

Introduced by

Industry and Business Committee

(At the request of the Insurance Commissioner)

1 A BILL for an Act to amend and reenact subsection 4 of section 26.1-02.2-01, sections
2 26.1-02.2-05 and 26.1-02.2-07, and subsection 1 of section 26.1-02.2-08 of the North Dakota
3 Century Code, relating to data security requirements for insurance producers; and to repeal
4 section 26.1-02.2-11 of the North Dakota Century Code, relating to implementation dates for
5 certain data security requirements for insurance producers.

6 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

7 **SECTION 1. AMENDMENT.** Subsection 4 of section 26.1-02.2-01 of the North Dakota
8 Century Code is amended and reenacted as follows:

- 9 4. "Cybersecurity event" means an event resulting in unauthorized access to, disruption,
10 or misuse of, an information system or nonpublic information stored on the information
11 system. The term does not include:
- 12 a. ~~The~~the unauthorized acquisition of encrypted nonpublic information if the
13 encryption, process, or key is not also acquired, released, or used without
14 authorization; ~~or~~
 - 15 b. ~~An event the licensee has determined that the nonpublic information accessed by~~
16 ~~an unauthorized person has not been used or released and has been returned or~~
17 ~~destroyed.~~

18 **SECTION 2. AMENDMENT.** Section 26.1-02.2-05 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **26.1-02.2-05. Notification of a cybersecurity event.**

- 21 1. A licensee shall notify the commissioner as promptly as possible, but no later than
22 ~~three business days~~seventy-two hours from a determination that a cybersecurity event
23 involving nonpublic information that is in the possession of a licensee has occurred if:

- 1 a. This state is the licensee's state of domicile, in the case of an insurer, or this state
2 is the licensee's home state, in the case of a producer as defined in chapter
3 26.1-26; ~~and the cybersecurity event has a reasonable likelihood of materially~~
4 ~~harming a consumer residing in this state or reasonable likelihood of materially~~
5 ~~harming any material part of the normal operations of the licensee; or~~
- 6 b. The licensee reasonably believes the nonpublic information involved is of
7 two hundred fifty or more consumers residing in this state and is:
- 8 (1) A cybersecurity event impacting the licensee for which notice is required to
9 be provided to any government body, self-regulatory agency, or any other
10 supervisory body pursuant to any state or federal law; or
- 11 (2) A cybersecurity event that has a reasonable likelihood of materially harming
12 any consumer residing in this state or materially harming any part of the
13 normal operations of the licensee.
- 14 2. The licensee shall provide the notice required under this section in electronic form as
15 directed by the commissioner. The licensee shall update and supplement the initial
16 and any subsequent notifications to the commissioner regarding material changes to
17 previously provided information relating to the cybersecurity event. The licensee's
18 notice required under this section must include:
- 19 a. The date of the cybersecurity event;
- 20 b. Description of how the information was exposed, lost, stolen, or breached,
21 including the specific roles and responsibilities of third-party service providers, if
22 any;
- 23 c. How the cybersecurity event was discovered;
- 24 d. Whether any lost, stolen, or breached information has been recovered and if so,
25 how;
- 26 e. The identity of the source of the cybersecurity event;
- 27 f. Whether the licensee has filed a police report or has notified any regulatory,
28 government, or law enforcement agencies and, if so, when the notification was
29 provided;
- 30 g. Description of the specific types of information acquired without authorization.
31 Specific types of information means particular data elements, including medical

