

SENATE COMMITTEE OF REFERENCE REPORT

\_\_\_\_\_ May 3, 2021  
Chair of Committee Date

Committee on Business, Labor, & Technology.

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 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) Unfair discrimination based on an individual's race, color,

1 national or ethnic origin, religion, sex, sexual orientation, or gender  
2 identity in any insurance practice; and

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

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

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

15 **10-3-1104.9. Insurers' use of external consumer data and**  
16 **information sources, algorithms, and predictive models -**  
17 **consideration of protected class status prohibited - unfair**  
18 **discrimination prohibited - rules - stakeholder process required -**  
19 **investigations - definitions.** (1) NOTWITHSTANDING SECTION 10-3-1104  
20 (1)(f), AN INSURER SHALL NOT, WITH REGARD TO ANY INSURANCE  
21 PRACTICE:

22 (a) UNFAIRLY DISCRIMINATE BASED ON AN INDIVIDUAL'S RACE,  
23 COLOR, NATIONAL OR ETHNIC ORIGIN, RELIGION, SEX, SEXUAL  
24 ORIENTATION, OR GENDER IDENTITY; OR

25 (b) PURSUANT TO RULES ADOPTED BY THE COMMISSIONER, USE  
26 ANY EXTERNAL CONSUMER DATA AND INFORMATION SOURCE, ALGORITHM,  
27 OR PREDICTIVE MODEL THAT UNFAIRLY DISCRIMINATES AGAINST AN  
28 INDIVIDUAL BASED ON AN INDIVIDUAL'S RACE, COLOR, NATIONAL OR  
29 ETHNIC ORIGIN, RELIGION, SEX, SEXUAL ORIENTATION, OR GENDER  
30 IDENTITY.

31 (2) (a) THE COMMISSIONER SHALL ADOPT RULES FOR THE  
32 IMPLEMENTATION OF THIS SECTION.

33 (b) THE COMMISSIONER SHALL ENGAGE IN A STAKEHOLDER  
34 PROCESS PRIOR TO THE ADOPTION OF RULES FOR ANY TYPE OF INSURANCE  
35 THAT INCLUDES CARRIERS, PRODUCERS, CONSUMER REPRESENTATIVES,  
36 AND OTHER INTERESTED PARTIES. THE COMMISSIONER SHALL HOLD  
37 STAKEHOLDER MEETINGS FOR STAKEHOLDERS OF DIFFERENT TYPES OF  
38 INSURANCE TO ENSURE SUFFICIENT OPPORTUNITY TO CONSIDER FACTORS  
39 AND PROCESSES RELEVANT TO EACH SUCH TYPE OF INSURANCE. THE  
40 COMMISSIONER SHALL PROVIDE NOTICE OF SUCH STAKEHOLDER MEETINGS  
41 ON THE DIVISION WEBSITE, AND STAKEHOLDER MEETINGS SHALL BE OPEN



1 TO THE PUBLIC.

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

12 (b) RULES ADOPTED PURSUANT TO THIS SECTION MUST REQUIRE  
13 EACH INSURER TO:

14 (I) PROVIDE INFORMATION TO THE COMMISSIONER CONCERNING  
15 THE EXTERNAL CONSUMER DATA AND INFORMATION SOURCES USED BY  
16 THE INSURER IN THE DEVELOPMENT AND IMPLEMENTATION OF  
17 ALGORITHMS AND PREDICTIVE MODELS FOR A PARTICULAR TYPE OF  
18 INSURANCE AND INSURANCE PRACTICE;

19 (II) PROVIDE AN EXPLANATION OF THE MANNER IN WHICH THE  
20 INSURER USES EXTERNAL CONSUMER DATA AND INFORMATION SOURCES,  
21 ALGORITHMS, AND PREDICTIVE MODELS FOR THE PARTICULAR TYPE OF  
22 INSURANCE AND INSURANCE PRACTICE;

23 (III) ESTABLISH AND MAINTAIN A RISK MANAGEMENT FRAMEWORK  
24 THAT IS REASONABLY DESIGNED TO DETERMINE, TO THE EXTENT  
25 PRACTICABLE, WHETHER THE INSURER'S USE OF EXTERNAL CONSUMER  
26 DATA AND INFORMATION SOURCES, ALGORITHMS, AND PREDICTIVE  
27 MODELS UNFAIRLY DISCRIMINATES AGAINST INDIVIDUALS BASED ON THEIR  
28 RACE, COLOR, NATIONAL OR ETHNIC ORIGIN, RELIGION, SEX, SEXUAL  
29 ORIENTATION, OR GENDER IDENTITY;

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

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

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

39 (4) PURSUANT TO SECTION 10-3-1106, THE COMMISSIONER MAY  
40 EXAMINE AND INVESTIGATE AN INSURER'S USE OF AN EXTERNAL  
41 CONSUMER DATA AND INFORMATION SOURCE, ALGORITHM, OR PREDICTIVE



1 MODEL IN ANY INSURANCE PRACTICE. INSURERS SHALL COOPERATE WITH  
2 THE COMMISSIONER AND THE DIVISION IN ANY EXAMINATION OR  
3 INVESTIGATION UNDER THIS SECTION.

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

12 (a) ANY NECESSARY RESTITUTION FOR CONSUMERS; AND

13 (b) ANY OTHER ACTION REQUIRED TO BE TAKEN BY THE INSURER  
14 TO REMEDY THE UNFAIR DISCRIMINATION ON A PROSPECTIVE BASIS.

15 (6) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE  
16 REQUIRES:

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

19 (b) "EXTERNAL CONSUMER DATA AND INFORMATION SOURCE"  
20 MEANS A DATA OR AN INFORMATION SOURCE THAT IS USED BY AN INSURER  
21 TO SUPPLEMENT TRADITIONAL UNDERWRITING OR OTHER INSURANCE  
22 PRACTICES OR TO ESTABLISH LIFESTYLE INDICATORS THAT ARE USED IN  
23 INSURANCE PRACTICES. "EXTERNAL CONSUMER DATA AND INFORMATION  
24 SOURCE" INCLUDES CREDIT SCORES, SOCIAL MEDIA HABITS, LOCATIONS,  
25 PURCHASING HABITS, HOME OWNERSHIP, EDUCATIONAL ATTAINMENT,  
26 OCCUPATION, LICENSURES, CIVIL JUDGMENTS, AND COURT RECORDS.

27 (c) "INSURANCE PRACTICE" MEANS MARKETING, UNDERWRITING,  
28 PRICING, UTILIZATION MANAGEMENT, REIMBURSEMENT METHODOLOGIES,  
29 CLAIMS MANAGEMENT, AND FRAUD DETECTION IN THE TRANSACTION OF  
30 INSURANCE.

31 (d) "PREDICTIVE MODEL" MEANS A PROCESS OF USING  
32 MATHEMATICAL AND COMPUTATIONAL METHODS THAT EXAMINE CURRENT  
33 AND HISTORICAL DATA SETS FOR UNDERLYING PATTERNS AND CALCULATE  
34 THE PROBABILITY OF AN OUTCOME.

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

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

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

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

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