

REQUEST FOR MODEL LAW DEVELOPMENT

This form is intended to gather information to support the development of a new model law or amendment to an existing model law. Prior to development of a new or amended model law, approval of the respective Parent Committee and the NAIC's Executive Committee is required. The NAIC's Executive Committee will consider whether the request fits the criteria for model law development. Please complete all questions and provide as much detail as necessary to help in this determination.

Please check whether this is: New Model Law or Amendment to Existing Model

1. Name of group to be responsible for drafting the model:

Cybersecurity (EX) Task Force

2. NAIC staff support contact information:

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3. Please provide a description and proposed title of the new model law. If an existing law, please provide the title, attach a current version to this form and reference the section(s) proposed to be amended.

Insurance Data Security Model Law

This new model, the Insurance Data Security Model Law, will establish standards for data security and investigation and notification of a breach of data security that will apply to insurance companies, producers and other persons licensed or required to be licensed under state law. This model, specific to the insurance industry, is intended to supersede state and federal laws of general applicability that address data security and data breach notification.

4. Does the model law meet the Model Law Criteria? Yes or No (Check one)

(If answering no to any of these questions, please reevaluate charge and proceed accordingly to address issues).

a. Does the subject of the model law necessitate a national standard and require uniformity amongst all states? Yes or No (Check one)

If yes, please explain why

Costs associated with a cybersecurity breach are enormous. Regulated entities need clarity on what they are expected to do to protect sensitive data and what is expected if there is a data breach. This can be accomplished by establishing a national standard and uniform application across the nation.

b. Does Committee believe NAIC members should devote significant regulator and Association resources to educate, communicate and support this model law?

Yes or No (Check one)

5. What is the likelihood that your Committee will be able to draft and adopt the model law within one year from the date of Executive Committee approval?

1 2 3 4 5 (Check one)

High Likelihood

Low Likelihood

Explanation, if necessary:

6. **What is the likelihood that a minimum two-thirds majority of NAIC members would ultimately vote to adopt the proposed model law?**

1 2 3 4 5 (Check one)

High Likelihood

Low Likelihood

Explanation, if necessary:

7. **What is the likelihood that state legislature will adopt the model law in a uniform manner within three years of adoption by the NAIC?**

1 2 3 4 5 (Check one)

High Likelihood

Low Likelihood

Explanation, if necessary:

8. **Is this model law referenced in the Accreditation Standards? If so, does the standard require the model law to be adopted in a substantially similar manner?**

9. **Is this model law in response to or impacted by federal laws or regulations? If yes, please explain.**

Yes. The Gramm-Leach-Bliley law has national requirements for privacy notices and the NIST Cybersecurity Framework is the gold standard today for cybersecurity best practices.

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New Model

Adopted by the Cybersecurity (EX) Working Group – 8/7/17

Adopted by the Innovation and Technology (EX) Task Force – 8/8/17

INSURANCE DATA SECURITY MODEL LAW

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Section 1. Title

This Act shall be known and may be cited as the “Insurance Data Security Law.”

Section 2. Purpose and Intent

- A. The purpose and intent of this Act is to establish standards for data security and standards for the investigation of and notification to the Commissioner of a Cybersecurity Event applicable to Licensees, as defined in Section 3.
- B. This Act may not be construed to create or imply a private cause of action for violation of its provisions nor may it be construed to curtail a private cause of action which would otherwise exist in the absence of this Act.

Drafting Note: The drafters of this Act intend that if a Licensee, as defined in Section 3, is in compliance with N.Y. Comp. Codes R. & Regs. tit.23, § 500, *Cybersecurity Requirements for Financial Services Companies*, effective March 1, 2017, such Licensee is also in compliance with this Act.

Section 3. Definitions

As used in this Act, the following terms shall have these meanings:

- A. “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.
- B. “Commissioner” means the chief insurance regulatory official of the state.
- C. “Consumer” means an individual, including but not limited to applicants, policyholders, insureds, beneficiaries, claimants, and certificate holders who is a resident of this State and whose Nonpublic Information is in a Licensee’s possession, custody or control.
- D. “Cybersecurity Event” means an event resulting in unauthorized access to, disruption or misuse of, an Information System or information stored on such Information System.

