

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1316

2007 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1316

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1316

House Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: January 17, 2007

Recorder Job Number: 1328

Committee Clerk Signature 

Minutes:

Chair Keiser opened the hearing on HB 1316.

Rep. Lois Delmore, District 43: It deals with the signing of federal legislation last Friday by the President, and there's also another bill SB 2255, and so I would like today's indulgence of this committee to turn my bill draft into a study resolution, which would track the federal regulations, and see if those accomplish to meet the needs of ND citizens.

See handout #1.

Tony Clark, Public Service Commissioner: See written testimony #2.

Rep. Kasper: What is the current, either federal or state law, regarding the sale of telephone numbers?

Tony: I don't know. The telephone company themselves may be able to tell you what rules they are under, as far as what they can provide for market. My guess is that they have some standards by which they cannot buy this information. Extended marketers are able to put together a list of people based on profiles.

Rep. Keiser: What did Bush sign into law, and what would SB 2255 do?

Tony: As I understand it, the law that passed federally simply prohibits the act of pretexting. There were two competing versions of this that were floating around Congress in the last

session. The key that our association focused in on was one, on the password, and the other did the same, but also prohibited all states from forcing or enacting similar statutes. SB 2255 appears to focus perhaps a little bit more on the criminal side of things, a little bit less than the telephone companies. Although there is similar language in SB 2255, which deals with telephone companies having to adopt certain standards, and things like that.

Rep. Clark: Does law enforcement have access to telephone records of private individuals?

Tony: Yes. There's a law called CALIA, which is how law enforcement interacts with health communications companies, the same law that authorizes things like wire taps.

Hearing closed.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1316

House Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: 01-29-2007

Recorder Job Number: 2120

Committee Clerk Signature

Lisa M Thomas

Minutes:

Chairman Keiser allowed committee discussion on HB 1316. HB 1316 relates to protection of consumer telephone records; and to provide a penalty. Rep. Dosch was absent.

Rep. Keiser: This is bill that Rep. Gruchalla is caring it.

Rep. Boe: This is a hog house amendment. *See attached amendments.*

Rep. Boe moved to adopt the amendments. Rep. Amerman seconded.

Voice vote: unanimous. Amendments were adopted.

Rep. Boe moved a DO PASS AS AMENDED. Rep. Gruchalla seconded.

Roll call vote: 13 yes. 0 no. 1 absent.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1316

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative council study of the protection of consumer telephone records.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE COUNCIL STUDY - PROTECTION OF CONSUMER TELEPHONE RECORDS STUDY. During the 2007-08 interim, the legislative council shall consider studying issues relating to the protection of consumer telephone records. The study must include a review of federal legislation on the protection of telephone records and the possible state responses considering federal legislation so that the needs of the citizens of North Dakota as to privacy of telephone records are met. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly."

Renumber accordingly

Date: 1-29-07
Roll Call Vote #: _____

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1316

House Industry Business & Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass, as amended

Motion Made By Rep. Boe Seconded By Rep. Gruchalla

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	X		Rep. Amerman	X	
Vice Chairman Johnson	X		Rep. Boe	X	
Rep. Clark	X		Rep. Gruchalla	X	
Rep. Dietrich	X		Rep. Thorpe	X	
Rep. Dosch	X		Rep. Zaiser	X	
Rep. Kasper	X				
Rep. Nottestad	X				
Rep. Ruby	X				
Rep. Vigasaa	X				

Total Yes 13 No 0

Absent 1

Floor Assignment Rep. Gruchalla

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1316: Industry, Business and Labor Committee (Rep. Kelsner, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1316 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative council study of the protection of consumer telephone records.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE COUNCIL STUDY - PROTECTION OF CONSUMER TELEPHONE RECORDS STUDY. During the 2007-08 interim, the legislative council shall consider studying issues relating to the protection of consumer telephone records. The study must include a review of federal legislation on the protection of telephone records and the possible state responses considering federal legislation so that the needs of the citizens of North Dakota as to privacy of telephone records are met. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly."

Renumber accordingly

2007 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1316

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **HB 1316**


Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: **February 21, 2007**

Recorder Job Number: **3555**

Committee Clerk Signature



Protection of Consumer Telephone Records:

Representative Delmar - In Favor

The bill introduced 1316 was: A. Ahead of it's time, when the House head the bill, it was passed in Federal Legislation and B. There is another bill, 2255 with has been passed on to the House. Backed by the Attorney General, it has the amendments that address that the bill is turned into a study.

S Klein: Are you asking us to save the bill? Do you want this bill passed? Do we need to study this any more?

R Delmar: I think we do. We need to keep track of the Federal Regulations.

S Klein: How will the bill affect law enforcement and ownership boards? This bill was a result of a company doing something?

