Senate Judiciary Committee

Pete Mulvey 271-4063

HB 195-FN, relative to the expectation of privacy in the collection and use of personal information.

Hearing Date: April 8, 2025

Time Opened: 1:20 p.m. **Time Closed**: 2:45 p.m.

Members of the Committee Present: Senators Gannon, Abbas, Altschiller and Reardon

Members of the Committee Absent : Senator McConkey

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

Sponsors:

Rep. Lynn	Rep. Erf	Rep. M. Smith
Rep. Bolton	Sen. Rosenwald	

Who supports the bill: 15 individuals signed in support of HB 195-FN. Contact peter.mulvey@gc.nh.gov for further details.

Who opposes the bill: 20 individuals signed in opposition to HB 195-FN. Contact peter.mulvey@gc.nh.gov for further details.

Who is neutral on the bill: Warren Cormack.

Summary of testimony:

Representative Bob Lynn
Rockingham – District 25

- Representative Lynn introduced HB 195-FN, relative to the expectation of privacy in the collection and use of personal information.
- HB 195-FN was similarly written to 2023's HB 314.
- The bill was solely related to disclosure, unlike 2024's SB 255, which contemplated acquisition and disclosure of information.
- HB 195-FN was important as a supplement to SB 255 in that it provided greater protection against disclosure and provided protection to a smaller group of entities. Those being credit card companies, insurance firms, and utilities/service providers which typically collected significant amounts of personal information.
- HB 195-FN requires opt-in consent from an individual to disclose their information.

- The way opt-in consent is proposed is important. It must be distinct and separate- not tucked away in terms and conditions.
- There are exceptions in the bill to permit disclosure for legitimate purposes.
- Rep. Lynn presented an amendment to the committee drafted by Rep. MacFarland.
- The amendment strengthened the bill and provided greater clarity, although Rep. Lynn did not find it absolutely necessary.
- Sen. Altschiller asked Rep. Lynn if he believed that the disclosure notification exemption contained in part (a) on the third page lacked sufficient barriers, and if any government entity could circumvent the protections under consideration.
    - Rep. Lynn clarified that the important element of part (a) was that the decision to disclose and the determination of good cause was not up to the government entity, rather, it was up to the subpoenaed / requested entity.
- Sen. Altschiller added that if a request was made without a subpoena, the third party being requested would have five days to consider. Sen. Altschiller asked for clarity that the third party being requested/the holder of information determined whether the requesting entity demonstrated sufficiently good cause.
    - Rep. Lynn said that was correct.
- Sen. Altschiller asked if good cause ought to be further defined as a legal standard and contemplated if agencies seeking information would simultaneously file warrants in anticipation of a denial.
    - Rep. Lynn said that could be the case.
- Sen. Altschiller asked if HB 195-FN would simply slow down the process of issuing a warrant in most cases.
    - Rep. Lynn said that was generally correct. If a situation were exigent, there were exceptions in part (b) of section II to allow disclosure without notification to the pertinent individual.
- Sen. Gannon asked if the Gramm-Leach-Bliley Act already governed these matters.
    - Rep. Lynn said it was his understanding that the GLBA did not apply. There was not a complete overlap.
- Sen. Gannon maintained there may be limited overlap, and contemplated if duplicative requirements would impose further costs on businesses.
    - Rep. Lynn said businesses may have to be more conscious toward privacy. Given the privacy amendment in the constitution, that was a cost worth bearing,

Representative Marjorie Smith
Strafford – District 10

- Rep. Smith believed that the federal government should have acted by now to establish national standards with clarity for those protecting privacy and those seeking information.
- The house had faced pressure to adopt a model from other states, which Rep. Smith believed was constructed by those seeking broader access to personal information.
- Recently, Consumer Reports issued a study on consumer data privacy, which revealed that private firms may not be compliant with any state's privacy measures and seemingly do not attempt compliance with rigor or commitment.
- Consumer Reports offered two conclusions: compliance with protection laws wasn't assured, and that privacy laws were meaningless if left unenforced.
- Specific agencies and enterprises were identified by Consumer Reports, which Rep. Smith refrained from detailing.
- Digital advertising was a great example of the deliberate use of private information.
- State privacy protections had been in development since 2018 and recently culminated in the aforementioned constitutional amendment.
- Rep. Smith urged the committee to take consumer privacy seriously.
- Sen. Abbas noted that the attorney general had exclusive enforcement action under HB 195-FN. Sen. Abbas asked if a private right of action were considered.

