

Sixty-third
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2126

Introduced by

Senators Cook, Campbell, Dotzenrod

Representatives Belter, Headland, Meier

1 A BILL for an Act to create and enact ~~section~~sections 12.1-23-16 and 12.1-23-17 and a new
2 subsection to section 57-39.2-14 of the North Dakota Century Code, relating to the prohibition
3 of automated sales suppression devices and skimming devices used for a fraudulent purpose;
4 and to provide a penalty.

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

6 **SECTION 1.** Section 12.1-23-16 of the North Dakota Century Code is created and enacted
7 as follows:

8 **12.1-23-16. Automated sales suppression device, zapper, or phantom-ware -**

9 **Prohibition - Penalties.**

10 1. For purposes of this section:

- 11 a. "Automated sales suppression device" or "zapper" means a software program
12 ~~carried on a memory stick or removable compact disc, accessed through an~~
13 ~~internet link, or~~ accessed through any ~~other~~ method, which falsifies or collects the
14 electronic records, transaction data, or transaction reports of electronic cash
15 registers and other point-of-sale systems.
- 16 b. "Electronic cash register" means a device that keeps a register or supporting
17 documents through the use of an electronic device or computer system designed
18 to record transaction data for the purpose of computing, compiling, or processing
19 retail sales transaction data or transaction reports.
- 20 c. "Phantom-ware" means a hidden, preinstalled or installed at a later time,
21 programming option embedded in the operating system of an electronic cash
22 register or hardwired into the electronic cash register, which can be used to
23 create a virtual second cash register or that can eliminate or manipulate
24 transaction records that may be preserved in digital formats to represent the true

1 or manipulated transaction data or reports in the electronic cash register and is
2 intended to falsify or collect the electronic records of an electronic cash register
3 or other point-of-sale system.

4 d. "Transaction data" means items purchased by a customer, the price for each
5 item, a taxability determination for each item, a segregated tax amount for each
6 of the taxed items, the amount of cash or credit tendered, the net amount
7 returned to the customer in change, the date and time of purchase, the name,
8 address, and identification number of the vendor, and the receipt or invoice
9 number of the transaction.

10 e. "Transaction report" means a report documenting sales, the tax collected,
11 methods of payment, voided sales, or other information at an electronic cash
12 register which is printed on cash register tape at the end of a day or shift, or a
13 report documenting every transaction at an electronic cash register that is stored
14 electronically.

15 2. It is unlawful to willfully sell, purchase, possess, install, transfer, manufacture, own, or
16 use in this state, an automated sales suppression device, zapper, or phantom-ware.

17 3. Any person convicted of a violation under subsection 2 is guilty of a class B felony.
18 Any person convicted of a second or subsequent violation of subsection 2 is guilty of a
19 class A felony and also is subject to a civil penalty of not more than one hundred
20 thousand dollars.

21 4. It is a defense to prosecution under this section that the person purchased,
22 possessed, installed, transferred, owned, or used in this state, an automated sales
23 suppression device, zapper, or phantom-ware for a legitimate purpose.

24 5. Any person violating subsection 2 is liable for all sales and use tax, income tax, or
25 other tax under title 57, and any county or city sales and use tax imposed under
26 sections 11-09.2-05 and 40-05.1-06, and associated penalties and interest due the
27 state as the result of the fraudulent use of an automated sales suppression device,
28 zapper, or phantom-ware. Any tax found to be due must be assessed at double the
29 amount so determined.

6. The person shall forfeit all proceeds associated with the sale or use of an automated sales suppression device, zapper, or phantom-ware. The proceeds forfeited under this section must be deposited with the state treasurer for deposit in the state general fund.

7. An automated sales suppression device, zapper, or phantom-ware, and the cash register or other device containing the device or the software, is contraband and subject to forfeiture in accordance with chapter 29-31.1.

SECTION 2. Section 12.1-23-17 of the North Dakota Century Code is created and enacted as follows:

12.1-23-17. Unlawful skimming of credit, debit, or other electronic payment cards - Penalty.

1. For purposes of this section:

a. "Authorized card user" means any person with the empowerment, permission, or competence to use an electronic payment card.

b. "Electronic payment card" means a credit card, charge card, debit card, hotel key card, stored value card, or any other card that is issued to an authorized card user which allows the user to obtain, purchase, or receive goods, services, money, or anything else of value from a merchant.

c. "Merchant" means an owner or operator of a retail mercantile establishment or an agent, employee, lessee, consignee, officer, director, franchisee, or independent contractor of a retail mercantile establishment who receives from an authorized user or someone believed to be an authorized user, an electronic payment card or information from an electronic payment card, or what is believed to be an electronic payment card or information from an electronic payment card, as the instrument for obtaining, purchasing, or receiving goods, services, money, or anything else of value from the retail mercantile establishment.

d. "Re-encoder" means an electronic device that places encoded information from the magnetic strip or stripe of an electronic payment card onto the magnetic strip or stripe of a different electronic payment card.

e. "Scanning device" means a scanner, reader, or any other electronic device that is used to access, read, scan, obtain, memorize, or store, temporarily or

1 permanently, information encoded on the magnetic strip or stripe of an electronic
2 payment card.

3 2. A person is guilty of unlawful skimming if the person uses:

4 a. A scanning device to access, read, scan, obtain, memorize, or store, temporarily
5 or permanently, information encoded on the magnetic strip or stripe of an
6 electronic payment card without the permission of the authorized user of the
7 electronic payment card, with the intent to defraud the authorized user of the
8 electronic payment card, the issuer of the electronic payment card, or a
9 merchant; or

10 b. A re-encoder to place information encoded on the magnetic strip or stripe of an
11 electronic payment card onto the magnetic strip or stripe of a different electronic
12 payment card without the permission of the authorized user of the card from
13 which the information is being re-encoded, with the intent to defraud the
14 authorized user of the electronic payment card, the issuer of the electronic
15 payment card, or a merchant.

16 3. Any person convicted of a violation under subsection 2 is guilty of a class B felony.

17 Any person convicted of a second or subsequent violation of subsection 2 is guilty of a
18 class A felony and also is subject to a civil penalty of not more than one hundred
19 thousand dollars.

20 **SECTION 3.** A new subsection to section 57-39.2-14 of the North Dakota Century Code is
21 created and enacted as follows:

22 Whenever the holder of a permit is convicted of violating section 12.1-23-16, the
23 commissioner shall revoke the permit and the holder is not eligible to receive another
24 permit for a period of ten years from the date of ~~revocation~~conviction. Any person
25 convicted of violating section 12.1-23-16 who is not a holder of a permit at the time of
26 conviction is not eligible to receive a permit for a period of ten years from the date of
27 conviction.