

SB169_L.001

SENATE COMMITTEE OF REFERENCE AMENDMENT

Committee on Business, Labor, & Technology.

SB21-169 be amended as follows:

1 Amend printed 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, algorithms, and predictive models in their insurance
7 rating, underwriting, claims, and other business practices;

8 (b) Although such tools have the potential to benefit insurers and
9 consumers by simplifying and expediting insurance rating, underwriting,
10 and claims processes, the accuracy and reliability of external consumer
11 data and information sources can vary greatly, and some algorithms and
12 predictive models may lack a sufficient rationale for use in insurance
13 practices; and

14 (c) The use of particular external consumer data and information
15 sources, algorithms, and predictive models by insurers may have a
16 significant negative impact not only on the availability and affordability
17 of insurance for protected classes of consumers, but also on the utilization
18 of such insurance.

19 (2) The general assembly therefore declares that in order to ensure
20 that all Colorado residents have fair and equitable access to insurance
21 products, it is necessary to:

22 (a) Prohibit:

23 (I) The use of an individual's race, color, national or ethnic origin,
24 religion, sex, sexual orientation, or gender identity in any insurance
25 practice; and

26 (II) The use of external consumer data and information sources,
27 algorithms, and predictive models, which use has the result of unfairly
28 discriminating against an individual based on an individual's race, color,
29 national or ethnic origin, religion, sex, sexual orientation, or gender
30 identity; and

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

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

38 **10-3-1104.9. Insurers' use of external consumer data and**
39 **information sources, algorithms, and predictive models -**
40 **consideration of protected class status prohibited - unfair**

1 **discrimination prohibited - rules - stakeholder process required -**
2 **investigations - definitions.** (1) NOTWITHSTANDING SECTION 10-3-1104

3 (1)(f), AN INSURER SHALL NOT, WITH REGARD TO ANY INSURANCE
4 PRACTICE:

5 (a) USE AN INDIVIDUAL'S RACE, COLOR, NATIONAL OR ETHNIC
6 ORIGIN, RELIGION, SEX, SEXUAL ORIENTATION, OR GENDER IDENTITY; OR

7 (b) PURSUANT TO RULES ADOPTED BY THE COMMISSIONER, USE
8 ANY EXTERNAL CONSUMER DATA AND INFORMATION SOURCE, ALGORITHM,
9 OR PREDICTIVE MODEL THAT UNFAIRLY DISCRIMINATES AGAINST AN
10 INDIVIDUAL BASED ON AN INDIVIDUAL'S RACE, COLOR, NATIONAL OR
11 ETHNIC ORIGIN, RELIGION, SEX, SEXUAL ORIENTATION, OR GENDER
12 IDENTITY.

13 (2) (a) THE COMMISSIONER SHALL ADOPT RULES FOR THE
14 IMPLEMENTATION OF THIS SECTION.

15 (b) THE COMMISSIONER SHALL ENGAGE IN A STAKEHOLDER
16 PROCESS PRIOR TO THE ADOPTION OF RULES FOR ANY TYPE OF INSURANCE
17 THAT INCLUDES CARRIERS, PRODUCERS, CONSUMER REPRESENTATIVES,
18 AND OTHER INTERESTED PARTIES. THE COMMISSIONER SHALL HOLD
19 STAKEHOLDER MEETINGS FOR STAKEHOLDERS OF DIFFERENT TYPES OF
20 INSURANCE TO ENSURE SUFFICIENT OPPORTUNITY TO CONSIDER FACTORS
21 AND PROCESSES RELEVANT TO EACH SUCH TYPE OF INSURANCE. THE
22 COMMISSIONER SHALL PROVIDE NOTICE OF SUCH STAKEHOLDER MEETINGS
23 ON THE DIVISION WEBSITE, AND STAKEHOLDER MEETINGS SHALL BE OPEN
24 TO THE PUBLIC.

