

**First Regular Session
Seventy-third General Assembly
STATE OF COLORADO**

REREVISED

*This Version Includes All Amendments
Adopted in the Second House*

LLS NO. 21-0594.01 Richard Sweetman x4333

SENATE BILL 21-169

SENATE SPONSORSHIP

Buckner, Fields, Moreno, Story

HOUSE SPONSORSHIP

Ricks and Esgar, Amabile, Bernett, Boesenecker, Caraveo, Cutter, Duran, Exum, Gonzales-Gutierrez, Herod, Hooton, Jackson, Jodeh, Kennedy, Kipp, Lontine, Snyder, Valdez A., Weissman, Woodrow

Senate Committees

Business, Labor, & Technology

House Committees

Health & Insurance

A BILL FOR AN ACT

101 **CONCERNING PROTECTING CONSUMERS FROM UNFAIR**
102 **DISCRIMINATION IN INSURANCE PRACTICES.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

An insurer is prohibited from:

- Considering an individual's race, color, national or ethnic origin, religion, sex, sexual orientation, disability, or transgender status in any insurance practice; or
- Directly or indirectly using any external consumer data and information source, algorithm, or predictive model

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
*Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

HOUSE
3rd Reading Unamended
June 7, 2021

HOUSE
Amended 2nd Reading
June 3, 2021

SENATE
3rd Reading Unamended
May 13, 2021

SENATE
Amended 2nd Reading
May 12, 2021

(external data source) that unfairly discriminates against an individual based on an individual's race, color, national or ethnic origin, religion, sex, sexual orientation, disability, or transgender status.

On and after January 1, 2022, an insurer that uses one or more external data sources in any insurance practice shall submit certain disclosures to the division of insurance. The commissioner of insurance (commissioner) may examine and investigate an insurer's use of an external data source. If the commissioner determines that use of an external data source bears no direct causal relationship to insurance losses or to the condition of a property or applicant to be potentially insured and that the use of the external data source unfairly discriminates on the basis of an individual's membership in a protected class, the commissioner may promulgate rules restricting or prohibiting the use of the external data source.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 finds that:

4 (a) Increasingly, insurers use external consumer data and
5 information sources, as well as algorithms and predictive models using
6 external consumer data and information sources, in their insurance rating,
7 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, as well as algorithms and predictive models using external
16 consumer data and information sources, by insurers may have a
17 significant negative impact not only on the availability and affordability

1 of insurance for protected classes of consumers, but also on the utilization
2 of such insurance.

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

6 (a) Prohibit:

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

10 (II) The use of external consumer data and information sources,
11 as well as algorithms and predictive models using external consumer data
12 and information sources, which use has the result of unfairly
13 discriminating based on race, color, national or ethnic origin, religion,
14 sex, sexual orientation, disability, gender identity, or gender expression;
15 and

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

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

23 **10-3-1104.9. Insurers' use of external consumer data and**
24 **information sources, algorithms, and predictive models - unfair**
25 **discrimination prohibited - rules - stakeholder process required -**
26 **investigations - definitions - repeal. (1) IN ADDITION TO THE METHODS**
27 **AND PRACTICES PROHIBITED PURSUANT TO SECTION 10-3-1104 (1)(f), AN**

1 INSURER SHALL NOT, WITH REGARD TO ANY INSURANCE PRACTICE:

2 (a) UNFAIRLY DISCRIMINATE BASED ON RACE, COLOR, NATIONAL
3 OR ETHNIC ORIGIN, RELIGION, SEX, SEXUAL ORIENTATION, DISABILITY,
4 GENDER IDENTITY, OR GENDER EXPRESSION; OR

5 (b) PURSUANT TO RULES ADOPTED BY THE COMMISSIONER, USE
6 ANY EXTERNAL CONSUMER DATA AND INFORMATION SOURCES, AS WELL
7 AS ANY ALGORITHMS OR PREDICTIVE MODELS THAT USE EXTERNAL
8 CONSUMER DATA AND INFORMATION SOURCES, IN A WAY THAT UNFAIRLY
9 DISCRIMINATES BASED ON RACE, COLOR, NATIONAL OR ETHNIC ORIGIN,
10 RELIGION, SEX, SEXUAL ORIENTATION, DISABILITY, GENDER IDENTITY, OR
11 GENDER EXPRESSION.

