

1 **SENATE FLOOR VERSION**

2 February 21, 2023

3 COMMITTEE SUBSTITUTE  
4 FOR

5 SENATE BILL NO. 543

6 By: Montgomery of the Senate

7 and

8 Sneed of the House

9 An Act relating to insurance data security; creating  
10 the Insurance Data Security Act; providing short  
11 title; establishing act jurisdiction; construing  
12 provision; defining terms; requiring licensees to  
13 develop data security program with certain  
14 inclusions; establishing intent of security programs  
15 created pursuant to act; directing licensee to  
16 conduct risk assessment; directing licensee to take  
17 certain action following risk assessment result;  
18 requiring certain supervising boards to take certain  
19 actions to implement program; requiring licensee to  
20 contract with third-party service provider subject to  
21 certain conditions; requiring licensee to maintain  
22 updates and revisions to program; requiring licensee  
23 develop incident response plan; requiring certain  
24 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

1 402, O.S.L. 2022 (51 O.S. Supp. 2022, Section 24A.3),  
2 which relates to the Oklahoma Open Records Act;  
3 modifying definition; updating statutory language;  
4 providing for codification; and providing an  
5 effective date.

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

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

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

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

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

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

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

1 As used in this act:

2 1. "Authorized individual" means an individual known to and  
3 screened by the licensee and determined to be necessary and  
4 appropriate to have access to the nonpublic information held by the  
5 licensee and its information systems;

6 2. "Commissioner" means the Insurance Commissioner;

7 3. "Consumer" means an individual, including but not limited to  
8 applicants, policyholders, insureds, beneficiaries, claimants, and  
9 certificate holders, who is a resident of this state and whose  
10 nonpublic information is in the possession, custody, or control of a  
11 licensee;

12 4. "Cybersecurity event" means an event resulting in  
13 unauthorized access to or disruption or misuse of an information  
14 system or nonpublic information stored on the information system.  
15 The term cybersecurity event shall not include the unauthorized  
16 acquisition of encrypted nonpublic information if the encryption,  
17 process, or key is not also acquired, released, or used without  
18 authorization. Cybersecurity event shall not include an event in  
19 which the licensee has determined that the nonpublic information  
20 accessed by an unauthorized person has not been used or released and  
21 has been returned or destroyed;

22 5. "Department" means the Insurance Department;

1       6. "Encrypted" means the transformation of data into a form  
2 which results in a low probability of assigning meaning without the  
3 use of a protective process or key;

4       7. "Information security program" means the administrative,  
5 technical, and physical safeguards that a licensee uses to access,  
6 collect, distribute, process, protect, store, use, transmit, dispose  
7 of, or otherwise handle nonpublic information;

8       8. "Information system" means a discrete set of electronic  
9 information resources organized for the collection, processing,  
10 maintenance, use, sharing, dissemination or disposition of nonpublic  
11 information, as well as any specialized system such as industrial or  
12 process controls systems, telephone switching and private branch  
13 exchange systems, and environmental control systems;

14       9. "Licensee" means any person licensed, authorized to operate,  
15 or registered, or required to be licensed, authorized to operate, or  
16 registered, pursuant to Title 36 of the Oklahoma Statutes; provided,  
17 however, that it shall not include a purchasing group or a risk  
18 retention group chartered and licensed in a state other than this  
19 state or a person that is acting as an assuming insurer that is  
20 domiciled in another state or jurisdiction;

21       10. "Multi-factor authentication" means authentication through  
22 verification of at least two (2) of the following types of  
23 authentication factors:

24           a. knowledge factors, such as a password,

1           b. possession factors, such as a token or text message on  
2           a mobile phone, or

3           c. inherence factors, such as a biometric characteristic;

4           11. "Nonpublic information" means electronic information that  
5 is not publicly available and is:

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

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

14               (1) social security number,

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

17               (3) financial account number, credit card number, or  
18               debit card number,

19               (4) any security code, access code, or password that  
20               would permit access to a consumer's financial  
21               account, or

22               (5) biometric records, or

23          c. any information or data, except age or gender, in any  
24          form or medium created by or derived from a health

1 care provider or a consumer that can be used to  
2 identify a particular consumer and that relates to:

- 3 (1) the past, present, or future physical, mental, or  
4 behavioral health or condition of any consumer or  
5 a member of the family of the consumer,  
6 (2) the provision of health care to any consumer, or  
7 (3) payment for the provision of health care to any  
8 consumer;

