ENGROSSED HOUSE AMENDMENT
TO
ENGROSSED SENATE BILL NO. 543 By: Montgomery of the Senate

and

Sneed of the House

An Act relating to insurance data security; creating the Insurance Data Security Act; providing short title; establishing act jurisdiction; construing provision; defining terms; requiring licensees to develop data security program with certain inclusions; establishing intent of security programs created pursuant to act; directing licensee to conduct risk assessment; directing licensee to take certain action following risk assessment result; requiring certain supervising boards to take certain actions to implement program; requiring licensee to contract with third-party service provider subject to certain conditions; requiring licensee to maintain updates and revisions to program; requiring licensee develop incident response plan; requiring certain reports be submitted to the Insurance Commissioner; requiring insurer to maintain certain records for specific time period; requiring investigation after certain cybersecurity event; establishing investigation process; requiring notification of certain event to the Commissioner; requiring compliance with certain state laws; providing for certain exemption; providing for the Commissioner to investigate certain licensees for certain violations; providing for confidentiality of certain information relating to cybersecurity event; allowing Commissioner to share certain data with national association; construing provision; providing for rule promulgation; providing certain exceptions to act; establishing penalties; amending 51 O.S. 2021, Section 24A.3, as last amended by Section 1, Chapter 402, O.S.L. 2022 (51 O.S. Supp. 2022, Section 24A.3), which relates to the Oklahoma Open Records Act; modifying definition; updating statutory language;

providing for codification; and providing an effective date.

AMENDMENT NO. 1. Strike the title, enacting clause, and entire bill and insert:

"An Act relating to insurance data security; creating the Insurance Data Security Act; providing short title; establishing act jurisdiction; construing provision; defining terms; requiring licensees to develop data security program with certain inclusions; establishing intent of security programs created pursuant to act; directing licensee to conduct risk assessment; directing licensee to take certain action following risk assessment result; requiring certain supervising boards to take certain actions to implement program; requiring licensee to contract with third-party service provider subject to certain conditions; requiring licensee to maintain updates and revisions to program; requiring licensee develop incident response plan; requiring certain reports be submitted to the Insurance Commissioner; requiring insurer to maintain certain records for specific time period; requiring investigation after certain cybersecurity event; establishing investigation process; requiring notification of certain event to the Commissioner; requiring compliance with certain state laws; providing for certain exemption; providing for the Commissioner to investigate certain licensees for certain violations; providing for confidentiality of certain information relating to cybersecurity event; allowing Commissioner to share certain data with national association; construing provision; providing for rule promulgation; providing certain exceptions to act; establishing penalties; providing for codification; providing an effective date, and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 670 of Title 36, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Insurance Data Security Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 671 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. Notwithstanding any other provision of law, the provisions of this act shall be the exclusive state law for licensees subject to the jurisdiction of the Insurance Commissioner for data security, the investigation of a cybersecurity event, and notification to the Commissioner.

B. This act shall not be construed to create or imply a private cause of action for violations of its provisions.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 672 of Title 36, unless there is created a duplication in numbering, reads as follows:

As used in this act:

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 the possession, custody, or control of a licensee;

4. “Cybersecurity event” means an event resulting in unauthorized access to or disruption or misuse of an information system or nonpublic information stored on the information system. The term cybersecurity event shall 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 shall not include an event in 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 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 nonpublic information, as well as any specialized system such as industrial or 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 to operate, or registered, pursuant to Title 36 of the Oklahoma Statutes; provided, however, that it shall not include a purchasing group or a risk retention group chartered and licensed in a state other than this state or a person 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 (2) of the following types of authentication factors:

a. knowledge factors, such as a password,

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 and is:

a. business related information of a licensee, of which the tampering with or unauthorized disclosure, access,

or use of would cause a material adverse impact to the business, operations, or security of the licensee,

b. any information concerning a consumer that, because of name, number, personal mark, or other identifier, can be used to identify him or her, in combination with any one or more of the following data elements:

(1) social security number,

(2) driver license number or nondriver identification card number,

(3) financial account number, credit card number, 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, or

c. 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 family of the consumer,

(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 nongovernmental entity including, but not limited to, any nongovernmental partnership, corporation, branch, agency, or association;

13. "Publicly available information" means any information that a licensee has 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; and

14. "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.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 673 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. Each licensee in this state shall develop, implement, and maintain a comprehensive written information security program based on the risk assessment of the licensee provided for in this act and that contains administrative, technical, and physical safeguards for the protection of nonpublic information and the information systems of the licensee. The program shall be commensurate with the size and complexity of the licensee, the nature and scope of the activities of the licensee, including its use of third-party service providers, and the sensitivity of the nonpublic information used by the licensee or in the possession, custody, or control of the licensee.

