

2021 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1486

2021 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Room JW327C, State Capitol

HB 1486
2/3/2021

Limitations on the authorized access to telephone records & sale or procurement of telephone records.
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(2:46) Chairman Lefor calls the hearing to order.

Representatives	Attendance
Chairman Lefor	P
Vice Chairman Keiser	P
Rep Hagert	P
Rep Jim Kasper	P
Rep Scott Louser	P
Rep Nehring	P
Rep O'Brien	P
Rep Ostlie	P
Rep Ruby	P
Rep Schauer	P
Rep Stemen	P
Rep Thomas	P
Rep Adams	P
Rep P Anderson	P

Discussion Topics:

- Private phone records sales without a signed release.

Rep Christensen~District 24. Introduced the bill. Attachment #5264.

Rep B Koppleman~District 16-Fargo amendment 21.0771.01002. Attachment #5259.

Terry Traynor~Executive Director-ND Association of Counties. Testified in opposition.

Blair Thorson~ND Peace Officers Association. Testified in opposition as it's currently written.

Sheriff Andy Schneider~Grand Forks County. Attachment #5261.

Jesse Jahner~Cass County Sheriff's Office. Attachment #5169.

Sheriff Andy Schneider~Grand Forks County agrees with amendment 21.0771.01002.

Chairman Lefor closed the hearing.

House Industry, Business and Labor Committee
HB 1486
Feb 3, 2021
Page 2

Rep Adams moved to adopt the amendment 21.0771.01002.

Rep Schauer second.

Voice vote Motion carried.

Additional written testimony: Attachment #4644 & 4699.

(3:31) End time.

Ellen LeTang, Committee Clerk

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1486

Page 2, line 26, overstrike "telephone company" and insert immediately thereafter
"governmental entity"

Page 2, line 26, remove the overstrike over "an"

Page 2, line 26, remove "a"

Page 2, line 27, remove "medical"

Page 2, line 28, remove "occurred"

Page 2, line 28, after "individual" insert "has occurred or will occur"

Page 2, line 28, overstrike "the"

Page 2, line 29, after "information" insert "related to the location of the emergency"

Renumber accordingly

1486

Chairman and members of the committee,

My name is Cole Christensen, representative from District 24.

HB 1485 will secure phone records so an individual, business, or other agency, may not procure, access, or sell private phone records without a signed release by the customer.

These past few years have created challenges with keeping information confidential. I don't want personal information floating around without authorization.

This bill did create a problem that will be solved with an amendment, and that problem pertained to an emergency agency and its ability to ping the phone of a missing person. The person testifying after me worked to make sure the agency can get the information in case of an emergency.

I will stand for questions.

21.0771.01002

Sixty-seventh
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1486

Introduced by

Representatives Christensen, Becker, Ertelt, Jones, B. Koppelman, M. Ruby, Vetter

Senator D. Larsen

1 A BILL for an Act to amend and reenact sections 51-34-02, 51-34-04, and 51-34-05 of the North
2 Dakota Century Code, relating to limitations on the authorized access to telephone records and
3 the sale or procurement of telephone records; to provide a penalty; and to provide for
4 application.

5 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

6 **SECTION 1. AMENDMENT.** Section 51-34-02 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **51-34-02. Unauthorized or fraudulent procurement, sale, or receipt of telephone**
9 **records prohibited - Criminal penalties - Restitution.**

10 1. A person may not:

- 11 a. Procure, attempt to procure, solicit, or conspire with another to procure, a
12 telephone record of any resident of this state without ~~the authorization of a signed~~
13 release by the customer or by fraudulent, deceptive, or false means;
14 b. Sell, or attempt to sell, a telephone record of any resident of this state without the
15 customer's ~~authorizationsigned release~~; or
16 c. Receive a telephone record of any resident of this state when such record has
17 been obtained without the customer's ~~authorizationsigned release~~ or by
18 fraudulent, deceptive, or false means.

19 2. Any person who knowingly violates this section is guilty of a class C felony.

20 3. In addition to any other punishment, a person found guilty of an offense under this
21 section shall make restitution for any financial loss sustained by the customer or any
22 other person who suffered financial loss as the direct result of the offense.

