

**FIRST ENGROSSMENT
with House Amendments**

Fifty-ninth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2251

Introduced by

Senators Trenbeath, Espegard, J. Lee

Representatives Aarsvold, Headland, Horter

1 A BILL for an Act to create and enact chapter 51-30 of the North Dakota Century Code, relating
2 to requiring disclosure to consumers of a breach in security by businesses maintaining personal
3 information in electronic form; to amend and reenact sections 12.1-23-11 and 12.1-23-12 of the
4 North Dakota Century Code, relating to the unauthorized use of personal identifying
5 information, penalties, and prosecution of offenses in multiple counties; jurisdiction in offenses
6 involving conduct outside this state; to provide a penalty; and to declare an emergency.

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

8 **SECTION 1. AMENDMENT.** Section 12.1-23-11 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **12.1-23-11. Unauthorized use of personal identifying information - Penalty.**

- 11 1. As used in this section, "personal identifying information" means any of the
- 12 following information:
- 13 a. An individual's name;
- 14 b. An individual's address;
- 15 c. An individual's telephone number;
- 16 d. The distinguishing operator's license number assigned to an individual by the
- 17 department of transportation under section ~~39-04-14~~ 39-06-14;
- 18 e. An individual's social security number;
- 19 f. An individual's employer or place of employment;
- 20 g. An identification number assigned to the individual by the individual's
- 21 employer;
- 22 h. The maiden name of the individual's mother; or
- 23 i. The identifying number of a depository account in a financial institution.
- 24 j. An individual's birth, death, or marriage certificate.

- 1 2. A person is guilty of ~~a class C felony~~ an offense if the person uses or attempts to
2 use any personal identifying information of an individual, living or deceased, to
3 obtain credit, money, goods, services, or anything else of value without the
4 authorization or consent of the individual and by representing that person is the
5 individual or is acting with the authorization or consent of the individual. The
6 offense is a class B felony if the credit, money, goods, services, or anything else of
7 value exceeds one thousand dollars in value, otherwise the offense is a class C
8 felony. A second or subsequent offense is a class A felony.
- 9 3. A violation of this section, of a law of another state, or of federal law that is
10 equivalent to this section and which resulted in a plea or finding of guilt must be
11 considered a prior offense. The prior offense must be alleged in the complaint,
12 information, or indictment. The plea or finding of guilt for the prior offense must
13 have occurred before the date of the commission of the offense or offenses
14 charged in the complaint, information, or indictment.
- 15 4. A prosecution for a violation of this section must be commenced within six years
16 after discovery by the victim of the offense of the facts constituting the violation.
- 17 5. When a person commits violations of this section in more than one county
18 involving either one or more victims or the commission of acts constituting an
19 element of the offense, the multiple offenses may be consolidated for
20 commencement of prosecution in any county where one of the offenses was
21 committed.

22 **SECTION 2. AMENDMENT.** Section 12.1-23-12 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **12.1-23-12. Jurisdiction - Conduct outside this state.** Notwithstanding section
25 29-03-01.1, a person who, while outside this state and by use of deception, obtains, deprives,
26 or conspires, solicits, or attempts to obtain the property of a person within this state or to
27 deprive such person of property is subject to prosecution under this chapter in the courts of this
28 state. The Except as provided in section 12.1-23-11, the venue is in the county in which the
29 victim resides or any other county in which any part of the crime occurred.

30 **SECTION 3.** Chapter 51-30 of the North Dakota Century Code is created and enacted
31 as follows:

1 **51-30-01. Definitions.** In this chapter, unless the context or subject matter otherwise
2 requires:

3 1. "Breach of the security system" means unauthorized acquisition of computerized
4 data which compromises the security, confidentiality, or integrity of personal
5 information maintained by a person. Good-faith acquisition of personal information
6 for the purposes of the person maintaining the information by an employee or
7 agent of the person is not a breach of the security of the system, provided that the
8 personal information is not used or subject to further disclosure.

9 2. a. "Personal information" means an individual's first name or first initial and last
10 name in combination with any of the following data elements, when either the
11 name or the data elements are not encrypted:

12 (1) The individual's social security number;

13 (2) The operator's license number assigned to an individual by the
14 department of transportation under section 39-06-14;

15 (3) A nondriver color photo identification card number assigned to the
16 individual by the department of transportation under section 39-06-03.1;

17 (4) The individual's financial institution account number, credit card
18 number, or debit card number;

19 (5) The individual's date of birth;

20 (6) The maiden name of the individual's mother; or

21 (7) An identification number assigned to the individual by the individual's
22 employer.

23 b. "Personal information" does not include publicly available information that is
24 lawfully made available to the general public from federal, state, or local
25 government records.

26 **51-30-02. Notice to consumers.** Any person that conducts business in North Dakota,
27 and that owns or licenses computerized data that includes personal information, shall disclose
28 any breach of the security of the system following discovery or notification of the breach in the
29 security of the data to any resident of the state whose unencrypted personal information was,
30 or is reasonably believed to have been, acquired by an unauthorized person. The disclosure
31 must be made in the most expedient time possible and without unreasonable delay, consistent

1 with the legitimate needs of law enforcement, as provided in section 51-30-04, or any measures
2 necessary to determine the scope of the breach and to restore the integrity of the data system.

3 **51-30-03. Notice to owner or licensee of personal information.** Any person that
4 maintains computerized data that includes personal information that the person does not own
5 shall notify the owner or licensee of the information of the breach of the security of the data
6 immediately following the discovery, if the personal information was, or is reasonably believed
7 to have been, acquired by an unauthorized person.

8 **51-30-04. Delayed notice.** The notification required by this chapter may be delayed if
9 a law enforcement agency determines that the notification will impede a criminal investigation.
10 The notification required by this chapter must be made after the law enforcement agency
11 determines that the notification will not compromise the investigation.

12 **51-30-05. Method of notice.** Notice under this chapter may be provided by one of the
13 following methods:

- 14 1. Written notice;
- 15 2. Electronic notice, if the notice provided is consistent with the provisions regarding
16 electronic records and signatures set forth in section 7001 of the United States
17 Code; or
- 18 3. Substitute notice, if the person demonstrates that the cost of providing notice
19 would exceed two hundred fifty thousand dollars, or that the affected class of
20 subject persons to be notified exceeds five hundred thousand, or the person does
21 not have sufficient contact information. Substitute notice includes:
 - 22 a. E-mail notice;
 - 23 b. Conspicuous posting of the notice on the person's web site page; or
 - 24 c. Notification to major statewide media.

25 **51-30-06. Alternate compliance.** Notwithstanding section 51-30-05, a person that
26 maintains its own notification procedures as part of an information security policy for the
27 treatment of personal information and is otherwise consistent with the timing requirements of
28 section 51-30-05, is deemed to be in compliance with the notification requirements of this
29 chapter if the person notifies subject individuals in accordance with its policies in the event of a
30 breach of security of the system.

1 **51-30-07. Enforcement - Powers - Remedies - Penalties.** The attorney general may
2 enforce this chapter. The attorney general, in enforcing this chapter, has all the powers
3 provided in chapter 51-15 and may seek all the remedies in chapter 51-15. A violation of this
4 chapter is deemed a violation of chapter 51-15. The remedies, duties, prohibitions, and
5 penalties of this chapter are not exclusive and are in addition to all other causes of action,
6 remedies, and penalties under chapter 51-15, or otherwise provided by law.

7 **SECTION 4. EMERGENCY.** This Act is declared to be an emergency measure.