The term “Cybersecurity Event” does not include the unauthorized acquisition of Encrypted Nonpublic Information if the encryption, process or key is not also acquired, released or used without authorization.

- Cybersecurity Event does not include an event with regard to which the Licensee has determined that the Nonpublic Information accessed by an unauthorized person has not been used or released and has been returned or destroyed.
- E. “Department” means the [insert name of insurance regulatory body].
 - F. “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.
 - G. “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.
 - H. “Information System” means a discrete set of electronic information resources organized for the collection, processing, maintenance, use, sharing, dissemination or disposition of electronic information, as well as any specialized system such as industrial/process controls systems, telephone switching and private branch exchange systems, and environmental control systems.
 - I. “Licensee” means any Person licensed, authorized to operate, or registered, or required to be licensed, authorized, or registered pursuant to the insurance laws of this State but shall not include a purchasing group or a risk retention group chartered and licensed in a state other than this State or a Licensee that is acting as an assuming insurer that is domiciled in another state or jurisdiction.
 - J. “Multi-Factor Authentication” means authentication through verification of at least two of the following types of authentication factors:
 - (1) Knowledge factors, such as a password; or
 - (2) Possession factors, such as a token or text message on a mobile phone; or
 - (3) Inherence factors, such as a biometric characteristic.
 - K. “Nonpublic Information” means information that is not Publicly Available Information and is:
 - (1) Business related information of a Licensee the tampering with which, or unauthorized disclosure, access or use of which, would cause a material adverse impact to the business, operations or security of the Licensee;
 - (2) Any information concerning a Consumer which because of name, number, personal mark, or other identifier can be used to identify such Consumer, in combination with any one or more of the following data elements:
 - (a) Social Security number,
 - (b) Driver’s license number or non-driver identification card number,
 - (c) Account number, credit or debit card number,
 - (d) Any security code, access code or password that would permit access to a Consumer’s financial account, or
 - (e) Biometric records;
 - (3) 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 and that relates to
 - (a) The past, present or future physical, mental or behavioral health or condition of any Consumer or a member of the Consumer's family,

- (b) The provision of health care to any Consumer, or
 - (c) Payment for the provision of health care to any Consumer.
- L. “Person” means any individual or any non-governmental entity, including but not limited to any non-governmental partnership, corporation, branch, agency or association.
- M. “Publicly Available Information” means any information that a Licensee has a reasonable basis to believe is lawfully made available to the general public from: federal, state or local government records; widely distributed media; or disclosures to the general public that are required to be made by federal, state or local law.

For the purposes of this definition, a Licensee has a reasonable basis to believe that information is lawfully made available to the general public if the Licensee has taken steps to determine:

- (1) That the information is of the type that is available to the general public; and
 - (2) 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.
- N. “Risk Assessment” means the Risk Assessment that each Licensee is required to conduct under Section 4C of this Act.
- O. “State” means [adopting state].
- P. “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. Information Security Program

A. Implementation of an Information Security Program

Commensurate with the size and complexity of the Licensee, the nature and scope of the Licensee’s activities, including its use of Third-Party Service Providers, and the sensitivity of the Nonpublic Information used by the Licensee or in the Licensee’s possession, custody or control, each Licensee shall develop, implement, and maintain a comprehensive written Information Security Program based on the Licensee’s Risk Assessment and that contains administrative, technical, and physical safeguards for the protection of Nonpublic Information and the Licensee’s Information System.

B. Objectives of Information Security Program

A Licensee’s Information Security Program shall be designed to:

- (1) Protect the security and confidentiality of Nonpublic Information and the security of the Information System;
- (2) Protect against any threats or hazards to the security or integrity of Nonpublic Information and the Information System;
- (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. Risk Assessment

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 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 Licensee's operations, including:
 - (a) Employee training and management;
 - (b) Information Systems, including 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 safeguards' key controls, systems, and procedures. ~~A summary of this assessment shall be included in the annual report required by Section 4I.~~

D. Risk Management

Based on its 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's activities, including its use of Third-Party Service Providers, and the sensitivity of the Nonpublic Information used by the Licensee or in the Licensee's possession, custody or control.
- (2) Determine which security measures listed below are appropriate and to implement such security measures.
 - (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 organization's risk strategy;
 - (c) Restrict access at physical locations containing Nonpublic Information, only to Authorized Individuals;
 - (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 and procedures for evaluating, assessing or testing the security of externally developed applications utilized by the Licensee;