B. An information security program of a licensee shall be designed to:

1. Protect the security and confidentiality of nonpublic information and the security of the information systems;

2. Protect against any threats or hazards to the security or integrity of nonpublic information and the information systems;

3. Protect against unauthorized access to or use of nonpublic information, and minimize the likelihood of harm to any consumer; and

4. Define and periodically reevaluate a schedule for retention of nonpublic information and a mechanism for its destruction when no longer needed.

C. The licensee shall:

1. 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;

2. Identify reasonably foreseeable internal or external threats that could result in unauthorized access, transmission, disclosure, misuse, alteration, or destruction of nonpublic information including, but not limited to, the security of information systems and nonpublic information that are accessible to, or held by, third-party service providers;

3. Assess the likelihood and potential damage of these threats, taking into consideration the sensitivity of the nonpublic information;

4. 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 operations of the licensee, including:

a. employee training and management,

b. information systems, including, but not limited to, network and software design, as well as information

classification, governance, processing, storage, transmission, and disposal, and

c. detecting, preventing, and responding to attacks, intrusions, or other systems failures; and

5. Implement information safeguards to manage the threats identified in its ongoing assessment, and no less than annually, assess the effectiveness of the key controls, systems, and procedures of the safeguards.

D. Based on the results of the risk assessment, the licensee shall:

1. 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 activities of the licensee including its use of third-party service providers, and the sensitivity of the nonpublic information used by the licensee or in the possession, custody, or control of the licensee;

2. Determine and implement security measures deemed appropriate, including:

a. 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,

b. 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 risk strategy of the organization,

c. restrict physical access to nonpublic information to authorized individuals only,

d. 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,

e. adopt secure development practices for in-house developed applications utilized by the licensee,

f. modify the information system in accordance with the information security program of the licensee,

g. utilize effective controls, which may include multi-factor authentication procedures for any authorized individual accessing nonpublic information,

h. regularly test and monitor systems and procedures to detect actual and attempted attacks on, or intrusions into, information systems,

i. 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,

j. implement measures to protect against destruction, loss, or damage of nonpublic information due to environmental hazards such as fire and water damage or other catastrophic events or technological failures, and

k. develop, implement, and maintain procedures for the secure disposal of nonpublic information in any format;

3. Include cybersecurity risks in the enterprise risk management process of the licensee;

4. 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

5. Provide its personnel with cybersecurity awareness training that is updated as necessary to reflect risks identified by the licensee in the risk assessment.

E. If the licensee has a board of directors, the board or an appropriate committee of the board, at a minimum, within one year of the effective date of this act, shall:

1. Require the executive management of the licensee or its delegates to develop, implement, and maintain the information security program of the licensee;

2. Require the executive management of the licensee or its delegates to report to the Insurance Commissioner in writing, at least annually, the following information:

a. the overall status of the information security program and the compliance of the licensee with this act, and

b. 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 responses of the management to those events or violations, and recommendations for changes in the information security program; and

3. If executive management delegates any of its responsibilities, it shall oversee the development, implementation, and maintenance of the information security program of the licensee prepared by the delegate or delegates and shall receive a report from the delegate or delegates complying with the requirements of the report to the board.

F. A licensee shall exercise due diligence in selecting its third-party service provider and shall require the 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.

G. 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 changing business arrangements of the licensee, such as mergers and acquisitions, alliances and joint ventures, outsourcing arrangements, and changes to information systems.

H. 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 information systems of the licensee, or the continuing functionality of any aspect of the business or operations of the licensee.

The 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.

I. Annually, each insurer domiciled in this state shall submit to the Commissioner a written statement by April 15, certifying that the insurer complies with the requirements set forth in this section. Each insurer shall maintain, for examination by the Insurance Department, all records, schedules, and data supporting this certificate for a period of five (5) 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. The documentation shall be available for inspection by the Commissioner upon request.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 674 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. 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.

B. During the investigation, the licensee, or an outside vendor or service provider designated to act on behalf of the licensee, shall, at a minimum:

1. Determine whether a cybersecurity event has occurred;

2. Assess the nature and scope of the cybersecurity event;

3. Identify any nonpublic information that may have been involved in the cybersecurity event; and

4. 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 possession, custody, or control of the licensee.

C. 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 shall complete the steps listed in subsection B of this section or confirm and document that the third-party service provider has completed those steps.

