

2015 SENATE GOVERNMENT AND VETERANS AFFAIRS

SCR 4012

2015 SENATE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee Missouri River Room, State Capitol

SCR 4012
2/19/2015
Job # 24130

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A concurrent resolution directing the Legislative Management to study the privacy, security, and data sharing laws in North Dakota, the effectiveness of federal privacy, security, and data sharing laws and the laws of other states, the interaction of federal and state laws, and whether current privacy, security, and data sharing protections meet the reasonable expectations of the citizens of North Dakota.

Minutes:

Attachments 1 - 2

Chairman Dever: Opened the hearing on SCR 4012.

Senator J. Lee, District 13: Testified as sponsor and in support of the resolution. This resolution recognizes that there are a variety of really important safety, security, and privacy laws and concerns that we have. We know that there needs to be some oversight to make sure that everything really smoothly and seamlessly works to protect what we need in a proper way. The details will come with next presenter.

(2:10) Sheldon Wolf, North Dakota Health Information Technology Director: See Attachment #1 for testimony in support of the resolution.

(6:28) Senator Davison: Is the Dakota Information Health Hub part of how we are starting to address these things in other bills? Where is that at in relationship to this study?

Sheldon Wolf: SB 2160 is on the floor today. It will be amended to reduce the dollar amount. With that bill we want to do a study of the information needs within the state and I think this bill and that bill go together. We would want to do some of those same types of things with that bill. They would work together very well.

Chairman Dever: I would imagine that different groups associated with developing security for software go to great lengths to protect that data. I know of your efforts involving the hub. What would be accomplished by the legislature studying it?

Sheldon Wolf: I think just taking a look at policies, procedures, and laws that we have in state to make sure that there is something that is the same for everything out there. Protection and reporting requirements and all the different things that goes along with it.

You could even go so far into the conversations about inscription. For example, HIPPA talks about it but it does not mandate it. However they do indicate that if you have encrypted your data and there is a breach, you don't have to some of the reporting requirements. It is those types that we want to follow in the state. We need to be consistent across the board.

Chairman Dever: So, this will make legislators aware and it might follow with some legislation?

Sheldon Wolf: It could, depending on what the study would find.

(11:05) Lisa Feldner, Vice Chancellor, University System: Testified in support of the resolution. One of the things that I believe we need to study in addition to privacy of healthcare is also that we have some other knee jerk reaction bills to school privacy. We need to better study the privacy and security that we have in the state. I think studying our own state laws and where we are at is better than just pulling something from another state and applying it here. I urge you to look at the study for all privacy data.

(12:50)Chairman Dever: In dealing with data, do you think to yourself what the law on this is, or should there be a law concerning this?

Lisa Feldner: I think that any of us that deal with data always thinks about what law covers what we are doing. We don't do a very good job of communicating that we are being responsible and doing a good job.

Senator Davison: Do you see the study looking at security of our data as well and what that means?

Lisa Feldner: I would have to look at that. That is a pretty big study to take a bite out of, if you are studying all of the software security and those practices. I think if you look at security policies and what are best practices for security policies - which you could study. It is up to those holding the data to be responsible and holding their people accountable for the security in the policies.

Senator Poolman: Would you be opposed to adding language at the end for direction in in the study to talk about public information and communicating to the public?

Lisa Feldner: I would not be opposed to that at all. Transparency to the public is very important.

(16:34) Deana Weise, Executive Director, Information Technology Council of North Dakota: See Attachment #2 for testimony in support of the resolution.

(18:05)Senator Davison: Can you explain the security piece to me?

Deana Weise: Honestly I have not had discussions on this. We would be open to looking at that. We commend the process of studying this. I would defer to them.

Sheldon Wolf: I think when we talk about security we really talk about the policies and different things that go wrong with it such as the levels of encryption and those types of things. We do not want to go into detail which specific software etc. That would be too large of a scope. Looking at the security aspects of it and making sure that there is some security in place and what the policies are. Also, to make sure that people have a process in place to test and do different things along that line.

Chairman Dever: Closed the hearing on SCR 4012.

