

HB 1619-FN – AS AMENDED BY THE HOUSE

12Mar2014... 0654h

2014 SESSION

14-2465  
05/04

HOUSE BILL            ***1619-FN***

AN ACT                prohibiting the acquisition, collection, or retention of certain information.

SPONSORS:            Rep. Kurk, Hills 2

COMMITTEE:          Criminal Justice and Public Safety

---

ANALYSIS

This bill prohibits the acquisition, collection, or retention of certain personal information.

---

Explanation:          Matter added to current law appears in ***bold italics***.  
                                Matter removed from current law appears [~~in brackets and struckthrough.~~]  
                                Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

**HB 1619-FN – AS AMENDED BY THE HOUSE**

12Mar2014... 0654h

14-2465  
05/04

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Fourteen*

AN ACT prohibiting the acquisition, collection, or retention of certain information.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

1 1 New Chapter; Expectation of Privacy. Amend RSA by inserting after chapter 507-G the  
2 following new chapter:

3 CHAPTER 507-H

4 EXPECTATION OF PRIVACY

5 507-H:1 Expectation of Privacy.

6 I. An individual shall have an expectation of privacy in personal information, including  
7 personal identifiers, content, and usage, given or available to third-party providers of information  
8 and services, including cellular and land-line telephone, electric, water, and other utility services;  
9 internet service providers; social media providers; email service providers; banks and financial  
10 institutions; insurance companies; and credit card companies.

11 II.(a) No municipal, state, or federal department, agency, employee, or contractor shall  
12 acquire, collect, retain, or use the personal information described in paragraph I, directly or  
13 indirectly, related to customers located in New Hampshire except:

14 (1) With a warrant signed by a judge and based on probable cause or pursuant to a  
15 judicially-recognized exception to the warrant requirement.

16 (2) In the case of the division of emergency services and communications, when  
17 handling emergency 911 telecommunications.

18 (b) Subparagraph (a) shall not apply to personal information described in paragraph I if  
19 required by a municipal, state, or federal department, agency, employee, or contractor pursuant to  
20 state or federal law, provided that such information is requested of and supplied by a third-party  
21 provider of information and services for named individuals only or, in the case of employees and/or  
22 contractors of a third-party provider of information and services, for all of its employees and/or  
23 contractors.

24 III. No municipal, state, or federal department, agency, employee, or contractor shall  
25 acquire, collect, or retain individually-identifiable social media data, including such data associated  
26 with Facebook and Twitter, whether password-protected or encrypted or not, except:

27 (a) With a warrant signed by a judge and based on probable cause, or pursuant to a  
28 judicially-recognized exception to the warrant requirement.

29 (b) In connection with hiring an individual to work for such departments or agencies.

30 (c) Investigating misconduct on the part of employees or contractors of such departments

**HB 1619-FN – AS AMENDED BY THE HOUSE**

**- Page 2 -**

1 or agencies.

2 (d) In an emergency involving severe bodily injury or significant damage to property.

3 (e) If required by a municipal, state, or federal department, agency, employee, or  
4 contractor pursuant to state or federal law, provided that such social media data is for named  
5 individuals only.

6 507-H:2 Action Against a Corporation. This chapter shall not be construed to create a cause of  
7 action against a corporation or its officers, employees, or agents for providing information to a  
8 municipal, state, or federal department, agency, employee, or contractor in accordance with the  
9 provisions of this chapter.

10 507-H:3 Federal Preemption. If federal law preempts any provision of this chapter, that  
11 provision shall not apply.

12 507-H:4 Construction. This chapter shall be construed to provide the greatest possible  
13 protection of the privacy of the people of this state.

14 2 Effective Date. This act shall take effect July 1, 2014.

**HB 1619-FN - FISCAL NOTE**

AN ACT prohibiting the acquisition, collection, or retention of certain information.

**FISCAL IMPACT:**

The Judicial Branch, Department of Employment Security, and Department of Health and Human Services state this bill, as introduced, may decrease state revenue, and increase county and local expenditures, by an indeterminable amount in FY 2015 and each year thereafter. There will be no impact on state expenditures, or county and local revenue.

**METHODOLOGY:**

The Judicial Branch states this bill requires a search warrant to obtain personal information, including personal identifiers, content, and usage, given or available to third-party providers of information or services. Thus, the bill's potential fiscal impact is in the form of additional search warrant requests. The Branch has no information on which to estimate how many search warrants will be sought under the bill, but does have information on the average cost of processing search warrant requests in the trial court. A search warrant request is classified as the same level case as a class A misdemeanor; accordingly, the Branch projects the average cost of a request will be \$66.17 in FY 2015, and \$67.64 in FY 2016. These costs are estimated based on case weight information from the Branch's last needs assessment completed in 2005.

The Department of Employment Security states this bill could potentially cause the Department to be out of compliance with federal requirements. Currently, federal laws require the Department to request personal information from claimants who apply for unemployment benefits, and to reveal personal information when seeking information from a claimant's past employers. Personal claimant information is required to be kept in the Department's records for purposes of administration of unemployment compensation laws, and is only subject to disclosure in accordance with federal and state laws. The Department states that being out of compliance with federal requirements would have an adverse impact on employers who benefit from the federal unemployment tax credit, requiring them to pay the full six percent tax instead of the reduced 0.6 percent tax. With respect to governmental entities, there would be no impact on state government employers because they do not pay the federal unemployment tax, paying unemployment benefits out of pocket instead. According to the Department, 40 out of 569 municipal and county employers pay the federal unemployment tax and may be subject to an indeterminable increase in expenditures should the Department be found out of compliance as a result of the bill.

The Department of Health and Human Services states that it is a State IV-D child support enforcement agency under the Social Security Act and receives federal funding at a rate of 66 percent of program costs, plus additional federal incentive funds based on performance measures. State compliance with all federal IV-D mandates is required in order to receive funding. The Department states the bill's provisions may subject the state to various sanctions, such as the total loss of federal funding for the child support program and associated incentive funds, anticipated to total \$12,708,931 in federal fiscal year 2014, and \$12,328,587 in federal fiscal year 2015. In addition, the Department states noncompliance with IV-D state plan and operational requirements may result in the loss of five percent of the state's TANF block grant.

The New Hampshire Municipal Association states this bill will have no fiscal impact on municipalities.