D. The licensee shall maintain records concerning all cybersecurity events for a period of at least five (5) years from the date of the cybersecurity event and shall produce those records upon request by the Insurance Commissioner.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 675 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. Every licensee shall notify the Insurance Commissioner without unreasonable delay, but not 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 either of the following criteria has been met:

1. This state is the state of domicile of the licensee, in the case of an insurer, or this state is the home state of the licensee, in the case of a producer, as those terms are defined in the Oklahoma Producer Licensing Act, Sections 1435.1 through 1435.41 of Title 36 of the Oklahoma Statutes, and the cybersecurity event has a reasonable likelihood of materially harming any material part of the normal operations of the licensee or any consumer residing in this state; or

2. The licensee reasonably believes that the nonpublic information involved is of two hundred fifty (250) or more consumers residing in this state and is either of the following:

a. 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

b. a cybersecurity event that has a reasonable likelihood of materially harming:

(1) any consumer residing in this state, or

(2) any material part of the normal operation or operations of the licensee.

B. The licensee making the notification required in subsection A of this section shall provide as much of the following information as possible, electronically in the manner and form prescribed by the Commissioner, along with any applicable fees. The licensee 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 shall provide:

1. Date of the cybersecurity event;

2. Description of how the information was exposed, lost, stolen, or breached including, but not limited to, the specific roles and responsibilities of third-party service providers, if any;

3. How the cybersecurity event was discovered;

4. Whether any lost, stolen, or breached information has been recovered and, if so, how this was done;

5. The identity of the source of the cybersecurity event;

6. Whether the licensee has filed a police report or has notified any regulatory, government, or law enforcement agencies and, if so, when such notification was provided;

7. Description of the specific types of information acquired without authorization. The term "specific types of information" means particular data elements including, but not limited to, types of medical information, financial information, or information allowing identification of the consumer;

8. The period during which the information system was compromised by the cybersecurity event;

9. 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;

10. 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;

11. Description of efforts being undertaken to remediate the situation which permitted the cybersecurity event to occur;

12. A copy of the privacy policy of the licensee and a statement outlining the steps the licensee will take to investigate and notify consumers affected by the cybersecurity event; and

13. Name of a contact person who is both familiar with the cybersecurity event and authorized to act for the licensee.

C. A licensee shall comply with the procedures of the Security Breach Notification Act, Section 161 et seq. of Title 24 of the

Oklahoma Statutes, to notify affected consumers and provide a copy of the notice sent to consumers under that statute to the Commissioner, when a licensee is required to notify the Commissioner under subsection A of this section.

D. 1. 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 the event as it would under subsection A of this section unless the third-party service provider provides the notice required under subsection A of this section to the Commissioner and the licensee.

2. The computation of deadlines of the licensee 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.

3. Nothing in this act 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 or notice requirements imposed under this act.

E. 1. 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 (3) business days of making the determination 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 the Security Breach Notification Act, Section 161 et seq. of Title 24 of the Oklahoma Statutes, and any other notification requirements relating to a cybersecurity event imposed under this section.

2. 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 (3) 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 Security Breach Notification Act, Section 161 et seq. of Title 24 of the Oklahoma Statutes, and any other notification requirements relating to a cybersecurity event imposed under this section.

F. 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 services of the insurer through an independent insurance producer, and for which consumer notice is required by this act or the Security Breach Notification Act, Section 161 et seq. of Title 24 of the Oklahoma Statutes, 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 this obligation for any producers who are not authorized by law or contract to sell, solicit, or negotiate on behalf of the insurer, and in those instances in which the insurer does not have the current producer of record information for an individual consumer. Any licensee acting as an 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.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 676 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. The Insurance Commissioner shall have power to examine and investigate the affairs of any licensee to determine whether the licensee has been or is engaged in any conduct in violation of the provisions of this act or any rules promulgated thereto. This power is in addition to the powers which the Commissioner has under applicable provisions of the Insurance Code including, but not

limited to, Sections 309.1 through 309.6, 332, and 1250.4 of Title 36 of the Oklahoma Statutes.

B. Whenever the Commissioner has reason to believe that a licensee has been or is engaged in conduct in this state that violates any provision of this act, the Commissioner may take action that is necessary or appropriate to enforce the provisions.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 677 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. Any documents, materials, or other information in the control or possession of the Insurance Department that are furnished by a licensee or an employee or agent thereof acting on behalf of a licensee pursuant to the provisions of Section 4 and Section 6 of this act or that are obtained by the Insurance Commissioner in an investigation or examination pursuant to Section 7 of this act shall be confidential by law and privileged, shall not be subject to the Oklahoma Open Records Act, 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 shall not otherwise make the documents, materials, or other information public without the prior written consent of the licensee.