23 **SECTION 2. AMENDMENT.** Section 51-34-04 of the North Dakota Century Code is
24 amended and reenacted as follows:

51-34-04. ~~Nonapplicability to valid~~Valid legal process and law enforcement.

1. ~~This chapter does not apply to any person acting pursuant to~~Except as otherwise provided by law, a telephone company may not permit access to, disclose, or provide a telephone record to any person without a valid court order, warrant, or subpoena, a subpoena by the attorney general pursuant to this chapter or chapter 51-15, the customer's signed release authorizing the disclosure or permitting access to the record related to the request, or other valid legal process.
2. This chapter does not prevent any action by a law enforcement agency, or any officer, employee, or agent of such agency, to obtain telephone records in connection with the performance of the official duties of the agency in accordance with subsection 1 or as specifically authorized by law.

SECTION 3. AMENDMENT. Section 51-34-05 of the North Dakota Century Code is amended and reenacted as follows:

51-34-05. Permitted use by telephone companies.

1. This chapter does not prohibit a telephone company from obtaining, using, disclosing, or permitting access to any telephone record, either directly or indirectly through its agents or contractors:
 - a. As otherwise authorized by law;
 - b. With the lawful consent of the customer documented in a signed release authorizing the disclosure or permitting access to the record under the relevant circumstances;
 - c. As may be necessarily incident to the rendition of the service or to the protection of the rights or property of the telephone company, or to protect the customer of those services and other carriers from fraudulent, abusive, or unlawful use of, or subscription to, such services;
 - d. To a governmental entity, if the ~~telephone company~~governmental entity reasonably believes that ~~an~~a medical emergency involving immediate danger of death or serious physical injury ~~occurred~~ to any ~~person~~an individual has occurred or will occur which justifies disclosure of ~~the~~ information related to the location of the emergency; or

1 e. To the national center for missing and exploited children, in connection with a
2 report submitted thereto under section 227 of the Victims of Child Abuse Act of
3 1990.

4 2. This chapter does not apply to or expand upon the obligations and duties of any
5 telephone company to protect telephone records beyond those otherwise established
6 by federal law or state law or both as set forth in section 51-34-06.

7 3. This chapter does not apply to a telephone company, and its agents or
8 representatives, who reasonably and in good faith act pursuant to subsection 2,
9 notwithstanding any later determination that the action was not in fact authorized.

10 **SECTION 4. APPLICATION.** This Act applies to telephone service contracts and
11 agreements entered after July 31, 2021.

GRAND FORKS COUNTY SHERIFF'S OFFICE

122 S 5TH ST, SUITE 210
 GRAND FORKS, NORTH DAKOTA 58201-4632
 SHERIFFS.OFFICE@GFCOUNTY.ORG

PHONE: 701-780-8280

FAX: 701-780-8307

SHERIFF ANDY SCHNEIDER



To: Chairman Lefor and House Industry, Business, and Labor Members
From: Sheriff Andy Schneider
RE: HB 1486
Date: 2/1/2021

Dear House Industry, Business, and Labor members,

My name is Andy Schneider, and I have the privilege and honor of being the Sheriff of Grand Forks County. I come before you today to give testimony regarding why I am opposed to HB 1486 as written. This proposed bill brings forth concerns regarding the abilities of law enforcement to utilize critical technological opportunities when lives are at risk.

- **This bill will prevent law enforcement from utilizing technology to assist in locating individuals during emergent circumstances.**
- **It would prevent law enforcement's abilities to attempt to get an accurate location of suicidal subjects.**
- **It would prevent law enforcement's abilities to attempt to get an accurate location of missing persons.**
- **It requires law enforcement to verify that a serious medical emergency has already occurred, and not that one is occurring or is likely to occur.**
- **It would restrict law enforcement's abilities to attempt to identify last locations of individuals who are missing that are suffering from disabilities that have a history of wandering such as individuals with Alzheimer's, dementia, and autism to name a few.**
 - **These conditions are not defined as medical emergencies that have occurred.**
- **When law enforcement responds to these issues, time is usually NOT on our side. These incidents require swift action and response to locate persons.**
- **The process of obtaining court orders, search warrants, or subpoenas is not timely.**
 - **Court orders and subpoenas can take days, if not weeks.**
 - **Search warrants can take several hours, if not days.**
 - **These options are not in the interest of public safety when it comes to locating missing persons, lost individuals, or suicidal subjects.**
- **The state should work with helping law enforcement have options and opportunities to locate suicidal, lost, and missing individuals instead of taking options away.**
- **Law enforcement entities typically use the wording, "To protect and serve".**
 - **Removing the abilities of law enforcement to potentially locate individuals by requesting the last location of their cell phone will make it harder for law enforcement to carry out the "protect" portion.**

