

HOUSE COMMITTEE OF REFERENCE REPORT

Chair of Committee

Date

May 28, 2021

Committee on Health & Insurance.

After consideration on the merits, the Committee recommends the following:

SB21-169 be amended as follows, and as so amended, be referred to the Committee of the Whole with favorable recommendation:

- 1 Amend reengrossed bill, strike everything below the enacting clause and
2 substitute:
- 3 **"SECTION 1. Legislative declaration.** (1) The general
4 assembly finds that:
- 5 (a) Increasingly, insurers use external consumer data and
6 information sources, as well as algorithms and predictive models using
7 external consumer data and information sources, in their insurance rating,
8 underwriting, claims, and other business practices;
- 9 (b) Although such tools have the potential to benefit insurers and
10 consumers by simplifying and expediting insurance rating, underwriting,
11 and claims processes, the accuracy and reliability of external consumer
12 data and information sources can vary greatly, and some algorithms and
13 predictive models may lack a sufficient rationale for use in insurance
14 practices; and
- 15 (c) The use of particular external consumer data and information
16 sources, as well as algorithms and predictive models using external
17 consumer data and information sources, by insurers may have a
18 significant negative impact not only on the availability and affordability
19 of insurance for protected classes of consumers, but also on the utilization
20 of such insurance.
- 21 (2) The general assembly therefore declares that in order to ensure
22 that all Colorado residents have fair and equitable access to insurance
23 products, it is necessary to:
- 24 (a) Prohibit:

1 (I) Unfair discrimination based on race, color, national or ethnic
2 origin, religion, sex, sexual orientation, disability, gender identity, or
3 gender expression in any insurance practice; and

4 (II) The use of external consumer data and information sources,
5 as well as algorithms and predictive models using external consumer data
6 and information sources, which use has the result of unfairly
7 discriminating based on race, color, national or ethnic origin, religion,
8 sex, sexual orientation, disability, gender identity, or gender expression;
9 and

10 (b) After notice and rule-making by the commissioner of
11 insurance, require insurers that use external consumer data and
12 information sources, algorithms, and predictive models to control for, or
13 otherwise demonstrate that such use does not result in, unfair
14 discrimination.

15 **SECTION 2.** In Colorado Revised Statutes, **add** 10-3-1104.9 as
16 follows:

17 **10-3-1104.9. Insurers' use of external consumer data and**
18 **information sources, algorithms, and predictive models -**
19 **consideration of protected class status prohibited - unfair**
20 **discrimination prohibited - rules - stakeholder process required -**
21 **investigations - definitions - repeal.** (1) IN ADDITION TO THE METHODS
22 AND PRACTICES PROHIBITED PURSUANT TO SECTION 10-3-1104 (1)(f), AN
23 INSURER SHALL NOT, WITH REGARD TO ANY INSURANCE PRACTICE:

24 (a) UNFAIRLY DISCRIMINATE BASED ON RACE, COLOR, NATIONAL
25 OR ETHNIC ORIGIN, RELIGION, SEX, SEXUAL ORIENTATION, DISABILITY,
26 GENDER IDENTITY, OR GENDER EXPRESSION; OR

27 (b) PURSUANT TO RULES ADOPTED BY THE COMMISSIONER, USE
28 ANY EXTERNAL CONSUMER DATA AND INFORMATION SOURCES, AS WELL
29 AS ANY ALGORITHMS OR PREDICTIVE MODELS THAT USE EXTERNAL
30 CONSUMER DATA AND INFORMATION SOURCES, IN A WAY THAT UNFAIRLY
31 DISCRIMINATES BASED ON RACE, COLOR, NATIONAL OR ETHNIC ORIGIN,
32 RELIGION, SEX, SEXUAL ORIENTATION, DISABILITY, GENDER IDENTITY, OR
33 GENDER EXPRESSION.

34 (2) (a) THE COMMISSIONER SHALL ADOPT RULES FOR THE
35 IMPLEMENTATION OF THIS SECTION.

