

**2015 SENATE JUDICIARY**

**SB 2214**

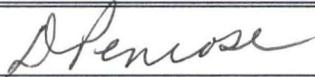
# 2015 SENATE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Fort Lincoln Room, State Capitol

SB 2214  
1/19/2015  
22099

- Subcommittee  
 Conference Committee

Committee Clerk Signature



**Minutes:**

1

Ch. Hogue: We will open the hearing on SB 2214.

Sen. Casper: Sponsor, explained the bill (support). We live in the day and age where our private information is shared through technology across the country and across the world and state. Three examples of recent actions would be Home Depot, Target, and Sony. When we talk about private information we include social security numbers, email addresses, addresses, passwords, codes. In the foresight of the legislature and the Attorney General's office here in ND, in the past in 2005 we passed the piece of legislation that is before you. It required the individuals or a company that is in possession of personal information, when they reasonably believe that information to be taken or not secure, to disclose that to the consumers. All we're asking for here is an amendment to that to require that the companies or individuals holding that information disclose that to the attorney general's office as well as to the consumers. Through my discussions with the AG's office, they say that this happens quite often already (that the disclosure is taking place). However, in some instances it has not and they will get a call from an individual asking what to do about their information being disclosed because under the law they are getting informed by the company or individual holding that information and then the AG is unaware and unprepared for that question. All we would be doing under this legislation is adding them to the list of individuals or groups that are notified.

Sen. C. Nelson: How is this disclosure made? Sometimes we just hear about it on the front page of the Forum.

Sen. Casper: Under this law, they should be contacting you. It's a reasonability standard. They should act as a reasonable person or company

would under like circumstances, if they reasonably believe the information has been disclosed and that someone else has it, then they should take reasonable action to inform you. If they have your email address, they have the phone number.

Sen. Casper: I don't have any statistics on how accurately that is happening.

Sen. C. Nelson: I didn't get notified by Home Depot or Target nor Sony, can I assume that my data is okay.

Sen. Casper: I don't have an answer for your particular data; the likelihood of Target or Home Depot having been hacked, they should have disclosed that to you under this law. They have to make reasonable efforts to contact you.

Ch. Hogue: I'm a customer of Target, but I don't have a Target credit card, so I wouldn't expect them to necessarily have my encrypted information; while employees and those with their credit cards under the existing law have to be notified and your bill is proposing that in addition to notifying those people that have that personal information encrypted, that the AG's office be notified.

Sen. Casper: As it's in code now, they are required to notify those individuals. They are just adding the AG's office to the list of who gets notified.

Ch. Hogue: Thank you. Further testimony in support.

Parrell Grossman, Director, Consumer Protection and Antitrust Division, office of Attorney General: Support (see attached #1).

Ch. Hogue: When there is a large breach, for example, we talked about Target which crosses multiple states, do the attorney generals of the states get involved in prosecution of those cases, or is it typically a federal prosecution.

Parrell Grossman: The attorney general of ND gets involved in every one of those cases, where it involves multi-states and if a major breach occurred, is there something actionable. Did they release confidential information, did they take enough steps to protect that information. Typically those are civil actions and although they may be local jurisdictions or in large cities that have their own ordinances for the most part, these are addressed through statutes in the AGs' offices throughout the country.

Sen. Grabinger: Are we having any success in getting to the bottom of these cases in finding out who the perpetrators are and actually prosecuting them, or is it still a struggle.

Parrell Grossman: I think we are having some success in sorting through how the breaches occurred with the large entities getting to the ultimate individuals that are typically in Russia or someplace else in the country, it's very difficult. On the one hand, the AGs' continue to think that these large companies have an obligation to their customers, the consumers and should take all reasonable steps. On the other hand, there are some very clever and complicated approaches used by the individuals that steal this information. Not so long ago there was a breach of a large oil company and they breached that oil company through accessing a Chinese take-out menu. They were located quite closely to the business and the employees ordered on-line from the restaurant, so the criminals got in through the data measures of that restaurant and then they breached the entire company. Typically we are hearing more and more things that I can't disclose the entity, but there was another large entity that was breached. They came in through the coolers that the company dealt with. They were charged with turning on the coolers in the morning and getting it to the right temperature, etc. and the individuals that breached the system came in through the coolers. That large retailer didn't foresee that that could happen; it continues to be a huge topic. I went to a conference last fall and took a day talking about this matter. Now we're working closely with our colleagues in the Federal Trade Commission and the Dept. of Justice to look at what might be appropriate legislation on the national level.

Ch. Hogue: Thank you. Further testimony in support. Testimony in opposition. Neutral testimony. We will close the hearing.

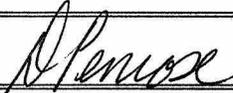
# 2015 SENATE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Fort Lincoln Room, State Capitol

SB 2214  
1/20/2015  
22229

- Subcommittee  
 Conference Committee

Committee Clerk Signature



## Minutes:

1

Ch. Hogue: Let's take a look at SB 2214. I had an amendment drafted to identify that the notice has to be mailed to the Attorney General's office (see attached #1). The person, who conducts business in the state, shall also disclose such breach to the Attorney General by mail.