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

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

24 (3) (a) AFTER THE STAKEHOLDER PROCESS DESCRIBED IN
25 SUBSECTION (2) OF THIS SECTION, THE COMMISSIONER SHALL ADOPT RULES
26 FOR SPECIFIC TYPES OF INSURANCE, BY INSURANCE PRACTICE, WHICH
27 RULES ESTABLISH MEANS BY WHICH AN INSURER MAY DEMONSTRATE, TO

1 THE EXTENT PRACTICABLE, THAT IT HAS TESTED WHETHER ITS USE OF
2 EXTERNAL CONSUMER DATA AND INFORMATION SOURCES, AS WELL AS
3 ALGORITHMS OR PREDICTIVE MODELS USING EXTERNAL CONSUMER DATA
4 AND INFORMATION SOURCES, UNFAIRLY DISCRIMINATES BASED ON RACE,
5 COLOR, NATIONAL OR ETHNIC ORIGIN, RELIGION, SEX, SEXUAL
6 ORIENTATION, DISABILITY, GENDER IDENTITY, OR GENDER EXPRESSION.
7 THE RULES SHALL NOT BECOME EFFECTIVE UNTIL JANUARY 1, 2023, AT
8 THE EARLIEST, FOR ANY TYPE OF INSURANCE, AND THE COMMISSIONER
9 SHALL CONSIDER SOLVENCY IMPACTS, IF ANY, TO INSURERS IN ADOPTING
10 THE RULES.

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

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

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

23 (III) ESTABLISH AND MAINTAIN A RISK MANAGEMENT FRAMEWORK
24 OR SIMILAR PROCESSES OR PROCEDURES THAT ARE REASONABLY DESIGNED
25 TO DETERMINE, TO THE EXTENT PRACTICABLE, WHETHER THE INSURER'S
26 USE OF EXTERNAL CONSUMER DATA AND INFORMATION SOURCES, AS WELL
27 AS ALGORITHMS AND PREDICTIVE MODELS USING EXTERNAL CONSUMER

1 DATA AND INFORMATION SOURCES, UNFAIRLY DISCRIMINATES BASED ON
2 RACE, COLOR, NATIONAL OR ETHNIC ORIGIN, RELIGION, SEX, SEXUAL
3 ORIENTATION, DISABILITY, GENDER IDENTITY, OR GENDER EXPRESSION;

4 (IV) PROVIDE AN ASSESSMENT OF THE RESULTS OF THE RISK
5 MANAGEMENT FRAMEWORK OR SIMILAR PROCESSES OR PROCEDURES AND
6 ACTIONS TAKEN TO MINIMIZE THE RISK OF UNFAIR DISCRIMINATION,
7 INCLUDING ONGOING MONITORING; AND

8 (V) PROVIDE AN ATTESTATION BY ONE OR MORE OFFICERS THAT
9 THE INSURER HAS IMPLEMENTED THE RISK MANAGEMENT FRAMEWORK OR
10 SIMILAR PROCESSES OR PROCEDURES APPROPRIATELY ON A CONTINUOUS
11 BASIS.

12 (c) THE RULES ADOPTED BY THE COMMISSIONER PURSUANT TO THIS
13 SECTION MUST INCLUDE PROVISIONS ESTABLISHING:

14 (I) A REASONABLE PERIOD OF TIME FOR INSURERS TO REMEDY ANY
15 UNFAIRLY DISCRIMINATORY IMPACT IN AN ALGORITHM OR PREDICTIVE
16 MODEL; AND

17 (II) THE ABILITY OF INSURERS TO USE EXTERNAL CONSUMER DATA
18 AND INFORMATION SOURCES, AS WELL AS ALGORITHMS OR PREDICTIVE
19 MODELS USING EXTERNAL CONSUMER DATA AND INFORMATION SOURCES,
20 THAT HAVE BEEN PREVIOUSLY ASSESSED BY THE DIVISION AND FOUND NOT
21 TO BE UNFAIRLY DISCRIMINATORY.