R Delmar: There wasn't a specific company addressed, more of it was a fear; going door to door and speaking to constituents, there is a nervousness out there that somebody is going to get a hold of their records, they will invade their privacy, give them calls they don't want, and that's where the bill came from. Because we have Federal legislation, doesn't mean that there aren't legitimate concerns out there.

S Wanzek: This didn't start out as a study, did you have an incident?

R Delmar: No, it was more, Several people mentioned fears of what could happen. I don't think telephone companies are taking advantage of citizens, but there is a reason why the Attorney General is in the bill. He has more clout. Do I think there are specific instances, not that I know of.

Q?

S Wanzek: When growing up we had party lines.

S Heitkamp: We should wait until John's [Andrist] back.

S Klein: I'm struggling with this. 2255 does have what we need.

S Potter: I'll be supporting this because I voted down Marketplace for Kids

CLOSE

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **HB 1316 B**

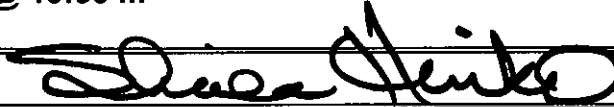
Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: **February 26, 2007**

Recorder Job Number: **3828 @ 15:58 m**

Committee Clerk Signature



Protection of Consumer Telephone Records:

S Klein: There's been some discussion, does this language say they WILL ...

S Heitkamp: The bill doesn't do anything now.

S Klein: They don't have to choose a study of it now.

S Wanzek: It says, "Shall consider." They could consider it, but doesn't say, "shall select."

S Heitkamp: But if you remember right, the stuff that's happened this session, the bill doesn't DO anything.

S Hacker: I think this reflects on SB 2255 that we passed.

S Klein: 2255 addresses all the issues that she has that she was thing to address here.

S Heitkamp: Maybe someone who doesn't have to go to a joint caucus should make a motion.

Motion for a DO NOT PASS HB 1316 – 4-2-1 (nays Behm & Potter) PASSED as DNP

Carrier: S Klein

S Heitkamp: I don't think you'll get a lot of opposition on the floor.

Date: 2-26-07

Roll Call Vote: 1

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1316

Senate INDUSTRY BUSINESS & LABOR Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken DO NOT PASS

Motion Made By Wanzek Seconded By Hacker

Senators	Yes	No	Senators	Yes	No
Chairman Klein, Jerry	✓		Senator Behm, Arthur		✓
Senator Hacker, Nick VC	✓		Senator Heitkamp, Joel	✓	
Senator Andrist, John	NP		Senator Potter, Tracy		✓
Senator Wanzek, Terry	✓				

Total Yes 4 No 2

Absent 1

Floor Assignment Klein

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1316, as engrossed: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends **DO NOT PASS** (4 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING). Engrossed HB 1316 was placed on the Fourteenth order on the calendar.

2007 TESTIMONY

HB 1316

#1

President signs pretexting bill into law

By Anne Broache

CNET NEWS

Story last modified Wed Jan 17 06:03:16 PST 2007

It's official: "pretexting" to buy, sell or obtain personal phone records--except when conducted by law enforcement or intelligence agencies--is now a federal crime that could yield prison time. President Bush on Friday affixed his signature to the Telephone Records and Privacy Protection Act of 2006. The measure threatens up to 10 years behind bars to anyone who pretends to be someone else, or otherwise employs fraudulent tactics, to persuade phone companies to hand over what is supposed to be confidential data about customers' calling habits.

Even before Bush's move, federal law banned pretexting to obtain someone's financial records. Some states, such as California, have already outlawed telephone pretexting. But many politicians and consumer advocacy groups urged passage of a federal law to clarify that the practice is illegal.

"Sales of fraudulently obtained phone records flourished because the possibility of criminal prosecution was remote," Rep. Lamar Smith (R-Texas), the bill's original sponsor, said in a statement after the legislation cleared the Senate last month.

Calls for criminalizing such a practice took on renewed urgency last summer after Hewlett-Packard admitted that its investigators had used false pretenses to obtain the phone records of journalists, including three from CNET News.com, and board members in an elaborate effort to uncover the source of boardroom media leaks. One data broker hired by HP pleaded guilty on Friday to using "fraud and deceit" to nab such records.

The president, who signed the bill along with six other unrelated measures, did not release any comments specific to the antipretexting legislation, a White House spokesman said.

The bill signed Friday was one of nearly a dozen proposals introduced last year by members of Congress who said they were incensed by reports that ordinary citizens could buy others' phone records online for \$100 or less. Most, but not all of the proposals, however, also contained exemptions for law enforcement and intelligence agents, who, according to published reports, have been known to hire pretexters for their own work.

The U.S. House of Representatives approved the measure that ultimately went to the president's desk in May by a 409-0 vote. But it stalled until the Senate's final day in session last December, in part because of disagreements over competing versions of the legislation. Some senators had hoped to impose more burdens on the phone companies themselves to protect their subscribers' data, though the industry urged against new regulations, saying it was already taking numerous steps to stave off fraud.