Sen. C. Nelson: That's my problem, "Notice sent by mail". It seems like everything is done by some sort of electronic means.

Sen. Casper: It seems like this has to be addressed somewhere else in the NDCC. Email can be lost.

Ch. Hogue: If you are reading this statute, you are going to go to the AG's website and look up their mailing address and send them notice by mail. If it doesn't specify, if it's electronic mail then you probably have to designate someone in the AG's office, but there is a lot of turnover in the AG's office for the Asst. Attorney Generals.

Sen. Armstrong: I move the amendment 15.8181.01001 Title 02000.

Sen. Luick: Second the motion.

Ch. Hogue: We will take a voice vote. Motion carried. We now have the bill before us as amended.

Sen. Armstrong: I move a Do Pass as amended.

Sen. Casper: Second the motion.

**6 YES 0 NO 0 ABSENT DO PASS AS AMENDED CARRIER: Sen. Luick**

15.8181.01001  
Title.02000

Adopted by the Judiciary Committee

January 20, 2015

70  
1/20/15

PROPOSED AMENDMENTS TO SENATE BILL NO. 2214

Page 1, line 9, remove "the attorney"

Page 1, line 10, remove "general and"

Page 1, line 11, after the period insert "In addition, any person that conducts business in this state shall disclose by mail any breach to the attorney general."

Renumber accordingly

Date: 4/20/2015  
Voice Vote # 1

2015 SENATE STANDING COMMITTEE  
VOICE VOTE  
BILL/RESOLUTION NO. 2214

Senate Judiciary Committee

Subcommittee

Amendment LC# or Description: 15. 8181.01001 / 02000

Recommendation:  Adopt Amendment

- Do Pass     Do Not Pass     Without Committee Recommendation
- As Amended                       Rerefer to Appropriations
- Place on Consent Calendar

Other Actions:     Reconsider                       \_\_\_\_\_

Seconded By

Motion Made By Sen Armstrong                      Sen Luick

Senators	Yes	No	Senators	Yes	No
Ch. Hogue	✓		Sen. Grabinger	✓	
Sen. Armstrong	✓		Sen. C. Nelson	✓	
Sen. Casper	✓				
Sen. Luick	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

*Motion carried.*

Date: 1/20/15

Roll Call Vote #: 2

**2015 SENATE STANDING COMMITTEE  
ROLL CALL VOTE**

BILL/RESOLUTION NO. 2214

Senate \_\_\_\_\_ **JUDICIARY** \_\_\_\_\_ Committee

Subcommittee

Amendment LC# or Description: 15.8181.01001 / 02000

Recommendation:  Adopt Amendment  
 Do Pass     Do Not Pass     Without Committee Recommendation  
 As Amended     Rerefer to Appropriations  
 Place on Consent Calendar

Other Actions:  Reconsider     \_\_\_\_\_

Motion Made By Sen. Armstrong    Seconded By Sen. Casper

Senators	Yes	No	Senators	Yes	No
Chairman Hogue	✓		Sen. Grabinger	✓	
Sen. Armstrong	✓		Sen. C. Nelson	✓	
Sen. Casper	✓				
Sen. Luick	✓				

Total (Yes) 6    No 0

Absent 0

Floor Assignment Sen. Luick

**REPORT OF STANDING COMMITTEE**

**SB 2214: Judiciary Committee (Sen. Hogue, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2214 was placed on the Sixth order on the calendar.

Page 1, line 9, remove "the attorney"

Page 1, line 10, remove "general and"

Page 1, line 11, after the period insert "In addition, any person that conducts business in this state shall disclose by mail any breach to the attorney general."

Renumber accordingly

**2015 HOUSE JUDICIARY**

**SB 2214**

# 2015 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee  
Prairie Room, State Capitol

SB 2214  
3/16/2015  
24889

- Subcommittee  
 Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

Relating to security breach notifications.

## Minutes:

Testimony #1

**Chairman K. Koppelman:** Opened the hearing on SB 2214.

**Senator Casper:** Introduced the bill. I put this in working with the Attorney General's office. Right now under a law when there is a breach when people are sharing information with companies like Target, Home Depot and signing up for credit cards under law when there is a breach they are required to give notice to the people whose information they possess. This law just amends this part of the code to require they send the Attorney General's Office notice as well so they are aware of what is taking place.

**Rep. L. Klemin:** What about public institutions? We have had this sort of thing happen with our higher education institutions.

**Senator Casper:** This would not affect that. They would not be required under this code.

**Rep. K. Wallman:** On line 12 it says the disclosure must be made in the most expedient time possible; 2 without reasonable delay; 3 without consistent with the legitimate needs have law enforcement and then there is a code it refers back to. I don't get the or?

