

Senate Judiciary Committee

Pete Mulvey 271-4063

HB 666-FN, relative to adding restitution payment for violations of the confidentiality of the library use records and adding library cards and membership status to the list of confidential matters.

Hearing Date: April 24, 2025

Time Opened: 3:21 p.m.

Time Closed: 4:06 p.m.

Members of the Committee Present: Senators Abbas, McConkey and Reardon

Members of the Committee Absent : Senators Gannon and Altschiller

Bill Analysis: This bill adds restitution payment and penalties for violating the confidentiality of the library use records and expands it to include library cards and membership status.

Sponsors:

Rep. Mazur

Rep. Alexander Jr.

Rep. Berry

Rep. Giasson

Rep. Reinfurt

Rep. Seidel

Sen. Murphy

Who supports the bill: 12 signed in support of HB 666-FN. Contact peter.mulvey@gc.nh.gov for further details.

Who opposes the bill: 84 signed in opposition to HB 666-FN, contact peter.mulvey@gc.nh.gov for further details.

Who is neutral on the bill: n/a.

Summary of testimony:

Representative Lisa Mazur

Hillsborough – District 44

- HB 666 enhanced the confidentiality of library user records and established clear penalties for violations.
- RSA 201-D:11 stated that library records which contained personal identifiable information shall be confidential and not subject to disclosure.
- Such records included library archival records regarding the use of materials or services, and items accessed in electronic form.

- Rep. Mazur reported that several library cards were released inadvertently in a Right to Know request. The library cards were posted across social media.
- The standard policy for many municipal libraries is that the names upon cards and use of services are confidential.
- HB 666 targeted RSA 201-D:11, to explicitly state that library cards and their associated data were confidential records.
- HB 666 further introduced a modest civil penalty for disclosure of library records.
- Rep. Mazur maintained that libraries were guardians of intellectual freedom.
- HB 666 aligned library privacy standards with other personal information standards.
- The New Hampshire Library Trustee Association sent several questions surrounding HB 666 to Rep. Mazur.
 - The association contemplated how library staff would continue to assess patrons over the phone, contemplated what data libraries needed to start collecting, contemplated who would receive and investigate complaints, and contemplated how staff would be protected from malicious claims.
- Rep. Mazur found it interesting that the association did not inquire about the privacy violation itself and what could be done to prevent it from happening again
- Sen. McConkey asked if library cards contained data on books taken.
 - Rep. Mazur said that the patron code on the card, unique to individuals, is used to log in and access books.
- Sen. Reardon asked what a person could do with another's patron code.
 - Rep. Mazur said passwords were associated with the code and added that individuals can poke holes in the system with the code to request a password change. Rep. Mazur maintained that a patron code is similar to a bank account number.
 - Rep. Mazur clarified that RSA 91-A:5 did exempt library user records from requests.

Representative Henry Giasson

Hillsborough – District 29

- Rep. Giasson spoke in support of HB 666.
- HB 666 provided penalties for breaches of privacy.
- The first job of legislators is to protect the rights of people, including the right to privacy.
- Individuals shouldn't fear that their library data will be published, for use in advertising or other nefarious purposes.
- Rep. Giasson believed that gaps related to library records confidentiality created risk.
- While an individual couldn't call schools or DMVs to find someone else, they may call a library and submit an RSA 91-A request to reverse engineer the information given. Rep. Giasson stated that the risk was specific but must be acknowledged.
- Rep. Giasson maintained that the right to privacy ought to be clearly defined and that libraries must know they had the same responsibilities as other agencies.
- Senator Reardon asked if the Goffstown library sought legal counsel in their response to the right to know request. Sen. Reardon expressed uncertainty if a library could be held to the 'knowingly and recklessly' standard within HB 666, because if they acted under counsel, it failed to meet the standard.
 - Rep. Giasson understood and added that currently, there was no legal recourse at all.
- Sen. Reardon emphasized that if you act on legal counsel, you acted reasonably, regardless of outcome. You cannot behave recklessly or knowingly if you act under counsel.

- Rep. Giasson said that absent a warrant or safety concern, any disclosure would be knowing or reckless.
- Sen. Reardon said she didn't believe the standard was appropriate.
 - Rep. Giasson believed that seeking legal counsel to disclose another person's information without their consent was wrong.
- Sen. Abbas pointed to language suggesting that an apology be mailed in certified mail and be notarized.
- Sen. Abbas asked if that was elsewhere in law, and asked what would happen if someone refused to write an apology
 - Rep. Giasson said he was amenable to remove the provision in question and reiterated that there just needed to be teeth to the privacy standard.

D.J Withee

Attorney - Windham, New Hampshire

- Mr. Withee testified in his individual capacity and not as a part of the Windham Board of Trustees for the public library.
- Mr. Withee testified in strong opposition to HB 666.
- Mr. Withee worked on legislation to make identity theft a crime in New Hampshire, which was eventually signed by Governor Jeanne Shaheen.
- Open government was important.
- Individuals mistakenly conflated library cards with library usage or records.
- Library records were protected under existing law – HB 666 simply included cards.
- Mr. Withee did not believe marginal additions would strengthen privacy.
- The library card itself said nothing about the holder.
- In most cases library cards did not even display the holder's name.
- What the library card displayed is that an individual had signed up to take part of a public service which was hardly different than the sticker on the windshield of a vehicle for a transfer station.
- Mr. Withee suggested rewriting the legislation with language which referenced circulation data, as opposed to library cards themselves.
- Mr. Withee suggested that the committee delete the section on educational materials.
- The \$1000 penalty for disclosure of library cards was greater than the penalty for disclosure of the circulation data itself.
- The written apology was legislatively compelled and offensive to Mr. Withee.
- Notarization is a form of attestation which violated article IV of the New Hampshire Constitution.
- A recipient could publish an apology with no regard.
- Ultimately, the standards and penalties of HB 666 were either duplicative with RSA 91-A, or out of sync with the law.
- Sen. Abbas asked Mr. Withee if he would feel differently should the fine be reduced.
 - Mr. Withee said the towns would pay and added that there were not penalties for individuals under RSA 91-A.
- Sen. Abbas asked what the circulation information fine referred to earlier was set to.
 - Mr. Withee said there was zero penalty in the bill for disclosing user data and suggested to reference RSA 91-A.

Representative Timothy Horrigan

Strafford - District 10

- Rep. Horrigan said the bill passed in the House Judiciary Committee on a party line vote.
- Rep. Horrigan concurred with Mr. Withee's testimony.
- The penalty in HB 666 was extremely excessive according to Rep. Horrigan.
- Ultimately, library books and records were completely confidential.
- Rep. Horrigan referred to an ongoing conflict between the Goffstown delegation and their local library and considered that the impetus of the legislation.
- The Committee was urged to find the bill inexpedient to legislate.

Representative Kelley Potenza

Strafford - District 19

- Representative Potenza spoke in support of HB 666.
- Issues with library confidentiality had arisen elsewhere in the past.
- A bill without any sort of penalty was just words on paper according to Rep. Potenza.
- HB 666 and library confidentiality protections were constitutional.

PM

Date Hearing Report completed: April 29, 2025