

**2013 HOUSE JUDICIARY**

**HB 1197**

# 2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee  
Prairie Room, State Capitol

HB 1197  
January 23, 2013  
Job 17593

☐ Conference Committee

*Kristin Hetzler*

## Explanation or reason for introduction of bill/resolution:

Identify theft; and to provide a penalty.

## Minutes:

*Testimony 1*

**Chairman Koppelman.** Opens

**Rep Delmore:** Identify theft is not a new issue to this committee and still remains a serious problem in ND. This will protect the people from not only monetary theft but covers personal information theft, domestic dispute matters; apply for jobs under another party, and falsely posing as another person via email or any other kind of communications. The bill expands the definition of identity theft. Fake Facebook accounts. Another HB 1280 that addresses some of the same issues.

**Rep Steiner:** We are we going farther than just monetary?

**Rep Delmore:** Yes, there are different types of theft when it's someone's reputation and there are so many ways to cause one damage. It is just as hard to overcome those types of theft as it is monetary.

**Rep Larson:** I am happy to see this bill. An officer told me it's a problem in their department as well. A warrant will go out for the wrong individual because of people giving false names and ID.

**Rep Delmore:** And the thieves keep getting better, we need to stay on top of this.

**Rep Toman:** Facebook, line 21, should we be more elaborate with this line so they do not slip throw the cracks?

**Rep Delmore:** I will defer that to Mr. Grossman.

**Parrell Grossman,** Director, Consumer Protection and Antitrust Division/ Office of Attorney General: Supports HB 1197, along with HB 1280. See testimony 1.

**Rep Klemin:** Follow up Rep Toman question, pg 1, line 21, should we add to it so that it is clearer. Computer system password vs. social media sites.

**Parrell Grossman:** I agree, that is a very suggestion.

**Chairman Koppelman:** Closes

## 2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee  
Prairie Room, State Capitol

HB 1197  
Job 17821  
DATE January 28, 2013

☐ Conference Committee

*Carman Hickle*

**Explanation or reason for introduction of bill/resolution:**  
Relating to identity theft; and to provide a penalty.

**Minutes:**

Testimony 1

**Chairman Kim Koppelman:** Reopened HB 1197. This bill is similar to HB 1280.

**Rep. Lois Delmore:** I have copies of both of them that were drafted by Parrell Grossman and the Attorney General's Office. I believe it does include the amendments that Rep. Toman has, it was put in there as you said you worked with him on the amendment. I would move the amendments to HB 1197.

**Chairman Kim Koppelman:** We have HB 1197 before us. We have a motion to amend from the Attorney General's Office, motion by Rep Delmore. Is there a second?

**Rep. Nathan Toman:** Second.

**Chairman Kim Koppelman:** As Rep. Delmore indicated Rep. Nathan Toman had a very good suggestion coming from his technical background about IT.

**Rep. Lois Delmore:** It was well taken and a value one to add.

**Chairman Kim Koppelman:** The other amendment by Rep. Toman is unnecessary to have because it is wrapped in the one for the AG's office from Parrell Grossman.

**Rep. Vicky Steiner:** Just so it's clear, this amendment is to trying to get at Facebook?

**Chairman Kim Koppelman:** What we are doing is there is two parts to the bill. One of them was included in HB 1280 a portion of that was also included in 1197. But the piece you are talking about that Rep. Nathan Toman further suggested we amend is included in 1197. The solution we discussed with the AG's office is to pass both bills but each would deal with a different section of what we are talking about. So 1197 if we use this amendment we will deal with that later section. Asked if Rep. Nathan Toman if he wanted to comment on password for a computer system.

**Rep. Nathan Toman:** The term computer system password in 1197 was limited to the computer system itself not to any other service that an individual might be signed up for. Such as Facebook or streaming music service that someone can get a hold of using your name and password. That is why I suggested the amendment of digital service user, name or password for a computer system to include those other services.

