

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

15000

2005 HOUSE JUDICIARY

HB 1500


2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1500

House Judiciary Committee

☐ Conference Committee

Hearing Date 2/1/05

Tape Number	Side A	Side B	Meter #
2	xx		44-end
2		xx	0-10.2
Committee Clerk Signature 			

Minutes: 14 members present.

Chairman DeKrey: We will open the hearing on HB 1500.

Representative Koppelman: Sponsor of the bill, explained the bill. This is a consumer protection bill, and it has to do with identity theft and I don't have to tell this committee that one of the great frauds of our time, is identity theft. Not only does identity theft involve a loss of property or money, it can result in ruining your credit history. HB 1500 simply puts in place consumer protections for victims of identity theft, by requiring credit reporting agencies to expunge negative information from the record of a victim of identity theft, until that matter is resolved. The bill provides that the victim would have to inform authorities that they are victim of identity theft, and that would have to be held to be true, and if that's the case, then these provisions of the bill would go into effect. In meeting with the AG's office, we were right at the bill introduction deadline, so they said they thought they needed some amendments, but put the bill in and we will fix it in committee. There is some federal law that we need to mirror, and Mr.

Grossman, from the AG's office has some amendments that he is going to present. I do support the amendments and urge the committee to adopt them as well. The amended bill will mirror federal law and will also allow us to enforce these measures in our state, even as they are in federal law, to the extent that the federal government, perhaps allows us to. We get back into this issue of federal preemption, and it is an undecided area as I understand it, in regard to these items. But there is at least a chance that some of them would be able to be enforced in ND, and more importantly that our ND citizens would have a place to go in ND if they are a victim of identity theft, call Mr. Grossman's office, the Consumer Protection and Fraud Division, AG's office, for some assistance.

Representative Delmore: Is there something in here to make sure that all of this is substantiated by the police.

Representative Koppelman: The intent of the bill is to make sure that this is a substantiated report, that's the first step before any of this can kick into gear.

Representative Meyer: My mother was a victim of identity theft, we went to the states attorney in our county, and he was very good and wrote a letter. But what happens on page 2, the provisions of this section do not apply to... The states attorney notified those companies and they turned around with a consumer reporting agency and told that to another collection agency and the process, we've gone through it now 4-5 times and it's been going on for over 9 years. Every time our states attorney does that, will this bill correct that.

Representative Koppelman: The intent of the bill is certainly to get at that kind of problem. I can't guarantee that it will correct it, simply because many of these companies are outside of the state of ND, some of it gets into federal arenas. So if we have a victim of identity theft that

reports through the proper law enforcement channels, that they are a victim of identity theft, that these negative things, that have popped up on their record, would be expunged until that investigation is completed, so that the credit reporting agency doesn't have it, so that they can't sell it to other agencies.

Representative Boehning: We've been getting letters at our desk from someone in Bismarck, and they enclosed a criminal record of a person here in Bismarck, and I remember that it had their SS#, would this law help go out and prosecute somebody and they would give out that information to us and those sorts of things.

Representative Koppelman: I'm not sure, we have other laws on the books, and we've tightened them up in recent sessions, and I've been part of some of that legislation to try and make sure that our SS#'s are protected.

Chairman DeKrey: Thank you.

Parrell Grossman, Division of Consumer Protection and Antitrust Division of AG's office:

We are offering technical assistance, (see written testimony).

Representative Delmore: On page 2, section 1, #4, is that what you put in at a later time, why did you remove that, lines 13-21.

Parrell Grossman: The reason I removed that is that I think that is very confusing and I think it is a fairly substantial burden for a consumer, who has been a victim of identity theft, to meet. It talks about a consumer can correct the disputed item, when the consumer submits to the consumer reporting agency, documentation obtained from the source of an item in dispute, or from public records confirming that the report was inaccurate or incomplete. First, I don't know what public records might be available to a consumer, to avail themselves of that particular

remedy, and then reporting documentation obtained from the source of the item. There are some procedures, under the Federal Fair Credit Reporting Act, where you can request that information if you have obtained that police report, but it can be very difficult for consumers to obtain that information. So I was unable to find any solid reasons why that language was needed or how it would enhance any protection for consumers and I felt on the business end, that the language that the federal law provides, does provide adequate protection for erroneous or fraudulent reports of identity theft.

Representative Meyer: If we did take out the exception for the resellers of credit, I think that is where a lot of problems with identity theft, are we not in compliance with federal law at that time.

Parrell Grossman: That is an excellent question. This law is substantially pre-empted by federal law. It would be my initial considered opinion, that if you were to remove that provision, it would conflict with federal law and would be pre-empted. Unfortunately, the Fair Credit Reporting Act, does not clearly set forth all the areas of preemption. It is kind of buried amongst the amendments in the new legislation and it is rather complicated to figure out exactly what is preempted and what isn't. They did provide the states with some ability to enhance some protections in the circumstances of identity theft, but for the most part, it continues to have very strong preemption in the federal act.

Chairman DeKrey: Thank you. Further testimony in support, testimony in opposition. We will close the hearing. What are the committee's wishes in regard to HB 1500.

Representative Koppelman: I move the amendments.

Representative Meyer: Seconded.

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House Judiciary Committee
Bill/Resolution Number HB 1500
Hearing Date 2/1/05

Chairman DeKrey: Motion carried.

Representative Delmore: I move a Do Pass as amended.

Representative Maragos: Seconded.

13 YES 0 NO 1 ABSENT DO PASS AS AMENDED CARRIER: Rep. Meyer

House Amendments to HB 1500 - Judiciary Committee 02/02/2005

Page 1, line 1, after "fraud" insert "; and to provide a penalty"

Page 1, line 3, after "**agencies**" insert "**- Enforcement - Penalty**"

Page 1, line 6, replace "police" with "identity" and after the first comma insert "as defined by that Act,"

Page 1, line 7, replace "thirty" with "four business"

Page 1, line 9, after the first "of" insert "identify theft defined by that Act, or"

Page 1, line 10, replace "a police report" with "an identity theft report, as defined by that Act,"

Page 1, line 13, after "information" insert a comma and remove ", in the exercise of good faith and judgment,"

Page 1, line 14, replace "believes" with "reasonably determines"

Page 1, line 15, replace "due to a misrepresentation of a material fact by" with "in error or a block was requested by the consumer in error;"

Page 1, remove line 16

Page 1, line 17, replace "due to fraud, in which the consumer participated" with "or a block was requested by the consumer, on the basis of a material misrepresentation of fact by the consumer relevant to the request or block; or"

Page 1, remove lines 18 and 19

Page 1, line 20, replace "agrees that portions of the blocked information or all of it were" with "obtained possession of money or goods, services, or money as a result of the blocked transaction or transactions."

Page 1, remove lines 21 through 24

House Amendments to HB 1500 - Judiciary Committee 02/02/2005

Page 2, remove lines 1 through 4

Page 2, line 5, replace "blocked" with "a block of" and replace "unblocked pursuant to" with "declined or rescinded under"

Page 2, line 9, replace "The prior presence of the blocked information in the" with "If a consumer reporting agency rescinds a block, the presence of information in the file of a consumer before the blocking of the information is not evidence of whether the consumer knew or should have known that the consumer obtained possession of any goods, services, or money as a result of the block."

Page 2, remove lines 10 through 21

Page 2, line 22, replace "5." with "4."

Page 2, line 24, replace "a violation of this section" with "identity theft as defined by the Fair Credit Reporting Act [Pub. L. 90-321; 84 Stat. 1127; 15 U.S.C. 1681 et seq.]"

Page 2, line 25, replace "6." with "5."

House Amendments to HB 1500 - Judiciary Committee 02/02/2005

Page 3, after line 10, insert:

- "6. Except as otherwise prohibited by the Fair Credit Reporting Act [Pub. L. 90-321; 84 Stat. 1127; 15 U.S.C. 1681 et seq.], a violation of this section is a violation of chapter 51-15. The attorney general may enforce violations of this section. The attorney general, in enforcing this section, may seek all remedies and penalties in chapter 51-15. The remedies, duties, prohibitions, and penalties of this section and chapter 51-15 are not exclusive and are in addition to all other causes of action otherwise provided by law."

Renumber accordingly

Date: 2/1/05
Roll Call Vote #: 1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1500

HOUSE JUDICIARY COMMITTEE

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken To Pass as Amended

Motion Made By Rep. Delmore Seconded By Rep. Maragos

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	✓		Representative Delmore	✓	
Representative Maragos	✓		Representative Meyer	✓	
Representative Bernstein	✓		Representative Onstad	✓	
Representative Boehning	✓		Representative Zaiser	A	
Representative Charging	✓				
Representative Galvin	✓				
Representative Kingsbury	✓				
Representative Klemin	✓				
Representative Koppelman	✓				
Representative Kretschmar	✓				
	X				
	X				
	X				
	X				

Total (Yes) 13 No 0

Absent 1

Floor Assignment Rep. Meyer

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

REPORT OF STANDING COMMITTEE

HB 1500: Judiciary Committee (Rep. DeKrey, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1500 was placed on the Sixth order on the calendar.

Page 1, line 1, after "fraud" insert "; and to provide a penalty"

Page 1, line 3, after "agencies" insert "- Enforcement - Penalty"

Page 1, line 6, replace "police" with "identity" and after the first comma insert "as defined by that Act,"

Page 1, line 7, replace "thirty" with "four business"

Page 1, line 9, after the first "of" insert "identify theft defined by that Act, or"

Page 1, line 10, replace "a police report" with "an identity theft report, as defined by that Act,"

Page 1, line 13, after "information" insert a comma and remove ", in the exercise of good faith and judgment,"

Page 1, line 14, replace "believes" with "reasonably determines"

Page 1, line 15, replace "due to a misrepresentation of a material fact by" with "in error or a block was requested by the consumer in error;"

Page 1, remove line 16

Page 1, line 17, replace "due to fraud, in which the consumer participated" with "or a block was requested by the consumer, on the basis of a material misrepresentation of fact by the consumer relevant to the request or block; or"

Page 1, remove lines 18 and 19

Page 1, line 20, replace "agrees that portions of the blocked information or all of it were" with "obtained possession of money or goods, services, or money as a result of the blocked transaction or transactions."

