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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-SECOND SESSION

H. F. No. 3914

03/03/2022 Authored by Stephenson

The bill was read for the first time and referred to the Committee on Public Safety and Criminal Justice Reform Finance and Policy

1.1 A bill for an act

1.2 relating to public safety; establishing the crime of organized retail theft; providing

1.3 for the release of certain financial account information to law enforcement;

1.4 amending certain burglary crimes following trespass notice; establishing a time

1.5 period for a search warrant on financial institutions; amending Minnesota Statutes

1.6 2020, sections 13A.02, subdivisions 1, 2; 609.52, subdivision 3; 609.527,

1.7 subdivision 1, by adding a subdivision; 609.582, subdivisions 3, 4; 626.15;

1.8 proposing coding for new law in Minnesota Statutes, chapter 609.

1.9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.10 Section 1. Minnesota Statutes 2020, section 13A.02, subdivision 1, is amended to read:

1.11 Subdivision 1. **Access by government.** Except as authorized by this chapter, no

1.12 government authority may have access to, or obtain copies of, or the information contained

1.13 in, the financial records of any customer from a financial institution unless the financial

1.14 records are reasonably described and:

- 1.15 (1) the customer has authorized the disclosure;
- 1.16 (2) the financial records are disclosed in response to a search warrant;
- 1.17 (3) the financial records are disclosed in response to a judicial or administrative subpoena;
- 1.18 (4) the financial records are disclosed to law enforcement, a lead investigative agency
- 1.19 as defined in section 626.5572, subdivision 13, or prosecuting authority that is investigating
- 1.20 financial exploitation of a vulnerable adult in response to a judicial subpoena or
- 1.21 administrative subpoena under section 388.23; or
- 1.22 (5) the financial records are disclosed pursuant to section 609.527 or 609.535 or other
- 1.23 statute or rule.

2.1 **EFFECTIVE DATE.** This section is effective August 1, 2022.

2.2 Sec. 2. Minnesota Statutes 2020, section 13A.02, subdivision 2, is amended to read:

2.3 Subd. 2. **Release prohibited.** No financial institution, or officer, employee, or agent of  
2.4 a financial institution, may provide to any government authority access to, or copies of, or  
2.5 the information contained in, the financial records of any customer except in accordance  
2.6 with the provisions of this chapter.

2.7 Nothing in this chapter shall require a financial institution to inquire or determine that  
2.8 those seeking disclosure have duly complied with the requirements of this chapter, provided  
2.9 only that the customer authorization, search warrant, subpoena, or written certification  
2.10 pursuant to section 609.527, subdivision 8; 609.535, subdivision 6; 626.557; or other statute  
2.11 or rule, served on or delivered to a financial institution shows compliance on its face.

2.12 **EFFECTIVE DATE.** This section is effective August 1, 2022.

2.13 Sec. 3. Minnesota Statutes 2020, section 609.52, subdivision 3, is amended to read:

2.14 Subd. 3. **Sentence.** Whoever commits theft may be sentenced as follows:

2.15 (1) to imprisonment for not more than 20 years or to payment of a fine of not more than  
2.16 \$100,000, or both, if the property is a firearm, or the value of the property or services stolen  
2.17 is more than \$35,000 and the conviction is for a violation of subdivision 2, clause (3), (4),  
2.18 (15), (16), or (19), or section 609.2335, subdivision 1, clause (1) or (2), item (i); or

2.19 (2) to imprisonment for not more than ten years or to payment of a fine of not more than  
2.20 \$20,000, or both, if the value of the property or services stolen exceeds \$5,000, or if the  
2.21 property stolen was an article representing a trade secret, an explosive or incendiary device,  
2.22 or a controlled substance listed in Schedule I or II pursuant to section 152.02 with the  
2.23 exception of marijuana; or

2.24 (3) to imprisonment for not more than five years or to payment of a fine of not more  
2.25 than \$10,000, or both, if any of the following circumstances exist:

2.26 (a) the value of the property or services stolen is more than \$1,000 but not more than  
2.27 \$5,000; or

2.28 (b) the property stolen was a controlled substance listed in Schedule III, IV, or V pursuant  
2.29 to section 152.02; or

2.30 (c) the value of the property or services stolen is more than \$500 but not more than  
2.31 \$1,000 and the person has been convicted within the preceding five years for an offense

3.1 under this section, section 256.98; 268.182; 609.24; 609.245; 609.522, 609.53; 609.582,  
3.2 subdivision 1, 2, or 3; 609.625; 609.63; 609.631; or 609.821, or a statute from another state,  
3.3 the United States, or a foreign jurisdiction, in conformity with any of those sections, and  
3.4 the person received a felony or gross misdemeanor sentence for the offense, or a sentence  
3.5 that was stayed under section 609.135 if the offense to which a plea was entered would  
3.6 allow imposition of a felony or gross misdemeanor sentence; or

3.7 (d) the value of the property or services stolen is not more than \$1,000, and any of the  
3.8 following circumstances exist:

3.9 (i) the property is taken from the person of another or from a corpse, or grave or coffin  
3.10 containing a corpse; or

3.11 (ii) the property is a record of a court or officer, or a writing, instrument or record kept,  
3.12 filed or deposited according to law with or in the keeping of any public officer or office; or

3.13 (iii) the property is taken from a burning, abandoned, or vacant building or upon its  
3.14 removal therefrom, or from an area of destruction caused by civil disaster, riot, bombing,  
3.15 or the proximity of battle; or

3.16 (iv) the property consists of public funds belonging to the state or to any political  
3.17 subdivision or agency thereof; or

3.18 (v) the property stolen is a motor vehicle; or

3.19 (4) to imprisonment for not more than one year or to payment of a fine of not more than  
3.20 \$3,000, or both, if the value of the property or services stolen is more than \$500 but not  
3.21 more than \$1,000; or

3.22 (5) in all other cases where the value of the property or services stolen is \$500 or less,  
3.23 to imprisonment for not more than 90 days or to payment of a fine of not more than \$1,000,  
3.24 or both, provided, however, in any prosecution under subdivision 2, clauses (1), (2), (3),  
3.25 (4), (13), and (19), the value of the money or property or services received by the defendant  
3.26 in violation of any one or more of the above provisions within any six-month period may  
3.27 be aggregated and the defendant charged accordingly in applying the provisions of this  
3.28 subdivision; provided that when two or more offenses are committed by the same person  
3.29 in two or more counties, the accused may be prosecuted in any county in which one of the  
3.30 offenses was committed for all of the offenses aggregated under this paragraph.

3.31 **EFFECTIVE DATE.** This section is effective August 1, 2022, and applies to crimes  
3.32 committed on or after that date.

4.1 Sec. 4. [609.522] ORGANIZED RETAIL THEFT.

4.2 Subdivision 1. Definitions. (a) As used in this section, the terms in this subdivision have  
4.3 the meanings given.

4.4 (b) "Article surveillance system" means any electronic device or other security device  
4.5 that is designed to detect or prevent the unauthorized removal of retail merchandise from  
4.6 a retailer.

4.7 (c) "Retailer" means a person or entity that sells retail merchandise.

4.8 (d) "Retail merchandise" means all forms of tangible property, without limitation, held  
4.9 out for sale by a retailer.

4.10 (e) "Value" means the retail market value at the time of the theft or, if the retail market  
4.11 value cannot be ascertained, the cost of replacement of the property within a reasonable  
4.12 time after the theft.

4.13 Subd. 2. Organized retail theft. (a) Whoever steals or fraudulently obtains retail  
4.14 merchandise from a retailer commits organized retail theft and may be sentenced as provided  
4.15 in subdivision 3 if the actor:

4.16 (1) resells or intends to resell the retail merchandise;

4.17 (2) advertises or displays any item of the retail merchandise for sale;

4.18 (3) returns any item of the retail merchandise to a retailer for anything of value; or

4.19 (4) steals retail merchandise within five years of a conviction under this section.

