

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1174

2001 HOUSE TRANSPORTATION

HB 1174

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1174

House Transportation Committee

☐ Conference Committee

Hearing Date January 18, 2001

Tape Number	Side A	Side B	Meter #
1		x	1,788
2	x		92 --- end 610
Committee Clerk Signature <i>Lauren B. Price</i>			

Minutes: Rep. Weisz - Chairman opened the hearing on HB 1174; A BILL to amend and reenact sections 39-33-01, 39-33-02, and 39-33-05 of the North Dakota Century Code, relating to privacy of driver and motor vehicle records; and to declare an emergency.

Keith Magnusson, Office of Driver and Vehicle Services, North Dakota Department of Transportation appeared to explain and support HBO 1147 a DOT sponsored bill. A copy of his written testimony is attached.

Rep. Carlson: (2829) I am assuming that over the years you have sold lists. What do you charge for a list?

Keith Magnusson: It really depends on what kind of a list it is; but a normal list --say a political candidate wants a list -- a minimum price plus so much per thousand names. I think we charge about \$45 per thousand names. We pay for the computer time and the printing -- and we can get you labels for about anything you might want -- and it pays for that and the handling. So we are not making a lot of profit. Now, the companies that want our entire date base it costs them a lot

Page 2

House Transportation Committee

Bill/Resolution Number HB 1174

Hearing Date January 18, 2001

more. We don't do like some states. It was reported in the Fargo Forum that Minnesota makes several million dollars--we don't do that. They mark it up based on value and we do it on costs.

Rep. Carlson: Please go over one more time, the penalties if we don't comply with this.

Keith Magnusson: No loss of federal funds. There are penalties of \$15,000 per day for releasing information and there is the possibility where the justice department can sue the state or an individual for release of information contrary to federal law.

Rep. Carlson: But in North Dakota under our open records law, it is legal for us to do what we are doing under state law. How can we be sued for doing something legal.

Keith Magnusson: The whole act we have now is an exception to our open record law. Again the federal government has mandated this as part of federal law.

Rep. Mahoney: Do you know has this come up in other states? And, has the Justice Department followed up on it?

Keith Magnusson: We haven't been faced with this before --- we have complied with federal law in 1997. The justice Department seems to be serious about it as the Congress has gotten after them. In other areas, the Justice Department has gone after states.

Rep. Carlson: How do they know we issued a list to anybody so they can find us?

Keith Magnusson: The Justice Department does have the authority to come in and audit. People also know about this law and if their name appears on a list, they will report it.

Rep. Weisz - Chairman (3428) What information are we now releasing, that is now out of bounds?

Keith Magnusson: This has just come out and we not sure because there are so many questions about medical records -- there is a lot of stuff in state law and lots of stuff federal law which is covered piece meal. What will really help us is the change from the opt-out to the opt-in.

Rep. Weisz - Chairman so, basically, it is section 12 and section 13 is why we need this bill?

Keith Magnusson: Yes, that is correct.

Rep. Weisz - Chairman (3622) There being no one further to testify for the bill, is there anyone opposed to HB1174?

Jack McDonald, representing the North Dakota Broadcaster Association and the R. L. Polk, Inc. company appeared in opposition the HB1174. A copy of his written testimony is attached.

There is one correction in my testimony after hearing Mr. Magnusson's testimony, I am happy to learn that the state won't loose a zillion dollars-- so strike that from my testimony and just ignore it.

Rep. Weisz - Chairman (4060) Can you tell us what is happening in the other 49 states, how are they responding to this mandate?

Jack McDonald: They are passing these bills too. Minnesota passed theirs this past summer. The state of Nebraska passed their several weeks ago. I wish it were the other way but we have these federal mandates.

Rep. Mahoney: Are you suggesting we ignore the federal mandates?

Jack McDonald: (Jokingly) We would prefer that Mr. Magnusson would stand up a strike a blow for states rights.

Rep. Weisz - Chairman (4250) There being no one wishing to appear either for or against HBO 1174 -- we will close the hearing on testimony for HB 1174.

Page 4
House Transportation Committee
Bill/Resolution Number HB 1174
Hearing Date January 18, 2001

TAPE 2 SIDE 1 (92)

Rep. Weisz - Chairman (92) opened the discussion for action on HB 1174.

Rep. Thoreson: (497) I move a 'Do Pass' for HB 1174.

Rep. Thorpe: I second the motion.

On a roll call vote the motion carried: 12 yeas 1 nay 1 absent

Rep. Thoreson was designated to carry HB 1174 on the floor.

END (610)

Date:
Roll Call Vote #: **1174**

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

House Transportation Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken DO Pass

Motion Made By Rep. Thoreson Seconded By Rep. Thorpe

Representatives	Yes	No	Representatives	Yes	No
Robin Weisz - Chairman	✓		Howard Grumbo	✓	
Chet Pollert - Vice Chairman	✓		John Mahoney	✓	
Al Carlson		✓	Arlo E. Schmidt	✓	
Mark A. Dosch	✓		Elwood Thorpe	✓	
Kathy Hawken	✓				
Roxanne Jensen	✓				
RaeAnn G. Kelsch	✓				
Clara Sue Price	A				
Dan Ruby	✓				
Laurel Thoreson	✓				

Total (Yes) 12 No 1

Absent 1

Floor Assignment Rep. Thoreson

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

REPORT OF STANDING COMMITTEE (410)
January 18, 2001 11:55 a.m.