Page 1, remove lines 21 through 24

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Page 2, line 5, replace "blocked" with "a block of" and replace "unblocked pursuant to" with "declined or rescinded under"

Page 2, line 9, replace "The prior presence of the blocked information in the" with "If a consumer reporting agency rescinds a block, the presence of information in the file of a consumer before the blocking of the information is not evidence of whether the consumer knew or should have known that the consumer obtained possession of any goods, services, or money as a result of the block."

Page 2, remove lines 10 through 21

Page 2, line 22, replace "5." with "4."

Page 2, line 24, replace "a violation of this section" with "identity theft as defined by the Fair Credit Reporting Act [Pub. L. 90-321; 84 Stat. 1127; 15 U.S.C. 1681 et seq.]"

Page 2, line 25, replace "6." with "5."

Page 3, after line 10, insert:

- "6. Except as otherwise prohibited by the Fair Credit Reporting Act [Pub. L. 90-321; 84 Stat. 1127; 15 U.S.C. 1681 et seq.], a violation of this section is a violation of chapter 51-15. The attorney general may enforce violations of this section. The attorney general, in enforcing this section, may seek all remedies and penalties in chapter 51-15. The remedies, duties, prohibitions, and penalties of this section and chapter 51-15 are not exclusive and are in addition to all other causes of action otherwise provided by law."

Renumber accordingly

2005 SENATE JUDICIARY

HB 1500

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1500

Senate Judiciary Committee

☐ Conference Committee

Hearing Date March 21, 2005

Tape Number	Side A	Side B	Meter #
1	X		0.0 - 628
Committee Clerk Signature <i>Maria L. Salberg</i>			

Minutes: Relating to provide protection of victims of ID fraud; penalty

Senator John (Jack) T. Traynor, Chairman called the Judiciary committee to order. All

Senators were present. The hearing opened with the following testimony:

Testimony In Support of the Bill:

Rep. Koppelman, Dist. #13 - Introduced the bill (meter 35) Introduced the bill and gave his testimony - Att. #1 Please hold the bill till we review the Federal Law. The Federal government would then govern.

Sen. Traynor asked if this bill is pre-empted by Federal Law? If it is the Federal Law would dominate over a state law.

Perrell Grossman - Attorney General's Office (meter 290) This bill closely tracts the Federal Governments Dec. 2003 Fair Credit Reporting Act and the Fair and Accurate Transaction Act (FACT). At the time of drafting these amendments, I was aware that there may be an issue of possible preemption. The Consumer Data Industry Assoc. has shared its concerns in this area

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Senate Judiciary Committee
Bill/Resolution Number HB 1500
Hearing Date March 21, 2005

that the language of blocking of trade credit information is pre-empted. While this part is true, after a close review of those acts, I still see credit in this bill on the other issues it brings forth. I would like to provide an amendment for the committee.

Sen. Traynor asked if this would be a hog house amendment? In some ways yes but in others no. Where the Fair Credit Reporting Act and the FACT act are concerned, yes but not in the rest of the bill

Mr. Glenn A. Elliot, Private Citizen - Att. #2

Testimony in Opposition of the Bill

None

Senator John (Jack) T. Traynor, Chairman closed the Hearing until amendments are presented.

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1500

Senate Judiciary Committee

☐ Conference Committee

Hearing Date March 23, 2005

Tape Number	Side A	Side B	Meter #
1	X		3540 - 5428
2	X		800 - end
Committee Clerk Signature <i>Mona L. Kelly</i>			

Minutes: Relating to providing protection of victims of ID fraud; penalty

Senator John (Jack) T. Traynor, Chairman called the Judiciary committee to order. All

Senators were present. The hearing opened with the following committee work:

Rep. Kim Koppelman, Dist. #13 - Introduced amendments Att. #1 and Att. #2. These are a result of the Federal Preemption to not be in conflict of these. Discussed (meter 3500) the amendments in detail.

Perrell Grossman, Attorney Generals Office (meter 3490) Discussed interstate power. Gave an example of the fraud alert process.

Sen. Trenbeath asked where the language comes from? It comes from the FACT Act of 2003 Section 112 referred to as 605A. This language tracks that language. The best aspect of this bill does is the judicial determination. There are many people that have been arrested and rearrested. The wrong person gets arrested for something else someone has done in another state you can know have jurisdiction in your state..

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Senate Judiciary Committee

Bill/Resolution Number HB 1500

Hearing Date March 23, 2005

Senator John (Jack) T. Traynor, Chairman closed the Hearing

Senator John (Jack) T. Traynor, Chairman reopened the Hearing

Sen. Trenbeath made the motion to Do Pass the Amendment and **Senator Hacker** seconded the motion. All members were in favor and motion passes.

Senator Hacker made the motion to Do Pass as amended and **Sen. Trenbeath** seconded the motion. All members were in favor and motion passes.

Carrier: **Senator Hacker**

Senator John (Jack) T. Traynor, Chairman closed the Hearing

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1500

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new chapter to title 51 of the North Dakota Century Code, relating to identity fraud; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new chapter to title 51 of the North Dakota Century Code is created and enacted as follows:

Definitions.

1. "Consumer" means an individual.
2. "Consumer report" has the same meaning as provided in 15 U.S.C. 1681a(d).
3. "Consumer reporting agency" means any person that, for monetary fees or dues or on a cooperative nonprofit basis, regularly engages in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate or intrastate commerce for the purpose of preparing or furnishing consumer reports. The term does not include an agency that compiles and maintains files on consumers on a nationwide basis, as described in 15 U.S.C. 1681a(p).
4. "File", when used in connection with information on any consumer, means all of the information on that consumer reported and retained by a consumer reporting agency regardless of how the information is stored.

Initial fraud alerts. Upon the direct request of a consumer or an individual acting on behalf of or as a personal representative of a consumer, who asserts in good faith a suspicion that the consumer has been or is about to become a victim of fraud or related crime, including identity theft, a consumer reporting agency that maintains a file on the consumer and has received appropriate proof of the identity of the requester shall include a fraud alert in the file of that consumer. The consumer reporting agency shall continue that alert along with any credit score generated in using that file, for a period of not less than ninety days beginning on the date of the request, unless the consumer or the consumer's representative requests that the fraud alert be removed before the end of the period and the agency has received appropriate proof of the identity of the requester for that purpose.

Extended fraud alerts. Upon the direct request of a consumer or an individual acting on behalf of or as a personal representative of a consumer, who asserts in good faith a suspicion that the consumer has been or is about to become a victim of fraud or related crime, including identity theft, a consumer reporting agency that maintains a file on the consumer and has received appropriate proof of the identity of the requester shall:

1. Include a fraud alert in the file of that consumer and continue that alert along with any credit score generated in using that file, during the seven-year period beginning on the date of the request, unless the consumer or the consumer's representative requests that the fraud alert be

removed before the end of that period and the agency has received appropriate proof of the identity of the requester for that purpose; and

2. During the five-year period beginning on the date of the request, exclude the consumer from any list of consumers prepared by the consumer reporting agency and provided to any third party to offer credit or insurance to the consumer as part of a transaction that was not initiated by the consumer, unless the consumer or the consumer's representative requests that the exclusion be rescinded before the end of that period.

Police reports - Judicial determination of factual innocence.

1. An individual who has learned or reasonably suspects that the individual's personal identifying information has been unlawfully used by another, as described in section 12.1-23-11, may initiate a law enforcement investigation by contacting the local law enforcement agency that has jurisdiction over the individual's residence. The law enforcement agency shall take a report of the matter, provide the individual with a copy of that report, and begin an investigation of the facts. If the suspected crime was committed in a different jurisdiction, the local law enforcement agency may refer the matter to the law enforcement agency where the suspected crime was committed for further investigation of the facts.
2. An individual who reasonably believes that the individual is the victim of identity theft may petition the district court in the county in which the alleged victim resides or in which the identity theft is alleged to have occurred, or the court, on its own motion or upon application of the state's attorney, may move for an expedited judicial determination of the individual's factual innocence, if the perpetrator of the identity theft was arrested, cited, or convicted of a crime under the victim's identity, if a criminal complaint has been filed against the perpetrator in the victim's name, or if the victim's identity has been mistakenly associated with a record of criminal conviction. Any judicial determination of factual innocence made under this section may be heard and determined upon declarations, affidavits, police reports, or other material, relevant, and reliable information submitted by the parties or ordered to be part of the record by the court. If the court determines that the petition or motion is meritorious and that there is no reasonable cause to believe that the victim committed the offense for which the perpetrator of the identity theft was arrested, cited, convicted, or subject to a criminal complaint in the victim's name, or that the victim's identity has been mistakenly associated with a record of criminal conviction, the court shall find the victim factually innocent of that offense. If the victim is found factually innocent, the court shall issue an order certifying that determination.
3. After a court has issued a determination of factual innocence under this section, the court may order the name and associated personal identifying information contained in court records, files, and indexes accessible by the public deleted, sealed, or labeled to show that the data is impersonated and does not reflect the defendant's identity.
4. A court that has issued a determination of factual innocence under this section may vacate that determination if the petition or any information submitted in support of the petition is found to contain any material misrepresentation or fraud.

Enforcement - Powers - Remedies - Penalties. The attorney general may enforce this chapter. In enforcing this chapter, the attorney general has all the powers provided in this chapter or chapter 51-15 and may seek all remedies in this chapter or chapter 51-15. A violation of this chapter constitutes a violation of chapter 51-15. The

remedies, duties, prohibitions, and penalties of this chapter are not exclusive and are in addition to all other causes of action, remedies, and penalties as provided in chapter 51-15 and as otherwise provided by law."