4.20 (b) Whoever receives, purchases, or possesses retail merchandise knowing or having  
4.21 reason to know the retail merchandise was stolen from a retailer and with the intent to resell  
4.22 that merchandise may be sentenced as provided in subdivision 3.

4.23 (c) Whoever possesses any device, gear, or instrument designed to assist in shoplifting  
4.24 or defeating an electronic article surveillance system with intent to use the same to shoplift  
4.25 and thereby commit theft may be sentenced pursuant to subdivision 3, clause (3).

4.26 Subd. 3. Sentence. Whoever commits organized retail theft may be sentenced as follows:

4.27 (1) to imprisonment for not more than 15 years or to payment of a fine of not more than  
4.28 \$35,000, or both, if the value of the property stolen exceeds \$5,000;

4.29 (2) to imprisonment for not more than seven years or to payment of a fine of not more  
4.30 than \$14,000, or both, if either of the following circumstances exist:

4.31 (i) the value of the property stolen is more than \$1,000 but not more than \$5,000; or

5.1 (ii) the person commits the offense within ten years of the first of two or more convictions  
5.2 under this section;

5.3 (3) to imprisonment for not more than two years or to payment of a fine of not more  
5.4 than \$5,000, or both, if either of the following circumstances exist:

5.5 (i) the value of the property stolen is more than \$500 but not more than \$1,000; or

5.6 (ii) the person commits the offense within ten years of a previous conviction under this  
5.7 section; or

5.8 (4) to imprisonment of not more than one year or to payment of a fine of not more than  
5.9 \$3,000, or both, if the value of the property stolen is \$500 or less.

5.10 Subd. 4. **Aggregation.** The value of the retail merchandise received by the defendant  
5.11 in violation of this section within any six-month period may be aggregated and the defendant  
5.12 charged accordingly in applying the provisions of this subdivision; provided that when two  
5.13 or more offenses are committed by the same person in two or more counties, the accused  
5.14 may be prosecuted in any county in which one of the offenses was committed for all of the  
5.15 offenses aggregated under this paragraph.

5.16 Subd. 5. **Enhanced penalty.** If a violation of this section creates a reasonably foreseeable  
5.17 risk of bodily harm to another, the penalties described in subdivision 3 are enhanced as  
5.18 follows:

5.19 (1) if the penalty is a gross misdemeanor, the person is guilty of a felony and may be  
5.20 sentenced to imprisonment for not more than three years or to payment of a fine of not more  
5.21 than \$5,000, or both; and

5.22 (2) if the penalty is a felony, the statutory maximum sentence for the offense is 50 percent  
5.23 longer than for the underlying crime.

5.24 **EFFECTIVE DATE.** This section is effective August 1, 2022, and applies to crimes  
5.25 committed on or after that date.

5.26 Sec. 5. Minnesota Statutes 2020, section 609.527, subdivision 1, is amended to read:

5.27 Subdivision 1. **Definitions.** (a) As used in this section, the following terms have the  
5.28 meanings given them in this subdivision.

5.29 (b) "Direct victim" means any person or entity described in section 611A.01, paragraph  
5.30 (b), whose identity has been transferred, used, or possessed in violation of this section.

6.1 (c) "False pretense" means any false, fictitious, misleading, or fraudulent information  
 6.2 or pretense or pretext depicting or including or deceptively similar to the name, logo, website  
 6.3 address, e-mail address, postal address, telephone number, or any other identifying  
 6.4 information of a for-profit or not-for-profit business or organization or of a government  
 6.5 agency, to which the user has no legitimate claim of right.

6.6 (d) "Financial institution" has the meaning given in section 13A.01, subdivision 2.