- (f) Modify the Information System in accordance with the Licensee's Information Security Program;
 - (g) Utilize effective controls, which may include Multi-Factor Authentication procedures for any 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 catastrophes 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 Licensee's enterprise risk management process.
 - (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. Oversight by Board of Directors

If the Licensee has a board of directors, the board or an appropriate committee of the board shall, at a minimum:

- (1) Require the Licensee's executive management or its delegates to develop, implement, and maintain the Licensee's Information Security Program;
- (2) Require the Licensee's executive management or its delegates to report in writing at least annually, the following information:
 - (a) The overall status of the Information Security Program and the Licensee's compliance 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 management's responses thereto, and recommendations for changes in the Information Security Program.
- (3) If executive management delegates any of its responsibilities under Section 4 of this Act, it shall oversee the development, implementation and maintenance of the Licensee's Information Security Program prepared by the delegate(s) and shall receive a report from the delegate(s) complying with the requirements of the report to the Board of Directors above.

F. Oversight of Third-Party Service Provider Arrangements

- (1) A Licensee shall exercise due diligence in selecting its Third-Party Service Provider; and

- (2) A Licensee shall require a Third-Party Service Provider to implement appropriate administrative, technical, and physical measures to protect and secure the Information Systems and Nonpublic Information that are accessible to, or held by, the Third-Party Service Provider.

G. Program Adjustments

The Licensee shall monitor, evaluate and adjust, as appropriate, the Information Security Program consistent with any relevant changes in technology, the sensitivity of its Nonpublic Information, internal or external threats to information, and the Licensee's own changing business arrangements, such as mergers and acquisitions, alliances and joint ventures, outsourcing arrangements and changes to Information Systems.

H. Incident Response Plan

- (1) 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 Licensee's Information Systems, or the continuing functionality of any aspect of the Licensee's business or operations.

- (2) Such incident response plan shall address the following areas:

- (a) The internal process for responding to a Cybersecurity Event;
- (b) The goals of the incident response plan;
- (c) The definition of clear roles, responsibilities and levels of decision-making authority;
- (d) External and internal communications and information sharing;
- (e) Identification of requirements for the remediation of any identified weaknesses in Information Systems and associated controls;
- (f) Documentation and reporting regarding Cybersecurity Events and related incident response activities; and
- (g) The evaluation and revision as necessary of the incident response plan following a Cybersecurity Event.

I. Annual Certification to Commissioner of Domiciliary State

Annually, each insurer domiciled in this State shall submit to the Commissioner, a written statement by February 15, certifying that the insurer is in compliance with the requirements set forth in Section 4 of this Act. Each insurer shall maintain for examination by the Department all records, schedules and data supporting this certificate for a period of five years. To the extent an insurer has identified areas, systems or processes that require material improvement, updating or redesign, the insurer shall document the identification and the remedial efforts planned and underway to address such areas, systems or processes. Such documentation must be available for inspection by the Commissioner.

Section 5. Investigation of a Cybersecurity Event

- A. If the Licensee learns that a Cybersecurity Event has or may have occurred the Licensee, or an outside vendor and/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 and/or service provider designated to act on behalf of the Licensee, shall, at a minimum determine as much of the following information as possible:
 - (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 Licensee's possession, custody or control.
- 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 will complete the steps listed in Section 5B above 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 years from the date of the Cybersecurity Event and shall produce those records upon demand of the Commissioner.

Section 6. Notification of a Cybersecurity Event

A. Notification to the Commissioner

Each Licensee shall notify the Commissioner as promptly as possible but in no event later than 72 hours from a determination that a Cybersecurity Event has occurred when either of the following criteria has been met:

- (1) This State is the Licensee's state of domicile, in the case of an insurer, or this State is the Licensee's home state, in the case of a producer, as those terms are defined in [insert reference to Producer Licensing Model Act]; or
- (2) The Licensee reasonably believes that the Nonpublic Information involved is of 250 or more Consumers residing in this State and that 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:
 - (i) Any Consumer residing in this State; or
 - (ii) Any material part of the normal operation(s) of the Licensee.

