Sixty-sixth Legislative Assembly of North Dakota
In Regular Session Commencing Thursday, January 3, 2019

SENATE BILL NO. 2262
(Senators Klein, Patten)
(Representatives Keiser, Zubke)

AN ACT to create and enact two new sections to chapter 12.1-23 of the North Dakota Century Code, relating to the use and possession of re-encoders and scanning devices; to amend and reenact section 12.1-23-11 of the North Dakota Century Code, relating to the unauthorized use of personal identifying information; to repeal section 12.1-23-17 of the North Dakota Century Code, relating to the unlawful skimming of credit, debit, or other electronic payment cards; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 12.1-23 of the North Dakota Century Code is created and enacted as follows:

Definitions.

As used in this chapter:

1. "Payment card" means a credit card, charge card, debit card, or any other card issued to an authorized card user which allows the user to obtain, purchase, or receive credit, money, goods, services, or anything else of value.

2. "Re-encoder" means an electronic device that places encoded information from the computer chip or magnetic strip or stripe of a payment card onto the computer chip or magnetic strip or stripe of a different payment card, driver's license, or state-issued identification card, or any electronic medium that allows an authorized transaction to occur.

3. "Scanning device" means a scanner, reader, or any other electronic device used to access, read, scan, obtain, memorize, or store, information encoded on a computer chip or magnetic strip or stripe of a payment card, driver's license, or state-issued identification card.

4. "Skimmer" means an electronic, photographic, visual imaging, recording, or other device capable of accessing, reading, recording, capturing, copying, imaging, scanning, reproducing, or storing in any manner the financial information contained on a payment card or encoded on a computer chip or magnetic strip or stripe of a payment card.

SECTION 2. AMENDMENT. Section 12.1-23-11 of the North Dakota Century Code is amended and reenacted as follows:

12.1-23-11. Unauthorized use of personal identifying information - Penalty.

1. As used in this section, "personal identifying information" means any of the following information:

   a. An individual's name;

   b. An individual's address;

   c. An individual's telephone number;

   d. The operator's license information assigned to an individual by the department of transportation under section 39-06-14;

e. An individual's social security number;

f. An individual's employer or place of employment;

g. An identification number assigned to the individual by the individual's employer;

h. The maiden name of the individual's mother;

i. An individual's financial institution account number, credit card number, or debit card number;

j. An individual's birth, death, or marriage certificate;

k. An individual's health insurance policy number or subscriber identification number or any unique identifier used by a health insurer to identify the individual;

l. The nondriver color photo identification card information assigned to the individual by the department of transportation under section 39-06-03.1; ~~or~~

m. An individual's digitized or other electronic signature~~.~~;

n. An individual's photograph or computerized image;

o. An individual's electronic mail address; ~~or~~

p. An individual's username and password of any digital service or computer system;

q. An individual's payment card information;

r. An individual's biometric data; or

s. Any other numbers, documents, or information that can be used to access another person's financial records.

2. An individual is guilty of an offense if the individual obtains or attempts to obtain, transfers, records, or uses or attempts to use any personal identifying information of another individual, living or deceased, to obtain credit, money, goods, services, or anything else of value without the authorization or consent of the other individual. The offense is a class B felony if the credit, money, goods, services, or anything else of value exceeds one thousand dollars in value, otherwise the offense is a class C felony. A second or subsequent offense is a class A felony.

3. A person is guilty of an offense if the person uses or attempts to use any personal identifying information of an individual, living or deceased, without the authorization or consent of the individual, in order to interfere with or initiate a contract or service for a person other than that individual, to obtain or continue employment, to gain access to personal identifying information of another individual, or to commit an offense in violation of the laws of this state, regardless of whether there is any actual economic loss to the individual. A first offense under this subsection is a class A misdemeanor. A second or subsequent offense under this subsection is a class C felony.

4. A violation of this section, of a law of another state, or of federal law that is equivalent to this section and which resulted in a plea or finding of guilt must be considered a prior offense. The prior offense must be alleged in the complaint, information, or indictment. The plea or finding of guilt for the prior offense must have occurred before the date of the commission of the offense or offenses charged in the complaint, information, or indictment.

5. A prosecution for a violation of this section must be commenced within six years after discovery by the victim of the offense of the facts constituting the violation.

6. When a person commits violations of this section in more than one county involving either one or more victims or the commission of acts constituting an element of the offense, the multiple offenses may be consolidated for commencement of prosecution in any county where one of the offenses was committed.

SECTION 3. A new section to chapter 12.1-23 of the North Dakota Century Code is created and enacted as follows:

Use and possession of re-encoders, scanning devices - Penalty.

1. An individual is guilty of a class B felony if the individual uses or attempts to use a skimmer, re-encoder, or a scanning device to obtain information from a payment card, driver's license, or state-issued identification card without the permission of the authorized card user of the card from which the information is being skimmed, re-encoded, or scanned. An individual convicted of a second or subsequent violation of this subsection is guilty of a class A felony and also is subject to a civil penalty of not more than one hundred thousand dollars.

2. An individual is guilty of a class A misdemeanor if the individual owns or possess a skimmer, re-encoder, or scanning device with the intent to commit, aid, or abet any unlawful activity.

SECTION 4. REPEAL. Section 12.1-23-17 of the North Dakota Century Code is repealed.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-sixth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2262.

Senate Vote:	Yeas 47	Nays 0	Absent 0
House Vote:	Yeas 83	Nays 7	Absent 4

Secretary of the Senate

Received by the Governor at 9:12 A.M. on March 18, 2019.

Approved at 4:55 P.M. on March 20, 2019.

Governor

Filed in this office this 21st day of March, 2019,

at 9:09 o'clock A. M.

Secretary of State