

JOURNAL OF THE SENATE

Fifty-ninth Legislative Assembly

Bismarck, April 12, 2005

The Senate convened at 8:00 a.m., with President Dalrymple presiding.

The prayer was offered by Reverend Joseph Howlett, Redeemer Lutheran Church, Dickinson.

The roll was called and all members were present except Senator Traynor.

A quorum was declared by the President.

COMMUNICATION FROM GOVERNOR JOHN HOEVEN

This is to inform you that on April 11, 2005, I have signed the following: SB 2120, SB 2227, and SB 2304.

CONSIDERATION OF CONFERENCE COMMITTEE REPORT

SEN. KRINGSTAD MOVED that the conference committee report on Engrossed SB 2059 as printed on SJ page 1435 be adopted, which motion prevailed on a voice vote.

Engrossed SB 2059, as amended, was placed on the Eleventh order.

MOTION

SEN. CHRISTMANN MOVED that SB 2059, as amended, be held over until the 1:00 p.m. session, which motion prevailed.

CONSIDERATION OF CONFERENCE COMMITTEE REPORT

SEN. DEVER MOVED that the conference committee report on Engrossed HB 1231 as printed on SJ page 1435 be adopted, which motion prevailed on a voice vote.

Engrossed HB 1231, as amended, was placed on the Fourteenth order.

SECOND READING OF HOUSE BILL

HB 1231: A BILL for an Act to create and enact a new section to chapter 25-07 of the North Dakota Century Code, relating to the provision of services to individuals who are deaf or hearing-impaired; and to amend and reenact sections 25-07-01, 25-07-04, 25-07-05, 25-07-06, 25-07-08, and 25-07-11 of the North Dakota Century Code, relating to the school for the deaf.

ROLL CALL

The question being on the final passage of the amended bill, which has been read, the roll was called and there were 46 YEAS, 0 NAYS, 0 EXCUSED, 1 ABSENT AND NOT VOTING.

YEAS: Andrist; Bercier; Bowman; Brown; Christmann; Cook; Dever; Erbele; Espegard; Every; Fairfield; Fischer; Flakoll; Freborg; Grindberg; Hacker; Heitkamp; Holmberg; Kilzer; Klein; Krauter; Krebsbach; Kringstad; Lee, G.; Lee, J.; Lindaas; Lyson; Mathern; Mutch; Nelson; Nething; O'Connell; Robinson; Schobinger; Seymour; Stenehjem; Syverson; Tallackson; Taylor; Thane; Tollefson; Trenbeath; Triplett; Urlacher; Wardner; Warner

ABSENT AND NOT VOTING: Traynor

Engrossed HB 1231, as amended, passed and the title was agreed to.

MOTION

SEN. CHRISTMANN MOVED that SB 2261 be returned to the Senate floor from the Conference Committee, which motion prevailed.

MOTION

SEN. CHRISTMANN MOVED that the Senate reconsider its action whereby the Senate did not concur in the House amendments to SB 2261, which motion prevailed.

MOTION

SEN. CHRISTMANN MOVED that SB 2261 be rereferred to the **Judiciary Committee**, which motion prevailed. Pursuant to Sen. Christmann's motion, SB 2261 was rereferred.

MOTION

SEN. CHRISTMANN MOVED that Senate Rule 338 be further amended to read "sixty-ninth" in place of "sixty-seventh", thereby extending the deadline for reporting bills out of committee, which motion prevailed.

MESSAGE TO THE HOUSE FROM THE SENATE (WILLIAM R. HORTON, SECRETARY)

MR. SPEAKER: The Senate has adopted the conference committee report and subsequently passed: HB 1231.

MESSAGE TO THE SENATE FROM THE HOUSE (BRADLEY C. FAY, CHIEF CLERK)

MR. PRESIDENT: The House has adopted the conference committee report and subsequently passed: HB 1189, HB 1222, HB 1275.

MESSAGE TO THE SENATE FROM THE HOUSE (BRADLEY C. FAY, CHIEF CLERK)

MR. PRESIDENT: The House has adopted the conference committee report and subsequently failed to pass: HB 1209, HB 1230.