B. 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 A of this section.

C. In order to assist in the performance of the duties of the Commissioner under this act, the Commissioner:

1. May share documents, materials, or other information including the confidential and privileged documents, materials, or information subject to subsection A of this section, with other state, federal, and international regulatory agencies, with the National Association of Insurance Commissioners and 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;

2. 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;

3. May share documents, materials, or other information subject to subsection A of 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

4. May enter into agreements governing sharing and use of information consistent with this subsection.

D. No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the Insurance Commissioner under this section or as a result of sharing as authorized in subsection C of this section.

E. Nothing in this act shall prohibit the Commissioner from releasing final, adjudicated actions that are open to public inspection pursuant to the Oklahoma Open Records Act, to a database or other clearinghouse service maintained by the National Association of Insurance Commissioners, its affiliates, or subsidiaries.

F. 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 act shall not be

construed to be public information, shall not be subject to the Oklahoma Open Records Act, shall not be subject to subpoena, and shall not be subject to discovery or admissible as evidence in any private civil action.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 678 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. The Insurance Commissioner may promulgate any rules necessary to carry out the provisions of this section.

B. 1. The following exceptions shall apply to this act:

a. a licensee with less than Five Million Dollars ($5,000,000.00) in gross annual revenue, is exempt from this act,

b. a licensee subject to the Health Insurance Portability and Accountability Act, Pub. L. 104-191, 110 Stat. 1936, as amended, that has established and maintains an information security program pursuant to such statutes, rules, regulations, procedures, or guidelines established thereunder, will be considered to meet the requirements of Section 4 of this act, provided that the licensee is compliant with and submits a written statement to the Commissioner certifying its compliance with the same,

c. a licensee subject to Title V of the federal Gramm-Leach-Bliley Act of 1999 (15 U.S.C. Sections 6801-6809 and 6821-6827) that has established and maintains an information security program pursuant to such, statutes, rules, regulations, procedures, or guidelines established thereunder, will be considered to meet the requirements of Section 4 of this act, provided that the licensee is compliant with and submits a written statement to the Commissioner certifying its compliance with the same, and

d. an employee, agent, representative, or designee of a licensee, who is also a licensee, is exempt from this act and shall not be required to develop their own information security program to the extent that the employee, agent, representative, or designee is covered by the information security program of the licensee.

2. If a licensee ceases to qualify for an exception, the licensee shall have one hundred eighty (180) days to comply with the provisions of this act.

C. In the case of a violation of this act, a licensee may be penalized in accordance with any applicable sections of the Insurance Code, including, but not limited to, Section 908 of Title 36 of the Oklahoma Statutes, or any other provision providing for

penalties that the licensee is subject to under the license or permit of the licensee. Nothing in this act shall be construed to impose any civil liability for any violation of this act or omission to act by the licensee or employees of the licensee.

D. The provisions of this act shall take precedence over any other state laws applicable to licensees for data security and the investigation of a cybersecurity event.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 679 of Title 36, unless there is created a duplication in numbering, reads as follows:

Licensees shall have one (1) year from the effective date of this act to implement Section 4 of this act and two (2) years from the effective date of this act to implement subsection F of Section 4 of this act.

SECTION 11. This act shall become effective July 1, 2024.

SECTION 12. It being immediately necessary for the preservation of the public peace, health or safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval."

Passed the House of Representatives the 25th day of April, 2024.

_____

Presiding Officer of the House of Representatives

Passed the Senate the ____ day of _____, 2024.

_____

Presiding Officer of the Senate

ENGROSSED SENATE
BILL NO. 543

By: Montgomery of the Senate

and

Sneed of the House

An Act relating to insurance data security; creating the Insurance Data Security Act; providing short title; establishing act jurisdiction; construing provision; defining terms; requiring licensees to develop data security program with certain inclusions; establishing intent of security programs created pursuant to act; directing licensee to conduct risk assessment; directing licensee to take certain action following risk assessment result; requiring certain supervising boards to take certain actions to implement program; requiring licensee to contract with third-party service provider subject to certain conditions; requiring licensee to maintain updates and revisions to program; requiring licensee develop incident response plan; requiring certain reports be submitted to the Insurance Commissioner; requiring insurer to maintain certain records for specific time period; requiring investigation after certain cybersecurity event; establishing investigation process; requiring notification of certain event to the Commissioner; requiring compliance with certain state laws; providing for certain exemption; providing for the Commissioner to investigate certain licensees for certain violations; providing for confidentiality of certain information relating to cybersecurity event; allowing Commissioner to share certain data with national association; construing provision; providing for rule promulgation; providing certain exceptions to act; establishing penalties; amending 51 O.S. 2021, Section 24A.3, as last amended by Section 1, Chapter 402, O.S.L. 2022 (51 O.S. Supp. 2022, Section 24A.3), which relates to the Oklahoma Open Records Act; modifying definition; updating statutory language; providing for codification; and providing an effective date.