36 (b) THE COMMISSIONER SHALL ENGAGE IN A STAKEHOLDER
37 PROCESS PRIOR TO THE ADOPTION OF RULES FOR ANY TYPE OF INSURANCE
38 THAT INCLUDES CARRIERS, PRODUCERS, CONSUMER REPRESENTATIVES,
39 AND OTHER INTERESTED PARTIES. THE COMMISSIONER SHALL HOLD
40 STAKEHOLDER MEETINGS FOR STAKEHOLDERS OF DIFFERENT TYPES OF
41 INSURANCE TO ENSURE SUFFICIENT OPPORTUNITY TO CONSIDER FACTORS

1 AND PROCESSES RELEVANT TO EACH TYPE OF INSURANCE. THE
2 COMMISSIONER SHALL PROVIDE NOTICE OF STAKEHOLDER MEETINGS ON
3 THE DIVISION WEBSITE, AND STAKEHOLDER MEETINGS SHALL BE OPEN TO
4 THE PUBLIC.

5 (3) (a) AFTER THE STAKEHOLDER PROCESS DESCRIBED IN
6 SUBSECTION (2) OF THIS SECTION, THE COMMISSIONER SHALL ADOPT RULES
7 FOR SPECIFIC TYPES OF INSURANCE, BY INSURANCE PRACTICE, WHICH
8 RULES ESTABLISH MEANS BY WHICH AN INSURER MAY DEMONSTRATE, TO
9 THE EXTENT PRACTICABLE, THAT IT HAS TESTED WHETHER ITS USE OF
10 EXTERNAL CONSUMER DATA AND INFORMATION SOURCES, AS WELL AS
11 ALGORITHMS OR PREDICTIVE MODELS USING EXTERNAL CONSUMER DATA
12 AND INFORMATION SOURCES, UNFAIRLY DISCRIMINATES BASED ON RACE,
13 COLOR, NATIONAL OR ETHNIC ORIGIN, RELIGION, SEX, SEXUAL
14 ORIENTATION, DISABILITY, GENDER IDENTITY, OR GENDER EXPRESSION.
15 THE RULES SHALL NOT BECOME EFFECTIVE UNTIL JANUARY 1, 2023, AT
16 THE EARLIEST, FOR ANY TYPE OF INSURANCE, AND THE COMMISSIONER
17 SHALL CONSIDER SOLVENCY IMPACTS, IF ANY, TO INSURERS IN ADOPTING
18 THE RULES.

19 (b) RULES ADOPTED PURSUANT TO THIS SECTION MUST REQUIRE
20 EACH INSURER TO:

21 (I) PROVIDE INFORMATION TO THE COMMISSIONER CONCERNING
22 THE EXTERNAL CONSUMER DATA AND INFORMATION SOURCES USED BY
23 THE INSURER IN THE DEVELOPMENT AND IMPLEMENTATION OF
24 ALGORITHMS AND PREDICTIVE MODELS FOR A PARTICULAR TYPE OF
25 INSURANCE AND INSURANCE PRACTICE;

26 (II) PROVIDE AN EXPLANATION OF THE MANNER IN WHICH THE
27 INSURER USES EXTERNAL CONSUMER DATA AND INFORMATION SOURCES,
28 AS WELL AS ALGORITHMS AND PREDICTIVE MODELS USING EXTERNAL
29 CONSUMER DATA AND INFORMATION SOURCES, FOR THE PARTICULAR TYPE
30 OF INSURANCE AND INSURANCE PRACTICE;

31 (III) ESTABLISH AND MAINTAIN A RISK MANAGEMENT FRAMEWORK
32 OR SIMILAR PROCESSES OR PROCEDURES THAT ARE REASONABLY DESIGNED
33 TO DETERMINE, TO THE EXTENT PRACTICABLE, WHETHER THE INSURER'S
34 USE OF EXTERNAL CONSUMER DATA AND INFORMATION SOURCES, AS WELL
35 AS ALGORITHMS AND PREDICTIVE MODELS USING EXTERNAL CONSUMER
36 DATA AND INFORMATION SOURCES, UNFAIRLY DISCRIMINATES BASED ON
37 RACE, COLOR, NATIONAL OR ETHNIC ORIGIN, RELIGION, SEX, SEXUAL
38 ORIENTATION, DISABILITY, GENDER IDENTITY, OR GENDER EXPRESSION;

39 (IV) PROVIDE AN ASSESSMENT OF THE RESULTS OF THE RISK
40 MANAGEMENT FRAMEWORK OR SIMILAR PROCESSES OR PROCEDURES AND
41 ACTIONS TAKEN TO MINIMIZE THE RISK OF UNFAIR DISCRIMINATION,

