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National Council of Insurance Legislators (NCOIL)

Resolution in Support of Existing Law Exemptions for New Data Privacy Laws

**Sponsored by Rep. Forrest Bennett (OK)*

**Adopted by the NCOIL Financial Services & Multi-Lines Issues Committee on July 20, 2023, and the NCOIL Executive Committee on July 22, 2023.*

WHEREAS, consumer information from millions of Americans is being collected, organized, and utilized to better understand consumer behavior, perform research, develop new products and services, and create “big data”; and

WHEREAS, the use of big data has accelerated innovation and produced positive outcomes in the insurance and health care sectors and in a myriad of other industries; and

WHEREAS, big data is being used to revolutionize health care, especially in the acceleration of drug development to treat rare diseases; and

WHEREAS, increased data collection in connection with clinical trials and the use of data to study the impact of drug utilization on patient health are helping to ensure that health care treatments, including drugs, are safer; and

WHEREAS, the protection of consumer data is an important public policy issue; and

WHEREAS, some industries, including the health care and insurance fields and those performing clinical research, are subject to longstanding, comprehensive, and robust data privacy requirements; and

WHEREAS, state legislatures are increasingly considering and enacting legislation that would establish data privacy regimes for data brokers and others not already subject to such a framework; and

WHEREAS, it is imperative to safeguard the confidentiality of a consumer's health records without sacrificing or undermining advances and innovation in health care; and

WHEREAS, the states that have established data privacy regimes for data brokers and others not already subject to such a framework (e.g. Texas and Virginia) have included narrow exemptions in those laws that recognize the requirements clinical researchers must already comply with and avoid the adoption of duplicative and conflicting data privacy mandates; and

BE IT NOW THEREFORE RESOLVED, that the National Council of Insurance Legislators (NCOIL) supports innovation in health care in an environment that protects a consumer's right to privacy; and

BE IT NOW FURTHER RESOLVED, that NCOIL urges states that are considering legislation that would establish data privacy regimes for data brokers and others to incorporate exemptions for:

- Entities or information already subject to existing legislative data privacy regimes;
- Identifiable private information that is subject to the federal regulations established for the protection of human subjects in research (i.e. 45 C.F.R. Part 46 and 21 C.F.R. Parts 6, 50, and 56);
- Identifiable private information that is collected as part of human subjects research pursuant to the good clinical practice guidelines issued by The International Council for Harmonisation of Technical Requirements for Pharmaceuticals for Human Use;
- Information that is deidentified in accordance with the requirements for deidentification pursuant to Health Insurance Portability and Accountability Act (HIPAA); and
- Information originating from, and intermingled to be indistinguishable with, or information treated in the same manner as information maintained by a covered entity or business associate as defined by HIPAA or a program or a qualified service organization as defined by 42 U.S.C. § 290dd-2; and

BE IT NOW FURTHER RESOLVED, that the exemptions encouraged in this Resolution are not intended and should not be interpreted to be exclusive of other exemptions to comprehensive data privacy regimes that states may consider; and

BE IT FINALLY RESOLVED, that a copy of this Resolution shall be sent to the Members of each State's committee with jurisdiction over data privacy laws.