

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

3042

2005 HOUSE JUDICIARY

HCR 3042

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HCR 3042

House Judiciary Committee

☐ Conference Committee

Hearing Date 2/23/05

Tape Number	Side A	Side B	Meter #
1	xx		4.5-12.4
Committee Clerk Signature <i>Dawn Penrose</i>			

Minutes: 13 members present, 1 member absent (Rep. Maragos).

**Chairman DeKrey:** We will open the hearing on HCR 3042.

**Rep. Jim Kasper:** Introduced the bill, sponsor. HCR 3042 calls for a study on identity theft and whether ND laws are strong enough, or protective enough for the people of our state. I introduced this bill at the request of the ND Bankers Association and Marilyn Foss is here to give additional testimony.

**Representative Delmore:** I have a bill that went through this committee, and I believe there is one in the Senate that states it pretty clearly that we would like this to cover people, whether they are dead or alive, is that the intent of this as well.

**Rep. Jim Kasper:** Who wants to study identity theft of dead people.

**Representative Delmore:** Excuse me, they can also steal the identity from people who have died, yes. Taking out credit cards from those people, just like from someone living. Yes it is possible to do that with dead people.

**Rep. Jim Kasper:** I certainly wouldn't object to trying to get to the bottom of the problem and try to look at what we need to do, if anything, in ND to prevent identity theft.

**Chairman DeKrey:** Thank you. Further testimony in support.

**Rep. Blair Thoreson:** Sponsor, I support this resolution.

**Marilyn Foss, General Counsel for ND Bankers Association:** Support (see written testimony).

**Representative Kretschmar:** Are you aware of any problems in ND, know of individuals who have had their identity stolen.

**Marilyn Foss:** I am not personally aware of someone who has had their identity stolen. About 3 or 4 years ago, there was a conference in Fargo on identity theft, and there were certainly ND citizens there who had had their identity stolen and related their experience. I think it's a bigger problem now, than it was then. I know that Choice Point, the company that Rep. Kasper mentioned, has notified people in all 50 states that they had been exposed or vulnerable to identity theft, as a result of that problem.

**Chairman DeKrey:** This happened to a lady in my Sunday School class, just recently, it was really tough, once it happens it's really tough to set straight. Thank you. Further testimony in support. Testimony in opposition. We will close the hearing. What are the committee's wishes in regard to HCR 3042.

**Representative Delmore:** I move a Do Pass & Consent Calendar.

**Representative Koppelman:** Seconded.

13 YES 0 NO 1 ABSENT

DO PASS

CARRIER: Rep. Koppelman

Date: 2/23/05  
Roll Call Vote #: 1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HCR 3042

HOUSE JUDICIARY COMMITTEE

☐ Check here for Conference Committee

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

Action Taken Do Pass - Consent Calendar

Motion Made By Rep. Delmore Seconded By Rep. Koppelman

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

Total (Yes) 13 No 0

Absent 1

Floor Assignment Rep. Koppelman

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

**REPORT OF STANDING COMMITTEE (410)**  
February 23, 2005 2:16 p.m.

**Module No: HR-33-3511**  
**Carrier: Koppelman**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**HCR 3042: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO PASS and BE PLACED ON THE CONSENT CALENDAR (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HCR 3042 was placed on the Tenth order on the calendar.**

2005 SENATE JUDICIARY

HCR 3042

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HCR 3042

Senate Judiciary Committee

☐ Conference Committee

Hearing Date March 23, 2005

Tape Number	Side A	Side B	Meter #
1	X		920 - 2500
Committee Clerk Signature <i>Maria L Solberg</i>			

Minutes: A concurrent resolution directing LC to study unauthorized theft of personal identifying information and what other states do.

**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 Resolution:**

**Rep. Jim Kasper**, Dist. #46 Introduced the Resolution. (meter 940) The news states how often our identities are stolen. We are asking LC to do a study on ID theft. ND has many open laws and a few closed laws. Cited personal case of his ID being stolen.