Renumber accordingly

Date: 3/23/05
Roll Call Vote #: 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1500

Senate Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Move Do Pass Amendment by Perrell Grossman

Motion Made By Senator Trenbeath Seconded By Senator Hacker

Senators	Yes	No	Senators	Yes	No
Sen. Traynor	✓		Sen. Nelson	✓	
Senator Syverson	✓		Senator Triplett	✓	
Senator Hacker	✓				
Sen. Trenbeath	✓				

Total (Yes) _____ 6 No _____ 0

Absent _____ 0

Floor Assignment _____

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

Date: 3/23/05
Roll Call Vote #: 2

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1500

Senate Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass As Amended

Motion Made By Senator Hacker Seconded By Senator Trenbeath

Senators	Yes	No	Senators	Yes	No
Sen. Traynor	✓		Sen. Nelson	✓	
Senator Syverson	✓		Senator Triplett	✓	
Senator Hacker	✓				
Sen. Trenbeath	✓				

Total (Yes) _____ 6 No _____ 0

Absent _____ 0

Floor Assignment Sen Hacker

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

REPORT OF STANDING COMMITTEE

HB 1500, as engrossed: Judiciary Committee (Sen. Traynor, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1500 was placed on the Sixth order on the calendar.

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Extended fraud alerts. Upon the direct request of a consumer or an individual acting on behalf of or as a personal representative of a consumer, who asserts in good faith a suspicion that the consumer has been or is about to become a victim of fraud or related crime, including identity theft, a consumer reporting agency that maintains a file on the consumer and has received appropriate proof of the identity of the requester shall:

1. Include a fraud alert in the file of that consumer and continue that alert along with any credit score generated in using that file, during the

seven-year period beginning on the date of the request, unless the consumer or the consumer's representative requests that the fraud alert be removed before the end of that period and the agency has received appropriate proof of the identity of the requester for that purpose; and

2. During the five-year period beginning on the date of the request, exclude the consumer from any list of consumers prepared by the consumer reporting agency and provided to any third party to offer credit or insurance to the consumer as part of a transaction that was not initiated by the consumer, unless the consumer or the consumer's representative requests that the exclusion be rescinded before the end of that period.

Police reports - Judicial determination of factual innocence.

1. An individual who has learned or reasonably suspects that the individual's personal identifying information has been unlawfully used by another, as described in section 12.1-23-11, may initiate a law enforcement investigation by contacting the local law enforcement agency that has jurisdiction over the individual's residence. The law enforcement agency shall take a report of the matter, provide the individual with a copy of that report, and begin an investigation of the facts. If the suspected crime was committed in a different jurisdiction, the local law enforcement agency may refer the matter to the law enforcement agency where the suspected crime was committed for further investigation of the facts.
2. An individual who reasonably believes that the individual is the victim of identity theft may petition the district court in the county in which the alleged victim resides or in which the identity theft is alleged to have occurred, or the court, on its own motion or upon application of the state's attorney, may move for an expedited judicial determination of the individual's factual innocence, if the perpetrator of the identity theft was arrested, cited, or convicted of a crime under the victim's identity, if a criminal complaint has been filed against the perpetrator in the victim's name, or if the victim's identity has been mistakenly associated with a record of criminal conviction. Any judicial determination of factual innocence made under this section may be heard and determined upon declarations, affidavits, police reports, or other material, relevant, and reliable information submitted by the parties or ordered to be part of the record by the court. If the court determines that the petition or motion is meritorious and that there is no reasonable cause to believe that the victim committed the offense for which the perpetrator of the identity theft was arrested, cited, convicted, or subject to a criminal complaint in the victim's name, or that the victim's identity has been mistakenly associated with a record of criminal conviction, the court shall find the victim factually innocent of that offense. If the victim is found factually innocent, the court shall issue an order certifying that determination.
3. After a court has issued a determination of factual innocence under this section, the court may order the name and associated personal identifying information contained in court records, files, and indexes accessible by the public deleted, sealed, or labeled to show that the data is impersonated and does not reflect the defendant's identity.
4. A court that has issued a determination of factual innocence under this section may vacate that determination if the petition or any information submitted in support of the petition is found to contain any material misrepresentation or fraud.

Enforcement - Powers - Remedies - Penalties. The attorney general may enforce this chapter. In enforcing this chapter, the attorney general has all the powers provided in this chapter or chapter 51-15 and may seek all remedies in this chapter or chapter 51-15. A violation of this chapter constitutes a violation of chapter 51-15. The remedies, duties, prohibitions, and penalties of this chapter are not exclusive and are in addition to all other causes of action, remedies, and penalties as provided in chapter 51-15 and as otherwise provided by law."

Renumber accordingly

2005 HOUSE JUDICIARY

CONFERENCE COMMITTEE

HB 1500

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1500/A

House Judiciary Committee

☒ Conference Committee

Hearing Date 4/6/05

Tape Number	Side A	Side B	Meter #
1	xx		10-31.1
Committee Clerk Signature <i>Dawn Penrose</i>			

Minutes: 5 members present, 1 member absent (Sen. Nelson).

Representative Galvin: Attendance was taken. Called to order. There has been such extensive amending to this bill, that I think a good start would be to have one of the Senate conferees go through their amendments.

Sen. Hacker: First off, I did get an opportunity to contact Parrell Grossman, who along with Rep. Koppelman, had an opportunity to construct a bill that is different in that sense than the current bill, which has a hog house amendment. However, it addresses a lot of the same issues. The First Engrossment of HB 1500 was preempted by federal law, and thus we hog housed it, and to my knowledge, with the support of Representative Koppelman and Parrell Grossman, came up with the current bill and I can go through and explain the things that the current bill specifically does. It provides ID theft protection, fraud alerts to consumer reporting agencies. These reporting agencies would not be "the nationwide big three" reporting agencies, because they are already preempted to do this sort of thing, by federal law; but rather the regional

reporting agencies, if you have a reporting agency in your region, that did things such as renters of apartments and things. So there may be a consolidated group of rental property owners that are together, and they say don't rent to these people because they are bad renters. That's not on one of the large reporting agencies, that's a regional reporting agency, and this legislation would require that, if there's ID theft for an individual that was renting at one of those units, and this whole group of people that won't allow you at different rental property, that regional agency would flag their account or their ID. It also provides the consumer, to provide and place a fraud alert on their own file for up to 90 days. It also extends the fraud alert to all ID theft victims to extend the alert and credit score procedures for up to 7 years, of which for a 5 year period, it prohibits consumer reporting agencies from including the consumer on any consumer list provided to a third party; that would be to send you credit card applications, etc.

Representative Galvin: Can you tell me where you're at in your amendments.

Sen. Hacker: The initial fraud alerts are on page 1, the 90 day fraud alert is on page 2 at the very top, up to 7 years is the extended fraud alert section, on page 2, line 6-22, and subsection 2 addresses the 5 year period, where third party-type vendors, etc., that are not initiated by the consumer, they cannot continue to send those types of things to you in the mail. Beginning there where it says police reports, judicial determination of factual innocence, this simply brings the law enforcement in to investigate the reports of ID theft, and to take a police report. This helps the consumer, who the ID was taken from, in processing their theft report. And then following, provides for a, here on page 3, establishes a procedure for ID theft victims, who have their ID falsely associated with criminal behavior. This would be an example if a thief of the ID, uses your identity in criminal acts, gets charged and you go to apply for something and it's found in

your history that you had stolen a vehicle, however, you never did, because the person that was charged, used your identification in the case, it provides for some proof of innocence. That's basically what the hog house amendment does. For further explanation, I would refer to Parrell Grossman if you have further questions.

Representative Galvin: Thank you. Mr. Grossman.

Parrell Grossman, AG's Office: I think Sen. Hacker's done an excellent job of explaining the bill, the Attorney General's worked closely with Representative Koppelman on this particular legislation. Initially there were concerns about preemption in the area of credit trade line blocking. Representative Koppelman took another look at that legislation and as did the AG's office, and spent a lot of time reviewing the FACT, the Fair and Accurate Credit Transactions Act, which amended the Fair Credit Reporting Act, to examine those issues of federal preemption and it concluded that those original provisions regarding trade line blocking were, in fact, preempted. So along the same lines, Representative Koppelman still wanted to do something that would help the consumers, and I think he saw an opportunity in the area of this initial fraud alert, which is going to have a very minimal impact. Certainly fraud alerts, as to the nationwide credit reporting agencies, such as Experian, EquiFax and TransUnion are preempted. Those are going to be the majority of instances in which, I guess, take reports of identity theft. These particular provisions regarding fraud alert, which are not preempted and the states are free to pass regulations in this area consistent with the federal legislation, will only address these regional consumer reporting agencies, or nationwide specialty reporting agencies. So let's say there's a nationwide landlord/tenant registry, or a regional landlord/tenant registry, that maintains this consumer information, then those individuals would have to take a report from a victim of

identity theft and would have to place a fraud alert on those particular files. Or let's say there was a regional consuming reporting agency that was comprised of MT, MN, WY, SD and ND, then that would be a regional consumer reporting agency and those regional agencies would be required to comply with this. Although the majority of instances of identity theft and fraud alerts would be reported to the nationwide consumer reporting agencies, one can foresee the possibility of a regional consumer reporting agency being more proactive in this area and I think, in that regard, it would be prudent to have them follow these same requirements for a fraud alert.

Certainly, I don't think you wouldn't want credit extended, on behalf of an ID theft victim, if they went in and the business that the consumer is doing business with, didn't bother to check with the national nationwide credit reporting agency, but they checked with the regional credit reporting agency and if that regional or specialty credit reporting agency didn't have a fraud alert on that file, then they would ostensibly give credit to that ID thief, again, on behalf of the ID victim's name. So I think what Representative Koppelman's amendments do, is sort of close a gap in that particular area, and as long as we were making these amendments, these hog house amendments, which we, of course, maintain that the bill has maintained the whole focus of identity thefts, although there were substantial amendments that can be characterized as hog house amendments, we have continued to deal with the same topic of ID theft and how to assist identity theft victims in this legislation. That presented this opportunity to provide for this judicial determination of factual innocence, so that if you or I were to become a victim of identity theft, and someone is using our name and they're arrested for criminal charges over in MN or SD, we certainly don't want to be arrested and brought before the court on their behalf, because they think then when they stop me, they think that Parrell Grossman is charged with these

outstanding criminal warrants in these other states, and they're going to bring me before the judge and I'm going to have to explain that it's all a big mistake and I would hope to have to do that only one time, and then I would be able to go to a judge and provide all of this proof, that in fact, I've never been in California, therefore I could not have been charged with burglaries or non-sufficient fund check charges, etc., in those other states; it is not me, and the court could give me this certificate, and even have my record expunged, since it really isn't my criminal record.