9 12. "Person" means any individual or any nongovernmental  
10 entity including but not limited to any nongovernmental  
11 partnership, corporation, branch, agency, or association;

12 13. "Publicly available information" means any information that  
13 a licensee has reasonable basis to believe is lawfully made  
14 available to the general public from federal, state, or local  
15 government records, widely distributed media, or disclosures to the  
16 general public that are required to be made by federal, state, or  
17 local law. For the purposes of this definition, a licensee has a  
18 reasonable basis to believe that information is lawfully made  
19 available to the general public if the licensee has taken steps to  
20 determine:

- 21 a. that the information is of the type that is available  
22 to the general public, and  
23  
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1           b.    whether a consumer can direct that the information not  
2                    be made available to the general public and, if so,  
3                    that such consumer has not done so; and

4           14.  "Third-party service provider" means a person, not  
5 otherwise defined as a licensee, that contracts with a licensee to  
6 maintain, process, store, or otherwise is permitted access to  
7 nonpublic information through its provision of services to the  
8 licensee.

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

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

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

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

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

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

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

11 C. The licensee shall:

12 1. Designate one or more employees, an affiliate, or an outside  
13 vendor designated to act on behalf of the licensee who is  
14 responsible for the information security program;

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

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

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1 4. Assess the sufficiency of policies, procedures, information  
2 systems, and other safeguards in place to manage these threats,  
3 including consideration of threats in each relevant area of the  
4 operations of the licensee, including:

- 5 a. employee training and management,
- 6 b. information systems, including, but not limited to,  
7 network and software design, as well as information  
8 classification, governance, processing, storage,  
9 transmission, and disposal, and
- 10 c. detecting, preventing, and responding to attacks,  
11 intrusions, or other systems failures; and

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

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

18 1. Design its information security program to mitigate the  
19 identified risks, commensurate with the size and complexity of the  
20 licensee, the nature and scope of the activities of the licensee  
21 including its use of third-party service providers, and the  
22 sensitivity of the nonpublic information used by the licensee or in  
23 the possession, custody, or control of the licensee;

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

- 3           a. place access controls on information systems  
4                 including controls to authenticate and permit access  
5                 only to authorized individuals to protect against the  
6                 unauthorized acquisition of nonpublic information,
- 7           b. identify and manage the data, personnel, devices,  
8                 systems, and facilities that enable the organization  
9                 to achieve business purposes in accordance with their  
10                relative importance to business objectives and the  
11                risk strategy of the organization,
- 12           c. restrict physical access to nonpublic information to  
13                authorized individuals only,
- 14           d. protect by encryption or other appropriate means, all  
15                nonpublic information while being transmitted over an  
16                external network and all nonpublic information stored  
17                on a laptop computer or other portable computing or  
18                storage device or media,
- 19           e. adopt secure development practices for in-house  
20                developed applications utilized by the licensee,
- 21           f. modify the information system in accordance with the  
22                information security program of the licensee,

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- 1 g. utilize effective controls, which may include multi-
- 2 factor authentication procedures for any authorized
- 3 individual accessing nonpublic information,
- 4 h. regularly test and monitor systems and procedures to
- 5 detect actual and attempted attacks on, or intrusions
- 6 into, information systems,
- 7 i. include audit trails within the information security
- 8 program designed to detect and respond to
- 9 cybersecurity events and designed to reconstruct
- 10 material financial transactions sufficient to support
- 11 normal operations and obligations of the licensee,
- 12 j. implement measures to protect against destruction,
- 13 loss, or damage of nonpublic information due to
- 14 environmental hazards such as fire and water damage or
- 15 other catastrophic events or technological failures,
- 16 and
- 17 k. develop, implement, and maintain procedures for the
- 18 secure disposal of nonpublic information in any format;

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

21 4. Stay informed regarding emerging threats or vulnerabilities  
22 and utilize reasonable security measures when sharing information  
23 relative to the character of the sharing and the type of information  
24 shared; and

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

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

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

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

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

15           b. material matters related to the information security  
16 program, addressing issues such as risk assessment,  
17 risk management and control decisions, third-party  
18 service provider arrangements, results of testing,  
19 cybersecurity events or violations and responses of  
20 the management to those events or violations, and  
21 recommendations for changes in the information  
22 security program; and

23          3. If executive management delegates any of its  
24 responsibilities, it shall oversee the development, implementation,

1 and maintenance of the information security program of the licensee  
2 prepared by the delegate or delegates and shall receive a report  
3 from the delegate or delegates complying with the requirements of  
4 the report to the board.

