

Senate Judiciary Committee

Matthew Schelzi 271-3266

HB 314-FN, relative to the expectation of privacy in the collection and use of personal information.

Hearing Date: March 19, 2024

Time Opened: 2:53 p.m.

Time Closed: 3:11 p.m.

Members of the Committee Present: Senators Gannon, Carson, Whitley and Chandley

Members of the Committee Absent: Senator Abbas

Bill Analysis: This bill regulates the collection, retention, and use of personal information and establishes a cause of action for violations of an individual's expectation of privacy in personal information.

Sponsors:

Rep. Erf

Rep. Lynn

Who supports the bill: Rep. Aures, Rep. Lynn, Rep. Erf, Hon. Neil Kurk, Devon Chaffee (ACLU), Joline Manseau, Daniel Richardson, Marcia King, Curtis Howland, and Karyn Niedzwiecki.

Who opposes the bill: Ryan Hale (NH Bankers), Maura Weston (NECTA), Adam Schmidt (NAIFA-NH), Heidi Kroll (AHIP), Lisa Shapiro (Manufacturers Assoc.), Rick Fabrizio (BIA), Kevin Daigle (NH Grocers), Kyle Baker (Cooperative Credit Union Assoc), Teresa Rosenberger (Consolidated Communications), Karen Soucy (CTIA), Janet Lucas, Lindsay Nadeau (American Property Casualty Insurance Association), George Roussos (Cigna), James Hatem (State Farm), Jake Lestock (CTIA), and Christopher Gilrein (TechNet)

Who is neutral on the bill: None.

Summary of testimony presented in support:

Representative Bob Lynn introduced HB 314-FN on behalf of Representative Erf. He noted the Governor recently signed SB 255 (2023) which overlaps to some extent with this bill, but there are differences. He said the application of this bill is significantly narrower than SB 255. This bill applies to third party providers of information and services which would be limited to utilities, internet, email, social media services, banks, credit card companies, insurance companies and other financial

institutions. Institutions that would be very likely to have your personal information. He said this bill is only a disclosure bill. It doesn't say anything about what information the covered companies can collect, but that the covered entities are prohibited from disclosure of that information, such things as name, address, date of birth, social security number, and more. This bill is a further effort to implement the privacy amendment to the New Hampshire Constitution.

This bill says if you a covered entity you are prohibited from disclosing certain information, unless one of five circumstances exist. First, some other law specifically authorizes the disclosure, then companies may disclose the information. Second, a customer can consent to the disclosure. Third, if the company believes that the disclosure could prevent crime or fraud. Fourth, when an emergency exists that there is an imminent danger of significant harm to persons or property. Lastly, when the disclosure is made pursuant to a properly authorized request. He said this bill does not create a private right of action and only the Attorney General may enforce the law. He said the bill contains provisions that when a government agency makes a request for disclosure, the covered business to whom the request is directed, is required to give notice to the person that a request has been made, unless covered by one of the exceptions mentioned.

Former Representative Neil Kurk said he supported HB 314-FN. He noted that this bill provides additional privacy protections that apply to a subset of companies that are covered by SB 255. He said under this bill companies cannot use your information unless you allow them to, which is an opt-in model. He said the reason for the opt-in model is because this bill deals with more personal information. He noted the New Hampshire Supreme Court has found that the citizens of New Hampshire have an expectation of privacy for bagged garbage left on the street for collection, but it has not found a right for internet privacy. However, the Supreme Court has invited the Legislature to take action on this issue. This bill requires third-party providers of information and services to only use this data to provide the service for which the customer signed up for.

Summary of testimony presented in opposition:

Rick Fabrizio, BIA, opposed to HB 314-FN. He noted the BIA has opposed the bill since its introduction in 2023. He said even through all the amendments, the core problems remain. He said HB 314-FN is built on an overly broad definition of public information and vague language regarding a constitutional expectation to privacy. A whole host of businesses who do business with the entities described in this bill could be wrapped up in it. SB 255 (2023) renders most of this bill unnecessary at best and harmful at worst. If this bill passes, it would create New Hampshire's own patchwork of data privacy, which SB 255 sought to prevent. He said the bill does not explain what a reasonable expectation of privacy means. This bill does not provide a right to cure a violation before the Attorney General initiates civil action with potentially significant financial penalties. He asked the Committee to recommend HB 314-FN Inexpedient to Legislate.

Neutral Information Presented: None.

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Date Hearing Report completed: March 25, 2024