So we think that would be very beneficial legislation in that regard. Then it also makes mandatory, what I think most ND law enforcement agencies are already doing, and that is to take a police report on ID theft victims, and that can become really important when you've been an ID theft victim and you have to file a report with the Federal Trade Commission and you want to obtain copies from one of your creditors. You're a victim of ID theft, and they say that you borrowed \$8,000 against your credit card, and you say it's not me, I've been a victim of identity theft and they say, oh yes, it's your name, it is you. And as you are going back and forth, you ask to see the underlying documentation, well why is it that you think I charged \$8,000 worth of goods or services on my VISA card, and they would not even have to show you the underlying documentation unless you had filed a police report with a law enforcement agency. So if that ND law enforcement agency, didn't take a report you would never be able to obtain those underlying copies or documentation. And for almost all other purposes, with the credit reporting agencies, they would accept Federal Trade Commission Affidavit of Identity Theft or the ND Attorney General's Affidavit of Identity Theft, but they have afforded the law for some protection to creditors and they do not have to provide the underlying documentation to an alleged or actual ID theft victim unless that victim has a police report. I think it's probably a good idea for the

Legislature to simply mandate, what I believe is already occurring in the state of ND and simply take that police report. Then in the last part of the legislation, or the amendments, merely provide the AG some enforcement authority, so that if there actually were some circumstances in which a regional consumer reporting agency didn't place a fraud alert on the ID theft victim's consumer file, then that individual could report that to the AG's office and we could look into that and determine what has occurred and why that wasn't done. Those are essentially the amendments.

Representative Onstad: When it left the House, there is a provision in there that says it does not apply to consumer reporting agencies to act as resellers, check services, etc. That part isn't in this new bill, that was taken out because it wasn't used because of our statutes, here?

Parrell Grossman: That's a good question. That essentially related to the blocking of trade line credit information, so that was removed in the Senate amendments that were then presented on the Senate side, because that related to the blocking of the trade line credit information, which is in fact preempted by federal law, the Fair Credit Reporting Act, and so that's why that particular language was removed and Representative Koppelman kind of limited the amendments to this issue of fraud alerts to kind of address this one particular area, where it seemed like there was a gap between federal law and state law as to these regional or specialty consumer reporting agencies.

Representative Onstad: So basically, this made it more specific, then.

Parrell Grossman: Yes.

Sen. Hacker: To my knowledge, it also moved liability for say, an auto dealer who pulls up someone's credit and it is flagged as ID theft, and they extend credit to the thief, the liability is now on that dealership for doing that, is that correct.

Parrell Grossman: I think arguably that would place some liability on the business that extended credit to an identity thief and whether that occurred as a result with the check with the nationwide consumer reporting agency or now, whether it occurred with one of these regional reporting agencies, that really is the whole idea; if you think about the fact that I have now reported to the three major credit reporting agencies that I've an ID theft victim and yet, two months later somebody walks into a car dealer, pretends to be me, and takes out a car loan in my name, and if they fail to check with that report with the credit reporting agencies and find out that, in fact, my account was flagged and they shouldn't have extended credit, it does really place some additional responsibility in those circumstances, at least that's what the private Bar would probably argue in those kinds of circumstances. So it's just to make sure that those alerts are placed on the file to provide that additional level of protection for ID theft victims. There is a history of ID theft victims, sort of being revictimized over and over again, for whatever reasons. Often times, consumers will report these identity thefts, and yet a number of months later, against the very same credit card, new charges will pop up again, and I think it becomes very frustrating for these consumers that, how many times should they have to report that that wasn't my credit card account, and yet 8 or 9 months after I've addressed this and filed an ID theft report with the credit reporting agency, here we go again with the same credit card company. Hopefully that will limit that, when that person goes and tries to take out a new loan at a bank, etc., then the fraud alert will be on the file, whether that fraud alert is on the file with the three major nationwide

credit reporting agencies, or whether it's simply on file with one of these regional consumer reporting agencies, it should provide that layer of protection for that consumer.

Sen. Syverson: Can you describe the definitions in 15 USC about regional and national reporting systems. In other words, if I'm in 49 states, am I national.

Parrell Grossman: That's a good question. I'll have to get my materials and I'll have to read the definition of a nationwide and you'll have to extrapolate from there. They only define nationwide and they don't define consumer regional. But essentially, a nationwide, in a nutshell, is Experian, TransUnion and EquiFax. But I'd be happy to get it, it's a short one paragraph definition. I'd be happy to read it, but by exclusion, everything that, if it's not a nationwide, then it's essentially not preempted and then it must be a regional or a nationwide specialty consumer reporting agency and nationwide specialty consumer reporting agencies aren't included or encompassed with that definition of what a nationwide consumer reporting agency is. Apparently, they have to be specifically one of those three, although they don't say that.

Sen. Syverson: Kind of the point I'm getting at, is if you are residing within the boundaries of a defined region, and your residence happens to be close to the edge of that region, and since most ID thefts occur by family members, and they live across the state line, and you reported it to your regional reporting facility, but 50 miles away, this dude is using your ID and getting by, without any legal protections for you, unless the national becomes involved, but if we don't involve the national, you see what this problem is.

Parrell Grossman: Yes, I do see what you're getting at, but it's sort of a matter of the state of ND is limited in what it can do. Hopefully, the fraud alert will kick in for the nationwide consumer reporting agencies and, in most instances I would guess, that those fraud alerts will

actually be filed and I would guess that about 95% or higher of the creditors, will actually check with the nationwide consumer reporting agency. But yes, in the situation you described, if you were on the border of MN and WI, and MN happened to belong to the regional reporting agency and WI didn't, in that particular area, there certainly wouldn't be any overlap, if you were to report it to that regional consumer reporting agency that included MN, it wouldn't necessarily get reported to a regional consumer reporting agency that included WI. There certainly could always be some gap and we can only hope that the usual, ordinary, and normal process of filing these fraud alerts with the nationwide credit agencies is going to catch about 95% or more of the victims that need that fraud alert on their file. That's probably the best I can say in that regard.

Representative Koppelman: I think Sen. Hacker and Mr. Grossman have done an excellent job of explaining the amendments, and I just want to complement the AG's office and the Consumer Fraud Division, under the leadership of Mr. Grossman, because I think they do a good job for our state in a lot of ways. As they have explained what this bill seeks to do, and with the Senate amendments, it basically dovetails with the national alert system that's out there, and catch what might fall between the cracks and Sen. Syverson makes a good point. There are other things that may still fall through the cracks, but we can only do what we can do in ND, and I think this bill is a real good step in that direction. Unless the committee has more questions, I would move that the House accede to the Senate amendments on HB 1500.

Sen. Syverson: Seconded.

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House Judiciary Committee
Bill/Resolution Number HB 1500
Hearing Date 4/6/05

Representative Galvin: The motion has been made and seconded that the House accede to the Senate amendments. We will have the clerk take the vote.

5 YES 0 NO 1 ABSENT (Sen. Nelson)

HOUSE WILL ACCEDE TO THE SENATE AMENDMENTS.

Representative Galvin: This committee is dissolved, meeting adjourned.

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1500/B

House Judiciary Committee

☒ Conference Committee

Hearing Date 4/11/05

Tape Number	Side A	Side B	Meter #
1	xx		0-19.8
Committee Clerk Signature			

Minutes: 6 members present.

Representative Galvin: Attendance was taken. Called the meeting to order. We're reconvened here today, as it appears that the resellers have no method of placing fraud alerts on the credit reports prepared by nationwide agencies.

Representative Koppelman: If I could further comment on this, I apologize for our committee having to reconvene. We had an hour long conference call, Parrell Grossman from the AG's office, and three people from credit reporting entities in ND, and Mr. Grossman asked me to sit in on that on Thursday, to discuss the question of what they actually do and how this would work in their business. We're dealing with specifically the fraud alert portion of the legislation. If you remember from our discussion last time, basically what that would do is, for victims of identity theft, it would allow them to ask for a fraud alert to be placed on their record, so that is someone is dealing with their credit report, it would be sort of a red flag and that person would look closer to make sure that the person they're dealing with is actually the real person and

not the identity thief. The problem we encountered in talking to the folks that do reselling of this information, is that, the way things are today with technology, is a little different than they were even a few years ago. A few years ago, as I understand their business, they would go to one of the big "3" national credit reporting agencies, and they would pull a report. If, for example, I applied for a loan at the bank, and he were to request a credit report on me, they would go and get the report from one of those three agencies, then they would do local searches, they might go to the courthouse and find out if there is any information there that would be germane to that document and so on; and they kind of meld all that information together and then give the report to the entity that was requesting it. The way things work now, is #1, those major national credit reporting agencies, in many cases, have purchased the local ones, or at least the division of the local credit bureaus that do that function, so they're kind of affiliate offices. Secondly, the way they provide the data, is that it's all done electronically and often times over the Internet. So in the same scenario I just described, the person asking for the information would put in a request, or pay for that report, the entity selling it to them would simply give them a link or something, so that they could hook up on the Internet, and it would flow straight through. The information wouldn't even physically pass through their office, so they would have no way of putting a fraud alert, that a ND citizen might give them. They can, of course, do the national blocking, which is preempted by federal law, so they can contact those big three and get that information blocked. So the question is, for the purpose of this bill and what we're trying to accomplish in ND, if all they do is resell it, Mr. Grossman and I are both convinced that it probably should be exempted, because we could give them a fraud alert, but they wouldn't know what to do with it. There's no real practical way for them to report it. So that's really why we got together. I think we were of

the opinion that the way the bill was written, with some of the definitions and things, and with the legislative intent, I think they probably would have been all right, even without changing it, but I visited with the Majority Leader in the House, and he felt it was best to get it right and make clear in the amendment that that was our intent. So that's why he suggested that we reconvene. One other issue has come up since that time, and let me preface this by saying, we want to be a little careful, I think, because we don't want this to become a parade of "me too's" with people asking for exemption. We realize that it is an inconvenience for businesses that deal in credit information, or consumer reporting information to deal with fraud alerts. That's a fact. However, that's kind of the point of the legislation. So we don't want everyone coming in and just saying "exempt us because we don't want to hassle with this too", but we did hear of one other organization, the folks that do the check verification business and their concern is that they, too, would have no way to really deal with the fraud alert issue. They deal strictly with looking at a routing number on a check and your drivers license number to verify that it's you, and then it goes through, they either say yes or no; based on whether there have been any NSF checks on that account. The question I asked about that is, well if somebody were to put a fraud alert on their account, wouldn't you want to be able to have the ability to put a fraud alert on that account. The answer was, well if that happened, #1, these organizations would be denying checks probably after the first NSF check passed anyway, and #2, what the consumer ought to do is go to the bank, close that account and open a new account. So the question of how practically beneficial it would be to have the check folks involved is another issue. So I have two potential amendments for the committee to look at. The first one I'll pass out, and they look almost identical and I'll explain where the difference is. We talked to LC and they said the proper way

to do this, if the committee decides to make these changes, is that we would need to have the Senate recede from its amendments, and that the Conference Committee would amend.

