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DESCRIPTION

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La Costa Richard
Operator's Signature

10/16/03
Date

2003 HOUSE POLITICAL SUBDIVISIONS

HB 1445

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Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1445

House Political Subdivisions Committee

Conference Committee

Hearing Date: February 13, 2003

Tape Number	Side A	Side B	Meter #
1		X	11.7-28.1
Committee Clerk Signature <i>Micki Schmidt</i>			<i>2-26-03</i>

Minutes:

TAPE 1; SIDE B:

(11.7) CHAIRMAN GLEN FROSETH: We will open the hearing on HB 1445.

(11.9) REP. SCOT KELSH: (Testimony in support) I introduced this Bill as a simple little consumer protection Bill. If you're like me, I receive anywhere from four to five credit card applications per week. What I usually do is throw them in the garbage can, but lately, I've been at least tearing them at least in half before I dispose of them. Often times I receive other people's mail in my mail box, which are most times credit card applications. I introduced this Bill for protection because there is nothing that prevents some person from retrieving it from your garbage or using your misdirected mail, complete the application, send it in, receive a credit card using your name, and make charges on it. I understand the Bill may need some more work on it.

(13.4) REP. GIL HERBEL: What are the financial obligations if something happens to the individual?

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House Political Subdivisions Committee

Bill/Resolution Number HB 1445

Hearing Date: February 13, 2003

(3.4) SCOT KELSH: My understanding is the consumer is responsible for the first \$50.00. d

(13.7) REP. ANDREW MARAGOS: Even if it can be shown that they didn't apply for the card?

(13.8) SCOT KELSH: Again the burden of proof lies on the consumer.

(14.7) MARILYN FOSS; ND BANKERS ASSOCIATION: (Testimony in opposition) (See attachment #1)

(24.5) CHAIRMAN GLEN FROSETH: I think we've all gotten credit cards in the mail. It's against federal law to send out unsolicited credit cards, how come we always receive them?

(24.9) MARILYN FOSS: I doubt that you have received an unsolicited credit card for a number of years. You do receive applications. A truly unsolicited credit card, they're not enforceable.

(25.4) CHAIRMAN GLEN FROSETH: All you have to do is present it and it's activated.

(25.5) MARILYN FOSS: I'm not going to challenge you on that. Truly unsolicited credit cards that companies send out to you with no return of application, nothing from you, hasn't been done in a long time.

(25.9) REP. GIL HERBEL: I too have received credit cards without no application what so ever. I no that for a fact. That has happened in the last three years. The \$50.00 issue only applies if you have present contract and not under circumstances where if this application was thrown in the garbage and someone else filled it out, then you're not required to pay that \$50.00?

(26.5) MARILYN FOSS: Yes, the \$50.00 applies to lost and stolen cards. Those are cards that you had lost through personal use. I'm not telling you that no one ever gets into arguments with

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House Political Subdivisions Committee
Bill/Resolution Number HB 1445
Hearing Date: February 13, 2003

their credit card company. I know that the possibility of someone stealing your garbage, that could result in the issue of your credit card which was mailed to you. But the signature on the application would be a forged signature. The credit card company would still have to prove that you entered the contract.

(27.7) CHAIRMAN GLEN FROSETH: Any questions by the committee? Opposition? Seeing none, we will close the hearing on HB 1445.

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1445

House Political Subdivisions Committee

Conference Committee

Hearing Date: February 13, 2003

Tape Number	Side A	Side B	Meter #
2	X		34.9-39.9
Committee Clerk Signature <i>Micki Schmidt</i>			2-28-03

Minutes:

TAPE 2; SIDE A:

(34.9) CHAIRMAN GLEN FROSETH: We will open the hearing on HB 1445.

(35.1) REP. ANDREW MARAGOS: I WOULD MOVE A DO NOT PASS.

(35.2) REP. RON IVERSON: I SECOND IT.

(35.2) CHAIRMAN GLEN FROSETH: Any committee discussion?

(36.6) REP. ANDREW MARAGOS: The thing that bothers me is the initiation or the activation of the credit card. My experience is that you are supposed to call an 800 number to activate the card to make a charge on it. You cannot activate it until you call that number from your home.

(37.1) REP. RON IVERSON: It is my understanding that all of these companies have a fraud dept. that you can call.

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House Political Subdivisions Committee

Bill/Resolution Number HB 1445

Hearing Date: February 13, 2003

(37.5) REP. MARY EKSTROM: These applications have a tremendous amount of information about that person already on the application. All you have to do is sign your name.

(37.8) REP. SALLY SANDVIG: I think what Marilyn said about reading the fine print on the back of your bill, I don't think everyone does that.

(38.2) REP. CAROL NIEMEIER: I think the bill has good intent. Whether the cards are solicited or not, there is still incidence of this happening where cards are being stolen and making charges on it. I like the part of the burden of proof is on the credit card company and that is the intent of the issue to me, so I would resist the Do Not Pass.

(38.8) CHAIRMAN GLEN FROSETH: Any further comments? Hearing none, I will have the clerk call the Roll Call Vote: 13-y; 1-n; 0-absent; Carrier: Rep. Wieland.

