

2023 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1143

2023 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Room JW327C, State Capitol

HB 1143
1/10/2023

Relating to theft of property; and to provide a penalty.

Chairman Louser called the meeting to order 8:59 AM.

Members Present: Chairman Louser, Vice Chairman Ostlie, Representative Christy Dakane, Johnson, Kasper, Koppelman, Ruby, Schauer, Thomas, Tveit, Wagner, Warrey.
Member Absent: Boschee

Discussion Topics:

- Civil proceedings
- Restitution ability
- Thief penalties
- Committee Work

In favor:

Representative Austin Schauer #12731

Representative Ista District 43, spoke in favor (no written testimony)

Mike Anderson, Branch Manager, Bierschbach Equipment & Supply Berger #12732

Representative D. Ruby moved a Do pass on HB 1143.

Representative Kasper seconded.

Roll Call vote:

Representatives	Vote
Representative Scott Louser	Y
Representative Mitch Ostlie	Y
Representative Josh Boschee	AB
Representative Josh Christy	Y
Representative Hamida Dakane	Y
Representative Jorin Johnson	Y
Representative Jim Kasper	Y
Representative Ben Koppelman	Y
Representative Dan Ruby	Y
Representative Austen Schauer	Y
Representative Paul J. Thomas	Y
Representative Bill Tveit	Y
Representative Scott Wagner	Y
Representative Jonathan Warrey	Y

Motion carried. 13-0-1.

Representative Schauer to carry the bill

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Chairman Louser adjourned 9:19 AM.

Diane Lillis, Committee Clerk

REPORT OF STANDING COMMITTEE

HB 1143: Industry, Business and Labor Committee (Rep. Louser, Chairman)
recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB
1143 was placed on the Eleventh order on the calendar.

2023 SENATE JUDICIARY

HB 1143

2023 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Peace Garden Room, State Capitol

HB 1143
3/15/2023

A bill relating to theft of property; and to provide a penalty.

9:31 AM Chairman Larson opened the meeting.

Chairman Larson and Senators Myrdal, Luick, Estenson, Sickler, Braunberger and Paulson are present.

Discussion Topics:

- Rental Property
- Stolen property

9:31 AM Representative Schauer introduced the bill. #25247

9:35 Stephanie Dassinger Engebretson, Lobbyist, Chiefs of Police Association of North Dakota, spoke opposed to the bill.

9:43 AM Jonathan Beyers, Lobbyist, North Dakota State's Attorney's Association, spoke opposed to the bill.

9:52 AM Robert Vallie, Assistant State's Attorney, Cass County State's Attorney's Office spoke opposed to the bill. #25131

10:04 AM Chairman Larson closed the public hearing.

10:04 AM Chairman Larson closed the meeting.

Rick Schuchard, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Peace Garden Room, State Capitol

HB 1143
3/20/2023

A bill relating to theft of property; and to provide a penalty.

11:03 AM Chairman Larson opened the meeting.

Chairman Larson and Senators Myrdal, Luick, Estenson, Sickler, Paulson and Braunberger are present.

Discussion Topics:

- Committee action
- Rental Property

11:08 The committee has discussion on the bill.

11:19 AM Senator Braunberger moved to Do Not Pass the bill. Motion seconded by Senator Myrdal.

11:19 AM Roll call vote was taken.

Senators	Vote
Senator Diane Larson	Y
Senator Bob Paulson	N
Senator Jonathan Sickler	Y
Senator Ryan Braunberger	Y
Senator Judy Estenson	Y
Senator Larry Luick	Y
Senator Janne Myrdal	Y

Motion passes 6-1-0.

Senator Luick will carry the bill.

This bill does not affect workforce development.

11:24 The Chairman Larson closed the meeting.

Rick Schuchard, Committee Clerk

REPORT OF STANDING COMMITTEE

HB 1143: Judiciary Committee (Sen. Larson, Chairman) recommends **DO NOT PASS** (6 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). HB 1143 was placed on the Fourteenth order on the calendar. This bill does not affect workforce development.

