

1999 HOUSE JUDICIARY

HB 1303

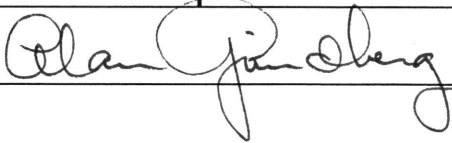
1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1303

House Judiciary Committee

Conference Committee

Hearing Date : January 25, 1999

Tape Number	Side A	Side B	Meter #
1		X	13.9
Committee Clerk Signature 			

Minutes:

REP. DROVDAL: Presented written testimony on behalf of Mr. Dave Feakes. In this modern world of telemarketing, internet, etc., it is a lot easier to steal an identity. This won't stop such activity but it will allow a victim to recover all his or her losses, including costs and necessary fees paid.

REP. KEMPENICH stated that he favored the bill and urged its passage.

PARNELL GROSSMAN (AG) Presented written testimony, a copy of which is attached.

MARSHA LEMBKE (DOT) DOT has no problem with this bill. We have a system whereby we can assign a number to any person's drivers license if they don't want their social security number on it.

COMMITTEE ACTION: February 8, 1999

Page 2

House Judiciary Committee

Bill/Resolution Number 1303

Hearing Date January 25, 1999

REP KOPPELMAN moved that the committee recommend that the bill DO PASS. Rep. Disrud

seconded and the motion was passed on a roll call vote of 14 ayes, 0 nays and 1 absent. Rep.

Koppelman was assigned to carry the bill on the floor.

Date: 503 2/8
Roll Call Vote #: 1

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1303

House JUDICIARY Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Koppelman Seconded By Disrud

Representatives	Yes	No	Representatives	Yes	No
REP. DEKREY	✓		REP. KELSH	✓	
REP. CLEARY	✓		REP. KLEMIN	✓	
REP. DELMORE	✓		REP. KOPPELMAN	✓	
REP. DISRUD	✓		REP. MAHONEY		
REP. FAIRFIELD	✓		REP. MARAGOS	✓	
REP. GORDER	✓		REP. MEYER	✓	
REP. GUNTER	✓		REP. SVEEN	✓	
REP. HAWKEN	✓				

Total Yes 14 No 0

Absent 1

Floor Assignment Koppelman

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

REPORT OF STANDING COMMITTEE (410)
February 8, 1999 3:21 p.m.

Module No: HR-25-2219
Carrier: Koppelman
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1303: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO PASS
(14 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1303 was placed on the
Eleventh order on the calendar.

1999 SENATE JUDICIARY

HB 1303

1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1303

Senate Judiciary Committee

Conference Committee

Hearing Date March 8, 1999

Tape Number	Side A	Side B	Meter #
1		x	5596 - end
2	x		0 - 550
Committee Clerk Signature <i>Jackie Tolman</i>			

Minutes:

HB1303 relates to recovery of damages for fraudulent use of social security numbers.

SENATOR STENEHJEM opened the hearing on HB1303 at 11:45 A.M.

All were present except Senator C. Nelson.

REPRESENTATIVE DROVDAHL, District 56, testified in support of HB1303. It is becoming harder to protect one's identification. This bill is patterned after the Colorado law. This will allow the victim to recover their actual loss, to recover equitable relief caused by the action and to recover attorney fees and costs. Testimony attached.

DAVE FEAKS submitted written testimony in support of HB1303. Testimony attached.

PARNELL GROSSMAN, Attorney General's Office, testified in support of HB1303.

Testimony attached.

SENATOR STENEHJEM asked will these bills this one and SB2225 fit together.

Page 2

Senate Judiciary Committee

Bill/Resolution Number HB1303

Hearing Date March 8, 1999

PARNELL GROSSMAN stated that yes, they will.

SENATOR STENEHJEM CLOSED the hearing on HB1303.

SENATOR LYSON made a motion for DO PASS, SENATOR WATNE seconded. Motion carried. 5 - 0 - 1

SENATOR TRAYNOR will carry the bill.