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A. Notwithstanding any other provision of law, the provisions of this act shall be the exclusive state law for licensees subject to the jurisdiction of the Insurance Commissioner for data security, the investigation of a cybersecurity event, and notification to the Commissioner.

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SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 672 of Title 36, unless there is created a duplication in numbering, reads as follows:

As used in this act:

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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 the possession, custody, or control of a licensee;

4. "Cybersecurity event" means an event resulting in unauthorized access to or disruption or misuse of an information system or nonpublic information stored on the information system. The term cybersecurity event shall 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 shall not include an event in 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 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 nonpublic information, as well as any specialized system such as industrial or 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 to operate, or registered, pursuant to Title 36 of the Oklahoma Statutes; provided, however, that it shall not include a purchasing group or a risk retention group chartered and licensed in a state other than this state or a person 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 (2) of the following types of authentication factors:

a. knowledge factors, such as a password,

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 and is:

a. business related information of a licensee, of which the tampering with or unauthorized disclosure, access, or use of would cause a material adverse impact to the business, operations, or security of the licensee,

b. any information concerning a consumer that, because of name, number, personal mark, or other identifier, can be used to identify him or her, in combination with any one or more of the following data elements:

(1) social security number,

(2) driver license number or nondriver identification card number,

(3) financial account number, credit card number, 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, or

c. 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 family of the consumer,

(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 nongovernmental entity including but not limited to any nongovernmental partnership, corporation, branch, agency, or association;

13. "Publicly available information" means any information that a licensee has 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; and

14. "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.

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 673 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. Each licensee in this state shall develop, implement, and maintain a comprehensive written information security program based on the risk assessment of the licensee provided for in this act and that contains administrative, technical, and physical safeguards for the protection of nonpublic information and the information systems of the licensee. The program shall be commensurate with the size and complexity of the licensee, the nature and scope of the activities of the licensee, including its use of third-party service providers, and the sensitivity of the nonpublic information used by the licensee or in the possession, custody, or control of the licensee.

B. An information security program of a licensee shall be designed to:

1. Protect the security and confidentiality of nonpublic information and the security of the information systems;

2. Protect against any threats or hazards to the security or integrity of nonpublic information and the information systems;

3. Protect against unauthorized access to or use of nonpublic information, and minimize the likelihood of harm to any consumer; and

4. Define and periodically reevaluate a schedule for retention of nonpublic information and a mechanism for its destruction when no longer needed.

C. The licensee shall:

1. 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;

2. Identify reasonably foreseeable internal or external threats that could result in unauthorized access, transmission, disclosure, misuse, alteration, or destruction of nonpublic information including, but not limited to, the security of information systems and nonpublic information that are accessible to, or held by, third-party service providers;

3. Assess the likelihood and potential damage of these threats, taking into consideration the sensitivity of the nonpublic information;

4. 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 operations of the licensee, including:

a. employee training and management,

b. information systems, including, but not limited to, network and software design, as well as information

classification, governance, processing, storage, transmission, and disposal, and

c. detecting, preventing, and responding to attacks, intrusions, or other systems failures; and

5. Implement information safeguards to manage the threats identified in its ongoing assessment, and no less than annually, assess the effectiveness of the key controls, systems, and procedures of the safeguards.

D. Based on the results of the risk assessment, the licensee shall:

1. 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 activities of the licensee including its use of third-party service providers, and the sensitivity of the nonpublic information used by the licensee or in the possession, custody, or control of the licensee;

2. Determine and implement security measures deemed appropriate, including:

a. 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,

b. 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 risk strategy of the organization,

c. restrict physical access to nonpublic information to authorized individuals only,

d. 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,

e. adopt secure development practices for in-house developed applications utilized by the licensee,

f. modify the information system in accordance with the information security program of the licensee,

g. utilize effective controls, which may include multi-factor authentication procedures for any authorized individual accessing nonpublic information,

h. regularly test and monitor systems and procedures to detect actual and attempted attacks on, or intrusions into, information systems,

i. 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,

j. implement measures to protect against destruction, loss, or damage of nonpublic information due to environmental hazards such as fire and water damage or other catastrophic events or technological failures, and

k. develop, implement, and maintain procedures for the secure disposal of nonpublic information in any format;

3. Include cybersecurity risks in the enterprise risk management process of the licensee;

4. 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

5. Provide its personnel with cybersecurity awareness training that is updated as necessary to reflect risks identified by the licensee in the risk assessment.