B. The Licensee shall provide as much of the following information as possible. The Licensee shall provide the information in electronic form as directed by the Commissioner. The Licensee shall have a continuing obligation to update and supplement initial and subsequent notifications to the Commissioner concerning the Cybersecurity Event.

- (1) Date of the Cybersecurity Event;
- (2) Description of how the information was exposed, lost, stolen, or breached, including 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 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. Specific types of information means particular data elements including, for example, types of medical information, types of financial information or types of information allowing identification of the Consumer;
 - (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 Licensee's privacy policy and a statement outlining the steps the Licensee will take to investigate and notify Consumers affected by the Cybersecurity Event; and
 - (13) Name of a contact person who is both familiar with the Cybersecurity Event and authorized to act for the Licensee.
- C. Notification to Consumers. Licensee shall comply with [insert state's data breach notification law], as applicable, 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 Section 6A.
- D. Notice Regarding Cybersecurity Events of Third-Party Service Providers
- (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 such event as it would under Section 6A.
 - (2) The computation of Licensee's deadlines 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 imposed under Section 5 or notice requirements imposed under Section 6.
- E. Notice Regarding Cybersecurity Events of Reinsurers to Insurers
- (1) (a) 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 72 hours of making the determination that a Cybersecurity Event has occurred.
 - (b) The ceding insurers that have a direct contractual relationship with affected Consumers shall fulfill the consumer notification requirements imposed under [insert the state's breach notification law] and any other notification requirements relating to a Cybersecurity Event imposed under Section 6.

- (2) (a) 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 72 hours of receiving notice from its Third-Party Service Provider that a Cybersecurity Event has occurred.
- (b) The ceding insurers that have a direct contractual relationship with affected Consumers shall fulfill the consumer notification requirements imposed under [insert the state's breach notification law] and any other notification requirements relating to a Cybersecurity Event imposed under Section 6.

F. Notice Regarding Cybersecurity Events of Insurers to Producers of Record

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 and for which a Consumer accessed the insurer's services through an independent insurance producer, the insurer shall notify the producers of record of all affected Consumers as soon as practicable as directed by the Commissioner.

The insurer is excused from this obligation for those instances in which it does not have the current producer of record information for any individual Consumer.

Section 7. Power of Commissioner

- A. The Commissioner shall have power to examine and investigate into the affairs of any Licensee to determine whether the Licensee has been or is engaged in any conduct in violation of this Act. This power is in addition to the powers which the Commissioner has under [insert applicable statutes governing the investigation or examination of insurers]. Any such investigation or examination shall be conducted pursuant to [insert applicable statutes governing the investigation or examination of insurers].
- B. Whenever the Commissioner has reason to believe that a Licensee has been or is engaged in conduct in this State which violates this Act, the Commissioner may take action that is necessary or appropriate to enforce the provisions of this Act.

Section 8. Confidentiality

- A. Any documents, materials or other information in the control or possession of the Department that are furnished by a Licensee or an employee or agent thereof acting on behalf of Licensee pursuant to Section 4I, Section 6B(2), (3), (4), (5), (8), (10), and (11), or that are obtained by the 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 [insert reference to state open records, freedom of information, sunshine or other appropriate law], 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.
- 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 Section 8A.
- C. In order to assist in the performance of the Commissioner's duties under this Act, the Commissioner:
 - (1) May share documents, materials or other information, including the confidential and privileged documents, materials or information subject to Section 8A, with other state, federal, and international regulatory agencies, with the National Association of Insurance Commissioners, its affiliates or subsidiaries, and with state, federal, and international law enforcement authorities, provided that the recipient agrees in writing to maintain the confidentiality and privileged status of the document, material or other information;

- (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; and
 - (3) May share documents, materials or other information subject to Section 8A, 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.
 - (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 Commissioner under this section or as a result of sharing as authorized in Section 8C.
 - E. Nothing in this Act shall prohibit the Commissioner from releasing final, adjudicated actions that are open to public inspection pursuant to [insert appropriate reference to state law] to a database or other clearinghouse service maintained by the National Association of Insurance Commissioners, its affiliates or subsidiaries.