Date: 3-8-99
Roll Call Vote #: 1

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1303

Senate Judiciary Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Do PASS

Motion Made By Senator Lyson Seconded By Senator Watne

Senators	Yes	No	Senators	Yes	No
Senator Wayne Stenehjem	X				
Senator Darlene Watne	X				
Senator Stanley Lyson	X				
Senator John Traynor	X				
Senator Dennis Bercier	X				
Senator Carolynn Nelson					

Total (Yes) 5 No 0

Absent 1

Floor Assignment Senator Traynor

REPORT OF STANDING COMMITTEE (410)
March 8, 1999 1:13 p.m.

Module No: SR-41-4220
Carrier: Traynor
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1303: Judiciary Committee (Sen. W. Stenehjem, Chairman) recommends **DO PASS**
(5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1303 was placed on the
Fourteenth order on the calendar.

1999 TESTIMONY

HB 1303

1303

TESTIMONY

Prepared by Mr. Dave Feakes

I have thought about what has happened to my many long hours. How could someone have the audacity to ruin someone's life by stealing their identity and destroying their credit?

First of all, it took very many phone calls in the beginning just to find out why all this was happening. No one seemed to call and keep me posted so I felt it was important for me to try and keep ahead of the problem before the problem got any worse.

Second of all, I worked with my bank and had to change all my account number to all new accounts. Our checks to our account had to be replaced with new ones, just in case he might try to write checks on our old account. The bank informed us that a credit application has been filled out at a car dealership in Fergus Falls, Minnesota. Whoever had stolen my identity was also trying to buy a \$30,000 pickup and he was using my name and social security number to make the purchase.

After the changes in our bank were made, we thought our troubles were over, but they had only just begun. Because at that time, a representative from the National Bank of Sioux Falls, South Dakota, contacted my home. She wanted information on an account which was opened at their bank, which was under my name. During our conversation, she had informed me that she had made a copy of a driver's license which included my name, social security number and the account holder's picture. I asked her to fax me a copy so I could pass it along to the right authorities. Maybe someone knew him and we could finally catch this person. I could not believe my eyes; all my information was on this license but it sure was not my picture.

The Wells County Sheriff's Department took this copy and faxed it to Fargo and, in turn, wanted me to immediately change my license number. I then went to the Driver's License Division that day. I told them I needed to obtain a new license, changing the number and removing my social security number. It took a long awaited time because Allan Rick's photo was the picture in their computer. The

Motor Vehicle personnel had a long set of questions and calls they made before they would let me have my license back.

I returned to Fessenden to find out that the sheriff working on my case had found out who was on the photo and that he was someone the police department in Fargo knew well. Again, I was thinking it would be easy to find him and arrest him for what he had done, but it wasn't so easy. He kept writing checks all over South Dakota, Minnesota, and North Dakota with his account in Fergus Falls. He never had a dime in the account so the National Bank was sending these checks back to the businesses which accepted them. In the meantime, my credit was being ruined because it was my name and numbers which were on those checks. I was contacted by the National Bank of Sioux Falls and I also kept tabs with them. Every day more and more checks were showing up NSF. They were written to many different places and he was just bouncing from state to state, making it almost impossible to locate or catch him. My wife and I weren't sure what would come of all this, but we found out the hard way what was happening to our credit.

We had gone to a town which is about a hundred miles from where we live. We thought we would do a little shopping and see a movie. The first store we stopped at was Target. Here we had picked up some items which were worth about \$30.00. I had written the check out for the purchase and the check was rejected. We were in front of many people and the store could not give a reason for the rejection. All we knew is they would not accept our check. My family was very humiliated and degraded and it was something we had NO control of. At that point we left the store and decided we would not put ourselves through that again. We ventured home feeling like someone had pulled the rug out from under us and our lives.

Again, we are back on the phone making many phone calls to the check approval company that handles checks and credit rights for all major stores, nationwide. After mailing many forms and letters explaining what had happened, they did call and inform me that the problem had been corrected this time. How many more times was this going to happen? I kept telling myself that Allan Rick would have to make a mistake and that mistake would get him arrested.

Well, it happened, and I was never so happy to hear from the Fergus Falls Chief of Police. He explained that Rick did go back for that pickup and that the dealership contacted them, letting them know when he would be coming. I have since talked to many people on the case. I have been trying to get as much information as I can

and get all the agencies involved so Allan Rick is prosecuted. I cannot begin to explain the worries, frustrations, anger and humiliation that one man has caused. One family that has worked all our lives to keep our good name and credit history; to have it all ruined in a matter of three months. I do hope that Allan Rick is prosecuted to the fullest extent of the law. The restitution we are asking for, compared to what we have been through and what we still have to go through because of his selfishness, is very minimal.