TESTIMONY

HB 1143

Thank you, Mr. Chairman, and members of the House Industry, Business and Labor Committee.

My name is Austen Schauer, representing District 13 in West Fargo.

I am here today to seek your support of **House Bill 1143**.

What is the definition of **theft**?

According to Webster, it's the **action or crime of stealing**.

That is obvious, but not as obvious as you may think.

Recently, I was contacted by an Equipment and Supply business in Fargo. It sells and rents construction equipment.

A man had rented some equipment valued at more than 40 thousand dollars.

The rental payment was set up to pay from a credit card.

That worked fine for three months and then the man stopped paying.

His credit card was repeatedly declined.

The phone number given to the rental company was disconnected and communication ended.

When the company ^{contacted} ~~connected~~ police and then an attorney, they were told this is a **civil matter** because of a rental contract.

So, is it a crime to not return rental property?

Is it a crime to steal rental property?

HB 1143 makes it clear that **it is a crime**, and we hope you agree.

Thank you, Mr. Chairman, and committee members.

We seek your full support of **House Bill 1143**.

House Bill 1143
1-10-23
9:00 am
North Dakota State Capitol

My name is Mike Anderson. I have worked with Bierschbach Equipment & Supply for 25 years in Fargo, ND.

I am testifying in favor of house bill 1143.

Bierschbach Equipment & Supply engages in the rental of construction equipment such as skidsteer loaders, telescopic forklifts, boom lifts, excavators, and many others.

When a customer rents equipment we ask for name, address, phone number, drivers license, and method of payment and signature. We typically gather payment via credit card and bill the amount up front for the agreed to term of the rental. Customer will not get the equipment without that initial payment. We have had times where the credit card is eventually declined and then we need to contact the customer regarding payment. Most are rectified, but we have had times where the customer phone is disconnected and the card is no longer good and the customer still has the equipment and wont return it.

The police wont help as they deem it a civil matter. I could get a small claims judgement on the unpaid rentals, but if the customer doesn't return the equipment the rentals keep adding up.

I currently have a customer who rented a \$40,000 mini excavator and the card was good for 3 months, but now he has had the excavator for 7 months with the last 4 months of declined credit card payments at \$2600 per month. The customer provided his parents address, his phone number is no longer in service and hasn't returned the equipment. Right now there is no penalty for not returning and not paying.

Imagine if someone rented a car in North Dakota and moved to Florida and kept the car and canceled the credit card. That seems like theft.

Thank you for your consideration of my support of House Bill 1143.

Mike Anderson
Branch Manager
Bierschbach Equipment & Supply, employee owned
4001 Main Ave
Fargo, ND. 58103
701-492-0855

**Robert Vallie-Assistant State's Attorney
Cass County State's Attorney's Office
Testimony Concerning House Bill 1143
March 15, 2023**

Chair Larson and members of the Senate Judiciary Committee,

My name is Robert Vallie and I am an Assistant State's Attorney with the Cass County State's Attorney's Office. I provide this testimony in opposition of the passage of House Bill 1143, which creates an additional subsection in North Dakota's theft statute, pertaining to leased or rented personal property.

Since my licensure in 2017, I have practiced the entirety of my career as a prosecutor. First in Ward County and now in Cass County. In that time, I have prosecuted theft cases, ranging from the stealing of a candy bar, to stealing cars, trailers and construction equipment. One may look at this bill as a straightforward fix to address those who may steal property rented or leased out. However, as a prosecutor who has dealt with the issues concerning rented property as a possible theft, I believe this committee having an understanding of the issues that can arise is important, while this Committee deliberates this bill.