Drafting Note: States conducting an investigation or examination under their examination law may apply the confidentiality protections of that law to such an investigation or examination.

Section 9. Exceptions

- A. The following exceptions shall apply to this Act:
 - (1) A Licensee with fewer than ten employees, including any independent contractors, is exempt from Section 4 of this Act;
 - (2) A Licensee subject to Pub.L. 104–191, 110 Stat. 1936, enacted August 21, 1996 (Health Insurance Portability and Accountability Act) 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, provided that Licensee is compliant with, and submits a written statement certifying its compliance with, the same;
 - (3) An employee, agent, representative or designee of a Licensee, who is also a Licensee, is exempt from Section 4 and need not develop its own Information Security Program to the extent that the employee, agent, representative or designee is covered by the Information Security Program of the other Licensee.
- B. In the event that a Licensee ceases to qualify for an exception, such Licensee shall have 180 days to comply with this Act.

Section 10. Penalties

In the case of a violation of this Act, a Licensee may be penalized in accordance with [insert general penalty statute].

Section 11. Rules and Regulations [OPTIONAL]

The Commissioner may, in accordance with [the state statute setting forth the ability of the Department to adopt regulations] issue such regulations as shall be necessary to carry out the provisions of this Act.

Drafting Note: This provision is applicable only to states requiring this language.

Section 12. Severability

If any provisions of this Act or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected thereby.

Section 13. Effective Date

This Act shall take effect on [insert a date]. Licensees shall have one year from the effective date of this Act to implement Section 4 of this Act and two years from the effective date of this Act to implement Section 4F of this Act.

PROJECT HISTORY

INSURANCE DATA SECURITY MODEL LAW

1. Description of the Project, Issues Addressed, etc.

The Cybersecurity (EX) Working Group, previously known as the Cybersecurity (EX) Task Force, was established by the NAIC's Executive (EX) Committee in 2014 to consider issues concerning cybersecurity as they pertain to the role of state insurance regulators. In 2015, the Working Group created two documents that were adopted by the NAIC: 1) *Principles for Effective Cybersecurity: Insurance Regulatory Guidance*, adopted in April 2015; and 2) *NAIC Roadmap for Cybersecurity Consumer Protections*, adopted in December 2015. Also, in 2015, Congress introduced a bill, the Data Security Act of 2015 (H.R. 2205). The NAIC and interested parties had concerns about this legislation and determined that the best way to proceed was with a model law specific to the insurance industry. Before determining that one new model was the appropriate course of action, the Working Group considered amending four different model laws related to data privacy: 1) the *NAIC Insurance Information and Privacy Protection Model Act* (#670); 2) the *Privacy of Consumer Financial and Health Information Regulation* (#672); 3) the *Standards for Safeguarding Consumer Information Model Regulation* (#673); and 4) the *Insurance Fraud Prevention Model Act* (#680).

The Working Group began drafting the Insurance Data Security Model Law in early 2016. The major provisions of the model include requiring insurers and other entities licensed by the department of insurance to: implement an information security program (Section 4); investigate a cybersecurity event (Section 5); and notify the state insurance commissioner of a cybersecurity event (Section 6).

The Working Group adopted the Insurance Data Security Model Law on Aug. 7 at the 2017 Summer National Meeting and presented it to the Innovation and Technology (EX) Task Force. The Task Force adopted the Insurance Data Security Law on Aug. 8 at the 2017 Summer National Meeting.

2. Name of Group Responsible for Drafting Model and States Participating

The Cybersecurity (EX) Working Group, previously known as the Cybersecurity (EX) Task Force, drafted the model law. The members of that Task Force at the time of adoption were: South Carolina, Chair; Rhode Island, Vice Chair; Alaska; Arkansas; California; Colorado; Connecticut; Delaware; District of Columbia; Florida; Idaho; Illinois; Kansas; Kentucky; Maine; Maryland; Michigan; Minnesota; Missouri; Montana; Nebraska; Nevada; New Hampshire; New Jersey; New Mexico; North Dakota; Northern Mariana Islands; Ohio; Oklahoma; Oregon; Pennsylvania; South Dakota; Tennessee; Texas; Utah; Vermont; Virginia; Washington; and Wisconsin.