**Chairman Kim Koppelman:** The difference as I understand it is when we all come in and log into the system if you were then to go to another website where you had a password the language of the original bill would not cover the second log in but the amendment will cover them all. Correct?

**Rep. Nathan Toman:** So for investment sites or anything like that.

**Chairman Kim Koppelman:** All those in favor of amending HB 1197 with the amendments suggested by Mr. Grossman and including Rep. Nathan Toman additional amendment signify by saying yea. Voice vote carried.

**Rep. Lois Delmore:** Moved a do pass as amended on HB 1197.

**Rep. Diane Larson:** Second the motion.

**Rep. Gary Paur:** We already adopted the amendment but on page 2 removed line 7 through 13.

**Chairman Kim Koppelman:** You will see that in HB 1280.

**Rep. Gary Paur:** But does section 3 make any sense if you do that.

**Chairman Kim Koppelman:** Yes, because if both bills are passed they harmonize them.

**Rep. Lois Delmore:** We decided we would pass both bill so each bill got part of the bill and there will be one full bill between the two of them.

**Rep. Gary Paur:** Page 2 lines 7 through 13. So an individual is guilty of an offense if the individual uses or attempts to use any then it stops and this will be filled in?

**Rep. Lois Delmore:** Line 6 is removed.

**Chairman Kim Koppelman:** Do pass as amended 14-0-0.

**Rep. Nathan Toman:** Carries the bill.

January 28, 2013

1/28/13  
JMC

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1197

Page 1, line 20, remove the second "or"

Page 1, line 21, remove "computer system password or"

Page 1, line 21, after "address" insert "; or

m. An individual's username and password of any digital service or computer system"

Page 2, line 6, remove "An individual is guilty of an offense if the individual uses or attempts to use any"

Page 2, remove lines 7 through 13

Page 2, line 14, remove "4."

Page 2, line 20, remove the overstrike over "4."

Page 2, line 20, remove "5."

Page 2, line 22, remove the overstrike over "5."

Page 2, line 22, remove "6."

Renumber accordingly

Date: 1-28-13  
Roll Call Vote #: 1

**2013 HOUSE STANDING COMMITTEE**  
**ROLL CALL VOTES**  
**BILL/RESOLUTION NO. *HB 1197***

House Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken: ☐ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment  
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Delmore Seconded By Rep. Toman

Representatives	Yes	No	Representatives	Yes	No
Chairman Kim Koppelman			Rep. Lois Delmore		
Vice Chairman Lawrence Klemin			Rep. Ben Hanson		
Rep. Randy Boehning			Rep. Kathy Hogan		
Rep. Roger Brabandt					
Rep. Karen Karls					
Rep. William Kretschmar					
Rep. Diane Larson					
Rep. Andrew Maragos					
Rep. Gary Paur					
Rep. Vicky Steiner					
Rep. Nathan Toman					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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

*Voice vote - carried*



Date: 1-28-13  
Roll Call Vote #: 1

**2013 HOUSE STANDING COMMITTEE**  
**ROLL CALL VOTES**  
**BILL/RESOLUTION NO. HB 1197**

House Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment  
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Delmore Seconded By Rep. Larson

Representatives	Yes	No	Representatives	Yes	No
Chairman Kim Koppelman	/		Rep. Lois Delmore	/	
Vice Chairman Lawrence Klemin	/		Rep. Ben Hanson	/	
Rep. Randy Boehning	/		Rep. Kathy Hogan	/	
Rep. Roger Brabandt	/				
Rep. Karen Karls	/				
Rep. William Kretschmar	/				
Rep. Diane Larson	/				
Rep. Andrew Maragos	/				
Rep. Gary Paur	/				
Rep. Vicky Steiner	/				
Rep. Nathan Toman	/				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Rep. Toman

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

**REPORT OF STANDING COMMITTEE**

**HB 1197: Judiciary Committee (Rep. K. Koppelman, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1197 was placed on the Sixth order on the calendar.