I did receive a letter from Allan Rick. In the letter, he explained to me how he ended up with my social security number and my identity. He first looked in the papers of a library which kept all news columns on obituaries. He was looking for someone his age who lived in North Dakota. In his search, he found my brother's obituary and decided to use his name. He called to Bismarck, asking for a copy of his birth certificate. He said he needed a copy because he was going to hire him. The Bismarck office told him that he was deceased and he may be "mistaken on the name!" Allan asked if there was anyone else in the family and that is when Dave's name (mine) was given and my birth certificate sent. Shortly after, Allan took the birth certificate to the North Dakota drivers (license) division and obtained a driver's license. His picture was on a driver's license which had Dave Feakes (my) social security number on it.

The rest is pretty well history. He had mine and both parents' social security numbers which told them credits looked good and he was allowed to open checking accounts and buy large items.

My wife and I have been turned in to fourteen different collection agencies. It took many letters, phone calls, and hours of our time to straighten this out. It has been almost two years and we are still finding credit companies which question our credit.

We do wish that this type of crime had stiffer penalties. In most cases, the person gets his hands slapped and a few weeks in jail. We may never get back what we lost but, hopefully, this will help you understand what people are going through.

Respectfully submitted by Dave Feakes, Fessenden, ND

Presented by Senator Jerry Klein

HOUSE OF REPRESENTATIVES JUDICIARY COMMITTEE
DUANE DEKREY, CHAIRMAN
JANUARY 25, 1999

TESTIMONY BY
PARRELL D. GROSSMAN
DIRECTOR, CONSUMER PROTECTION AND ANTITRUST DIVISION
OFFICE OF ATTORNEY GENERAL
IN SUPPORT OF
HOUSE BILL NO. 1303

Mr. Chairman and members of the House Judiciary Committee. I am Parrell Grossman, Director of the Consumer Protection and Antitrust Division of the Attorney General's Office. The Attorney General and the Consumer Protection Division support House Bill No. 1303.

This proposed legislation prohibits the use of an individual's social security number for fraud or fraudulent purposes including assuming the individual's identity. This legislation directly addresses the very serious, important and timely problem of "identity theft." The Attorney General strongly supports legislation to deter and redress "identity theft." There currently are two proposed bills before the Fifty-sixth Legislative Assembly. House Bill 1303 that provides civil relief and damages and Senate Bill 2225 that makes "identity theft" a crime. These both appear to be good bills. The respective sponsors introducing the legislation and committees hearing the legislation may want to consider amendments that incorporate the best provisions of each bill. For the committee's reference, I have attached a copy of Senate Bill 2225 that is scheduled to be heard by the Senate Judiciary Committee on Tuesday, January 26, 1999 at 10:30 a.m.

If the sponsors and/or committee are so inclined or would like the Attorney General's Office to do so, I would be happy to either prepare or work with Legislative Council to prepare appropriate amendments to this legislation.

Much of the information provided in this testimony is taken from an interview posted on the Internet site www.bankinfo.com. The interview is conducted by Mary Beth Guard and is an interview of Mari Frank, of Laguna Niguel, California, a famous identity theft victim, who is an attorney, mediator and author. Ms. Frank is now the leading expert on identity theft and she is the author of "The Identity Theft Survival Kit, a resource guide for victims." Ms. Frank assisted in passing a new law in California making identity theft a crime as well as assisting the U.S. Senate in the passage of a law in October of 1998 making identity theft a federal crime. While I understand your very busy schedules, I encourage you to view the Internet site and related sites with a wealth of information on the topic of identity theft.

In addition to the new federal law, as of November, 1998 there were only a few states with identity theft statutes: California; Wisconsin; Arizona; Colorado; Georgia; Kansas; Mississippi; West Virginia; and New Jersey; with legislation pending in New York, Ohio and Pennsylvania. North Dakota now also has the opportunity to enact legislation to try and protect our citizens and address some of the damages as a result of this horrible "crime."

Identity theft occurs when someone uses your name and usually your social security number to obtain credit, loans, employment, health care services, rentals, mortgages, and maybe even file bankruptcy in your name. Your identity could also be used by someone who has committed crimes and you could have a felony criminal record without even knowing it. There have been many victims who were wrongfully arrested!