In November 2016, the Working Group formed a drafting group, consisting of industry, consumer representatives and state insurance regulators. This group included representatives from the following interested parties: American Council of Life Insurers (ACLI), America's Health Insurance Plans (AHIP), the American Insurance Association (AIA), the American Land Title Association (ALTA), the Independent Insurance Agents and Brokers of America (IIABA), the National Association of Mutual Insurance Companies (NAMIC), the Professional Insurance Agents (PIA), the Property Casualty Insurers Association of America (PCI), the Reinsurance Association of America (RAA), the Center for Economic Justice (CEJ) and Peter Kochenburger (University of Connecticut School of Law). The drafting group also included state insurance regulators from California, Florida, Illinois, Maine, New York, Rhode Island and Texas.

3. Project Authorized by What Charge and Date Given to the Group

The original charge of the Cybersecurity (EX) Working Group, previously known as the Cybersecurity (EX) Task Force, was to: review the following models and make recommendations to the Executive (EX) Committee: the *NAIC Insurance Information and Privacy Protection Model Act* (#670); the *Privacy of Consumer Financial and Health Information Regulation* (#672); the *Standards for Safeguarding Consumer Information Model Regulation* (#673); and the *Insurance Fraud Prevention Model Act* (#680).

During the Working Group's meeting at the 2016 Spring National Meeting, on April 4, the Working Group determined that it would be simpler to draft one new model law and address any revisions to the other models at a later date, if necessary.

4. A General Description of Drafting Process and Due Process

The Cybersecurity (EX) Working Group, previously known as the Cybersecurity (EX) Task Force, released the first draft of the Insurance Data Security Model Law on March 2, 2016. Following a 30-day exposure period, interested stakeholders presented comments during the Working Group's April 4, 2016, conference call.

The Working Group held an interim meeting May 24–25, 2016, and received section-by-section oral comments regarding the first draft of the model law.

The Working Group met via conference call Aug. 4, Aug. 11 and Aug. 16, 2016, in regulator-to-regulator session pursuant to paragraph 3 (specific companies, entities or individuals) and paragraph 8 (consideration of strategic planning issues) of the NAIC Policy Statement on Open Meetings. The second draft of the model law was released on Aug. 17, 2016. Oral comments regarding the second draft were received on Aug. 27 via conference call, and written comments were received by Sept. 16, 2016, following a 30-day exposure period.

The Working Group met via conference call Oct. 17, 2016, to discuss the second draft of the model law, as well as to receive additional oral comments. Subsequently, the Working Group met via conference call Nov. 8, 2016. During this meeting, the Working Group formed a drafting group to continue drafting the model law. The drafting group included state insurance regulators and interested parties. Between versions two and three of the model, the drafting group met via conference call on following dates in 2016: Nov. 15, Nov. 22, Nov. 29 and Dec. 20. It also met on the following dates in 2017: Jan. 10, Jan. 24, Feb. 7 and Feb. 21.

The drafting group released a third version of the draft model law on Feb. 27, 2017. The drafting group met via conference call March 7 to continue discussion regarding the third draft of the model law. Written comments were received from interested stakeholders through April 17.

The drafting group released a fourth draft of the model law on April 26. The drafting group met via conference call May 9 to discuss the fourth version of the model. Oral comments were received on the May 9 conference call, and written comments were received from stakeholders by May 16, following a 20-day exposure period.

The drafting group released the fifth draft of the model law July 7. Written comments were received from interested stakeholders by July 31 following a 24-day exposure period. The Working Group adopted the fifth version of the model law with some minor changes at the Summer National Meeting. Due to the changes made, the Working Group adopted it as the sixth version of the model law.

The final version of the draft model law, the sixth draft, was adopted by the Innovation and Technology (EX) Task Force at the Summer National Meeting. Prior to consideration of adoption by the Executive (EX) Committee and the joint Executive (EX) Committee and Plenary, two technical corrections will be noted for incorporation into the final version of the model: 1) removal of a cross-reference to a provision that had been deleted from version five; and 2) clarification regarding implementation of security measures at Section 4D(2).

All drafts and comments were posted on the Working Group's web page on the NAIC website.