Page 1, line 20, remove the second "or"

Page 1, line 21, remove "computer system password or"

Page 1, line 21, after "address" insert ". or

m. An individual's username and password of any digital service or computer system"

Page 2, line 6, remove "An individual is guilty of an offense if the individual uses or attempts to use any"

Page 2, remove lines 7 through 13

Page 2, line 14, remove "4."

Page 2, line 20, remove the overstrike over "4."

Page 2, line 20, remove "5."

Page 2, line 22, remove the overstrike over "5."

Page 2, line 22, remove "6."

Renumber accordingly

**2013 SENATE JUDICIARY**

**HB 1197**

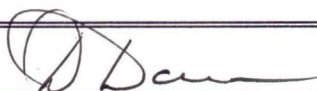
# 2013 SENATE STANDING COMMITTEE MINUTES

## Senate Judiciary Committee Fort Lincoln Room, State Capitol

HB1197  
3/11/2013  
Job #19692

☐ Conference Committee

Committee Clerk Signature



**Minutes:**

*Attached testimony*

### Relating to identity theft

#### Senator David Hogue - Chairman

Representative Lois Delmore - District 43 - See written testimony **(1)**  
Companion bill to 1280

Parrell Grossman - Director of the Attorney General's Consumer Protection and Antitrust Division - See written testimony **(2)**. Senator Sitte asks about a friendly amendment to add personal health information to which Mr. Grossman replies there is another bill in Human Services for that. The committee discusses personal health information and the combination of 1197 and 1280. Senator Armstrong wonders if they need to carve out the misdemeanor application in both bills. Mr. Grossman doesn't believe that is needed. Senator Armstrong is concerned that in one bill there is a Class A misdemeanor application and in the other one there isn't. Mr. Grossman relates they are trying to get the message across from stealing from people by enhancing the penalties. Senator Nelson asks Mr. Grossman how many FTE's would be needed in his department to crackdown on these people. Mr. Grossman replies this is designed for more local individuals but he would need probably several more investigators and 2 or 3 attorneys. Mr. Grossman explains the number of counts or multiple acts for a misdemeanor.

Mike Reitan - Assistant Chief, West Fargo PD - See written testimony. **(3)**

Senator Sitte asks him how they can best make this bill workable for him. Mr. Reitan replies that as it is currently worded it shouldn't be an issue. He adds that many times when they are investigating on-line services and request subpoenas they typically require that the offense being investigated be a felony offense. He said they may have to come back next session to ask it to be a C felony.

Mr. Grossman clears up how they charge for multiple convictions and that you cannot change the word may.

Opposition - none  
Neutral - none

Close the hearing

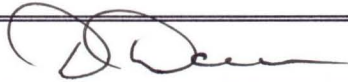
# 2013 SENATE STANDING COMMITTEE MINUTES

**Senate Judiciary Committee**  
Fort Lincoln Room, State Capitol

HB1197  
3/11/2013  
Job #19715

☐ Conference Committee

Committee Clerk Signature



**Minutes:**

**Senator David Hogue - Chairman**

Committee work

Discussion

Committee discusses jointly HB 1280 and HB 1197. Senator Armstrong states that any theft of any money that involves identity theft is a felony under these two bills. There is no misdemeanor disposition for stealing for example \$50. Senator Hogue says it isn't only the taking of the money but for exposing through future harm. Senator Armstrong relates his personal experience and says it is significantly more than just the money you are out. He says this is different than a normal theft due to the personal level. Senator Sitte thinks maybe a prior conviction should be added. Senator Hogue thinks 1197 is a little easier to deal with, 1197 is simply an expansion of the definition of what constitutes personal identifying information for purposes of the crime. The committee discusses health information and identity theft of personal health information. Senator Hogue and Senator Grabinger believe this is already covered in HIPPA and State law. Senator Armstrong mentions in these bills stealing isn't the crime, it must be used for a purpose, use it to steal money or harass someone. Committee discusses subsequent use. Senator Sitte gives examples of how it could be used. Committee goes back to 1280 and discusses the felony charges. Senator Sitte disagrees with it being a felony and thinks it is excessive. Senator Armstrong says they are not adding new felonies; the only thing they are adding is a misdemeanor. Senator Hogue says they will lay 1197 over till he speaks with the Medical Association and Senator Sitte and Senator Grabinger may bring in an amendment to reduce to a misdemeanor.

