Information Technology
Contracts/Insurance/Liability

Per S.L. 2015-241, Sec. 7.20

Joint Legislative Oversight Committee on Information Technology

March 3, 2016

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Department of Insurance Charge:

Sec. 7.20.(4):

"In consultation with the Department of Insurance, an analysis of the feasibility of developing a surplus line insurance policy and rate schedule for data breach liability coverage."

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Department of Insurance Response:

- It would be feasible for DOI to develop a policy and rate schedule for data breach liability coverage.
  - Note – to do so DOI will require industry assistance and expertise.

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Policy development will require:

- Significant assistance from the Department's broker (NCAIA) and insurance carriers.

Rate schedule development will require:

- Significant effort to fully understand underwriting rating criteria.
- Rating information from Insurance Services Office.

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Rationale for assistance needs:

Cyber liability is *not* within DOI staff expertise.

- Requires in depth risk management services of Cyber Liability carriers.
- To do in house, DOI would need to either establish or contract for:
    - Investigative resources
    - Data restoration resources
    - Credit monitoring resources

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Self-Insurance feasible?

- Due to enormity of potential losses, costly.
- Significant allocation would be necessary to self-insure against potential data breach

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Committee Questions :

- What would it cost for the State to have either an umbrella policy for data breach or a contract specific data breach policy?
  - Cost of such policies anticipated to be significant.

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Committee Questions :

- *Recommendation –*
  - More cost effective to obtain coverage either in a primary or excess policy and utilize the established resources of a Cyber Liability Insurance carrier.
  - Carriers currently provide the necessary services, including:
    - risk management
    - data restoration
    - investigative and credit monitoring resources

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Committee Questions :

- Could DOI regulate an insurance market for data breach insurance and allow it to be sold in the State?
  - Yes.
  - Policies providing this coverage are currently available
  - General Statute governing such policies – G.S. 58-41-50.

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Sample cost factors for potential policy cost variations:

- Coverage limits
- Retention thresholds
- Type of breach responses covered
- Amount of network asset protection provided
- Number of notified individuals
- Coverage triggers
- Types of data covered

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Example state policies in place now

- **Tennessee** - $5MM Liability/$3MM Breach Response/$1MM Network Asset Protection
  - Policy Cost: $240,000; carrier – NAS
- **West Virginia** - $25MM limit/ $1MM retention
  - Policy Cost: $500,000; carrier - Lloyd's of London
- **Nevada** – added benefit as part of the state's property insurance program with APIP