

2021 SENATE JUDICIARY

SB 2276

2021 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Peace Garden Room, State Capitol

SB 2276
2/3/2021
AM Hearing

A BILL for an Act to amend and reenact section 44-04-18.3 of the North Dakota Century Code, relating to confidentiality of law enforcement personnel records.

Chairwoman Larson calls the meeting to order, all Senators are present: Myrdal, Luick, Dwyer, Bakke, Fors, Larson

Discussion Topics:

- Difference between confidential and exempt records
- Protection of law enforcement officer's personal data

Senator Judy Lee introduced the bill and provided oral testimony in favor [10:00]

Aaron Birst from the North Dakota Association of Counties provided testimony in favor [10:05]

Major Aaron Hummel, Chief of Staff of the North Dakota Highway Patrol provides neutral written and oral testimony #5189 [10:15]

Katie Paulson Recorder and Tax Director of McKenzie County provides testimony in favor [10:30]

Mary Kay Kelsh Assistant Attorney General provided testimony in favor [10:35]

Hearing Adjourned [10:45]

Jamal Omar, Committee Clerk

Senate Bill 2276
Senate Judiciary Committee
Senator Diane Larson, Chairman
February 3, 2021

Chairman Larson and members of the Senate Judiciary Committee, my name is Major Aaron Hummel, chief of staff for the North Dakota Highway Patrol. I am here to provide testimony in support of Senate Bill 2276, but feel some language needs to be amended.

In light of things going on around the country, I feel the expansion of those officials protected under 44-04-18.3 by adding prosecutors, district court judges, and judicial referees is appropriate. Under the current law, the phone number and home address of those officials is a confidential record and shall not be made public.

There are a couple points I would like to provide additional clarification on and recommend an amendment.

First, the bill adds the language in lines 9-10 on page 1, "in any personnel record." What this language does is narrow the scope of confidential records only to personnel records held by entities. Current law encompasses all records containing the phone number and home address. For example, a state trooper in the course of their employment or otherwise, could have their home address listed on a state crash report and that information is an open record to anyone. We have worked with the ND Department of transportation over time to try and keep that information confidential. I can't list all other records held by entities that may contain that information, but in any regard, adding the language in the bill would open those records up potentially revealing the address and phone number.

The second area I believe needs to be addressed is the exception provided in page 1 subsection 1, line 9 and outlined in page 2 with the addition of subsection 5, lines 13-17. As provided in the bill, the language makes GIS, title, and tax records held by entities exempt records, which allows for the discretionary release. These are the most common records that the public would have access to and you can find them on many county websites. There certainly needs to be some work done in this area, but the language provided will make these records no longer confidential which is concerning. As an agency we have, and I believe other law enforcement agencies in the Bismarck-Mandan areas have worked with the county tax officials to ensure their information is updated annually to ensure those records aren't being released. As an agency we have been updating our employee list and allowing our employees not to be listed if they chose and we provide the list to the entities holding those records. By having the information not listed publicly, it does create some hassles if the individual is working with people like realtors and insurance adjustors who use that information regularly. In those cases, the individual whose records are protected would have the additional



burden of retrieving those records. There definitely needs to a balance struck between convenience and privacy.

The amendment I have provided replaces page 2 subsection 5 with the following language:

“An address of an individual in subsection 1 which is included in a geographic information system, a property title record, or tax parcel data is an exempt record. However, upon request of an individual in subsection 1 or their employer, the information shall be confidential for the remainder of the calendar year. Requests must be made by individuals in subsection 1 or their employers annually to maintain the confidentiality for subsequent years.”

In my discussions with Mr. Birst and Senator Lee, I believe this accomplishes the goal that was sought with this bill. It still maintains the confidentiality of the protected officials phone and home address, but it does put the responsibility on the individual or the agency to request their phone and home address records be made confidential, while making it reasonable for those entities holding the records to actually maintain the confidentiality.



Thank you Chairman Larson and members of the committee, this concludes my testimony and I would be glad to answer any questions you may have.



PROPOSED AMENDMENTS TO SENATE BILL 2276

44-04-18.3 Records of juvenile court supervisors and probation officers and law enforcement and correctional employees – Law enforcement work schedules – Confidential Informants.