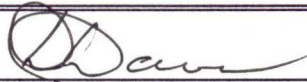
# 2013 SENATE STANDING COMMITTEE MINUTES

**Senate Judiciary Committee**  
Fort Lincoln Room, State Capitol

HB1197  
3/27/2013  
Job #20607

☐ Conference Committee

Committee Clerk Signature



**Minutes:**

Vote

## **Senator Hogue - Chairman**

Committee work

The committee discusses the penalty limit. Senator Grabinger proposes an amendment to raise to \$5000.00. They discuss that there is a companion bill to this, HB1280. Senator Sitte wonders if they would need more FTE's in the Attorney General office to enforce this. Senator Armstrong says these penalties were in place before, new ones were not added. He adds this type of theft is a horrible invasion of privacy.

Senator Grabinger moves his amendment to insert \$5,000  
Senator Sitte seconded

Discussion

Committee discusses the felony levels

Vote - 7 yes, 0 no

Motion passes

Discussion

Committee discusses whether or not they will change the Class A felony. Senator Sitte believes this does not compare to murder which is also a Class A felony. Senator Lyson believes it should be left a Class A, this is stealing your reputation.

Senator Sitte moves her amendment to change class A to B felony  
Senator Berry seconded

Vote - 4 yes, 3 no

Motion passes

Senator Sitte moves a do pass as amended  
Senator Armstrong seconded

Vote - 5 yes, 2 no

Motion passes

Senator Nelson will carry

# 2013 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee  
Fort Lincoln Room, State Capitol

HB1197  
4/1/2013  
20729

☐ Conference Committee

Committee Clerk Signature



**Minutes:**

*Vote two*

**Senator David Hogue - Chairman**

Committee work

Senator Hogue explains that this bill has a potential conflict with HB1280. He says we amended it to decrease the penalty from Class A felony to a B felony. The committee discusses the language in HB1280. Senator Nelson would like to reconsider her vote.

Senator Armstrong moves to reconsider  
Senator Sitte seconded

Verbal vote - all yes  
Motion passes

Discussion

Senator Armstrong says he doesn't think these maximums matter much because the fact pattern that would have to happen would be so unbelievably unique where you worry ever getting the maximum. Says he is okay with the bill as it is. Senator Sitte says no property crime is a felony.

Senator Grabinger moves a do pass on the bill in its original form, no amendments  
Senator Armstrong seconded

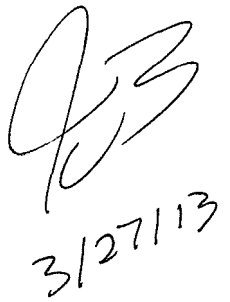
Vote - 6 yes, 1 no  
Motion passes

Senator Nelson will carry

13.8202.02001  
Title.03000

Adopted by the Judiciary Committee

March 27, 2013

Handwritten signature and date "3/27/13".

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1197

Page 2, line 7, overstrike "one" and insert immediately thereafter "five"

Page 2, line 8, overstrike "A" and insert immediately thereafter "B"

Renumber accordingly



Date: 3/27/13  
Roll Call Vote #: 1

2013 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1197

Senate JUDICIARY — Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number Raise to 5,000 - Grabinger amend.

