

PROPOSED AMENDMENTS TO SENATE BILL NO. 2075

Page 1, line 1 after “A Bill” replace the remainder of the bill with “for an Act to create and enact a new chapter, 26.1-02.2, of the North Dakota Century Code, relating to insurance data and security; and to provide for a study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new chapter, 26.1-02.2 of the North Dakota Century Code, titled Insurance Data Security is enacted as follows:

26.1-02.2-01 Definitions

For purposes of this chapter, unless the context or subject matter otherwise requires:

1. “Authorized individual” means an individual known to and screened by the licensee and determined to be necessary and appropriate to have access to the nonpublic information held by the licensee and its information systems.
2. “Commissioner” means the insurance commissioner
3. “Consumer” means an individual, including but not limited to applicants, policyholders, insureds, beneficiaries, claimants, and certificate holders who is a resident of this state and whose nonpublic information is in a licensee’s possession, custody, or control.
4. “Cybersecurity event” means an event resulting in unauthorized access to, disruption or misuse of, an information system or nonpublic information stored on such information system.

The term “cybersecurity event” does not include the unauthorized acquisition of encrypted nonpublic information if the encryption, process or key is not also acquired, released or used without authorization.

Cybersecurity event does not include an event with regard to which the licensee has determined that the nonpublic information accessed by an unauthorized person has not been used or released and has been returned or destroyed.

5. “Department” means the North Dakota insurance department.
6. “Encrypted” means the transformation of data into a form which results in a low probability of assigning meaning without the use of a protective process or key.
7. “Information security program” means the administrative, technical, and physical safeguards that a licensee uses to access, collect, distribute, process, protect, store, use, transmit, dispose of, or otherwise handle nonpublic information.
8. “Information system” means a discrete set of electronic information resources organized for the collection, processing, maintenance, use, sharing, dissemination or disposition of electronic nonpublic information, as well as any specialized system such as industrial/process controls systems, telephone switching and private branch exchange systems, and environmental control systems.
9. “Licensee” means any person licensed, authorized to operate, or registered, or required to be licensed, authorized, or registered pursuant to the insurance laws of this state but shall not include a purchasing group or a risk retention group chartered and licensed in a state other than this state or a licensee that is acting as an assuming insurer that is domiciled in another state or jurisdiction.
10. “Multi-factor authentication” means authentication through verification of at least two of the following types of authentication factors:
 - a. Knowledge factors, such as a password; or
 - b. Possession factors, such as a token or text message on a mobile phone; or
 - c. Inherence factors, such as a biometric characteristic.
11. “Nonpublic information” means electronic information that is not publicly available information and is:
 - a. Any information concerning a consumer which because of name, number, personal mark, or other identifier can be used to identify such consumer, in combination with any one or more of the following data elements:
 - 1) Social security number,

- 2) Driver's license number or non-driver identification card number,
 - 3) Financial account number, credit or debit card number,
 - 4) Any security code, access code or password that would permit access to a consumer's financial account, or
 - 5) Biometric records;
- b. Any information or data, except age or gender, in any form or medium created by or derived from a health care provider or a consumer that can be used to identify a particular consumer and that relates to
- 1) The past, present or future physical, mental or behavioral health or condition of any consumer or a member of the consumer's family,
 - 2) The provision of health care to any consumer, or
 - 3) Payment for the provision of health care to any consumer.
12. "Person" means any individual or any non-governmental entity, including but not limited to any non- governmental partnership, corporation, branch, agency or association.
13. "Publicly available information" means any information that a licensee has a reasonable basis to believe is lawfully made available to the general public from: federal, state or local government records; widely distributed media; or disclosures to the general public that are required to be made by federal, state or local law.
- For the purposes of this definition, a licensee has a reasonable basis to believe that information is lawfully made available to the general public if the licensee has taken steps to determine:
- a. That the information is of the type that is available to the general public; and
 - b. Whether a consumer can direct that the information not be made available to the general public and, if so, that such consumer has not done so.
14. "Risk assessment" means the risk assessment that each licensee is required to conduct under subsection 3 of section 3.

15. “Third-party service provider” means a person, not otherwise defined as a licensee, that contracts with a licensee to maintain, process, store or otherwise is permitted access to nonpublic information through its provision of services to the licensee.

26.1-02.2-02 Exclusive Regulation

Notwithstanding any other provision of law, this chapter establishes the exclusive state standards applicable to licensees for data security, the investigation of a cybersecurity event as defined in section 1, and notification to the commissioner.