6.7 (e) "Identity" means any name, number, or data transmission that may be used, alone or  
 6.8 in conjunction with any other information, to identify a specific individual or entity, including  
 6.9 any of the following:

6.10 (1) a name, Social Security number, date of birth, official government-issued driver's  
 6.11 license or identification number, government passport number, or employer or taxpayer  
 6.12 identification number;

6.13 (2) unique electronic identification number, address, account number, or routing code;  
 6.14 or

6.15 (3) telecommunication identification information or access device.

6.16 ~~(e)~~ (f) "Indirect victim" means any person or entity described in section 611A.01,  
 6.17 paragraph (b), other than a direct victim.

6.18 ~~(f)~~ (g) "Loss" means value obtained, as defined in section 609.52, subdivision 1, clause  
 6.19 (3), and expenses incurred by a direct or indirect victim as a result of a violation of this  
 6.20 section.

6.21 ~~(g)~~ (h) "Unlawful activity" means:

6.22 (1) any felony violation of the laws of this state or any felony violation of a similar law  
 6.23 of another state or the United States; and

6.24 (2) any nonfelony violation of the laws of this state involving theft, theft by swindle,  
 6.25 forgery, fraud, or giving false information to a public official, or any nonfelony violation  
 6.26 of a similar law of another state or the United States.

6.27 ~~(h)~~ (i) "Scanning device" means a scanner, reader, or any other electronic device that is  
 6.28 used to access, read, scan, obtain, memorize, or store, temporarily or permanently,  
 6.29 information encoded on a computer chip or magnetic strip or stripe of a payment card,  
 6.30 driver's license, or state-issued identification card.

6.31 ~~(i)~~ (j) "Reencoder" means an electronic device that places encoded information from the  
 6.32 computer chip or magnetic strip or stripe of a payment card, driver's license, or state-issued

7.1 identification card, onto the computer chip or magnetic strip or stripe of a different payment  
 7.2 card, driver's license, or state-issued identification card, or any electronic medium that  
 7.3 allows an authorized transaction to occur.

7.4 ~~(j)~~ (k) "Payment card" means a credit card, charge card, debit card, or any other card  
 7.5 that:

7.6 (1) is issued to an authorized card user; and

7.7 (2) allows the user to obtain, purchase, or receive credit, money, a good, a service, or  
 7.8 anything of value.

7.9 **EFFECTIVE DATE.** This section is effective August 1, 2022.

7.10 Sec. 6. Minnesota Statutes 2020, section 609.527, is amended by adding a subdivision to  
 7.11 read:

7.12 **Subd. 8. Release of limited account information to law enforcement authorities.** (a)  
 7.13 A financial institution may release the information described in paragraph (b) to a law  
 7.14 enforcement or prosecuting authority that certifies in writing that it is investigating or  
 7.15 prosecuting a crime of identity theft under this section. The certification must describe with  
 7.16 reasonable specificity the nature of the suspected identity theft that is being investigated or  
 7.17 prosecuted, including the dates of the suspected criminal activity.

7.18 (b) This subdivision applies to requests for the following information relating to a  
 7.19 potential victim's account:

7.20 (1) the name of the account holder or holders; and

7.21 (2) the last known home address and telephone numbers of the account holder or holders.

7.22 (c) A financial institution may release the information requested under this subdivision  
 7.23 that it possesses within a reasonable time after the request. The financial institution may  
 7.24 not impose a fee for furnishing the information.

7.25 (d) A financial institution is not liable in a criminal or civil proceeding for releasing  
 7.26 information in accordance with this subdivision.

7.27 (e) Release of limited account information to a law enforcement agency under this  
 7.28 subdivision is criminal investigative data under section 13.82, subdivision 7, except that  
 7.29 when the investigation becomes inactive the account information remains confidential data  
 7.30 on individuals or protected nonpublic data.

7.31 **EFFECTIVE DATE.** This section is effective August 1, 2022.

