

Bill as Introduced

HB 384-FN - AS AMENDED BY THE HOUSE

8Apr2021... 0155h

2021 SESSION

21-0478
04/10

HOUSE BILL **384-FN**

AN ACT prohibiting the sharing of location data.

SPONSORS: Rep. Wuelper, Straf. 3; Rep. M. Smith, Straf. 6; Rep. Verville, Rock. 2; Rep. Gould,
 Hills. 7; Rep. T. Lekas, Hills. 37; Rep. Wallace, Rock. 12; Rep. Testerman, Merr. 2

COMMITTEE: Judiciary

ANALYSIS

This bill prohibits the sharing of location data by a mobile application developer, telecommunications carrier, or other person.

Explanation: Matter added to current law appears in **bold italics**.
 Matter removed from current law appears [~~in brackets and struck through.~~]
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty One

AN ACT prohibiting the sharing of location data.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 New Section; Wiretapping and Eavesdropping; Sharing Location Data Prohibited. Amend
2 RSA 570-A by inserting after section 2-a the following new section:

3 570-A:2-b Sharing Location Data Prohibited.

4 I. In this section:

5 (a)(1) "Authorized use" means the sharing of a customer's location data:

6 (A) For the purpose of providing a service explicitly requested by such customer;

7 (B) Exclusively for the purpose of providing a service explicitly requested by such
8 customer; and

9 (C) Where such data is not collected, shared, stored, or otherwise used by a third
10 party for any purpose other than providing a service explicitly requested by such customer.

11 (2) "Authorized use" shall not include any instance in which a customer's location
12 data is shared in exchange for products or services.

13 (b) "Customer" means a current or former subscriber to a telecommunications carrier or
14 a current or former user of a mobile application.

15 (c) "Location data" means information related to the physical or geographical location of
16 a person or the person's mobile communications device, regardless of the particular technological
17 method used to obtain this information.

18 (d) "Mobile application" means a software program that runs on the operating system of
19 a mobile communications device.

20 (e) "Mobile application developer" means a person that owns, operates, or maintains a
21 mobile application and makes such application available for the use of customers for a fee or
22 otherwise.

23 (f) "Mobile communications device" means any portable wireless telecommunications
24 equipment that is utilized for the transmission or reception of data, including location data, and that
25 is or may be commonly carried by or on a person or commonly travels with a person, including in or
26 as part of a vehicle a person drives.

27 (g) "Share" means to make location data available to another person, for a fee or
28 otherwise.

29 (h) "Telecommunications carrier" means a service offered to the public for a fee that
30 transmits sounds, images, or data through wireless telecommunications technology.

1 II(a) No mobile application developer or a telecommunications carrier shall share a
2 customer's location data, other than to fulfill an explicit request from such customer, unless the
3 customer has affirmatively waived such right after being properly informed. For purposes of this
4 section, continuing to use a service or website shall not be considered an affirmative waiver.

5 (b) No person who receives location data that is shared in violation of subparagraph (a)
6 shall share such data with another person.

7 III. A mobile application developer, telecommunications carrier, or other person who shares
8 a customer's location data with another person in a manner prohibited by this section shall be guilty
9 of a violation and subject to a fine of \$1,000. A mobile application developer, telecommunications
10 carrier, or other person who is convicted of multiple violations of this section shall be subject to a
11 maximum fine \$10,000 for each person whose location data was shared in violation of this section.

12 IV. This section shall not apply to:

13 (a) Information provided to a law enforcement agency in response to a lawful process;

14 (b) Information provided to an emergency service agency responding to an emergency
15 communication or any other communication reporting an imminent threat to life or property;

16 (c) Information required to be provided by a federal, state, or local law enforcement
17 agency; or

18 (d) A customer providing the customer's own location data to a mobile application.

19 V. Any customer whose location data has been shared in violation of this chapter may bring
20 a private action in a court of competent jurisdiction. If a court of competent jurisdiction finds that a
21 person has violated a provision of this section, the court may award actual damages and reasonable
22 attorney's fees and costs incurred in maintaining such civil action.

23 2 Effective Date. This act shall take effect 60 days after its passage.

**HB 384-FN- FISCAL NOTE
AS INTRODUCED**

AN ACT prohibiting the sharing of location data.

FISCAL IMPACT: State County Local None

STATE:	Estimated Increase / (Decrease)			
	FY 2021	FY 2022	FY 2023	FY 2024
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
Expenditures	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
Funding Source:	<input checked="" type="checkbox"/> General Assessment Revenue <input type="checkbox"/> Education <input type="checkbox"/> Highway <input checked="" type="checkbox"/> Other - Penalty			

METHODOLOGY:

This bill prohibits the sharing of data by a mobile application developer, telecommunications carrier, or other person. The Judicial Branch indicates the potential fiscal impact to the Branch from this bill is in the filing of additional violation offenses and civil actions for damages, costs and attorneys' fees. The Branch does not have information on the number of additional violation level offenses that will result from the proposed bill and is unable to anticipate the additional costs or the amount of fine revenue that will be collected. Regarding private actions for sharing location data in violation of proposed RSA 570-A:2-b, including claims for damages, costs and reasonable attorneys' fees, such cases would likely be classified as complex civil cases in the superior court. The Branch has no information on which to estimate how many new complex civil cases will be brought because of the proposed bill. The estimated average cost to Branch for both types of cases follows:

Judicial Branch	FY 2021	FY 2022
Violation Level Offense	\$53	\$53
Complex Civil Case	\$794	\$794
Appeals	Varies	Varies

It should be noted that these average case cost estimates are based on data that is more than ten years old and does not reflect changes to the courts over that same period of time or the impact these changes may have on processing the various case types. The Judicial Branch received an

appropriation in the operating budget to update its cost data in 2020, but due to the COVID state of emergency, this analysis has been delayed.

It is assumed any fiscal impact would occur after July 1, 2021.

AGENCIES CONTACTED:

Judicial Branch

LBA
21-0478
Amended 5/4/21

**HB 384-FN FISCAL NOTE
AS AMENDED BY THE HOUSE (AMENDMENT #2021-0155h)**

AN ACT prohibiting the sharing of location data.

FISCAL IMPACT: State County Local None

STATE:	Estimated Increase / (Decrease)			
	FY 2021	FY 2022	FY 2023	FY 2024
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Expenditures	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
Funding Source:	<input checked="" type="checkbox"/> General Penalty Assessment Revenue	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input checked="" type="checkbox"/> Other

METHODOLOGY:

This bill prohibits the sharing of data by a mobile application developer, telecommunications carrier, or other person. The Judicial Branch indicates the potential fiscal impact to the Branch from this bill is in the filing of additional violation offenses and civil actions for damages, costs and attorneys' fees. The Branch does not have information on the number of additional violation level offenses that will result from the proposed bill and is unable to anticipate the additional costs or the amount of fine revenue that will be collected. Regarding private actions for sharing location data in violation of proposed RSA 570-A:2-b, including claims for damages, costs and reasonable attorneys' fees, such cases would likely be classified as complex civil cases in the superior court. The Branch has no information on which to estimate how many new complex civil cases will be brought because of the proposed bill. The estimated average cost to Branch for both types of cases follows:

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these changes may have on processing the various case types. The Judicial Branch received an appropriation in the operating budget to update its cost data in 2020, but due to the COVID state of emergency, this analysis has been delayed.

It is assumed any fiscal impact would occur after July 1, 2021.

AGENCIES CONTACTED:

Judicial Branch

Committee Minutes

SENATE CALENDAR NOTICE
Commerce

Sen Harold French, Chair
Sen Bill Gannon, Vice Chair
Sen Jeb Bradley, Member
Sen Donna Soucy, Member
Sen Kevin Cavanaugh, Member

Date: April 15, 2021

HEARINGS

Tuesday

04/27/2021

(Day)

(Date)

Commerce

REMOTE 000

9:00 a.m.

(Name of Committee)

(Place)

(Time)

9:00 a.m.	HB 227	relative to termination of tenancy at the expiration of the tenancy or lease term.
9:15 a.m.	HB 384-FN	prohibiting the sharing of location data.
9:30 a.m.	HB 385-FN	relative to workers' compensation for heart and lung disease in firefighters.
9:45 a.m.	HB 448	establishing a committee to study and compare federal Occupational Safety and Health Act standards with the safety and health standards the New Hampshire department of labor uses for public sector employees.
10:00 a.m.	HB 593-FN	requiring a food delivery service to enter into an agreement with a food service establishment or food retail store before offering delivery service from that restaurant.

Committee members will receive secure Zoom invitations via email.

Members of the public may attend using the following links:

1. Link to Zoom Webinar: <https://www.zoom.us/j/97416675416>
2. To listen via telephone: Dial (for higher quality, dial a number based on your current location): 1-312-626-6799, or 1-646-558-8656, or 1-301-715-8592, or 1-346-248-7799, or 1-669-900-9128, or 1-253-215-8782
3. Or iPhone one-tap: 13126266799,,97416675416# or 16465588656,,97416675416#
4. Webinar ID: 974 1667 5416
5. To view/listen to this hearing on YouTube, use this link:
<https://www.youtube.com/channel/UCjBZdtriRnQdmg-2MPMiWrA>
6. To sign in to speak, register your position on a bill and/or submit testimony, use this link:
<http://gencourt.state.nh.us/remotecommittee/senate.aspx>

The following email will be monitored throughout the meeting by someone who can assist with and alert the committee to any technical issues: remotesenate@leg.state.nh.us or call (603-271-6931).

EXECUTIVE SESSION MAY FOLLOW

Sponsors:

HB 227

Rep. Lynn

HB 384-FN

Rep. Wuelper

Rep. T. Lekas

HB 385-FN

Rep. M. Pearson

Rep. Doucette

Rep. O'Brien

HB 448

Rep. Sullivan

Rep. Myler

Rep. Long

HB 593-FN

Rep. Wilhelm

Rep. M. Smith

Rep. Wallace

Rep. S. Pearson

Rep. Pratt

Rep. M. Pearson

Rep. Schultz

Sen. Cavanaugh

Rep. Chretien

Rep. Verville

Rep. Testerman

Rep. Shurtleff

Rep. Soucy

Rep. Merner

Rep. Schuett

Rep. Oxaal

Rep. Gould

Rep. Goley

Rep. Lanzara

Rep. Welch

Rep. Goley

Rep. Moran

Aaron Jones 271-4063

Harold F. French
Chairman

Senate Commerce Committee

Aaron Jones 271-4063

HB 384-FN, prohibiting the sharing of location data.

Hearing Date: April 27, 2021

Time Opened: 10:08 a.m.

Time Closed: 10:55 a.m.

Members of the Committee Present: Senators French, Gannon, Bradley, Soucy and Cavanaugh

Members of the Committee Absent : None

Bill Analysis: This bill prohibits the sharing of location data by a mobile application developer, telecommunications carrier, or other person.

Sponsors:

Rep. Wuelper

Rep. M. Smith

Rep. Verville

Rep. Gould

Rep. T. Lekas

Rep. Wallace

Rep. Testerman

Who supports the bill: 32 people signed up in support of the bill. Full sign in sheet available upon request.