6. A Discussion of the Significant Issues (items of some controversy raised during the due process and the group's response)

The first version of the model was drafted by incorporating key provisions of the legislation pending in Congress, H.R. 2205 and a draft model law submitted by a group of several insurance trade associations. Key provisions of the first version included requiring a licensee to: 1) implement an information security program; 2) investigate a potential data breach; 3) notify consumers of their rights before a data breach; and 4) notify consumers following a data breach. It also provided the state insurance commissioner with authority to prescribe the appropriate level of consumer protection following a data breach.

Following a two-day in-person meeting with interested parties, the second version of the model law was released. Comments received following the exposure of the second version made it apparent there were six important issues on which the Working Group would need to reach consensus: 1) how to address state uniformity and exclusivity of the law; 2) whether and how to include an exemption for licensees subject to the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) or the federal Gramm-Leach-Bliley Act (GLBA); 3) whether to include a harm trigger in the definition of "data breach"; 4) how to define "personal information"; 5) how to address scalability of information security requirements for

smaller licensees; and 6) how to address licensee oversight of third-party service providers.

Considering the complexity of these issues, the Working Group created a drafting group to hold a number of in-depth discussions in an attempt to reach consensus. Following drafting group calls held between November 2016 and February 2017, a third version of the model was exposed. Comments received on the third version revealed that drafting group members still disagreed on how to address several of the key issues.

At the 2017 Spring National Meeting, Superintendent Maria T. Vullo (NY) urged the Working Group to adopt New York's *Cybersecurity Requirements for Financial Services Companies*, N.Y. Comp. Codes R. & Regs. tit. 23, § 500, as the NAIC's model law. At the Working Group's meeting on April 9 at the 2017 Spring National Meeting, drafting group chair Superintendent Elizabeth Kelleher Dwyer (RI) invited all interested parties to submit additional comments on the third version of the draft, as well as thoughts regarding Superintendent Vullo's proposal to redraft the model law to look more like the New York regulation.

After receiving letters from interested parties, a fourth draft was released that incorporated many of the provisions found in the New York regulation. Like the New York regulation, the fourth version of the model law delegates consumer notification of a cybersecurity event (data breach) to be done in compliance with the state's already-existing generally applicable data breach notification law, rather than create insurance-specific rules regarding consumer notification. Some of the provisions in version four of the model that were similar to the New York regulation included: 1) the same definition of "non-public information" that must be protected; 2) a similar definition of "cybersecurity event"; 3) risk management standards based on the licensee's own risk assessment; 4) similar language regarding oversight of third-party service provider arrangements; and 5) requirement of an incident response plan. The NAIC model also added exceptions to the law, which were similar to those found in the New York regulation, including: 1) licensees with fewer than 10 employees; and 2) licensees using the information security program of another licensee. The NAIC model also added an exemption for licensees compliant with HIPAA data security laws, which is not found in the New York regulation.

After receiving comments on version four of the model, several provisions were redrafted, including the addition of a drafting note to Section 2, stating that the intent of the drafters is that if a licensee is in compliance with the New York regulation, it is also in compliance with this model law. In response to industry comments that the provision addressing oversight of third-party service providers was burdensome, the provision was revised to require licensees to exercise due diligence in selecting its third-party service providers and to require those providers to implement appropriate measures to protect consumer data. The requirement of an annual report was revised to become a requirement of annual certification, which more closely mirrors language from the New York regulation.

The drafting group determined that certain issues raised by interested parties did not warrant changes to the model. Several interested parties requested reinstatement of language stating the model law is an "exclusive state standard." The original concern was related to inconsistencies regarding consumer notices, reflecting that approximately 48 states have specific and often differing laws on consumer notices applicable across industries. Since the model no longer requires consumer notice, apart from that already required by state law, the need for a statement of exclusivity was no longer present. Additionally, some interested parties suggested there was a need for stronger confidentiality protections, similar to those found in the *Risk Management and Own Risk and Solvency Assessment Model Act* (#505). But the heightened confidentiality protections of the Model #505 were drafted to protect information that includes trade secret and proprietary information, which is not the type of information provided to the state insurance commissioner under this model. The Working Group noted that the same confidentiality language that appears in this model law has been included in multiple NAIC models.

7. Any Other Important Information (e.g., amending an accreditation standard)

No other items are identified at this time.

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