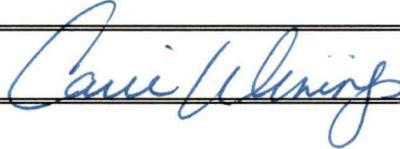
2015 SENATE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee
Missouri River Room, State Capitol

SCR 4012
2/19/2015
Job # 24181

- Subcommittee
 Conference Committee

Committee Clerk Signature



Minutes:

No Attachments

Chairman Dever: Opened SCR 4012 for committee discussion.

Senator Cook: Moved a Do Pass.

Senator Nelson: Seconded.

A Roll Call Vote Was Taken: 7 yeas, 0 nays, 0 absent.

Motion Carried.

Senator Davison will carry the bill.

Date: 2/19
 Roll Call Vote #: 1

**2015 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 4012**

Senate Government and Veterans Affairs Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Cook Seconded By Nelson

Senators	Yes	No	Senators	Yes	No
Chairman Dever	✓		Senator Marcellais	✓	
Vice Chairman Poolman	✓		Senator Nelson	✓	
Senator Cook	✓				
Senator Davison	✓				
Senator Flakoll	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Davison

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

REPORT OF STANDING COMMITTEE

SCR 4012: Government and Veterans Affairs Committee (Sen. Dever, Chairman)
recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).
SCR 4012 was placed on the Eleventh order on the calendar.

2015 HOUSE GOVERNMENT AND VETERANS AFFAIRS

SCR 4012

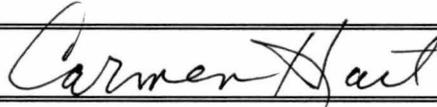
2015 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee
Fort Union, State Capitol

SCR 4012
3/19/2015
25099

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Directing the Legislative Management to study the privacy, security, and data sharing laws in ND, the effectiveness in other states, the interaction of federal and state laws and whether the current laws meet the reasonable expectations of the citizens of ND

Minutes:

Attachments 1-2

Chairman Kasper opened the hearing on SCR 4012.

Senator Judy Lee, District 13, appeared in support. I am introducing a resolution which will call for studying our privacy laws and data sharing. During the interim it became apparent that there is some occasional confusion. The law is there, but it isn't always as clear as it needs to be, and we need to see if we are up to date on some of this.

Chairman Kasper Your intent is to study all areas of privacy and security, not limited to any one or two areas?

Senator Lee The potential to limit it is certainly appropriate, perhaps even for legislative management to consider. I would suggest that Mr. Wolf might even have a suggestion. The areas where we have looked the most have been areas related to health information technology, but also other things that kind of tie into areas that we might be studying in the human services committee as well. The schools also appropriately have certain data. It is their data. There are some appropriate places where it needs to be shared.

Chairman Kasper I would suspect we could get to be very broad.

Senator Lee I would agree that would be true. We are not looking at only those things that relate to state government, but rather as I mentioned, schools, healthcare facilities which interact with the health department, etc. Our interest was not in limiting to one particular spot. We also recognize there are some challenges in determining the scope of the study, and we have to work together with legislative management on that.

Sheldon Wolf, ND Health Information Technology Director, appeared in support.
Attachment 1 (4:59-7:36)

Rep. Louser We heard Senator Lee mention about having our laws keep up with technology, which I think is probably impossible. What added benefit an interim committee studying this would provide? Is it funding? Is it oversight? Is it direction? What can we do?

Sheldon Wolf All of that. There may need to be some changes done. There are a lot of different components that can be studied.

Vice Chair Rohr I don't know if I am happy or sad to see this resolution. Sitting on the education committee, we are really struggling with the student data right now, and I often think look how far we have come in healthcare data. Why aren't some of these same rules being applied to the education sector? Do you technology leaders get together and discuss the laws that you have in place, like for data sharing agreements? What we do in education is different than what we do in healthcare.