5 F. A licensee shall exercise due diligence in selecting its  
6 third-party service provider and shall require the provider to  
7 implement appropriate administrative, technical, and physical  
8 measures to protect and secure the information systems and nonpublic  
9 information that are accessible to, or held by, the third-party  
10 service provider.

11 G. The licensee shall monitor, evaluate, and adjust, as  
12 appropriate, the information security program consistent with any  
13 relevant changes in technology, the sensitivity of its nonpublic  
14 information, internal or external threats to information and the  
15 changing business arrangements of the licensee, such as mergers and  
16 acquisitions, alliances and joint ventures, outsourcing  
17 arrangements, and changes to information systems.

18 H. As part of its information security program, each licensee  
19 shall establish a written incident response plan designed to  
20 promptly respond to, and recover from, any cybersecurity event that  
21 compromises the confidentiality, integrity, or availability of  
22 nonpublic information in its possession, the information systems of  
23 the licensee, or the continuing functionality of any aspect of the  
24 business or operations of the licensee.

1 The incident response plan shall address the following areas:

- 2 1. The internal process for responding to a cybersecurity  
3 event;
- 4 2. The goals of the incident response plan;
- 5 3. The definition of clear roles, responsibilities, and levels  
6 of decision-making authority;
- 7 4. External and internal communications and information  
8 sharing;
- 9 5. Identification of requirements for the remediation of any  
10 identified weaknesses in information systems and associated  
11 controls;
- 12 6. Documentation and reporting regarding cybersecurity events  
13 and related incident response activities; and
- 14 7. The evaluation and revision as necessary of the incident  
15 response plan following a cybersecurity event.

16 I. Annually, each insurer domiciled in this state shall submit  
17 to the Commissioner a written statement by March 1, certifying that  
18 the insurer complies with the requirements set forth in this section.  
19 Each insurer shall maintain, for examination by the Insurance  
20 Department, all records, schedules, and data supporting this  
21 certificate for a period of five (5) years. To the extent an  
22 insurer has identified areas, systems, or processes that require  
23 material improvement, updating, or redesign, the insurer shall  
24 document the identification and the remedial efforts planned and

1 underway to address such areas, systems, or processes. The  
2 documentation shall be available for inspection by the Commissioner  
3 upon request.

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

7 A. If the licensee learns that a cybersecurity event has or  
8 may have occurred, the licensee, or an outside vendor or service  
9 provider designated to act on behalf of the licensee, shall conduct  
10 a prompt investigation.

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

14 1. Determine whether a cybersecurity event has occurred;

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

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

18 4. Perform or oversee reasonable measures to restore the  
19 security of the information systems compromised in the cybersecurity  
20 event in order to prevent further unauthorized acquisition, release,  
21 or use of nonpublic information in the possession, custody, or  
22 control of the licensee.

23 C. If the licensee learns that a cybersecurity event has or may  
24 have occurred in a system maintained by a third-party service

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

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

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

11 A. Every licensee shall notify the Insurance Commissioner  
12 without unreasonable delay, but not later than three business days,  
13 from a determination that a cybersecurity event involving nonpublic  
14 information that is in the possession of a licensee has occurred  
15 when either of the following criteria has been met:

16 1. This state is the state of domicile of the licensee, in the  
17 case of an insurer, or this state is the home state of the licensee,  
18 in the case of a producer, as those terms are defined in the  
19 Oklahoma Producer Licensing Act, Sections 1435.1 through 1435.41 of  
20 Title 36 of the Oklahoma Statutes, and the cybersecurity event has a  
21 reasonable likelihood of materially harming any material part of the  
22 normal operations of the licensee or any consumer residing in this  
23 state; or  
24



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

4           a. a cybersecurity event impacting the licensee of which  
5 notice is required to be provided to any government  
6 body, self-regulatory agency, or any other supervisory  
7 body pursuant to any state or federal law, or

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

10           (1) any consumer residing in this state, or

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

13           B. The licensee making the notification required in subsection  
14 A of this section shall provide as much of the following information  
15 as possible, electronically in the manner and form prescribed by the  
16 Commissioner, along with any applicable fees. The licensee shall  
17 have a continuing obligation to update and supplement initial and  
18 subsequent notifications to the Commissioner regarding material  
19 changes to previously provided information relating to the  
20 cybersecurity event. The licensee shall provide:

21           1. Date of the cybersecurity event;

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

- 1        3. How the cybersecurity event was discovered;
- 2        4. Whether any lost, stolen, or breached information has been  
3 recovered and, if so, how this was done;
- 4        5. The identity of the source of the cybersecurity event;
- 5        6. Whether the licensee has filed a police report or has  
6 notified any regulatory, government, or law enforcement agencies  
7 and, if so, when such notification was provided;
- 8        7. Description of the specific types of information acquired  
9 without authorization. The term "specific types of information"  
10 means particular data elements including, but not limited to, types  
11 of medical information, financial information, or information  
12 allowing identification of the consumer;
- 13        8. The period during which the information system was  
14 compromised by the cybersecurity event;
- 15        9. The number of total consumers in this state affected by the  
16 cybersecurity event. The licensee shall provide the best estimate  
17 in the initial report to the Commissioner and update this estimate  
18 with each subsequent report to the Commissioner pursuant to this  
19 section;
- 20        10. The results of any internal review identifying a lapse in  
21 either automated controls or internal procedures, or confirming that  
22 all automated controls or internal procedures were followed;
- 23        11. Description of efforts being undertaken to remediate the  
24 situation which permitted the cybersecurity event to occur;

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

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

6 C. A licensee shall comply with the procedures of the Security  
7 Breach Notification Act, Section 161 et seq. of Title 24 of the  
8 Oklahoma Statutes, to notify affected consumers and provide a copy  
9 of the notice sent to consumers under that statute to the  
10 Commissioner, when a licensee is required to notify the Commissioner  
11 under subsection A of this section.

12 D. 1. In the case of a cybersecurity event in a system  
13 maintained by a third-party service provider, of which the licensee  
14 has become aware, the licensee shall treat the event as it would  
15 under subsection A of this section unless the third-party service  
16 provider provides the notice required under subsection A of this  
17 section to the Commissioner and the licensee.

18 2. The computation of deadlines of the licensee shall begin on  
19 the day after the third-party service provider notifies the licensee  
20 of the cybersecurity event or the licensee otherwise has actual  
21 knowledge of the cybersecurity event, whichever is sooner.

22 3. Nothing in this act shall prevent or abrogate an agreement  
23 between a licensee and another licensee, a third-party service  
24

1 provider, or any other party to fulfill any of the investigation  
2 requirements impose or notice requirements imposed under this act.

3 E. 1. In the case of a cybersecurity event involving nonpublic  
4 information that is used by the licensee that is acting as an  
5 assuming insurer, or in the possession, custody, or control of a  
6 licensee, that is acting as an assuming insurer and that does not  
7 have a direct contractual relationship with the affected consumers,  
8 the assuming insurer shall notify its affected ceding insurers and  
9 the Commissioner of its state of domicile within three (3) business  
10 days of making the determination that a cybersecurity event has  
11 occurred. The ceding insurers that have a direct contractual  
12 relationship with affected consumers shall fulfill the consumer  
13 notification requirements imposed under the Security Breach  
14 Notification Act, Section 161 et seq. of Title 24 of the Oklahoma  
15 Statutes, and any other notification requirements relating to a  
16 cybersecurity event imposed under this section.

17 2. In the case of a cybersecurity event involving nonpublic  
18 information that is in the possession, custody, or control of a  
19 third-party service provider of a licensee that is an assuming  
20 insurer, the assuming insurer shall notify its affected ceding  
21 insurers and the Commissioner of its state of domicile within three  
22 (3) business days of receiving notice from its third-party service  
23 provider that a cybersecurity event has occurred. The ceding  
24 insurers that have a direct contractual relationship with affected

1 consumers shall fulfill the consumer notification requirements  
2 imposed under Security Breach Notification Act, Section 161 et seq.  
3 of Title 24 of the Oklahoma Statutes, and any other notification  
4 requirements relating to a cybersecurity event imposed under this  
5 section.

6 F. In the case of a cybersecurity event involving nonpublic  
7 information that is in the possession, custody, or control of a  
8 licensee that is an insurer or its third-party service provider for  
9 which a consumer accessed the services of the insurer through an  
10 independent insurance producer, and for which consumer notice is  
11 required by this act or the Security Breach Notification Act,  
12 Section 161 et seq. of Title 24 of the Oklahoma Statutes, the  
13 insurer shall notify the producers of record of all affected  
14 consumers of the cybersecurity event no later than the time at which  
15 notice is provided to the affected consumers. The insurer is  
16 excused from this obligation for any producers who are not  
17 authorized by law or contract to sell, solicit, or negotiate on  
18 behalf of the insurer, and in those instances in which the insurer  
19 does not have the current producer of record information for an  
20 individual consumer. Any licensee acting as an assuming insurer  
21 shall have no other notice obligations relating to a cybersecurity  
22 event or other data breach under this section or any other law of  
23 this state.

