

**FIRST ENGROSSMENT
with Conference Committee Amendments
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 sections 12.1-23-16 and 12.1-23-17 and a new subsection
2 to section 57-39.2-14 of the North Dakota Century Code, relating to the prohibition of automated
3 sales suppression devices and skimming devices used for a fraudulent purpose; and to provide
4 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 accessed through any method which falsifies the electronic records, transaction
13 data, or transaction reports of electronic cash registers and other point-of-sale
14 systems.
- 15 b. "Electronic cash register" means a device that keeps a register or supporting
16 documents through the use of an electronic device or computer system designed
17 to record transaction data for the purpose of computing, compiling, or processing
18 retail sales transaction data or transaction reports.
- 19 c. "Phantom-ware" means a hidden, preinstalled or installed at a later time,
20 programming option embedded in the operating system of an electronic cash
21 register or hardwired into the electronic cash register, which can be used to
22 create a virtual second cash register or that can eliminate or manipulate
23 transaction records that may be preserved in digital formats to represent the true
24 or manipulated transaction data or reports in the electronic cash register and is

1 intended to falsify the electronic records of an electronic cash register or other
2 point-of-sale system.

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

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

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

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

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

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

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

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

6 **12.1-23-17. Unlawful skimming of credit, debit, or other electronic payment cards -**
7 **Penalty.**

8 1. For purposes of this section:

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

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

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

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

26 e. "Scanning device" means a scanner, reader, or any other electronic device that is
27 used to access, read, scan, obtain, memorize, or store, temporarily or
28 permanently, information encoded on the magnetic strip or stripe of an electronic
29 payment card.

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

- 1 a. A scanning device to access, read, scan, obtain, memorize, or store, temporarily
2 or permanently, information encoded on the magnetic strip or stripe of an
3 electronic payment card without the permission of the authorized user of the
4 electronic payment card, with the intent to defraud the authorized user of the
5 electronic payment card, the issuer of the electronic payment card, or a
6 merchant; or
- 7 b. A re-encoder to place information encoded on the magnetic strip or stripe of an
8 electronic payment card onto the magnetic strip or stripe of a different electronic
9 payment card without the permission of the authorized user of the card from
10 which the information is being re-encoded, with the intent to defraud the
11 authorized user of the electronic payment card, the issuer of the electronic
12 payment card, or a merchant.
- 13 3. Any person convicted of a violation under subsection 2 is guilty of a class B felony.
14 Any person convicted of a second or subsequent violation of subsection 2 is guilty of a
15 class A felony and also is subject to a civil penalty of not more than one hundred
16 thousand dollars.

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

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