1 INCLUDING ONGOING MONITORING; AND
2 (V) PROVIDE AN ATTESTATION BY ONE OR MORE OFFICERS THAT
3 THE INSURER HAS IMPLEMENTED THE RISK MANAGEMENT FRAMEWORK OR
4 SIMILAR PROCESSES OR PROCEDURES APPROPRIATELY ON A CONTINUOUS
5 BASIS.
6 (c) THE RULES ADOPTED BY THE COMMISSIONER PURSUANT TO THIS
7 SECTION MUST INCLUDE PROVISIONS ESTABLISHING:
8 (I) A REASONABLE PERIOD OF TIME FOR INSURERS TO REMEDY ANY
9 UNFAIRLY DISCRIMINATORY IMPACT IN AN ALGORITHM OR PREDICTIVE
10 MODEL; AND
11 (II) THE ABILITY OF INSURERS TO USE EXTERNAL CONSUMER DATA
12 AND INFORMATION SOURCES, AS WELL AS ALGORITHMS OR PREDICTIVE
13 MODELS USING EXTERNAL CONSUMER DATA AND INFORMATION SOURCES,
14 THAT HAVE BEEN PREVIOUSLY ASSESSED BY THE DIVISION AND FOUND NOT
15 TO BE UNFAIRLY DISCRIMINATORY.
16 (d) DOCUMENTS, MATERIALS, AND OTHER INFORMATION IN THE
17 POSSESSION OR CONTROL OF THE DIVISION THAT ARE OBTAINED BY,
18 CREATED BY, OR DISCLOSED TO THE COMMISSIONER OR ANY OTHER
19 PERSON PURSUANT TO THIS SECTION OR ANY RULES ADOPTED PURSUANT
20 TO THIS SECTION ARE RECOGNIZED AS PROPRIETARY AND CONTAINING
21 TRADE SECRETS. ALL SUCH DOCUMENTS, MATERIALS, AND OTHER
22 INFORMATION ARE CONFIDENTIAL AND PRIVILEGED; ARE NOT SUBJECT TO
23 DISCLOSURE UNDER THE "COLORADO OPEN RECORDS ACT", PART 2 OF
24 ARTICLE 72 OF TITLE 24, OR OTHER OPEN RECORDS, FREEDOM OF
25 INFORMATION, SUNSHINE, OR SIMILAR LAW OF THIS STATE; ARE NOT
26 SUBJECT TO SUBPOENA; AND ARE NOT SUBJECT TO DISCOVERY OR
27 ADMISSIBLE IN EVIDENCE IN ANY PRIVATE CIVIL ACTION. HOWEVER, THE
28 COMMISSIONER MAY USE THE DOCUMENTS, MATERIALS, OR OTHER
29 INFORMATION IN THE FURTHERANCE OF ANY REGULATORY OR LEGAL
30 ACTION BROUGHT AS PART OF THE COMMISSIONER'S OFFICIAL DUTIES. THE
31 COMMISSIONER SHALL NOT OTHERWISE MAKE THE DOCUMENTS,
32 MATERIALS, OR OTHER INFORMATION PUBLIC WITHOUT THE PRIOR WRITTEN
33 CONSENT OF THE INSURER FROM WHICH THE DOCUMENTS, MATERIALS, OR
34 OTHER INFORMATION WAS OBTAINED. THE COMMISSIONER MAY MAKE
35 DATA PUBLICLY AVAILABLE IN AN AGGREGATED OR DE-IDENTIFIED
36 FORMAT IN A MANNER DEEMED APPROPRIATE BY THE COMMISSIONER.
37 (4) PURSUANT TO SECTION 10-3-1106, THE COMMISSIONER MAY
38 EXAMINE AND INVESTIGATE AN INSURER'S USE OF AN EXTERNAL
39 CONSUMER DATA AND INFORMATION SOURCE, ALGORITHM, OR PREDICTIVE
40 MODEL IN ANY INSURANCE PRACTICE. INSURERS SHALL COOPERATE WITH
41 THE COMMISSIONER AND THE DIVISION IN ANY EXAMINATION OR

