

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

SENATE BILL NO. 2126
(Senators Cook, Campbell, Dotzenrod)
(Representatives Belter, Headland, Meier)

AN ACT to create and enact sections 12.1-23-16 and 12.1-23-17 and a new subsection to section 57-39.2-14 of the North Dakota Century Code, relating to the prohibition of automated sales suppression devices and skimming devices used for a fraudulent purpose; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

12.1-23-16. Automated sales suppression device, zapper, or phantom-ware - Prohibition - Penalties.

1. For purposes of this section:
 - a. "Automated sales suppression device" or "zapper" means a software program accessed through any method which falsifies the electronic records, transaction data, or transaction reports of electronic cash registers and other point-of-sale systems.
 - b. "Electronic cash register" means a device that keeps a register or supporting documents through the use of an electronic device or computer system designed to record transaction data for the purpose of computing, compiling, or processing retail sales transaction data or transaction reports.
 - c. "Phantom-ware" means a hidden, preinstalled or installed at a later time, programming option embedded in the operating system of an electronic cash register or hardwired into the electronic cash register, which can be used to create a virtual second cash register or that can eliminate or manipulate transaction records that may be preserved in digital formats to represent the true or manipulated transaction data or reports in the electronic cash register and is intended to falsify the electronic records of an electronic cash register or other point-of-sale system.
 - d. "Transaction data" means items purchased by a customer, the price for each item, a taxability determination for each item, a segregated tax amount for each of the taxed items, the amount of cash or credit tendered, the net amount returned to the customer in change, the date and time of purchase, the name, address, and identification number of the vendor, and the receipt or invoice number of the transaction.
 - e. "Transaction report" means a report documenting sales, the tax collected, methods of payment, voided sales, or other information at an electronic cash register which is printed on cash register tape at the end of a day or shift, or a report documenting every transaction at an electronic cash register that is stored electronically.
2. It is unlawful to willfully sell, purchase, possess, install, transfer, manufacture, own, or use in this state, an automated sales suppression device, zapper, or phantom-ware.
3. Any person convicted of a violation under subsection 2 is guilty of a class B felony. Any person convicted of a second or subsequent violation of subsection 2 is guilty of a class A felony and also is subject to a civil penalty of not more than one hundred thousand dollars.

4. It is a defense to prosecution under this section that the person purchased, possessed, installed, transferred, owned, or used in this state, an automated sales suppression device, zapper, or phantom-ware for a legitimate purpose.
5. Any person violating subsection 2 is liable for all sales and use tax, income tax, or other tax under title 57, and any county or city sales and use tax imposed under sections 11-09.2-05 and 40-05.1-06, and associated penalties and interest due the state as the result of the fraudulent use of an automated sales suppression device, zapper, or phantom-ware. Any tax found to be due must be assessed at double the 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 permanently, information encoded on the magnetic strip or stripe of an electronic payment card.
2. A person is guilty of unlawful skimming if the person uses:
 - a. A scanning device to access, read, scan, obtain, memorize, or store, temporarily or permanently, information encoded on the magnetic strip or stripe of an electronic payment card without the permission of the authorized user of the electronic payment card, with the intent to defraud the authorized user of the electronic payment card, the issuer of the electronic payment card, or a merchant; or

- b. A re-encoder to place information encoded on the magnetic strip or stripe of an electronic payment card onto the magnetic strip or stripe of a different electronic payment card without the permission of the authorized user of the card from which the information is being re-encoded, with the intent to defraud the authorized user of the electronic payment card, the issuer of the electronic payment card, or a merchant.
3. Any person convicted of a violation under subsection 2 is guilty of a class B felony. Any person convicted of a second or subsequent violation of subsection 2 is guilty of a class A felony and also is subject to a civil penalty of not more than one hundred thousand dollars.

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

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

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-third Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2126.

Senate Vote: Yeas 46 Nays 0 Absent 1

House Vote: Yeas 93 Nays 0 Absent 1

Secretary of the Senate

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