

## **LD 51, An Act To Enact the Maine Insurance Data Security Act**

### **SUMMARY:**

This bill has been submitted by the Bureau of Insurance. This bill enacts the Maine Insurance Data Security Act by adding a new chapter to the Maine Insurance Code, Title 24-A. The law would apply to insurers, insurance producers (agents) and other entities licensed by the Bureau of Insurance.

The bill establishes standards for data security and information systems and for the investigation and notification to the Superintendent of Insurance of “cybersecurity events.”

Entities licensed by the Bureau of Insurance would be required to develop, implement and maintain an information security program based on the entities’ ongoing risk assessment for protecting consumers’ personal information. Licensees with fewer than 10 employees are exempt from this requirement.

Insurance carriers domiciled in Maine are required to annually certify compliance to the Superintendent.

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## ISSUES FOR CONSIDERATION:

1. LD 51 reflects the language unanimously supported by HCIFS Committee in 129<sup>th</sup> Legislature in [LD 1995](#), An Act To Enact the Maine Insurance Data Security Act. LD 1995 was voted OTP-A by HCIFS and reported out of committee, but was not taken up in any special session before termination of the 129<sup>th</sup> Legislature. The language was developed with input of stakeholders; additional changes were considered by committee but not included in the final language.

2. Under current law, insurers are subject to the provisions of [Title 10, chapter 210-B, the Notice of Risk to Personal Data Act](#).

- The law requires that if an insurer who maintains computerized data that includes personal information becomes aware of a breach of the security of the system, the insurer is required to conduct in good faith a reasonable and prompt investigation to determine the likelihood that personal information has been or will be misused and shall give notice of a breach of the security of the system following discovery or notification of the security breach to a resident of this State if misuse of the personal information has occurred or if it is reasonably possible that misuse will occur.
- The notice must be made as expeditiously as possible and without unreasonable delay, consistent with the legitimate needs of law enforcement or with measures necessary to determine the scope of the security breach and restore the reasonable integrity, security and confidentiality of the data in the system. If there is no delay of notification due to a law enforcement investigation, the notices must be made no more than 30 days after the insurer becomes aware of a breach of security and identifies its scope.
- Notice to the appropriate State regulator is also required. LD 51 includes notification provisions regarding cybersecurity events to the Superintendent of Insurance and is not intended to conflict with the provisions in Title 10.

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## ISSUES FOR CONSIDERATION (cont'd):

3. Consider further language changes to the bill suggested by insurer representatives, including:

- Clarify definition of “cybersecurity event” and “information system” by adding references to nonpublic information
- Further clarify that Legislature’s intent is that the law establishes exclusive standards for data security
- Add safe harbor language to recognize compliance with substantially similar laws in other states
- Add materiality factor to determination of when notice to BOI must be provided
- Remove discretion of BOI to determine when notice is provide to producers by insurers
- Clarify confidentiality language
- Consider extending effective dates from January 1, 2022 and January 1, 2023 to January 1, 2023 and January 1, 2024 respectively

4. LD 51 is based on a model law developed by the National Association of Insurance Commissioners.

According to the [NAIC June 2020 State Legislative Issue Brief](#), the model law has been adopted in 11 states: AL, CT, DE, IN, LA, MI, MS, NH, OH, SC and VA. 10 of the 11 state laws have made various changes to the model depending on the state; 8 states have included a materiality factor as to notification.

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## **ISSUES FOR CONSIDERATION (cont'd):**

5. As drafted, LD 51 provides that documents submitted to the Superintendent by a licensee to certify annual compliance with the law's requirements, to notify the Superintendent about a cybersecurity event or to response to requests during an examination or investigation are not public records. See page 10 of the bill. Pursuant to 1 MRSA §434, any legislation proposing a new public records exception must be reviewed by the Judiciary Committee. If committee moves forward, the language must be referred to JUD for further review. Last session, the Judiciary Committee previously reviewed the same language that was included in LD 1995 and recommended no changes. See [memo](#) from Judiciary Committee.

## **FISCAL INFORMATION:**

Minor cost increase-Other Special Revenue Funds

Any additional costs to the Department of Professional and Financial Regulation to adopt the changes in this bill are expected to be minor and can be absorbed within existing budgeted resources.