25 (3) (a) AFTER THE STAKEHOLDER PROCESS DESCRIBED IN
26 SUBSECTION (2) OF THIS SECTION, THE COMMISSIONER SHALL ADOPT RULES
27 FOR SPECIFIC TYPES OF INSURANCE, BY INSURANCE PRACTICE, WHICH
28 RULES ESTABLISH MEANS BY WHICH AN INSURER MAY DEMONSTRATE THAT
29 IT HAS TESTED WHETHER ITS USE OF EXTERNAL CONSUMER DATA AND
30 INFORMATION SOURCES, ALGORITHMS, OR PREDICTIVE MODELS UNFAIRLY
31 DISCRIMINATES BASED ON AN INDIVIDUAL'S RACE, COLOR, NATIONAL OR
32 ETHNIC ORIGIN, RELIGION, SEX, SEXUAL ORIENTATION, OR GENDER
33 IDENTITY. ANY SUCH RULES SHALL NOT BECOME EFFECTIVE UNTIL
34 JANUARY 1, 2023, AT THE EARLIEST, FOR ANY TYPE OF INSURANCE.

35 (b) RULES ADOPTED PURSUANT TO THIS SECTION MUST REQUIRE
36 EACH INSURER TO:

37 (I) PROVIDE INFORMATION TO THE COMMISSIONER CONCERNING
38 THE EXTERNAL CONSUMER DATA AND INFORMATION SOURCES USED BY
39 THE INSURER IN THE DEVELOPMENT AND IMPLEMENTATION OF
40 ALGORITHMS AND PREDICTIVE MODELS FOR A PARTICULAR TYPE OF
41 INSURANCE AND INSURANCE PRACTICE;

42 (II) PROVIDE AN EXPLANATION OF THE MANNER IN WHICH THE
43 INSURER USES EXTERNAL CONSUMER DATA AND INFORMATION SOURCES,

1 ALGORITHMS, AND PREDICTIVE MODELS FOR THE PARTICULAR TYPE OF
2 INSURANCE AND INSURANCE PRACTICE;

3 (III) ESTABLISH AND MAINTAIN A RISK MANAGEMENT FRAMEWORK
4 THAT IS REASONABLY DESIGNED TO DETERMINE, TO THE EXTENT
5 PRACTICABLE, WHETHER THE INSURER'S USE OF EXTERNAL CONSUMER
6 DATA AND INFORMATION SOURCES, ALGORITHMS, AND PREDICTIVE
7 MODELS UNFAIRLY DISCRIMINATES AGAINST INDIVIDUALS BASED ON THEIR
8 RACE, COLOR, NATIONAL OR ETHNIC ORIGIN, RELIGION, SEX, SEXUAL
9 ORIENTATION, OR GENDER IDENTITY;

10 (IV) PROVIDE AN ASSESSMENT OF THE RESULTS OF THE RISK
11 MANAGEMENT FRAMEWORK AND ACTIONS TAKEN TO MINIMIZE THE RISK
12 OF UNFAIR DISCRIMINATION, INCLUDING ONGOING MONITORING; AND

13 (V) PROVIDE AN ATTESTATION BY THE INSURER'S CHIEF RISK
14 OFFICER THAT THE INSURER HAS IMPLEMENTED THE RISK MANAGEMENT
15 FRAMEWORK APPROPRIATELY ON A CONTINUOUS BASIS.

16 (c) INFORMATION SUBMITTED BY INSURERS TO COMPLY WITH THIS
17 SECTION IS SUBJECT TO THE "COLORADO OPEN RECORDS ACT", PART 2 OF
18 ARTICLE 72 OF TITLE 24.

19 (4) PURSUANT TO SECTION 10-3-1106, THE COMMISSIONER MAY
20 EXAMINE AND INVESTIGATE AN INSURER'S USE OF AN EXTERNAL
21 CONSUMER DATA AND INFORMATION SOURCE, ALGORITHM, OR PREDICTIVE
22 MODEL IN ANY INSURANCE PRACTICE. INSURERS SHALL COOPERATE WITH
23 THE COMMISSIONER AND THE DIVISION IN ANY EXAMINATION OR
24 INVESTIGATION UNDER THIS SECTION.