A push for additional legislation could be on the way. In the early days of the new Congress, Sen. Ted Stevens (R-Alaska) reintroduced a bill (click for PDF) designed to require wireless, Internet, and wireline phone companies alike to implement new safeguards against unauthorized access to their customers' records. Among other things, it would also allow consumers to sue those who managed to secure their records without their permission.

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HOUSE BILL 1316

Presented by: Tony Clark, Public Service Commissioner

Before: House Industry, Business and Labor Committee
Honorable George J. Keiser, Chairman

Date: January 17, 2007

TESTIMONY

Mr. Chairman and committee members, for your record my name is Public Service Commissioner Tony Clark. I am before you today to speak on behalf of the entire Public Service Commission. The PSC is pleased to offer its support HB 1316.

Within the last couple of years, the issue of pre-texting, or the unauthorized procurement of a customer's phone records, has become a major concern of officials across the nation. Action has been taken at the federal level, both in Congress and at the Federal Communications Commission. In addition, a number of states have specifically created state enforcement authority of similar laws. This is often advantageous because experience has shown that state officials tend to be better equipped to handle compliance and enforcement of specific consumer protection complaints than our federal counterparts.

I currently serve as Chairman of the Telecommunications Committee of the National Association of Regulatory Utility Commissioners (NARUC), which is the association that represents the interests of states and state commissions in matters of national importance on utility matters. I have attached to our testimony a copy of a

resolution passed by our membership in support of measures that crack-down on those who participate in the sleazy business of pre-texting.

As a matter of background, I would note that President Bush recently signed into law a federal bill that prohibits the practice of pre-texting. In addition, the FCC is consistently undergoing rulemakings that require telecommunications companies to protect consumer phone information. To date, federal officials have not pre-empted states from enacting these types of statutes, though it has been tried on many occasions, and undoubtedly will in the future.

We would recommend that however the legislature chooses to approach this issue, that it strive to create as much uniformity with federal rules as possible. This will ensure that conflicting rules do not apply to telecommunications companies that also must comply with federal standards. The PSC would be willing to work with industry and the committee if further research in this area is needed.

This completes my testimony, I would be happy to answer any questions you might have.

Resolution on Theft and Unauthorized Sale of Consumer's Telephone Records

WHEREAS, American jurisprudence recognizes the fundamental right to privacy in personal communications, and the Courts and Congress have recognized the paramount interest citizens have in protecting their privacy; *and*

WHEREAS, Dozens of online services are advertising the selling of private telephone call records, raising security concerns among law enforcement and consumers who have an expectation that their telephone records are confidential and will be kept private; *and*

WHEREAS, It is a growing concern that such telephone records can be exploited by criminals, such as stalkers or abusive spouses, and can lead to violence; *and*

WHEREAS, The Federal Communications Commission and the Federal Trade Commission have launched inquiries into the method of procurement of consumer records, whether telephone service providers are following disclosure rules, and are coordinating efforts to combat the rising fraud related to the access of telephone records; *and*

WHEREAS, Several States have introduced specific legislation prohibiting the unauthorized sale or release of telephone records; *and*

WHEREAS, Telephone service providers across the nation, concerned about improper methods of accessing customer records (e.g., "pretexting," which is obtaining customer information from a provider by pretending to be someone else), are seeking various legal methods to tackle the theft of their customer telephone records; *and*

WHEREAS, The National Association of Regulatory Utility Commissioners (NARUC) has been a long time advocate of customer privacy and related consumer protection issues (truth-in-billing, caller ID, slamming, etc.) and its member State commissions play an important role in ensuring that public safety and consumer protection goals are met; *and*

WHEREAS, NARUC has consistently encouraged and supported the FCC's efforts to maintain an effective, strong and cooperative relationship with NARUC and its member States as it addresses consumer issues, including development of rules and policies, enforcement actions against violators, and developing and distributing related consumer education materials; *now therefore be it*

RESOLVED, That the Board of Directors of the National Association of Regulatory Utility Commissioners (NARUC), convened in its February 2006 Winter Meetings in Washington, D.C., supports and commends FCC Chairman Martin and his colleagues, Commissioners Tate, Adelstein, and Copps, for taking leadership in addressing the theft and sale of personal telephone records and recognizing that quick action by the FCC is needed to address this issue and prevent the illegal theft of Americans' phone records; *and be it further*

RESOLVED, That NARUC is committed to working with Congress, the FCC and the industry on a comprehensive approach to the issue in order to educate and protect consumers regarding the protection of the privacy of their telephone records.

*Sponsored by the Consumer Affairs Committee and the Committee on Telecommunications
Adopted by the NARUC Board of Directors February 15, 2006*