22 (d) DOCUMENTS, MATERIALS, AND OTHER INFORMATION IN THE
23 POSSESSION OR CONTROL OF THE DIVISION THAT ARE OBTAINED BY,
24 CREATED BY, OR DISCLOSED TO THE COMMISSIONER OR ANY OTHER
25 PERSON PURSUANT TO THIS SECTION OR ANY RULES ADOPTED PURSUANT
26 TO THIS SECTION ARE RECOGNIZED AS PROPRIETARY AND CONTAINING
27 TRADE SECRETS. ALL SUCH DOCUMENTS, MATERIALS, AND OTHER

1 INFORMATION ARE CONFIDENTIAL AND PRIVILEGED; ARE NOT SUBJECT TO
2 DISCLOSURE UNDER THE "COLORADO OPEN RECORDS ACT", PART 2 OF
3 ARTICLE 72 OF TITLE 24, OR OTHER OPEN RECORDS, FREEDOM OF
4 INFORMATION, SUNSHINE, OR SIMILAR LAW OF THIS STATE; ARE NOT
5 SUBJECT TO SUBPOENA; AND ARE NOT SUBJECT TO DISCOVERY OR
6 ADMISSIBLE IN EVIDENCE IN ANY PRIVATE CIVIL ACTION. HOWEVER, THE
7 COMMISSIONER MAY USE THE DOCUMENTS, MATERIALS, OR OTHER
8 INFORMATION IN THE FURTHERANCE OF ANY REGULATORY OR LEGAL
9 ACTION BROUGHT AS PART OF THE COMMISSIONER'S OFFICIAL DUTIES. THE
10 COMMISSIONER SHALL NOT OTHERWISE MAKE THE DOCUMENTS,
11 MATERIALS, OR OTHER INFORMATION PUBLIC WITHOUT THE PRIOR WRITTEN
12 CONSENT OF THE INSURER FROM WHICH THE DOCUMENTS, MATERIALS, OR
13 OTHER INFORMATION WAS OBTAINED. THE COMMISSIONER MAY MAKE
14 DATA PUBLICLY AVAILABLE IN AN AGGREGATED OR DE-IDENTIFIED
15 FORMAT IN A MANNER DEEMED APPROPRIATE BY THE COMMISSIONER.

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

22 (5) (a) IN THE REPORT SUBMITTED BY THE DEPARTMENT OF
23 REGULATORY AGENCIES TO THE LEGISLATIVE COMMITTEES OF REFERENCE
24 DURING THE FIRST TWO WEEKS OF EACH REGULAR LEGISLATIVE SESSION,
25 PURSUANT TO PART 2 OF ARTICLE 7 OF TITLE 2, THE DIVISION SHALL
26 INCLUDE:

27 (I) INFORMATION CONCERNING ANY RULES ADOPTED PURSUANT TO

1 THIS SECTION;

2 (II) INFORMATION CONCERNING ANY CHANGES IN INSURANCE

3 RATES THAT HAVE RESULTED FROM THE PROHIBITIONS DESCRIBED IN

4 SUBSECTION (1) OF THIS SECTION;

5 (III) A SUMMARY OF THE STAKEHOLDER ENGAGEMENT PROCESS

6 DESCRIBED IN SUBSECTION (2)(b) OF THIS SECTION; AND

7 (IV) A DESCRIPTION OF DATA SOURCES, IF ANY, DISCUSSED DURING

8 THE STAKEHOLDER ENGAGEMENT PROCESS, WHICH DATA SOURCES

9 INSURERS MAY USE TO COMPLY WITH THIS 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

1 CARE, OR DISABILITY INSURERS TO TEST, MEDICAL, FAMILY HISTORY,
2 OCCUPATIONAL, DISABILITY, OR BEHAVIORAL INFORMATION RELATED TO
3 A SPECIFIC INDIVIDUAL, WHICH INFORMATION, BASED ON ACTUARIALLY
4 SOUND PRINCIPLES, HAS A DIRECT RELATIONSHIP TO MORTALITY,
5 MORBIDITY, OR LONGEVITY RISK UNLESS SUCH INFORMATION IS
6 OTHERWISE INCLUDED IN THE TESTING OF AN ALGORITHM OR PREDICTIVE
7 MODEL THAT ALSO USES EXTERNAL CONSUMER DATA AND INFORMATION
8 SOURCES;