Sen. Hacker: When you were on the phone with these check verification companies, or whoever brought this forth, was there any discussion about the possible value in using that sort of equipment to track and find out where these people that stole your identity are at, I understand that at the site they run a check through and if it's flagged, they could say, wow this guy is actually at Bob's gas station, etc.

Representative Koppelman: That's a good point, I didn't ask that question. I believe Marilyn Foss, who is the lobbyist that represents those folks is here. She might be able to answer that question.

Marilyn Foss, TeleCheck: TeleCheck is a nationwide, check services company, you see their decal around ND on cash registers. One of the services they do, is check verification in ND, and they are licensed and regulated in ND, by the Dept. of Financial Institutions as a collections agency. To respond directly to Sen. Hacker's question, I can't honestly say whether it would be possible for them to keep track of where checks are being offered. That is not their business at this point. At least, it's not part of their business that is subject to this legislation. One of the points that we were discussing with Representative Koppelman this morning, in which he has also made with respect to the resellers, is their business, is that the amendments that are being proposed to the bill are to reflect the business these people are now in. Our check services entities, you run a check through a micro reader and they say yes or no. If there's a fraud alert, presumably the answer would be no. But if an NSF check has been written on the account, the answer is no. So they don't keep files to receive a fraud alert and they also don't have the

mechanisms, because it's not their business to announce about fraud alerts; even though as they are in the fraud prevention business, overall. So what you are suggesting may be a business, but it's not the business they have at this moment.

Sen. Syverson: I'm not convinced that I understand the national reseller being unable to flag an account number to indicate that there is a fraud alert on that account. We're talking about computers, we're talking about account numbers that have been established and if a scenario is as Representative Koppelman indicated, they just pass a link to the purchaser of the information, why can they not then establish on that unique and specific account number, data that would indicate to the purchaser and receiver of that data, that there is indeed a fraud alert associated with that account. I just don't understand. I would be willing to listen for an answer.

Representative Koppelman: That's an excellent question, the same question I asked, among many others, and my understanding is that this information doesn't even pass through their control. So, in other words, if you were to have a fraud alert on an account in ND, if you had an identity thief meddling with your information, for example, and you were to alert one of these credit bureaus, and one of them was in Fargo that we talked to, they would have no way, they say, of either maintaining that information, and I said open a file and put it in a drawer, or open a database on your computer. But they said, they have no way of melding that into a national report because they gather no local information that they include in that report. Now the other aspect of it, that gives me some comfort, is the fact that the federal law does allow for you, if you are a victim of identity theft, to have your fraudulent information, that might be on your credit information, blocked through the federal law and the national organizations. So, if that occurs, and if all the local person is doing, is reselling that information, your goal's been accomplished,

because in the federal sense, it's blocked. I probed very hard on the same questions you're asking, and I guess Mr. Grossman became convinced in listening, and I guess I did too, that we could leave them in, and we could make them, they said if you do this, we will open a file, but we feel bad because there isn't anything we can do with it. There's no way we can report it, or because we don't keep files on consumers, we don't maintain this data, it's there when the customer orders it and pays for it and that's it.

Representative Onstad: On the same line as Sen. Syverson, the real concern is the reselling of the information, and then you go on from one agency selling to another agency, and they turn around and pass it on and they keep passing it from one to the next, that will never end. So if the original information that is being moved out there is part of a theft, we could look out at this 4 or 5 times down the road. You are multiplying every time that it's out there. If it's true that it's identity theft, and one time it's sold and the next time it's sold, you're multiplying that a lot. If it goes out three times, I'm with the Senator, it just seems to me there's something that could be done there. I can understand the check writing, and that portion. But this reselling of names, I think the purpose of the original legislation was probably to address this kind of situation. That's something we need to put our hands around a little bit, before we kick this out. Since we weren't a part of your conversation, so that might put you at an advantage and us at a disadvantage.

Representative Koppelman: Well, believe me I went into that conversation, asking and being every bit as skeptical as you folks are, and probably more so, because I didn't want to see a lot of exemptions created, because as you point out, I think that would undermine the effectiveness of the legislation; but given the description that I heard about how these organizations operate, given the protections that are there under federal law to correct that initial

list, that you were talking about, Representative Onstad, so that it isn't continually propagating false information, but hopefully fix it at the source. I guess I became convinced that this is probably appropriate. I can explain the amendments if you like. The two sets of amendments that I passed out, if you're pouring over them and trying to figure out the difference, it's in item 3, in the definitions on the first page. Right at the end of that paragraph, by the way the rest of the amendment that you see before you is identical to the bill we've already passed. The only difference is how we deal with definitions. The one exempts resellers, you'll see right after the words, "as described in 15 USC 1681a(p)". That's where it ends in the current version, then adds "or a reseller as defined 15 USC 1681a(u), when engaged in the act of the reselling of consumer information or other information,".... Maybe I should stop and explain why it's worded that way. This doesn't exempt the organization, it exempts the act of reselling. That's an important differentiation, because one of the two entities we talked to, only deals with reselling, the other one deals with additional business. For example, they do the landlord/tenant kind of screening. So if someone applies to rent an apartment, they might contract with one of these organizations and furnish them with an application that a potential renter has filled out and the organization would go back and do some research into maybe contacting prior landlords, checking other information to find out if they're a good tenant or not, etc. They would not be exempted under the amendment before you, for that activity. They would strictly be exempted for the activity of reselling the credit report. The second version of the amendment before you includes what I've just described, and it also adds, "or a 'nationwide specialty consumer reporting agency' that maintains 'check writing history' as defined in 15 USC 1681a(w)(3)." So one version just exempts the resellers, that was the version we were prepared to come to the

committee with before the check writing issue came up, the other version includes the check writing issue as an exemption. Those are the options before the committee.

Representative Galvin: Does anyone have a motion.

Representative Koppelman: I move that we adopt the second version of the amendment exempting the resellers and the check writing.

Sen. Hacker: Seconded.

Representative Onstad: When we get to paragraph 3, that says, it's directed to an agency that collects information, we want to stop it. Representative Koppelman, the term does not include an agency that compiles and maintains files on consumers.

Representative Koppelman: That's correct.

Representative Onstad: That's only on a nationwide basis, only national companies. So we're going to exempt national companies, but not locals.

Representative Koppelman: Just to clarify, and I know this gets kind of confusing, but the reason we had the conference committee in the first place, or I should say the reason that the Senate extensively amended the bill, was because the time it was in the House and the Senate, we discovered that some of what we were trying to do in the House version of the bill, is already done under federal law; so therefore, it preempts states from doing it. We can't, the federal government is basically saying, I suppose under the supremacy clause and the Interstate Commerce laws, "we've got this covered, and the states shouldn't meddle here". So we came to the Senate with the amendment that dealt with areas where the federal law didn't apply, so that exemption you just talked about, Representative Onstad, is exempted from what federal law already covers, and yes, that is the national agencies that compile and maintain files on the

consumers on a nationwide basis, and those are the reports that are being resold. So the motion before us, would exempt folks that merely take that information that is compiled on a national basis, that the federal government now monitors and regulates and sells it to somebody else without adding to it or disrupting it in any way, or even handling it sometimes, physically. Then, of course, the check writing issue we talked about.

Representative Onstad: I've asked this before, Representative Koppelman, so really we're only looking at the local level, the person who goes out and does a background check, like if you're a poor renter, right.

Representative Koppelman: There are several areas that this bill would cover, I don't have the list in front of me, unfortunately, and it wouldn't be only locally, it would be people that do business in ND, they wouldn't have to be a local entity, but if they've got a nexus here, they're doing business in ND, ND would have a right to, under this bill, regulate their activity, at least as it applies to ND consumers. So it is a lot broader, but yes, we are narrowing it by exempting these two, we are narrowing what we had before us a week or two ago when we last met. But, bear in mind, that the bill, this is just the fraud alert portion of the bill we're discussing, so it narrows the scope but it essentially tries to catch what falls between the cracks. It gets to those areas that the federal law doesn't, and it also deals with some important areas like police departments being required to accept police reports from victims of identity theft, which are required for an identity theft victim to pursue the issue in many areas and gather information on their accounts from credit card companies, etc. It also allows ND courts the authority to expunge erroneous criminal record information on someone's record, a victim of identity theft, and it also allows the AG's office to enforce these measures. So, I believe the bill still does what we're

trying to accomplish, but granted we are exempting some things that we think may be sort of an exercise in futility.

Representative Galvin: Any further discussion.

Representative Koppelman: I was just handed something from Marilyn Foss, that might help further answer Representative Onstad's question. The other areas that were exempted by federal law, meaning that states have the right to enact legislation regarding them if they choose, in addition to the check writing history folks, and of course, the resellers we talked about, are medical records, payment people, people that compile those kinds of records, residential or tenant history, employment history, insurance claims people. There are some significant areas that this bill would still cover.

Representative Galvin: We will take a roll call vote on version 2 of the amendment presented by Representative Koppelman.

6 YES 0 NO 0 ABSENT MOTION CARRIED.

SENATE RECEDE FROM SENATE AMENDMENTS AND ADOPT AMENDMENTS.