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment  
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By S. Grabinger Seconded By S. Sitte

Senators	Yes	No	Senator	Yes	No
Chairman David Hogue	<input checked="" type="checkbox"/>		Senator Carolyn Nelson	<input checked="" type="checkbox"/>	
Vice Chairman Margaret Sitte	<input checked="" type="checkbox"/>		Senator John Grabinger	<input checked="" type="checkbox"/>	
Senator Stanley Lyson	<input checked="" type="checkbox"/>				
Senator Spencer Berry	<input checked="" type="checkbox"/>				
Senator Kelly Armstrong	<input checked="" type="checkbox"/>				

Total (Yes) 7 No 0

Absent 0

Floor Assignment pass

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

Date:

3/27/13

Roll Call Vote #:

2

**2013 SENATE STANDING COMMITTEE**  
**ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 1197**

Senate JUDICIARY

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Sitte amendment - change class to B felonyAction Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By

S. Sitte

Seconded By

S. Berry

Senators	Yes	No	Senator	Yes	No
Chairman David Hogue			Senator Carolyn Nelson		X
Vice Chairman Margaret Sitte	X		Senator John Grabinger	X	
Senator Stanley Lyson		X	<u>Sen Hogue</u>	X	
Senator Spencer Berry		X			
Senator Kelly Armstrong	X				

Total (Yes)

4

No

3

Absent

Floor Assignment

pass

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

Date: 3/27/13  
Roll Call Vote #: 3

2013 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1197

Senate JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 13-8202.02001

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment  
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By S. Sitte Seconded By S. Armstrong

Senators	Yes	No	Senator	Yes	No
Chairman David Hogue			Senator Carolyn Nelson	<input checked="" type="checkbox"/>	
Vice Chairman Margaret Sitte	<input checked="" type="checkbox"/>		Senator John Grabinger	<input checked="" type="checkbox"/>	
Senator Stanley Lyson		<input checked="" type="checkbox"/>	<u>Sen Hogue</u>	<input checked="" type="checkbox"/>	
Senator Spencer Berry		<input checked="" type="checkbox"/>			
Senator Kelly Armstrong	<input checked="" type="checkbox"/>				

Total (Yes) 5 No 2

Absent 6

Floor Assignment S. Nelson

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

Date: 4-1-13  
Roll Call Vote #: 1

2013 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1197

Senate JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment  
☐ Rerefer to Appropriations ☒ Reconsider

Motion Made By S Armstrong Seconded By S Sitte

Senators	Yes	No	Senator	Yes	No
Chairman David Hogue	1		Senator Carolyn Nelson	1	
Vice Chairman Margaret Sitte			Senator John Grabinger		
Senator Stanley Lyson					
Senator Spencer Berry					
Senator Kelly Armstrong					

Total (Yes) 1 No \_\_\_\_\_

Absent Verbal - yes

Floor Assignment passes

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

Date:

Roll Call Vote #:

4/1/13  
2

**2013 SENATE STANDING COMMITTEE**  
**ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 1197**

Senate JUDICIARY

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken: ☒ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment  
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By

S. Geabinger

Seconded By

S. Armstrong

Senators	Yes	No	Senator	Yes	No
Chairman David Hogue	X		Senator Carolyn Nelson	X	
Vice Chairman Margaret Sitte		X	Senator John Grabinger	X	
Senator Stanley Lyson	X				
Senator Spencer Berry	X				
Senator Kelly Armstrong	X				

Total (Yes) 6 No 1

Absent \_\_\_\_\_

Floor Assignment

S. Nelson

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

**REPORT OF STANDING COMMITTEE**

**HB 1197, as engrossed: Judiciary Committee (Sen. Hogue, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1197 was placed on the Sixth order on the calendar.

Page 2, line 7, overstrike "one" and insert immediately thereafter "five"

Page 2, line 8, overstrike "A" and insert immediately thereafter "B"

Renumber accordingly

**REPORT OF STANDING COMMITTEE**

**HB 1197, as engrossed: Judiciary Committee (Sen. Hogue, Chairman) recommends DO PASS** (6 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1197 was placed on the Fourteenth order on the calendar.

