

**Sixty-third Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 8, 2013**

HOUSE BILL NO. 1435
(Representatives Mock, Karls, Sanford)
(Senators Berry, Mathern, Schneider, Sorvaag)

AN ACT to amend and reenact sections 12.1-23-11, 51-30-01, and 51-30-06 of the North Dakota Century Code, relating to medical information identity theft.

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~~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. ~~The identifying number of a depository account in a~~An individual's financial institution account number, credit card number, or debit card number; or
 - 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.
2. 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, 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 51-30-01 of the North Dakota Century Code is amended and reenacted 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 databases 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. "Health insurance information" means an individual's health insurance policy number or subscriber identification number and any unique identifier used by a health insurer to identify the individual.
3. "Medical information" means any information regarding an individual's medical history, mental or physical condition, or medical treatment or diagnosis by a health care professional.
4. 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) Medical information;
 - (8) Health insurance information;

- (9) An identification number assigned to the individual by the individual's employer; or
- ~~(8)~~(10) 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.

SECTION 3. AMENDMENT. Section 51-30-06 of the North Dakota Century Code is amended and reenacted as follows:

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. A covered entity, business associate, or subcontractor subject to breach notification requirements under title 45, Code of Federal Regulations, subpart D, part 164, is considered to be in compliance with this chapter.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-third Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1435.

House Vote: Yeas 94 Nays 0 Absent 0

Senate Vote: Yeas 47 Nays 0 Absent 0

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2013.

Approved at _____ M. on _____, 2013.

Governor

Filed in this office this _____ day of _____, 2013,

at _____ o'clock _____ M.

Secretary of State