**Senator Casper:** I don't have an answer on that second part.

**Rep. K. Wallman:** ND just passed a bill for grant dollars to go to high volume data centers. Big Sky in Grand Forks would most likely be a precipitant of that grant money. They are going to be handling a lot of volume of data from drones. So the more industry we have in ND this might apply to do you think it might be reasonable to actually put a timeframe on there that is more than most expedient time possible?

**Senator Casper:** That is existing language. I would guess that is in here. It might take two days because I own a small business in Fargo and have 10 employees and we are conducting business with one another and you have provided some kind of business

information to me as part of that. There is a data breach on my computer and I have 100 customers so it pretty easy to go through that data; and send them an email or letter and notify that their data has been breached and they may want to switch credit cards or call their credit card company and get a new one. If I am Home Depot takes more time to do that. I think that is why the language is the way it is.

**Parrell Grossman, Director, Consumer Protection and Antitrust Division; Office of Attorney General:** (See Testimony #1, proposed amendment) (5:50-14:20)

**Chairman K. Koppelman:** We may want to make a grammatical correction to your proposed amendment by this language you have at the end of it that say which exceeds 250 individuals; it should be bracketed with comma's and added after breach of the security system; otherwise it is the Attorney General who exceeds 250 people. Then it would read in addition to any person who conducts business in this state shall disclose by mail or email any breach which exceeds 250 individuals to the Attorney General. You mentioned other states have a higher threshold. Why does your office have a threshold for wanting to be notified?

**Parrell Grossman:** It could be some amount less than 250?

**Chairman K. Koppelman:** What would the process be? Would you back track it without the notification at that point assuming this was part of the statute?

**Parrell Grossman:** Yes we follow up right away with 1 or 2.

**Rep. L. Klemin:** I don't have any problems with the amendments. What about the higher education institutions? How does the Attorney General find out about this? Or should that be included in here?

**Parrell Grossman:** We did get notified. That is a decision for you if you want to put them in here.

**Rep. L. Klemin:** While you are adding a number of new sections into this bill maybe we should add them in there? What about the institutions of higher education? We did have some situational where tens of thousands of names were breached and the institutions didn't even bring that to the attention of anybody until sometime had passed. How does the Attorney General find out about that?

**Parrell Grossman:** We did get notified of that. We would have no objection and maybe a good suggestion, I need to go back and look at the definition of person or not. It hasn't been an issue.

**Rep. K. Wallman:** The security system that is being used is the same one that was in place with the big Target breach and so I think it might be a great measure of transparency if that was included. Certainly there is risk.

**Parrell Grossman:** I will prepare an appropriate amendment.

House Judiciary Committee

SB 2214

March 16, 2015

Page 3

Opposition: None

Neutral: None

Hearing closed.

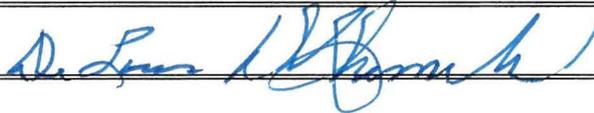
# 2015 HOUSE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Prairie Room, State Capitol

SB 2214  
3/25/2015  
25441

- Subcommittee  
 Conference Committee

Committee Clerk Signature



## Minutes:

Proposed amendment #1, Marked up bill #2

**Chairman K. Koppelman:** (See proposed amendment #1) Went over the proposed amendment #2. This bill deals with the issue of notice to the attorney general and consumers. Mr. Grossman presented an amendment and we suggested a verbal change which he agrees with.

**Rep. L. Klemin:** This marked up version is not consistent with the last draft of the bill.

**Chairman K. Koppelman:** Tessa will you check this over.

**Rep. K. Hawken:** With version 4 it is exactly what these amendments do.

**Chairman K. Koppelman:** Does not seem to have the right versions. These are definitions and current statutes. Went over the proposals.

**Rep. L. Klemin:** Versions do not seem to fit? I am use to seeing the bill with all the proposed amendments?

**Chairman K. Koppelman:** This is confusing. Could Tessa please take these versions and put them in the correct style.

Closed meeting.

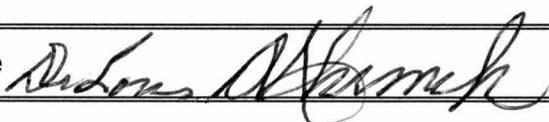
# 2015 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee  
Prairie Room, State Capitol

SB 2214  
3/30/2015  
25592

- Subcommittee  
 Conference Committee

Committee Clerk Signature



## Minutes:

Proposed amendment #1

**Chairman K. Koppelman:** (see proposed amendment #1) Version 4. This has to do with the security breach notification. The amendments deal with the ID numbers. Went through the proposed amendment.

**Motion made to move the amendment #1 by Rep. Lois Delmore: Seconded by Rep. K. Hawken:**

Discussion:

**Rep. K. Wallman:** My understanding was conducts business in this state defines the scope of who has to do this and when it says as provided in this section I am not sure what it is referring back to who has to do it. Does it say somewhere else what the scope is and who would have to do it?

