

Sixty-third  
Legislative Assembly  
of North Dakota

## HOUSE BILL NO. 1435

Introduced by

Representatives Mock, Karls, Sanford

Senators Berry, Mathern, Schneider, Sorvaag

1 A BILL for an Act to amend and reenact sections 12.1-23-11, 51-30-01, and ~~54-59-26~~51-30-06  
2 of the North Dakota Century Code, relating to medical information identity theft.

### 3 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

#### 6 **12.1-23-11. Unauthorized use of personal identifying information - Penalty.**

- 7 1. As used in this section, "personal identifying information" means any of the following  
8 information:
- 9 a. An individual's name;
  - 10 b. An individual's address;
  - 11 c. An individual's telephone number;
  - 12 d. The distinguishing operator's license ~~number~~information assigned to an individual  
13 by the department of transportation under section 39-06-14;
  - 14 e. An individual's social security number;
  - 15 f. An individual's employer or place of employment;
  - 16 g. An identification number assigned to the individual by the individual's employer;
  - 17 h. The maiden name of the individual's mother;
  - 18 i. ~~The identifying number of a depository account in a~~An individual's financial  
19 institution account number, credit card number, or debit card number ~~in~~  
20 ~~combination with any required security code, access code, or password that~~  
21 ~~would permit access to an individual's financial accounts;~~ or
  - 22 j. An individual's birth, death, or marriage certificate;
  - 23 k. An individual's health insurance policy number or subscriber identification number  
24 or any unique identifier used by a health insurer to identify the individual;

- 1            l. The nondriver color photo identification card ~~number~~information assigned to the  
2            individual by the department of transportation under section 39-06-03.1; or  
3            m. An individual's digitized or other electronic signature.
- 4            2. A person is guilty of an offense if the person uses or attempts to use any personal  
5            identifying information of an individual, living or deceased, to obtain credit, money,  
6            goods, services, or anything else of value without the authorization or consent of the  
7            individual and by representing that person is the individual or is acting with the  
8            authorization or consent of the individual. The offense is a class B felony if the credit,  
9            money, goods, services, or anything else of value exceeds one thousand dollars in  
10           value, otherwise the offense is a class C felony. A second or subsequent offense is a  
11           class A felony.
- 12           3. A violation of this section, of a law of another state, or of federal law that is equivalent  
13           to this section and which resulted in a plea or finding of guilt must be considered a  
14           prior offense. The prior offense must be alleged in the complaint, information, or  
15           indictment. The plea or finding of guilt for the prior offense must have occurred before  
16           the date of the commission of the offense or offenses charged in the complaint,  
17           information, or indictment.
- 18           4. A prosecution for a violation of this section must be commenced within six years after  
19           discovery by the victim of the offense of the facts constituting the violation.
- 20           5. When a person commits violations of this section in more than one county involving  
21           either one or more victims or the commission of acts constituting an element of the  
22           offense, the multiple offenses may be consolidated for commencement of prosecution  
23           in any county where one of the offenses was committed.

24           **SECTION 2. AMENDMENT.** Section 51-30-01 of the North Dakota Century Code is  
25           amended and reenacted as follows:

26           **51-30-01. Definitions.**

27           In this chapter, unless the context or subject matter otherwise requires:

- 28           1. "Breach of the security system" means unauthorized acquisition of computerized data  
29           when access to personal information has not been secured by encryption or by any  
30           other method or technology that renders the electronic files, media, or databases  
31           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 54-59-26 of the North Dakota Century Code is amended and reenacted as follows:~~

~~**54-59-26. Health information technology office – Duties – Loan and grant programs.**~~

~~1. The health information technology office is created in the department. The health information technology advisory committee shall make recommendations to the health information technology office for implementing a statewide interoperable health information infrastructure that is consistent with emerging national standards; promote the adoption and use of electronic health records and other health information technologies; and promote interoperability of health information systems for the purpose of improving health care quality, patient safety, and the overall efficiency of health care and public health services.~~

~~2. The health information technology office director, in collaboration with the health information technology advisory committee, shall:~~

~~a. Apply for federal funds that may be available to assist the state and health care providers in implementing and improving health information technology.~~

~~b. Implement and administer a health information exchange that utilizes information infrastructure and systems in a secure and cost-effective manner to facilitate the collection, storage, and transmission of health records.~~

~~c. Adopt rules under chapter 28-32 for the use of health information, use of the health information exchange, and participation in the health information exchange.~~

~~d. Adopt rules under chapter 28-32 for accessing the health information exchange to ensure appropriate and required privacy and security protections and relating to the authority of the director to suspend, eliminate, or terminate the right to participate in the health information exchange. The rules must include a protocol for an individual to address identity theft or other errors that result in erroneous medical records being included in the health information exchange.~~

~~e. Establish a health information technology loan program to provide loans to health care providers for the purpose of purchasing and upgrading certified electronic health record technology, training personnel in the use of such technology, and~~

improving the secure electronic exchange of health information, and for any other purpose under section 6-09-42.

~~f. Establish a health information technology planning loan program to provide low-interest loans to health care entities to assist those entities in improving their health information technology infrastructure under section 6-09-43.~~

~~g. Facilitate and expand electronic health information exchange in the state, directly or by awarding grants.~~

~~h. Establish an application process and eligibility criteria for and accept and process applications for loans and grants under subdivisions e, f, and g. The eligibility criteria must be consistent with federal requirements associated with federal funds received under subdivision a. The eligibility criteria for loans under subdivision f must include a requirement that the recipient's approved health information technology be strategically aligned with the state's health information technology plan and the associated federal standards and that the recipient has passed an onsite electronic medical record readiness assessment conducted by an assessment team determined by the health information technology advisory committee and the health information technology office director.~~

~~i. Determine fees and charges for access and participation in the health information exchange. Any moneys collected under this subdivision must be deposited in the electronic health information exchange fund.~~

~~j. Consult and coordinate with the state department of health and the department of human services to facilitate the collection of health information from health care providers and state agencies for public health purposes, including identifiable health information that may be used by state agencies, departments, or institutions to comply with applicable state or federal laws.~~

~~3. If the health information technology advisory committee determines that establishing a health information exchange with another state or states will assist in providing health information exchange services in a cost-effective manner, the health information technology office director, in collaboration with the health information technology advisory committee, may join with another state or states to establish,~~

1           ~~implement, and administer a health information exchange consistent with other~~  
2           ~~provisions of this chapter.~~

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

5           **51-30-06. Alternate compliance.**

6           Notwithstanding section 51-30-05, a person that maintains its own notification procedures  
7 as part of an information security policy for the treatment of personal information and is  
8 otherwise consistent with the timing requirements of this chapter is deemed to be in compliance  
9 with the notification requirements of this chapter if the person notifies subject individuals in  
10 accordance with its policies in the event of a breach of security of the system. A financial  
11 institution, trust company, or credit union that is subject to, examined for, and in compliance with  
12 the federal interagency guidance on response programs for unauthorized access to customer  
13 information and customer notice is ~~deemed to be~~ in compliance with this chapter. A covered  
14 entity, business associate, or subcontractor subject to breach notification requirements under  
15 title 45, Code of Federal Regulations, subpart D, part 164, is considered to be in compliance  
16 with this chapter.