    - Rep. Lynn said there was extensive discussion. The focus of HB 195-FN was private entities. HB 522-FN was directed toward the State Government, and did provide a private right of action.
- Sen. Abbas found it sensible to have the attorney general handle cases of significant volume or frequency and contemplated if the attorney general would still be the appropriate torch bearer for smaller, more isolated instances.
    - Rep. Lynn reiterated that he favored not allowing a private right of action against companies because privacy protections dealt with regulations in a relatively novel area. Businesses should have a chance to deal with the new protections before a private right of action be enabled.
    - Rep. Smith differed in that she initially supported a private right of action, albeit no longer. The adversary being a private business as opposed to the state was very different.
    - HB 195-FN fine-tuned previous consumer data protections and was not simple.

Andrew Kingman
State Privacy and Security Coalition

- Mr. Kingman has a background as a privacy compliance attorney.
- The State Privacy and Security Coalition opposed HB 195-FN despite its best intentions.
- Mr. Kingman maintained that the preexisting comprehensive privacy law extensively regulated data disclosure between companies.
- If modifications are sought after, they ought to be made in the same context as the preexisting comprehensive privacy law with similar terminology.
- The preexisting law and HB 195-FN employed different definitions, and delineated responsibilities between controllers and processors differently.
- Mr. Kingman believed that adding separate requirements under separate terms which only applied to certain companies with specific data was very difficult to work with.
- HB 195-FN may present confusion for consumers. The Department of Justice and the Attorney General's Office have already formed their own consumer data privacy unit to further enforce the comprehensive state privacy law.
- The comprehensive privacy statute had only been in place for three months; More time is needed before changes be appropriately considered.
- There are provisions in the comprehensive privacy law that contradict and conflict with broad opt-in consent for disclosure.
- An opt-out mechanism is scheduled to come online next year according to Mr. Kingman, which would conflict with the requirement to opt into any kind of disclosure.
- Many of the companies subject to HB 195-FN were likely exempt under federal law or already covered under consumer privacy law.
- Sen. Abbas asked Mr. Kingman to elaborate on which companies were already exempt under federal law.
    - Mr. Kingman clarified that the comprehensive privacy law delineated who was within the scope of its provisions or not. Financial intuitions, whose data was already regulated, were not covered under the comprehensive data protection law given the existence of laws like the GLBA.

Maura Weston
New England Connectivity and Telecommunications Association (NECTA)

- Ms. Weston and NECTA opposed HB 195-FN.
- NECTA members have been committed to protecting consumer privacy and data.
- NECTA members are compliant with RSA 507-H.
- Consumers were provided with protections and actionable rights under current law.
- There were imprecise definitions and terms in HB 195-FN which did not align with preexisting statutes.

- NECTA members and partners shared client's personal information whether it be for billing, authentication, or other practices.
- HB 195-FN sought to protect individuals as opposed to consumers. A company could not disclose the names or addresses of employees for payroll unless opt-in consent was provided.
- The term personal information employed in HB 195-FN was broad and problematic in many respects.
- The current law adequately differentiated between sensitive data and non-sensitive data.
- HB 195-FN did not include or list a range of entities subject to regulation, and did not specify search engines, television, data brokers, etc. Working within RSA 507-H was preferable.
- It was far too soon to amend these statutes – they needed more time to be implemented and enforced.
- Ms. Weston requested that HB 195-FN be found inexpedient to legislate.

Lieutenant Stephen McAulay
New Hampshire State Police

- Lt. McAulay was neutral toward HB 195-FN.
- The New Hampshire State Police were primarily concerned with the third page of the bill, specifically lines 1, 10, and 18.
- Good cause was undefined and who made that determination was unclear.
- Lt. McAulay identified the exigent scenario exemptions contained on line 15 of the third page as a concern. Those instances were fluid, high risk, and may endanger lives if subject to disclosure.
- If good cause was not found by the requested enterprise, they could then notify the pertinent individual which again could result in a danger to life depending on the investigation.
- Lt. McAulay questioned line three of the third page, and contemplated If police would be delayed when requesting critical information.
- Sen. Altschiller identified the first few lines of the second page to Lt. McAulay and asked if a request were made absent a subpoena, if the provision's conditions were met by saying to the third-party provider that it was reasonably necessary disclosure to prevent, protect, or respond to past, present, or future criminal conduct.
- Sen. Altschiller asked if (b) and (c) sufficiently covered emergency situations or if more prescriptive language was appropriate.
    - Lt. McAulay elaborated that if a third party were requested to disclose information, while police may get the information, if the third party does not see sufficiently good cause, they can notify the pertinent individual which may be dangerous in amber alert or abduction scenarios.
- Sen. Altschiller pointed to line 29, and asked if the provision gave third parties an-out from notifying a potential perpetrator, subscriber, suspect, or consumer.
    - Lt. McAulay said that was incorrect, as page three, line 15 forced notification regardless of a warrant unless good cause was demonstrated or a court order stated otherwise.
- Sen. Altschiller asked if there was space between lines 17 and 18 to tighten disclosures relative to pending investigations or pursuits in progress.
    - Lt. McAulay found that section appropriate for such language.
- Sen. Abbas asked what would happen if the police or requesting agency believed they'd demonstrated good cause, but the requested party determined otherwise.
    - Lt. McAulay said if a third-party provider said there was not good cause, the police would have to weigh the consequences of proceeding with the understanding that notification may occur and would have to consider what may happen as a result.
    - A search warrant under such circumstances would take several hours to be drafted and signed by a judge.
- Sen. Abbas elaborated his view that the third-party provider had greater leverage in determining whether notification be provided to a consumer, pertinent individual or suspect, and that the police may have to convince the provider otherwise. Sen. Abbas contemplated recourse for the police in such a scenario.