Page 1, subsection 1, lines 9-10 replace with:

“Except as provided in subsection 5, a telephone number and home address of a prosecutor, district court judge, judicial referee, judicial” (removes “in any personnel record”)

Page 2, subsection 5, remove lines 13-17, replace with:

“An address of an individual in subsection 1 which is included in a geographic information system, a property title record, or tax parcel data is an exempt record. However, upon request of an individual in subsection 1 or their employer, the information shall be confidential for the remainder of the calendar year. Requests must be made by individuals in subsection 1 or their employers annually to maintain the confidentiality for subsequent years.”

Renumber accordingly.

2021 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Peace Garden Room, State Capitol

SB 2276
2/3/2021

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| A BILL for an Act to amend and reenact section 44-04-18.3 of the North Dakota Century Code, relating to confidentiality of law enforcement personnel records. |
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Chair Larson calls the committee meeting to order. Present are Senators Myrdal, Luick, Dwyer, Bakke, Fors, and Heitkamp. [2:02]

Discussion Topics:

- Confidentiality in law enforcement records

Mary Kay Kelsch presents an amendment to the committee as testimony #5250. [2:13]

Senator Dwyer moves to adopt an amendment [21.0907.01001]. [2:16]

Senator Heitkamp seconds. [2:16]

| Senator | Vote |
|------------------|------|
| Chair Larson | Y |
| Senator Myrdal | Y |
| Senator Luick | Y |
| Senator Dwyer | Y |
| Senator Bakke | Y |
| Senator Fors | Y |
| Senator Heitkamp | Y |

Motion passes 7-0-0. [2:16]

Senator Luick moves DO PASS AS AMENDED. [2:17]

Senator Myrdal seconds. [2:17]

| Senator | Vote |
|------------------|------|
| Chair Larson | Y |
| Senator Myrdal | Y |
| Senator Luick | Y |
| Senator Dwyer | Y |
| Senator Bakke | Y |
| Senator Fors | Y |
| Senator Heitkamp | Y |

Motion passes 7-0-0. [2:18] Senator Luick carries.

Chair Larson adjourns the meeting [2:20]

Jamal Omar, Committee Clerk

February 3, 2021

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2/3
1041

PROPOSED AMENDMENTS TO SENATE BILL NO. 2276

Page 1, line 9, remove the second "in"

Page 1, line 10, remove "any personnel record"

Page 2, line 15, remove "the address may not be accessible to the public through the geographic"

Page 2, replace lines 16 and 17 with "upon request of an individual in subsection 1 or the individual's employer, the information is confidential for the remainder of the calendar year. Requests must be made by the individual in subsection 1 or the individual's employer annually to maintain the confidentiality for subsequent years."

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2276: Judiciary Committee (Sen. Larson, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2276 was placed on the Sixth order on the calendar.

Page 1, line 9, remove the second "in"

Page 1, line 10, remove "any personnel record"

Page 2, line 15, remove "the address may not be accessible to the public through the geographic"

Page 2, replace lines 16 and 17 with "upon request of an individual in subsection 1 or the individual's employer, the information is confidential for the remainder of the calendar year. Requests must be made by the individual in subsection 1 or the individual's employer annually to maintain the confidentiality for subsequent years."

Renumber accordingly

PROPOSED AMENDMENTS TO SENATE BILL NO. 2276

Page 1, Lines 9-10, remove "in any personnel record"

Page 2, Lines 14-17, replace "the address may not be accessible to the public through the geographic information system, property title record, or tax parcel data via a search of the individual's name only" with "upon request of an individual in subsection 1 or the individual's employer, the information is confidential for the remainder of the calendar year. Requests must be made by individuals in subsection 1 or the individuals' employers annually to maintain the confidentiality for subsequent years."

Renumber accordingly

2021 HOUSE JUDICIARY

SB 2276

2021 HOUSE STANDING COMMITTEE MINUTES

Judiciary

Room JW327B, State Capitol

SB 2276
3/22/2021
AM

Relating to confidentiality of law enforcement personnel records.