MESSAGE TO THE SENATE FROM THE HOUSE (BRADLEY C. FAY, CHIEF CLERK)

MR. PRESIDENT: The Speaker has signed: HB 1042, HB 1280, HB 1284, HB 1348, HB 1350, HB 1357, HB 1374, HB 1376, HB 1391, HB 1410, HB 1419, HB 1433, HB 1439, HB 1452, HB 1460, HB 1470, HB 1473, HB 1484, HB 1486, HB 1497, HB 1505.

MOTION

SEN. CHRISTMANN MOVED that the Senate stand in recess until 1:00 p.m., which motion prevailed.

THE SENATE RECONVENED pursuant to recess taken, with President Pro Tem Grindberg presiding.

MOTION

SEN. CHRISTMANN MOVED that HB 1531, which is on the Sixth order, be rereferred to the **Industry, Business and Labor Committee**, which motion prevailed. Pursuant to Sen. Christmann's motion, HB 1531 was rereferred.

REPORT OF STANDING COMMITTEE

HB 1050, as engrossed: Appropriations Committee (Sen. Holmberg, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING). Engrossed HB 1050 was placed on the Sixth order on the calendar.

Page 1, line 2, after "adjustments" insert "; and to provide an appropriation for additional state employee compensation"

Page 1, line 7, replace "three" with "four"

Page 1, line 8, remove "Of the"

Page 1, remove lines 9 through 23

Page 2, line 6, replace "three" with "four"

Page 2, line 9, replace "three" with "four"

Page 2, after 18, insert:

"SECTION 3. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the agencies listed below for the purpose of providing additional compensation to state employees of the various agencies, for the biennium beginning July 1, 2005, and ending June 30, 2007:

	GENERAL FUND	SPECIAL FUNDS	TOTAL
Governor	\$18,647		\$18,647

Secretary of state	18,079	\$412	18,491
Office of management and budget	76,842	19,108	95,950
Information technology department	17,139	261,063	278,202
State auditor	37,752	17,374	55,126
State treasurer	5,283		5,283
Attorney general	119,265	42,774	162,039
Tax commissioner	108,832		108,832
Office of administrative hearings		8,792	8,792
Legislative council	38,169		38,169
Judicial branch	256,101	7,961	264,062
Retirement and investment office		16,207	16,207
Public employees retirement system		23,494	23,494
Department of public instruction	27,084	55,943	83,027
Land department		18,442	18,442
State library	15,857	2,099	17,956
School for the deaf	22,884	1,596	24,480
North Dakota vision services - school for the blind	7,578	2,999	10,577
Board for career and technical education	17,729	8,940	26,669
State department of health	96,462	175,470	271,932
Veterans' home	49,836		49,836
Indian affairs commission	2,832		2,832
Department of veterans' affairs	4,085		4,085
Department of human services	939,599	552,033	1,491,632
Protection and advocacy project	4,866	16,544	21,410
Job service	781	291,876	292,657
Insurance commissioner		42,621	42,621
Industrial commission	43,829	7,113	50,942
Labor commissioner	7,085	2,213	9,298
Public service commission	28,213	15,631	43,844
Aeronautics commission		5,797	5,797
Department of financial institutions		28,958	28,958
Securities department	9,430		9,430
Bank of North Dakota		149,018	149,018
Housing finance agency		36,355	36,355
Workforce safety and insurance		213,435	213,435
Highway patrol	168,909	5,461	174,370
Division of emergency management	25,495	22,988	48,483
Department of corrections and rehabilitation	438,759	38,484	477,243
Adjutant general	32,634	84,212	116,846
Department of commerce	43,228	19,289	62,517
Agriculture commissioner	29,656	22,767	52,423
Seed department		24,274	24,274
Upper great plains transportation institute	2,903	64,844	67,747
Branch research centers	58,568	18,264	76,832
NDSU extension service	153,847	107,685	261,532
Northern crops institute	5,663	4,071	9,734
Main research center	268,579	139,324	407,903
Agronomy seed farm		3,326	3,326
Historical society	38,629	4,827	43,456
Council on the arts	3,714		3,714
Game and fish department		143,043	143,043
Parks and recreation department	33,620	3,182	36,802
State water commission	11,220	69,208	80,428
Department of transportation		<u>835,451</u>	<u>835,451</u>
Total	\$3,289,683	\$3,634,968	\$6,924,651"