**Chairman K. Koppelman:** If this amendment were adopted it would read in addition any person that experiences a breach of a security system is provided in this section so it would refer back to the licensed computer data and it says any person that conducts business in this state that owns or licenses computerized data etc.

**Rep. P. Anderson:** I thought we talked about state agency report to the attorney general or would that be a matter of course? Like what happened at NDSU?

**Rep. L. Klemin:** If that does happen and that thing at NDSU was reported within hours so there is already being done.

**Voice vote carried.**

**Motion made to further amend by Rep. K. Wallman: Seconded by Rep. P. Anderson: Line 7, after any state agency and any would accomplish what you want.**

The intern brought to my attention there is another reference 101.49?

House Judiciary Committee

SB 2214

March 30, 2015

Page 2

**Motion withdrawn by Rep. K. Wallman and Rep. P. Anderson**

**Do Pass As Amended by Rep. K. Hawken: Seconded by Rep. Lois Delmore:**

Discussion: None

**Roll Call Vote: 12 Yes 0 No 1 Absent Carrier: Rep. P. Anderson:**

:

March 30, 2015

SK  
3/30/15  
1/0

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2214

Page 1, line 1, after "reenact" insert "subsection 4 of section 51-30-01 and"

Page 1, after line 3, insert:

**"SECTION 1. AMENDMENT.** Subsection 4 of section 51-30-01 of the North Dakota Century Code is amended and reenacted as follows:

4. a. "Personal information" means an individual's first name or first initial and last name in combination with any of the following data elements, when the name and the data elements are not encrypted:
  - (1) The individual's social security number;
  - (2) The operator's license number assigned to an individual by the department of transportation under section 39-06-14;
  - (3) A nondriver color photo identification card number assigned to the individual by the department of transportation under section 39-06-03.1;
  - (4) The individual's financial institution account number, credit card number, or debit card number in combination with any required security code, access code, or password that would permit access to an individual's financial accounts;
  - (5) The individual's date of birth;
  - (6) The maiden name of the individual's mother;
  - (7) Medical information;
  - (8) Health insurance information;
  - (9) An identification number assigned to the individual by the individual's employer in combination with any required security code, access code, or password; or
  - (10) The individual's digitized or other electronic signature.
- b. "Personal information" does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records."

Page 1, line 7, overstrike "that conducts business in this state, and"

Page 1, line 8, overstrike "of the"

Page 1, line 11, replace "conducts business in this state" with "experiences a breach of the security system as provided in this section"

Page 1, line 12, remove "by mail any breach"

2/2

Page 1, line 12, after "general" insert "by mail or email any breach of the security system which exceeds two hundred fifty individuals"

Renumber accordingly

Date: 3-30-15  
 Roll Call Vote #:   

**2015 HOUSE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. SB2214**

House JUDICIARY Committee

Subcommittee  Conference Committee

Amendment LC# or Description: Grossman Amend #1

Recommendation:  Adopt Amendment  
 Do Pass  Do Not Pass  Without Committee Recommendation  
 As Amended  Rerefer to Appropriations  
 Other Actions:  Reconsider  \_\_\_\_\_

Motion Made By Rep. Bohannon Seconded By Rep. Hawken

Representative	Yes	No	Representative	Yes	No
Chairman K. Koppelman			Rep. Pamela Anderson		
Vice Chairman Karls			Rep. Delmore		
Rep. Brabandt			Rep. K. Wallman		
Rep. Hawken					
Rep. Mary Johnson					
Rep. Klemin					
Rep. Kretschmar					
Rep. D. Larson					
Rep. Maragos					
Rep. Paur					

*voice*  
*NOTED*  
*CARRIED*

Total (Yes) \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

Date: 3-30-15  
 Roll Call Vote #: 2

**2015 HOUSE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. 2214**

House JUDICIARY Committee

Subcommittee  Conference Committee

Amendment LC# or Description: 15. 8181. 02001. 03000

Recommendation:  Adopt Amendment  
 Do Pass  Do Not Pass  Without Committee Recommendation  
 As Amended  Rerefer to Appropriations  
 Other Actions:  Reconsider  \_\_\_\_\_

Motion Made By Rep. Hawken Seconded By Rep. Delmore

Representative	Yes	No	Representative	Yes	No
Chairman K. Koppelman	✓		Rep. Pamela Anderson	✓	
Vice Chairman Karls	✓		Rep. Delmore	✓	
Rep. Brabandt	✓		Rep. K. Wallman	✓	
Rep. Hawken	✓				
Rep. Mary Johnson	✓				
Rep. Klemm	✓				
Rep. Kretschmar	✓				
Rep. D. Larson	✓				
Rep. Maragos	—				
Rep. Paur	✓				

Total (Yes) 12 No 0

Absent 1

Floor Assignment Rep. Anderson

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**SB 2214, as engrossed: Judiciary Committee (Rep. K. Koppelman, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2214 was placed on the Sixth order on the calendar.