The immediate and primary issue for the identity theft victim is to stop the crime spree but that unfortunately is just the start of the problem. Identity theft is a horrendous nightmare for the victim that can take months and years to try and correct, if even possible in some circumstances. A victim's major concern is to get his/her life back. Victims have lost their employment, homes, cars and their very reputations!

The crime of identity theft has become very common. According to a survey quoted by Dan Rather of CBS television, one out of four adults have already been a victim of identity theft to some degree. As of November 1998, the credit reporting agency TransUnion estimated it was receiving 56,000 calls a month to their fraud hotline from people claiming to be an identity theft victim. Mari Frank conservatively estimates there are over 500,000 new victims per year.

Absolutely no one is immune from identity theft. Anyone with a social security number can be a victim including the wealthy, poor, children, students and even the deceased. A family member may be the victim of another family member, something occurring quite regularly in the area of consumer fraud.

Identity theft occurs in many ways. Someone steals credit cards by snatching a purse or lifting a wallet from the victim, gets a hold of a loan application, steals financial papers from your home or business, etc.

Victims have reported living in "identity theft hell" for years where, with even a fraud alert on a credit report, instant credit was granted in the victim's name.

This legislation isn't going to totally stop identity theft but it will provide deterrence if the legislature makes it a crime and awards victims the right to civil damages when they have been harmed by this crime.

The Consumer Protection Division of the Attorney General's Office will continue to proactively educate and warn consumers about identity theft. We will assist victims in trying to curtail the damages, end the nightmare and restore their credit and reputation.

However, the State of North Dakota should make identity theft a crime and award victims damages in an effort to deter the crime and punish the offenders, as well as try and restore some financial restitution to the victims for a very devastating and horrible experience.

Mr. Chairman and members of the committee, for these reasons, on behalf of the Attorney General and the Consumer Protection Division, I respectfully urge this committee to give House Bill 1303, a "Do Pass" recommendation. Thank you. I am willing to try and answer any questions.

SENATE BILL NO. 2225

Introduced by

Senator Klein

Representative Cleary

1 A BILL for an Act to create and enact a new section to chapter 12.1-23 of the North Dakota
2 Century Code, relating to the fraudulent use of personal identifying information.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1.** A new section to chapter 12.1-23 of the North Dakota Century Code is
5 created and enacted as follows:

6 **Fraudulent use of personal identifying information - Penalty.**

- 7 1. As used in this section, "personal identifying information" means any of the
8 following information:
- 9 a. An individual's name;
 - 10 b. An individual's address;
 - 11 c. An individual's telephone number;
 - 12 d. The distinguishing operator's license number assigned to an individual by the
13 department of transportation under section 39-04-14;
 - 14 e. An individual's social security number;
 - 15 f. An individual's employer or place of employment;
 - 16 g. An identification number assigned to the individual by the individuals'
17 employer;
 - 18 h. The maiden name of the individual's mother; or
 - 19 i. The identifying number of a depository account in a financial institution.
- 20 2. A person is guilty of a class C felony if the person uses or attempts to use any
21 personal identifying information of an individual to obtain credit, money, goods,
22 services, or anything else of value without the authorization or consent of the
23 individual and by representing that person is the individual or is acting with the
24 authorization or consent of the individual.



OFFICE OF ATTORNEY GENERAL
STATE OF NORTH DAKOTA

Heidi Heitkamp
ATTORNEY GENERAL

MEMORANDUM

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TO: Honorable Duane DeKrey, Chairman, House Judiciary
Committee
Honorable Kim Koppelman, Vice-Chairman
Honorable Lois Delmore
Honorable Rachael Disrud
Honorable April Fairfield
Honorable William E. Gorder
Honorable G. Jane Gunter
Honorable Kathy Hawken
Honorable Scot Kelsh
Honorable Lawrence R. Klemin
Honorable John Mahoney
Honorable Andrew G. Maragos
Honorable Shirley Meyer
Honorable Gerald O. Sveen

FROM: Parrell D. Grossman, Director, Consumer
Protection Division *PDG*

RE: House Bill 1303 and Senate Bill 2225

DATE: February 5, 1999

Enclosed for your review and consideration are copies of my February 4, 1999, memorandum to the Senate Judiciary Committee, including proposed amendments to Senate Bill 2225.