Module No: HR-08-1201
Carrier: L. Thoreson
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1174: Transportation Committee (Rep. Welsz, Chairman) recommends DO PASS
(12 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING). HB 1174 was placed on the
Eleventh order on the calendar.

2001 SENATE TRANSPORTATION

HB 1174

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1174

Senate Transportation Committee

☐ Conference Committee

Hearing Date 3-15

Tape Number	Side A	Side B	Meter #
1		x	6.7-18.6
2	x		12.2-15.5
Committee Clerk Signature <i>Sydney Schaf</i>			

Minutes: HB 1174 relates to privacy of driver and motor vehicle records; and to declare an emergency.

Kelth Magnusson: (Office of Driver and Vehicle Services; Supports) See attached testimony.

Senator Trenbeath: I want to be absolutely clear. Are you saying that "highly restricted personal information" would not be able to be re-disclosed by insurance support organizations?

Kelth Magnusson: The insurance support organizations would be able to disclose information to insurance companies, but only if they represent , and only for insurance purposes.

Senator Trenbeath: I want to be sure that you are telling me that if you are disclosing this to insurers, insurance agents, employees and contractors- that you are reading this as a restriction on the reuse of this information for insurance purposes.

Kelth Magnusson: Yes, if they do then they are under the same penalties as this act.

Senator Espgaard: What are your provisions for making sure that the vendors do not share the information?

Page 2
Senate Transportation Committee
Bill/Resolution Number HB 1174
Hearing Date 3-15

Keith Magnusson: That gets to be a problem. We do have the right in the contract that we have with them to go in and audit. Some vendors in certain states have been barred from doing business because of that.

Senator Espegard: That is the problem. That is the information that gets out. It is not the motor vehicle department, it's the businesses that do business with them. If there is no agreement, it becomes their information and can share with whomever.

Keith Magnusson: When the Driver's Protection Right passed, we specifically had vendors sign contracts. Not many people enforce this, but it is there.

Jack McDonald: (ND Newspaper Association; Lobbyist # 238; Opposes) We realize that this is a federal law passed down but still want to go on record as opposing this. I recognize the realities of the situation though.

Hearing closed.

Committee reopened on 3-15-01.

Senator Trenbeath motions to Do Pass. Seconded by Senator Bercier. Roll call taken. 6-0-0.

Floor carrier is Senator Trenbeath.

Committee closed.

Roll Call Vote #:

ALORD 174

Committee

or

Legislative Council Amendment Number

Nov. 1895

Thymus

By

[illegible]

Le No 10

()

Franklin

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

REPORT OF STANDING COMMITTEE (410)
March 16, 2001 7:56 a.m.

Module No: SR-46-5782
Carrier: Trenbeath
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1174: Transportation Committee (Sen. Stenehjem, Chairman) recommends DO PASS
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1174 was placed on the
Fourteenth order on the calendar.

2001 TESTIMONY

HB 1174

HOUSE TRANSPORTATION COMMITTEE

January 18, 2001

North Dakota Department of Transportation
Keith C. Magnusson, Office of Driver and Vehicle Services

HB 1174

The North Dakota Department of Transportation prefiled HB 1174 as an agency bill. This bill changes North Dakota law to comply with changes to the federal Drivers Privacy Protection Act (DPPA).

North Dakota's version of the federal requirements was passed by the 1997 legislature. At that time, an amendment was added to specify that our law would be void if the U.S. Supreme Court found the federal DPPA unconstitutional. The opposite happened: in November 1999, the U.S. Supreme Court specifically found the act to be constitutional. Thus, the North Dakota law remains in effect. In 1999 and 2000, Congress made changes to the federal DPPA, and this bill is an effort to comply with those changes.

SECTION 1 adds definitions for "express consent" and "highly restricted personal information" as a result of provisions of the 2000 amendments to the DPPA by Congress. These amendments clarified what it meant by "express consent" and added special protection for photographs or images, social security number, and medical or disability information. Some of this we are already doing, but the changes in Section 1 make it clear in this chapter of the code without requiring people to go to other chapters and put the information together piecemeal.

SECTION 2 makes it clear that we may not disclose the highly restricted personal information without the express consent of the person to whom it pertains except for the following uses: by a government agency (including a court or law enforcement agency), litigation, insurance purposes, or verification by employers relating to a commercial driver's license. Others may continue to get some information, but not information defined as "highly restricted personal information." This section also makes it clear that the requirements do not affect any organ donation program.