E. If the licensee has a board of directors, the board or an appropriate committee of the board, at a minimum, within one year of the effective date of this act, shall:

1. Require the executive management of the licensee or its delegates to develop, implement, and maintain the information security program of the licensee;

2. Require the executive management of the licensee or its delegates to report to the Insurance Commissioner in writing, at least annually, the following information:

a. the overall status of the information security program and the compliance of the licensee with this act, and

b. 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 responses of the management to those events or violations, and recommendations for changes in the information security program; and

3. If executive management delegates any of its responsibilities, it shall oversee the development, implementation, and maintenance of the information security program of the licensee prepared by the delegate or delegates and shall receive a report from the delegate or delegates complying with the requirements of the report to the board.

F. A licensee shall exercise due diligence in selecting its third-party service provider and shall require the 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.

G. 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 changing business arrangements of the licensee, such as mergers and acquisitions, alliances and joint ventures, outsourcing arrangements, and changes to information systems.

H. 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 information systems of the licensee, or the continuing functionality of any aspect of the business or operations of the licensee.

The 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.

I. Annually, each insurer domiciled in this state shall submit to the Commissioner a written statement by March 1, certifying that the insurer complies with the requirements set forth in this section. Each insurer shall maintain, for examination by the Insurance Department, all records, schedules, and data supporting this certificate for a period of five (5) 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. The documentation shall be available for inspection by the Commissioner upon request.

SECTION 17. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 674 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. 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.

B. During the investigation, the licensee, or an outside vendor or service provider designated to act on behalf of the licensee, shall, at a minimum:

1. Determine whether a cybersecurity event has occurred;

2. Assess the nature and scope of the cybersecurity event;

3. Identify any nonpublic information that may have been involved in the cybersecurity event; and

4. 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 possession, custody, or control of the licensee.

C. 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 shall complete the steps listed in subsection B of this section or confirm and document that the third-party service provider has completed those steps.

D. The licensee shall maintain records concerning all cybersecurity events for a period of at least five (5) years from the date of the cybersecurity event and shall produce those records upon request by the Insurance Commissioner.

SECTION 18. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 675 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. Every licensee shall notify the Insurance Commissioner without unreasonable delay, but not 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 either of the following criteria has been met:

1. This state is the state of domicile of the licensee, in the case of an insurer, or this state is the home state of the licensee, in the case of a producer, as those terms are defined in the Oklahoma Producer Licensing Act, Sections 1435.1 through 1435.41 of Title 36 of the Oklahoma Statutes, and the cybersecurity event has a reasonable likelihood of materially harming any material part of the normal operations of the licensee or any consumer residing in this state; or

2. The licensee reasonably believes that the nonpublic information involved is of two hundred fifty (250) or more consumers residing in this state and is either of the following:

a. 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

b. a cybersecurity event that has a reasonable likelihood of materially harming:

(1) any consumer residing in this state, or

(2) any material part of the normal operation or operations of the licensee.

B. The licensee making the notification required in subsection A of this section shall provide as much of the following information as possible, electronically in the manner and form prescribed by the Commissioner, along with any applicable fees. The licensee 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 shall provide:

1. Date of the cybersecurity event;

2. Description of how the information was exposed, lost, stolen, or breached including, but not limited to, the specific roles and responsibilities of third-party service providers, if any;

3. How the cybersecurity event was discovered;

4. Whether any lost, stolen, or breached information has been recovered and, if so, how this was done;

5. The identity of the source of the cybersecurity event;

6. Whether the licensee has filed a police report or has notified any regulatory, government, or law enforcement agencies and, if so, when such notification was provided;

7. Description of the specific types of information acquired without authorization. The term "specific types of information" means particular data elements including, but not limited to, types of medical information, financial information, or information allowing identification of the consumer;

8. The period during which the information system was compromised by the cybersecurity event;

9. 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;

10. 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;

11. Description of efforts being undertaken to remediate the situation which permitted the cybersecurity event to occur;

12. A copy of the privacy policy of the licensee and a statement outlining the steps the licensee will take to investigate and notify consumers affected by the cybersecurity event; and

13. Name of a contact person who is both familiar with the cybersecurity event and authorized to act for the licensee.

C. A licensee shall comply with the procedures of the Security Breach Notification Act, Section 161 et seq. of Title 24 of the

Oklahoma Statutes, to notify affected consumers and provide a copy of the notice sent to consumers under that statute to the Commissioner, when a licensee is required to notify the Commissioner under subsection A of this section.

D. 1. 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 the event as it would under subsection A of this section unless the third-party service provider provides the notice required under subsection A of this section to the Commissioner and the licensee.