Who opposes the bill: 41 people signed up in opposition to bill. Full sign in sheet available upon request.

Who is neutral on the bill: Lieutenant Brian Strong (NH State Police), Richard Head (NH Judicial Branch)

Summary of testimony presented in support:

Representative Kurt Wuelper

- The intent of this bill is to give individuals control over the sharing of their location information.
- This bill would keep location information confidential between the user and the provider. Specifically, this bill prohibits the sharing, selling, and giving away of location information.
- Representative Wuelper said he doesn't give location information to his providers so that they can sell it to other vendors, such as travel agencies or cruise companies.
- Through the assemblage of digital information, Representative Wuelper said people no longer have privacy.

- Last year, a similar bill passed the House with bipartisan support. Also, a similar bill was introduced by Senator Shannon Chandley, but it was tabled as a result of the pandemic.
- Representative Wuelper said this bill is intended to be broad in scope.
- The provisions of this bill don't apply to emergency situations or law enforcement.
- A \$1,000 fine is imposed for every violation and a \$10,000 fine is imposed per person for repeated violations.
- Representative Wuelper agreed that a federal law might be beneficial; however, other states like California, Maine, and New York have introduced similar legislation.
- Representative Wuelper concluded that the residents of New Hampshire made it clear they wanted their privacy protected when they adopted a Constitutional Amendment several years ago.
- **Senator Gannon** asked if any lawyers had reviewed this bill to determine if it violated the Commerce Clause or interstate commerce restrictions.
 - **Representative Wuelper** replied that it hadn't been reviewed.
- **Senator French** asked Representative Wuelper if he knew how many billions of dollars were involved with the sale of information by telecommunications companies.
 - **Representative Wuelper** said he couldn't count that high.
- **Senator French** wondered if this bill would drive up the cost of basic services if the sale of information were prohibited.
 - **Representative Wuelper** responded that he wasn't sure because he didn't know the revenue streams of the telecommunications industry. He stated that privacy has a value that far exceeds the small cost increases that might occur.

Jason Hennessey

- As of 2019, all major mobile wireless carriers were found to be selling location information to intermediaries, which then sold that information to anyone they wanted to.
 - For example, T-Mobile has sold information to over 80 intermediaries.
 - Telecommunications providers agreed to end this practice; however, Mr. Hennessey said that hasn't happened yet.
 - To his knowledge, Mr. Hennessey said it isn't illegal for thefts, stalkers, or malicious actors to purchase or use this information.
- Location information can be used to intrude into everyone's private life. Additionally, aggregators can use location information to link people to one another.
- According to Mr. Hennessey, location information doesn't depend on a user enabling location access on their cellphone. Instead, location information can be tracked via cellphone towers.

- This bill would codify a common expectation that companies aren't permitted to widely share location information without consent.
- According to Mr. Hennessey, this bill is necessary because solutions in the marketplace aren't being offered.
- While telecommunications companies have stated they want federal legislation, Mr. Hennessey said they spent \$100 million to defeat legislative efforts in 2017.
- Mr. Hennessey believed this bill didn't violate interstate commerce because it operates only within the bounds of New Hampshire.
- Applications, such as Uber, wouldn't be affected by this bill as long as the request were made by a person.
- This bill wouldn't apply to first-party advertisers or friends sharing locations with one another. Instead, it would only apply to telecommunications companies and mobile application developers.
- Mr. Hennessey asked the Committee to amend the bill to ensure that consent requests were separate and distinct from other consents.
- **Senator Gannon** asked if his children could still be tracked even if they turned off their locators on their phones.
 - **Mr. Hennessey** said they could still be tracked because companies don't rely on any permissions that are on someone's phone.

Summary of testimony presented in opposition:

Representative Timothy Horrigan

- Representative Horrigan shared concerns over privacy; however, he believed this bill didn't adequately address this extraordinarily complicated issue.
- Representative Horrigan felt this legislation wasn't necessary because it should be addressed at the federal level. In addition, he was concerned that the sponsor never consulted anyone on whether the bill violated interstate commerce or not.
- If passed, this bill would deny residents, visitors, and businesses access to valuable online location-based services.
- Representative Horrigan said the technology industry was aware that consumers don't want to use products that don't respect their privacy.
 - For example, Apple has recently launched a new operating system that seeks to enhance privacy protections for users.
- Service providers often collect data anonymously in order to provide their service, then they sell it to others who want it.
- Representative Horrigan emphasized that the Legislature has a role in regulating the sharing of data; however, this bill would drive high tech companies out of the state, destroy jobs, and paralyze the growth of the gig economy.
- This bill could result in businesses and individuals paying millions of dollars in fines, even if they inadvertently violate the provisions of this bill.
- Finally, this bill doesn't provide rulemaking authority to either the executive branch or the Joint Legislative Committee on Administrative Rules (JLCAR).

Lisa McCabe, Director of State Legislative Affairs, CTIA

- This bill would further fragment consumer privacy laws since it's technology and sector specific.
- Additionally, this bill only applies to one type of information, location information, which only mobile application developers and telecommunications providers have access to.
- Consequently, this bill favors certain business models and competitors over others.
- Ms. McCabe said that consumer privacy protections should be applied consistently across all industry sectors and for all types of information.
- This bill would include a private right of action, which could expose telecommunications providers in New Hampshire to costly litigation. In addition, it could increase the cost of operating mobile applications and services in the state.
 - A recent study found that plaintiffs are unlikely to receive compensation or adjudicative relief in privacy-related lawsuits. In contrast, their attorney's benefit monetarily from these types of cases.
- Ms. McCabe concluded that it's better to address this issue through a holistic approach to ensure consumer protections are consistent and that no business model is favored over another.
- **Senator French** asked if there was any federal legislation being proposed to address this matter.
 - **Ms. McCabe** said that there are numerous bills in Congress that are taking a holistic approach to help address consumer privacy issues.

David Creer, Director of Public Policy, BIA of New Hampshire

- If passed, New Hampshire would stand out nationally for its location privacy requirements.
- For application services, such as Uber or Instacart, data is essential for their functionality.
- Under this bill, a consumer would be required to consent to their location being shared every time they use one of these applications.
- Small businesses frequently use this type of data to target local customers, not customers out-of-state.
- Mr. Creer concluded that this bill would place overly burdensome requirements on businesses and consumers.

Maura Weston, on behalf of the New England Cable and Telecommunications Association

- Members of the New England Cable and Telecommunications Association (NECTA), such as Atlantic Broadband, Comcast, and Charter, are committed to not selling the location data of their mobile customers.
- NECTA opposed the bill for four reasons.
 - First, the definitions and language contained within this bill are vague and overly broad.
 - For example, the term “telecommunications carrier” is inconsistent with other statutory definitions of the same term.
 - Second, this bill would impede the ability of businesses, providers, and consumers from engaging in basic commercial interactions and functions.
 - For example, necessary functions like payment processing, order fulfillment, or fraud protection would require intrusive and repeated consent requests.
 - Third, New Hampshire would be an outlier because even California doesn’t treat the sharing of data in this manner.
 - Finally, the existing online ecosystem has built its compliance around the Federal Trade Commission (FTC). NECTA members have relied on the FTC framework, which Ms. Weston said has protected consumers, provided necessary oversight, and allowed innovative services to proliferate. Often the FTC cooperates with state attorney’s general to enforce consumer protections. The FTC has brought over 500 privacy and data security enforcement actions against small and large companies.
- Ms. Weston emphasized that this bill would harm New Hampshire’s standing with surrounding states; impact business sectors, small businesses, and consumers alike; create a policy framework that isn’t found anywhere else in the \$21.5 trillion dollar telecommunications economy; and have a significant impact on competitiveness and innovation.
- **Senator Gannon** wondered if an opt-out option could be a possibility.
 - **Ms. Weston** said that the FTC requires an opt-in framework for very sensitive data; however, the framework is generally built around opt-out. States, such as California, have followed the FTC model. Ms. Weston said to shift gears way from the opt-out framework would be detrimental and inconsistent with federal law.

Christopher Gilrein, Executive Director, TechNet

- This bill would create friction between consumers and the state.
 - Mr. Gilrein said friction is the number of steps between when a consumer identifies what they want and how many steps it takes to get there.
 - For example, if Mr. Gilrein came to New Hampshire from Massachusetts, he would receive messages requiring him to opt-in to having his location data processed. These requests would apply to his GPS, payment applications, digital trail maps, and even state park reservations.
- Consumers would get consent requests from frequently used applications and from third-party processors, such as payment processors, which typically

operate silently in the background. Consequently, this could cause greater friction and lead to more consumer confusion.

- As others have stated, the bill provides a private right of action.
 - For small companies, it's possible that a consent request might not appear, especially if they don't have a compliance director or an extra developer to program it in.
 - As a result, Mr. Gilrein said there's a good possibility that more out-of-state law firms will file class action lawsuits against New Hampshire-based companies.

Kyle Baker, on behalf of The Internet Coalition

- The Coalition shared similar concerns that this bill created an overly broad prohibition on the sharing of geolocation data.
- Users can already view privacy policies and the settings of applications before they download them. Additionally, a user can decline to consent to having their location data shared.
- Once an application is downloaded, a user can choose not to share their information, limit location data access to certain services, or tailor location data systems to turn on or off at any time.
- This bill would impact popular ridesharing, mapping, educational, and weather applications.
- Mr. Baker concluded that this bill would create a patchwork of various mandates that would potentially conflict with existing state and federal laws. This would make it almost impossible for national and worldwide companies to operate across state lines.

Maya McKenzie, on behalf of the State Privacy and Security Coalition

- Ms. McKenzie said they appreciated the intent of the bill, but it's too vague and overly broad to be workable.
- When evaluating policies, the Coalition uses three criteria: first, it must improve consumer protections; second, it must be operationally workable; and finally, it must prevent frivolous litigation, while also providing consumers with an understanding of their rights.
 - According to Ms. McKenzie, this bill doesn't meet any of these criteria.
- Generally, states have aligned data sharing practices and operational workability with federal regulations, which govern notice and consent requirements. Ms. McKenzie said these practices also provide consumer protections.
- As others have mentioned, location information is used for background business functions.
 - For example, the state lottery application uses location information to determine if lottery functions can be offered to someone. This bill would potentially have a negative on this service.

- This bill only applies to the usage and sharing of data within the boundaries of cities and towns, not unincorporated areas.
- This bill might encumber voice activated applications that are used by the visually impaired.
- Finally, this bill would substantially increase litigation risk for mobile application developers, telecommunications carriers, and individual's if they shared information without consent.

Neutral Information Presented:

Lieutenant Brian Strong, Commander of the Special Investigations Unit, New Hampshire State Police

- Lieutenant Strong wanted to emphasize how important it's that law enforcement have the ability through criminal processes to retrieve location information.
- Based on his understanding, this bill wouldn't apply to law enforcement.