Perhaps the biggest issue a prosecutor can face, in cases of theft involving rental property is showing that the suspect intends to deprive the owner of that property. When an alleged theft from a rental or leasing company comes forward, many times it is due to the property not being returned at the specified time, a credit card being declined or limited or no contact with the suspect at a certain point. These reports may include some or all of these factors. While any of these may provide a good starting point to suggest the possibility of a crime, it is not in and of itself a crime. Assuming one or more of the factors described is a part of a criminal report, all that is known for certain is a breach of contract. Circumstances can occur where the suspect has died, the property returned to a different facility that was not communicated or the property is taken by someone other than the suspect. In addition, when a rental company, who may be having difficulties with a suspect, provides a written or verbal extension to terms of the contract. These types of extensions, while understandable from a business perspective can further complicates a determination by law enforcement and prosecutors as to when a breach of contract ends, and a criminal violation begins.

To further complicate matters in determining that intent, becomes where the suspect is located at, when that intent to deprive the owner occurs. In cities like Fargo, Grand Forks and Wahpeton, that have sister cities across the river in Minnesota, it comes as no surprise that people and criminal activity can flow from one jurisdiction to another. If the property is listed on Facebook Marketplace for sale, flees from law enforcement or involved in some other criminal act, this provides evidence of an intent to deprive the owner. In my experience, it is common to see a vehicle reported stolen in one jurisdiction and the vehicle found or involved in a criminal act across the Red River at a later time. Depending on the facts of the specific case, I have had to decline prosecution or charge an individual with theft by possession versus theft by taking, due to that jurisdiction change. While I might suspect or guess that the suspect

intended to steal the vehicle at the very start, that is not sufficient to prove all the essential elements of the criminal offense, beyond a reasonable doubt. The same applies for rental or leased property. In today's world, where a rental company can rent property in Bismarck and return it in Birmingham, proving where that intent to deprive starts is further complicated.

In addition to the above-mentioned concerns, there are areas of the bill that either require clarification or are duplicative of what is already in Century Code. As proposed, a person would be guilty of theft if the person intended to wrongfully deprive the owner. In my review of the bill and Century Code, there is no definition of the term wrongfully. Under Title 12.1 a number of words are defined, in order to provide guidance as to whether a criminal offense has been committed. I believe, if this bill is to pass, it is important to define what the term wrongfully means, in order to ensure consistent application of the law across the state. Under Subsections (4)(b) and (4)(c) of the proposed changes to 12.1-23-02 of Century Code, this bill proposes two areas already covered under the current theft statute. Subsection (4)(b), which deals with the use of false or fictitious information, fits within the realm of Theft by Deception under 12.1-23-02(2). Subsection (4)(c), which deals with non-payment for the lease or rental, is a Theft of Services under 12.1-23-03(1). In these areas, if, law enforcement is able to acquire evidence of such violations, the means already exist to prosecute such crimes. As such, these proposed Subsections are duplicative and unnecessary to what already exists with our current Century Code.

Chair Larson and members of the Committee, thank you for the opportunity to provide testimony on this matter. I urge a Do Not Pass Recommendation for this bill and happy to answer any questions the Committee may have.

Robert Vallie
Assistant State's Attorney
Cass County State's Attorney's Office
211 9th St. S.
Fargo, ND 58103
(701) 241-5850

Thank you, Madam Chair, and members of the Senate Judiciary Committee.

My name is Austen Schauer, representing District 13 in West Fargo.

I am here today seeking your support of **House Bill 1143**.

What is the definition of **theft**?

According to Webster, it's the **action or crime of stealing**.

That may not be as obvious as you may think.

Last Fall, I was contacted by an Equipment and Supply business in Fargo. It sells and rents construction equipment.

A man had rented some equipment valued at more than **40 thousand dollars**.

The rental payment agreement was set up with a credit card.

That worked fine for about three months and then the man **stopped** paying.

His credit card was repeatedly declined.

The phone number given to the rental company was **disconnected** and communication ended.

When the company contacted police, they said, "Sorry we can't do anything."

Why can't you?

"Because this kind of theft is considered a civil matter because of a rental contract."

The company then contacted an attorney...who said, the police are right.

There is **nothing** in the Century Code that covers this crime.

Until now.

Is it a crime to **not** return rental property?

HB 1143 which makes it clear; stealing rental property is a crime.

Page 1, lines 16-23 and page 2, lines 1-6.

Thank you, Madam Chair, and committee members.

****Wrongfully****