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

4           A. The Insurance Commissioner shall have power to examine and  
5 investigate the affairs of any licensee to determine whether the  
6 licensee has been or is engaged in any conduct in violation of the  
7 provisions of this act or any rules promulgated thereto. This power  
8 is in addition to the powers which the Commissioner has under  
9 applicable provisions of the Insurance Code including, but not  
10 limited to, Sections 309.1 through 309.6, 332, and 1250.4 of Title  
11 36 of the Oklahoma Statutes.

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

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

19           A. Any documents, materials, or other information in the  
20 control or possession of the Insurance Department that are furnished  
21 by a licensee or an employee or agent thereof acting on behalf of a  
22 licensee pursuant to the provisions of Section 4 and Section 6 of  
23 this act or that are obtained by the Insurance Commissioner in an  
24 investigation or examination pursuant to Section 7 of this act shall

1 be confidential by law and privileged, shall not be subject to the  
2 Oklahoma Open Records Act, shall not be subject to subpoena, and  
3 shall not be subject to discovery or admissible in evidence in any  
4 private civil action. However, the Commissioner is authorized to  
5 use the documents, materials, or other information in the  
6 furtherance of any regulatory or legal action brought as a part of  
7 the Commissioner's duties. The Commissioner shall not otherwise  
8 make the documents, materials, or other information public without  
9 the prior written consent of the licensee.

10 B. Neither the Commissioner nor any person who received  
11 documents, materials, or other information while acting under the  
12 authority of the Commissioner shall be permitted or required to  
13 testify in any private civil action concerning any confidential  
14 documents, materials, or information subject to subsection A of this  
15 section.

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

18 1. May share documents, materials, or other information  
19 including the confidential and privileged documents, materials, or  
20 information subject to subsection A of this section, with other  
21 state, federal, and international regulatory agencies, with the  
22 National Association of Insurance Commissioners and its affiliates  
23 or subsidiaries and with state, federal, and international law  
24 enforcement authorities; provided, that the recipient agrees in

1 writing to maintain the confidentiality and privileged status of the  
2 document, material, or other information;

3 2. May receive documents, materials, or information including  
4 otherwise confidential and privileged documents, materials, or  
5 information, from the National Association of Insurance  
6 Commissioners, its affiliates or subsidiaries, and from regulatory  
7 and law enforcement officials of other foreign or domestic  
8 jurisdictions, and shall maintain as confidential or privileged any  
9 document, material, or information received with notice or the  
10 understanding that it is confidential or privileged under the laws  
11 of the jurisdiction that is the source of the document, material, or  
12 information;

13 3. May share documents, materials, or other information subject  
14 to subsection A of this section, with a third-party consultant or  
15 vendor; provided, the consultant agrees in writing to maintain the  
16 confidentiality and privileged status of the document, material, or  
17 other information; and

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

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



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

7 F. Documents, materials, or other information in the possession  
8 or control of the National Association of Insurance Commissioners or  
9 a third-party consultant or vendor pursuant to this act shall not be  
10 construed to be public information, shall not be subject to the  
11 Oklahoma Open Records Act, shall not be subject to subpoena, and  
12 shall not be subject to discovery or admissible as evidence in any  
13 private civil action.

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

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

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

20 a. a licensee with less than Five Million Dollars  
21 (\$5,000,000.00) in gross annual revenue, is exempt  
22 from this act,

23 b. a licensee subject to the Health Insurance Portability  
24 and Accountability Act, Pub. L. 104-191, 110 Stat.

1 1936, as amended, that has established and maintains  
2 an information security program pursuant to such  
3 statutes, rules, regulations, procedures, or  
4 guidelines established thereunder, will be considered  
5 to meet the requirements of Section 4 of this act,  
6 provided that the licensee is compliant with and  
7 submits a written statement to the Commissioner  
8 certifying its compliance with the same, and

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

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

19 C. In the case of a violation of this act, a licensee may be  
20 penalized in accordance with any applicable sections of the  
21 Insurance Code, including, but not limited to, Section 908 of Title  
22 36 of the Oklahoma Statutes, or any other provision providing for  
23 penalties that the licensee is subject to under the license or  
24 permit of the licensee. Nothing in this act shall be construed to

1 impose any civil liability for any violation of this act or omission  
2 to act by the licensee or employees of the licensee.

