

## NORTH DAKOTA

IDENTITY THEFT RANKING BY STATE: Rank 50, 28.5 Complaints Per 100,000  
Population, 182 Complaints (2007)  
Updated July 5, 2008

### **Current Laws:**

**Identity Crime:** A person commits the crime of unauthorized use of personal identifying information if he uses or attempts 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, and by representing that person is the individual or acting with the authorization or consent of the individual.

“Personal identifying information” includes any of the following:

- An individual’s name, address, telephone number, driver’s license number, or Social Security number.
- An individual’s place of employment or employer, or identification number assigned by his/her employer
- An individuals’ birth, death, or marriage certificate
- The maiden name of the individual’s mother
- The identifying number of a depository account in a financial institution

The offense is a class C felony, punishable by up to 5 years in jail and/or a fine up to \$5,000, unless the value of the credit, money, goods, services, or anything else of value exceeds \$1000, in which case it is a class B felony, punishable by up to 10 years in jail and/or a fine up to \$10,000. A second or subsequent offense is a class A felony, punishable by up to 20 years in jail and/or a fine up to \$10,000. In determining whether it is a second or subsequent offense, prosecutors can count violations in North Dakota, any other state, or of federal law.

Statute: §12.1-23-11: <http://www.legis.nd.gov/cencode/t121c23.pdf> (scroll down to section 11)

**Statute of Limitations:** Prosecution for this offense must be commenced within six years after discovery by the victim of the theft.

Statute: §12.1-23-11: <http://www.legis.nd.gov/cencode/t121c23.pdf> (scroll down to section 11)

**Jurisdiction:** If a person commits violations of this section in more than one county, the multiple offenses may be consolidated for commencement of the prosecution in any county where one of the offenses was committed. If the crime is committed by a person residing out of state against a North Dakota resident, he/she is subject to prosecution in North Dakota. The venue would be the county in which the victim resides or any other county in which any part of the crime occurred.

Statute: §12.1-23-12: <http://www.legis.nd.gov/cencode/t121c23.pdf> (scroll down to section 12)

**Phishing:** State law criminalizes fraudulent or misleading communications that are used to obtain another person's personal identifying information, also known as phishing. A person is guilty of a class C felony (punishable by up to 5 years in jail and/or a fine up to \$5,000), if with intent to defraud or injure another person, makes any communication that is not true and is calculated to mislead by purporting to be by or on behalf of another person without the authority or approval of that person, and uses that communication to induce, request, or solicit the individual to provide property or identifying information. It is also a class C felony if with the intent to defraud or injure another, a person creates or operates a web page that falsely represents the actor as being associated with another person without the authority or approval of that person, and the web pages seeks to induce users to provide property or identifying information. Statute: §51-27-10: <http://www.legis.nd.gov/cencode/t51c27.pdf> (scroll down to section 10)

### **Victim Assistance:**

**Mandatory Police Reports:** An individual who has learned or reasonably suspects that his/her personal identifying information has been unlawfully used by another may initiate a law investigation by contacting the local law enforcement with jurisdiction over the individual's residence. The agency must take a report of the matter, provide the individual with a copy of the report, and begin an investigation of the facts. If the suspected crime was committed in another jurisdiction, the agency may refer the matter to the law enforcement agency in that location. Statute: §51-31: <http://www.legis.nd.gov/cencode/t51c31.pdf> (scroll down to section 4).

**Security Freeze:** All consumers in North Dakota may place a security freeze on his or her credit report by requesting one from the credit reporting agencies by mail, by telephone, or by e-mail, if the agency makes that option available. A security freeze prohibits, with certain specific exceptions, the credit reporting agency from releasing the consumer's credit report or any information from it without the express authorization of the consumer. The credit reporting agency may charge up to \$5 for each placing, removing or temporary lifting of a security freeze. However, victims of identity theft will not be charged any fees in connection with the placing, removing, or temporary lifting of a security freeze.