Sheldon Wolf It is a little bit different. Internally, we usually use the same lawyers and those types of things. On the health information network that we have, we have a legal and policy work group, and we share that information with providers and everybody across. I think these types of studies really help educate everybody and get them on the same page. The federal laws are different even in themselves. The SAMSHA rules for Part 2 which is substance abuse are stricter than just for regular medical type information.

Vice Chair Rohr In the private industry we have what we call institutional review boards. Does the state of North Dakota have a governing group like that?

Sheldon Wolf As a statewide, I am not sure. I know some of the universities do. For us we are not releasing any information yet, so we don't have an IRB process. That is some of the things we are having in discussion in SB 2160 which is a study around how we use healthcare data.

Vice Chair Rohr Education needs to be involved as well, because there is a lot of aggregate data being accumulated there. I think that is going to happen too. They are going to start being asked to use that for studies.

Sheldon Wolf I agree.

Chairman Kasper I am asking for your personal opinion. All of us have personal information about ourselves. Who do you believe owns each one of our personal information?

Sheldon Wolf Personally, the individual owns it. If you have conversations with other people, providers will say they own it because they created it. It depends upon who you asked the question to.

Chairman Kasper You said personally, the individual. I agree with that.

Deana Wiese, Executive Director of the Information Technology Council of North Dakota, appeared in support. Attachment 2 (13:47-15:15)

Chairman Kasper In a computer software system where that system collects data on 10,000 individuals, is the software able to be programmed so that if some of that group wishes their information to not be shared, that would be able to be isolated and not shared compared to the rest of the group where they say if you want to share this information, you can do it?

Deana Wiese I keep the organization organized. I don't work with the database. I would defer to Sheldon Wolf.

Sheldon Wolf I will answer in relation to the product that we run. The North Dakota health information network which is the health information exchange brings information in from providers, and we do have in our process a way to segregate that data. If an individual opts out, their information is not searchable by anybody else at that point in time. We have three different options. The first option is in you are in by default, so your information is in the system and anybody can query to it. Then you can opt out completely meaning none of your information is able to be queried. Third, you can opt out in an emergency situation where a physician can come in and actually break the class.

Chairman Kasper To program the software like you just described, is it initially costly?

Sheldon Wolf I am not sure exactly what the cost is, because when we went out and did our request for proposals for the system, it was a requirement we wanted to have it included with it right away so it was included in our base product that we bought. When you start modifying systems and things like that, it does get expensive.

Chairman Kasper Software programming like what we have now is sort of standard around the country?

Sheldon Wolf That is true. We have over half the states using opt out models, and half the states using opt in models. An opt in model means you have to sign up to put your information in before it is shared. Only about 130-140 people in North Dakota have opted out.

Rep. Wallman Option 1, do you mean any provider can access that?

Sheldon Wolf Yes. You have to have a participation agreement with us, and then they are identified who they are. There are seven different levels of access, so a provider, a doctor, is going to have much more access than somebody that is a clerk.

Chairman Kasper Are you part of the IT system in North Dakota, or are you a separate area?

Sheldon Wolf I serve at the pleasure of the health information technology advisory committee. Rep. Weisz and Senator Lee sit on the HI Tech committee. I am housed in ITD. We are in the ITD budget.

Chairman Kasper I would assume all the ITD software would have the capabilities of your software?

Sheldon Wolf I can't speak to that. We actually run my software as a service model and not even housed in ITD.

No opposition or neutral.

The hearing was closed.

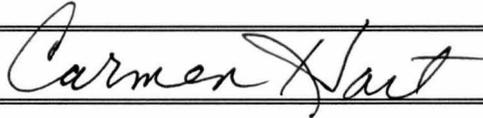
2015 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee
Fort Union, State Capitol

SCR 4012
3/20/2015
25216

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Directing the Legislative Management to study the privacy, security, and data sharing laws in ND, the effectiveness in other states, the interaction of federal and state laws and whether the current laws meet the reasonable expectations of the citizens of ND

Minutes:

"Click to enter attachment information."

Chairman Kasper opened the meeting on SCR 4012. This is a resolution to study privacy.