I was very pleased on behalf of consumers to see the legislation proposed in both House Bill 1303 and Senate Bill 2225. I really appreciated your committee's reception and careful consideration of House Bill 1303.

At the time of my appearance and testimony before the House Judiciary Committee in regard to House Bill 1303, there was some discussion and a request by your committee to consider and/or draft proposed amendments to House Bill 1303. Shortly thereafter I appeared before the Senate Judiciary Committee regarding Senate Bill 2225 and I raised a similar

February 5, 1999
Page 2

request for proposed amendments to incorporate the best provisions from each bill.

After careful consideration of both bills, it appeared to me to be more appropriate and expeditious to propose amendments to Senate Bill 2225. The House Judiciary Committee was interested in possible amendments that would provide identity theft victims with additional rights, etc., to restore or address their credit history after the occurrence of identity theft. This is an excellent observation and goal. However, it does not immediately occur to me that there would be any short, simple or precise language that would provide such relief and that could be included in proposed amendments to House Bill 1303. Federal law, pursuant to the Fair Credit Reporting Act, does provide some relief to victims of identity theft in regard to disputing and/or removing incorrect or inaccurate information on their credit report. We would need to carefully review and consider whether and what additional or different legislation is required or necessary in North Dakota to separately address the issue. At your request, I am willing to pursue that project in the future.

Please let Senator Stenehjem and the Senate Judiciary Committee know your thoughts on my proposed amendments to Senate Bill 2225 and the status of House Bill 1303. If I can provide any further information or assist in any way, please let me know.

Thank you for your consideration.

vkk
Enclosure
cc: Senate Judiciary Committee



OFFICE OF ATTORNEY GENERAL
STATE OF NORTH DAKOTA

Heidi Heitkamp
ATTORNEY GENERAL

MEMORANDUM

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TO: Honorable Wayne Stenehjem, Chairman, Senate
Judiciary Committee
Honorable Darlene Watne, Vice-Chairman
Honorable Dennis Bercier
Honorable Stanley W. Lyson
Honorable Carolyn Nelson
Honorable John T. Traynor

FROM: Parrell D. Grossman, Director, Consumer Protection Division **BG**

RE: Proposed Amendments to Senate Bill 2225

DATE: February 5, 1999

I have prepared for your review and consideration Proposed Amendments to Senate Bill No. 2225.

I have added a new subsection "f. An individual's birth date". I then added Section 2 to the bill that proposes to include the civil penalties language from subsections 2, 3, and 4 of House Bill 1303. I have for clarification changed the language from subsection 2 of HB 1303 to now read "the greater of liquidated damages up to ten thousand dollars or actual damages," as opposed to "the greater of actual damages or liquidated damages of up to ten thousand dollars."

For your information, the proposed legislation is now patterned somewhat after the provisions of N.D.C.C. §§ 12.1-23.1-01 and 12.1-23.1-02 addressing theft of cable television and civil penalties for the same. I have provided copies of those statutes for your review.

I believe the proposed amendments would create good legislation that combines the best of Senate Bill 2225 and House Bill 1303. However, I understand your committee may have other thoughts and considerations. I will provide a copy of my proposed amendments to the House Judiciary Committee.

If you have any questions or I can be of any assistance, please let me know. Thank you for your consideration.

vkk
cc: House Judiciary Committee

SENATE BILL NO. 2225

Introduced by

Senator Klein

Representative Cleary

1 A BILL for an Act to create and enact a new section to chapter 12.1-23 of the North Dakota
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3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1.** A new section to chapter 12.1-23 of the North Dakota Century Code is
5 created and enacted as follows:

6 **Fraudulent use of personal identifying information - Penalty.**

7 1. As used in this section, "personal identifying information" means any of the
8 following information:

- 9 a. An individual's name;
- 10 b. An individual's address;
- 11 c. An individual's telephone number;
- 12 d. The distinguishing operator's license number assigned to an individual by the
13 department of transportation under section 39-04-14;
- 14 e. An individual's social security number;
- 15 f. An individual's employer or place of employment;
- 16 g. An identification number assigned to the individual by the individuals'
17 employer;
- 18 h. The maiden name of the individual's mother; or
- 19 i. The identifying number of a depository account in a financial institution.