**2013 TESTIMONY**

**HB 1197**



HOUSE JUDICIARY COMMITTEE  
KIM KOPPELMAN, CHAIRMAN  
JANUARY 23, 2013

TESTIMONY BY  
PARRELL D. GROSSMAN  
DIRECTOR, CONSUMER PROTECTION AND ANTITRUST DIVISION  
OFFICE OF ATTORNEY GENERAL  
IN SUPPORT OF  
HOUSE BILL NO. 1197

Mr. Chairman and members of the House Judiciary Committee. I am Parrell Grossman, Director of the Attorney General's Consumer Protection and Antitrust Division. I appear on behalf of the Attorney General in support of House Bill 1197.

Identity Theft continues to be a priority for the Attorney General and Consumer Protection Division. The Identity theft problem continues to grow on a national and state basis. The Consumer Protection Division acts as a clearinghouse for ID theft victims. We process ID theft complaints and assist consumers when their identities have been stolen. The Attorney General's Office has received 112 ID Theft complaints in the current biennium, since July 1, 2011. The Consumer Protection Division has received 76 ID theft complaints in 2012. ID theft was the number two complaint category in the Attorney General's Top Ten Complaints in 2012.

The landscape has changed since the identity theft statute was first enacted. At that time ID theft involved the theft of personal identifying information for monetary or financial gain. Now, identities are stolen for other purposes, including obtaining employment, initiating or cancelling service contracts, committing a criminal offense in another person's name, or impersonating an individual by e-mail, website, or social media to harass, harm, defraud, intimidate or threaten another person.

This legislation broadens the applicability of the ID theft statute to prohibit such conduct and treat it as an offense.

Page 1, lines 20-21, add an individual's photograph or computerized image and an individual's computer system password or e-mail address to the definition of personal identifying information. These amendments address the problem of electronic harassment via social media, e-mail, etc.

Page 2, lines 1-2, amends subsection 2 to remove the additional element "and by representing that person is the individual or is acting with the authorization or consent of the individual." This element of an ID theft offense is an additional and unnecessary burden. Currently, if the thief just uses the victim's bank or credit card information to steal from the victim, but doesn't represent that he is the victim AND that he acted with the victim's consent, that element of the offense may not be present.

Page 2, lines 6-13, amend the statute to add a criminal penalty for the unauthorized use of personal identifying information of another individual to interfere with or initiate a contract or service, obtain or continue employment, or to commit an offense, whether or not there is no economic loss. A first offense is a class A misdemeanor. A second or subsequent offense is a class C felony.

The proposed amendments in this legislation will significantly alter the identity theft statute in a manner consistent with the expanded wrongful theft and use of personal identifying information and will act as a stronger deterrent and punishment for identity theft.

The Attorney General respectfully asks the House Judiciary Committee to give House Bill 1197, a "Do Pass" recommendation.

Thank you for your time and consideration. I would be pleased to try and answer any questions.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1197  
HOUSE JUDICIARY COMMITTEE  
KIM KOPPELMAN, CHAIRMAN  
JANUARY 24, 2012

PRESENTED BY  
PARRELL D. GROSSMAN, DIRECTOR  
CONSUMER PROTECTION & ANTITRUST DIVISION  
OFFICE OF ATTORNEY GENERAL

Page 1, line 21, replace "An individual's computer system password or e-mail address" with "An individual's username and password of any digital service or computer system, or an individual's e-mail address"

Page 2, line 6, remove "An individual is guilty of an offense if the individual uses or attempts to use  
any"

Page 2, remove lines 7 through 13

Page 2, line 14, remove "4."

Page 2, line 20, remove the overstrike over "4."

Page 2, line 20, remove "5."

Page 2, line 22, remove the overstrike over "5."

Page 2, line 22, remove "6."

Renumber accordingly

*Mr. Chairman  
Can they read*

Identity Theft continues to be a serious problem in our state. As the ID thieves use new methods to commit this horrible crime, we need to make sure our laws are current in order to combat this problem and prosecute the various aspects of Identity Theft.

HB1197 is a companion bill to HB1280 which also is scheduled before the committee for a hearing this morning.