Richard Head, Government Affairs Coordinator, New Hampshire Judicial Branch

- Mr. Head said they had no position on the policy of the bill; however, they wanted the effective date changed to January 1, 2022.
- Under RSA 14:9-a, any law effecting judicial practice and procedure or eliminating criminal prohibitions, civil causes of action or remedies, or limitations of actions shall take effect January 1st in the year following passage.
- Also, changing the effective date is necessary to ensure that the Uniform Charge Table used by courts, law enforcement, and agencies is updated and precise. This system requires hundreds of changes.
- This bill would require five changes to the Uniform Charge Table.
 - First, there would need to be a description of the change made.
 - Second, the violation or violations would need to be described.
 - Third, the fine for the violation would be defined.
 - Fourth, differences between multiple violations would be established.
 - Finally, fines would be defined for each of the multiple violations.

AJ

Date Hearing Report completed: May 3, 2021

Speakers

Commerce Committee Testify List for Bill HB384 on 2021-04-27

Support: 32 Oppose: 41 Neutral: 2 Total to Testify: 11

<u>Name</u>	<u>Email Address</u>	<u>Phone</u>	<u>Title</u>	<u>Representing</u>	<u>Position</u>	<u>Testifying</u>
McCabe, Lisa	lmccabe@ctia.org	202.714.4948	A Lobbyist	CTIA	Oppose	Yes
Creer, David	dcreer@BIAofNH.com	603.224.5388	A Lobbyist	BIA of NH	Oppose	Yes
Head, Richard	rhead@courts.state.nh.us	603-716-8235	State Agency Staff	Myself	Neutral	Yes
Weston, Maura	mauraweston@comcast.net	16034912853	A Lobbyist	The New England Cable and Telecommunications Association	Oppose	Yes
Gilrein, Christopher	cgilrein@technet.org	Not Given	A Lobbyist	TechNet	Oppose	Yes
Baker, Kyle	krb@rypgranite.com	603.410.4320	A Lobbyist	The Internet Coalition	Oppose	Yes
Horrigan, Rep. Timothy	timothy.horrigan@leg.state.nh.us	603.969.3823	An Elected Official	Strafford 6	Oppose	Yes
McKenzie, Maya	maya.mckenzie@dlapiper.com	Not Given	A Lobbyist	State Privacy & Security Coalition	Oppose	Yes
Strong, Brian	Brian.R.Strong@dos.nh.gov	603.223.8568	State Agency Staff	NH State Police	Neutral	Yes
Wuelper, REp Kurt	Not Given	Not Given	An Elected Official	Strafford 3, Strafford & New Durham	Support	Yes
Hennessey, Jason	jayhennspam@yahoo.com	Not Given	A Member of the Public	Myself	Support	Yes
Lekas, Tony	Rep.Tony.Lekas@gmail.com	603.305.5726	An Elected Official	Hillsborough 37	Support	No
Alexis, Chryssa	chryssa.n.alexis@ehi.com	216.214.6541	A Member of the Public	Enterprise Holdings operating Enterprise, Alamo & National Car Rental	Oppose	No
Bagan, Michael	mbagan@grotonnh.org	603.530.1000	A Member of the Public	Myself	Oppose	No
Fisher, Gary	Not Given	Not Given	A Member of the Public	Myself	Oppose	No
Pelton, Charles	Not Given	Not Given	A Member of the Public	Myself	Oppose	No
Reynolds, Charles	reynolds.charles@comcast.net	603.781.0168	A Member of the Public	Myself	Oppose	No
Parsons, John	Not Given	Not Given	A Member of the Public	Myself	Oppose	No
Cobb, E	Not Given	Not Given	A Member of the Public	Myself	Oppose	No
Carpenter, Timothy	Not Given	Not Given	A Member of the Public	Myself	Oppose	No
Wright, William	Not Given	Not Given	An Elected Official	Myself	Oppose	No
Hamblet, Joan	joan.hamblet@leg.state.nh.us	603.205.4925	An Elected Official	Myself	Support	No
Mahoney, Joe	Not Given	Not Given	A Member of the Public	Myself	Oppose	No
Harriott-Gathright, Linda	linda.HarriottGathright@leg.state.nh.us	16038804537	An Elected Official	Myself	Support	No
Goldstein, David	dgoldstein@franklinnh.org	16039989782	A Member of the Public	Myself	Oppose	No
Ballentine, John M	mikeb@btine.com	Not Given	A Member of the Public	Myself	Support	No

Commerce Committee Testify List for Bill HB384 on 2021-04-27

Support: 32 Oppose: 41 Neutral: 2 Total to Testify: 11

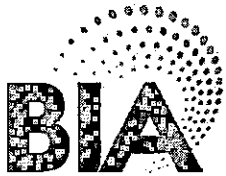
<u>Name</u>	<u>Email Address</u>	<u>Phone</u>	<u>Title</u>	<u>Representing</u>	<u>Position</u>	<u>Testifying</u>
Shagoury, Andrew	Not Given	Not Given	A Member of the Public	Myself	Oppose	No
Hoebeke, Joseph	jhoebeke@hollisnh.org	603.765.1595	State Agency Staff	Hollis Police Department	Oppose	No
LaFlamme, Brendan	blaflamme@hollisnh.org	603.465.7637	State Agency Staff	Hollis Police Department	Oppose	No
Maloney, James	jmaloney@hollisnh.org	603.465.7637	State Agency Staff	Hollis Police Department	Oppose	No
Richard, Domenic	Not Given	Not Given	An Elected Official	Myself	Oppose	No
Croft, David	Not Given	Not Given	A Member of the Public	Myself	Oppose	No
Connelly, Christopher	Not Given	Not Given	A Member of the Public	Myself	Oppose	No
Brave, Sheriff Mark	Mbrave@co.strafford.nh.us	Not Given	An Elected Official	Myself	Oppose	No
Connelly, Joanne	Not Given	Not Given	A Member of the Public	Myself	Oppose	No
Kurk, Neal	Not Given	Not Given	A Member of the Public	Myself	Support	No
Osgood, Bradley	Not Given	Not Given	A Member of the Public	Myself	Oppose	No
Patten, Gregory	Not Given	Not Given	A Member of the Public	Myself	Oppose	No
Noyes, David	pdchief@wvpublicsafety.com	603.236.8809	A Member of the Public	Myself	Oppose	No
Krauss, Richard	rkrauss301@gmail.com	603.833.8818	A Member of the Public	Myself	Oppose	No
Lester, Scott	Not Given	Not Given	A Member of the Public	Myself	Oppose	No
Lewis, Gerald	Not Given	Not Given	A Member of the Public	Myself	Oppose	No
Crowley, Timothy	tcrowley@atkinson-nh.gov	978.888.3248	A Member of the Public	Myself	Oppose	No
See, Alvin	absee@4Liberty.net	Not Given	A Member of the Public	Myself	Support	No
Skelton, Michael	mikes@manchester-chamber.org	Not Given	A Member of the Public	Greater Manchester Chamber of Commerce	Oppose	No
Storrs, Caroline	Not Given	Not Given	A Member of the Public	Myself	Support	No
McBeath, Rebecca	NHStateHouse@gmail.com	Not Given	An Elected Official	Myself	Support	No
Bean Burpee, Anthony	Not Given	Not Given	A Member of the Public	Myself	Oppose	No
Sullivan, Patrick	Patsully@comcast.net	Not Given	A Member of the Public	Myself	Oppose	No
Graham, Nancy	nancygraham806@gmail.com	425.765.6921	A Member of the Public	Myself	Support	No
Sargent, Elizabeth	echasesargent@gmail.com	603.568.0213	A Lobbyist	NH Association of Chiefs of Police	Oppose	No
Rosenberger, Teresa	Not Given	Not Given	A Lobbyist	US Cellular; NH Telephone Association	Oppose	No

Commerce Committee Testify List for Bill HB384 on 2021-04-27

Support: 32 Oppose: 41 Neutral: 2 Total to Testify: 11

<u>Name</u>	<u>Email Address</u>	<u>Phone</u>	<u>Title</u>	<u>Representing</u>	<u>Position</u>	<u>Testifying</u>
Burnett, Jamie	jamie@sight-line.us	Not Given	A Lobbyist	American Property Casualty Insurance Association (APCIA)	Oppose	No
Schapiro, Joe	joe.schapiro@leg.state.nh.us	603.852.5039	An Elected Official	Cheshire 16, Keene	Support	No
Booras, Hon. Efstathia	efstathiab73@gmail.com	603.930.3220	An Elected Official	Constituents	Support	No
Dontonville, Anne	Adontonville@gmail.com	603.632.7719	A Member of the Public	Myself	Support	No
Weston, Joyce	jweston14@roadrunner.com	Not Given	An Elected Official	Myself	Support	No
Heath, Mary	Not Given	Not Given	An Elected Official	hills 14	Support	No
Bartlett, Christy	christydbartlett@gmail.com	603.717.8151	An Elected Official	Merrimack 19	Support	No
Lonano, James	Not Given	Not Given	A Member of the Public	Myself	Support	No
Bixby, Peter	peter.bixby@leg.state.nh.us	16037495659	An Elected Official	Myself	Support	No
Pauer, Eric	eric_list@pauerhome.com	202.241.3072	A Member of the Public	Myself	Support	No
Chase, Wendy	Not Given	603.319.7259	An Elected Official	Myself	Support	No
Vail, Suzanne	Suzanne.vail@leg.state.nh.us	Not Given	A Lobbyist	Hillsborough County 30	Support	No
Casino, Joanne	joannecasino@comcast.net	603.746.3491	A Member of the Public	Myself	Support	No
Hamer, Heidi	Not Given	Not Given	An Elected Official	Myself	Support	No
Almy, Susan	susan.almy@comcast.net	603.448.4769	An Elected Official	Myself	Support	No
Pugh, Barbara	barbara.pugh@comcast.net	Not Given	A Member of the Public	Myself	Support	No
Grassie, Chuck	chuck.grassie@leg.state.nh.us	16039787417	An Elected Official	Strafford 11	Oppose	No
Mombourquette, Donna	Not Given	Not Given	A Member of the Public	Myself	Support	No
Cornell, Patricia	Not Given	Not Given	An Elected Official	Myself	Support	No
Dontonville, Roger	rdontonville@gmail.com	603.632.7719	An Elected Official	Myself	Support	No
Stevens, Representative Deb	debstevens4ward7@gmail.com	603.820.0866	An Elected Official	My 10K constituents	Support	No
Tucker, Kathy	Not Given	Not Given	A Member of the Public	Myself	Support	No
Layon, Erica	erica.layon@leg.state.nh.us	603.479.9595	An Elected Official	Myself	Support	No

Testimony



BUSINESS & INDUSTRY ASSOCIATION
New Hampshire's Statewide
Chamber of Commerce

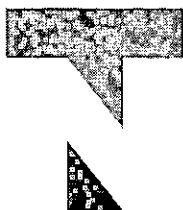
Testimony of David Creer
Business & Industry Association
HB 384
Senate Commerce Committee
April 27, 2021

Dear Members of the Senate Commerce Committee, my name is David Creer and I'm director of public policy for the Business and Industry Association (BIA), New Hampshire's statewide chamber of commerce and leading business advocate. BIA represents more than 400 members in a variety of industries. Member firms employ 89,000 people throughout the state, which represents one in seven private workforce jobs, and contribute \$4.5 billion annually to the state's economy.