The current version of this bill will create a disservice to the communities we are sworn to protect and serve. It creates a burden for law enforcement's ability to potentially save the lives of those lost, missing, or suicidal. I cannot support this bill as it is written. I encourage to committee to consider a do-not pass recommendation on this bill. Additionally, if the committee's desire is to

move forward I would request consideration in removing any and all wording that restricts law enforcement to utilizing this technology in such a narrow scope (medical emergency involving immediate danger of death or serious physical injury that has occurred, or the national center for missing and exploited children). The examples I provided are not all-inclusive of additional reasons that an agency would utilize a cellular device to assist in locating an individual, merely a few that commonly occur.

Thank you for your time and consideration. Please feel free to contact me with any questions, feedback, or comments. I appreciate your service.

**Andy Schneider
Sheriff, Grand Forks County
andrew.schneider@gfcounty.org**

House Bill 1486

My name is Jesse Jahner and I am the elected Sheriff of Cass County North Dakota. I am testifying in opposition of House Bill 1486 as it is currently written. The way the bill is currently written our 911 dispatch center would not be allowed to ping a cell phone in an emergency situation to locate an individual who is need of immediate assistance. The situations where we would want to ping a phone currently encompass situations of immediate life or death, locations during adverse weather conditions, someone is in jeopardy of serious bodily injuries or death, kidnapping, elderly wondering and orientation, terrorists threats, national security situations, and suicidal individuals to name a few. I have spoken with one of the bills sponsors Representative Ben Koppelman in reference to these concerns and he was very receptive to language that would assist in these situations. I mentioned to him that if Section 3 Amendment, 51-34-05 line 26 d. was changed back to it's original format it would fit the need of law enforcement in order to help in these emergencies. If this language was changed back to it's original format I would have no other concerns.

Chairman and Committee Members,

My name is Cindy Miller, and I have been the Executive Director at FirstLink for over 13 years. Today, one of the greatest needs we have in the state is knowing where to go for help and hope to assist those who need behavioral health support. I am writing about HB 1486. I am neutral about this bill.

We need to make getting help easier- this year has been tough enough, why are we making it even more difficult to get help? HB 1486 will make it harder to find those who need immediate help. The bill also states, "Medical emergency that **has** occurred." Is a behavioral health/suicidal plan a medical emergency? How about an abduction? Many who call our line have not already attempted suicide but have a plan-so it has not "occurred" yet. But they need immediate help.

Our contacts increased almost 19% in 2020 from a record 60,148 in 2019 to a new record 71,325 in 2020. Crisis intervention contacts were 7,938 in 2020 and contacts related to suicide in 2020 were 12,873. People need help and we need to know where Law Enforcement can find them.

Life has thrown a lot at our state this past year. We have been here 24 hours a day for 50 years... no closures because of storms, floods, Covid-19. We are always here because crisis does not stop at certain times or days of the week. But we need Law Enforcement to be able to do the next step and be able to find those who need help. Our staff are devastated when some LE centers across the state do not have technology to "ping" someone who needs help immediately. If it were your loved one, wouldn't you want them to get help immediately wherever they are?

Sincerely,

A handwritten signature in cursive script that reads "Cindy Miller". The ink is dark and the signature is fluid, with a long, sweeping tail on the "l" in Miller.

Cindy Miller

FirstLink Executive Director

February 3, 2021
House Industry, Business and Labor
Honorable Chairman Mike Lefor

HB 1486
AMEND

Chairman Lefor and members of the Industry, Business and Labor Committee, for the record my name is Becky Ault, Director of the Grand Forks Public Safety Answering Point, and Co-Chair of the ND 911 Association Legislative Committee. I urge a change to the language of HB1486, which relates the limitations on the authorized access to telephone records and the sale or procurement of telephone records.