Page 1, line 1, after "reenact" insert "subsection 4 of section 51-30-01 and"

Page 1, after line 3, insert:

**"SECTION 1. AMENDMENT.** Subsection 4 of section 51-30-01 of the North Dakota Century Code is amended and reenacted as follows:

4. a. "Personal information" means an individual's first name or first initial and last name in combination with any of the following data elements, when the name and the data elements are not encrypted:
  - (1) The individual's social security number;
  - (2) The operator's license number assigned to an individual by the department of transportation under section 39-06-14;
  - (3) A nondriver color photo identification card number assigned to the individual by the department of transportation under section 39-06-03.1;
  - (4) The individual's financial institution account number, credit card number, or debit card number in combination with any required security code, access code, or password that would permit access to an individual's financial accounts;
  - (5) The individual's date of birth;
  - (6) The maiden name of the individual's mother;
  - (7) Medical information;
  - (8) Health insurance information;
  - (9) An identification number assigned to the individual by the individual's employer in combination with any required security code, access code, or password; or
  - (10) The individual's digitized or other electronic signature.
- b. "Personal information" does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records."

Page 1, line 7, overstrike "that conducts business in this state, and"

Page 1, line 8, overstrike "of the"

Page 1, line 11, replace "conducts business in this state" with "experiences a breach of the security system as provided in this section"

Page 1, line 12, remove "by mail any breach"

Page 1, line 12, after "general" insert "by mail or email any breach of the security system which exceeds two hundred fifty individuals"

Renumber accordingly

**2015 TESTIMONY**

**SB 2214**

SENATE JUDICIARY COMMITTEE  
DAVID HOUGE, CHAIRMAN  
JANUARY 19, 2015

TESTIMONY BY  
PARRELL D. GROSSMAN  
DIRECTOR, CONSUMER PROTECTION AND ANTITRUST DIVISION  
OFFICE OF ATTORNEY GENERAL  
IN SUPPORT OF  
SENATE BILL NO. 2214

Mr. Chairman and members of the Senate Judiciary Committee. I am Parrell Grossman, and it is my privilege to be the Director of the Attorney General's Consumer Protection and Antitrust Division. I appear on behalf of the Attorney General in support of Senate Bill 2214.

The proposed amendment to section 51-30-02 would require businesses that experience a data security breach notify the attorney general, in addition to notifying the affected consumers.

When the Attorney General proposed and the Legislature enacted this legislation in 2005, there were a small number of states that had enacted this legislation. It was a new concept and I don't recall that these statutes required notification to the state attorneys general. Many states now require notification by the entity to the state attorneys general.

The Attorney General is the agency that enforces this statute and assists consumers when a data security breach occurs. It makes sense that the Attorney General should have notice of the breach. Many entities already provide this notice to the Attorney General, either in the interests of cooperation, or because they believe the notice is mandatory.

The Attorney General should have notice of the security breach to enforce the law and to assist impacted consumers.

Almost immediately after consumers are notified of a data security breach, they frequently contact the Attorney General's office for information or assistance. They are particularly concerned about the potential consequences and what steps they should take to protect themselves from financial or other consequences. It is helpful and appropriate for the Attorney General to already have notice of the security breach and other information obtained through contacting the breached entity.

The Attorney General respectfully asks the Senate Judiciary Committee give Senate Bill 2214 a "Do Pass" recommendation.

Thank you for your time and consideration. I would be pleased to try and answer any questions.

1/20/2015  
# 1-

## PROPOSED SENATE BILL NO. 2214

1 A BILL for an Act to amend and reenact section 51-30-02 of the North Dakota  
2 Century Code, relating to security breach notification.

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

4 **SECTION 1. AMENDMENT.** Section 51-30-02 of the North Dakota Century Code  
5 is amended and reenacted as follows:

6 **51-30-02. Notice to attorney general and consumers.**

7 Any person that conducts business in this state, and that owns or licenses  
8 computerized data that includes personal information, shall disclose any breach of  
9 the security of the system following discovery or notification of the breach in the  
10 security of the data to ~~the attorney general and~~ any resident of the state whose  
11 unencrypted personal information was, or is reasonably believed to have been,  
12 acquired by an unauthorized person. Any person that conducts business in this state  
13 shall also disclose such breach to the attorney general by mail. The disclosure must  
14 be made in the most expedient time possible and without unreasonable delay,  
15 consistent with the legitimate needs of law enforcement, as provided in section 51-  
16 30-04, or any measures necessary to determine the scope of the breach and to  
17 restore the integrity of the data system.

1/20/15  
#1-2

**PROPOSED AMENDMENTS TO SENATE BILL NO. 2214**

Page 1, line 9-10, overstrike "the attorney general and"

Page 1, line 11, after "person." insert "Any person that conducts business in this state shall also disclose such breach to the attorney general by mail."