26.1-02.2-03 Information Security Program

1. Commensurate with the size and complexity of the licensee, the nature and scope of the licensee’s activities, including its use of third-party service providers, and the sensitivity of the nonpublic information used by the licensee or in the licensee’s possession, custody or control, each licensee shall develop, implement, and maintain a comprehensive written information security program based on the licensee’s risk assessment and that contains administrative, technical, and physical safeguards for the protection of nonpublic information and the licensee’s information system.
2. A licensee’s information security program shall be designed to:
 - a. Protect the security and confidentiality of nonpublic information and the security of the information system;
 - b. Protect against any threats or hazards to the security or integrity of nonpublic information and the information system;
 - c. Protect against unauthorized access to or use of nonpublic information, and minimize the likelihood of harm to any consumer; and
 - d. Define and periodically reevaluate a schedule for retention of nonpublic information and a mechanism for its destruction when no longer needed.
3. The licensee shall:

- a. Designate one or more employees, an affiliate, or an outside vendor designated to act on behalf of the licensee who is responsible for the information security program;
 - b. Identify reasonably foreseeable internal or external threats that could result in unauthorized access, transmission, disclosure, misuse, alteration, or destruction of nonpublic information, including the security of information systems and nonpublic information that are accessible to, or held by, third-party service providers;
 - c. Assess the likelihood and potential damage of these threats, taking into consideration the sensitivity of the nonpublic information;
 - d. Assess the sufficiency of policies, procedures, information systems and other safeguards in place to manage these threats, including consideration of threats in each relevant area of the licensee's operations, including:
 - 1) Employee training and management;
 - 2) Information systems, including network and software design, as well as information classification, governance, processing, storage, transmission, and disposal; and
 - 3) Detecting, preventing, and responding to attacks, intrusions, or other systems failures; and
 - e. Implement information safeguards to manage the threats identified in its ongoing assessment, and no less than annually, assess the effectiveness of the safeguards' key controls, systems, and procedures.
4. Based on its risk assessment, the licensee shall:
- a. Design its information security program to mitigate the identified risks, commensurate with the size and complexity of the licensee, the nature and scope of the licensee's activities, including its use of third-party service providers, and the sensitivity of the nonpublic information used by the licensee or in the licensee's possession, custody, or control.
 - b. Determine which security measures in this subdivision are appropriate and implement such security measures:
 - 1) Place access controls on information systems, including

controls to authenticate and permit access only to authorized Individuals to protect against the unauthorized acquisition of nonpublic information;

- 2) Identify and manage the data, personnel, devices, systems, and facilities that enable the organization to achieve business purposes in accordance with their relative importance to business objectives and the organization's risk strategy;
- 3) Restrict physical access to nonpublic information to authorized individuals only;
- 4) Protect by encryption or other appropriate means, all nonpublic information while being transmitted over an external network and all nonpublic information stored on a laptop computer or other portable computing or storage device or media;
- 5) Adopt secure development practices for in-house developed applications utilized by the licensee;
- 6) Modify the information system in accordance with the licensee's information security program;
- 7) Utilize effective controls, which may include multi-factor authentication procedures for employees accessing nonpublic information;
- 8) Regularly test and monitor systems and procedures to detect actual and attempted attacks on, or intrusions into, information systems;
- 9) Include audit trails within the information security program designed to detect and respond to cybersecurity events and designed to reconstruct material financial transactions sufficient to support normal operations and obligations of the licensee;
- 10) Implement measures to protect against destruction, loss, or damage of nonpublic information due to environmental hazards, such as fire and water damage or other catastrophes or technological failures; and
- 11) Develop, implement, and maintain procedures for the secure disposal of nonpublic information in any format.

- c. Include cybersecurity risks in the licensee's enterprise risk management process.
 - d. Stay informed regarding emerging threats or vulnerabilities and utilize reasonable security measures when sharing information relative to the character of the sharing and the type of information shared; and
 - e. Provide its personnel with cybersecurity awareness training that is updated as necessary to reflect risks identified by the licensee in the risk assessment.
5. If the licensee has a board of directors, the board or an appropriate committee of the board shall, at a minimum:
- a. Require the licensee's executive management or its delegates to develop, implement, and maintain the licensee's information security program;
 - b. Require the licensee's executive management or its delegates to report in writing at least annually, the following information:
 - 1) The overall status of the information security program and the licensee's compliance with the provisions of this chapter; and
 - 2) Material matters related to the information security program, addressing issues such as risk assessment, risk management and control decisions, third-party service provider arrangements, results of testing, cybersecurity events or violations and management's responses thereto, and recommendations for changes in the information security program.
 - c. If executive management delegates any of its responsibilities under this section, it shall oversee the development, implementation and maintenance of the licensee's information security program prepared by the delegate and shall receive a report from the delegate complying with the requirements of the report to the board of directors.
6. A licensee shall exercise due diligence in selecting its third-party service provider; and a licensee shall require a third-party service provider to implement appropriate administrative, technical, and physical measures to protect and secure the information systems and nonpublic information

that are accessible to, or held by, the third-party service provider.