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

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

9 Licensees shall have one (1) year from the effective date of  
10 this act to implement Section 4 of this act and two (2) years from  
11 the effective date of this act to implement subsection F of Section  
12 4 of this act.

13 SECTION 11. AMENDATORY 51 O.S. 2021, Section 24A.3, as  
14 last amended by Section 1, Chapter 402, O.S.L. 2022 (51 O.S. Supp.  
15 2022, Section 24A.3), is amended to read as follows:

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

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

1 of public funds or the administering of public property. ~~"Record"~~

2 Record does not mean:

3 a. computer software,

4 b. nongovernment personal effects,

5 c. unless public disclosure is required by other laws or

6 regulations, vehicle movement records of the Oklahoma

7 Transportation Authority obtained in connection with

8 the Authority's electronic toll collection system,

9 d. personal financial information, credit reports or

10 other financial data obtained by or submitted to a

11 public body for the purpose of evaluating credit

12 worthiness, obtaining a license, permit or for the

13 purpose of becoming qualified to contract with a

14 public body,

15 e. any digital audio/video recordings of the toll

16 collection and safeguarding activities of the Oklahoma

17 Transportation Authority,

18 f. any personal information provided by a guest at any

19 facility owned or operated by the Oklahoma Tourism and

20 Recreation Department to obtain any service at the

21 facility or by a purchaser of a product sold by or

22 through the Oklahoma Tourism and Recreation

23 Department,

24

- 1 g. a Department of Defense Form 214 (DD Form 214) filed  
2 with a county clerk including any DD Form 214 filed  
3 before July 1, 2002,
- 4 h. except as provided for in Section 2-110 of Title 47 of  
5 the Oklahoma Statutes<sup>7</sup>:  
6 (1) any record in connection with a Motor Vehicle  
7 Report issued by the Department of Public Safety,  
8 as prescribed in Section 6-117 of Title 47 of the  
9 Oklahoma Statutes, or  
10 (2) personal information within driver records, as  
11 defined by the Driver's Privacy Protection Act,  
12 18 United States Code, Sections 2721 through  
13 2725, which are stored and maintained by the  
14 Department of Public Safety, ~~or~~
- 15 i. any portion of any document or information provided to  
16 an agency or entity of the state or a political  
17 subdivision to obtain licensure under the laws of this  
18 state or a political subdivision that contains an  
19 applicant's personal address, personal phone number,  
20 personal electronic mail address or other contact  
21 information. Provided, however, lists of persons  
22 licensed, the existence of a license of a person, or a  
23 business or commercial address, or other business or  
24 commercial information disclosable under state law

1 submitted with an application for licensure shall be  
2 public record, or

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

6 2. "Public body" shall include, but not be limited to, any  
7 office, department, board, bureau, commission, agency, trusteeship,  
8 authority, council, committee, trust or any entity created by a  
9 trust, county, city, village, town, township, district, school  
10 district, fair board, court, executive office, advisory group, task  
11 force, study group or any subdivision thereof, supported in whole or  
12 in part by public funds or entrusted with the expenditure of public  
13 funds or administering or operating public property, and all  
14 committees, or subcommittees thereof. Except for the records  
15 required by Section 24A.4 of this title, ~~"public body"~~ public body  
16 does not mean judges, justices, the Council on Judicial Complaints,  
17 the Legislature or legislators. ~~"Public body"~~ Public body shall not  
18 include an organization that is exempt from federal income tax under  
19 Section 501(c)(3) of the Internal Revenue Code of 1986, as amended,  
20 and whose sole beneficiary is a college or university, or an  
21 affiliated entity of the college or university, that is a member of  
22 The Oklahoma State System of Higher Education. Such organization  
23 shall not receive direct appropriations from the Oklahoma  
24

1 Legislature. The following persons shall not be eligible to serve  
2 as a voting member of the governing board of the organization:

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

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

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

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

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

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

21 SECTION 12. This act shall become effective November 1, 2023.

22 COMMITTEE REPORT BY: COMMITTEE ON RETIREMENT AND INSURANCE  
23 February 21, 2023 - DO PASS AS AMENDED BY CS  
24