1 INVESTIGATION UNDER THIS SECTION.

2 (5) (a) IN THE REPORT SUBMITTED BY THE DEPARTMENT OF
3 REGULATORY AGENCIES TO THE LEGISLATIVE COMMITTEES OF REFERENCE
4 DURING THE FIRST TWO WEEKS OF EACH REGULAR LEGISLATIVE SESSION,
5 PURSUANT TO PART 2 OF ARTICLE 7 OF TITLE 2, THE DIVISION SHALL
6 INCLUDE INFORMATION CONCERNING ANY RULES ADOPTED PURSUANT TO
7 THIS SECTION AND ANY CHANGES IN INSURANCE RATES THAT HAVE
8 RESULTED FROM THE PROHIBITIONS DESCRIBED IN SUBSECTION (1) OF THIS
9 SECTION.

10 (b) THIS SUBSECTION (5) IS REPEALED, EFFECTIVE JULY 1, 2025.

11 (6) NOTWITHSTANDING ANY PROVISION OF THIS SECTION TO THE
12 CONTRARY, THIS SECTION DOES NOT APPLY TO:

13 (a) TITLE INSURANCE, AS DEFINED IN SECTION 10-11-102 (8);

14 (b) BONDS EXECUTED BY QUALIFIED SURETY COMPANIES
15 PURSUANT TO PART 3 OF ARTICLE 4 OF THIS TITLE 10; OR

16 (c) INSURERS ISSUING COMMERCIAL INSURANCE POLICIES; EXCEPT
17 THAT THIS SECTION DOES APPLY TO INSURERS THAT ISSUE BUSINESS
18 OWNERS' POLICIES OR COMMERCIAL GENERAL LIABILITY POLICIES, WHICH
19 BUSINESS OWNERS' POLICIES OR COMMERCIAL GENERAL LIABILITY POLICIES
20 HAVE ANNUAL PREMIUMS OF TEN THOUSAND DOLLARS OR LESS.

21 (7) NOTHING IN THIS SECTION:

22 (a) REQUIRES AN INSURER TO COLLECT FROM AN APPLICANT OR
23 POLICYHOLDER THE RACE, COLOR, NATIONAL OR ETHNIC ORIGIN, RELIGION,
24 SEX, SEXUAL ORIENTATION, DISABILITY, GENDER IDENTITY, OR GENDER
25 EXPRESSION OF AN INDIVIDUAL; OR

26 (b) MAY BE CONSTRUED TO:

27 (I) PROHIBIT THE USE OF, OR REQUIRE LIFE, ANNUITY, LONG-TERM
28 CARE, OR DISABILITY INSURERS TO TEST, MEDICAL, FAMILY HISTORY,
29 OCCUPATIONAL, DISABILITY, OR BEHAVIORAL INFORMATION RELATED TO
30 A SPECIFIC INDIVIDUAL, WHICH INFORMATION, BASED ON ACTUARIALLY
31 SOUND PRINCIPLES, HAS A DIRECT RELATIONSHIP TO MORTALITY,
32 MORBIDITY, OR LONGEVITY RISK UNLESS SUCH INFORMATION IS
33 OTHERWISE INCLUDED IN THE TESTING OF AN ALGORITHM OR PREDICTIVE
34 MODEL THAT ALSO USES EXTERNAL CONSUMER DATA AND INFORMATION
35 SOURCES;

36 (II) PROHIBIT THE USE OF, OR REQUIRE LIFE, ANNUITY, LONG-TERM
37 CARE, OR DISABILITY INSURERS TO TEST, TRADITIONAL UNDERWRITING
38 FACTORS BEING USED FOR THE EXCLUSIVE PURPOSE OF DETERMINING
39 INSURABLE INTEREST OR ELIGIBILITY FOR COVERAGE UNLESS SUCH
40 FACTORS ARE OTHERWISE INCLUDED IN THE TESTING OF AN ALGORITHM OR
41 PREDICTIVE MODEL THAT ALSO USES EXTERNAL CONSUMER DATA AND



