

January 21, 2025

RE: SB 2088 – North Dakota Data Security

Thank you for this opportunity to provide comments on North Dakota Senate Bill 2088. The American Property Casualty Insurance Association (APCIA)¹, the American Council of Life Insurers (ACLI)², and the National Association of Mutual Insurance Companies (NAMIC)³ support robust consumer protection and the safeguarding of sensitive personal information. We appreciate the Insurance Department's robust engagement with stakeholders as we have worked towards solutions that balance operational feasibility and consumer protections. However, we still have significant concerns about the proposed amendments to North Dakota's data security law, as these changes could impose considerable challenges on insurers while providing limited additional benefit to consumers.

1. Revisions to Notice Provisions

The existing law appropriately limits notification requirements to cybersecurity events that are reasonably likely to cause material harm to insurance licensees or consumers whose sensitive personal information is affected. This standard strikes a crucial balance between meaningful oversight and operational efficiency, ensuring attention is focused on incidents that truly matter.

In contrast, the proposed amendment, which mandates notifications for all cybersecurity events—even those unlikely to cause harm—would create unnecessary administrative burdens and divert resources from addressing genuine threats to consumer protection and cybersecurity. Many instances of unauthorized access are not malicious and pose no risk of harm to consumers. For example, a claims file might be sent to the wrong plaintiff's lawyer, or an employee could inadvertently include sensitive information in an internal email. Such occurrences do not warrant

¹ APCIA is the primary national trade association for home, auto, and business insurers. APCIA promotes and protects the viability of private competition for the benefit of consumers and insurers, with a legacy dating back 150 years. APCIA represents the broadest cross-section of home, auto, and business insurers of any national trade association.

² ACLI is the leading trade association driving public policy and advocacy on behalf of the life insurance industry. 90 million American families rely on the life insurance industry for financial protection and retirement security. ACLI's member companies are dedicated to protecting consumers' financial wellbeing through life insurance, annuities, retirement plans, long-term care insurance, disability income insurance, reinsurance, and dental, vision and other supplemental benefits. ACLI's 275 member companies represent 93 percent of industry assets in the United States.

³ NAMIC represents nearly 1,500 member companies, including six of the top 10 property/casualty insurers in the United States. NAMIC member companies collectively write more than \$391 billion in annual premiums and represent significant portions of the homeowners, automobile, and business insurance markets, including \$546 million in written premium in the state of North Dakota.

notification, and regulatory departments would neither need nor want to be inundated with these reports.

Equally concerning is the potential ripple effect: requiring notification of insignificant events to North Dakota could trigger notice obligations in other states, amplifying the burden without enhancing consumer protection.

Notably, most states that have enacted the NAIC Insurance Data Security Model Act have adopted similar language, ensuring notification provisions target only events with a meaningful likelihood of harm. Retaining the current standard not only safeguards consumers but also fosters uniformity across jurisdictions, creating a consistent, efficient framework that benefits both insurers and consumers.

2. Notification Timeline

The proposed change from “three business days” to “seventy-two hours” for notification of a cybersecurity event fails to account for weekends and holidays, when key personnel may not be available. This rigid timeline would create significant challenges for insurers, particularly in complex cases where initial assessments take time. A “three business days” standard is more practical and provides sufficient time for insurers to investigate and provide accurate, meaningful reports to regulators without compromising consumer protection. This timeline would also align with regulator schedules, which similarly accommodate weekends and holidays when such reports are unlikely to be reviewed.

3. Removal of Written Consent for Public Disclosure

We also have concerns about the amendment removing the requirement for licensees' prior written consent before public disclosure of sensitive information. While we understand the Department's intention to align this change with statutory requirements for transparency, it raises significant confidentiality concerns. Stakeholders have been assured that sensitive information will not be disclosed unnecessarily, but removing the consent requirement introduces risks to insurers and their consumers without a clear consumer benefit.

Recommendations

1. Retain the existing language found in ND §26.1-02.2-05. Notification of a cybersecurity event: *“...and the cybersecurity event has a reasonable likelihood of materially harming a consumer residing in this state or reasonable likelihood of materially harming any material part of the normal operations of the licensee.”*
2. Retain existing references to “three business days” rather than amending the language to “seventy-two hours.”

3. Retain the existing language found in ND §26.1-02.2-07. Confidentiality: “...*The commissioner may not otherwise make the documents, materials, or other information public without the prior written consent of the licensee.*”

Conclusion

APCIA, ACLI, and NAMIC all believe in protecting consumers and ensuring strong data security practices. However, the proposed amendments would burden insurers with requirements that provide limited additional consumer protection. We urge the North Dakota legislature to reconsider these amendments and maintain the balance between regulatory oversight and operational feasibility that the current law achieves.

By preserving a practical, focused approach to data security, North Dakota can ensure robust consumer protection while supporting an insurance industry that effectively serves its policyholders.

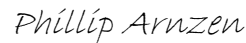
Sincerely,



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