BIA opposes HB 384, prohibiting the sharing of location data. This bill is overly burdensome on both businesses and customers. This bill seeks to prohibit the sharing of locational data obtained through mobile applications and require consent every time this data is shared by the application. This would make New Hampshire into the only state in the nation that requires this level of consent.

Many applications require the sharing of data for their essential purpose. For example, ride sharing apps need to share your location with the driver so they know where to pick you up and retail store apps use your location to send you to the nearest store. By requiring consent every time this data is used, consumers would be flooded with consent approvals, making them less effective and overly burdensome.

Thank you for your consideration.



TECHNET
THE VOICE OF THE
INNOVATION ECONOMY

**STATE
PRIVACY &
SECURITY
COALITION**

April 27, 2021

The Honorable Senator Harold French, Chair
Senate Commerce Committee
SH Rm 100
107 North Main Street
Concord, NH 03301

Re: HB 384 – Prohibiting the Sharing of Location Data

Dear Chair French and members of the Committee,

TechNet, the national, bipartisan network of technology CEOs and senior executives that promotes the growth of the innovation economy and represents over three million employees – including thousands here in New Hampshire, along with the State Privacy and Security Coalition, a cross-sectoral coalition of 30 companies and eight trade associations in the retail, technology, telecommunications, automobile, payment card, and online security sectors, respectfully oppose HB 384, which establishes a civil penalty for the unauthorized disclosure of electronic location information by application developers and service providers. HB 384 is unnecessary, confusing and harmful in its approach to the issue of consumer privacy by proposing technology-and-sector-specific prohibitions which, if passed, would make New Hampshire an outlier; no other state has such a broad and ambiguous law.

HB 384 Does Not Reflect the Modern Online Ecosystem

HB 384 is not a practical solution for New Hampshire. While it was drafted with good intentions, it does not translate into public policy that will increase protections for New Hampshire residents or allow businesses to easily understand and comply with its ambiguous mandates.

This legislation is problematic for many reasons but notably it because fails to make any distinction between personally identifiable information (PII) and aggregated/anonymized data. Often, companies are not actually sharing an individual's specific data, but anonymized datasets. The sharing of anonymized data underpins much of the modern Internet. Both GDPR and the California Consumer Privacy Act recognize this distinction and establish separate rules for anonymized (or deidentified) data.

Moreover, existing federal regulations require companies to obtain a consumer's express consent prior to collecting location data. The Federal Trade Commission (FTC) Act prohibits "unfair or deceptive acts or practices" affecting commerce, and subsequent FTC guidance clearly states express consent should be obtained prior to collecting location data, especially when the data is collected for a new purpose. Further, the Stored Communications Act prohibits telecommunications carriers from using or sharing location data, for purposes other

than providing a service, without express consent. HB 384 would introduce "patchwork" legislation and inconsistent application of laws which would be confusing to consumers in the state of New Hampshire.

Additionally, the bill does not recognize the critical role that service providers play in the modern online ecosystem. Service providers are businesses who have relationships with companies to perform specific services on behalf of the companies but are generally prohibited from using customer information for their own uses. Examples of these businesses which require location information to provide services include shipping fulfillment and payment card processing, as well as crucial security services like fraud detection and prevention. Because this bill does not recognize such arrangements, literally every transfer of information – even if it is for the business' own purpose and not for an exchange of money – would fall within this bill's scope, creating a regulatory scheme unrecognized in any other state. From a consumer perspective, this would mean that request for consent to share information would come in from unfamiliar companies greatly increasing the likelihood of consumer rejection meaning that desirable services will not be provided.

HB 384 is Vague and Not Feasible to Comply With

While HB 384 defines "authorized use," the term is not used anywhere in the operative provisions. Additionally, the definition does not contemplate the business-service provider relationship described above, where businesses frequently use information to provide goods and services that consumers have come to rely on. The result is that this bill would impose unreasonable and unwarranted limitations that would prevent companies from performing functions expected by customers.

Without clarity as to how a company may determine whether a customer "explicitly requested" a service, companies would likely send customers mobile app pop-up consent notifications to obtain affirmative consent each time the relevant location information is shared. Customers will be inundated with pop-up consents to permit sharing and experience delays in service or functions they typically expect, since location information is often used for a variety of incidental or background business functions (i.e., processing shipping, collecting payment information, publicizing customer reviews, etc.). Further, deploying a consent mechanism is a complicated process to implement and, as a result, imposes significant costs on local businesses.

In addition to an unclear definition of "authorized use," this bill contains an overbroad definition of "location information" such that any sharing of location information, regardless of the level of precision, will require a customer's consent. As drafted, "location information" might range from broad areas such as city and state or ZIP code to more precise location. Companies would be required to obtain consent any time this information is collected through a mobile device and provided to another person, be it another company for a reasonable use or in a public forum such as a website or social media app – further impairing a company's ability to provide services its customers expect but may not explicitly request.

Even more confusing and frustrating to consumers will be the fact that the bill attempts to govern not just NH residents, but anyone located in NH. When out-of-state families enter the state to go hiking or fishing each weekend, or those that commute in for work, they would be deluged with opt-in notifications from businesses they already have a relationship with and already expect to perform services on their behalf. This process would repeat each time they cross the border.

Ironically, because the bill does not govern only New Hampshire residents, companies would likely have to collect *more* geolocation information about individuals in order to attempt to comply with this bill's ambiguous mandates.


HB 384's Vagueness Exposes Companies to Frivolous Litigation

TechNet and SPSC's member companies are also strongly opposed to the inclusion of a private right of action that enables trial lawyers to sue their wireless providers and developers of applications for transactions that are routine and expected by consumers, but would be prohibited by this law. A private right of action would open companies up to untold amounts of litigation and could significantly hamper companies' ability to operate, even if they are making best efforts to comply. Many services and functions that New Hampshire residents know and rely on would no longer be accessible, as companies would likely remove or restrict functionality in the state to avoid the potential litigation risk. Further, the risk of legal exposure will have a chilling effect on entrepreneurs launching new products and developing new applications here.

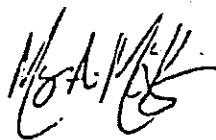
While we appreciate the desire of the sponsor to protect the privacy of New Hampshire residents, companies also need the ability operate in accordance with the law while providing the services that consumers expect and rely on. This legislation fails to do both and therefore we strongly urge the Committee to not advance this legislation.

Thank you in advance for your consideration on these matters and please do not hesitate to reach out with any questions.

Sincerely,



Christopher Gilrein
Executive Director, Massachusetts and the Northeast
TechNet
cgilrein@technet.org



Maya A. McKenzie
Associate
DLA Piper, LLP
maya.mckenzie@us.dlapiper.com

Testimony Against Passing HB 384:

“AN ACT prohibiting the sharing of location data.”

Rep. Timothy Horrigan; April 27, 2021

HB 384 is a crude, unsophisticated and inflexible attempt to solve an extraordinarily complicated problem which in any case would best be addressed, and in fact IS being addressed, on a federal level. This bill, if passed in its current form, would accomplish little if anything aside from denying Granite State residents, visitors, and businesses access to valuable online location-based services.

The tech industry is well aware of the public's concern about online privacy, and apps and operating systems both incorporate functionality enabling users to manage how their location data is used. The tech industry is doing this not merely out of the goodness of their hearts, but also because they know that ordinary people will refuse to use products that do not respect their privacy concerns.

There very well may be a need for state legislation regulating the sharing of location data. But HB 384 is not a good way to address this issue.

HB 384 would destroy jobs by driving high-tech firms to other states or countries and by crippling the growth of the new “gig economy.” Finally, this bill would impose fines which could literally run into the millions of dollars on businesses and individuals who inadvertently violate the vague provisions of this bill.



April 27, 2021

Hon. Harold French, Chair
Senate Commerce Committee
State House Room 100
Concord, NH

Re: HB 384 – An Act prohibiting the sharing of location data

Dear Chairman French,

The American Property Casualty Insurance Association (APCIA)¹ is a leading national property/casualty trade association representing nearly 60% of the property/casualty market nationwide. We are writing to respectfully express our **opposition to HB 384**, which would prohibit wireless providers and mobile application developers from sharing a user’s location data except in certain limited circumstances. There is significant concern that the bill could have negative implications for consumers who have signed up for telematics or usage-based insurance (UBI) devices offered by their insurance carriers.

By way of background, many insurance carriers are using technology to offer new, innovative products for consumers, including telematics, UBI and “pay-as-you-drive” programs. Essentially, these programs offer consumers the option of having premiums specifically tailored to their individual driving patterns and behavior, typically either via a smart phone app or a device that is plugged into the vehicle. Consumers who opt into these programs are financially incentivized to drive less and to drive more safely, given that their rates are specifically pegged to their driving behavior, which is all monitored via the app and then analyzed by the insurer.

¹ Effective January 1, 2019, the American Insurance Association (AIA) and the Property Casualty Insurers Association of America (PCIAA) merged to form the American Property Casualty Insurance Association (APCIA). Representing nearly 60 percent of the U.S. property casualty insurance market, APCIA promotes and protects the viability of private competition for the benefit of consumers and insurers. APCIA represents the broadest cross-section of home, auto, and business insurers of any national trade association. APCIA members represent all sizes, structures, and regions, which protect families, communities, and businesses in the U.S. and across the globe.

As drafted, we are concerned that insurance companies who utilize telematics would fall under the definition of “mobile application developer” and thus be subject to the restrictive provisions of the bill. Consumers who choose these programs for their insurance needs are already informed that their driving behavior and location data is being analyzed by the insurer in order to set their premium level. Based on the provisions in the bill, sharing location data would only be permitted in order to fulfill an “*explicit request*” from a consumer, or unless the consumer “*affirmatively waived*” the right not to have location data shared...after being “*properly informed.*” Not only are these terms not defined, but it appears likely that consumers would need to be asked repeatedly for authorization in order to utilize their telematics device/app, which is likely to cause great frustration. Insurers would also have difficulty crafting and presenting disclosures that meet the undefined meaning of some of these terms in the bill.

It also appears that the bill applies to out of state residents who are visiting NH for work or vacation. Not only would this be disruptive to these consumers who are accustomed to seamless and efficient services in their own state, but it also is unclear how operationally this would even work in practice. Further, insurance carriers often utilize third party vendors to assist them in providing telematics services to consumers. In these instances, the insurer would collect the data, share it with the third-party vendor for processing, and then return it back to the insurer. As drafted, we are concerned that the bill may prohibit this sort of arrangement, which is provided as a benefit to the consumer and which the consumer has willingly agreed to utilize.

Another area of concern with the legislation is that sharing location information is limited to the purpose of providing a service explicitly requested by the consumer, meaning other uses which are provided as value adds to the consumer would be prohibited unless disclosed and approved. For example, a consumer who signed up to utilize a telematics or UBI program will often be provided with coupons or discounts for products or services that might be available as the person drives in the vicinity of where the product or service is available. For a further example, hypothetically, a driver could be passing by McDonald's, and they may see a coupon pop up on their device for \$2 off their order. These types of additional offerings are provided as a benefit to consumers, and we are concerned that they could be prohibited under the legislation.