1 INFORMATION SOURCES;
2 (III) AMEND, MODIFY, OR SUPERSEDE SECTION 10-3-1104
3 (1)(f)(III) OR (1)(f)(IV); OR
4 (IV) PROHIBIT THE USE OF OR REQUIRE THE TESTING OF
5 LONGSTANDING AND WELL-ESTABLISHED COMMON INDUSTRY PRACTICES
6 IN SETTling CLAIMS OR TRADITIONAL UNDERWRITING PRACTICES UNLESS
7 SUCH PRACTICES OR FACTORS ARE OTHERWISE INCLUDED IN THE TESTING
8 OF AN ALGORITHM OR PREDICTIVE MODEL THAT ALSO USES EXTERNAL
9 CONSUMER DATA AND INFORMATION SOURCES.
10 (9) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE
11 REQUIRES:
12 (a) "ALGORITHM" MEANS A COMPUTATIONAL OR MACHINE
13 LEARNING PROCESS THAT INFORMS HUMAN DECISION MAKING IN
14 INSURANCE PRACTICES.
15 (b) (I) "EXTERNAL CONSUMER DATA AND INFORMATION SOURCE"
16 MEANS A DATA OR AN INFORMATION SOURCE THAT IS USED BY AN INSURER
17 TO SUPPLEMENT TRADITIONAL UNDERWRITING OR OTHER INSURANCE
18 PRACTICES OR TO ESTABLISH LIFESTYLE INDICATORS THAT ARE USED IN
19 INSURANCE PRACTICES. "EXTERNAL CONSUMER DATA AND INFORMATION
20 SOURCE" INCLUDES CREDIT SCORES, SOCIAL MEDIA HABITS, LOCATIONS,
21 PURCHASING HABITS, HOME OWNERSHIP, EDUCATIONAL ATTAINMENT,
22 OCCUPATION, LICENSURES, CIVIL JUDGMENTS, AND COURT RECORDS.
23 (II) THE COMMISSIONER MAY PROMULGATE RULES TO FURTHER
24 DEFINE "EXTERNAL CONSUMER DATA AND INFORMATION SOURCE" FOR
25 PARTICULAR LINES OF INSURANCE AND INSURANCE PRACTICES.
26 (c) "INSURANCE PRACTICE" MEANS MARKETING, UNDERWRITING,
27 PRICING, UTILIZATION MANAGEMENT, REIMBURSEMENT METHODOLOGIES,
28 AND CLAIMS MANAGEMENT IN THE TRANSACTION OF INSURANCE.
29 (d) "PREDICTIVE MODEL" MEANS A PROCESS OF USING
30 MATHEMATICAL AND COMPUTATIONAL METHODS THAT EXAMINE CURRENT
31 AND HISTORICAL DATA SETS FOR UNDERLYING PATTERNS AND CALCULATE
32 THE PROBABILITY OF AN OUTCOME.
33 (e) "UNFAIRLY DISCRIMINATE" AND "UNFAIR DISCRIMINATION"
34 INCLUDE THE USE OF ONE OR MORE EXTERNAL CONSUMER DATA AND
35 INFORMATION SOURCES, AS WELL AS ALGORITHMS OR PREDICTIVE MODELS
36 USING EXTERNAL CONSUMER DATA AND INFORMATION SOURCES, THAT
37 HAVE A CORRELATION TO RACE, COLOR, NATIONAL OR ETHNIC ORIGIN,
38 RELIGION, SEX, SEXUAL ORIENTATION, DISABILITY, GENDER IDENTITY, OR
39 GENDER EXPRESSION, AND THAT USE RESULTS IN A DISPROPORTIONATELY
40 NEGATIVE OUTCOME FOR SUCH CLASSIFICATION OR CLASSIFICATIONS,
41 WHICH NEGATIVE OUTCOME EXCEEDS A REASONABLE CORRELATION TO



1 THE UNDERLYING INSURANCE PRACTICE, INCLUDING LOSSES AND COSTS
2 FOR UNDERWRITING.

3 **SECTION 3. Act subject to petition - effective date.** This act
4 takes effect at 12:01 a.m. on the day following the expiration of the
5 ninety-day period after final adjournment of the general assembly; except
6 that, if a referendum petition is filed pursuant to section 1 (3) of article V
7 of the state constitution against this act or an item, section, or part of this
8 act within such period, then the act, item, section, or part will not take
9 effect unless approved by the people at the general election to be held in
10 November 2022 and, in such case, will take effect on the date of the
11 official declaration of the vote thereon by the governor."

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