The consumer reporting agency must place the freeze within three business days of receiving the request. If the person requesting the freeze is an identity theft victim with a police report or other complaint, the freeze must be placed within 48 hours. After August 1, 2009, this time decreases to just 24 hours. Within five days after receiving the request, the consumer reporting agency must send a written confirmation of the freeze to the consumer, along with a unique password or personal identification number that can be used to temporarily lift the freeze.

Statute: §51-33: <http://www.legis.nd.gov/cencode/t51c33.pdf>  
"Security Freeze" (<http://www.ag.state.nd.us/brochures/factsheet/security%20freeze2007.pdf>)

**Fraud Alerts:** A person who asserts in good faith a suspicion that he/she has been or is about to be a victim of identity theft can request that consumer reporting agencies place a fraud alert on his/or credit report. Upon receiving the request, including proof of identity of the requesting person, the agency must place the alert in the consumer's credit file for at least 90 days. This can be extended for seven years upon request by the consumer.

Statute: §51-31: <http://www.legis.nd.gov/cencode/t51c31.pdf>

**Criminal History:** Someone who believes his or her identity has been stolen may ask a judge for expedited determination of innocence, if the theft causes the person to be falsely arrested or blamed for fraud. An individual may petition the district court in the county where he/she resides or in which the identity theft is alleged to have occurred. A court can also move on its own motion or upon application of the state's attorney 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. If a victim is found factually innocent, the court will issue an order certifying that determination, and may order the name and associated personal identifying information contained in court records, files, and indexes accessible by the public be deleted, sealed, or labeled to show that the data is impersonated and does not reflect the defendant's identity.

Statute: §51-31-04: <http://www.legis.nd.gov/cencode/t51c31.pdf> (scroll down to section 4)

**Security Breaches:** State law requires any person that conducts in the state, and that owns or licenses computerized data that includes personal information, to disclose any breach of the security of the system to any resident of the state whose unencrypted personal information was, or is reasonably believed to have been, acquired by an unauthorized person. A breach is defined as the unauthorized acquisition of computerized data when access to personal information has not been secured by encryption or by any other method or technology that renders the electronic files, media, or data bases unreadable or unusable. The disclosure must be made in the most expedient time possible and without unreasonable delay, consistent with the legitimate needs of law enforcement, or any measures necessary to determine the scope of the breach and to restore the integrity of the data system.

Personal information is defined as an individual's first name or first initial and last name in combination with any of the following data elements, when the name and the data elements are not encrypted: Social Security number; operator's license number or nondriver identification card number; a financial account number, credit or debit card number, in combination with any required security code, access code, or password, that would permit access to an individual's financial accounts; date of birth; mother's maiden name; employee identification number; or digitized or other electronic signature. It does not include publicly available information that is lawfully made available to the public from federal, state, or local government records.

Notification can be provided by mail or e-mail. If the cost of providing regular notice would exceed \$250,000, the amount of people to be notified exceeds 500,000, or the business or agency does not have sufficient contact information to provide written or electronic notice, substitute notice may be provided. When substitute notice is used, it must consist of all of the following, as applicable: e-mail notice, conspicuous posting on the business's web site, and notification to major statewide media.

Statute: 51-30: <http://www.legis.nd.gov/cencode/t51c30.pdf>

## State Resources:

Office of the Attorney General: “Identity Theft”

(<http://www.ag.state.nd.us/CPAT/IDTheft/IDTheft.htm>)

- “What Is Identity Theft?” (<http://www.ag.state.nd.us/cpat/PDFFiles/IdentityTheft1.PDF>)
- “How to Avoid Identity Theft” (<http://www.ag.state.nd.us/cpat/PDFFiles/IdentityTheft2.PDF>)
- “Stolen Identity – Now What?” (<http://www.ag.state.nd.us/cpat/PDFFiles/STOLENIDENTITY.pdf>)

This document instructs victims to: *“File a report with your local police. It is a crime in North Dakota for an individual to use another individual’s identifying numbers. Once the police report is written, request a copy for your files. You may be asked by your bank, credit card companies or other agencies to supply a copy of this report for their files. Even if the police can’t catch the identity thief in your case, having a copy of the police report can help you when dealing with creditors.”*