7. The licensee shall monitor, evaluate and adjust, as appropriate, the information security program consistent with any relevant changes in technology, the sensitivity of its nonpublic information, internal or external threats to information, and the licensee's own changing business arrangements, such as mergers and acquisitions, alliances and joint ventures, outsourcing arrangements and changes to information systems.
8. As part of its information security program, each licensee shall establish a written incident response plan designed to promptly respond to, and recover from, any cybersecurity event that compromises the confidentiality, integrity, or availability of nonpublic information in its possession. The incident response plan must include the licensee's plan to recover its information systems and restore continuous functionality of any aspect of the licensee's business or operations.

A licensee's incident response plan shall address the following areas:

- 1) The internal process for responding to a cybersecurity event;
 - 2) The goals of the incident response plan;
 - 3) The definition of clear roles, responsibilities and levels of decision-making authority;
 - 4) External and internal communications and information sharing;
 - 5) Identification of requirements for the remediation of any identified weaknesses in information systems and associated controls;
 - 6) Documentation and reporting regarding cybersecurity events and related incident response activities; and
 - 7) The evaluation and revision as necessary of the incident response plan following a cybersecurity event.
9. Annually, each insurer domiciled in this state shall submit to the commissioner, a written statement by April fifteenth, certifying that the insurer is in compliance with the requirements set forth in this section. Each insurer shall maintain for examination by the department all

records, schedules and data supporting this certificate for a period of five years. To the extent an insurer has identified areas, systems, or processes that require material improvement, updating or redesign, the insurer shall document the identification and the remedial efforts planned and underway to address such areas, systems, or processes. Such documentation must be available for inspection by the commissioner.

26.1-02.2-04 Investigation of a Cybersecurity Event

1. If the licensee learns that a cybersecurity event has or may have occurred the licensee, or an outside vendor or service provider designated to act on behalf of the licensee, shall conduct a prompt investigation.
2. During the investigation, the licensee, or an outside vendor or service provider designated to act on behalf of the licensee, shall, at a minimum:
 - a. Determine whether a cybersecurity event has occurred;
 - b. Assess the nature and scope of the cybersecurity event;
 - c. Identify any nonpublic information that may have been involved in the cybersecurity event; and
 - d. Perform or oversee reasonable measures to restore the security of the information systems compromised in the cybersecurity event in order to prevent further unauthorized acquisition, release or use of nonpublic Information in the licensee's possession, custody, or control.
3. If the licensee learns that a cybersecurity event has or may have occurred in a system maintained by a third-party service provider, the licensee will complete the steps listed in subsection 2 or confirm and document that the third-party service provider has completed those steps.
4. The licensee shall maintain records concerning all cybersecurity events for a period of at least five years from the date of the cybersecurity event and shall produce those records upon demand of the commissioner.

26.1-02.2-05 Notification of a Cybersecurity Event

1. Each licensee shall notify the commissioner as promptly as possible but in no event later than three business days from a determination that a

cybersecurity event involving nonpublic information that is in the possession of a licensee has occurred when:

- a. This state is the licensee's state of domicile, in the case of an insurer, or this state is the licensee's home state, in the case of a producer, as those terms are defined in chapter 26.1-26, 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; or
 - b. The licensee reasonably believes that the nonpublic information involved is of two hundred fifty or more consumers residing in this state and that is:
 - 1) A cybersecurity event impacting the licensee of which notice is required to be provided to any government body, self-regulatory agency or any other supervisory body pursuant to any state or federal law; or
 - 2) A cybersecurity event that has a reasonable likelihood of materially harming any consumers residing in this state or materially harming any part of the normal operations of the licensee.
2. The licensee's notice required under this section shall provide the information in electronic form as directed by the commissioner. The licensee's notice shall have a continuing obligation to update and supplement initial and subsequent notifications to the commissioner regarding material changes to previously provided information relating to the cybersecurity event. The licensee's notice required under this section shall include as much of the following information in this subsection as possible;
- a. Date of the cybersecurity event;
 - b. Description of how the information was exposed, lost, stolen, or breached, including the specific roles and responsibilities of third-party service providers, if any;
 - c. How the cybersecurity event was discovered;
 - d. Whether any lost, stolen, or breached information has been recovered and if so, how this was done;
 - e. The identity of the source of the cybersecurity event;