**REPORT OF CONFERENCE COMMITTEE
(ACCEDE/RECEDE)**

Bill Number **HB 1500** as engrossed:

Date: 4/6/05

Your Conference Committee **HOUSE JUDICIARY**

For the Senate:

For the House:

YES / NO		YES / NO	
Sen. Hacker	X	Rep. Galvin	X
Sen. Syverson	X	Rep. Kretschmar	X
Sen. Nelson	<i>Absent</i>	Rep. Onstad	X

recommends that the HOUSE ACCEDE to

the Senate amendments on HJ page(s) 1455 -- 1457

XXX, and place HB 1500 on the Seventh order.

____, adopt (further) amendments as follows, and place _____ on the Seventh order:

____, having been unable to agree, recommends that the committee be discharged and a new committee be appointed.

Engrossed **HB 1500** was placed on the Seventh order of business on the calendar.

DATE: 4/6/05

CARRIER: Rep. Galvin

LC NO.	of amendment
LC NO.	of engrossment
Emergency clause added or deleted	
Statement of purpose of amendment	

MOTION MADE BY: Rep. Koppelman

SECONDED BY: Sen. Syverson

VOTE COUNT 5 YES 0 NO 1 ABSENT (Sen. Nelson)

Revised 4/1/05

Insert LC: .

REPORT OF CONFERENCE COMMITTEE

HB 1500, as engrossed: Your conference committee (Sens. Hacker, Syverson, Nelson and Reps. Galvin, Koppelman, Onstad) recommends that the **HOUSE ACCEDE** to the Senate amendments on HJ pages 1455-1457 and place HB 1500 on the Seventh order.

Engrossed HB 1500 was placed on the Seventh order of business on the calendar.

Conference Committee Amendments to Engrossed HB 1500 (50752.0202) - 04/11/2005

That the Senate recede from its amendments as printed on pages 1455-1457 of the House Journal and pages 1065-1067 of the Senate Journal and that Engrossed House Bill No. 1500 be amended as follows:

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new chapter to title 51 of the North Dakota Century Code, relating to identity fraud; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new chapter to title 51 of the North Dakota Century Code is created and enacted as follows:

Definitions.

1. "Consumer" means an individual.
2. "Consumer report" has the same meaning as provided in 15 U.S.C. 1681a(d).
3. "Consumer reporting agency" means any person that, for monetary fees or dues or on a cooperative nonprofit basis, regularly engages in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate or intrastate commerce for the purpose of preparing or furnishing consumer reports. The term does not include an agency that compiles and maintains files on consumers on a nationwide basis, as described in 15 U.S.C. 1681a(p), a "reseller" as defined in 15 U.S.C. 1681a(u), when engaged in the act of the reselling of consumer information or other information, or a "nationwide specialty consumer reporting agency" that maintains "check writing history" as defined in 15 U.S.C. 1681a(w)(3).
4. "File", when used in connection with information on any consumer, means all of the information on that consumer reported and retained by a consumer reporting agency regardless of how the information is stored.

Initial fraud alerts. Upon the direct request of a consumer or an individual acting on behalf of or as a personal representative of a consumer, who asserts in good faith a suspicion that the consumer has been or is about to become a victim of fraud or related crime, including identity theft, a consumer reporting agency that maintains a file on the consumer and has received appropriate proof of the identity of the requester shall include a fraud alert in the file of that consumer. The consumer reporting agency shall continue that alert along with any credit score generated in using that file, for a period of not less than ninety days beginning on the date of the request, unless the consumer or the consumer's representative requests that the fraud alert be removed before the end of the period and the agency has received appropriate proof of the identity of the requester for that purpose.

Extended fraud alerts. Upon the direct request of a consumer or an individual acting on behalf of or as a personal representative of a consumer, who asserts in good faith a suspicion that the consumer has been or is about to become a victim of fraud or related crime, including identity theft, a consumer reporting agency that maintains a file on the consumer and has received appropriate proof of the identity of the requester shall:

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2. During the five-year period beginning on the date of the request, exclude the consumer from any list of consumers prepared by the consumer reporting agency and provided to any third party to offer credit or insurance to the consumer as part of a transaction that was not initiated by the consumer, unless the consumer or the consumer's representative requests that the exclusion be rescinded before the end of that period.

Police reports - Judicial determination of factual innocence.

1. An individual who has learned or reasonably suspects that the individual's personal identifying information has been unlawfully used by another, as described in section 12.1-23-11, may initiate a law enforcement investigation by contacting the local law enforcement agency that has jurisdiction over the individual's residence. The law enforcement agency shall take a report of the matter, provide the individual with a copy of that report, and begin an investigation of the facts. If the suspected crime was committed in a different jurisdiction, the local law enforcement agency may refer the matter to the law enforcement agency where the suspected crime was committed for further investigation of the facts.
2. An individual who reasonably believes that the individual is the victim of identity theft may petition the district court in the county in which the alleged victim resides or in which the identity theft is alleged to have occurred, or the court, on its own motion or upon application of the state's attorney, may move for an expedited judicial determination of the individual's factual innocence, if the perpetrator of the identity theft was arrested, cited, or convicted of a crime under the victim's identity, if a criminal complaint has been filed against the perpetrator in the victim's name, or if the victim's identity has been mistakenly associated with a record of criminal conviction. Any judicial determination of factual innocence made under this section may be heard and determined upon declarations, affidavits, police reports, or other material, relevant, and reliable information submitted by the parties or ordered to be part of the record by the court. If the court determines that the petition or motion is meritorious and that there is no reasonable cause to believe that the victim committed the offense for which the perpetrator of the identity theft was arrested, cited, convicted, or subject to a criminal complaint in the victim's name, or that the victim's identity has been mistakenly associated with a record of criminal conviction, the court shall find the victim factually innocent of that offense. If the victim is found factually innocent, the court shall issue an order certifying that determination.
3. After a court has issued a determination of factual innocence under this section, the court may order the name and associated personal identifying information contained in court records, files, and indexes accessible by the public deleted, sealed, or labeled to show that the data is impersonated and does not reflect the defendant's identity.
4. A court that has issued a determination of factual innocence under this section may vacate that determination if the petition or any information submitted in support of the petition is found to contain any material misrepresentation or fraud.

Enforcement - Powers - Remedies - Penalties. The attorney general may enforce this chapter. In enforcing this chapter, the attorney general has all the powers provided in this chapter or chapter 51-15 and may seek all remedies in this chapter or chapter 51-15. A violation of this chapter constitutes a violation of chapter 51-15. The remedies, duties, prohibitions, and penalties of this chapter are not exclusive and are in addition to all other causes of action, remedies, and penalties as provided in chapter 51-15 and as otherwise provided by law."

Renumber accordingly

**REPORT OF CONFERENCE COMMITTEE
(ACCEDE/RECEDE)**

Bill Number **HB 1500** as engrossed:

Date: 4/11/05

Your Conference Committee **HOUSE JUDICIARY**

For the Senate:

For the House:

YES / NO		YES / NO	
Sen. Hacker	XX	Rep. Galvin	XX
Sen. Syverson	XX	Rep. Koppelman	XX
Sen. Nelson	XX	Rep. Onstad	XX

**Recommends that the Senate recede from the Senate Amendments
on HJ page(s) 1455 -- 1457**

____, and place HB 1500 on the Seventh order.

XXX, adopt amendments as follows, and place HB 1500 on the
Seventh order:

____, having been unable to agree, recommends that the committee be discharged
and a new committee be appointed.

Engrossed HB 1500 was placed on the Seventh order of business on the calendar.

DATE: 4/11/05

CARRIER: Rep. Galvin

LC NO.	50752.0202	of amendment
LC NO.		of engrossment
Emergency clause added or deleted		
Statement of purpose of amendment		

MOTION MADE BY: Rep. Koppelman

SECONDED BY: Sen. Hacker

VOTE COUNT 6 YES 0 NO 0 ABSENT

**SENATE RECEDE FROM SENATE AMENDMENTS ON HJ PG 1455-1457, ADOPT
AMENDMENTS AS FOLLOWS.**

Revised 4/1/05

REPORT OF CONFERENCE COMMITTEE

HB 1500, as engrossed: Your conference committee (Sens. Hacker, Syverson, Nelson and Reps. Galvin, Koppelman, Onstad) recommends that the **SENATE RECEDE** from the Senate amendments on HJ pages 1455-1457, adopt amendments as follows, and place HB 1500 on the Seventh order:

That the Senate recede from its amendments as printed on pages 1455-1457 of the House Journal and pages 1065-1067 of the Senate Journal and that Engrossed House Bill No. 1500 be amended as follows:

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new chapter to title 51 of the North Dakota Century Code, relating to identity fraud; and to provide a penalty.

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faith a suspicion that the consumer has been or is about to become a victim of fraud or related crime, including identity theft, a consumer reporting agency that maintains a file on the consumer and has received appropriate proof of the identity of the requester shall:

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2. During the five-year period beginning on the date of the request, exclude the consumer from any list of consumers prepared by the consumer reporting agency and provided to any third party to offer credit or insurance to the consumer as part of a transaction that was not initiated by the consumer, unless the consumer or the consumer's representative requests that the exclusion be rescinded before the end of that period.

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3. After a court has issued a determination of factual innocence under this section, the court may order the name and associated personal identifying information contained in court records, files, and indexes accessible by the

public deleted, sealed, or labeled to show that the data is impersonated and does not reflect the defendant's identity.

4. A court that has issued a determination of factual innocence under this section may vacate that determination if the petition or any information submitted in support of the petition is found to contain any material misrepresentation or fraud.

Enforcement - Powers - Remedies - Penalties. The attorney general may enforce this chapter. In enforcing this chapter, the attorney general has all the powers provided in this chapter or chapter 51-15 and may seek all remedies in this chapter or chapter 51-15. A violation of this chapter constitutes a violation of chapter 51-15. The remedies, duties, prohibitions, and penalties of this chapter are not exclusive and are in addition to all other causes of action, remedies, and penalties as provided in chapter 51-15 and as otherwise provided by law."

Renumber accordingly

Engrossed HB 1500 was placed on the Seventh order of business on the calendar.

