

January 28, 2025

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO

SENATE BILL NO. 2088

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:

1 **26.1-02.2-05. Notification of a cybersecurity event.**

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

5 a. This state is the licensee's state of domicile, in the case of an insurer, or this state
6 is the licensee's home state, in the case of a producer as defined in chapter
7 26.1-26, and the cybersecurity event has a reasonable likelihood of materially
8 ~~harming a consumer residing in this state~~triggers notification to a consumer
9 residing in the state in accordance with chapter 51-30 or has a reasonable
10 likelihood of materially ~~harming any material part of the normal operations of the~~
11 licensee; or

12 b. The licensee reasonably believes the nonpublic information involved is of
13 two hundred fifty or more consumers residing in this state and is:

14 (1) A cybersecurity event impacting the licensee for which notice is required to
15 be provided to any government body, self-regulatory agency, or any other
16 supervisory body pursuant to any state or federal law; or

17 (2) A cybersecurity event that has a reasonable likelihood of materially harming
18 any consumer residing in this state or materially harming any part of the
19 normal operations of the licensee.

20 2. The licensee shall provide the notice required under this section in electronic form as
21 directed by the commissioner. The licensee shall update and supplement the initial
22 and any subsequent notifications to the commissioner regarding material changes to
23 previously provided information relating to the cybersecurity event. The licensee's
24 notice required under this section must include:

25 a. The date of the cybersecurity event;

26 b. Description of how the information was exposed, lost, stolen, or breached,
27 including the specific roles and responsibilities of third-party service providers, if
28 any;

29 c. How the cybersecurity event was discovered;

30 d. Whether any lost, stolen, or breached information has been recovered and if so,
31 how;

- 1 e. The identity of the source of the cybersecurity event;
- 2 f. Whether the licensee has filed a police report or has notified any regulatory,
3 government, or law enforcement agencies and, if so, when the notification was
4 provided;
- 5 g. Description of the specific types of information acquired without authorization.
6 Specific types of information means particular data elements, including medical
7 information, financial information, or any other information allowing identification
8 of the consumer;
- 9 h. The period during which the information system was compromised by the
10 cybersecurity event;
- 11 i. The total number of consumers in this state affected by the cybersecurity event.
12 The licensee shall provide the best estimate in the initial report to the
13 commissioner and update the estimate with a subsequent report to the
14 commissioner pursuant to this section;
- 15 j. The results of any internal review identifying a lapse in either automated controls
16 or internal procedures, or confirming that all automated controls or internal
17 procedures were followed;
- 18 k. Description of efforts being undertaken to remediate the situation that permitted
19 the cybersecurity event to occur;
- 20 l. A copy of the licensee's privacy policy and a statement outlining the steps the
21 licensee will take to investigate and notify consumers affected by the
22 cybersecurity event; and
- 23 m. Name of a contact person that is both familiar with the cybersecurity event and
24 authorized to act for the licensee.
- 25 3. The licensee shall comply with chapter 51-30, as applicable, and provide a copy of the
26 notice sent to consumers to the commissioner, when a licensee is required to notify
27 the commissioner under subsection 1.
- 28 4. In the case of a cybersecurity event in a system maintained by a third-party service
29 provider, of which the licensee has become aware, the licensee shall treat the event in
30 accordance with subsection 1 unless the third-party service provider provides the
31 notice required under chapter 26.1-02.2 to the commissioner.

- 1 a. The computation of licensee's deadlines under this subsection begin on the day
2 after the third-party service provider notifies the licensee of the cybersecurity
3 event or the licensee otherwise has actual knowledge of the cybersecurity event,
4 whichever is sooner.
- 5 b. Nothing in this chapter prevents or abrogates an agreement between a licensee
6 and another licensee, a third-party service provider, or any other party to fulfill
7 any of the investigation requirements imposed under section 26.1-02.2-04 or
8 notice requirements imposed under subsection 1.
- 9 5. If a cybersecurity event involving nonpublic information that is used by a licensee that
10 is acting as an assuming insurer or in the possession, custody, or control of a licensee
11 that is acting as an assuming insurer and that does not have a direct contractual
12 relationship with the affected consumers, the assuming insurer shall notify the
13 insurer's affected ceding insurers and the commissioner of the insurer's state of
14 domicile within ~~three business days~~seventy-two hours of making the determination
15 that a cybersecurity event has occurred. The ceding insurer that has a direct
16 contractual relationship with affected consumers shall fulfill the consumer notification
17 requirements imposed under chapter 51-30 and any other notification requirements
18 relating to a cybersecurity event imposed under subsection 1.
- 19 6. If a cybersecurity event involving nonpublic information that is in the possession,
20 custody, or control of a third-party service provider of a licensee that is an assuming
21 insurer, the assuming insurer shall notify the insurer's affected ceding insurers and the
22 commissioner of the insurer's state of domicile within ~~three business days~~seventy-two
23 hours of receiving notice from its third-party service provider that a cybersecurity event
24 has occurred. The ceding insurers that have a direct contractual relationship with
25 affected consumers shall fulfill the consumer notification requirements imposed under
26 chapter 51-30 and any other notification requirements relating to a cybersecurity event
27 imposed under subsection 1.
- 28 7. Any licensee acting as assuming insurer does not have any other notice obligations
29 relating to a cybersecurity event or other data breach under this section or any other
30 law of this state.