- “Social Security Numbers” (<http://www.ag.state.nd.us/cpat/PDFFiles/socialsecuritynumbers.pdf>)

“Identity Theft Fact Sheet” (<http://www.ag.state.nd.us/CPAT/IDTheft/IDTheftAffidavit.pdf>)

This fact sheet directs victims to first: ***“File a report with your local law enforcement agency. Ask for a copy of the police report, or the complaint number.”***

“Identity Theft Brochure” (<http://www.ag.state.nd.us/brochures/IdentityTheft.pdf>)

“Identity Theft Affidavit” (<http://www.ag.state.nd.us/CPAT/IDTheft/IDTheftAffidavit.pdf>)

This document, developed by the Federal Trade Commission (FTC) and now implemented by the North Dakota Attorney General, helps victims report proof of identity theft using one standard form.

Instructions for filling out the form: <http://www.ag.state.nd.us/CPAT/IDTheft/IDTheftInstr.pdf>

“Identity Theft Contact Log” (<http://www.ag.state.nd.us/cpat/idtheft/IDTheftLog.pdf>)

“Scams, Shams, and Flimflams” (<http://www.ag.state.nd.us/CPAT/ScamsShamsFlimFlams.pdf>)

This comprehensive document includes information on preventing identity theft and instructions on what to do if you become an identity theft victim. It tells victims to first: *“File a report with your local law enforcement agency. Ask for a copy of the police report or the complaint number.”*

“Security Freeze” (<http://www.ag.state.nd.us/brochures/factsheet/security%20freeze2007.pdf>)

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## **Legislation:**

### **2007:**

Under **HB 1417**, consumers in North Dakota will have the right to put a security freeze on their credit files to prevent identity thieves from opening new credit accounts in their names. A security freeze enables a consumer to prevent anyone from looking at his or her own credit reporting file for purposes of granting credit unless the consumer chooses to let that particular business look at the information. This gives consumers control over who has access to their information needed to process a credit application and effectively prevents crooks from opening new accounts in their name. When the consumer is applying for credit, the security freeze can be lifted temporarily so the application can be processed.

**HB 1507** prohibits phishing, a form of identity theft that uses an e-mail that appears to represent a legitimate Web site and requests personal information that can be used to access a person's financial accounts or obtain goods and services. The bill prohibits sending state residents e-mail that looks like it is from a legitimate business but is not in order to solicit or request the individual to provide property or identifying information. It also prohibits the creation or operation of a web page that falsely represents itself as being associated with another person or business to induce users to provide property or identifying information. Both crimes are class C felonies, if committed with the intent to defraud or injure an individual.

### **2005:**

**HB 1500** provides new protections for victims of identity theft. The bill gives the attorney general jurisdiction over complaints of identity theft, regardless of where in North Dakota the complaint originated. A complaint triggers credit-bureau alerts and other initiatives to limit a person's financial harm. Someone who believes his or her identity has been stolen may ask a judge for expedited determination of innocence, if the theft causes the person to be falsely arrested or blamed for fraud. In addition, the bill requires law enforcement agencies to take reports of identity theft and begin investigations of complaints.

**SB 2251** requires companies to notify consumers if a security breach puts unencrypted sensitive personal information at risk of identity theft. The notification requirement covers unencrypted computerized personal data, including Social Security numbers and numbers for driver licenses, birth dates, credit cards numbers and other financial accounts. The notification must be made in the most expedient time possible and without unreasonable delay, consistent with the legitimate needs of law enforcement, and can be made in various ways, including by mail, e-mail, or phone. The attorney general may conduct an investigation and bring civil actions to obtain compliance.

**HB 1211** makes several changes to the state's identity theft statute. It adds marriage, birth, and death certificates to the list of personal identifying information protected by the law. It also clarifies that the law also applies to victims both living and dead. It increases the penalty from a class C to a class B felony for crimes in which the value of the credit, money, goods, services, or anything else of value exceeds \$1000. It also adds a class A felony penalty for second or subsequent offenses. In addition, it sets a statute of limitations for prosecution of identity theft crimes at six years from the date of discovery by the victim.