8.1 Sec. 7. Minnesota Statutes 2020, section 609.582, subdivision 3, is amended to read:

8.2 Subd. 3. **Burglary in the third degree.** (a) Except as otherwise provided in this section,  
8.3 whoever enters a building without consent and with intent to steal or commit any felony or  
8.4 gross misdemeanor while in the building, or enters a building without consent and steals or  
8.5 commits a felony or gross misdemeanor while in the building, either directly or as an  
8.6 accomplice, commits burglary in the third degree and may be sentenced to imprisonment  
8.7 for not more than five years or to payment of a fine of not more than \$10,000, or both.

8.8 (b) Whoever enters a building that is open to the public, other than a building identified  
8.9 in subdivision 2, paragraph (b), with intent to steal while in the building, or enters a building  
8.10 that is open to the public, other than a building identified in subdivision 2, paragraph (b),  
8.11 and steals while in the building, either directly or as an accomplice, commits burglary in  
8.12 the third degree and may be sentenced to imprisonment for not more than five years or to  
8.13 payment of a fine of not more than \$10,000, or both, if:

8.14 (1) the person enters the building within one year after being told to leave the building  
8.15 and not return; and

8.16 (2) the person has been convicted within the preceding five years for an offense under  
8.17 this section, section 256.98, 268.182, 609.24, 609.245, 609.52, 609.522, 609.53, 609.625,  
8.18 609.63, 609.631, or 609.821, or a statute from another state, the United States, or a foreign  
8.19 jurisdiction, in conformity with any of those sections, and the person received a felony  
8.20 sentence for the offense or a sentence that was stayed under section 609.135 if the offense  
8.21 to which a plea was entered would allow imposition of a felony sentence.

8.22 **EFFECTIVE DATE.** This section is effective August 1, 2022, and applies to crimes  
8.23 committed on or after that date.

8.24 Sec. 8. Minnesota Statutes 2020, section 609.582, subdivision 4, is amended to read:

8.25 Subd. 4. **Burglary in the fourth degree.** (a) Whoever enters a building without consent  
8.26 and with intent to commit a misdemeanor other than to steal, or enters a building without  
8.27 consent and commits a misdemeanor other than to steal while in the building, either directly  
8.28 or as an accomplice, commits burglary in the fourth degree and may be sentenced to  
8.29 imprisonment for not more than one year or to payment of a fine of not more than \$3,000,  
8.30 or both.

8.31 (b) Whoever enters a building that is open to the public, other than a building identified  
8.32 in subdivision 2, paragraph (b), with intent to steal while in the building, or enters a building  
8.33 that is open to the public, other than a building identified in subdivision 2, paragraph (b),



9.1 and steals while in the building, either directly or as an accomplice, commits burglary in  
 9.2 the fourth degree and may be sentenced to imprisonment for not more than one year or to  
 9.3 payment of a fine of not more than \$3,000, or both, if the person enters the building within  
 9.4 one year after being told to leave the building and not return.

9.5 **EFFECTIVE DATE.** This section is effective August 1, 2022, and applies to crimes  
 9.6 committed on or after that date.

9.7 Sec. 9. Minnesota Statutes 2020, section 626.15, is amended to read:

9.8 **626.15 EXECUTION AND RETURN OF WARRANT; TIME.**

9.9 (a) Except as provided in paragraph ~~(b)~~ (c), a search warrant must be executed and  
 9.10 returned to the court which issued it within ten days after its date. After the expiration of  
 9.11 this time, the warrant is void unless previously executed.

9.12 (b) A search warrant on a financial institution for financial records is valid for 30 days.

9.13 (c) A district court judge may grant an extension of a the warrant on a financial institution  
 9.14 for financial records upon an application under oath stating that the financial institution has  
 9.15 not produced the requested financial records within ~~ten days~~ the 30-day period and that an  
 9.16 extension is necessary to achieve the purposes for which the search warrant was granted.  
 9.17 Each extension may not exceed 30 days.

9.18 (d) For the purposes of this paragraph section, "financial institution" has the meaning  
 9.19 given in section 13A.01, subdivision 2, and "financial records" has the meaning given in  
 9.20 section 13A.01, subdivision 3.

9.21 **EFFECTIVE DATE.** This section is effective August 1, 2022.