#1  
SB 2214  
3-16-15

HOUSE JUDICIARY COMMITTEE  
KIM KOPPELMAN, CHAIRMAN  
MARCH 16, 2015

TESTIMONY BY  
PARRELL D. GROSSMAN  
DIRECTOR, CONSUMER PROTECTION AND ANTITRUST DIVISION  
OFFICE OF ATTORNEY GENERAL  
IN SUPPORT OF  
ENGROSSED SENATE BILL NO. 2214

Mr. Chairman and members of the House Judiciary Committee. I am Parrell Grossman, and it is my privilege to be the Director of the Attorney General's Consumer Protection and Antitrust Division. I appear on behalf of the Attorney General in support of Engrossed Senate Bill 2214, with amendments proposed by the Attorney General.

The proposed amendment to section 51-30-02 would require businesses that experience a data security breach notify the Attorney General, in addition to notifying the affected consumers.

When the Attorney General proposed and the Legislature enacted this legislation in 2005, there were a small number of states that had enacted this legislation. It was a new concept and I don't recall that these statutes required notification to the state attorneys general. States, however, are now starting to require notification by the breached entity to the state attorneys general.

The Attorney General is the agency that enforces this statute and assists consumers when a data security breach occurs. It makes sense that the Attorney General should have notice of the breach. Many entities already provide this notice to the Attorney General, either in the interests of cooperation, or because they believe the notice is mandatory.

The Attorney General should have notice of the security breach to enforce the law and to assist impacted consumers.

Almost immediately after consumers are notified of a data security breach, these consumers often contact the Attorney General's office for information or assistance regarding the security breach. They are particularly concerned about the potential consequences and what steps they should take to protect themselves from financial or other consequences. It is appropriate and very helpful for the Attorney General to already have notice of the security breach and other information regarding the security breach directly from the breached entity. The Attorney General often requires additional information that may not be shared with impacted consumers and the notice of breach provides the Attorney General an early opportunity to promptly obtain that information.

The Attorney General is now proposing several amendments to Engrossed Senate Bill No. 2214, mostly based upon discussions with affected entities.

First Amendment: On page 1, after line 3, insert in 51-30-01 subsection 2, after the existing definition of "health insurance information," the following language: "[I]n combination with any required security code, access code, password, or security question and answer that would permit access to information pertaining to the individual's health insurance policy." This change would be consistent with subsection 4, subdivision a, paragraph 4, relating to "The individual's financial institution account number, credit card number, or debit card number in combination with any required security code, access code, or password that would permit access to an individual's financial accounts." The American Council of Life Insurers asserts this language is helpful because unauthorized access to a health insurance policy number, subscriber number, or unique identifier number is very unlikely to give rise to identity theft or identity fraud, and it is the sensitive policy information accessed by the unauthorized use of access codes and security codes that certainly calls into question risk of identity theft or fraud. The Attorney General maintains this premise and the proposed change are acceptable.

Second Amendment: On Page 1, after line 3 and immediately following the first proposed amendment, insert in 51-30-01, subsection 4, subdivision a, paragraph 9, relating to [a]n identification number assigned to the individual by the individual's employer," the following language: "[I]n combination with any required security code, access code, or password." This change would be consistent with subsection 4, subdivision a, paragraph 4, relating to "[t]he individual's financial institution account number, credit card number, or debit card number in combination with any required security code, access code, or password that would permit access to an individual's financial accounts."

The requirement in current law to treat "an identification number assigned to the individual by the individual's employer" as "personal information" pursuant to subsection 4, subdivision a, paragraph 9, of section 51-30-01, may be unique to North Dakota law. There is merit in including this component in "personal information." However, further consideration of this particular requirement has revealed to the Attorney General that in a review of this requirement by Montana Dakota Utilities Resources (MDU Resources), and other entities it is aware of, the loss of just the employee identification number along with the first name and last name would have no negative impact on the employee. In fact, MDU Resources uses the employee number for internal indexing for applications and searches to avoid using social security numbers. MDU Resources does encrypt its other information that could potentially cause harm if compromised in a breach. However, to require encryption of the employee identification data would result in many program changes for MDU Resources and increased expenses for no additional security.

The Attorney General does not want MDU Resources or other similar entities to experience any unnecessary burdens or expenses. However, to ensure maximum protection for North Dakota citizens, the Attorney General would like North Dakota law to continue to treat the employee identification number as protected personal information, only if released in combination with any required security code, access

code, or password that would permit access to the individual's other personal information.

Third Amendment: On Page 1, line 12, after "mail" insert "or e-mail." After the initial hearing in Senate Judiciary, the Committee asked me to designate the preferred method of notification to the Attorney General. Although I suggested "mail," if the Committee only wanted a preferred method, I indicated that notification by mail or e-mail would be acceptable. Senate Judiciary selected "mail" as the only option. The Attorney General, however, is now proposing an amendment to include notification by mail or e-mail, because we believe the entity sending notification should have the flexibility of providing the notice by mail or e-mail at its option, and we do not see any benefit in limiting the notification option to "mail."