I have been the director in Grand Forks for ten years. Prior to that, I worked as a regional coordinator in northeast ND in the Homeland Security Division at the Department of Emergency Services for 2 years, and prior to that I was the Pembina County Emergency Manager and 911 Director for 14 years. I give you that background to show that over the years, I have worked with both large paid departments, as well as small rural departments, and all disciplines, encompassing law enforcement, fire personnel, emergency medical services, public works, and schools, to name a few. I can tell you that there are circumstances, in counties both large and small, where 911 dispatch services, based upon the request of responding agencies, and under emergency circumstances that could result in death or injury – leverage technology, partnering with our cell phone companies, to locate an individual. This does not happen often, and we have processes in place to ensure there are exigent circumstances, but we have located individuals that are suicidal, or have autism or other cognitive challenges, or have another type of medical emergency where we need to locate them to enable responders to render aid. We refer to this as “pinging” the cell phone.

The section of the proposed bill that we find concerning is located on page 2 lines 26 and 27. This is located in 57-34-05(d). Specifically identifying “medical”, as well as “occurred”. We are concerned this may limit our ability to request technological assistance from our industry partners to locate individuals that are in danger, when an incident may be pending.

We thank you for your service and for your consideration of this recommended adjustment in the language of this bill.

2021 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Room JW327C, State Capitol

HB 1486
2/10/2021

Limitations on the authorized access to telephone records & sale or procurement of telephone records.
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(9:53) Chairman Lefor called the work session to order.

Representatives	Attendance
Chairman Lefor	P
Vice Chairman Keiser	P
Rep Hagert	P
Rep Jim Kasper	P
Rep Scott Louser	P
Rep Nehring	P
Rep O'Brien	P
Rep Ostlie	P
Rep Ruby	P
Rep Schauer	P
Rep Stemen	P
Rep Thomas	P
Rep Adams	P
Rep P Anderson	P

Discussion Topics:

- Committee work.

Chairman Lefor explained amendment 21.0771.01004. Attachment #6199.

Kasper moved the amendment.

Rep D Ruby second.

Voice vote Motion carried.

Rep Schauer moved a Do Pass as Amended.

Rep Kasper second.

Representatives	Vote
Chairman Lefor	Y
Vice Chairman Keiser	N
Rep Hagert	Y
Rep Jim Kasper	Y
Rep Scott Louser	Y
Rep Nehring	Y
Rep O'Brien	N
Rep Ostlie	Y
Rep Ruby	Y
Rep Schauer	Y
Rep Stemen	Y
Rep Thomas	N
Rep Adams	N
Rep P Anderson	N

Vote roll call taken Motion carried 9-5-0 & Rep Ostlie is the carrier.

(9:52) End time.

Ellen LeTang, Committee Clerk

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1486

Page 1, line 1, after "reenact" insert "subsection 5 of section 51-34-01 and"

Page 1, after line 5, insert:

"SECTION 1. AMENDMENT. Subsection 5 of section 51-34-01 of the North Dakota Century Code is amended and reenacted as follows:

5. "Telephone record" means information retained by a telephone company ~~that~~which relates to the telephone number dialed by the customer or other person using the customer's telephone with ~~sueh~~the customer's permission, the incoming number of a call directed to a customer or other person using the customer's telephone with ~~sueh~~the customer's permission, or other data related to ~~sueh~~the call typically contained on a customer's telephone bill, including the times the call started and ended, the duration of the call, the time the call was made, and any charges applied. ~~A telephone record~~The term includes text message records and data usage records. The term does not include information collected and retained by a customer utilizing caller identification or similar technology or include a carrier network record."

Page 1, line 19, after "2." insert "To be enforceable, the release under subsection 1 must:

- a. Inform the customer of any person that may receive the customer's telephone record;
- b. Be written in a clear and conspicuous manner on a separate and distinct page from any other contract condition or term; and
- c. Be signed by the customer separately from any other condition or contract term.

3."

Page 1, line 20, overstrike "3." and insert immediately thereafter "4."