Rep. Louser In this case it is pretty hard to vote against a study resolution especially when it comes to privacy. I see no harm in making a motion to approve the study and let legislative management decide if it warrants a merit. I make a motion for a DO PASS.

Rep. Amerman seconded the motion. Also, PLACE ON THE CONSENT CALENDAR.

Rep. Mooney I like this and was glad it was brought forward. She mentioned about all the number of databases that are discussed in human services and trying to pull together that information just as a means to try to understand some of the things they are dealing with. Every single time part of that discussion is the privacy issue. I hope legislative management picks it up.

Rep. Wallman I agree. She mentioned about researchers on autism that want data.

A roll call vote was taken. 12 Yeas, 2 Nays, 0 Absent.

Rep. Mooney will carry the bill.

Date: 3-20-15
 Roll Call Vote #: 1

**2015 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 4012**

House Government and Veterans Affairs Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By Louser Seconded By Amerman

Representatives	Yes	No	Representatives	Yes	No
Chairman Jim Kasper	X		Rep. Bill Amerman	X	
Vice Chair Karen Rohr		X	Rep. Gail Mooney	X	
Rep. Jason Dockter	X		Rep. Mary Schneider	X	
Rep. Mary C. Johnson	X		Rep. Kris Wallman	X	
Rep. Karen Karls	X				
Rep. Ben Koppelman		X			
Rep. Vernon Laning	X				
Rep. Scott Louser	X				
Rep. Jay Seibel	X				
Rep. Vicky Steiner	X				

Total (Yes) 12 No 2

Absent 0

Floor Assignment Mooney

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

REPORT OF STANDING COMMITTEE

SCR 4012: Government and Veterans Affairs Committee (Rep. Kasper, Chairman) recommends **DO PASS** and **BE PLACED ON THE CONSENT CALENDAR** (12 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SCR 4012 was placed on the Tenth order on the calendar.

2015 TESTIMONY

SCR 4012

**TESTIMONY BEFORE THE
GOVERNMENT AND VETERANS AFFAIRS
SENATE CONCURRENT RESOLUTION NO. 4012
FEBRUARY 19, 2015**

Mr. Chairman, members of the committee, I am Sheldon Wolf, the ND Health Information Technology Director. I am here today to support Senate Concurrent Resolution No. 4012.

With the implementation of electronic health records, health information networks, health insurance exchanges, electronic prescribing, registries, mandatory and optional reporting between stakeholders, population health studies, etc. and along with some of the negative issues, such as breaches of information at various entities around the United States, privacy and security of health information is on everyone's mind these days. In addition, based upon my discussions with stakeholders, we frequently encounter situations where there is great uncertainty in the applicability of a law, how it is applied, and how State and Federal law co-exist. Some examples include, when and how to share information, what rules apply, such as HIPAA, FERPA, SAMSHA Part 2, etc. In some cases, the uncertainty ends up creating situations of paralysis. Individuals do not know what rules to follow, how it applies to the situation, or how they should apply it and, in some cases, simply do nothing.

For example, based upon HIPAA, information can be shared between stakeholders for payment, treatment and operations (PTO) without the consent of an individual. Some stakeholders may feel that a signed release is required; others indicate that as long as it for PTO, it can be shared without patient consent. Then throw in the mix of state rules and regulations, it can get very confusing.

In closing, I would like to leave you with this. If an individual would do a quick search of state statutes for the word confidential, they would find over four hundred hits. Additionally, there are about 30 different federal regulations that may or may not need to be considered. To ensure due diligence, and meet the reasonable expectations of our citizens, I think it is in the best interest of our citizens that the Legislative Management consider studying State and Federal privacy, security and data sharing laws, their interactions and their effectiveness.

Thank you for the opportunity to appear before you today, I would be happy to address any questions.



#2

PO Box 2599 • Bismarck, ND 58502
Phone: 701.355.4458 • Fax: 701.223.4645
office@itcnd.org • www.itcnd.org

Testimony of Deana Wiese
Executive Director

In Support of SCR 4012
February 19, 2015

Chairman Dever and members of the Senate Government and Veterans Affairs Committee:

My name is Deana Wiese, and I am the executive director of the Information Technology Council of North Dakota (ITCND). I am here today to voice support of SCR 4012.