2. The computation of deadlines of the licensee 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.

3. Nothing in this act 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 impose or notice requirements imposed under this act.

E. 1. 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 (3) business days of making the determination 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 the Security Breach Notification Act, Section 161 et seq. of Title 24 of the Oklahoma Statutes, and any other notification requirements relating to a cybersecurity event imposed under this section.

2. 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 (3) 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 Security Breach Notification Act, Section 161 et seq. of Title 24 of the Oklahoma Statutes, and any other notification requirements relating to a cybersecurity event imposed under this section.

F. 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 services of the insurer through an independent insurance producer, and for which consumer notice is required by this act or the Security Breach Notification Act, Section 161 et seq. of Title 24 of the Oklahoma Statutes, 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 this obligation for any producers who are not authorized by law or contract to sell, solicit, or negotiate on behalf of the insurer, and in those instances in which the insurer does not have the current producer of record information for an individual consumer. Any licensee acting as an 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.

SECTION 19. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 676 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. The Insurance Commissioner shall have power to examine and investigate the affairs of any licensee to determine whether the licensee has been or is engaged in any conduct in violation of the provisions of this act or any rules promulgated thereto. This power is in addition to the powers which the Commissioner has under applicable provisions of the Insurance Code including, but not

limited to, Sections 309.1 through 309.6, 332, and 1250.4 of Title 36 of the Oklahoma Statutes.

B. Whenever the Commissioner has reason to believe that a licensee has been or is engaged in conduct in this state that violates any provision of this act, the Commissioner may take action that is necessary or appropriate to enforce the provisions.

SECTION 20. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 677 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. Any documents, materials, or other information in the control or possession of the Insurance Department that are furnished by a licensee or an employee or agent thereof acting on behalf of a licensee pursuant to the provisions of Section 4 and Section 6 of this act or that are obtained by the Insurance Commissioner in an investigation or examination pursuant to Section 7 of this act shall be confidential by law and privileged, shall not be subject to the Oklahoma Open Records Act, 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 shall not otherwise make the documents, materials, or other information public without the prior written consent of the licensee.

B. 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 A of this section.

C. In order to assist in the performance of the duties of the Commissioner under this act, the Commissioner:

1. May share documents, materials, or other information including the confidential and privileged documents, materials, or information subject to subsection A of this section, with other state, federal, and international regulatory agencies, with the National Association of Insurance Commissioners and 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;

2. 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;

3. May share documents, materials, or other information subject to subsection A of 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

4. May enter into agreements governing sharing and use of information consistent with this subsection.

D. No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the Insurance Commissioner under this section or as a result of sharing as authorized in subsection C of this section.

E. Nothing in this act shall prohibit the Commissioner from releasing final, adjudicated actions that are open to public inspection pursuant to the Oklahoma Open Records Act, to a database or other clearinghouse service maintained by the National Association of Insurance Commissioners, its affiliates, or subsidiaries.

F. 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 act shall not be

construed to be public information, shall not be subject to the Oklahoma Open Records Act, shall not be subject to subpoena, and shall not be subject to discovery or admissible as evidence in any private civil action.

SECTION 21. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 678 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. The Insurance Commissioner may promulgate any rules necessary to carry out the provisions of this section.

B. 1. The following exceptions shall apply to this act:

a. a licensee with less than Five Million Dollars ($5,000,000.00) in gross annual revenue, is exempt from this act,

b. a licensee subject to the Health Insurance Portability and Accountability Act, Pub. L. 104-191, 110 Stat. 1936, as amended, that has established and maintains an information security program pursuant to such statutes, rules, regulations, procedures, or guidelines established thereunder, will be considered to meet the requirements of Section 4 of this act, provided that the licensee is compliant with and submits a written statement to the Commissioner certifying its compliance with the same, and

c. an employee, agent, representative, or designee of a licensee, who is also a licensee, is exempt from this act and shall not be required to develop their own information security program to the extent that the employee, agent, representative, or designee is covered by the information security program of the licensee.

2. If a licensee ceases to qualify for an exception, the licensee shall have one hundred eighty (180) days to comply with the provisions of this act.

C. In the case of a violation of this act, a licensee may be penalized in accordance with any applicable sections of the Insurance Code, including, but not limited to, Section 908 of Title 36 of the Oklahoma Statutes, or any other provision providing for penalties that the licensee is subject to under the license or permit of the licensee. Nothing in this act shall be construed to impose any civil liability for any violation of this act or omission to act by the licensee or employees of the licensee.

D. The provisions of this act shall take precedence over any other state laws applicable to licensees for data security and the investigation of a cybersecurity event.