Page 2, line 26, overstrike "telephone company" and insert immediately thereafter "governmental entity"

Page 2, line 26, remove the overstrike over "an"

Page 2, line 26, remove "a"

Page 2, line 27, remove "medical"

Page 2, line 28, remove "occurred"

Page 2, line 28, after "individual" insert "has occurred or will occur"

Page 2, line 28, overstrike "the"

Page 2, line 29, after "information" insert "related to the location of the emergency"

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1486: Industry, Business and Labor Committee (Rep. Lefor, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (9 YEAS, 5 NAYS, 0 ABSENT AND NOT VOTING). HB 1486 was placed on the Sixth order on the calendar.

Page 1, line 1, after "reenact" insert "subsection 5 of section 51-34-01 and"

Page 1, after line 5, insert:

"SECTION 1. AMENDMENT. Subsection 5 of section 51-34-01 of the North Dakota Century Code is amended and reenacted as follows:

5. "Telephone record" means information retained by a telephone company ~~that~~which relates to the telephone number dialed by the customer or other person using the customer's telephone with ~~such~~the customer's permission, the incoming number of a call directed to a customer or other person using the customer's telephone with ~~such~~the customer's permission, or other data related to ~~such~~the call typically contained on a customer's telephone bill, including the times the call started and ended, the duration of the call, the time the call was made, and any charges applied. ~~A telephone record~~The term includes text message records and data usage records. The term does not include information collected and retained by a customer utilizing caller identification or similar technology or include a carrier network record."

Page 1, line 19, after "2." insert "To be enforceable, the release under subsection 1 must:

- a. Inform the customer of any person that may receive the customer's telephone record;
- b. Be written in a clear and conspicuous manner on a separate and distinct page from any other contract condition or term; and
- c. Be signed by the customer separately from any other condition or contract term.

3."

Page 1, line 20, overstrike "3." and insert immediately thereafter "4."

Page 2, line 26, overstrike "telephone company" and insert immediately thereafter "governmental entity"

Page 2, line 26, remove the overstrike over "an"

Page 2, line 26, remove "a"

Page 2, line 27, remove "medical"

Page 2, line 28, remove "occurred"

Page 2, line 28, after "individual" insert "has occurred or will occur"

Page 2, line 28, overstrike "the"

Page 2, line 29, after "information" insert "related to the location of the emergency"

Renumber accordingly

21.0771.01004

Sixty-seventh
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1486

Introduced by

Representatives Christensen, Becker, Ertelt, Jones, B. Koppelman, M. Ruby, Vetter

Senator D. Larsen

1 A BILL for an Act to amend and reenact subsection 5 of section 51-34-01, and sections
2 51-34-02, 51-34-04, and 51-34-05 of the North Dakota Century Code, relating to limitations on
3 the authorized access to telephone records and the sale or procurement of telephone records;
4 to provide a penalty; and to provide for application.

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

6 **SECTION 1. AMENDMENT.** Subsection 5 of section 51-34-01 of the North Dakota Century
7 Code is amended and reenacted as follows:

8 5. "Telephone record" means information retained by a telephone company that which
9 relates to the telephone number dialed by the customer or other person using the
10 customer's telephone with such the customer's permission, the incoming number of a
11 call directed to a customer or other person using the customer's telephone with
12 such the customer's permission, or other data related to such the call typically
13 contained on a customer's telephone bill, including the times the call started and
14 ended, the duration of the call, the time the call was made, and any charges applied. A-
15 ~~telephone record~~ The term includes text message records and data usage records.
16 The term does not include information collected and retained by a customer utilizing
17 caller identification or similar technology or include a carrier network record.

18 **SECTION 2. AMENDMENT.** Section 51-34-02 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **51-34-02. Unauthorized or fraudulent procurement, sale, or receipt of telephone**
21 **records prohibited - Criminal penalties - Restitution.**

22 1. A person may not:

- 1 a. Procure, attempt to procure, solicit, or conspire with another to procure, a
2 telephone record of any resident of this state without ~~the authorization of a signed~~
3 release by the customer or by fraudulent, deceptive, or false means;
- 4 b. Sell, or attempt to sell, a telephone record of any resident of this state without the
5 customer's ~~authorization~~signed release; or
- 6 c. Receive a telephone record of any resident of this state when such record has
7 been obtained without the customer's ~~authorization~~signed release or by
8 fraudulent, deceptive, or false means.

