

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 of the
2 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 assigned to an individual by the
13 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 assigned to the individual by
2 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

1 employee or agent of the person is not a breach of the security of the system, if the
2 personal information is not used or subject to further unauthorized disclosure.

3 2. "Health information" means an individual's health insurance policy number or
4 subscriber identification number and any unique identifier used by a health insurer to
5 identify the individual.

6 3. "Medical information" means any information regarding an individual's medical history,
7 mental or physical condition, or medical treatment or diagnosis by a health care
8 professional.

9 4. a. "Personal information" means an individual's first name or first initial and last
10 name in combination with any of the following data elements, when the name and
11 the data elements are not encrypted:

12 (1) The individual's social security number;

13 (2) The operator's license number assigned to an individual by the department
14 of transportation under section 39-06-14;

15 (3) A nondriver color photo identification card number assigned to the individual
16 by the department of transportation under section 39-06-03.1;

17 (4) The individual's financial institution account number, credit card number, or
18 debit card number in combination with any required security code, access
19 code, or password that would permit access to an individual's financial
20 accounts;

21 (5) The individual's date of birth;

22 (6) The maiden name of the individual's mother;

23 (7) Medical information;

24 (8) Health insurance information;

25 (9) An identification number assigned to the individual by the individual's
26 employer; or

27 ~~(8)~~(10) The individual's digitized or other electronic signature.

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

1 **SECTION 3. AMENDMENT.** Section 54-59-26 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **54-59-26. Health information technology office - Duties - Loan and grant programs.**

- 4 1. The health information technology office is created in the department. The health
5 information technology advisory committee shall make recommendations to the health
6 information technology office for implementing a statewide interoperable health
7 information infrastructure that is consistent with emerging national standards; promote
8 the adoption and use of electronic health records and other health information
9 technologies; and promote interoperability of health information systems for the
10 purpose of improving health care quality, patient safety, and the overall efficiency of
11 health care and public health services.
- 12 2. The health information technology office director, in collaboration with the health
13 information technology advisory committee, shall:
- 14 a. Apply for federal funds that may be available to assist the state and health care
15 providers in implementing and improving health information technology.
- 16 b. Implement and administer a health information exchange that utilizes information
17 infrastructure and systems in a secure and cost-effective manner to facilitate the
18 collection, storage, and transmission of health records.
- 19 c. Adopt rules under chapter 28-32 for the use of health information, use of the
20 health information exchange, and participation in the health information
21 exchange.
- 22 d. Adopt rules under chapter 28-32 for accessing the health information exchange
23 to ensure appropriate and required privacy and security protections and relating
24 to the authority of the director to suspend, eliminate, or terminate the right to
25 participate in the health information exchange. The rules must include a protocol
26 for an individual to address identity theft or other errors that result in erroneous
27 medical records being included in the health information exchange.
- 28 e. Establish a health information technology loan program to provide loans to health
29 care providers for the purpose of purchasing and upgrading certified electronic
30 health record technology, training personnel in the use of such technology, and

- 1 improving the secure electronic exchange of health information, and for any other
2 purpose under section 6-09-42.
- 3 f. Establish a health information technology planning loan program to provide
4 low-interest loans to health care entities to assist those entities in improving their
5 health information technology infrastructure under section 6-09-43.
- 6 g. Facilitate and expand electronic health information exchange in the state, directly
7 or by awarding grants.
- 8 h. Establish an application process and eligibility criteria for and accept and process
9 applications for loans and grants under subdivisions e, f, and g. The eligibility
10 criteria must be consistent with federal requirements associated with federal
11 funds received under subdivision a. The eligibility criteria for loans under
12 subdivision f must include a requirement that the recipient's approved health
13 information technology be strategically aligned with the state's health information
14 technology plan and the associated federal standards and that the recipient has
15 passed an onsite electronic medical record readiness assessment conducted by
16 an assessment team determined by the health information technology advisory
17 committee and the health information technology office director.
- 18 i. Determine fees and charges for access and participation in the health information
19 exchange. Any moneys collected under this subdivision must be deposited in the
20 electronic health information exchange fund.
- 21 j. Consult and coordinate with the state department of health and the department of
22 human services to facilitate the collection of health information from health care
23 providers and state agencies for public health purposes, including identifiable
24 health information that may be used by state agencies, departments, or
25 institutions to comply with applicable state or federal laws.
- 26 3. If the health information technology advisory committee determines that establishing a
27 health information exchange with another state or states will assist in providing health
28 information exchange services in a cost-effective manner, the health information
29 technology office director, in collaboration with the health information technology
30 advisory committee, may join with another state or states to establish, implement, and

Sixty-third
Legislative Assembly

- 1 administer a health information exchange consistent with other provisions of this
- 2 chapter.