- f. Whether Licensee has filed a police report or has notified any regulatory, government or law enforcement agencies and, if so, when such notification was provided;
 - g. Description of the specific types of information acquired without authorization. Specific types of information means particular data elements including, for example, types of medical information, types of financial information or types of information allowing identification of the consumer;
 - h. The period during which the information system was compromised by the cybersecurity event;
 - i. The number of total consumers in this state affected by the cybersecurity event. The licensee shall provide the best estimate in the initial report to the commissioner and update this estimate with each subsequent report to the commissioner pursuant to this section;
 - j. The results of any internal review identifying a lapse in either automated controls or internal procedures, or confirming that all automated controls or internal procedures were followed;
 - k. Description of efforts being undertaken to remediate the situation which permitted the cybersecurity event to occur;
 - l. A copy of the licensee's privacy policy and a statement outlining the steps the Licensee will take to investigate and notify consumers affected by the cybersecurity event; and
 - m. Name of a contact person who is both familiar with the cybersecurity event and authorized to act for the licensee.
3. The licensee shall comply with chapter 51-30, as applicable, and provide a copy of the notice sent to consumers to the commissioner, when a licensee is required to notify the commissioner under subsection 1.
4. In the case of a cybersecurity event in a system maintained by a third-party service provider, of which the licensee has become aware, the licensee shall treat such event as it would under subsection 1 unless the third-party service provider provides the notice required under chapter 26.1-02.2 to the commissioner.
- a. The computation of licensee's deadlines under this subsection

shall begin on the day after the third-party service provider notifies the licensee of the cybersecurity event or the licensee otherwise has actual knowledge of the cybersecurity event, whichever is sooner.

b. Nothing in this chapter shall prevent or abrogate an agreement between a licensee and another licensee, a third-party service provider or any other party to fulfill any of the investigation requirements imposed under section 4 or notice requirements imposed under subsection 1.

5. In the case of a cybersecurity event involving nonpublic information that is used by the licensee that is acting as an assuming insurer or in the possession, custody or control of a licensee that is acting as an assuming insurer and that does not have a direct contractual relationship with the affected consumers, the assuming insurer shall notify its affected ceding insurers and the commissioner of its state of domicile within three business days of making the determination that a cybersecurity event has occurred.

The ceding insurer that has a direct contractual relationship with affected consumers shall fulfill the consumer notification requirements imposed under chapter 51-30 and any other notification requirements relating to a cybersecurity event imposed under subsection 1.

6. In the case of a cybersecurity event involving nonpublic information that is in the possession, custody or control of a third-party service provider of a licensee that is an assuming insurer, the assuming insurer shall notify its affected ceding insurers and the commissioner of its state of domicile within three business days of receiving notice from its third-party service provider that a cybersecurity event has occurred.

The ceding insurers that have a direct contractual relationship with affected consumers shall fulfill the consumer notification requirements imposed under chapter 51-30 and any other notification requirements relating to a cybersecurity event imposed under subsection 1.

7. Any licensee acting as assuming insurer shall have no other notice obligations relating to a cybersecurity event or other data breach under this section or any other law of this state.

8. In the case of a cybersecurity event involving nonpublic information that is in the possession, custody or control of a licensee that is an insurer or its third-party service provider for which a consumer accessed the insurer's services through an independent insurance producer, and for which consumer notice is required by chapter 51-30, the insurer shall

notify the producers of record of all affected consumers of the cybersecurity event no later than the time at which notice is provided to the affected consumers .

The insurer is excused from the obligation imposed under this subsection for any producers who are not authorized by law or contract to sell, solicit or negotiate on behalf of the insurer, and those instances in which the insurer does not have the current producer of record information for an individual consumer.

26.1-02.2-06 Power of Commissioner

1. The commissioner shall have power to examine and investigate into the affairs of any licensee to determine whether the licensee has been or is engaged in any conduct in violation of this chapter. This power is in addition to the powers which the commissioner has under chapter 26.1-03. Any such investigation or examination shall be conducted pursuant to chapter 26.1-03.
2. Whenever the commissioner has reason to believe that a licensee has been or is engaged in conduct in this state which violates this chapter, the commissioner may take action that is necessary or appropriate to enforce the provisions of this chapter.