Renumber accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

This amendment adds \$6,924,651, of which \$3,289,683 is from the general fund, for state agencies to provide an additional 1 percent state employee salary increase for the first year of the 2005-07 biennium. The state employee compensation guidelines are changed to provide that state employees receive a 4 percent salary increase for the first year and a 4 percent

salary increase for the second year of the 2005-07 biennium. Provisions designating that one-half of the second year increase be used for specific purposes are removed.

CONSIDERATION OF AMENDMENTS

HB 1050, as engrossed: SEN. HOLMBERG (Appropriations Committee) MOVED that the amendments be adopted and then be placed on the Fourteenth order with **DO PASS**, which motion prevailed.

SECOND READING OF HOUSE BILL

HB 1050: A BILL for an Act to provide a statement of legislative intent regarding state employee compensation adjustments; and to provide an appropriation for additional state employee compensation.

ROLL CALL

The question being on the final passage of the amended bill, which has been read, the roll was called and there were 44 YEAS, 1 NAY, 0 EXCUSED, 2 ABSENT AND NOT VOTING.

YEAS: Andrist; Bercier; Brown; Christmann; Cook; Dever; Erbele; Espegard; Every; Fairfield; Fischer; Flakoll; Freborg; Grindberg; Hacker; Heitkamp; Holmberg; Kilzer; Klein; Krauter; Krebsbach; Kringstad; Lee, G.; Lee, J.; Lindaas; Lyson; Mathern; Mutch; Nelson; Nothing; O'Connell; Robinson; Schobinger; Seymour; Stenehjem; Syverson; Taylor; Thane; Tollefson; Trenbeath; Triplett; Urlacher; Wardner; Warner

NAYS: Bowman

ABSENT AND NOT VOTING: Tallackson; Traynor

Engrossed HB 1050, as amended, passed and the title was agreed to.

CONSIDERATION OF MESSAGE FROM THE HOUSE

SEN. HOLMBERG MOVED that the Senate do concur in the House amendments to Reengrossed SB 2247 as printed on SJ page 1355, which motion prevailed on a voice vote.

Reengrossed SB 2247, as amended, was placed on the Eleventh order of business.

SECOND READING OF SENATE BILL

SB 2247: A BILL for an Act to provide a statement of legislative intent regarding state employee compensation adjustments.

ROLL CALL

The question being on the final passage of the amended bill, which has been read, the roll was called and there were 10 YEAS, 35 NAYS, 0 EXCUSED, 2 ABSENT AND NOT VOTING.

YEAS: Andrist; Bercier; Every; Fairfield; Heitkamp; Krauter; Mathern; Nelson; Nothing; Warner

NAYS: Bowman; Brown; Christmann; Cook; Dever; Erbele; Espegard; Fischer; Flakoll; Freborg; Grindberg; Hacker; Holmberg; Kilzer; Klein; Krebsbach; Kringstad; Lee, G.; Lee, J.; Lindaas; Lyson; Mutch; O'Connell; Robinson; Schobinger; Seymour; Stenehjem; Syverson; Taylor; Thane; Tollefson; Trenbeath; Triplett; Urlacher; Wardner

ABSENT AND NOT VOTING: Tallackson; Traynor

Reengrossed SB 2247 lost.

SECOND READING OF SENATE BILL

SB 2059: A BILL for an Act to amend and reenact section 54-03-20 of the North Dakota Century Code, relating to lodging expense reimbursement for members of the legislative assembly; to provide for retroactive application; and to declare an emergency.

ROLL CALL

The question being on the final passage of the amended bill, which has been read, the roll was called and there were 38 YEAS, 7 NAYS, 0 EXCUSED, 2 ABSENT AND NOT VOTING.