Current North Dakota law requires an Identity Thief to have a monetary gain before the theft of personal identifying information is an offense.

This bill and 1280 together change that requirement and this legislation will broaden the law to protect the public from theft of personal information for other purposes including:

- Committing an offense in another person's name

- Entering into or cancelling contractual or service agreements

- Gaining employment in another's name and not paying income taxes etc.

- Revengeful or spiteful actions in domestic relations matters, or failed personal or business relationships

- Falsely posing as another individual on social media or via e-mail etc. for financial or other harmful reasons

HB1197 expands the definition of Personal identifying Information" to include :

- An individual's photograph or computerized image;

- An individual's e-mail address; and

- An individual's username and password of any digital service or computer system.

Removes the current additional element of the offense stating " and by representing that person is the individual or is acting with the authorization or consent of the individual."

Currently, if the ID thief uses the victims' credit card or bank account, but doesn't represent that he is the victim AND that he acted with the victim's consent, that element of the offense may not be present, possibly resulting an inability to establish the offense and prosecute the crime.

It is enough that the action occurred without the individual's authorization and it simply is not necessary or appropriate to require criminal prosecutors to establish that the ID thief represented he was acting with the victim's authorization.

HB1197 and HB1280 will significantly overhaul current ID theft law and provide much greater protection to ID theft victims, who often have their identities misused for malicious purposes.

Parrell Grossman, Director of the Attorney General's Consumer Protection Division, also is available to answer any questions.

1197 (2)

SENATE JUDICIARY COMMITTEE  
DAVID HOGUE, CHAIRMAN  
MARCH 11, 2013

TESTIMONY BY  
PARRELL D. GROSSMAN  
DIRECTOR, CONSUMER PROTECTION AND ANTITRUST DIVISION  
OFFICE OF ATTORNEY GENERAL  
IN SUPPORT OF  
HOUSE BILL NOS. 1197 AND 1280

Mr. Chairman and members of the Senate Judiciary Committee. I am Parrell Grossman, Director of the Attorney General's Consumer Protection and Antitrust Division. I appear on behalf of the Attorney General in support of House Bill 1197. With your permission, I also will be appearing at the separate hearing today in support of House Bill 1280.

Identity Theft continues to be a priority for the Attorney General and Consumer Protection Division. The Identity theft problem continues to grow on a national and state basis. The Consumer Protection Division acts as a clearinghouse for ID theft victims. We process ID theft complaints and assist consumers when their identities have been stolen. The Attorney General's Office has received 112 ID Theft complaints in the current biennium, since July 1, 2011. The Consumer Protection Division has received 76 ID theft complaints in 2012. ID theft was the number two complaint category in the Attorney General's Top Ten Complaints in 2012. Last week, my division received identity theft theft complaints from ID theft victims who indicated other individuals had filed income tax returns using their social security numbers.

The landscape has changed since the identity theft statute was first enacted. At that time ID theft involved the theft of personal identifying information for monetary or financial gain. Now, identities are stolen for other purposes, including obtaining employment, initiating or cancelling service contracts, committing a criminal offense in another person's name, or impersonating an individual by e-mail, website, or social media to harass, harm, defraud, intimidate or threaten another person.

Representatives Delmore and Kim Koppelman, and their other colleagues in the legislature, have introduced legislation that broadens the applicability of the ID theft statute to prohibit such conduct and treat it as an offense and the House has passed this legislation.

With your permission, Mr. Chairman, I will discuss both 1197 and 1280 together, and then explain the complimentary pieces of the combined legislation, in order to avoid confusion about either bill.

In Engrossed House Bill 1197, Page 1, lines 20-23, add an individual's photograph or computerized image, an individual's e-mail address, and an individual's username and

password of any digital service or computer system to the definition of personal identifying information. These additions to the law mean the unauthorized use of this information will constitute identity theft and it helps address the problem of electronic harassment via social media or e-mail, or the use of such information to initiate or change a contract or service for another, to obtain employment, or to commit another crime, *et cetera*.