**Marilyn Foss**, General Council for ND Bankers Assoc. (meter 1165) Gave Testimony - Att. #1 Gave information on what other states do - Att. #2

**Sen. Traynor** asked if our laws currently were efficient? ND legislature has generally been on top of it. The area of controversy is "absolute right" of freezing credit reporting and the balance of its positive vs. negative effect of doing this. Movement of Uniform reporting and filing.



**Senator Syverson** discussed current legislation and its progressive nature. The people who own the card need to take responsibility for there own information. Discussion of Y2K and the Banking industries forefront fight for security and the notification process of stolen information. **Senator Hacker** wished there was a process that one could review the cards activity on there own accord as often as the want. **Ms. Foss** explained the free access to you credit card history (FACT Act) and liability of unauthorized access to your card.

**Testimony in Opposition of the Resultion**

None

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

**Carrier: Sen. Trenbeath**

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

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

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 3042

Senate Judiciary Committee

☐ Check here for Conference Committee

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

Action Taken Do Pass

Motion Made By Senator Trenbeath Seconded By Senator Syverson

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 Trenbeath

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

**REPORT OF STANDING COMMITTEE (410)**  
March 24, 2005 9:56 a.m.

**Module No: SR-54-6001**  
**Carrier: Trenbeath**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**HCR 3042: Judiciary Committee (Sen. Traynor, Chairman) recommends DO PASS**  
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HCR 3042 was placed on the  
Fourteenth order on the calendar.

2005 TESTIMONY

HCR 3042

TESTIMONY OF THE NORTH DAKOTA BANKERS ASSOCIATION  
IN FAVOR OF HCR 3042

Chairman DeKrey, members of the House Judiciary Committee, I am Marilyn Foss, general counsel for the North Dakota Bankers Association. I am appearing before you this morning to heartily support this resolution for an interim study of North Dakota's laws as they relate to identity theft.

Identity theft has a real and substantial effect on North Dakota citizens and North Dakota banks just as it does for citizens and financial institutions throughout our country. As the reality and threat of identity theft has grown over the past few years, legislators at state and federal levels have responded. New laws define the scope of the conduct that constitutes a identity theft and, as identity thieves become cleverer, redefine and expand that scope. (For example, so far in this legislative session, the North Dakota House has passed a bill to criminalize the theft of a deceased person's identity, HB 1211.) Legislators are also busy considering, proposing and adopting laws which are intended to aid victims of identity theft by making processes for reporting more uniform and by defining types and effects of remedial action by victims. (HB 1500 is an example of this. It provides that a victim of identity theft who files a valid identity report under the federal Fair Credit Reporting Act may demand a freeze on credit reports relating to that victim.) This year at least 17 state legislatures are considering at least 24 bills on the subject of identity theft.

Recent federal laws, such as the FACT Act, also address identity theft. Federal regulators, including the FTC and federal bank regulatory agencies are all adopting regulations to address such things as protecting and properly disposing of citizens' personal

information and are working on ways to make it easier for a victim of identity theft to report the theft and to, literally, restore his or her good name.

NDBA holds the view that an interim study of the various new state and federal laws is timely. Identity theft laws have been on the books for a few years. Individuals and businesses have experience with this crime. An interim study would allow you to make a more in depth consideration of what laws have provided meaningful relief and what laws have had little effect here and elsewhere. An interim study would allow a well considered examination to find out if there are still gaps in our laws and whether those laws have unintended as well as intended consequences. In the end, I would hope there would be a strong foundation for you to decide whether North Dakota has done enough or, if not, what, specifically, remains to be done to better protect individuals and businesses from this insidious crime.

With that, I'll reiterate NDBA support for HCR 3042 and state that, if the resolution is adopted and ultimately chosen as a subject for an interim study, we will be there to participate.

Thank you.