- 1 information, financial information, or any other information allowing identification
2 of the consumer;
- 3 h. The period during which the information system was compromised by the
4 cybersecurity event;
- 5 i. The total number of consumers in this state affected by the cybersecurity event.
6 The licensee shall provide the best estimate in the initial report to the
7 commissioner and update the estimate with a subsequent report to the
8 commissioner pursuant to this section;
- 9 j. The results of any internal review identifying a lapse in either automated controls
10 or internal procedures, or confirming that all automated controls or internal
11 procedures were followed;
- 12 k. Description of efforts being undertaken to remediate the situation that permitted
13 the cybersecurity event to occur;
- 14 l. A copy of the licensee's privacy policy and a statement outlining the steps the
15 licensee will take to investigate and notify consumers affected by the
16 cybersecurity event; and
- 17 m. Name of a contact person that is both familiar with the cybersecurity event and
18 authorized to act for the licensee.
- 19 3. The licensee shall comply with chapter 51-30, as applicable, and provide a copy of the
20 notice sent to consumers to the commissioner, when a licensee is required to notify
21 the commissioner under subsection 1.
- 22 4. In the case of a cybersecurity event in a system maintained by a third-party service
23 provider, of which the licensee has become aware, the licensee shall treat the event in
24 accordance with subsection 1 unless the third-party service provider provides the
25 notice required under chapter 26.1-02.2 to the commissioner.
- 26 a. The computation of licensee's deadlines under this subsection begin on the day
27 after the third-party service provider notifies the licensee of the cybersecurity
28 event or the licensee otherwise has actual knowledge of the cybersecurity event,
29 whichever is sooner.
- 30 b. Nothing in this chapter prevents or abrogates an agreement between a licensee
31 and another licensee, a third-party service provider, or any other party to fulfill

1 any of the investigation requirements imposed under section 26.1-02.2-04 or
2 notice requirements imposed under subsection 1.

3 5. If a cybersecurity event involving nonpublic information that is used by a licensee that
4 is acting as an assuming insurer or in the possession, custody, or control of a licensee
5 that is acting as an assuming insurer and that does not have a direct contractual
6 relationship with the affected consumers, the assuming insurer shall notify the
7 insurer's affected ceding insurers and the commissioner of the insurer's state of
8 domicile within ~~three business days~~seventy-two hours of making the determination
9 that a cybersecurity event has occurred. The ceding insurer that has a direct
10 contractual relationship with affected consumers shall fulfill the consumer notification
11 requirements imposed under chapter 51-30 and any other notification requirements
12 relating to a cybersecurity event imposed under subsection 1.

13 6. If a cybersecurity event involving nonpublic information that is in the possession,
14 custody, or control of a third-party service provider of a licensee that is an assuming
15 insurer, the assuming insurer shall notify the insurer's affected ceding insurers and the
16 commissioner of the insurer's state of domicile within ~~three business days~~seventy-two
17 hours of receiving notice from its third-party service provider that a cybersecurity event
18 has occurred. The ceding insurers that have a direct contractual relationship with
19 affected consumers shall fulfill the consumer notification requirements imposed under
20 chapter 51-30 and any other notification requirements relating to a cybersecurity event
21 imposed under subsection 1.

22 7. Any licensee acting as assuming insurer does not have any other notice obligations
23 relating to a cybersecurity event or other data breach under this section or any other
24 law of this state.

25 8. If a cybersecurity event involving nonpublic information that is in the possession,
26 custody, or control of a licensee that is an insurer or the insurer's third-party service
27 provider for which a consumer accessed the insurer's services through an
28 independent insurance producer, and for which consumer notice is required by chapter
29 51-30, the insurer shall notify the producers of record of all affected consumers of the
30 cybersecurity event no later than the time at which notice is provided to the affected
31 consumers. The insurer is excused from the obligation imposed under this subsection

1 for any producers that are not authorized by law or contract to sell, solicit, or negotiate
2 on behalf of the insurer, and those instances in which the insurer does not have the
3 current producer of record information for an individual consumer.

4 **SECTION 3. AMENDMENT.** Section 26.1-02.2-07 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **26.1-02.2-07. Confidentiality.**

