

2013 HOUSE JUDICIARY

HB 1280

2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1280
January 23, 2013
Job 17596

Conference Committee



Explanation or reason for introduction of bill/resolution:

Unauthorized use of personal identifying information; and to provide a penalty.

Minutes:



Chairman: Opens.

Rep Kim Koppelman: West Fargo Police Department asked me to sponsor this bill. I do agree with the testimony that you heard this morning, there is a similar bill that Rep. Delmore introduced, it seems to be a duplicate of this bill. Whichever bill moves forward, it should include the additional language that occurred in the bill that Rep. Delmore.

Chairman: Closes

2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1280
Job 17821
DATE January 28, 2013

Conference Committee

Cauren Hickle

Explanation or reason for introduction of bill/resolution:

Relating to the unauthorized use of personal identifying information; and to provide a penalty

Minutes:

[Empty rectangular box]

Chairman Kim Koppelman: Reopened HB 1280.

Rep. Lois Delmore: I move on amendments from Parrell Grossman on HB 1280.

Chairman Kim Koppelman: We have a motion for amendment is there a second?

Rep. Andy Maragos: Second.

Chairman Kim Koppelman: We have a motion and a second to on the amendments from the Attorney General's office. Asked for discussion, none.

Voice vote carried.

Chairman Kim Koppelman: Asked the committee wishes on HB 1280.

Rep. Lois Delmore: Moved a do pass on HB 1280.

Rep. Ben Hanson: second.

Chairman Kim Koppelman: Asked for discussion on a do pass as amended HB 1280. No discussion.

14-0-0

Rep. Toman will carry the bill.

January 28, 2013

1/28/13
JDC

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1280

Page 2, line 4, overstrike "a class C felony" and insert immediately thereafter "an offense"

Page 2, line 5, overstrike "to enter, modify,"

Page 2, overstrike lines 6 and 7

Page 2, line 8, overstrike "is the individual or is acting with the authorization or consent of the individual" and insert immediately thereafter "without the authorization or consent of the individual, in order to interfere with or initiate a contract or service for a person other than that individual, to obtain or continue employment, to gain access to personal identifying information of another individual, or to commit an offense in violation of the laws of this state, regardless of whether there is any actual economic loss to the individual. A first offense under this subsection is a class A misdemeanor. A second or subsequent offense under this subsection is a class C felony"

Renumber accordingly

Date: 1-28-2013
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1280

House Judiciary Committee

Check here for Conference Committee

Legislative Council Amendment Number 13.0619.01001

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

Motion Made By Rep Delmore Seconded By Rep Maragos

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 Voice vote Carried

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

Parrell Grossman amendments

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

**2013 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. HB 1280**

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. Hanson

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 1280: 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 1280 was placed on the Sixth order on the calendar.

Page 2, line 4, overstrike "a class C felony" and insert immediately thereafter "an offense"

Page 2, line 5, overstrike "to enter, modify,"

Page 2, overstrike lines 6 and 7

Page 2, line 8, overstrike "is the individual or is acting with the authorization or consent of the individual" and insert immediately thereafter "without the authorization or consent of the individual, in order to interfere with or initiate a contract or service for a person other than that individual, to obtain or continue employment, to gain access to personal identifying information of another individual, or to commit an offense in violation of the laws of this state, regardless of whether there is any actual economic loss to the individual. A first offense under this subsection is a class A misdemeanor. A second or subsequent offense under this subsection is a class C felony"

Re-number accordingly

2013 SENATE JUDICIARY

HB 1280

2013 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

HB1280
3/11/2013
Job #19690

Conference Committee

Committee Clerk Signature 

Minutes:

Attached testimony

Relating to the unauthorized use of personal identifying information

Senator David Hogue - Chairman

Companion bill - HB1197

Representative K Koppelman - District 13 - Introduces the bill and the impetus is; it was discovered that if someone does this for monetary gain it is a crime in ND but there are issues with dealing with ID theft if it isn't for monetary gain. He goes on to explain why there are two identical bills dealing with identity theft. Senator Sitte asks him about the 2nd offense being a felony. Rep. Koppelman replies we do over criminalize sometimes but the question is whether we want some threshold of felony offense for this kind of identity theft.

Mike Reitan - Assistant Chief, West Fargo PD - See written testimony. (1)

Parrell Grossman - Director of the Attorney General's Consumer Protection and Antitrust Division. - See written testimony (2) Senator Sitte relays her concern regarding too many felony laws.

Opposition - none

Neutral - none

Close the hearing

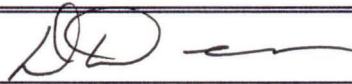
2013 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

HB1280
3/11/2013
Job #19715

Conference Committee

Committee Clerk Signature



Minutes:

Vote

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 Grabinger moves a do pass on 1280

Senator Nelson seconded

Discussion

Committee discusses the confusion having two of these bills when maybe they should have been combined.

Vote - 6 yes, 1 no

Motion passes

Senator Hogue will carry

Date: 3-11-13
 Roll Call Vote #: 1

**2013 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1280**

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. Grabinger Seconded By S. Nelson

Senators	Yes	No	Senator	Yes	No
Chariman 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. Hogue

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

REPORT OF STANDING COMMITTEE

HB 1280, as engrossed: Judiciary Committee (Sen. Hogue, Chairman) recommends DO PASS (6 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1280 was placed on the Fourteenth order on the calendar.

2013 TESTIMONY

HB 1280

Senate Judiciary Committee
House Bill 1280
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 1280. 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 use of another's identity information.

NDCC 12.1-23-11 as currently written requires the element the suspect obtain a thing of value for an illegal act to have been committed by stealing your identity. As the law now stands, a suspect could cause you financial damage by cancelling your insurance coverage; entering or cancelling an existing contract; assuming your identity to become employed; or posting information on-line which may cause you personal or professional damage and not be charged with a crime. The West Fargo Police Department has investigated several incidents where an ex-spouse or partner used the identity of another to cause that person harm without benefitting financially. None of them could be prosecuted.

I believe the proposed amendment will add the needed language to better define the illegal act of unauthorized use of another's identity to cause the person harm or is otherwise illegal. I ask for your support in the passage of House Bill 1280. Thank you and I would be willing to take any questions you may have.

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.

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.