

**Fifty-ninth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 4, 2005**

SENATE BILL NO. 2251
(Senators Trenbeath, Espegard, J. Lee)
(Representatives Aarsvold, Headland, Horter)

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. 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 distinguishing operator's license number assigned to an individual by the department of transportation under section ~~39-04-14~~ 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; ~~or~~
 - i. The identifying number of a depository account in a financial institution; or
 - j. An individual's birth, death, or marriage certificate.
2. A person is guilty of ~~a class C felony~~ an offense if the person 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 is acting with the authorization or consent of the 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 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.

4. 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.
5. 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 2. AMENDMENT. Section 12.1-23-12 of the North Dakota Century Code is amended and reenacted as follows:

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

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

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

1. "Breach of the security system" means 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. Good-faith acquisition of personal information by an employee or agent of the person is not a breach of the security of the system, if the personal information is not used or subject to further unauthorized disclosure.
2. a. "Personal information" means 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:
 - (1) The individual's social security number;
 - (2) The operator's license number assigned to an individual by the department of transportation under section 39-06-14;
 - (3) A nondriver color photo identification card number assigned to the individual by the department of transportation under section 39-06-03.1;
 - (4) The individual's financial institution account number, credit card number, 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;
 - (5) The individual's date of birth;
 - (6) The maiden name of the individual's mother;
 - (7) An identification number assigned to the individual by the individual's employer;
or
 - (8) The individual's digitized or other electronic signature.

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

51-30-02. Notice to consumers. Any person that conducts business in this state, and that owns or licenses computerized data that includes personal information, shall disclose any breach of the security of the system following discovery or notification of the breach in the security of the data to any resident of the state whose unencrypted personal information was, or is reasonably believed to have been, acquired by an unauthorized person. The disclosure must be made in the most expedient time possible and without unreasonable delay, consistent with the legitimate needs of law enforcement, as provided in section 51-30-04, or any measures necessary to determine the scope of the breach and to restore the integrity of the data system.

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

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

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

1. Written notice;
2. Electronic notice, if the notice provided is consistent with the provisions regarding electronic records and signatures set forth in section 7001 of title 15 of the United States Code; or
3. Substitute notice, if the person demonstrates that the cost of providing notice would exceed two hundred fifty thousand dollars, or that the affected class of subject persons to be notified exceeds five hundred thousand, or the person does not have sufficient contact information. Substitute notice consists of the following:
 - a. E-mail notice when the person has an e-mail address for the subject persons;
 - b. Conspicuous posting of the notice on the person's web site page, if the person maintains one; and
 - c. Notification to major statewide media.

51-30-06. Alternate compliance. Notwithstanding section 51-30-05, a person that maintains its own notification procedures as part of an information security policy for the treatment of personal information and is otherwise consistent with the timing requirements of this chapter is deemed to be in compliance with the notification requirements of this chapter if the person notifies subject individuals in accordance with its policies in the event of a breach of security of the system. A financial institution, trust company, or credit union that is subject to, examined for, and in compliance with the federal interagency guidance on response programs for unauthorized access to customer information and customer notice is deemed to be in compliance with this chapter.

51-30-07. Enforcement - Powers - Remedies - Penalties. The attorney general may enforce this chapter. The attorney general, in enforcing this chapter, has all the powers provided in chapter 51-15 and may seek all the remedies in chapter 51-15. A violation of this chapter is deemed a violation of chapter 51-15. The remedies, duties, prohibitions, and penalties of this chapter are not exclusive

and are in addition to all other causes of action, remedies, and penalties under chapter 51-15, or otherwise provided by law.

SECTION 4. EFFECTIVE DATE. This Act becomes effective on June 1, 2005.

SECTION 5. EMERGENCY. This Act is declared to be an emergency measure.

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 Fifty-ninth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2251 and that two-thirds of the members-elect of the Senate voted in favor of said law.

Vote: Yeas 47 Nays 0 Absent 0

President of the Senate

Secretary of the Senate

This certifies that two-thirds of the members-elect of the House of Representatives voted in favor of said law.

Vote: Yeas 92 Nays 0 Absent 2

Speaker of the House

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2005.

Approved at _____ M. on _____, 2005.

Governor

Filed in this office this _____ day of _____, 2005,

at ___ o'clock _____ M.

Secretary of State