(39.9)

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Date: 2-13-03

Roll Call Vote #: 4

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1445

House "POLITICAL SUBDIVISION" Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Not Pass

Motion Made By Rep. Maragos Seconded By Rep. Iverson

Representatives	Yes	No	Representatives	Yes	No
Chairman Glen Froseth	✓				
Vice-Chairman Nancy Johnson	✓				
Mike Grosz	✓				
Gil Herbei	✓				
Ron Iverson	✓				
William E. Kretschmar	✓				
Andrew Maragos	✓				
Dale Severson	✓				
Alon Wieland	✓				
Bruce Eckre	✓				
Mary Ekstrom	✓				
Carol A. Niemeier		✓			
Sally M. Sandvig	✓				
Vonnie Pietsch	✓				

Total (Yes) 13 No 1

Absent 0

Floor Assignment Rep. Wieland

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

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Jo Costa Rickford
Operator's Signature

10/16/03
Date

REPORT OF STANDING COMMITTEE (410)
February 13, 2003 1:19 p.m.

Module No: HR-28-2583
Carrier: Wieland
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE
HB 1445: Political Subdivisions Committee (Rep. Froseth, Chairman) recommends DO
NOT PASS (13 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). HB 1445 was placed
on the Eleventh order on the calendar.

(2) DESK, (3) COMM

Page No. 1

HR-28-2583

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RP

2003 TESTIMONY

HB 1445

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Salveta Rickford 10/16/03
Operator's Signature Date

#1

273-03

TESTIMONY OF MARILYN FOSS (NDBA) ON HB 1445

Mr. Chairman, members of the committee, I am Marilyn Foss, general counsel for the North Dakota Bankers Association. Let me say at the outset, that I debated whether or not to testify on this bill because NDBA and its member banks 1) are actively working to help North Dakotans protect themselves against identity theft ,and, 2) do not think that a "credit card company" (a term which is not defined in the bill) should be able to obtain a court judgment against an individual who does not have a contract with the credit card company. However, after thinking about it for a while, I concluded the committee should have an understanding of the applicable law before acting on the bill.

Credit card issuers and cardholders are parties to a contract under which the credit card company extends credit to the cardholder upon specified, written terms as set out in their agreement. A credit card holder becomes a party to the contract/agreement by signing the application for a credit card. (Credit card issuers do not send out unsolicited credit cards any more and haven't done so for a number of years. That activity is prohibited by federal law.) When a credit card company is suing a cardholder over charges, the credit card company is attempting to enforce the contract. As a matter of ordinary contract law any person who is suing to enforce a contract must prove there is a contract with the person being sued and to prove that the person being sued breached the contract. If the person who is suing doesn't submit enough evidence from which a judge or jury could find that the contract exists, the judge will dismiss the lawsuit. This part of the law isn't different for credit cards even though credit card procedures and some of

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their contract terms are regulated by other state and federal laws, including the federal Truth in Lending Act and its implementing regulation, which is known as Regulation Z.

Under section 1643 of the federal Truth in Lending Act as it is interpreted by the courts, it is the suing card issuer which bears the burden of proving a charge is authorized by a contract between the parties. The card holder isn't responsible for proving a charge isn't authorized. Section 1643 applies whenever there is a collection lawsuit.

The committee has heard testimony this morning about the cardholder's possible liability when a credit card is lost or stolen. A card holder who has a card stolen or who loses a card has a contract with the card issuer. I don't see HB 1445 as even addressing the problem of liability when there is a lost or stolen card because HB 1445 addresses only situations where the person being sued doesn't have a contract with the card issuer. Frankly, I am not aware of any case in North Dakota where a credit card issuer has sued a person who is asserting s/he is a victim of identity theft under the theory that the person is lying about the identity theft.

The federal Truth in Lending Act and Reg Z thoroughly address the rights and remedies of the card issuer and card holder when there is an erroneous charge to an account. And, every credit card statement tells card holders what to do if there is an erroneous charge. Generally speaking, the card holder is directed to notify the card issuer within 60 days so that the matter can be investigated. In main, the problem with lost and stolen cards is not that there isn't a process, it's that people don't follow the process and notify issuers within 60 days. BUT, even then, if the issuer sues the card holder, TIL section 1643 becomes operative and the issuer must still prove the charge is authorized.

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With the existing laws on the books, the only thing that this bill actually does is to impose a different and tougher standard of proof for credit card contracts than is imposed for enforcing any other type of contract in North Dakota. Frankly, I don't see that it is sound policy for the state to single out one industry and one type of contract in this manner.

I would also note that the bill requires a determination that there has been clear and convincing evidence of the contract and authority before the action may proceed. I assume that is to mean there is to be a speedy resolution to the issue. However, that type of determination is one which is made by a jury or a judge after a trial. It doesn't usually happen early in a proceeding or before the parties have incurred what can be substantial expense. So here again, I am not sure the bill achieves its purpose.

Finally, I did ask the American Bankers Association about similar statutes in other states. I was told they knew of none.

In closing, I would urge the committee to give this bill a DNP. I'd be happy to answer questions. Thank you.

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