**TX HB 492** Would require the State Board of Education to make personal finance a high school graduation requirement. 2/7 Referred to Public Education

**Identity Theft**

**AL SB 243** Would classify all instances of the crime of identity theft as a Class C felony and would increase the statute of limitations for the crime of identity theft to seven years. 2/8 Read for the First Time, Referred to the Senate Committee on Judiciary

**AZ HB 2232** Would create the crime of identity theft. 2/16 Assigned to Rules Committee

**AR HB 1354** Would clarify that the offense of financial identity fraud pertains to the use of identifying information to open or create an account or financial resource. 2/9 Returned by the Committee, Do Pass

**CA HB 424** Would amend the California Code to include a firm, association, organization, partnership, business trust, company, corporation, limited liability company, or other public entity in the definition of person in relation to identity theft. 2/15 Read First Time, To Print

**FL HB 481** Would provide that using deception to obtain certain personal identification information for commercial solicitation purposes is deceptive & unfair trade practice in violation of Deceptive & Unfair Trade Practices law; prohibits unauthorized disclosure, sale, or transfer of said info. to third party; revises criminal penalties re offense of fraudulently using, or possessing with intent to fraudulently use, personal ID info. 2/7 Referred to Criminal Justice

**MD SB 492** Prohibiting specified persons from causing computer software to be copied onto the computer of a consumer that modifies Internet settings, collects personally identifying information, prevents an authorized user from blocking the installation of software, or prevents an authorized user from disabling software under specified circumstances; prohibiting specified persons from misleading users as to the effect actions will have with respect to computer software. 2/14 Hearing set on 3/9

**ME SB 190** Would prohibit a consumer reporting agency from furnishing a consumer report or disclosing information about a consumer unless the consumer has authorized the disclosure if the consumer has given a copy of a police report to the consumer reporting agency that was prepared by a law enforcement agency in investigation of identity theft involving the consumer. 2/8 Referred to the Committee on Business, Research and Economic Development

**MN SB 992** Would modify penalties for identity theft; requiring minimum restitution payments and providing information to victims of identity theft. 2/16 Referred to Crime Prevention and Public Safety

**TN SB 974** Would amend enact the Tennessee credit and debit card number identity theft prevention act of 2005 and to provide punishment for violations. **2/7 Passed Second Consideration**

**TN SB 1156** Would increase the amount of identity theft investigation proceeds that are disbursed to state and local governmental agencies for the purpose of reducing identity theft. **2/7 Passed Second Consideration**

**TN HB 866** Would increase the amount of identity theft investigation proceeds that are disbursed to state and local governmental agencies for the purpose of reducing identity theft. **2/14 Assigned to Subcommittee**

**TX HB 982** Would require posting a sign warning restaurant employees against fraudulent use or possession of identifying information and provide a criminal penalty. **2/14 Referred to Business and Industry**

**UT SB 118** Would include in the offense of identity fraud the unlawful use of information of persons who are deceased and include the personal identifying information of persons who are deceased in the statute that prohibits the use of identifying information to commit identity fraud crimes. **2/15 Enroll Draft**

**WA HB 1966** Would classify identity theft as a crime against persons. **2/24 Scheduled for Public Hearing in Committee**

**WA SB 5939** Would require police reports to be given to victims of identity theft. **2/15 First Reading, Referred to Financial Institutions**

#### **Insurance**

**MT SB 238** Would create an insurance consumer protection fund through various funds, including premium taxes. **2/16 Scheduled for Third Reading**

#### **Marketing /Telemarketing/E-Mail Solicitation**

**IL HB 1045** Would create right to know city, state and country where a solicitation call originates, name or alias of the caller, and the name of the caller's company, and a right to speak to another employee of the caller's company. The bill would also create an opt-in for transmission of financial, credit or identifying information outside U.S.