Chairman Klemin called the hearing at 10:38 AM

Present: Representatives Klemin, Karls, Becker, Christensen, K Hanson, Jones, Paulson, Paur, Roers Jones, Satrom, and Vetter. Absent: Magrum, Cory, Buffalo

Discussion Topics:

- Confidential information
- GIS use
- Exempt records

Aaron Burst, Association of Counties: Verbal testimony 10:39

Senator Lee: Introduced the bill. Verbal testimony 10:55

Carrie Krause, Wells County Recorder: Verbal testimony 11:07

Major Tom Iverson – Chief of Operations, Highway Patrol; Testimony #10324

Mary Kay Kelsh, Attorney General's office: Verbal testimony 11:23

Chairman Klemin recessed the hearing at 11:40.

Additional written testimony: #10153

DeLores D. Shimek
Committee Clerk

Senate Bill 2276
House Judiciary Committee
Representative Lawrence Klemin, Chairman
March 22, 2021

Chairman Klemin and members of the House Judiciary Committee, my name is Major Tom Iverson, chief of operations for the North Dakota Highway Patrol. I am here to provide testimony in support of Senate Bill 2276.

Considering things going on around the country, I believe the expansion of those officials protected under NDCC 44-04-18.3 by adding prosecutors, district court judges, and judicial referees is appropriate. Under the current law, the phone number and home address of those officials is a confidential record and shall not be made public.

There was considerable discussion during Senate hearings about the additional language added in sections 1 and 5. Major Aaron Hummel, the highway patrol's chief of staff, provided testimony regarding our agency's concerns and submitted a proposed amendment. The Senate adopted that amendment, and we believe the bill, in its current form, is a good compromise to help protect the identity of individuals listed in NDCC 44-04-18.3.

The updated language still maintains the confidentiality of the protected officials' phone numbers and home addresses, and it puts the responsibility on the individual or the individual's employer to request that an individual's phone number and home address remain confidential. This request would have to be submitted annually. This change makes it simpler for those entities holding the records to actually maintain confidentiality because they would receive a notification annually rather than trying to keep track of who meets the criteria and who doesn't.

Thank you Chairman Klemin and members of the committee, this concludes my testimony and I would be glad to answer any questions you may have.

Senate Bill 2276
House Judiciary Committee
Testimony Presented by Sara Behrens
March 22, 2021

Good morning Chairman Klemin, members of the committee. My name is Sara Behrens and I am a staff attorney with the State Court Administrator's Office. I am submitting this testimony on Senate Bill No. 2276 in a neutral capacity with a proposed amendment. It was noted that district court judges and referees were included but justices of the supreme court were not. The attached proposed amendment simply adds justices of the supreme court on page 1, line 10. Justices would also have reason to want their home addresses to be removed from public databases. We ask for your thoughtful consideration of the proposed amendment.

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2276

Page 1, line 10, after "referee," insert "justices of the supreme court,"

Renumber accordingly

2021 HOUSE STANDING COMMITTEE MINUTES

Judiciary

Room JW327B, State Capitol

SB 2276

3/24/2021

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| Relating to confidentiality of law enforcement personnel records. |
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Chairman Klemin called the meeting at 11:22 AM.

Present: Representatives Klemin, Karls, Becker, Christensen, K Hanson, Cory, Magrum, Jones, Paulson, Paur, Roers Jones, Satrom, and Vetter. Absent: Cory

Discussion Topics:

- Confidential records
- Annual renewal for confidential record

Chairman Klemin: Introduced proposed amendment 21.0907.02002
Testimony #10655

Rep. Karls: Motion to adopt amendment 21.0907.02002

Rep. Satrom: Seconded

Voice vote carried

Rep. Karls: Do Pass as amended

Rep. Satrom: Seconded

Roll call vote:

| Representatives | Vote |
|---------------------|------|
| Chairman Klemin | Y |
| Vice Chairman Karls | Y |
| Rep Becker | Y |
| Rep. Christensen | N |
| Rep. Cory | A |
| Rep T. Jones | Y |
| Rep Magrum | N |
| Rep Paulson | Y |
| Rep Paur | N |
| Rep Roers Jones | N |

| | |
|---------------|---|
| Rep B. Satrom | Y |
| Rep Vetter | N |
| Rep Buffalo | Y |
| Rep K. Hanson | Y |

8-5-1 Motion carried

Carrier: Chairman Klemin

Stopped 11:47.

DeLores D. Shimek
Committee Clerk

21.0907.02002
Title.03000

Prepared by the Legislative Council staff for
Representative Klemin
March 23, 2021

De 3/24/21
1 of 1

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2276

Page 1, line 10, after the first underscored comma insert "supreme court justice."