- 9 2. To be enforceable, the release under subsection 1 must:
 - 10 a. Inform the customer of any person that may receive the customer's telephone
11 record;
 - 12 b. Be written in a clear and conspicuous manner on a separate and distinct page
13 from any other contract condition or term; and
 - 14 c. Be signed by the customer separately from any other condition or contract term.

15 3. Any person who knowingly violates this section is guilty of a class C felony.

16 ~~3.4.~~ In addition to any other punishment, a person found guilty of an offense under this
17 section shall make restitution for any financial loss sustained by the customer or any
18 other person who suffered financial loss as the direct result of the offense.

19 **SECTION 3. AMENDMENT.** Section 51-34-04 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **51-34-04. ~~Nonapplicability to valid~~Valid legal process and law enforcement.**

- 22 1. ~~This chapter does not apply to any person acting pursuant to~~Except as otherwise
23 provided by law, a telephone company may not permit access to, disclose, or provide
24 a telephone record to any person without a valid court order, warrant, or subpoena, a
25 subpoena by the attorney general pursuant to this chapter or chapter 51-15, the
26 customer's signed release authorizing the disclosure or permitting access to the
27 record related to the request, or other valid legal process.
- 28 2. This chapter does not prevent any action by a law enforcement agency, or any officer,
29 employee, or agent of such agency, to obtain telephone records in connection with the
30 performance of the official duties of the agency in accordance with subsection 1 or as
31 specifically authorized by law.

1 **SECTION 4. AMENDMENT.** Section 51-34-05 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **51-34-05. Permitted use by telephone companies.**

4 1. This chapter does not prohibit a telephone company from obtaining, using, disclosing,
5 or permitting access to any telephone record, either directly or indirectly through its
6 agents or contractors:

7 a. As otherwise authorized by law;

8 b. With the lawful consent of the customer documented in a signed release
9 authorizing the disclosure or permitting access to the record under the relevant
10 circumstances;

11 c. As may be necessarily incident to the rendition of the service or to the protection
12 of the rights or property of the telephone company, or to protect the customer of
13 those services and other carriers from fraudulent, abusive, or unlawful use of, or
14 subscription to, such services;

15 d. To a governmental entity, if the ~~telephone company~~ governmental entity
16 reasonably believes that ~~an~~ a medical emergency involving immediate danger of
17 death or serious physical injury ~~occurred to any person~~ an individual has occurred
18 or will occur which justifies disclosure of the information related to the location of
19 the emergency; or

20 e. To the national center for missing and exploited children, in connection with a
21 report submitted thereto under section 227 of the Victims of Child Abuse Act of
22 1990.

23 2. This chapter does not apply to or expand upon the obligations and duties of any
24 telephone company to protect telephone records beyond those otherwise established
25 by federal law or state law or both as set forth in section 51-34-06.

26 3. This chapter does not apply to a telephone company, and its agents or
27 representatives, who reasonably and in good faith act pursuant to subsection 2,
28 notwithstanding any later determination that the action was not in fact authorized.

29 **SECTION 5. APPLICATION.** This Act applies to telephone service contracts and
30 agreements entered after July 31, 2021.

2021 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1486

2021 SENATE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Fort Union Room, State Capitol

HB 1486
3/17/2021

relating to limitations on the authorized access to telephone records and the sale or procurement of telephone records
--

Chair Klein opened the hearing at 2:29 p.m. All members were present. Senators Klein Larsen, Burckhard, Vedaa, Kreun, and Marcellas.

Discussion Topics:

- Ability to sell or share data
- North Dakota consumers
- Contracts for privacy
- National corporate businesses
- North Dakota telephone companies
- Marketing and sale of information

Representative Ben Koppleman testified in favor [14:29].

Representative Cole Christensen introduced the bill [14:41].

Troy Sieble, Chief Deputy Attorney General testified neutral and submitted testimony #9880 [14:42].

Lisa McCabe, Cellular Telecommunication Industry Association testified in opposition and submitted testimony #9826 [14:51].

Additional written testimony: 9603

Chair Klein closed the hearing at 2:59 p.m.