Fourth Amendment: On Page 1, line 12, after "breach" insert "of the security of the system." This change will provide consistency with the current statute as indicated on Page 1, line 8, which states: "[s]hall disclose any breach of the security of the system."

Fifth Amendment: On Page 1, line 12, after "general" insert "which exceeds two hundred fifty individuals." After the initial hearing on this legislation in Senate Judiciary it occurred to the Attorney General and others that the legislation would unintentionally require an entity to provide the Attorney General of a security breach impacting as little one individual. The Attorney General believes that a threshold of two hundred fifty individuals is appropriate in North Dakota and, therefore, is recommending that this proposed legislation be amended to require the entity notify the North Dakota Attorney General whenever the breach exceeds two hundred and fifty individuals in North Dakota.

The Attorney General respectfully asks the House Judiciary Committee give Engrossed Senate Bill 2214 a "Do Pass" recommendation, with the proposed amendments.

Thank you for your time and consideration. I would be pleased to try and answer any questions.

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2214  
HOUSE JUDICIARY COMMITTEE  
KIM KOPPELMAN, CHAIRMAN  
MARCH 16, 2015

PRESENTED BY  
PARRELL D. GROSSMAN, DIRECTOR  
CONSUMER PROTECTION & ANTITRUST DIVISION  
OFFICE OF ATTORNEY GENERAL

Page 1, line 1, after "reenact" insert "subsections 2 and 4 of section 51-30-01 and"

Page 1, line 2, after "to" insert "definitions and"

Page 1, after line 3, insert:

**"SECTION 1. AMENDMENT.** Subsection 2 of section 51-30-01 of the North Dakota Century Code is amended and reenacted as follows:

2. "Health insurance information" means an individual's health insurance policy number or subscriber identification number and any unique identifier used by a health insurer to identify the individual in combination with any required security code, access code, password, or security question and answer that would permit access to information pertaining to the individual's health insurance policy.

**SECTION 2. AMENDMENT.** Subsection 4 of section 51-30-01 of the North Dakota Century Code is amended and reenacted as follows:

4. a. "Personal information" means an individual's first name or first initial and last name in combination with any of the following data elements, when the name and the data elements are not encrypted:
  - (1) The individual's social security number;
  - (2) The operator's license number assigned to an individual by the department of transportation under section 39-06-14;
  - (3) A nondriver color photo identification card number assigned to the individual by the department of transportation under section 39-06-03.1;
  - (4) The individual's financial institution account number, credit card number, or debit card number in combination with any required security code, access code, or password that would permit access to an individual's financial accounts;
  - (5) The individual's date of birth;
  - (6) The maiden name of the individual's mother;
  - (7) Medical information;
  - (8) Health insurance information;
  - (9) An identification number assigned to the individual by the individual's employer in combination with any required security code, access code, or password; or
  - (10) The individual's digitized or other electronic signature.
- b. "Personal information" does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records."

Page 1, line 12 after "mail" insert "or e-mail"

Page 1, line 12, after "breach" insert "of the security of the system"

Page 1, line 12, after "general" insert "which exceeds two hundred and fifty individuals"

Renumber accordingly

Version 4 #1  
SB 2214  
3-25-15

SECOND REVISED PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2214  
HOUSE JUDICIARY COMMITTEE  
KIM KOPPELMAN, CHAIRMAN  
MARCH 18, 2015

PRESENTED BY  
PARRELL D. GROSSMAN, DIRECTOR  
CONSUMER PROTECTION & ANTITRUST DIVISION  
OFFICE OF ATTORNEY GENERAL

Page 1, line 1, after "reenact" insert "subsection 4 of section 51-30-01 and"

Page 1, line 2, after "to" insert "definitions and"

Page 1, after line 3, insert:

**SECTION 1. AMENDMENT.** Subsection 4 of section 51-30-01 of the North Dakota Century Code is amended and reenacted as follows:

- 4. a. "Personal information" means an individual's first name or first initial and last name in combination with any of the following data elements, when the name and the data elements are not encrypted:
  - (1) The individual's social security number;
  - (2) The operator's license number assigned to an individual by the department of transportation under section 39-06-14;
  - (3) A nondriver color photo identification card number assigned to the individual by the department of transportation under section 39-06-03.1;
  - (4) The individual's financial institution account number, credit card number, or debit card number in combination with any required security code, access code, or password that would permit access to an individual's financial accounts;
  - (5) The individual's date of birth;
  - (6) The maiden name of the individual's mother;
  - (7) Medical information;
  - (8) Health insurance information;
  - (9) An identification number assigned to the individual by the individual's employer in combination with any required security code, access code, or password; or
  - (10) The individual's digitized or other electronic signature.
- b. "Personal information" does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records."

Page 1, line 7, after "person" insert ", as defined in section 1-01-49."