25 (5) IN THE EVENT THAT IT IS DETERMINED, AS A RESULT OF AN
26 INSURER'S PROPER COMPLIANCE WITH THE REQUIREMENTS OF THIS
27 SECTION, THAT THE INSURER'S USE OF EXTERNAL CONSUMER DATA AND
28 INFORMATION SOURCES, ALGORITHMS, OR PREDICTIVE MODELS IS FOUND
29 TO UNFAIRLY DISCRIMINATE AGAINST INDIVIDUALS BASED ON THEIR RACE,
30 COLOR, NATIONAL OR ETHNIC ORIGIN, RELIGION, SEX, SEXUAL
31 ORIENTATION, OR GENDER IDENTITY, THE COMMISSIONER MAY ISSUE AN
32 ORDER TO THE INSURER, WHICH ORDER SHALL BE LIMITED TO:

33 (a) ANY NECESSARY RESTITUTION FOR CONSUMERS; AND
34 (b) ANY OTHER ACTION REQUIRED TO BE TAKEN BY THE INSURER
35 TO REMEDY THE UNFAIR DISCRIMINATION ON A PROSPECTIVE BASIS.

36 (6) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE
37 REQUIRES:

38 (a) "ALGORITHM" MEANS A COMPUTATIONAL PROCESS THAT
39 INFORMS HUMAN DECISION-MAKING IN INSURANCE PRACTICES.

40 (b) "EXTERNAL CONSUMER DATA AND INFORMATION SOURCE"
41 MEANS A DATA OR AN INFORMATION SOURCE THAT IS USED BY AN INSURER
42 TO SUPPLEMENT TRADITIONAL UNDERWRITING OR OTHER INSURANCE
43 PRACTICES OR TO ESTABLISH LIFESTYLE INDICATORS THAT ARE USED IN

1 INSURANCE PRACTICES. "EXTERNAL CONSUMER DATA AND INFORMATION
2 SOURCE" INCLUDES CREDIT SCORES, SOCIAL MEDIA HABITS, LOCATIONS,
3 PURCHASING HABITS, HOME OWNERSHIP, EDUCATIONAL ATTAINMENT,
4 OCCUPATION, LICENSURES, CIVIL JUDGMENTS, AND COURT RECORDS.

5 (c) "INSURANCE PRACTICE" MEANS MARKETING, UNDERWRITING,
6 PRICING, UTILIZATION MANAGEMENT, REIMBURSEMENT METHODOLOGIES,
7 CLAIMS MANAGEMENT, AND FRAUD DETECTION IN THE TRANSACTION OF
8 INSURANCE.

9 (d) "PREDICTIVE MODEL" MEANS A PROCESS OF USING
10 MATHEMATICAL AND COMPUTATIONAL METHODS THAT EXAMINE CURRENT
11 AND HISTORICAL DATA SETS FOR UNDERLYING PATTERNS AND CALCULATE
12 THE PROBABILITY OF AN OUTCOME.

13 (e) "UNFAIR DISCRIMINATION BASED ON AN INDIVIDUAL'S RACE,
14 COLOR, NATIONAL OR ETHNIC ORIGIN, RELIGION, SEX, SEXUAL
15 ORIENTATION, OR GENDER IDENTITY" INCLUDES THE USE OF AN EXTERNAL
16 CONSUMER DATA AND INFORMATION SOURCE, ALGORITHM, OR PREDICTIVE
17 MODEL WHOSE PREDICTIVE CAPABILITY IS DERIVED IN SUBSTANTIAL PART
18 FROM ITS CORRELATION WITH MEMBERSHIP IN ONE OR MORE OF SUCH
19 PROTECTED CLASSES.

20 **SECTION 3.** In Colorado Revised Statutes, **add** 10-4-1405 as
21 follows:

22 **10-4-1405. Exemption from testing and reporting**
23 **requirements.** NOTWITHSTANDING SECTION 10-3-1104.9, THE
24 REQUIREMENTS OF SAID SECTION 10-3-1104.9 DO NOT APPLY TO INSURERS
25 OF EXEMPT COMMERCIAL POLICYHOLDERS, AS DEFINED BY RULE
26 PURSUANT TO SECTION 10-4-1402.

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

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