ITCND was created in 2000 by North Dakota business, government and education leaders who recognized the need to strengthen the state's information technology infrastructure and reposition the state as a national leader in IT. ITCND has nearly 100 member organizations, with representatives from both the public and private sector.

We commend the sponsors of this concurrent resolution for their forward thinking in studying North Dakota laws alongside those of other states and also considering federal laws in order to make strategic recommendations on privacy, security, and data sharing laws. ITCND would welcome the opportunity to take part in the study process should it move forward.

We have a diverse membership made up of software developers, telecommunications companies, Internet providers and content developers, systems integrators, educational institutions and state agencies across North Dakota. Therefore, ITCND understands the importance of this issue from the both the business and citizen perspectives. We recognize the need to address privacy-related issues and would encourage the state to work toward a balance between right to privacy and company business growth.

We urge your support of SCR 4012, and I'd be happy to answer any questions.

#1
4012
3-19-15

**TESTIMONY BEFORE THE
HOUSE GOVERNMENT AND VETERANS AFFAIRS
SENATE CONCURRENT RESOLUTION NO. 4012
MARCH 19, 2015**

Mr. Chairman, members of the committee, I am Sheldon Wolf, the ND Health Information Technology Director. I am here today to support Senate Concurrent Resolution No. 4012.

With the implementation of electronic health records, health information networks, health insurance exchanges, registries, mandatory and optional reporting between stakeholders, population health studies, etc. and along with some of the negative issues, such as breaches of information at various entities around the United States, privacy and security of health information is on everyone's mind these days. In addition, based upon my discussions with stakeholders, we frequently encounter situations where there is great uncertainty in the applicability of a law, how it is applied, and how State and Federal law co-exist. Some examples include, when and how to share information, what rules apply, such as HIPAA, FERPA, SAMSHA Part 2, etc. In some cases, the uncertainty ends up creating situations of paralysis. Individuals do not know what rules to follow, how it applies to the situation, or how they should apply it and, in some cases, simply do nothing.

For example, based upon HIPAA, information can be shared between stakeholders for payment, treatment and operations (PTO) without the consent of an individual. Some stakeholders may feel that a signed release is required; others indicate that as long as it for PTO, it can be shared without patient consent. Then throw in the mix of state rules and regulations, it can get very confusing.

In closing, I would like to leave you with this. If an individual would do a quick search of state statutes for the word confidential, they would find over four hundred hits. Additionally, there are about 30 different federal regulations that may or may not need to be considered. To ensure due diligence, and meet the reasonable expectations of our citizens, I think it is in the best interest of our citizens that the Legislative Management consider studying State and Federal privacy, security and data sharing laws, their interactions and their effectiveness.

Thank you for the opportunity to appear before you today, I would be happy to address any questions.

Testimony of Deana Wiese
Executive Director

In Support of SCR 4012
March 19, 2015

Chairman Kasper and members of the House Government and Veterans Affairs Committee:

My name is Deana Wiese, and I am the executive director of the Information Technology Council of North Dakota (ITCND). I am here today to voice support of SCR 4012.

ITCND was created in 2000 by North Dakota business, government and education leaders who recognized the need to strengthen the state's information technology infrastructure and reposition the state as a national leader in IT. ITCND has nearly 100 member organizations, with representatives from both the public and private sector.

We commend the sponsors of this concurrent resolution for their forward thinking in studying North Dakota laws alongside those of other states and also considering federal laws in order to make strategic recommendations on privacy, security, and data sharing laws. ITCND would welcome the opportunity to take part in the study process should it move forward.

We have a diverse membership made up of software developers, telecommunications companies, Internet providers and content developers, systems integrators, educational institutions and state agencies across North Dakota. Therefore, ITCND understands the importance of this issue from the both the business and citizen perspectives. We recognize the need to address privacy-related issues and would encourage the state to work toward a balance between right to privacy and company business growth.

We urge your support of SCR 4012, and I'd be happy to answer any questions.