

**FIRST ENGROSSMENT**

**ENGROSSED 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 from a determination that a cybersecurity event ~~involving-~~  
4       ~~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 of making the determination that a cybersecurity  
15       event has occurred. The ceding insurer that has a direct contractual relationship with  
16       affected consumers shall fulfill the consumer notification requirements imposed under  
17       chapter 51-30 and any other notification requirements relating to a cybersecurity event  
18       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 of receiving  
23       notice from its third-party service provider that a cybersecurity event has occurred.  
24       The ceding insurers that have a direct contractual relationship with affected  
25       consumers shall fulfill the consumer notification requirements imposed under chapter  
26       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.