**IL HB 1071** Would require that electronic mail service provided under State contracts must be provided reasonably free of unsolicited electronic mail advertisements (sometimes known as "spam"). **2/8 Referred to Rules Committee**

**MD HB 1011** Would authorize a person who receives an electronic or telephonic transmission made to the person's facsimile device in violation of specified provisions of



**MT HB 110** Would provide for identity theft passports for victims of identity theft. Passports may be obtained through any law enforcement agency and may be presented to law enforcement personnel to prevent arrest or detention of a victim for a crime committed by someone using the victim's identity. Passports may also be presented to credit reporting agencies which shall accept passports as the direct conveyance of a credit dispute. Passports may also be presented to creditors to aid in investigation of identity theft. **Passed House; 1/24 Transmitted to Senate**

**MT LD 1252/HB 732** Would adopt and revise laws to implement individual privacy and to prevent identity theft; requiring a consumer reporting agency to block or expunge information on a report that results in a theft of identity. **2/14 Draft in Assembly**

**ND SB 2251** Would provide that a person is guilty of an offense of unauthorized use of personal identifying information if the person uses or attempts to use any personal identifying information of an individual without the authorization of the individual. Would make the offense a class B felony if the credit, money, goods, services, or anything else of value exceeds one thousand dollars in value. **2/11 Introduced, First Reading**

**ND HB 1211** Would make it a Class C felony to use or attempt to use any personal identifying information of an individual, living or deceased, to obtain credit, money, goods, services, or anything else of value without the authorization or consent of the individual or to represent that that person is the individual or is acting with the authorization or consent of the individual. **2/15 Reported Back Amended, Do Pass**

**ND HB 1500** Would provide for protection of victims of identity fraud and provide a penalty. **2/9 Received from House**

**NM HB 246** Would extend the time limit within which prosecution for an identity theft crime must be brought to 3 years. The bill also establishes the Identity Theft Passport program. **2/9 Do Pass as Amended**

**NM SB 720** Would create a new criminal offense known as obtaining identity by electronic fraud; providing penalties and civil liability. **2/15 Do Pass Committee Report Adopted**

**OK HB 1985** Would create the Identity Theft Protection Act and requires businesses to take reasonable measures to protect against unauthorized access to or use of personal identifying information in connection with, or after its disposal. These reasonable measures must include burning, pulverizing or shredding documents containing personal information and implementing policies that require the destruction or erasure of electronic media containing personal information. **2/8 Second Reading, Referred to Appropriations and Budget**

**PA SB 178** Would provide for the Office of Identity Theft Victim Support in the Pennsylvania Commission on Crime and Delinquency; establishing an Identity Theft Advisory Board; and making an appropriation. **2/7 Referred to Judiciary**

# TESTIMONY OF MARILYN FOSS IN SUPPORT OF HCR 3042

Chairman Traynor, members of the Senate Judiciary Committee, my name is Marilyn Foss. I am general counsel for the North Dakota Bankers Association. HCR 3042 was introduced at the request of NDBA.

The acquisition, protection, use and misuse of personal information are subjects that are increasingly on the mind of the public and their legislators. If I understand the statistics correctly, identity theft is such a fast growing, national problem that it is the most likely event of fraud which most consumers will face. Certainly, it is a subject that is on the minds of banks as they enhance information system security to protect information against unauthorized intrusion and then, start the process over again to protect the more secure information systems from even more sophisticated intruders. Identity theft is also on the minds of federal and state legislators.

At the federal level, the Fair and Accurate Credit Transactions Act (FACT) and federal bank regulatory agencies regulate access, use, protections and proper disposal of personal information, and procedures to make it easier for citizens to determine credit standing and, when an identity theft has occurred, to restore his or her good name and credit standing.

State legislatures are also expending time and energy on the problem. At least 17 state legislatures are considering at least 24 bills on the subject of identity theft. (A list is attached to my testimony.) The bills seek to define or redefine the conduct which constitutes identity theft and to find even better avenues of relief than exist in current law. Examples of this in North Dakota include the legislation that you have passed to criminalize the theft of a deceased person's identity and HB 1500 which you heard on Monday.

NDBA holds the view that an interim study of the various new state and federal laws would be timely and productive. Identity theft laws have been on the books for a few years. Victims and regulators have experience with them and we all should be in a better position to assess what works, what doesn't work, what is preempted by federal law, what laws are ineffective, overly burdensome or, carry unintended consequences,

and, whether there are specific steps that remain to be taken to better protect our citizens from this crime.

With that, I'll reiterate NDBA support for this resolution and stand for questions.  
Thank you.

Identity Theft

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