SECTION 3 makes a basic change from an "opt-out" system to an "opt-in" system for marketing and other general purposes. When the law was originally passed in 1997, despite the recommendation of the department to the contrary, an "opt-out" provision was added, creating a system where all of the public driver's license information was available for marketing, mailing, and other general purposes unless someone specifically opted out of the system. Now, Congress has mandated that we make a complete change and provide the information for these general purposes only if someone has opted in by express consent. This has the effect of making lists for marketing or other such general purposes worthless. They will get the names only where those individuals have opted into the system for disclosure.

SECTION 4 declares this act to be an emergency. Congress passed the first of these changes in 1999 after the North Dakota legislature met. States such as North Dakota that did not have a legislative session in the year 2000 were given until 90 days after their next legislative session started (April 9 for North Dakota) to make these changes. Fortunately, Congress has specifically said this will not affect federal highway funds. But, there are still monetary penalties for disclosure of the information contrary to the federal DPPA, and the U.S. Department of Justice is now moving to assure state compliance.

January 18, 2001

HOUSE TRANSPORTATION COMMITTEE HB 1174

REPRESENTATIVE WEISZ AND COMMITTEE MEMBERS:

My name is Jack McDonald. I am appearing today on behalf of the North Dakota Newspaper Association, the North Dakota Broadcasters Association, and R.L. Polk, Inc., the company that puts out the Polk city directories. We oppose HB 1174 since it effectively closes motor vehicle records that have traditionally been open records.

We recognize that this bill is in response to a federal mandate, and that the department will lose a zillion dollars or so if it doesn't conform, but nevertheless it's a bad bill. First, it will cost the state some money since it no longer will be able to charge for many copies of the records, or sell any lists.

Secondly, the media lose a valuable source to confirm names, get accurate spellings and addresses, and, in some instances, produce valuable stories. In the past, for example, stories about school bus drivers with many driving violations, including DUIs, have led several local school districts to be much more careful in researching the background of their bus drivers....thus leading to safer buses for our children.

The bill is really a parody, since it doesn't really restrict access to these records. It just restricts access by you and me, and the media. Look at the top of page 3 of the list of who will still be able to get copies of these records: governments and law enforcement agencies; employers; courts; researchers; insurance companies; tow truck drivers; private eyes; trucking companies; and private toll road operators (in case you shoot through one of the many toll roads in North Dakota without paying).

We respectfully request that you give this bill a **do not pass**. If you have any questions, I'd be glad to try to answer them. THANK YOU FOR YOUR TIME AND CONSIDERATION.

SENATE TRANSPORTATION COMMITTEE

March 15, 2001

**North Dakota Department of Transportation
Keith C. Magnusson, Office of Driver and Vehicle Services**

HB 1174

The North Dakota Department of Transportation prefiled HB 1174 as an agency bill. This bill changes North Dakota law to comply with changes to the federal Drivers Privacy Protection Act (DPPA).

North Dakota's version of the federal requirements was passed by the 1997 legislature. At that time, an amendment was added to specify that our law would be void if the U.S. Supreme Court found the federal DPPA unconstitutional. The opposite happened: in November 1999, the U.S. Supreme Court specifically found the act to be constitutional. Thus, the North Dakota law remains in effect. In 1999 and 2000, Congress made changes to the federal DPPA, and this bill is an effort to comply with those changes.

SECTION 1 adds definitions for "express consent" and "highly restricted personal information" as a result of provisions of the 2000 amendments to the DPPA by Congress. These amendments clarified what it meant by "express consent" and added special protection for photographs or images, social security number, and medical or disability information. Some of this we are already doing, but the changes in Section 1 make it clear in this chapter of the code without requiring people to go to other chapters and put the information together piecemeal.

SECTION 2 makes it clear that we may not disclose the highly restricted personal information without the express consent of the person to whom it pertains except for the following uses: by a government agency (including a court or law enforcement agency), litigation, insurance purposes, or verification by employers relating to a commercial driver's license. Others may continue to get some information, but not information defined as "highly restricted personal information." This section also makes it clear that the requirements do not affect any organ donation program.

SECTION 3 makes a basic change from an "opt-out" system to an "opt-in" system for marketing and other general purposes. When the law was originally passed in 1997, despite the recommendation of the department to the contrary, an "opt-out" provision was added, creating a system where all of the public driver's license information was available for marketing, mailing, and other general purposes unless someone specifically opted out of the system. Now, Congress has mandated that we make a complete change and provide the information for these general purposes only if someone has opted in by express consent. This has the effect of making lists for marketing or other such general purposes worthless. They will get the names only where those individuals have opted into the system for disclosure.

SECTION 4 declares this act to be an emergency. Congress passed the first of these changes in 1999 after the North Dakota legislature met. States such as North Dakota that did not have a legislative session in the year 2000 were given until 90 days after their next legislative session started (April 9 for North Dakota) to make these changes. Fortunately, Congress has specifically said this will not affect federal highway funds. But, there are still monetary penalties for disclosure of the information contrary to the federal DPPA, and the U.S. Department of Justice is now moving to assure state compliance.