

**FIRST ENGROSSMENT
with Conference Committee Amendments**

ENGROSSED HOUSE BILL NO. 1500

Introduced by

Representatives Koppelman, L. Meier, S. Meyer

Senators Syverson, Taylor, Tollefson

1 A BILL for an Act to create and enact a new chapter to title 51 of the North Dakota Century
2 Code, relating to identity fraud; and to provide a penalty.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

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

6 **Definitions.**

- 7 1. "Consumer" means an individual.
- 8 2. "Consumer report" has the same meaning as provided in 15 U.S.C. 1681a(d).
- 9 3. "Consumer reporting agency" means any person that, for monetary fees or dues or
10 on a cooperative nonprofit basis, regularly engages in the practice of assembling
11 or evaluating consumer credit information or other information on consumers for
12 the purpose of furnishing consumer reports to third parties, and which uses any
13 means or facility of interstate or intrastate commerce for the purpose of preparing
14 or furnishing consumer reports. The term does not include an agency that
15 compiles and maintains files on consumers on a nationwide basis, as described in
16 15 U.S.C. 1681a(p), a "reseller" as defined in 15 U.S.C. 1681a(u), when engaged
17 in the act of the reselling of consumer information or other information, or a
18 "nationwide specialty consumer reporting agency" that maintains "check writing
19 history" as defined in 15 U.S.C. 1681a(w)(3).
- 20 4. "File", when used in connection with information on any consumer, means all of
21 the information on that consumer reported and retained by a consumer reporting
22 agency regardless of how the information is stored.

23 **Initial fraud alerts.** Upon the direct request of a consumer or an individual acting on
24 behalf of or as a personal representative of a consumer, who asserts in good faith a suspicion

1 that the consumer has been or is about to become a victim of fraud or related crime, including
2 identity theft, a consumer reporting agency that maintains a file on the consumer and has
3 received appropriate proof of the identity of the requester shall include a fraud alert in the file of
4 that consumer. The consumer reporting agency shall continue that alert along with any credit
5 score generated in using that file, for a period of not less than ninety days beginning on the
6 date of the request, unless the consumer or the consumer's representative requests that the
7 fraud alert be removed before the end of the period and the agency has received appropriate
8 proof of the identity of the requester for that purpose.

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

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

26 **Police reports - Judicial determination of factual innocence.**

- 27 1. An individual who has learned or reasonably suspects that the individual's personal
28 identifying information has been unlawfully used by another, as described in
29 section 12.1-23-11, may initiate a law enforcement investigation by contacting the
30 local law enforcement agency that has jurisdiction over the individual's residence.
31 The law enforcement agency shall take a report of the matter, provide the

- 1 individual with a copy of that report, and begin an investigation of the facts. If the
2 suspected crime was committed in a different jurisdiction, the local law
3 enforcement agency may refer the matter to the law enforcement agency where
4 the suspected crime was committed for further investigation of the facts.
- 5 2. An individual who reasonably believes that the individual is the victim of identity
6 theft may petition the district court in the county in which the alleged victim resides
7 or in which the identity theft is alleged to have occurred, or the court, on its own
8 motion or upon application of the state's attorney, may move for an expedited
9 judicial determination of the individual's factual innocence, if the perpetrator of the
10 identity theft was arrested, cited, or convicted of a crime under the victim's identity,
11 if a criminal complaint has been filed against the perpetrator in the victim's name,
12 or if the victim's identity has been mistakenly associated with a record of criminal
13 conviction. Any judicial determination of factual innocence made under this
14 section may be heard and determined upon declarations, affidavits, police reports,
15 or other material, relevant, and reliable information submitted by the parties or
16 ordered to be part of the record by the court. If the court determines that the
17 petition or motion is meritorious and that there is no reasonable cause to believe
18 that the victim committed the offense for which the perpetrator of the identity theft
19 was arrested, cited, convicted, or subject to a criminal complaint in the victim's
20 name, or that the victim's identity has been mistakenly associated with a record of
21 criminal conviction, the court shall find the victim factually innocent of that offense.
22 If the victim is found factually innocent, the court shall issue an order certifying that
23 determination.
- 24 3. After a court has issued a determination of factual innocence under this section,
25 the court may order the name and associated personal identifying information
26 contained in court records, files, and indexes accessible by the public deleted,
27 sealed, or labeled to show that the data is impersonated and does not reflect the
28 defendant's identity.
- 29 4. A court that has issued a determination of factual innocence under this section
30 may vacate that determination if the petition or any information submitted in
31 support of the petition is found to contain any material misrepresentation or fraud.

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