Bill Number:	S. 0856 Introduced on January 9, 2018
Author:	Cromer
Subject:	SC Insurance Data Security Act
Requestor:	Senate Banking and Insurance
RFA Analyst(s):	Wren
Impact Date:	January 22, 2018

Estimate of Fiscal Impact

	FY 2018-19	FY 2019-20
State Expenditure		
General Fund	$0	$0
Other and Federal	$0	$0
Full-Time Equivalent Position(s)	0.00	0.00
State Revenue		
General Fund	$0	Undetermined
Other and Federal	$0	$0
Local Expenditure	$0	$0
Local Revenue	$0	$0

Fiscal Impact Summary
This bill will have no expenditure impact on the General Fund, Other Funds, or Federal Funds as the bill requires the Department of Insurance (DOI) and the Department of Consumer Affairs to perform activities within the normal course of agency business. The revenue impact on the General Fund beginning in FY 2019-20 is undetermined since data is not available to determine the number of security breach notices that occurred in prior years due to an entity not having a comprehensive information security program in place. This bill will have no impact on Other or Federal Fund revenues.

Explanation of Fiscal Impact

Introduced on January 9, 2018
State Expenditure
This bill adds Chapter 99 to Title 38 to enact the South Carolina Insurance Data Security Act. The bill authorizes the DOI director to promulgate regulations necessary for the administration of this new chapter. The bill requires insurers, insurance brokers, and insurance producers to develop, implement, and maintain a comprehensive written information security program based on the licensee's risk assessment that contains administrative, technical, and physical safeguards for the protection of nonpublic information. The licensee's information security program must be designed to protect the security and confidentiality of nonpublic information, protect against threats or hazards to the security or integrity of nonpublic information, protect against unauthorized access to or use of nonpublic information, and define and periodically reevaluate a schedule for retention of nonpublic information. A licensee domiciled in this state must submit a written statement to the DOI director no later than February 15 annually certifying that the

insurer is in compliance with the requirements of this bill. If the licensee learns that a cybersecurity event has occurred or may have occurred, the licensee, an outside vendor, or service provider designated to act on behalf of the licensee must conduct a prompt investigation of the event. A licensee must notify the DOI director no later than seventy-two hours after determining that a cybersecurity event has occurred if South Carolina is the licensee's state of domicile in the case of an insurer, or the licensee's home state in the case of a producer or the licensee reasonably believes that the nonpublic information involved is of no less than 250 consumers residing in this state and the cybersecurity event meets certain criteria. A licensee must comply with the notice requirements of Section 39-1-90 and any other applicable law and provide a copy of the notice sent to consumers to the director of DOI when the licensee is required to notify the director. Licensees who violate the provisions of this bill are subject to penalties as provided in Section 38-2-10. Licensees with fewer than ten employees, an employee agent, representative or designee of a licensee who is also a licensee, and licensees subject to the Health Insurance Portability and Accountability Act, Pub.L. 104-191, 110 Stat. 1936 are exempt from the provisions of this bill. Further, licensees have until July 1, 2019, to implement Section 38-99-20 of this bill, which requires licensees to develop, implement, and maintain the information security program. Licensees have until July 1, 2020, to implement Section 38-99-20(F) of this bill, which requires licensees to exercise due diligence in selecting its third-party service providers and requires a third-party provider to implement secure information systems.

The Department of Insurance. DOI indicates that the bill requires the agency to perform activities within the normal course of agency business. Therefore, the bill would have no expenditure impact on the General Fund, Other Funds, or Federal Funds.

Department of Consumer Affairs. This bill requires insurance licensees to comply with the consumer notification requirements imposed under Section 39-1-90. The department indicates that Section 39-1-90 currently applies to all individuals and organizations conducting business in the state. The bill does not alter current responsibilities of the department and will therefore have no expenditure impact on the General Fund, Other Funds, or Federal Funds.

State Revenue

The bill requires insurers, insurance brokers, and insurance producers to develop, implement, and maintain a comprehensive written information security program based on the licensee's risk assessment that contains administrative, technical, and physical safeguards for the protection of nonpublic information. Licensees must comply with the notice requirements pursuant to Section 39-1-90. Licensees who violate the provisions of this bill are subject to penalties as provided in Section 38-2-10.

Section 39-1-90(H), which pertains to noncompliance of notice requirements regarding breach of security of business data, allows an administrative fine in the amount of $1,000 per resident whose information was accessible by reason of breach. Section 39-1-90(H) currently includes individuals or organizations who conduct business in this state and own, license, or maintain computerized data or other data that includes personal identifying information. Since Section 39-1-90 currently applies to all individuals and organizations in this state, this portion of the bill will have no revenue impact on the General Fund, Other Funds, or Federal Funds.

A licensee who violates the provisions of this bill is subject to penalties as provided in Section 38-2-10. The administrative fine ranges from an amount not to exceed $15,000 to an amount not to exceed $30,000 if the violator is an insurer or a health maintenance organization. The administrative fine ranges from an amount not to exceed $2,500 to an amount not to exceed $5,000 if the violator is a person, other than an insurer or a health maintenance organization. These penalties are in addition to any criminal penalties provided by law or any other remedies provided by law. Also, the administrative proceedings do not preclude civil or criminal proceedings from taking place before, during, or after the administrative proceeding. These administrative penalties are credited to the General Fund. Based upon data provided by the Department of Consumer Affairs, there were approximately nine security breach notices reported in this state by insurance companies in 2016. Data is not available to determine the number of breaches that occurred due to an entity not having a comprehensive information security program in place. Therefore, the increase in General Fund revenue beginning in FY 2019-20 due to additional administrative fines for violations pursuant to Section 38-2-10 is undetermined.

Local Expenditure
N/A

Local Revenue
N/A

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