20 2. A person is guilty of a class C felony if the person uses or attempts to use any
21 personal identifying information of an individual to obtain credit, money, goods,
22 services, or anything else of value without the authorization or consent of the
23 individual and by representing that person is the individual or is acting with the
24 authorization or consent of the individual.

THEFT OF CABLE TELEVISION

12.1-23.1-01

commit theft by deception. *State v. Bastien*, 436 N.W.2d 229 (N.D. 1989).

Property of Another.

Fact that one person has title to property does not preclude property from being property of another person within meaning of this section; fact that title to automobile remained in name of defendant at time of its theft did not preclude a finding that defendant took or exercised unauthorized control over property of another where there was evidence that defendant had traded car to another person prior to its theft. *State v. Cox*, 325 N.W.2d 181 (N.D. 1982).

Theft by Deception.

Defendant's argument that his conduct was only a breach of contract and not a crime overlooked the "continuing scheme" statutory language in section 12.1-23-02; while theft by deception is limited so that a fraudulent intent not to perform a promise cannot be inferred from the nonperformance of a contract, if the nonperformance is part of a continuing scheme to defraud, deceptive intent may be inferred. *State v. Hersch*, 445 N.W.2d 626 (N.D. 1989).

Double-billing by accountant for three or four quarters, at \$ 210 per quarter, supported conviction of theft in excess of \$ 500, where accountant had another board member sign blank checks, then made the checks payable to himself, provided the required second signature, filed invoices and canceled checks in

records stored in his office, and never showed those records to any other representative of organization, from which conduct a rational factfinder could find a continuing scheme to defraud. *State v. Trosen*, 547 N.W.2d 735 (N.D. 1996).

DECISIONS UNDER PRIOR LAW

Definition in Jury Instruction.

A defendant on trial for larceny was entitled to have definition of the word "steal" given in a charge to the jury so that the jurors could apply the evidence to the charge with a full understanding of its meaning. *State v. Tough*, 12 N.D. 425, 96 N.W. 1025 (1903).

Generally.

Under C.L. 1913, § 9916, "grand larceny" was the taking of personal property exceeding twenty dollars in value, or when the property was taken from the person of another without regard to its value. *State v. Bossart*, 62 N.D. 11, 241 N.W. 78 (1932).

Under C.L. 1913, § 9916, "petit larceny" was the taking of personal property not from the person of another, nor of value exceeding twenty dollars. *State v. Bossart*, 62 N.D. 11, 241 N.W. 78 (1932).

Collateral References.

Validity and construction of terroristic threat statutes, 45 A.L.R.4th 949.

Possession of stolen property as continuing offense, 24 A.L.R.5th 132.

CHAPTER 12.1-23.1

THEFT OF CABLE TELEVISION

Section		Section	
12.1-23.1-01. Theft of cable television services — Penalty.			vices — Action — Injunction — Property forfeiture.
12.1-23.1-02. Civil penalties for theft of cable television services.		12.1-23.1-04. Amateur radio communications	— Exemption.
12.1-23.1-03. Theft of cable television ser-			

12.1-23.1-01. Theft of cable television services — Penalty. A person is guilty of a class B misdemeanor if the person:

1. Knowingly obtains or attempts to obtain cable television service from another by any means, artifice, trick, deception, or device without the payment to the cable television operator of all lawful compensation for each type of service obtained;
2. Knowingly assists or instructs any other person in obtaining or attempting to obtain any cable television service without the payment to the cable television operator of all lawful compensation for each type of service obtained or attempted to be obtained;

3. Knowingly tampers, diverts from, or connects to by any means, whether mechanical, electrical, acoustical or other means, any cables, wires, or other devices used for the distribution of cable television without authority from the cable television operator; or
4. Knowingly manufactures, imports into this state, distributes, sells, offers for sale or rental, possesses for sale, or advertises for sale, any device, plan or kit for a device, or printed circuit, designed to unlock, decode, descramble, or otherwise make intelligible any locked, encoded, scrambled, or other nonstandard signal carried by the cable television system, thereby facilitating the doing of any acts specified in subsections 1, 2, and 3.