26.1-02.2-07 Confidentiality

1. Any documents, materials or other information in the control or possession of the department that are furnished by a licensee or an employee or agent thereof acting on behalf of licensee pursuant to this chapter, or that are obtained by the commissioner in an investigation or examination pursuant to section 6 shall be confidential by law and privileged, shall not be subject to chapter 44-04, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. However, the commissioner is authorized to use the documents, materials or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's duties. The commissioner may not otherwise make the documents, materials or other information public without the prior written consent of the licensee.
2. Neither the commissioner nor any person who received documents, materials or other information while acting under the authority of the commissioner shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to subsection 1.

3. In order to assist in the performance of the commissioner's duties the commissioner:
 - a. May share documents, materials or other information, including the confidential and privileged documents, materials or information subject to subsection 1, with other state, federal, and international regulatory agencies, with the national association of insurance commissioners, its affiliates or subsidiaries, and with state, federal, and international law enforcement authorities, provided that the recipient agrees in writing to maintain the confidentiality and privileged status of the document, material or other information;
 - b. May receive documents, materials or information, including otherwise confidential and privileged documents, materials or information, from the national association of insurance commissioners, its affiliates or subsidiaries and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information;
 - c. May share documents, materials or other information subject to this section, with a third-party consultant or vendor provided the consultant agrees in writing to maintain the confidentiality and privileged status of the document, material or other information; and
 - d. May enter into agreements governing sharing and use of information consistent with this subsection.
4. A waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information does not occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in subsection 3.
5. Documents, materials or other information in the possession or control of the national association of insurance commissioners or a third-party consultant or vendor pursuant to this chapter shall be confidential by law and privileged, shall not be subject to chapter 44-04, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action.

26.1-02.2-08 Exceptions

1. The following exceptions shall apply to this chapter:
 - a. A licensee with less than five million dollars in gross revenue or less than ten million dollars in year-end assets is exempt from section 3.
 - b. During the period beginning on August 1, 2021 and ending on July 31, 2023, each licensee with fewer than fifty employees, which, for the purposes of this subclause, includes independent contractors and employees of affiliated companies having access to nonpublic information used by such licensee or in such licensee's possession, custody or control, shall be exempt from section 3.
 - c. On and after August 1, 2023 each licensee with fewer than twenty-five employees, which, for the purposes of this subclause, includes independent contractors and employees of affiliated companies having access to nonpublic information used by such licensee or in such licensee's possession, custody or control shall be exempt from section 3
 - d. A licensee which is subject to and governed by the privacy, security, and breach notification rules issued by the United States Department of Health and Human Services, Parts 160 and 164 of Title 45 of the Code of Federal Regulations, established pursuant to the Health Insurance Portability and Accountability Act of 1996 (Public Law 104- 191), and the Health Information Technology for Economic and Clinical Health Act (Public Law 111-5, HITECH), and which maintains nonpublic information concerning a consumer in the same manner as protected health information shall be deemed to comply with the requirements of this chapter except for the commissioner notification requirements in section 5 subsection 1 and section 5 subsection 2;
 - e. An employee, agent, representative or designee of a licensee, who is also a Licensee, is exempt from section 3 and need not develop its own information security program to the extent that the employee, agent, representative or designee is covered by the information security program of the other licensee.
2. In the event that a licensee ceases to qualify for an exception, such licensee shall have one hundred eighty days to comply with this chapter.

26.1-02.2-09 Penalties

In the case of a violation of this chapter, a licensee may be penalized in accordance with section 26.1-01-03.3.

26.1-02.2-10 Rules and Regulations

The commissioner may adopt reasonable rules necessary for the implementation of this chapter.

26.1-02.2-11 Implementation Dates

Licensee's shall implement:

1. Subsections 1 through 5, 8, and 9 of section 3 no later than August 1, 2022, and
2. Subsections 6 and 7 of section 3 no later than August 1, 2023.

SECTION 2. LEGISLATIVE MANAGEMNT STUDY – CYBER VULNERABILITIES OF ENTITIES LICENSED BY THE INSURANCE DEPARTMENT. During the 2021-22 interim, the legislative management shall consider, with the assistance of the insurance department, the North Dakota laws and practice of insurers making property and casualty insurance policies and related information available to insureds by electronic means; the feasibility and desirability of prohibiting insurers from restricting the conditions in which insureds may access such information, including through software and agents of their choosing; and the extent to which insurers conducting business in this state have sought to limit access to policies and related information made available to insureds, whether such restrictions restrain competition in the marketplace, balance with an analysis of the impact of such access on potential cyber breaches, and loss of trade secret or proprietary information resulting from third party usage and software applications, and how the two competing considerations can be safely and fairly reconciled. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-eighth legislative assembly.”

Renumber accordingly