YEAS: Andrist; Bercier; Bowman; Brown; Christmann; Cook; Dever; Erbele; Espegard; Fischer; Flakoll; Freborg; Grindberg; Hacker; Heitkamp; Holmberg; Kilzer; Klein;

Krebsbach; Kringstad; Lee, G.; Lee, J.; Lindaas; Lyson; Mutch; Nelson; Nething; O'Connell; Robinson; Schobinger; Seymour; Stenehjem; Syverson; Thane; Tollefson; Trenbeath; Urlacher; Wardner

NAYS: Every; Fairfield; Krauter; Mathern; Taylor; Triplett; Warner

ABSENT AND NOT VOTING: Tallackson; Traynor

Reengrossed SB 2059 passed, the title was agreed to, and the emergency clause was declared carried.

REPORT OF STANDING COMMITTEE

HCR 3059: Industry, Business and Labor Committee (Sen. Mutch, Chairman) recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HCR 3059 was placed on the Fourteenth order on the calendar.

SECOND READING OF HOUSE CONCURRENT RESOLUTION

HCR 3059: A concurrent resolution urging Congress to oppose federal legislation that would impair, erode, and limit the ability of state governments to regulate the business of insurance.

The question being on the final adoption of the resolution, which has been read, and has committee recommendation of DO PASS.

HCR 3059 was declared adopted, and the title was agreed to on a voice vote.

REPORT OF CONFERENCE COMMITTEE

HB 1275, as engrossed: Your conference committee (Sens. Kringstad, Christmann, Robinson and Reps. Skarphol, Monson, Glassheim) recommends that the **SENATE RECEDE** from the Senate amendments on HJ page 858, adopt amendments as follows, and place HB 1275 on the Seventh order:

That the Senate recede from its amendments as printed on page 858 of the House Journal and page 644 of the Senate Journal and that Engrossed House Bill No. 1275 be amended as follows:

Page 2, line 12, replace "software development or" with "information technology"

Page 2, line 13, remove "implementation"

Renumber accordingly

Engrossed HB 1275 was placed on the Seventh order of business on the calendar.

CONSIDERATION OF CONFERENCE COMMITTEE REPORT

SEN. ROBINSON MOVED that the conference committee report on Engrossed HB 1275 be adopted, which motion prevailed on a voice vote.

Engrossed HB 1275, as amended, was placed on the Fourteenth order.

SECOND READING OF HOUSE BILL

HB 1275: A BILL for an Act to create and enact a new section to chapter 54-59 of the North Dakota Century Code, relating to executive branch, legislative branch, and judicial branch reporting of information technology projects to the information technology advisory committee; and to amend and reenact section 54-59-07 of the North Dakota Century Code, relating to the state information technology advisory committee.

ROLL CALL

The question being on the final passage of the amended bill, which has been read, the roll was called and there were 26 YEAS, 19 NAYS, 0 EXCUSED, 2 ABSENT AND NOT VOTING.

YEAS: Bercier; Cook; Dever; Erbele; Every; Grindberg; Hacker; Holmberg; Kilzer; Krebsbach; Kringstad; Lee, G.; Lindaas; Lyson; Mathern; Nelson; Nething; Robinson; Seymour; Stenehjem; Taylor; Thane; Trenbeath; Urlacher; Wardner; Warner

NAYS: Andrist; Bowman; Brown; Christmann; Espegard; Fairfield; Fischer; Flakoll; Freborg; Heitkamp; Klein; Krauter; Lee, J.; Mutch; O'Connell; Schobinger; Syverson; Tollefson; Triplett

ABSENT AND NOT VOTING: Tallackson; Traynor

Engrossed HB 1275, as amended, passed and the title was agreed to.