Page 2, lines 1-5, amend subsection 2 of section 12.1-23-11 to remove the additional element "and by representing that person is the individual or is acting with the authorization or consent of the individual." This element of an ID theft offense is an additional and unnecessary burden. Currently, if the thief just uses the victim's bank or credit card information to steal from the victim, but doesn't represent that he is the victim AND that he acted with the victim's consent, that element of the offense may not be present.

It should be illegal to use a victim's personal identifying information for theft or other illicit purposes, without requiring the criminal prosecutor to establish that the identity thief represented that he was acting with the victim's authorization.

House Bills 1197 and 1280, prior to the House Judiciary Committee hearings on the separate bills, each accomplished similar purposes, and ultimately were missing something from the other bill. Therefore, the Attorney General, as the agency that has been involved in the drafting of North Dakota's identity theft statutes and works closely with the implementation and enforcement of this law, offered amendments to these bills. The amendments and bills were approved by House Judiciary and passed by the House.

I have attached copies of Engrossed House Bill N. 1280 and I will briefly highlight the changes in House Bill 1280 and work hand-in-hand with House Bill 1197. I direct your attention to Page 2, lines 9-15.

These proposed changes in the law, as set forth in House Bill 1280, amend section 12.1-23-11 to add a criminal penalty for the unauthorized use of personal identifying information of another individual to interfere with or initiate a contract or service, obtain or continue employment, or to commit an offense, whether or not there is no economic loss. A first offense is a class A misdemeanor. A second or subsequent offense is a class C felony. As a reminder it is House Bill 1197, Page 1, lines 20-22, which provides the additional components of personal identifying information that are used to harass individuals via social media or e-mail, or to initiate a contract for service *et cetera* for the victim, without the victim's authorization.

The proposed changes in the law in House Bills 1197 and 1280 will significantly alter the identity theft statute in a manner consistent with the expanded wrongful theft and use of personal identifying information that is now occurring in this context and will act as a stronger deterrent and punishment for identity theft.

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The Attorney General respectfully asks the Senate Judiciary Committee to give Engrossed House Bill 1197, a "Do Pass" recommendation and, at the appropriate time after completion of the hearing on Engrossed House Bill 1280, to also give Engrossed House Bill 1280 a "Do Pass" recommendation.

Thank you for your time and consideration. I would be pleased to try and answer any questions.



Senate Judiciary Committee

House Bill 1197

Testimony of Mike Reitan, Assistant Chief, West Fargo Police

Good Morning Chairman Hogue and members of the committee. For the record my name is Mike Reitan, Assistant Chief of the West Fargo Police Department. I am testifying today in support of House Bill 1197. The bill before you today will amend the current language of section 12.1-23-11 of the North Dakota Century Code and provide a penalty for the unauthorized access of another's computer based digital and computer based systems.

As technology continues to advance the citizens of North Dakota have taken the opportunity to utilize on-line computer base programs for service ranging from banking and bill paying to personal and business communications. On-line service companies provide intricate levels of security to deny unauthorized access to your information. The single point of vulnerability is your user name and password. An individual who is able to obtain these two pieces of information could cause you financial or personal ruin. The person could cancel your insurance coverage; disconnect your utilities; or to enroll you in unwanted services.

The bill also adds your photograph or computerized image and e-mail address to protected information. The ability to assume another's identify through the unauthorized use of a photo or e-mail address can be in the least embarrassing or could be personally damaging. Your image or e-mail could be used to defraud another through false claims and promises. An example locally was a woman bilked out of thousands of dollars by an individual posing as a military service member. In another case the West Fargo Police Department investigated a case where an ex-boyfriend used a woman's electronic identity to embarrass her personally and to nearly cost her job.

North Dakota Century Code 12.1-23-11 currently makes it unlawful to assume another person's identity. Missing from the statute is your electronic identity and photo, items that I feel also need to be protected. I ask for your support in the passage of House Bill 1197. Thank you and I would be willing to take any questions you may have.