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:

Amend printed bill, strike everything below the enacting clause and substitute:

"SECTION 1. Legislative declaration. (1) The general assembly finds that:

(a) Increasingly, insurers use external consumer data and information sources, algorithms, and predictive models in their insurance rating, underwriting, claims, and other business practices;

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

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

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

(a) Prohibit:

(1) Unfair discrimination based on an individual's race, color,
national or ethnic origin, religion, sex, sexual orientation, or gender identity in any insurance practice; and

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

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

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

10-3-1104.9. Insurers' use of external consumer data and information sources, algorithms, and predictive models - consideration of protected class status prohibited - unfair discrimination prohibited - rules - stakeholder process required - investigations - definitions.

(1) NOTWITHSTANDING SECTION 10-3-1104 (1)(f), AN INSURER SHALL NOT, WITH REGARD TO ANY INSURANCE PRACTICE:

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

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

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

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

(3) (a) After the stakeholder process described in subsection (2) of this section, the commissioner shall adopt rules for specific types of insurance, by insurance practice, which rules establish means by which an insurer may demonstrate that it has tested whether its use of external consumer data and information sources, algorithms, or predictive models unfairly discriminates based on an individual’s race, color, national or ethnic origin, religion, sex, sexual orientation, or gender identity. Any such rules shall not become effective until January 1, 2023, at the earliest, for any type of insurance.

(b) Rules adopted pursuant to this section must require each insurer to:

(I) Provide information to the commissioner concerning the external consumer data and information sources used by the insurer in the development and implementation of algorithms and predictive models for a particular type of insurance and insurance practice;

(II) Provide an explanation of the manner in which the insurer uses external consumer data and information sources, algorithms, and predictive models for the particular type of insurance and insurance practice;

(III) Establish and maintain a risk management framework that is reasonably designed to determine, to the extent practicable, whether the insurer’s use of external consumer data and information sources, algorithms, and predictive models unfairly discriminates against individuals based on their race, color, national or ethnic origin, religion, sex, sexual orientation, or gender identity;

(IV) Provide an assessment of the results of the risk management framework and actions taken to minimize the risk of unfair discrimination, including ongoing monitoring; and

(V) Provide an attestation by the insurer’s chief risk officer that the insurer has implemented the risk management framework appropriately on a continuous basis.

(c) Information submitted by insurers to comply with this section is subject to the "Colorado Open Records Act", part 2 of article 72 of title 24.

(4) Pursuant to section 10-3-1106, the commissioner may examine and investigate an insurer’s use of an external consumer data and information source, algorithm, or predictive
MODEL IN ANY INSURANCE PRACTICE. INSURERS SHALL COOPERATE WITH
THE COMMISSIONER AND THE DIVISION IN ANY EXAMINATION OR
INVESTIGATION UNDER THIS SECTION.

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

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

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

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

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

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

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

(e) "UNFAIR DISCRIMINATION BASED ON AN INDIVIDUAL'S RACE,
COLOR, NATIONAL OR ETHNIC ORIGIN, RELIGION, SEX, SEXUAL
ORIENTATION, OR GENDER IDENTITY" INCLUDES THE USE OF AN EXTERNAL
CONSUMER DATA AND INFORMATION SOURCE, ALGORITHM, OR PREDICTIVE
MODEL WHOSE PREDICTIVE CAPABILITY IS DERIVED IN SUBSTANTIAL PART
FROM ITS CORRELATION WITH MEMBERSHIP IN ONE OR MORE OF SUCH
PROTECTED CLASSES.
SECTION 3. In Colorado Revised Statutes, add 10-4-1405 as follows:

10-4-1405. Exemption from testing and reporting requirements. Notwithstanding section 10-3-1104.9, the requirements of said section 10-3-1104.9 do not apply to insurers of exempt commercial policyholders, as defined by rule pursuant to section 10-4-1402.

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

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