APCIA is also concerned that the bill could hamper an insurer's ability to investigate fraudulent claims. While there is an exception for requests by a law enforcement agency in response to a lawful process, there is no similar exception for insurance carriers who are involved in civil litigation or investigating potential insurance fraud. For example, in the workers' compensation context, insurance fraud investigators have utilized cell phone data to locate behavior and locations in cases of suspected workers' compensation fraud. Restricting access to this data or requiring disclosure to the person suspected of committing fraud could potentially put the entire investigation at risk.

Further, there seems to be no provision in the bill that would allow for location data to be used as long as personal info is removed. For example, third party vendors are able to provide the insurance industry with trends on miles driven in a particular state – most of which is obtained via telematics. There is no personal consumer data collected, however location information is included in order to identify trends to determine whether mileage is up, down or flat in a particular state. This type of data is important for the insurance industry and highway traffic safety organizations to obtain in order to conduct various driving-related studies and research.

APCIA is also extremely concerned with the private right of action included in the legislation, which would allow for recovery of actual damages, attorneys' fees, and costs. This is in addition to statutory damages which are also prescribed in the bill. Given the undefined terms, vagueness of the language, and operational difficulties that would undoubtedly arise as carriers try to comply with the bill's provisions, this could lead to an influx of costly, time-consuming litigation. Increased litigation will only lead to additional costs for New Hampshire businesses and, ultimately consumers. As you know, businesses and families are continuing to face financial difficulties as a result of COVID-19, and the state is working diligently on economic recovery efforts. Now does not seem like a prudent time to enact legislation such as HB 384 that could only hamper these efforts.

Respectfully, and for the reasons set forth above, APCIA must oppose HB 384 due to the potentially significant adverse impact on consumers and businesses in the state. We would welcome the opportunity to discuss this issue further should there be questions or if additional information is needed.

Sincerely,



Alison Cooper
Vice President, State Government Relations
APCIA
alison.cooper@apci.org
518.462.1695



**Testimony of
Lisa McCabe
CTIA
Opposition to New Hampshire House Bill 384
Before the Senate Commerce Committee**

April 27, 2021

Chair French, Vice Chair Gannon, and members of the Committee, on behalf of CTIA®, the trade association for the wireless communications industry, thank you for the opportunity to provide this testimony in opposition to HB 384, which prohibits the sale of unauthorized sharing of location data by a mobile application developer or telecommunications carrier. HB 384 is unnecessary, would add to the further fragmentation of consumer privacy laws, and raises particular concerns because it is technology-and-sector-specific.

CTIA and its member companies strongly believe that consumer information should be protected and that consumers should be given choices with respect to when and how their information is used. Mobile providers currently obtain the affirmative opt-in consent of their wireless consumers before using or sharing subscribers' precise location information – with limited exceptions for emergency situations and appropriate legal process. This is consistent with the Federal Trade Commission's (FTC) Privacy Framework and with other federal laws and regulations, which generally require telecommunications carriers to obtain opt-in consent prior to sharing mobile call location information. The FTC regularly brings



enforcement actions against companies that have misrepresented consumer control regarding collection and use of geolocation data.¹

Consumer privacy protections should apply consistently across all industry sectors, and protections should be consistent for any given type of information. HB 384 applies to a specific type of information – location information – on an application on an electronic device that can track an individual's proximity that is collected by an application developer or telecommunications carrier. Because the requirements in HB 384 only apply to application developers and telecommunications carriers, the legislation favors certain business models and particular competitors over others. It would not cover tracking of retail customers through WiFi or Bluetooth devices, for example, nor would it cover any use or sharing of location information by operating systems. HB 384 is unfairly limited to the collection of one type of location data in the online ecosystem – something that consumers are unlikely to understand or expect.

The private right of action included in the bill will unfairly expose telecommunication carriers and mobile application developers operating in New Hampshire to costly litigation. According to a study prepared by Hogan Lovells for the U.S. Chamber Institute for Legal Reform, plaintiffs rarely recover from lawsuits brought in privacy-related cases. Instead, this litigation “often leads to a major payday for plaintiffs’ attorneys, even where class members

¹ See, e.g., *In the Matter of InMobi Pte Ltd., a private limited company*. F.T.C. June 22, 2016. 3:16-cv-03474; *In the Matter of Nomi Technologies, Inc., a corporation*. F.T.C. September 3, 2015. 132-3251; *In the Matter of Goldenshores Technologies, LLC, a limited liability company, and Erik M. Geidl, individually and as the managing member of the limited liability company*. F.T.C. March 31, 2014. 132-3087.



experienced no concrete harm . . . even where class members may have suffered a concrete injury, the data indicates that they are unlikely to receive material compensatory or injunctive relief through private litigation.”² Recent data on the California Consumer Privacy Act (CCPA) suggests that the inclusion of any private right of action in a bill, however limited, appears to invite litigation. Although the CCPA strictly limits private litigation to data security breaches, over half of the cases brought in its first year raised broader claims that the law appears to foreclose.³ In 2020 alone, 75 class action suits were filed citing the CCPA.⁴ The inclusion of a private right of action will significantly increase the cost of offering mobile applications in New Hampshire.

It is also important to note that the bill appears to limit the sharing of information for operational purposes. Specifically, the bill could be read to mean that a carrier or developer cannot share information with their vendor that helps provide the service that the customer has requested. The bill includes a definition of "authorized use" but does not appear to incorporate that term anywhere into the prohibition or exceptions. For example, this could negatively impact the information sharing necessary for effectuating the use of connected vehicles and other IoT applications.

² Mark Brennan et al., *Ill-Suited: Private Rights of Action and Privacy Claims*, U.S. Chamber Institute for Legal Reform (July 2019).

³ Perkins Coie, *CCPA Litigation Year in Review* (March 21, 2021), available at [CCPA Litigation Year in Review | Perkins Coie](#).

⁴ Akin Gump, 2020 CCPA Litigation Report (March 23, 2021); available at [Akin Gump Announces 2020 CCPA Litigation Report](#).



Privacy issues are better addressed with a holistic approach and at the federal level, so that the law does not apply differently to different types of data or on a patchwork, state-by-state basis, or favor one business model over another. A comprehensive approach will lessen any unintended consequences and provide consistent consumer protections. For these reasons, CTIA respectfully requests that you report this bill Inexpedient to Legislate. Thank you for your consideration.

The State of New Hampshire
ADMINISTRATIVE OFFICE OF THE COURTS

Christopher Keating
Director

1 Granite Place, Suite N400
Concord, NH 03301
(603) 271-2521
Fax: (603) 513-5454
eMail: aoc@courts.state.nh.us
TTY/TDD Relay: (800) 735-2964

April 22, 2021

The Honorable Harold French, Chair
Senate Commerce Committee
State House, Room 100
Concord, New Hampshire 03301

RE: RE: HB 384 (prohibiting the sharing of location data)
Request for Amended Effective Date

Dear Senator French and members of Senate Commerce:

I am writing to make you aware of a concern the Judicial Branch has with regard to the proposed effective date of House Bill 384. The current draft has a proposed effective date of 60 days after its passage. Under RSA 14:9-a “[e]ach law affecting judicial practice and procedure, or establishing or eliminating criminal prohibitions, civil causes of action or remedies, or limitations of actions, shall take effect on the January 1 following passage.” Because this law would establish new criminal prohibitions, RSA 14:9-a provides that it should be effective no sooner than January 1, 2022.

The additional time is needed for the Judicial Branch to implement the collective changes that will be made to laws during this legislative session that impact criminal and civil cases. After each legislative session, the Judicial Branch must update the uniform charge table and the Judicial Branch’s Odyssey database, modify or create new forms, make necessary changes to the e-filing system, and notify and train judges and staff on the hundreds of changes that affect the court system. Implementation of these changes must accurately reflect the changes in law and be properly programed into the case management database and e-filing system. Given the number of changes that must be implemented, it takes several months to complete this effort.

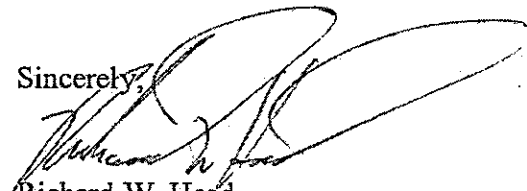
I am writing to request the bill be amended to change the effective date to January 1, 2022 which will allow the Judicial Branch sufficient time to implement all of the changes described in the bills that are passed in this session.

April 22, 2021

Page 2

Thank you for your consideration of this request. Please do not hesitate to contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard W. Head", written over a large, stylized, looping flourish.

Richard W. Head

Government Affairs Coordinator

Email: rhead@courts.state.nh.us

Cell: 603-716-8235



NECTA

New England Cable & Telecommunications Association, Inc.
The Enterprise Center • 121 Loring Avenue • Suite 340 • Salem, MA 01970
Tel: 781.843.3418

New England Cable & Telecommunications Association, Inc.

New England Cable & Telecommunications Association, Inc.

Testimony in Opposition to HB 384, prohibiting the sharing of location data

Senate Commerce

April 27, 2021

Good morning, my name is Maura Weston, thank you for the opportunity to speak to you today on behalf of the New England Cable and Telecommunications Association (NECTA). Our members, including Atlantic Broadband, Charter and Comcast, are New Hampshire's leading broadband and communications providers with over 450,000 customers in more than 184 communities.

Before moving to the substance of our opposition to the bill, I would like to unambiguously state that NECTA members have committed publicly to not sell their mobile customers location data. These policies are clearly stated in our members privacy policies. For example, Comcast's privacy policy states: "We don't sell, and have never sold, your location data when you use our Xfinity Mobile service."

Even though our members do not sell location data, NECTA is opposed to HB384 because it seeks to regulate the sharing of data in a manner which will fundamentally impede the use of popular and essential services to a properly functioning internet ecosystem. While the legislature is understandably and appropriately concerned about consumer protection, this bill would not enhance consumer protections. Generally, the bill is poorly drafted, definitions are vague, and the language is overly broad, which in turn leads to inconsistency in operationalizing the bill and that is ultimately harmful to consumers. Specifically, the unintended consequence of the manner in which this bill proposed to prohibit sharing location data will do more harm than good and make New Hampshire an outlier among states. Even California, which has been very proactive in consumer privacy protections does not treat this type of data in this manner.

HB384 would hamstring consumers, businesses, and providers alike in conducting the most basic commercial interactions and business functions. Highly desirable and necessary functions such as payment processing, order fulfillment and fraud protection could not be completed without intrusive and repeated consent requests. The bill would also impede routine network and business operations. Data sharing for critical functions like network and data security would be impeded for services which are not optional to the safe and secure operation of the internet. Taken together these factors would materially harm New Hampshire's standing among neighboring states and would have cascading impacts throughout business sectors causing downstream impacts on smaller businesses and consumers who call New Hampshire home.

Internet based services are essential to businesses struggling to come back from the economic harms of the pandemic, and the state should be particularly careful to guard against the unintended consequences of impeding the functionality of the Internet and Internet based transactions. Creating a policy framework found only in New Hampshire and nowhere else in the \$21.5 trillion US economy would have far reaching negative consequences for our competitiveness and ability to innovate.