2005 TESTIMONY

HB 1500

HOUSE JUDICIARY COMMITTEE
DUANE DEKREY, CHAIRMAN
FEBRUARY 1, 2005

TESTIMONY BY
PARRELL D. GROSSMAN
DIRECTOR, CONSUMER PROTECTION AND ANTITRUST DIVISION
OFFICE OF ATTORNEY GENERAL
SENATE BILL NO. 1500

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 appear in this hearing to provide technical assistance for House Bill No. 1500.

The Attorney General submits proposed amendments for your consideration.

This legislation is modeled after the federal Fair Credit Reporting Act, and will provide state law that substantially mirrors federal law. This legislation is intended to provide assistance to Identity Theft victims in regard to their credit history on file with consumer reporting agencies.

This legislation requires consumer reporting agencies to block fraudulent transactions on a consumer's credit report as a result of Identity Theft. It also provides measures to decline to block or rescind a block when appropriate such as an error or misrepresentation by the consumer.

The Attorney General has proposed amendments that will make this legislation consistent with the Fair Credit Reporting Act, in order to avoid inconsistencies and preemption issues.

I will explain these amendments.

For these reasons, if you give House Bill 1500 a "do pass" recommendation the Attorney General respectfully urges this committee to adopt the proposed amendments,

Thank you for your time and consideration. I will be available to try and answer any questions.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1500
HOUSE JUDICIARY COMMITTEE
DUANE DEKREY, CHAIRMAN
FEBRUARY 1, 2005

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

Page 1, line 1, after "fraud" insert "and to provide enforcement and penalties"

Page 1, line 3, after "agencies" insert "- Enforcement by attorney general and penalties"

Page 1, line 6, replace "police" with "identity theft"

Page 1, line 6, after "report," insert "as defined by that Act,"

Page 1, line 7, overstrike "thirty" and insert immediately thereafter "four business"

Page 1, line 9, after "of" insert "identity theft defined by that Act, or"

Page 1, line 10, remove "a police report" and insert immediately thereafter "an identity theft report, as defined by the Act,"

Page 1, line 13, after "information" insert a comma

Page 1, line 13, remove ", in the exercise of good faith and judgment,"

Page 1, line 14 remove "believes" and insert immediately thereafter "reasonably determines"

Page 1, remove lines 15 through 24

Page 2, remove lines 1 through 4 and insert immediately thereafter:

- a. The information was blocked in error or a block was requested by the consumer in error or a block was requested by the consumer in error;
- b. The information was blocked, or a block was requested by the consumer, on the basis of a material misrepresentation of fact by the consumer relevant to the request or block;
- c. The consumer obtained possession of money or goods, services, or money as a result of the blocked transactions or transactions.

Page 2, line 5, remove "blocked" and insert immediately thereafter "if a block of"

Page 2, line 5, remove "unblocked" and insert immediately thereafter "declined or rescinded"

Page 2, line 5, remove "pursuant to" and insert immediately thereafter "under"

Page 2, line 9, remove "The prior presence of the blocked information in the"

Page 2, line 10, remove lines 10 through 12 and insert immediately thereafter "If a consumer reporting agency rescinds a block, the presence of information in the file of a consumer prior to the blocking of such information is not evidence of whether the consumer knew or should have known that the consumer obtained possession of any goods, services, or money as a result of the block."

Page 2, remove lines 13 through 21

Page 2, line 22 replace "5." with "4."

Page 2, line 24 remove "a violation of this section" and immediately thereafter insert "identity theft as defined by the Fair Credit Reporting Act [Pub. L. 90-321; 84 Stat. 1127; 15 U.S.C. 1681 et seq.]"

Page 2, line 25, replace "6." with "5."

Page 3, after line 10, insert:

"6. Except as otherwise prohibited by the Fair Credit Reporting Act [Pub. L. 90-321; 84 Stat. 1127; 15 U.S.C. 1681 et seq.] a violation of this section is a violation of chapter 51-15. The attorney general may enforce violations of this section. The attorney general in enforcing this section may seek all remedies and penalties in chapter 51-15. The remedies, duties, prohibitions, and penalties of this section and chapter 51-15 are not exclusive and are in addition to all other causes of action otherwise provided by law."

Renumber accordingly

Version 7E

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1500

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Version 2

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AH #1

HB 1500 Amendments
Representative Kim Koppelman

Amendments remove legislation regarding blocking of trade line credit information, because such provisions are preempted under the Fair Credit Reporting Act.

Amendments do the following for ND consumers:

Provide ID Theft protection through fraud alerts on specialty consumer reporting agencies and regional consumer reporting agencies. This legislation is not preempted.

Consumer can place a fraud alert on his or her file that will flag the account, as well as require the credit reporting agency to provide any credit score generated in using that file, for a period not less than 90 days.

The extended fraud alert allows the ID Theft victim to extend the fraud alert and credit score procedures for up to 7 years.

In addition, for a 5 year period, it prohibits the consumer reporting agency from including the consumer on any consumer list provided to a 3rd party, to offer credit or insurance, as part of a transaction not initiated by the consumer.

Requires law enforcement to investigate reports of ID Theft and to take a police report. This helps consumers with processing of ID Theft reports with consumer reporting agencies, and creditors.

Establishes procedures for ID theft victims, who have their ID's falsely associated with criminal charges, to obtain a judicial determination of factual innocence through a legitimate court proceeding. Upon providing valid proof of innocence, the court will issue an appropriate order.

Finally, the amendments provide the Attorney General with enforcement authority to address violations of the statute.

Testimony in Favor of House Bill 1500

by Glenn A. Elliott, a private citizen and resident of Mandan, North Dakota, appearing on his own behalf on Monday, 21 March 2005

Before the Judiciary Committee of the North Dakota Senate

Mr. Chairman and Senators of the Committee:

I am appearing today and offering this testimony supporting House Bill 1500. However, while I support the bill and believe that it is workable as written, I have some reservations about certain provisions, and I also want to invite the committee's attention to what is not addressed by this bill.

1. I need not belabor the problem of identity theft. It lies at least near one of the two extremes of circumstances that break the risk underwriting model. While the chances of the problem occurring may be small, its consequences in the disruption of the life of the affected individual are extreme.

2. In many if not most cases, the problems resulting from identity theft are only civil problems primarily involving damage to the victim's credit history. However, these problems go beyond being able to get a credit card or a preferred rate. An individual's credit history is commonly reviewed in connection with government security clearances and both application for and retention of employment. One who has a damaged credit history may become the modern-day untouchable, incapable of rising above a certain status.

3. House Bill 1500 addresses a large part of the identity theft problem by requiring the major consumer credit reporting agencies to block out suspect adverse information that may be a result of identity theft. However, there are some problems in the bill:

a. In Subsection 1 of the bill, on Line 7 of Page 1, the bill discusses the submission of a "valid identity report." I believe that the wording should be "valid identity theft report."

b. According to Paragraph c of Subsection 2 (Lines 23-24 on Page 1), a consumer reporting agency "...may decline to block or may rescind any block of consumer information, if the consumer reporting agency reasonably determines that...[t]he consumer obtained possession of money or goods, services, or money as a result of the blocked transaction or transactions."

(1) The precise wording "...obtained possession of money or goods, services, or money..." is redundant, and could be better rendered as "...obtained goods, services, or money..."

(2) Consumer credit information is inherently linked to economic transactions. A consumer will almost always economically profit from the lack of adverse information, regardless of whether the information is truly absent or only blocked from access. The real concern is whether certain information in a consumer credit report, or the consumer's disclaimer of same, is suspect. Paragraph c is "the hole you can drive a truck through," and I believe it should be removed. Perhaps that paragraph could be reworded to appropriately qualify it, but I have not been able to formulate appropriate language for this purpose.

c. For the reasons I have stated above regarding Paragraph c of Subsection 2 of the bill, I believe that the second sentence of Subsection 3 of the bill (Lines 5-9 of Page 2) is superfluous and should be removed.

d. I am troubled by the exemptions stated in Subsection 5 (Lines 15-30 of Page 2), particularly Paragraph a (Lines 16-20) regarding consumer credit information resellers.

(1) The consumer's reputation is wrongfully damaged by inaccurate adverse credit information, regardless of the source of that information. There is no guarantee that a credit information reseller only gains information from sources that are subject to the Fair Credit Reporting Act or this proposed legislation. In addition, while a reseller may not maintain a permanent database, it is likely the reseller does maintain a temporary database, and there is no assurance that inaccurate information will be flushed from that temporary database within a reasonable time. It also offends fundamental fairness that the reseller may profit from inaccurate information.

(2) Consequences of identity theft are not only credit-related, and may well involve fraudulent creation, use, or depletion of bank accounts, as well as denial of bank services as a result. While services that verify bank account holders or applicants, or negotiable instruments or transactions relating to those accounts, or that otherwise operate to frustrate financial fraud, may collect and deal in different information than credit reporting agencies, those services should be obligated to forward identity theft alerts that do come to their attention.

e. In Subsection 6 (Lines 1-7 of Page 3), the bill provides that violation of the proposed legislation is also a violation of NDCC 51-15 and that the Attorney General may address such violation utilizing the remedies of that chapter. The bill does not recognize that a victim of identity theft is further damaged by failure to comply with the proposed legislation, and that enforcement by the Attorney General does not address those damages. In Senate Bill 2265, this committee heard extensive testimony regarding the nature of the "public duty doctrine," namely that performance of public duties involves obligation to the public in general, but not to any individual members of it. A victim of identity theft who is further damaged by violation of this proposed legislation should have a right to private civil enforcement for at least moderate redress of those damages, plus attorney fees.

4. I have attached a draft amended version of House Bill 1500 to this testimony as an appendix. The draft addresses the problems that I have outlined in Item 3 above. I regret that certain exigencies do not allow me to present the draft in the proper form and style.

5. House Bill 1500 does not address another major aspect of identity theft, which is beyond the scope of these proceedings but should not be out of the cognizance of the legislature.

a. An identity thief is not necessarily a particular criminal, and is likely to commit other crimes independent of or connected with identity theft. An identity thief may use data gained in identity theft to completely impersonate the victim, either by obtaining false identity documents with that data, or by using that data, or false identity documents prepared with it, to obtain legitimate identity documents. When the thief is apprehended, criminal databases may be populated with the identity data of the identity theft victim, not the identity thief. If the thief jumps bail or escapes, law enforcement agencies end up seeking the identity theft victim, not the thief.

b. It may be orders of magnitude more difficult for the identity theft victim in such a case to establish his or her innocence:

(1) Unless the police have or obtain information indicating otherwise, the identity of an apprehended individual is assumed to be genuine if supported by documents in the individual's possession. To my knowledge, no law enforcement agency has any formal policies or procedures specifically for verifying an individual's identity documents. Falsely obtained legitimate identity documents complicate the problem further, as a law enforcement check will show that a government agency issued the documents.