9 (II) PROHIBIT THE USE OF, OR REQUIRE LIFE, ANNUITY, LONG-TERM
10 CARE, OR DISABILITY INSURERS TO TEST, TRADITIONAL UNDERWRITING
11 FACTORS BEING USED FOR THE EXCLUSIVE PURPOSE OF DETERMINING
12 INSURABLE INTEREST OR ELIGIBILITY FOR COVERAGE UNLESS SUCH
13 FACTORS ARE OTHERWISE INCLUDED IN THE TESTING OF AN ALGORITHM OR
14 PREDICTIVE MODEL THAT ALSO USES EXTERNAL CONSUMER DATA AND
15 INFORMATION SOURCES;

16 (III) AMEND, MODIFY, OR SUPERSEDE SECTION 10-3-1104
17 (1)(f)(III) OR (1)(f)(IV); OR

18 (IV) PROHIBIT THE USE OF OR REQUIRE THE TESTING OF
19 LONGSTANDING AND WELL-ESTABLISHED COMMON INDUSTRY PRACTICES
20 IN SETTLING CLAIMS OR TRADITIONAL UNDERWRITING PRACTICES UNLESS
21 SUCH PRACTICES OR FACTORS ARE OTHERWISE INCLUDED IN THE TESTING
22 OF AN ALGORITHM OR PREDICTIVE MODEL THAT ALSO USES EXTERNAL
23 CONSUMER DATA AND INFORMATION SOURCES.

24 (8) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE
25 REQUIRES:

26 (a) "ALGORITHM" MEANS A COMPUTATIONAL OR MACHINE
27 LEARNING PROCESS THAT INFORMS HUMAN DECISION MAKING IN

1 INSURANCE PRACTICES.

2 (b) (I) "EXTERNAL CONSUMER DATA AND INFORMATION SOURCE"
3 MEANS A DATA OR AN INFORMATION SOURCE THAT IS USED BY AN INSURER
4 TO SUPPLEMENT TRADITIONAL UNDERWRITING OR OTHER INSURANCE
5 PRACTICES OR TO ESTABLISH LIFESTYLE INDICATORS THAT ARE USED IN
6 INSURANCE PRACTICES. "EXTERNAL CONSUMER DATA AND INFORMATION
7 SOURCE" INCLUDES CREDIT SCORES, SOCIAL MEDIA HABITS, LOCATIONS,
8 PURCHASING HABITS, HOME OWNERSHIP, EDUCATIONAL ATTAINMENT,
9 OCCUPATION, LICENSURES, CIVIL JUDGMENTS, AND COURT RECORDS.

10 (II) THE COMMISSIONER MAY PROMULGATE RULES TO FURTHER
11 DEFINE "EXTERNAL CONSUMER DATA AND INFORMATION SOURCE" FOR
12 PARTICULAR LINES OF INSURANCE AND INSURANCE PRACTICES.

13 (c) "INSURANCE PRACTICE" MEANS MARKETING, UNDERWRITING,
14 PRICING, UTILIZATION MANAGEMENT, REIMBURSEMENT METHODOLOGIES,
15 AND CLAIMS MANAGEMENT IN THE TRANSACTION OF INSURANCE.

16 (d) "PREDICTIVE MODEL" MEANS A PROCESS OF USING
17 MATHEMATICAL AND COMPUTATIONAL METHODS THAT EXAMINE CURRENT
18 AND HISTORICAL DATA SETS FOR UNDERLYING PATTERNS AND CALCULATE
19 THE PROBABILITY OF AN OUTCOME.

20 (e) "UNFAIRLY DISCRIMINATE" AND "UNFAIR DISCRIMINATION"
21 INCLUDE THE USE OF ONE OR MORE EXTERNAL CONSUMER DATA AND
22 INFORMATION SOURCES, AS WELL AS ALGORITHMS OR PREDICTIVE MODELS
23 USING EXTERNAL CONSUMER DATA AND INFORMATION SOURCES, THAT
24 HAVE A CORRELATION TO RACE, COLOR, NATIONAL OR ETHNIC ORIGIN,
25 RELIGION, SEX, SEXUAL ORIENTATION, DISABILITY, GENDER IDENTITY, OR
26 GENDER EXPRESSION, AND THAT USE RESULTS IN A DISPROPORTIONATELY
27 NEGATIVE OUTCOME FOR SUCH CLASSIFICATION OR CLASSIFICATIONS,

1 WHICH NEGATIVE OUTCOME EXCEEDS THE REASONABLE CORRELATION TO
2 THE UNDERLYING INSURANCE PRACTICE, INCLUDING LOSSES AND COSTS
3 FOR UNDERWRITING.

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