Page 1, line 7, overstrike "that conducts business in this state, and"

Page 1, line 8, overstrike the second "of the"

Page 1, line 11, replace "conducts business in this state" with "experiences a breach of the security system as provided in this section"

①

Page 1, line 12, remove "by mail any breach"

Page 1, line 12, after "general" insert "by mail or e-mail any breach of the security system that exceeds two hundred and fifty individuals"

Renumber accordingly

2

15.8181.02000

FIRST ENGROSSMENT

#2  
version 4  
SB 2214  
3-25-15

Sixty-fourth  
Legislative Assembly  
of North Dakota

ENGROSSED SENATE BILL NO. 2214

Introduced by

Senators Casper, Burckhard, Robinson

Representatives Beadle, Oversen, Silbernagel

A BILL for an Act to amend and reenact subsection 4 of section 51-30-01 and section 51-30-02 of the North Dakota Century Code, relating to definitions and security breach notification.

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

**SECTION 1. AMENDMENT.** Subsection 4 of section 51-30-01 of the North Dakota Century Code is amended and reenacted as follows:

4. a. "Personal information" means an individual's first name or first initial and last name in combination with any of the following data elements, when the name and the data elements are not encrypted:
- (1) The individual's social security number;
  - (2) The operator's license number assigned to an individual by the department of transportation under section 39-06-14;
  - (3) A nondriver color photo identification card number assigned to the individual by the department of transportation under section 39-06-03.1;
  - (4) The individual's financial institution account number, credit card number, or debit card number in combination with any required security code, access code, or password that would permit access to an individual's financial accounts;

- (5) The individual's date of birth;
- (6) The maiden name of the individual's mother;
- (7) Medical information;
- (8) Health insurance information;
- (9) An identification number assigned to the individual by the individual's employer in combination with any required security code, access code, or password; or
- (10) The individual's digitized or other electronic signature.

b. "Personal information" does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records."

**SECTION 2. AMENDMENT.** Section 51-30-02 of the North Dakota Century Code is amended and reenacted as follows:

**51-30-02. Notice to attorney general and consumers.**

Any person ~~that conducts business in this state, and~~ as defined in section 1-01-49, that owns or licenses computerized data that includes personal information, shall disclose any breach of the security ~~of the~~ system following discovery or notification of the breach in the security of the data to any resident of the state whose unencrypted personal information was, or is reasonably believed to have been, acquired by an unauthorized person. In addition, any person that ~~conducts business in this state~~ experiences a breach of the security system as provided in this section shall disclose by mail any breach to the attorney general by mail or e-mail any breach of the security system that exceeds two hundred and fifty individuals. The disclosure must be made in the most expedient time possible and without unreasonable delay, consistent with the

Sixty-fourth  
Legislative Assembly

legitimate needs of law enforcement, as provided in section 51-30-04, or any measures necessary to determine the scope of the breach and to restore the integrity of the data system.

#1  
Version 4502214  
3-30-15

SECOND REVISED PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2214  
HOUSE JUDICIARY COMMITTEE  
KIM KOPPELMAN, CHAIRMAN  
MARCH 18, 2015

PRESENTED BY  
PARRELL D. GROSSMAN, DIRECTOR  
CONSUMER PROTECTION & ANTITRUST DIVISION  
OFFICE OF ATTORNEY GENERAL

Page 1, line 1, after "reenact" insert "subsection 4 of section 51-30-01 and"

Page 1, line 2, after "to" insert "definitions and"

Page 1, after line 3, insert:

**SECTION 1. AMENDMENT.** Subsection 4 of section 51-30-01 of the North Dakota Century Code is amended and reenacted as follows:

4. a. "Personal information" means an individual's first name or first initial and last name in combination with any of the following data elements, when the name and the data elements are not encrypted:
- (1) The individual's social security number;
  - (2) The operator's license number assigned to an individual by the department of transportation under section 39-06-14;
  - (3) A nondriver color photo identification card number assigned to the individual by the department of transportation under section 39-06-03.1;
  - (4) The individual's financial institution account number, credit card number, or debit card number in combination with any required security code, access code, or password that would permit access to an individual's financial accounts;
  - (5) The individual's date of birth;
  - (6) The maiden name of the individual's mother;
  - (7) Medical information;
  - (8) Health insurance information;
  - (9) An identification number assigned to the individual by the individual's employer in combination with any required security code, access code, or password; or
  - (10) The individual's digitized or other electronic signature.
- b. "Personal information" does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records."

Page 1, line 7, after "person" insert "as defined in section 1-01-49,"

Page 1, line 7, overstrike "that conducts business in this state, and"

Page 1, line 8, overstrike the second "of the"

Page 1, line 11, replace "conducts business in this state" with "experiences a breach of the security system as provided in this section"

①

Page 1, line 12, remove "by mail any breach"

Page 1, line 12, after "general" insert "by mail or e-mail any breach of the security system that exceeds two hundred and fifty individuals"

Renumber accordingly

2