- 7 1. Any documents, materials, or other information in the control or possession of the
8 department which are furnished by a licensee, or an employee or agent thereof acting
9 on behalf of a licensee pursuant to this chapter, or that are obtained by the
10 commissioner in an investigation or examination pursuant to section 26.1-02.2-06 are
11 confidential, not subject to chapter 44-04, not subject to subpoena, and are not subject
12 to discovery or admissible in evidence in any private civil action. The commissioner
13 may use the documents, materials, or other information in the furtherance of any
14 regulatory or legal action brought as a part of the commissioner's duties. ~~The~~
15 ~~commissioner may not otherwise make the documents, materials, or other information~~
16 ~~public without the prior written consent of the licensee.~~
- 17 2. The commissioner or any person that received documents, materials, or other
18 information while acting under the authority of the commissioner may not be permitted
19 or required to testify in any private civil action concerning any confidential documents,
20 materials, or information subject to subsection 1.
- 21 3. In order to assist in the performance of the commissioner's duties under this chapter,
22 the commissioner:
- 23 a. May share documents, materials, or other information, including the confidential
24 and privileged documents, materials, or information subject to subsection 1, with
25 other state, federal, and international regulatory agencies, with the national
26 association of insurance commissioners, its affiliates or subsidiaries, and with
27 state, federal, and international law enforcement authorities, provided the
28 recipient agrees in writing to maintain the confidentiality and privileged status of
29 the document, material, or other information;
- 30 b. May receive documents, materials, or information, including otherwise
31 confidential and privileged documents, materials, or information, from the national

- 1 association of insurance commissioners, its affiliates or subsidiaries, and from
2 regulatory and law enforcement officials of other foreign or domestic jurisdictions,
3 and shall maintain as confidential or privileged any document, material, or
4 information received with notice or the understanding that it is confidential or
5 privileged under the laws of the jurisdiction that is the source of the document,
6 material, or information;
- 7 c. May share documents, materials, or other information subject to this section, with
8 a third-party consultant or vendor provided the consultant agrees in writing to
9 maintain the confidentiality and privileged status of the document, material, or
10 other information; and
- 11 d. May enter agreements governing sharing and use of information consistent with
12 this subsection.
- 13 4. A waiver of any applicable privilege or claim of confidentiality in the documents,
14 materials, or information does not occur as a result of disclosure to the commissioner
15 under this section or as a result of sharing as authorized in subsection 3.
- 16 5. Documents, materials, or other information in the possession or control of the national
17 association of insurance commissioners or a third-party consultant or vendor pursuant
18 to this chapter are confidential, not subject to chapter 44-04, not subject to subpoena,
19 and not subject to discovery or admissible in evidence in any private civil action.

20 **SECTION 4. AMENDMENT.** Subsection 1 of section 26.1-02.2-08 of the North Dakota
21 Century Code is amended and reenacted as follows:

- 22 1. The following exceptions apply to this chapter:
- 23 a. A licensee with less than five million dollars in gross revenue or less than
24 ten million dollars in year-end assets is exempt from subsections 2 through 10 of
25 section 26.1-02.2-03.
- 26 ~~b. During the period beginning on August 1, 2021, and ending on July 31, 2023, a~~
27 ~~licensee with fewer than fifty employees, including independent contractors and~~
28 ~~employees of affiliated companies having access to nonpublic information used~~
29 ~~by the licensee or in the licensee's possession, custody, or control, is exempt~~
30 ~~from section 26.1-02.2-03.~~

1 e. ~~After July 31, 2023, a licensee with fewer than twenty-five employees, including~~
2 ~~independent contractors and employees of affiliated companies having access to~~
3 ~~nonpublic information used by the licensee or in the licensee's possession,~~
4 ~~custody, or control is exempt from section 26.1-02.2-03.~~

5 d.b. A licensee that is subject to ~~and~~, governed by, and compliant with the privacy,
6 security, and breach notification rules issued by the United States department of
7 health and human services, title 45, Code of Federal Regulations, parts 160
8 and 164, established pursuant to the federal Health Insurance Portability and
9 Accountability Act of 1996 [Pub. L. 104-191], and the federal Health Information
10 Technology for Economic and Clinical Health Act [Pub. L. 111-5], and which
11 maintains nonpublic information concerning a consumer in the same manner as
12 protected health information is deemed to comply with the requirements of this-
13 chapter ~~except for the commissioner notification requirements under~~
14 ~~subsections 1 and 2 of section 26.1-02.2-05~~section 26.1-02.2-03.

15 e.c. An employee, agent, representative, or designee of a licensee, that also is a
16 licensee, is exempt from section 26.1-02.2-03 and is not required to develop an
17 information security program to the extent the employee, agent, representative,
18 or designee is covered by the information security program of the other licensee.

19 **SECTION 5. REPEAL.** Section 26.1-02.2-11 of the North Dakota Century Code is repealed.