Source: S.L. 1985, ch. 180, § 1.

business for use, or providing technical means of use, of transmissions by nonsubscribers, 46 A.L.R.4th 811.

Collateral References.

State civil actions by subscription television

12.1-23.1-02. Civil penalties for theft of cable television services.

1. Any person who violates subsection 1, 2, or 3 of section 12.1-23.1-01 is liable to the franchised or otherwise duly licensed cable television system for the greater of one thousand dollars or three times the amount of actual damages, if any, sustained by the system, plus reasonable attorney fees.
2. Any person who violates subsection 4 of section 12.1-23.1-01 is liable to the franchised or otherwise duly licensed cable television system for the greater of ten thousand dollars or three times the amount of actual damages, if any, sustained by the plaintiff, plus reasonable attorney fees. A second or subsequent conviction is punishable by the greater of twenty thousand dollars or three times the amount of actual damages, if any, plus reasonable attorney fees.

Source: S.L. 1985, ch. 180, § 2.

business for use, or providing technical means of use, of transmissions by nonsubscribers, 46 A.L.R.4th 811.

Collateral References.

State civil actions by subscription television

12.1-23.1-03. Theft of cable television services — Action — Injunction — Property forfeiture.

1. Any franchised or otherwise duly licensed cable television system may bring an action to enjoin and restrain violation of section 12.1-23.1-01 or an action for conversion, or both, and may in the same action seek damages as provided for in section 12.1-23.1-02.
2. Any communications paraphernalia prohibited under section 12.1-23.1-01 may be seized and, upon conviction, is forfeited to the jurisdiction where the arrest was made. The paraphernalia may be, pursuant to court order, sold or destroyed.

TESTIMONY for HB 1303
Prepared by Representative David Drovdal
March 8, 1999

Chairman Stenehjem and members of the Senate Judiciary Committee. For the record, my name is Representative David Drovdal from District 39.

HB 1303 is a bill draft relating to identification theft. In today's world of credit cards, Internet purchasing, and telemarketing, the use of a person's credit is becoming increasingly vital to transact business. It is also becoming increasingly harder to protect one's personal identification. The more you use it, the more it is available to be misused. We require a number on our driver's license, and most of the time it is our social security number. We require identification to rent vehicles, to purchase cellular phone services, to write checks, and sometimes to use credit cards. As these practices continue, it makes it easier and easier to have those numbers misused by others. A number of states have already addressed this issue. This bill is patterned after Colorado's.

This bill will not prevent the theft of social security numbers or even the misuse of them. What it will do is allow the person whose social security number has been misused to, first of all, recover their actual loss; second, to recover equitable relief caused by the action; and third, to recover attorney's fees and other litigation costs and expenses including expert witness fees and court costs. This action is in addition to any criminal prosecution that may be brought under any state or federal law.

There is another bill, SB 2225, sponsored by Senator Klein, that addresses what identification fraud is; it could be considered a companion bill but not a duplicate bill. When I decided to introduce this bill, I thought that it was "before the fact." I have since learned that identification theft is here and growing. I am enclosing a written testimony from Mr. Dave Feakes that tells in detail of the frustration and humiliation that identification theft can have on a person. His testimony was prepared for SB 2225, but he gave me permission to present it with this bill.

I thank the Committee for your time and ask for your favorable consideration on this bill.

Respectfully submitted by:

Representative David Drovdal

SENATE JUDICIARY COMMITTEE
WAYNE STENEHJEM, CHAIRMAN
MARCH 8, 1999

TESTIMONY BY
PARRELL D. GROSSMAN
DIRECTOR, CONSUMER PROTECTION AND ANTITRUST DIVISION
OFFICE OF ATTORNEY GENERAL
IN SUPPORT OF
HOUSE BILL NO. 1303

Mr. Chairman and members of the Senate Judiciary Committee. I am Parrell Grossman, Director of the Consumer Protection and Antitrust Division of the Attorney General's Office. The Attorney General and the Consumer Protection Division support House Bill No. 1303.

This proposed legislation prohibits the use of an individual's social security number for fraud or fraudulent purposes including assuming the individual's identity. This legislation directly addresses the very serious, important and timely problem of "identity theft." The Attorney General strongly supports legislation to deter and redress "identity theft." There currently are two proposed bills before the Fifty-sixth Legislative Assembly. House Bill 1303, providing civil relief and damages and Engrossed Senate Bill 2225 making "identity theft" a crime and including provisions, almost identical to House Bill No. 1303, awarding civil damages also.