REPORT OF CONFERENCE COMMITTEE

HB 1222, as engrossed: Your conference committee (Sens. Cook, G. Lee, Fairfield and Reps. Carlson, Devlin, Zaiser) recommends that the **SENATE RECEDE** from the Senate amendments on HJ pages 1344-1345, adopt amendments as follows, and place HB 1222 on the Seventh order:

That the Senate recede from its amendments as printed on pages 1344 and 1345 of the House Journal and page 1017 of the Senate Journal and that Engrossed House Bill No. 1222 be amended as follows:

Page 1, line 1, replace "effect" with "impact"

Page 1, line 3, replace "**effect**" with "**impact**"

Page 1, line 5, replace "effect" with "impact"

Page 1, line 7, remove "or a committee"

Page 1, line 8, remove "designated by the council"

Page 1, line 9, replace "effect" with "impact"

Page 1, line 11, replace "effect" with "impact"

Page 1, line 12, remove "or its designated"

Page 1, line 13, remove "committee" and replace "effect" with "impact"

Page 1, line 16, replace "effect" with "impact" and after the period insert "Within thirty days of the close of the first complete fiscal year after the effective date of an initiated measure approved by the voters, the agencies, institutions, or departments that provided the estimates of the fiscal impact of the measure to the legislative council under this section shall submit a report to the legislative council on the actual fiscal impact for the first complete fiscal year resulting from provisions of the initiated measure and a comparison to the estimates provided to the legislative council under this section and the legislative council shall issue a report of the actual fiscal impact of the initiated measure."

Renumber accordingly

Engrossed HB 1222 was placed on the Seventh order of business on the calendar.

CONSIDERATION OF CONFERENCE COMMITTEE REPORT

SEN. COOK MOVED that the conference committee report on Engrossed HB 1222 be adopted, which motion prevailed on a voice vote.

Engrossed HB 1222, as amended, was placed on the Fourteenth order.

SECOND READING OF HOUSE BILL

HB 1222: A BILL for an Act providing for determining the estimated fiscal impact of an initiated measure.

ROLL CALL

The question being on the final passage of the amended bill, which has been read, the roll was called and there were 44 YEAS, 1 NAY, 0 EXCUSED, 2 ABSENT AND NOT VOTING.

YEAS: Andrist; Bowman; Brown; Christmann; Cook; Dever; Erbele; Espegard; Every; Fairfield; Fischer; Flakoll; Freborg; Grindberg; Hacker; Heitkamp; Holmberg; Kilzer; Klein; Krauter; Krebsbach; Kringstad; Lee, G.; Lee, J.; Lindaas; Lyson; Mathern; Mutch; Nelson; Nething; O'Connell; Robinson; Schobinger; Seymour; Stenehjerm; Syverson; Taylor; Thane; Tollefson; Trenbeath; Triplett; Urlacher; Wardner; Warner

NAYS: Bercier

ABSENT AND NOT VOTING: Tallackson; Traynor

Engrossed HB 1222, as amended, passed and the title was agreed to.

REPORT OF CONFERENCE COMMITTEE

SB 2388: Your conference committee (Sens. J. Lee, Lyson, Warner and Reps. Uglem, Porter, Sandvig) recommends that the **SENATE ACCEDE** to the House amendments on SJ page 755, adopt further amendments as follows, and place SB 2388 on the Seventh order:

That the Senate accede to the House amendments as printed on page 755 of the Senate Journal and page 901 of the House Journal and that Senate Bill No. 2388 be further amended as follows:

Page 1, line 7, after "licensed" insert "or registered"

Renumber accordingly

SB 2388 was placed on the Seventh order of business on the calendar.

CONSIDERATION OF CONFERENCE COMMITTEE REPORT

SEN. J. LEE MOVED that the conference committee report on SB 2388 be adopted, which motion prevailed on a voice vote.

SB 2388, as amended, was placed on the Fourteenth order.

SECOND READING OF SENATE BILL

SB 2388: A BILL for an Act to create and enact a new subsection to section 43-42-05 and a new section to chapter 43-51 of the North Dakota Century Code, relating to reciprocity for the practice of respiratory therapy and for foreign practitioners in emergency situations.

ROLL CALL

The question being on the final passage of the amended bill, which has been read, the roll was called and there were 45 YEAS, 0 NAYS, 0 EXCUSED, 2 ABSENT AND NOT VOTING.