- 1 8. If a cybersecurity event involving nonpublic information that is in the possession,
2 custody, or control of a licensee that is an insurer or the insurer's third-party service
3 provider for which a consumer accessed the insurer's services through an
4 independent insurance producer, and for which consumer notice is required by chapter
5 51-30, the insurer shall notify the producers of record of all affected consumers of the
6 cybersecurity event no later than the time at which notice is provided to the affected
7 consumers. The insurer is excused from the obligation imposed under this subsection
8 for any producers that are not authorized by law or contract to sell, solicit, or negotiate
9 on behalf of the insurer, and those instances in which the insurer does not have the
10 current producer of record information for an individual consumer.

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

13 **26.1-02.2-07. Confidentiality.**

- 14 1. Any documents, materials, or other information in the control or possession of the
15 department which are furnished by a licensee, or an employee or agent thereof acting
16 on behalf of a licensee pursuant to this chapter, or that are obtained by the
17 commissioner in an investigation or examination pursuant to section 26.1-02.2-06 are
18 confidential, not subject to chapter 44-04, not subject to subpoena, and are not subject
19 to discovery or admissible in evidence in any private civil action. The commissioner
20 may use the documents, materials, or other information in the furtherance of any
21 regulatory or legal action brought as a part of the commissioner's duties. ~~The~~
22 ~~commissioner may not otherwise make the documents, materials, or other information~~
23 ~~public without the prior written consent of the licensee.~~
- 24 2. The commissioner or any person that received documents, materials, or other
25 information while acting under the authority of the commissioner may not be permitted
26 or required to testify in any private civil action concerning any confidential documents,
27 materials, or information subject to subsection 1.
- 28 3. In order to assist in the performance of the commissioner's duties under this chapter,
29 the commissioner:
30 a. May share documents, materials, or other information, including the confidential
31 and privileged documents, materials, or information subject to subsection 1, with

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

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

- 29 1. The following exceptions apply to this chapter:

- 1 a. A licensee with less than five million dollars in gross revenue or less than
2 ten million dollars in year-end assets is exempt from subsections 2 through 10 of
3 section 26.1-02.2-03.
- 4 ~~b. During the period beginning on August 1, 2021, and ending on July 31, 2023, a~~
5 ~~licensee with fewer than fifty employees, including independent contractors and~~
6 ~~employees of affiliated companies having access to nonpublic information used~~
7 ~~by the licensee or in the licensee's possession, custody, or control, is exempt~~
8 ~~from section 26.1-02.2-03.~~
- 9 ~~e. After July 31, 2023, a licensee with fewer than twenty-five employees, including~~
10 ~~independent contractors and employees of affiliated companies having access to~~
11 ~~nonpublic information used by the licensee or in the licensee's possession,~~
12 ~~custody, or control is exempt from section 26.1-02.2-03.~~
- 13 ~~d.b.~~ A licensee that is subject to and, governed by, and compliant with the privacy,
14 security, and breach notification rules issued by the United States department of
15 health and human services, title 45, Code of Federal Regulations, parts 160
16 and 164, established pursuant to the federal Health Insurance Portability and
17 Accountability Act of 1996 [Pub. L. 104-191], and the federal Health Information
18 Technology for Economic and Clinical Health Act [Pub. L. 111-5], and which
19 maintains nonpublic information concerning a consumer in the same manner as
20 protected health information is deemed to comply with the requirements of ~~this~~
21 ~~chapter except for the commissioner notification requirements under~~
22 ~~subsections 1 and 2 of section 26.1-02.2-05~~section 26.1-02.2-03.
- 23 ~~e.c.~~ An employee, agent, representative, or designee of a licensee, that also is a
24 licensee, is exempt from section 26.1-02.2-03 and is not required to develop an
25 information security program to the extent the employee, agent, representative,
26 or designee is covered by the information security program of the other licensee.

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