Page 2, line 13, replace "An" with "A home"

Page 2, line 14, replace "an exempt record" with "confidential only if an individual in subsection 1 or the individual's employer submits a written request to the custodian of the records. The request will remain confidential for the remainder of a calendar year and must be renewed annually"

Page 2, remove lines 15 through 18

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2276, as engrossed: Judiciary Committee (Rep. Klemin, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (8 YEAS, 5 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2276 was placed on the Sixth order on the calendar.

Page 1, line 10, after the first underscored comma insert "supreme court justice."

Page 2, line 13, replace "An" with "A home"

Page 2, line 14, replace "an exempt record" with "confidential only if an individual in subsection 1 or the individual's employer submits a written request to the custodian of the records. The request will remain confidential for the remainder of a calendar year and must be renewed annually"

Page 2, remove lines 15 through 18

Renumber accordingly

21.0907.0200

2

FIRST ENGROSSMENT

Sixty-seventh
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2276

Introduced by

Senators Lee, Dwyer, Hogue

Representatives Nathe, Roers Jones

1 A BILL for an Act to amend and reenact section 44-04-18.3 of the North Dakota Century Code,
2 relating to confidentiality of law enforcement personnel records.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1. AMENDMENT.** Section 44-04-18.3 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **44-04-18.3. Records of juvenile court supervisors and probation officers and law**
7 **enforcement and correctional employees - Law enforcement work schedules -**
8 **Confidential informants.**

9 1. AnyExcept as provided in subsection 5, a telephone number and the home address of
10 a prosecutor, supreme court justice, district court judge, judicial referee, juvenile court
11 director or probation officer, an employee of a law enforcement agency, employee of a
12 state or local correctional facility, and an employee of the department of corrections
13 and rehabilitation are confidential. Information contained in a personnel record of an
14 employee of the department of corrections and rehabilitation may not be disclosed to
15 an inmate in the legal custody of the department of corrections and rehabilitation
16 confined in a jail, prison, or other correctional facility unless authorized by the director
17 of the department of corrections and rehabilitation. Information contained in a
18 personnel record of a law enforcement officer of a state or local law enforcement
19 agency or in the personnel record of a correctional employee of a correctional facility
20 subject to chapter 12-44.1 may not be disclosed to an inmate confined in a state
21 correctional facility or correctional facility subject to chapter 12-44.1 unless authorized
22 by the employing agency.

Sixty-seventh
Legislative Assembly

- 1 2. Records or other information that would reveal the identity, or endanger the life or
2 physical well-being, of an undercover law enforcement officer is confidential. For
3 purposes of this subsection, an "undercover law enforcement officer" means a
4 full-time, salaried employee of a local or state law enforcement agency who acts
5 surreptitiously or poses as someone other than a law enforcement officer while
6 engaging in the investigation of a violation of law.
- 7 3. Any record containing the work schedule of employees of a law enforcement agency is
8 exempt.
- 9 4. A law enforcement officer or prosecutor, within the scope of the employment of the
10 officer or prosecutor, may provide assurances of confidentiality to a person providing
11 information regarding violations of the law. Any information that would identify or
12 provide a means of identifying a confidential informant, if the identity of the informant is
13 not otherwise publicly known, is confidential and may be disclosed only as permitted
14 by law.
- 15 5. AnA home address of an individual in subsection 1 which is included in a geographic
16 information system, a property title record, or tax parcel data is an exempt record
17 confidential only if an individual in subsection 1 or the individual's employer submits a
18 written request to the custodian of the records. The request will remain confidential for
19 the remainder of a calendar year and must be renewed annually. However, upon
20 request of an individual in subsection 1 or the individual's employer, the information is
21 confidential for the remainder of the calendar year. Requests must be made by the
22 individual in subsection 1 or the individual's employer annually to maintain the
23 confidentially for subsequent years.

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2276

Page 1, line 10, after the first underscored comma insert "supreme court justice."

Page 2, line 13, replace "An" with "A home"

Page 2, line 14, replace "an exempt record" with "confidential only if an individual in subsection 1 or the individual's employer submits a written request to the custodian of the records. The request will remain confidential for the remainder of a calendar year and must be renewed annually"

Page 2, remove lines 15 through 18

Renumber accordingly