(2) Criminal records are assumed to be accurate upon entry. Again, to my knowledge, no agency has any formal policies or procedures to verify any criminal record entries or correct inaccuracies.

c. While this particular problem is beyond the scope of House Bill 1500 and these proceedings, and likely not amenable to solution during this legislative session, the senators of this committee are encouraged to at least conduct or seek study of this problem during the legislative interim, with a goal of preparing comprehensive legislation for the next legislative session.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Identity fraud - Duties of consumer reporting agencies -
Enforcement - Penalty.

1. If a consumer, as defined by the Fair Credit Reporting Act [Pub. L. 90-321; 84 Stat. 1127; 15 U.S.C. 1681 et seq.], submits to a consumer reporting agency, as defined by that Act, a copy of a valid identity theft report, as defined by that Act; the consumer reporting agency, within four business days of receipt of the report, shall block the reporting of any information that the consumer alleges appears on the consumer's credit report, as defined by that Act, as a result of identity theft defined by that Act, or a violation of section 12.1-23-11. The consumer reporting agency promptly shall notify the furnisher of the information that an identity theft report, as defined by that Act, has been filed, that a block has been requested, and the effective date of the block.

2. Consumer reporting agencies may decline to block or may rescind any block of consumer information, if the consumer reporting agency reasonably determines that:

a. The information was blocked in error or a block was requested by the consumer in error; or

b. The information was blocked, or a block was requested by the consumer, on the basis of a material misrepresentation of fact by the consumer relevant to the request or block

3. If a block of information is declined or rescinded under this section, the consumer reporting agency shall notify the consumer in the same manner as consumers are notified of the reinsertion of information pursuant to the procedure in case of disputed accuracy under the Fair Credit Reporting Act [Pub. L. 90-321; 84 Stat. 1127; 15 U.S.C. 1681 et seq.].

4. A consumer reporting agency shall delete from a consumer credit report inquiries for credit reports based upon credit requests that the consumer reporting agency verifies were initiated as a result of identity theft as defined by the Fair Credit Reporting Act [Pub. L. 90-321; 84 Stat. 1127; 15 U.S.C. 1681 et seq.] or section 12.1-23-11.

5. Partially exempted entities:

a. Except as provided in Paragraph b below, the provisions of this section do not apply to:

(1) A consumer reporting agency that acts as a reseller of credit information by assembling and merging information contained in the data bases of other consumer reporting agencies, and that does not maintain a permanent data base of credit information from which new consumer credit reports are produced;

(2) A check services or fraud prevention services company that issues reports on incidents of fraud or authorizations for the purpose of approving or processing negotiable instruments, electronic funds transfers, or similar payment methods; or

(3) A demand deposit account information service company that issues reports regarding account closures due to fraud, substantial overdrafts, automatic teller machine abuse, or similar negative information regarding a consumer to inquiring banks or other financial institutions for use only in reviewing a consumer request for a demand deposit account at the inquiring bank or financial institution.

b. If any entity in Paragraph a above becomes aware that an individual has filed an identity theft report as defined in Subsection 1 above, the entity must provide notice of such, along with any favorable or adverse information provided to customers, subscribers, or other users of the services of that entity, regarding the individual concerned.

6. Except as otherwise prohibited by the Fair Credit Reporting Act [Pub. L. 90-321; 84 Stat. 1127; 15 U.S.C. 1681 et seq.]:

a. A violation of this section is a violation of chapter 51-15. The attorney general may enforce violations of this section. The attorney general, in enforcing this section, may seek all remedies and penalties in chapter 51-15. The remedies, duties, prohibitions, and penalties of this section and chapter 51-15 are not exclusive and are in addition to all other causes of action otherwise provided by law.

b. If a consumer submits an identity theft report to a consumer reporting agency in accordance with Subsection 1 above, and the agency does not block or decline to block information as outlined in Subsection 1:

(1) Within seven business days after receiving the report; AND

(2) Within seven business days after receiving a followup notice sent by the consumer within forty-five days after the identity theft report; THEN

The consumer may bring a civil action against the agency for actual damages, or statutory damages of not less than five hundred dollars nor more than fifteen hundred dollars, plus attorney fees. These remedies shall be in addition to any other remedies available to the consumer.

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1500
SENATE JUDICIARY COMMITTEE
JOHN T. TRAYNOR, CHAIRMAN
MARCH 23, 2005

PRESENTED BY
PARRELL D. GROSSMAN, DIRECTOR
CONSUMER PROTECTION & ANTITRUST DIVISION
OFFICE OF ATTORNEY GENERAL
ON BEHALF OF REPRESENTATIVE KIM KOPPELMAN

Page 1, line 1, remove "provide for" and insert immediately thereafter "create and enact a new chapter to title 51 of the North Dakota Century Code, relating to"

Page 1, line 1, after the semicolon insert "police reports; judicial determination of factual innocence;"

Page 1, after line 2, insert:

"SECTION 1. Definitions.

1. "Consumer" means an individual.
2. "Consumer report" has the same meaning as provided in section 1681(a)(d) of Title 15 of the United States Code.
3. "Consumer reporting agency" means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate or intrastate commerce for the purpose of preparing or furnishing consumer reports.
4. "File," when used in connection with information on any consumer, means all of the information on that consumer reported and retained by a consumer reporting agency regardless of how the information is stored.
5. "Employment purposes," when used in connection with a consumer report means a report used for the purpose of evaluating a consumer for employment, promotion, reassignment, or retention as an employee.

Initial fraud alerts. Upon the direct request of a consumer, or an individual acting on behalf of or as a personal representative of a consumer, who asserts in good faith a suspicion that the consumer has been or is about to become a victim of fraud or related crime, including identity theft, a consumer reporting agency, except a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis, as described in section 1681a(p) of Title 15 of the United States Code, that maintains a file on the consumer and has received appropriate proof of the identity of the requester shall include a fraud alert in the file of that consumer, and also provide that alert along with any credit score generated in using that file, for a period of not less than 90 days,

beginning on the date of such request, unless the consumer or such representative requests that such fraud alert be removed before the end of such period, and the agency has received appropriate proof of the identity of the requester for such purpose.

Extended fraud alerts. Upon the direct request of a consumer, or an individual acting on behalf of or as a personal representative of a consumer, who asserts in good faith a suspicion that the consumer has been or is about to become a victim of fraud or related crime, including identity theft, a consumer reporting agency, except a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis, as described in section 1681a(p) of Title 15 of the United States Code, that maintains a file on the consumer and has received appropriate proof of the identity of the requester shall:

1. Include a fraud alert in the file of that consumer, and also provide that alert along with any credit score generated in using that file, during the seven-year period beginning on the date of such request, unless the consumer or such representative requests that such fraud alert be removed before the end of such period and the agency has received appropriate proof of the identity of the requester for such purpose; and
2. During the five-year period beginning on the date of such request, exclude the consumer from any list of consumers prepared by the consumer reporting agency and provided to any third party to offer credit or insurance to the consumer as part of a transaction that was not initiated by the consumer, unless the consumer or such representative requests that such exclusion be rescinded before the end of such period.

Police reports -- Judicial determination of factual innocence.

1. A person who has learned or reasonably suspects that his or her personal identifying information has been unlawfully used by another as described in section 12.1-23-11, may initiate a law enforcement investigation by contacting the local law enforcement agency that has jurisdiction over his or her actual residence, which shall take a police report of matter, provide the complainant with a copy of that report, and begin an investigation of the facts. If the suspected crime was committed in a different jurisdiction, the local law enforcement agency may refer the matter to the law enforcement agency where the suspected crime was committed for further investigation of the facts.
2. A person who reasonably believes that he or she is the victim of identity theft may petition a court in the county in which the alleged victim resides or in which the identity theft is alleged to have occurred, or the court, on its own motion or upon application of the state's attorney, may move, for an expedited judicial determination of his or her factual innocence, where the perpetrator of the identity theft was arrested for, cited for, or convicted of a crime under the victim's identity, or where a criminal complaint has been filed against the perpetrator in the victim's name, or where the victim's identity has been mistakenly associated with a record of criminal conviction. Any judicial determination of factual innocence made

pursuant to this section may be heard and determined upon declarations, affidavits, police reports, or other material, relevant, and reliable information submitted by the parties or ordered to be part of the record by the court. Where the court determines that the petition or motion is meritorious and that there is no reasonable cause to believe that the victim committed the offense for which the perpetrator of the identity theft was arrested, cited, convicted, or subject to a criminal complaint in the victim's name, or that the victim's identity has been mistakenly associated with a record of criminal conviction, the court shall find the victim factually innocent of that offense. If the victim is found factually innocent, the court shall issue an order certifying this determination.

3. After a court has issued a determination of factual innocence pursuant to this section, the court may order the name and associated personal identifying information contained in court records, files, and indexes accessible by the public deleted, sealed, or labeled to show that the data is impersonated and does not reflect the defendant's identity.
4. A court that has issued a determination of factual innocence pursuant to this section may at any time vacate that determination if the petition, or any information submitted in support of the petition, is found to contain any material misrepresentation or fraud.

Enforcement - Powers - Remedies - Penalties. The attorney general may enforce this chapter. In enforcing this chapter, the attorney general has all the powers provided in this chapter or chapter 51-15 and may seek all remedies in this chapter or chapter 51-15. A violation of this chapter constitutes a violation of chapter 51-15. The remedies, duties, prohibitions, and penalties of this chapter are not exclusive and are in addition to all other causes of action, remedies, and penalties as provided in chapter 51-15 and as otherwise provided by law.

Page 1, remove lines 3 through 24

Page 2, remove lines 1 through 30

Page 3, remove lines 1 through 7

Renumber accordingly.