Isabella Grotberg, Committee Clerk

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1486

Page 2, line 25, replace the second “chapter” with “chapters”

Page 2, line 25, after “51-15” add “or 50-24.8”

Renumber accordingly



**Testimony of
Lisa McCabe
CTIA
Opposition to North Dakota House Bill 1486
Before the Senate Industry, Business and Labor Committee**

March 17, 2021

Chair Klein, Vice Chair Larsen and Committee Members, on behalf of CTIA®, the trade association for the wireless communications industry, thank you for the opportunity to provide this testimony in opposition to House Bill 1486 dealing with telephone records. HB 1486 is inconsistent with federal law, limits consumer choice, creates unnecessary burdens on consumers and businesses, and unnecessarily expands unaccountable governmental access to citizens' private information.

Wireless carriers' practices are consistent with the Communications Act and the Federal Communications Commission's rules on the sharing and disclosure of Consumer Proprietary Network Information (collectively "CPNI Rules"), a class of data that is very similar in scope to the definition of "telephone record" provided in HB 1486.¹ The CPNI Rules require that a carrier obtain a consumer's opt-in consent before using, disclosing, or accessing the consumer's CPNI data for marketing purposes.² That approval may be provided by the consumer orally, in writing, or electronically.³ The CPNI Rules also govern how a

¹ CPNI includes the time, date, duration and destination number of each call, the type of network a consumer subscribes to, and any other information that appears on the consumer's telephone bill. See 47 U.S.C. § 222(h)(1).

² 47 C.F.R. § 64.2007(a).

³ 47 C.F.R. § 64.2007(a).



telecommunications carrier must provide notice to its users about its data sharing and disclosure practices relating to CPNI.⁴ This federally mandated notice and approval process differs from the process for obtaining a “signed release” as defined in HB 1486, and will cause significant problems for both consumers and businesses as discussed below.

HB 1486 Limits Consumer Choice

First, by mandating a process for obtaining consumer authorization that differs from the CPNI Rules, HB 1486 would provide consumers with ***fewer*** choices in how they can exercise their rights related to disclosing their telephone record information. In particular, while the CPNI Rules provide choice to consumers in how they provide authorization for sharing their data (orally, electronically or in writing), HB 1486 limits consumer choice and convenience. Consumers will no longer be able to provide their authorization in a means that is most convenient and accessible to them and must instead find a way to provide a “signed release.”

This has serious, negative, real-world implications for consumers. For example, consider an elderly parent who wants to provide a son or daughter with authorization to their cell phone account, so they can help their parent manage the account, including by making payments or looking for overcharges or other issues with the account. While both current North Dakota law (and the CPNI Rules) would allow that parent to provide the authorization to the wireless carrier over the phone, the parent must now find a way to provide a “signed

⁴ 47 C.F.R. § 64.2008.



release” to the carrier authorizing this access. Providing this signed release will be a burden for individuals in rural areas, those with reduced access to technology, or those with any reduced mobility or other health concerns. It will also introduce significant delay into the approval process as individuals may be required to mail the release or go to a carrier’s store in order to provide the signed release. In rural areas, this will be especially burdensome, where the store may not be nearby.

HB 1486 Creates Unnecessary Burdens on Businesses

Second, requiring a “signed release” creates unnecessary burdens on businesses. As discussed, the CPNI Rules already provide consumers with choices related to use of their CPNI – the equivalent of telephone record information – and HB 1486 does not create any additional consumer rights. Businesses have incurred significant costs in developing processes to comply with the CPNI Rules, including processes for sending, receiving, verifying and storing consumers’ consents. If H.B. 1486 were passed, carriers would need to incur additional costs associated with developing new processes related to signed consumer releases, establishing yet another category of data that needs to be collected, stored and protected.

HB 1486 Unnecessarily Expands Government Access to Customer Data

Third, HB 1486 unnecessarily and inappropriately expands governmental access to data related to the location of North Dakota citizens without adequate safeguards. HB 1486 includes a provision that would allow access to sensitive phone location information by *any* “governmental entity,” a term which is not defined, if the governmental entity “reasonably



believes” an emergency involving imminent danger exists.⁵ Not only is this provision entirely unnecessary as there already exists a means for law enforcement to obtain that information, but HB 1486 provides no framework or standards whereby the carriers would measure or evaluate the reasonableness of the government’s belief or when in fact it should turn over the records.