Much of the information provided in this testimony is taken from an interview posted on the Internet site www.bankinfo.com. The interview is conducted by Mary Beth Guard and is an interview of Mari Frank, of Laguna Niguel, California, a famous identity theft victim, who is an attorney, mediator and author. Ms. Frank is now the leading expert on identity theft and she is the author of "The Identity Theft Survival Kit, a resource guide for victims." Ms. Frank assisted in passing a new law in California making identity theft a crime as well as assisting the U.S. Senate in the passage of a law in October of 1998 making identity theft a federal crime. While I understand your very busy schedules, I encourage you to view the Internet site and related sites with a wealth of information on the topic of identity theft.

In addition to the new federal law, as of November, 1998 there were only a few states with identity theft statutes: California; Wisconsin; Arizona; Colorado; Georgia; Kansas; Mississippi; West Virginia; and New Jersey; with legislation pending in New York, Ohio and Pennsylvania. North Dakota now also has the opportunity to enact legislation to try and protect our citizens and address some of the damages as a result of this horrible "crime."

Identity theft occurs when someone uses your name and usually your social security number to obtain credit, loans, employment, health care services, rentals, mortgages,

and maybe even file bankruptcy in your name. Your identity could also be used by someone who has committed crimes and you could have a felony criminal record without even knowing it. There have been many victims who were wrongfully arrested!

The immediate and primary issue for the identity theft victim is to stop the crime spree but that unfortunately is just the start of the problem. Identity theft is a horrendous nightmare for the victim that can take months and years to try and correct, if even possible in some circumstances. A victim's major concern is to get his/her life back. Victims have lost their employment, homes, cars and their very reputations!

The crime of identity theft has become very common. According to a survey quoted by Dan Rather of CBS television, one out of four adults have already been a victim of identity theft to some degree. As of November 1998, the credit reporting agency TransUnion estimated it was receiving 56,000 calls a month to their fraud hotline from people claiming to be an identity theft victim. Mari Frank conservatively estimates there are over 500,000 new victims per year.

Identity theft has been referred to as an epidemic. Some law enforcement agencies call identity theft the fastest growing crime across the country right now. Trans Union and Equifax, two of the three big national credit bureaus or reporting agencies, confirm that they are receiving about 1200 calls per day with most coming from identity theft or fraud victims. This is more than 4 times the number of calls per day Equifax was receiving in 1995.

Absolutely no one is immune from identity theft. Anyone with a social security number can be a victim including the wealthy, poor, children, students and even the deceased. A family member may be the victim of another family member, something occurring quite regularly in the area of consumer fraud.

Identity theft occurs in many ways. Someone steals credit cards by snatching a purse or lifting a wallet from the victim. Someone misappropriates a loan application by diverting a mailing address or other means. Someone steals financial papers from your home or business, etc. Most victims don't even know how the perpetrators got their personal identity information or numbers.

Victims have reported living in "identity theft hell" for years where, with even a fraud alert on a credit report, instant credit was granted in the victim's name.

Identity theft is not even against the law in many states. This legislature now has the opportunity to change that in North Dakota and make identity theft against the law and to provide relief for victims of identity theft. Victims often have to prove their innocence in identity theft cases. This is surprising or shocking to new identity theft victims. Victims expect law enforcement, lenders and financial institutions and credit reporting agencies to assist them. While this should be the case, it frequently isn't.

This legislation isn't going to totally stop identity theft but it will provide deterrence if the legislature makes it a crime and awards victims the right to civil damages when they have been harmed by this crime.

The Consumer Protection Division of the Attorney General's Office will continue to proactively educate and warn consumers about identity theft. We will assist victims in trying to curtail the damages, end the nightmare and restore their credit and reputation. However, the State of North Dakota should make identity theft a crime and award victims damages in an effort to deter the crime and punish the offenders, as well as try and restore some financial restitution to the victims for a very devastating and horrible experience.

Mr. Chairman and members of the committee, for these reasons, on behalf of the Attorney General and the Consumer Protection Division, I respectfully urge this committee to give House Bill 1303, a "Do Pass" recommendation. Thank you. I am willing to try and answer any questions.