In addition to the potential harm that this bill could cause, there is longstanding oversight of the activities contemplated by this legislation. The online ecosystem is built on a national enforcement platform overseen by the Federal Trade Commission. The FTC has a proven framework that protects consumers and allows innovative new services to proliferate. It has a strong track record of privacy oversight – bringing over 500 privacy and data security enforcement actions against companies large and small – and it often cooperates and coordinates with State Attorneys General to enforce consumer protections for consumers throughout the country.

NECTA's member companies value our customers' privacy and trust. We work every day to protect the privacy and security of their personal information because we know the success of our business depends on earning our customers' trust. It is in that spirit that we ask you to vote HB384 as Inexpedient to Legislate.

Thank you for your attention to this matter, I would be happy to answer any questions that you may have.

Respectfully Submitted,

Maura Weston



April 26, 2021

Hon. Harold French, Chair
Senate Committee on Commerce
State House, Room 100
107 North Main Street
Concord, NH 03301

RE: House Bill 384 - Oppose

Dear Chairman French and Members of the Committee:

On behalf of the Alliance for Automotive Innovation¹ (Auto Innovators), I am writing to you today to note our opposition to House Bill 384, legislation intended to further regulate the sharing of location data by mobile application developers or telecommunications carriers.

Maintaining Consumer Privacy and Cybersecurity

The protection of consumer personal information is a priority for the automotive industry. Through the development of the "*Consumer Privacy Protection Principles for Vehicle Technologies and Services*," Auto Innovators' members committed to take steps to protect the personal data generated by their vehicles. These *Privacy Principles* are enforceable through the Federal Trade Commission and provide heightened protection for geolocation data and how drivers operate their vehicles.² The auto industry's *Privacy Principles* already prohibit the sale or sharing of location and other sensitive data with unaffiliated third parties for their own purposes in the absence of affirmative consent.

With increasing vehicle connectivity, customer privacy must be a priority. Many of the advanced technologies and services in vehicles today are based upon information obtained from a variety of vehicle systems and involve the collection of information about a vehicle's location or a driver's use of a vehicle. Consumer trust is essential to the success of vehicle technologies and services. Auto Innovators and our members understand that consumers want to know how these vehicle technologies and services can deliver benefits to them while respecting their privacy. Our members are committed to providing all their customers with a high level of protection of their personal data and maintaining their trust.

¹ Formed in 2020, the Alliance for Automotive Innovation is the singular, authoritative, and respected voice of the automotive industry. Focused on creating a safe and transformative path for sustainable industry growth, the Alliance for Automotive Innovation represents the manufacturers producing nearly 99 percent of cars and light trucks sold in the U.S., as well as original equipment suppliers, technology and other automotive-related companies, and trade associations. For more information, visit our website <http://www.autosinnovate.org>.

²[https://www.autosinnovate.org/innovation/Automotive%20Privacy/Consumer Privacy Principles for Vehicle Technologies and Services-03-21-19.pdf](https://www.autosinnovate.org/innovation/Automotive%20Privacy/Consumer%20Privacy%20Principles%20for%20Vehicle%20Technologies%20and%20Services-03-21-19.pdf)

Practical Concerns

While seemingly well-intentioned in spirit, the substance of HB 384 fails to provide a practical pathway for the appropriate use of shared data. Section II is too vague as to what would constitute an "explicit" request. Similarly, it does not establish what should be considered as a consumer "affirmatively waived such right", nor how a business could ensure a consumer was "properly informed". Additionally, the definition of "share" in Section I, is far too simplistic and does not take into the various affiliations and partnerships that a business may utilize to effectively service their customer. Automakers may need to share data suppliers for product development, quality assurance, or safety purposes. Any sharing between automakers and these affiliated entities would seemingly be prohibited by this proposal.

Second, HB 384 is not clear as to whether it applies only to identifiable information, which means information that is linked or reasonably linkable to a particular consumer or vehicle. The restrictions in the bill should not apply to location information that is de-identified, anonymized, or aggregated. Automakers may provide aggregated location information, for example, to real-time traffic service providers or may provide de-identified location information to entities engaged in precision mapping to support automated vehicle deployment. In these cases, location information is not linked or linkable to a specific consumer or a specific vehicle, and therefore should not raise any privacy concerns that would necessitate being included in any proposed bills.

As a final sign of a bill that has not been fully vetted or reviewed, the term "Authorized Use", is not actually used in the bill. The term that presumably establishes the fundamental basis for what is deemed to be appropriate sharing of location data is not even used in the bill. Surely, just an oversight, but indicative of a rush to move legislation that has not been carefully thought through. That is not the only quibble with drafting either. In Section III, it adds on the idea of "other person" to mobile application developers or telecommunications carriers, as those who are prohibited from taking certain actions. However, because there is no violation delineated for an "other person" to commit in Section II, there is no way an "other person" could be in violation of the provisions of the bill, despite being listed as such. As it means nothing as currently drafted, it is not really problematic. It only indicative of a legislative proposal that has not been carefully considered.

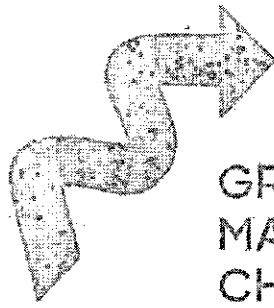
It is for these reasons that we respectfully ask for your opposition to HB 384.

Thank you for your consideration of our position. Please do not hesitate to contact me, should I be able to provide any additional information.

Sincerely,



Wayne Weikel
Senior Director, State Affairs



GREATER
MANCHESTER
CHAMBER

April 27, 2021

Senator Harold French, Chairman
Senate Commerce Committee
NH State Senate
107 North Main Street
Concord, NH 03301

RE: HB 384 – An Act prohibiting the sharing of location data

Dear Chairman French and Honorable Members of the Senate Commerce Committee,

I write today on behalf the Greater Manchester Chamber (GMC) and to share our opposition to HB 384. By way of background, the GMC is New Hampshire's largest Chamber of Commerce and represents more than 800 businesses of all sizes and industry sectors from across Southern New Hampshire. A primary element of the GMC's mission is to ensure New Hampshire's business climate remains friendly, stable, and supportive of innovation that will drive growth and prosperity. For this reason, the GMC opposes HB 384 as we are deeply concerned with impact this proposed legislation will have on consumers, businesses, and the state's overall competitiveness in the rapidly changing internet ecosystem on which we all rely.

HB 384 seeks to prohibit wireless providers and application developers from sharing a user's location data except in extremely limited circumstances. As written bill would prohibit mobile app developers, wireless providers, and businesses from performing functions of service that a customer has requested. Further, the structure and design of the bill is teeming with unintended consequences and an unworkable compliance framework that would severely disrupt business activity for entities seeking to comply with the legislation's requirements or simply lead to some services no longer being offered to NH residents due to the cost and complexity of compliance.

Small businesses of all types have turned to technology to help them survive the past year and going forward. For many of them this has meant depending on online services such as order taking, payment processing, scheduling and reservations, order fulfillment and inventory

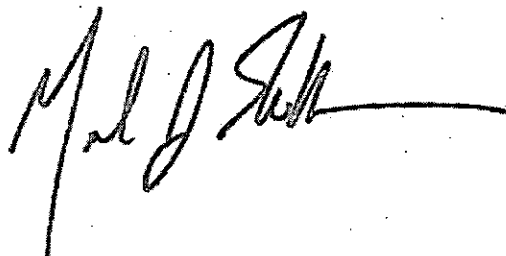
management. All these services use some form of location data to function and all of them require the sharing of data to work. Further these services were built to comply with national privacy standards enforced by the Federal Trade Commission which are entirely different than the system described in HB 384.

For example, many restaurants rely on online ordering and platforms which they rely on for online orders use location data for fraud prevention, payment processing and process optimization. The GMC is concerned that internet platform providers who serve a global marketplace will not customize for New Hampshire's small market. Small businesses may lose access to critical services that their businesses are dependent on for success. It is not just restaurants who depend on location data driven services. Real estate, retail, entertainment, and recreational attractions depend on internet-based services to process payments, advertise themselves and stay connected with customers. None of these services will be able to function without substantial NH only modifications were HB 384 in place.

Furthermore, to comply with HB 384, visitors to NH will be bombarded by requests for consent when they drive across the border or arrive by plane. These requests are likely to cause consumer confusion which in turn is likely to cause distrust and reduce utilization. This will only hurt NH businesses as they will miss out on the opportunity to serve these visitors and see less usage of technology tool in which they have invested and built their business around.

Finally, passage of HB 384 would put NH in a severely diminished position compared to other states in terms of economic competitiveness at a time when a thriving internet ecosystem is essential to attracting growth and economic prosperity. No other state in the nation has passed legislation such as HB 384. At a time when our state's economy is in recovery, we cannot afford to make NH an island in the internet ecosystem with a proposal that will bring confusion, complexity, and unintended consequences impacting consumers and businesses.

Thank you for your consideration,

A handwritten signature in black ink, appearing to read "Michael Skelton", with a long horizontal line extending to the right.

Michael Skelton
President & CEO
Greater Manchester Chamber



Tammy Cota, Executive Director
1 Blanchard Court, Suite 101
Montpelier, VT 05602
802-279-3534
tammy@theinternetcoalition.com
www.theinternetcoalition.com

April 23, 2021

Honorable Harold French, Chair
Senate Commerce Committee
107 North Main Street
Concord, NH 03301

Re: IC must respectfully oppose HB 384, Sharing of Location Data

Dear Chairman French:

By way of introduction, the Internet Coalition (IC) is a national trade association that represents members in state public policy discussions. The IC also serves as an informational resource, striving to protect and foster the Internet economy and the benefits it provides consumers. Our member companies directly employ more than 4,000 New Hampshire citizens and provide essential services statewide.

IC understands the challenges lawmakers face when attempting to regulate technological complex areas in a balanced way, allowing for innovation growth while simultaneously protecting consumers from harm. IC supports well-thought out, narrowly defined geolocation laws that adequately solve a specific issue, providing remedies in an effective way and are flexible enough to allow for innovation to flourish while avoiding limiting an entire segment of data.

Therefore, IC must **respectfully oppose HB 384**, which is overly broad, could unintentionally hamper user experiences, disrupt many harmless conveniences that users have come to expect online, is unnecessary, offers little additional or effective consumer protections and would subject companies to a bombardment of unscrupulous lawsuits as it would expose them to private rights of action, even for minor or unknown infractions.

Companies adhere to strong privacy policies which prohibit the sale of location data by apps. These privacy policies are enforceable by the Attorney General and the Federal Trade Commission. Users can view app privacy policies before download, decline consent to location data access if they wish and are informed of their ability to control app interactions with their location data before download. Following download users can choose not to allow the sharing of information at any time. Users may hand-tailor location data settings on most devices per application, which can be turned on or off at any time. Users may also choose to only allow location data access when a particular service is in use.

Many online sites and applications use device location information to provide vital services to users that can be hand-tailored to show specific content based upon a person's local area. While we agree that precise geolocation information linked to someone specifically should be treated appropriately, this bill appears to cover any website or application that runs off a mobile device's operations system and would require authorization for sharing of anonymized data. These two broad definitions alone would potentially adversely impact thousands of geolocation-based business models that use location data that is not linked to specific person.