SECTION 22. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 679 of Title 36, unless there is created a duplication in numbering, reads as follows:

Licensees shall have one (1) year from the effective date of this act to implement Section 4 of this act and two (2) years from the effective date of this act to implement subsection F of Section 4 of this act.

SECTION 23. AMENDATORY 51 O.S. 2021, Section 24A.3, as last amended by Section 1, Chapter 402, O.S.L. 2022 (51 O.S. Supp. 2022, Section 24A.3), is amended to read as follows:

Section 24A.3. As used in the Oklahoma Open Records Act:

1. "Record" means all documents including, but not limited to, any book, paper, photograph, microfilm, data files created by or used with computer software, computer tape, disk, record, sound recording, film recording, video record or other material regardless of physical form or characteristic, created by, received by, under the authority of, or coming into the custody, control or possession of public officials, public bodies or their representatives in connection with the transaction of public business, the expenditure of public funds or the administering of public property. ~~"Record"~~ Record does not mean:

a. computer software,

b. nongovernment personal effects,

c. unless public disclosure is required by other laws or regulations, vehicle movement records of the Oklahoma Transportation Authority obtained in connection with the Authority's electronic toll collection system,

d. personal financial information, credit reports or other financial data obtained by or submitted to a public body for the purpose of evaluating credit worthiness, obtaining a license, permit or for the purpose of becoming qualified to contract with a public body,

e. any digital audio/video recordings of the toll collection and safeguarding activities of the Oklahoma Transportation Authority,

f. any personal information provided by a guest at any facility owned or operated by the Oklahoma Tourism and Recreation Department to obtain any service at the facility or by a purchaser of a product sold by or through the Oklahoma Tourism and Recreation Department,

g. a Department of Defense Form 214 (DD Form 214) filed with a county clerk including any DD Form 214 filed before July 1, 2002,

h. except as provided for in Section 2-110 of Title 47 of the Oklahoma Statutes~~,~~:

(1) any record in connection with a Motor Vehicle Report issued by the Department of Public Safety, as prescribed in Section 6-117 of Title 47 of the Oklahoma Statutes, or

(2) personal information within driver records, as defined by the Driver's Privacy Protection Act, 18 United States Code, Sections 2721 through 2725, which are stored and maintained by the Department of Public Safety, ~~or~~

i. any portion of any document or information provided to an agency or entity of the state or a political subdivision to obtain licensure under the laws of this state or a political subdivision that contains an applicant's personal address, personal phone number, personal electronic mail address or other contact information. Provided, however, lists of persons licensed, the existence of a license of a person, or a business or commercial address, or other business or commercial information disclosable under state law submitted with an application for licensure shall be public record, or

j. information relating to a cybersecurity event reported to the Insurance Commissioner pursuant to the Insurance Data Security Act;

2. "Public body" shall include, but not be limited to, any office, department, board, bureau, commission, agency, trusteeship, authority, council, committee, trust or any entity created by a trust, county, city, village, town, township, district, school

district, fair board, court, executive office, advisory group, task force, study group or any subdivision thereof, supported in whole or in part by public funds or entrusted with the expenditure of public funds or administering or operating public property, and all committees, or subcommittees thereof. Except for the records required by Section 24A.4 of this title, ~~"public body"~~ public body does not mean judges, justices, the Council on Judicial Complaints, the Legislature or legislators. ~~"Public body"~~ Public body shall not include an organization that is exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and whose sole beneficiary is a college or university, or an affiliated entity of the college or university, that is a member of The Oklahoma State System of Higher Education. Such organization shall not receive direct appropriations from the Oklahoma Legislature. The following persons shall not be eligible to serve as a voting member of the governing board of the organization:

a. a member, officer, or employee of the Oklahoma State Regents for Higher Education,

b. a member of the board of regents or other governing board of the college or university that is the sole beneficiary of the organization, or

c. an officer or employee of the college or university that is the sole beneficiary of the organization;

3. "Public office" means the physical location where public bodies conduct business or keep records;

4. "Public official" means any official or employee of any public body as defined herein; and

5. "Law enforcement agency" means any public body charged with enforcing state or local criminal laws and initiating criminal prosecutions including, but not limited to, police departments, county sheriffs, the Department of Public Safety, the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, the Alcoholic Beverage Laws Enforcement Commission, and the Oklahoma State Bureau of Investigation.

SECTION 24. This act shall become effective November 1, 2023.

Passed the Senate the 20th day of March, 2023.

_____
Presiding Officer of the Senate

Passed the House of Representatives the ____ day of _____, 2023.

_____
Presiding Officer of the House of Representatives