For these reasons, CTIA respectfully opposes this legislation. Thank you for your consideration.

⁵ HB 1468, Section 4, Lines 15-19.



TECHNET
THE VOICE OF THE
INNOVATION ECONOMY

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March 16, 2021
Honorable Chair Jerry Klein
North Dakota State Legislature
600 East Boulevard
Bismarck, ND 58505-0360

Re: TechNet Opposition to EHB 1486

Dear Chair Klein and Members of the Senate Industry, Business and Labor Committee:

I write on behalf of TechNet respectfully in opposition to **Engrossed House Bill 1486**, relating to limitations on the authorized access to telephone records and the sale or procurement of telephone records.

TechNet is the national, bipartisan network of technology CEOs and senior executives that promotes the growth of the innovation economy by advocating a targeted policy agenda at the federal and 50-state level. TechNet's diverse membership includes dynamic American businesses ranging from startups to the most iconic companies on the planet and represents more than three and a half million employees and countless customers in the fields of information technology, e-commerce, the sharing and gig economies, advanced energy, cybersecurity, venture capital, and finance.

EHB 1486 would do little to strengthen consumer privacy because of federal Consumer Proprietary Network Information (CPNI) regulations in line with the Federal Communications Commission and the Communications Act. These regulations already mandate that carriers gain consumer consent to use or access their CPNI data. Should this bill be enacted, it would burden consumers who have already given consent to carriers, subjecting them to sign an unnecessary release form that can create more confusion.

In addition, this legislation would impede business processes in North Dakota. By requiring consumer authorization of accessing and selling CPNI data through signed release, businesses would have to create new processes to adhere to EHB 1486, impeding innovation and deterring business relocations to the state.

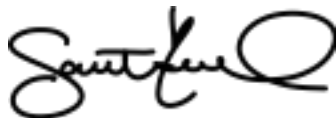
TechNet members are deeply committed to the protection of consumer data and invest significant resources to public safety associated with that data. However, we believe that provisions on data privacy should not be a piecemeal approach depending on the type of data or the state. Instead, data privacy legislation should be comprehensive to minimize unintended consequences and should be addressed at the federal level. Recently, the North Dakota State Legislature did not pass HB

1330, another state-specific privacy bill. Among discussions about this legislation, it is clear that other legislators agree that these privacy issues are best left to the federal government.

Data privacy continues to be one of the most significant challenges facing public and private entities in the modern digital economy. TechNet understands the role states can play in this discussion, especially as it pertains to a consumer's right to know what data exists and how their data may be used. Nonetheless, we believe additional consumer consent in selling data would hinder all parties and should fall solely under Attorney General enforcement until there are federal regulations in place.

For these reasons, TechNet opposes EHB 1486. We thank you in advance for your consideration, and please do not hesitate to reach out with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Santana" followed by a stylized flourish.

Samantha Kersul
Executive Director, Northwest
TechNet
skersul@technet.org
360-791-6407

2021 SENATE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Fort Union Room, State Capitol

HB 1486
3/23/2021

relating to limitations on the authorized access to telephone records and the sale or procurement of telephone records
--

Chair Klein opened the hearing at 2:46 p.m. All members were present. Senators Klein, Larsen, Burckhard, Vedaa, Kreun, and Marcellais.

Discussion Topics:

- Duties of telephone companies
- Reporting requirements for telephone companies
- Existing language in code

David Kruthers, Broadband Association of North Dakota testified in opposition [14:47].

Senator Vedaa moved a DO NOT PASS [14:55].

Senator Kreun seconded the motion [14:55].

[14:55]

Senators	Vote
Senator Jerry Klein	Y
Senator Doug Larsen	N
Senator Randy A. Burckhard	Y
Senator Curt Kreun	Y
Senator Richard Marcellais	Y
Senator Shawn Vedaa	Y

Motion passed: 5-1-0

Senator Burckhard will carry the bill [14:56].

Chair Klein ended the hearing at 2:56 p.m.

Isabella Grotberg, Committee Clerk

REPORT OF STANDING COMMITTEE

HB 1486, as engrossed: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends **DO NOT PASS** (5 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). Engrossed HB 1486 was placed on the Fourteenth order on the calendar.