YEAS: Andrist; Bercier; Bowman; Brown; Christmann; Cook; Dever; Erbele; Espegard; Every; Fairfield; Fischer; Flakoll; Freborg; Grindberg; Hacker; Heitkamp; Holmberg; Kilzer; Klein; Krauter; Krebsbach; Kringstad; Lee, G.; Lee, J.; Lindaas; Lyson; Mathern; Mutch; Nelson; Nething; O'Connell; Robinson; Schobinger; Seymour; Stenehjem; Syverson; Taylor; Thane; Tollefson; Trenbeath; Triplett; Urlacher; Wardner; Warner

ABSENT AND NOT VOTING: Tallackson; Traynor

Engrossed SB 2388 passed and the title was agreed to.

MESSAGE TO THE HOUSE FROM THE SENATE (WILLIAM R. HORTON, SECRETARY)

MR. SPEAKER: The Senate has passed unchanged: HCR 3059.

MESSAGE TO THE HOUSE FROM THE SENATE (WILLIAM R. HORTON, SECRETARY)

MR. SPEAKER: The Senate has amended and subsequently passed: HB 1050.

MESSAGE TO THE HOUSE FROM THE SENATE (WILLIAM R. HORTON, SECRETARY)

MR. SPEAKER: The Senate has concurred in the House amendments and subsequently failed to pass: SB 2247.

MESSAGE TO THE HOUSE FROM THE SENATE (WILLIAM R. HORTON, SECRETARY)

MR. SPEAKER: The Senate has adopted the conference committee report and subsequently passed: SB 2388.

MESSAGE TO THE HOUSE FROM THE SENATE (WILLIAM R. HORTON, SECRETARY)

MR. SPEAKER: The Senate has adopted the conference committee report, subsequently passed, and the emergency clause carried: SB 2059.

MESSAGE TO THE HOUSE FROM THE SENATE (WILLIAM R. HORTON, SECRETARY)

MR. SPEAKER: The Senate has adopted the conference committee report and subsequently passed: HB 1222, HB 1275.

MESSAGE TO THE SENATE FROM THE HOUSE (BRADLEY C. FAY, CHIEF CLERK)

MR. PRESIDENT: The House has concurred in the Senate amendments and subsequently passed: HB 1203.

MESSAGE TO THE SENATE FROM THE HOUSE (BRADLEY C. FAY, CHIEF CLERK)

MR. PRESIDENT: The House has adopted the conference committee report and subsequently passed: SB 2187, SB 2266, SB 2372.

MESSAGE TO THE SENATE FROM THE HOUSE (BRADLEY C. FAY, CHIEF CLERK)

MR. PRESIDENT: The House has adopted the conference committee report, subsequently passed, and the emergency clause carried: SB 2251.

MESSAGE TO THE SENATE FROM THE HOUSE (BRADLEY C. FAY, CHIEF CLERK)

MR. PRESIDENT: The House has adopted the conference committee report and subsequently passed: HB 1500.

MOTION

SEN. CHRISTMANN MOVED that the absent member be excused, which motion prevailed.

MOTION

SEN. CHRISTMANN MOVED that the Senate be on the Fourth, Fifth, Seventh, Thirteenth, and Sixteenth orders of business and at the conclusion of those orders, the Senate stand adjourned until 8:00 a.m., Wednesday, April 13, 2005, which motion prevailed.

REPORT OF CONFERENCE COMMITTEE

HB 1189, as engrossed: Your conference committee (Sens. Traynor, Freborg, Every and Reps. Porter, Nelson, Hanson) recommends that the **SENATE RECEDE** from the Senate amendments on HJ page 1526, adopt amendments as follows, and place HB 1189 on the Seventh order:

That the Senate recede from its amendments as printed on page 1526 of the House Journal and page 711 of the Senate Journal and that Engrossed House Bill No. 1189 be amended as follows:

Page 2, line 2, replace "Local" with "If the local match meets one-third of the total cost of the contract, local"

Renumber accordingly

Engrossed HB 1189 was placed on the Seventh order of business on the calendar.

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.

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:

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

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

The Senate stood adjourned pursuant to Senator Christmann's motion.

William R. Horton, Secretary