Banning or restricting positive and innocuous use of anonymized data would end valuable and widely used services or force companies to repeatedly ask consumers for authorization to complete even simple and routine services that may share location information outside what the user may have originally "explicitly requested."

For example, a visually impaired consumer logged on to her computer and set her voice activated assistance software to allow use and sharing of her location data. She then uses the voice service from her

mobile phone to have food delivered to her home, order merchandize for pick up at the nearest hardware store, then scheduled a driver to pick her up, take her to the hardware store and return her home.

Execution of these services would generally require the voice software to share her location with the mobile device, the restaurant the food was ordered from, a third-party food delivery service, the Uber or Lyft app, the search engine or hardware store's website used to locate the nearest hardware store. These services may have needed to share her location data with third-party mapping software to find an available person to pick her up and to deliver her food to the right house. Location data also may have been shared to third parties for payment apps to authenticate and process payment for the food, car service and hardware store merchandize. This simple every day use of location data technology would bombard this customer with a dozen or more requests for consent, from companies unfamiliar to her. This overload of requests will almost have certainly led to consent fatigue, resulting in confusion and a poor consumer experience.

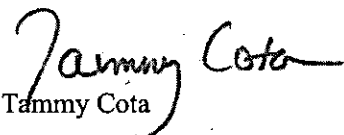
The provisions in the New Hampshire bill would not allow the voice software to share her location with the device or any of the other parties to complete these transactions without constant interruptions asking the consumer "Are you sure you want to give XYZ your location?" in the middle of each request which would be a horrible consumer experience.

Find my phone features; ridesharing apps; mapping/GPS and navigation apps; educational services; real estate services, weather apps including ski and snow reports; local tourism and attraction apps and software that allows users to connect to free public wi-fi could all be disrupted by this bill. Since the bill provisions do not appear to be limited to New Hampshire residents but those located in the state, companies would have to collect more location data about users to comply with the provisions of this bill since they must verify whether or not all users are not based in New Hampshire. Those living, visiting or just passing through New Hampshire would have to be presented with repeated requests for authorization which would likely prove confusing and annoying to consumers.

IC believes location data legislation is not needed as there are numerous state and federal laws in place now that companies must abide by (see existing state and federal privacy laws attached). Enacting additional laws causes a patchwork of varying mandates that could possibly conflict with these laws, while making it extremely difficult, if not impossible, for national and worldwide companies to legally operate across state lines.

Since this bill contains broad and problematic definitions, would end or interrupt consumers' online experiences, is unnecessary, exposes businesses to frivolous lawsuits and deters innovation, we ask that you **oppose HB 384**. Please feel free to contact me if you have questions or would like to discuss this in more detail.

Sincerely,


Tammy Cota

cc: Senate Commerce Committee members

New Hampshire Privacy Laws

- The state Constitution was amended in 2018, which gives residents a general right to privacy (CACR 16). The following language was added: An individual's right to live free from governmental intrusion in private or personal information is natural, essential, and inherent.
- Right to Know (RSA 91-A); affects every aspect of local government including every board, committee, commission and subcommittee in every town, city and village district regarding public meetings and governmental records.
- Data security, data breach and record destruction laws (Sec. 282-A:120; Title XXI Sec. 359-C:19 to Sec. 359-C:21).
- Restrictions on collection and use of health data (Title X, Ch. 126:25), insurance data (CH. 420-P), medical and patient data (Ch. 332-I); employer practices regarding employee and student personal accounts and devices (Title XXIII, Ch. 275:74); student privacy (§189:66-189:68A).
- Business privacy policies (Title XXXI, Ch. 358-A).
- Government collection of biometric data, law enforcement surveillance and government regulation of GPS and location data. (Title LXII, Chapter 644-A; Title XXI, Ch. 260)
- The Right to Privacy Act (Title XXXI Sec. 359-C:4 and Sec. 570-A:9) prohibits government officials from obtaining customer financial or credit information without authorization, an administrative or judicial subpoena, or a search warrant. Law enforcement and state government may not disclose contents of such communications without following specific procedures.

Federal Laws Related to Data Collection

- The Electronic Communications Privacy Act of 1986 (ECPA), 18 U.S.C. § 2510-22, which protects wire, oral, and electronic communications being made, are in transit, and when stored on computers. This applies to email, phone conversations and electronic data stored. Title II of ECPA, called the Stored Communications Act (SCA), protects the privacy of the contents of files stored by service providers and of records held about the subscriber by service providers, such as subscriber name, billing records, or IP addresses.
- The Federal Trade Commission Act (FTC) regulates unfair or deceptive commercial practices. The FTC is the primary federal regulator in the privacy area and brings enforcement actions against companies. This includes failing to comply with posted privacy policies and failing to adequately protect personal information.
- Computer Fraud & Abuse Act (CFAA) – makes unlawful certain computer-related activities involving the unauthorized access of a computer to obtain certain information, defraud or obtain anything of value, transmit harmful items, or traffic in computer passwords.
- Children's Online Privacy Protection Act (COPPA) – requires certain website and online service providers to obtain verifiable parental consent before collecting, using, or disclosing personal information from minors under the age of 13. It also requires websites to post an online privacy policy, collect only the personal information necessary and create and maintain reasonable security measures.
- Fair and Accurate Credit Transactions Act (FACTA)– requires financial institutions and creditors to maintain written identity theft prevention programs.
- The Gramm-Leach-Bliley Act (GLBA) - requires companies "significantly engaged" in financial activities to give "clear, conspicuous, and accurate statements" of their information-sharing practices. It also restricts use and sharing of financial information.
- The Health Insurance Portability and Accountability Act (HIPAA) privacy rules requires notice in writing of the privacy practices of health care services and this requirement also applies if the health service is electronic.

Subject: Testimony FOR HB384: location privacy

Dear Hon. Senate Commerce members,

This is my written testimony IN SUPPORT of HB384, Location Privacy, to accompany my oral testimony at the hearing on April 27, 2021.

Executive Summary

Cellphone companies, apps, and perhaps car manufacturers are exploiting the trust of their customers by selling those customers' live location to other companies that then sell it again (and so forth), to the point where the original companies have no idea who is using it and little to no protections are in place for the privacy of those customers. This is in violation of those customers' expectations of privacy and with no informed consent, since companies go out of their way to hide this practice. When these practices came to light, the companies said they would stop. They didn't.

The availability of this information could lead to real harm for individuals, not just in their loss of privacy but also because stalkers, burglars, and insurance companies can purchase the info from any of the many resellers. Due to a security flaw at one of them, anyone in the world could anonymously find the location of any US phone just by having its number. Documented victims so far include a judge and state police officers.

Because all of the major cellphone companies engage in this practice, legislation is needed to protect the privacy of NH citizens. HB384 accomplishes this by only allowing location information to be shared in the way expected by the customer: as part of fulfilling their request or providing them service. We cannot afford to wait for the federal govt, which, at the behest of Telecommunications Industry lobbyists, already rolled back the few privacy protections that were in place.

Contrary to the portrayal of this bill by Telecom-industry lobbyists, the net effect of this bill would be to require disclosure and customer consent for sharing a customer's location info only if the sharing was not part of fulfilling the customer's request. **Regular commerce, such as payment authorization, calling an uber, etc, would not be affected** based on the plain text of the bill.

Who am I

My name is Jason Hennessey; a resident of Amherst, NH. I have extensive experience with modern computing technologies, working in the technology industry for over 15 years. I also have a PhD in Computational Sciences and Statistics from South Dakota State University, completed 4 years of postdoctoral studies in Computer Science at Boston University (where I co-taught a course in Computer Security) and have a BS in Computer Science from Rivier University (Nashua, NH).

I have published several peer-reviewed scientific papers covering topics in privacy, security and computing systems in widely respected venues¹. Some have received international media attention.

Collection of private location information is pervasive

Many do not realize that at least as of 2 years ago, all of the major cellphone companies in the US are constantly collecting and selling their customers' location information to networks of resellers, often with little or no controls in place or even the ability to track who the information was sold to. For example, T-Mobile sold it to 80 companies². This became public in 2018 when a county sheriff was

found to be tracking a judge and state police officers³. Cellphone providers committed to ending the practice, though several months later, they hadn't⁴.

On top of that, many mobile apps on Smart Phones sell the location of their users. One investigation found 70 companies to whom a set of popular apps were directly uploading exact location information; one weather app sent its users' locations to 40 companies by itself⁵! Many cars with infotainment or navigation systems can also track location.

After this location information is uploaded to exchanges, it's unclear who can access it and what, if any, verification or background checks are performed on those people.

Privacy issues with location information

The Supreme Court has said that the location data cell-phone providers keep "provides an intimate window into a person's life, revealing not only their particular movements but through them his familial, political, professional, religious, and sexual associations."⁶

On top of general privacy concerns, the unregulated marketplace for personal location data could be exploited by stalkers, burglars, insurance companies, and other entities to directly harm individuals.

On top of that, the fact that almost everyone is being tracked simultaneously could be used to determine who a person's private associates were.

We have no idea who is buying this information; as far as we know it's available on the open market. These companies may or may not have any filtering or protections in place. An NY Times article⁷ discusses how one of these location resellers that targeted law enforcement (Securus) performed no verification that requests were lawful.

A bug in one of the location sharing contractors, LocationSmart allowed anyone on the Internet to track anyone else in realtime with just a phone number anonymously.⁸ This was discovered by a university student in his spare time; imagine what someone dedicated could do.

Lack of informed consent

NH residents making use of cellphones, apps and cars generally have an expectation of privacy that is being violated by these location sharing practices. Perhaps this is why the companies that engage in them obscure these practices through long privacy policies (Verizon: 20 pages, AT&T: 27) that do not explicitly mention the sale of location information. I have not been able to find a way for customers to opt out of this selling of location, despite searching for it.

This legislation is a good answer

HB384 limits the sharing of location when not being used to benefit the person. This reflects most people's expectation and addresses the exploitation of NH citizens.

In 2020, NH Senate Judiciary recommended OTP on an almost identical bill, SB732, however due to COVID the bill did not move further.

NH cannot wait for federal legislation

Telecom lobbyists will say that we should wait for Federal legislation, however they successfully fought efforts to do just that in 2017 when they were able to have the privacy protections that included location information repealed⁹, aided by over \$123m spent on federal lobbying in just 2016¹⁰. NH citizens deserve protection against this exploitation now.

Other states like Maine and California have enacted extensive privacy protections for their residents.

US Constitutionality

Maine's protections exceed those proposed in HB384 and include location privacy. Last year, it survived a constitutional challenge by the telecom industry¹¹. The dismissed challenge alleged that Maine's statute violated federal preemption and the First and Fourteenth amendments¹².

Addressing concerns

Uber/Lyft, Payment Authorization: One concern raised by a lobbyist during the public hearing was that companies like Uber wouldn't be able to share location information about customers with their drivers. This doesn't agree with HB384's definition of *Authorized Use* or II(a)'s allowance of that information *to fulfill an explicit request*, since the sharing of this information would be to provide the service the customer requested.

