaster, as defined by the local emergency medical services agency organized under Section 1797.200 of the Health and Safety Code.

(2) The reading of a person's identification document by a health care professional for reasons relating to the health or safety of that person or an identification document issued to a patient by emergency services.

(3) The reading of an identification document of a person who is incarcerated in the state prison or a county jail, detained in a juvenile facility operated by the Division of Juvenile Facilities in the Department of Corrections and Rehabilitation, or housed in a mental health facility, pursuant to a court order after having been

charged with a crime, or to a person pursuant to a court-ordered electronic monitoring.

(4) Law enforcement or government personnel who need to read a lost identification document when the owner is unavailable for notice, knowledge, or consent, or those parties specifically authorized by law enforcement or government personnel for the limited purpose of reading a lost identification document when the owner is unavailable for notice, knowledge, or consent.

(5) Law enforcement personnel who need to read a person's identification document after an accident in which the person is unavailable for notice, knowledge, or consent.

(6) Law enforcement personnel who need to read a person's identification document pursuant to a search warrant.

(d) Subdivision (a) shall not apply to a person or entity that unintentionally remotely reads a person's identification document using RFID in the course of operating a contactless identification document system unless it knows it unintentionally read the document and thereafter intentionally does any of the following acts:

(1) Discloses what it read to a third party whose purpose is to read a person's identification document, or any information derived therefrom, without that person's knowledge and consent.

(2) Stores what it read for the purpose of reading a person's identification document, or any information derived therefrom, without that person's knowledge and prior consent.

(3) Uses what it read for the purpose of reading a person's identification document, or any information derived therefrom, without that person's knowledge and prior consent.

(e) Subdivisions (a) and (d) shall not apply to the reading, storage, use, or disclosure to a third party of a person's identification document, or information derived therefrom, in the course of an act of good faith security research, experimentation, or scientific inquiry, including, but not limited to, activities useful in identifying and analyzing security flaws and vulnerabilities.

(f) Nothing in this section shall affect the existing rights of law enforcement to access data stored electronically on driver's licenses.

(g) The penalties set forth in subdivisions (a) and (b) are independent of, and do not supersede, any other penalties provided

by state law, and in the case of any conflict, the greater penalties shall apply.

1798.795. For purposes of this title, the following definitions shall apply:

(a) “Contactless identification document system” means a group of identification documents issued and operated under a single authority that use RFID to transmit data remotely to readers intended to read that data. In a contactless identification document system, every reader must be able to read every identification document in the system.

(b) “Data” means any information stored or transmitted on an identification document in machine-readable form.

(c) “Identification document” means any document containing data that is issued to an individual and which that individual, and only that individual, uses alone or in conjunction with any other information for the primary purpose of establishing his or her identity. Identification documents specifically include, but are not limited to, the following:

(1) Driver’s licenses or identification cards issued pursuant to Section 13000 of the Vehicle Code.

(2) Identification cards for employees or contractors.

(3) Identification cards issued by educational institutions.

(4) Health insurance or benefit cards.

(5) Benefit cards issued in conjunction with any government-supported aid program.

(6) Licenses, certificates, registration, or other means to engage in a business or profession regulated by the Business and Professions Code.

(7) Library cards issued by any public library.

(d) “Key” means a string of bits of information used as part of a cryptographic algorithm used in encryption.

(e) “Radio frequency identification” or “RFID” means the use of electromagnetic radiating waves or reactive field coupling in the radio frequency portion of the spectrum to communicate to or from an identification document through a variety of modulation and encoding schemes.

(f) “Reader” means a scanning device that is capable of using RFID to communicate with an identification document and read the data transmitted by that identification document.

(g) “Remotely” means that no physical contact between the identification document and a reader is necessary in order to transmit data using RFID.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Approved _____, 2008

Governor