- Lt. McAulay said it was a dangerous situation as every provider will be different to some extent. A small convenience store may view a department's demonstration of good cause differently than a corporation like comcast or Eversource.

Warren Cormack
Assistant Attorney General, Data Privacy Unit, N.H Department of Justice

- Mr. Cormack testified as neutral toward HB 195-FN.
- HB 195-FN provided a 1000-dollar penalty per violation; A penalty so low that it will likely not deter violators.
- Other violations can result in 10,000-dollar penalties under RSA 507-H.
- Many third parties covered by HB 195-FN were exempt from RSA 507-H.
- HB 195-FN targeted some of the largest companies with some of the weakest penalties in the consumer protection and privacy landscape.
- Mr. Cormack requested that fines be commensurate with other violations in the preexisting data privacy protection act.

Robert Dietel
Legal Counsel, New Hampshire Bankers Association

- Privacy protections are central to banking.
- Mr. Dietel suggested that certain entity exemptions would be appropriate to avoid confusion between the standards set in RSA 507-H.
- Absent of any exemptions, compliance obligations for financial intuitions would be unclear in the event HB 195-FN be adopted.
- Financial institution fraud is on the rise and is a serious problem. The ambiguities presented by HB 195-FN would create difficulty in responding to instances of fraud.
- Page two referred to a general right to provide information when a third-party provider has reason to believe it's beneficial. Mr. Dietel contemplated what criteria a bank would use to make that determination.
- Mr. Deitel referred to (c) on the same page and indicated that it could apply to instances beyond government requests, but the use of the term warrant made it unclear if that was intended to be exclusively limited to those requests or not.
- Mr. Deitel was concerned that the emergency provisions and exemptions only recognized physical safety or injury, and did not reference property.
- Concerns surrounding the meaning and determination of good cause were reiterated.
- The Attorney General's enforcement measures on page four contained an exemption for certain disclosures that was seemingly limited and exclusive to those done under court order, subpoena, or warrant.
- HB 195-FN would have a chilling effect on the enforcement of fraud.
- The New Hampshire Bankers Association requested that the bill be found inexpedient to legislate.

Michelle Heaton
Director of Life and Health, N.H Department of Insurance

- The definition for third-party information service provider encompassed insurance companies.
- Enforcement is relegated to the Attorney General under HB 195-FN. Traditionally, the regulation of insurance and insurance companies fell under the Department of Insurance itself.
- The regulatory structure of insurance companies already exceeded what was provided in HB 195-FN relative to disclosures and privacy restrictions.
- The term insurance company did not fully account for all types of entities involved in the industry.
- The insurance department routinely receives information that may be subject to the provisions in HB 195-FN.
- Insurance statutes already had substantial privacy protections.
- Fiscal impacts may be more significant if the insurance industry is subject to HB 195-FN.

Neal Kurk
Former Representative, Hillsborough – District 2

- Telecommunications companies should not be able to sell consumer data without their knowledge or consent.
- The Constitutional amendment relative to privacy has not yet been interpreted by the State Supreme Court.
- In 2005, the case of State v. Gubitosi determined that a telephone number, albeit not the contents of a call, may be subpoenaed. However, nothing precluded the legislature from contemplating further regulating phone record protection.
- Rep. Kurk suggested eliminating sections II and III on the third page.
- Rep. Kurk believed that despite the bill's troubles, it ought to be interim studied and improved and not found inexpedient to legislate.
- Sen. Altschiller asked if eliminating lines 12-19 on the third page would mitigate concerns while retaining efficacy.
    - Rep. Kurk said that was correct.

PM
Date Hearing Report completed: April 10, 2025