Cookies: Another concern raised by a lobbyist in the House Judiciary hearing is that this bill could create problems for free apps that use computer "cookies". Because cookies are set by a server on the client, which later returns that cookie to the server, it is not clear how they could be impacted by this legislation.

Annoying opt-ins: Another concern raised was that HB384 would require those entering NH to have to consent to their location being shared, despite the person being unaware of this law. One lobbyist went so far as to raise the case of someone from NH who commutes to Massachusetts needing to consent each time they crossed the border. This is unfounded.

These concerns convey an entitlement that these companies feel they have to exploit their unsuspecting customers' location information. No consent is needed if a person's location information is only being shared to fulfill their request, isn't being shared with third parties at all, or if the company has received the customer's consent.

One must ask themselves why the Telecom Industry is so concerned about getting informed consent from their customers.

Summary

The only commerce HB384 will substantially affect is the sale of the private location information of NH citizens, many times without their informed consent.

HB384 protects the physical well being of NH citizens against criminals who might exploit this information to rob, stalk or otherwise harm them by purchasing their realtime location from any of the myriad, unregulated companies that trade in this information.

Respectfully Submitted,
Jason Hennessey (representing myself, a concerned citizen)
455 Boston Post Rd, Amherst, NH

References

- 1 Jason's publications can be found on Google Scholar: https://scholar.google.com/scholar?hl=en&as_sdt=0%2C30&q=author%3A%22Jason+Hennessey%22
- 2 Cellphone Carriers Face \$200 Million Fine for Not Protecting Location Data. NY Times, 2020. <https://www.nytimes.com/2020/02/28/technology/fcc-cellphones-location-data-fines.html>
- 3 Service Meant to Monitor Inmates' Calls Could Track You, Too. NY Times, 2018. <https://www.nytimes.com/2018/05/10/technology/cellphone-tracking-law-enforcement.html>
- 4 Carriers Swore They'd Stop Selling Location Data. Will They Ever? Wired, 2019. <https://www.wired.com/story/carriers-sell-location-data-third-parties-privacy/>
- 5 Your Apps Know Where You Were Last Night, and They're Not Keeping It Secret. NY Times, 2019. <https://www.nytimes.com/interactive/2018/12/10/business/location-data-privacy-apps.html>
- 6 CARPENTER v. UNITED STATES. US Supreme Court Opinion, 2017. https://www.supremecourt.gov/opinions/17pdf/16-402_h315.pdf
- 7 Service Meant to Monitor Inmates' Calls Could Track You, Too. NY Times, 2018. <https://www.nytimes.com/2018/05/10/technology/cellphone-tracking-law-enforcement.html>
- 8 A Security Flaw in a Free Web Service Let Anyone Anonymously Track U.S. Cell Phones. Fortune, 2018. <https://fortune.com/2018/05/19/locationsmart-hacker-track-cell-phones/>
- 9 U.S. Senate votes to overturn Obama broadband privacy rules. Reuters, 2017. <https://www.reuters.com/article/usa-internet-idINKBN16U2IC>
- 10 INFLUENCE GAME: Telecom lobbying muscle kills privacy rules. AP News, 2017. <https://apnews.com/article/22f858a75c4e4d408b970cfe28c72bbe>
- 11 Federal Judge Upholds Maine's Strict Internet Privacy. AP News, 2020. <https://apnews.com/article/c2ce25378d8f8cf0e5ddf5df02642193>
- 12 Maine Internet Privacy Law Survives Challenge. National Law Review, 2020. <https://www.natlawreview.com/article/maine-internet-privacy-law-survives-challenge>

Dear Chairman French, Vice Chair Gannon, and members of the Committee:

My name is Chryssa Alexis. I am a NH resident and live in Windham. My office is based out of Londonderry, I am also an employer of nearly 400 residents, with over 30 locations across the state.

As a Regional Vice President, I represent Enterprise Holdings who is not only the world's largest car rental operator, but also an industry leader in mobility and technology. No matter what transportation challenges our customers face, we have an innovative solution. Through our independent regional subsidiaries and franchise partners – we operate the Enterprise Rent-A-Car, National Car Rental and Alamo Rent A Car brands via more than 10,000 fully staffed neighborhood and airport offices in 100 countries and territories. This robust global network – operating a fleet of more than 2 million vehicles – provides a comprehensive portfolio of transportation solutions, including car rental, carsharing, vanpooling, car sales, truck rental, online ride-matching, vehicle-subscription and affiliated fleet management services. As a total mobility provider and an integral part of the automotive value chain, we serve the needs of a wide variety of businesses, consumers, government agencies and organizations day in and day out.

At Enterprise Holdings, consumers' trust and confidence is essential to our business and we are committed to protecting our customers' privacy and treating their personal information responsibly.

Enterprise Holdings welcomes the opportunity to bring our experience and expertise in consumer service, data privacy and cybersecurity to the policy discussions on this critical issue. However, because data privacy is a complex regulatory endeavor, there is not likely a "one-size-fits-all" approach that can accommodate all consumer-provider relationships. The way this bill is written leaves numerous unanswered questions in definitions, parameters and application.

At the end of the day, Enterprise Holdings supports a Consumer-Focused Data Privacy Framework, but we oppose HB 384 due to concerns with ambiguity and unclear intentions.

Thank you for your consideration and I welcome the opportunity to discuss this issue with the Committee.

Chryssa Alexis

ENTERPRISEHOLDINGS.

Chryssa N. Alexis
Regional Vice President
NH, ME & Northern MA
216-214-6541 cell
888-668-0215 fax

ENTERPRISEHOLDINGS.

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ENTERPRISEHOLDINGS.

Voting Sheets

Senate Commerce Committee
EXECUTIVE SESSION RECORD
2021-2022 Session

Bill # HB 384-FN

Hearing date: 4/27/21

Executive Session date: 5/4/21

Motion of: ITL Vote: 5-0

Committee Member	Made by	Second	Yes	No
Sen. French, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Gannon, V-Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Bradley	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Cavanaugh	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Soucy	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Motion of: CONSENT Vote: 5-0

Committee Member	Made by	Second	Yes	No
Sen. French, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Gannon, V-Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Bradley	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Cavanaugh	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Soucy	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Motion of: _____ Vote: _____

Committee Member	Made by	Second	Yes	No
Sen. French, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Gannon, V-Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Bradley	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Cavanaugh	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Soucy	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Reported out by: Sen. Gannon

Notes: _____

Committee Report

STATE OF NEW HAMPSHIRE

SENATE

REPORT OF THE COMMITTEE
FOR THE CONSENT CALENDAR

Wednesday, May 5, 2021

THE COMMITTEE ON Commerce

to which was referred **HB 384-FN**

AN ACT prohibiting the sharing of location data.

Having considered the same, the committee recommends that the Bill

IS INEXPEDIENT TO LEGISLATE

BY A VOTE OF: 5-0

Senator Bill Gannon
For the Committee

This bill would have prohibited telecommunications companies and application developers from sharing, selling, and giving away the location information of their users. The Committee felt this bill had too many technical problems. At the public hearing, the Committee heard testimony that this bill could potentially force technology companies out of the state, expose carriers and mobile developers to costly litigation, further fragment consumer privacy laws, and disrupt the functionality of mobile applications for both in-state and out-of-state consumers.

Aaron Jones 271-4063

FOR THE CONSENT CALENDAR

COMMERCE

HB 384-FN, prohibiting the sharing of location data.

Inexpedient to Legislate, Vote 5-0.

Senator Bill Gannon for the committee.

This bill would have prohibited telecommunications companies and application developers from sharing, selling, and giving away the location information of their users. The Committee felt this bill had too many technical problems. At the public hearing, the Committee heard testimony that this bill could potentially force technology companies out of the state, expose carriers and mobile developers to costly litigation, further fragment consumer privacy laws, and disrupt the functionality of mobile applications for both in-state and out-of-state consumers.

Docket of HB384

Docket Abbreviations

Bill Title: prohibiting the sharing of location data.*Official Docket of HB384.:*

Date	Body	Description
1/10/2021	H	Introduced (in recess of) 01/06/2021 and referred to Judiciary HJ 2 P. 45
2/19/2021	H	Public Hearing: 02/19/2021 01:00 pm Members of the public may attend using the following link: To join the webinar: https://www.zoom.us/j/92168223794 / Executive session on pending legislation may be held throughout the day (time permitting) from the time the committee is initially convened.
3/2/2021	H	Executive Session: 03/02/2021 09:00 am Members of the public may attend using the following link: To join the webinar: https://www.zoom.us/j/95501229688
3/9/2021	H	Majority Committee Report: Ought to Pass with Amendment #2021-0155h (Vote 16-4; RC) HC 18 P. 52
3/9/2021	H	Minority Committee Report: Inexpedient to Legislate
4/8/2021	H	Amendment #2021-0155h : AA VV 04/08/2021 HJ 6 P. 109
4/8/2021	H	FLAM #2021-1097h (Rep. Yokela): AF VV 04/08/2021 HJ 6 P. 109
4/8/2021	H	Ought to Pass with Amendment 2021-0155h: MA DV 327-12 04/08/2021 HJ 6 P. 109
4/13/2021	S	Introduced 04/08/2021 and Referred to Commerce; SJ 12
4/15/2021	S	Remote Hearing : 04/27/2021, 09:15 am; Links to join the hearing can be found in the Senate Calendar; SC 20
5/5/2021	S	Committee Report: Inexpedient to Legislate; Vote 5-0; CC; 05/13/2021; SC 23
5/13/2021	S	Inexpedient to Legislate, MA, VV === BILL KILLED ===; 05/13/2021; SJ 15

NH House

NH Senate

Other Referrals

Senate Inventory Checklist for Archives

Bill Number: HB 384-FN

Senate Committee: Commerce

Please include all documents in the order listed below and indicate the documents which have been included with an "X" beside

Final docket found on Bill Status

Bill Hearing Documents: {Legislative Aides}

Bill version as it came to the committee

All Calendar Notices

Hearing Sign-up sheet(s)

Prepared testimony, presentations, & other submissions handed in at the public hearing

Hearing Report

Revised/Amended Fiscal Notes provided by the Senate Clerk's Office

Committee Action Documents: {Legislative Aides}

All amendments considered in committee (including those not adopted):

___ - amendment # ___ ___ - amendment # ___

___ - amendment # ___ ___ - amendment # ___

Executive Session Sheet

Committee Report

Floor Action Documents: {Clerk's Office}

All floor amendments considered by the body during session (only if they are offered to the senate):

___ - amendment # ___ ___ - amendment # ___

___ - amendment # ___ ___ - amendment # ___

Post Floor Action: (if applicable) {Clerk's Office}

___ Committee of Conference Report (if signed off by all members. Include any new language proposed by the committee of conference):

___ Enrolled Bill Amendment(s)

___ Governor's Veto Message

All available versions of the bill: {Clerk's Office}

___ as amended by the senate ___ as amended by the house

___ final version

Completed Committee Report File Delivered to the Senate Clerk's Office By:

Aaron Jones
Committee Aide

7/21/21
Date

Senate Clerk's Office [Signature]