A bill for an act

relating to crime; including use of scanning device and reencoder to acquire information from payment cards as identity theft; amending Minnesota Statutes 2008, section 609.527, subdivisions 1, 6, by adding a subdivision; Minnesota Statutes 2009 Supplement, section 388.23, subdivision 1.

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

Section 1. Minnesota Statutes 2009 Supplement, section 388.23, subdivision 1, is amended to read:

Subdivision 1. **Authority.** The county attorney, or any deputy or assistant county attorney whom the county attorney authorizes in writing, has the authority to subpoena and require the production of any records of telephone companies, cellular phone companies, paging companies, subscribers of private computer networks including Internet service providers or computer bulletin board systems, electric companies, gas companies, water utilities, chemical suppliers, hotels and motels, pawn shops, airlines, buses, taxis, and other entities engaged in the business of transporting people, and freight companies, warehousing companies, self-service storage facilities, package delivery companies, and other entities engaged in the businesses of transport, storage, or delivery, and records of the existence of safe deposit box account numbers and customer savings and checking account numbers maintained by financial institutions and safe deposit companies, insurance records relating to the monetary payment or settlement of claims, the banking, credit card, and financial records of a <u>subject of an identity theft investigation or a</u> vulnerable adult, whether held in the name of the vulnerable adult or a third party, including but not limited to safe deposit, loan and account applications and agreements, signature cards, statements, checks, transfers, account authorizations, safe deposit access records and documentation of fraud, and wage and employment records of an applicant or recipient of

public assistance who is the subject of a welfare fraud investigation relating to eligibility information for public assistance programs. Subpoenas may only be issued for records that are relevant to an ongoing legitimate law enforcement investigation. Administrative subpoenas may only be issued in welfare fraud and identity theft cases if there is probable cause to believe a crime has been committed. This provision applies only to the records of business entities and does not extend to private individuals or their dwellings.

Sec. 2. Minnesota Statutes 2008, section 609.527, subdivision 1, is amended to read:

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

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

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

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

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

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

(3) telecommunication identification information or access device.

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

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

(g) "Unlawful activity" means:

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

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

(h) "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 a computer chip or magnetic strip or stripe of a payment card.

(i) "Reencoder" means an electronic device that places encoded information from the computer chip or magnetic strip or stripe of a payment card onto the computer chip or magnetic strip or stripe of a different payment card or any electronic medium that allows an authorized transaction to occur.

Sec. 3. Minnesota Statutes 2008, section 609.527, is amended by adding a subdivision to read:

Subd. 5b. **Unlawful possession or use of scanning device or reencoder.** (a) A person who uses a scanning device or reencoder without permission of the cardholder of the card from which the information is being scanned or reencoded, with the intent to commit, aid, or abet any unlawful activity, is guilty of a crime.

(b) A person who possesses, with the intent to commit, aid, or abet any unlawful activity, any device, apparatus, equipment, software, material, good, property, or supply that is designed or adapted for use as a scanning device or a reencoder is guilty of a crime.

(c) Whoever commits an offense under paragraph (a) or (b) may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than $10,000, or both.

EFFECTIVE DATE. This section is effective August 1, 2010, and applies to crimes committed on or after that date.

Sec. 4. Minnesota Statutes 2008, section 609.527, subdivision 6, is amended to read:

Subd. 6. **Venue.** Notwithstanding anything to the contrary in section 627.01, an offense committed under subdivision 2 ~~or~~, 5a, or 5b may be prosecuted in:

(1) the county where the offense occurred;

(2) the county of residence or place of business of the direct victim or indirect victim; or

(3) in the case of a violation of this subdivision ~~5a~~ or subdivision 7, the county of residence of the person whose identity was obtained or sought.