

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

INTRODUCED

LLS NO. 21-0594.01 Richard Sweetman x4333

SENATE BILL 21-169

SENATE SPONSORSHIP

Buckner,

HOUSE SPONSORSHIP

(None),

Senate Committees

Business, Labor, & Technology

House Committees

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.

(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, algorithms, and predictive models in their insurance
6 rating, underwriting, claims, and other business practices;

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

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

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

4 (a) Prohibit the use of external consumer data and information
5 sources, algorithms, and predictive models that have no direct causal
6 relationship to the risk being insured and that result in unfair
7 discrimination based on an individual's race, color, national or ethnic
8 origin, religion, sex, sexual orientation, disability, or transgender status;
9 and

10 (b) Require insurers that use external consumer data and
11 information sources, algorithms, and predictive models to control for, or
12 otherwise demonstrate that such use does not result in, such unfair
13 discrimination.

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

16 **10-3-1104.9. Insurers' use of external consumer data and**
17 **information sources, algorithms, and predictive models -**
18 **consideration of protected class status prohibited - unfair**
19 **discrimination prohibited - explanation required - disclosures to**
20 **consumers required - investigations - rules - definitions.**

21 (1) NOTWITHSTANDING SECTION 10-3-1104 (1)(f), AN INSURER SHALL
22 NOT:

23 (a) CONSIDER AN INDIVIDUAL'S RACE, COLOR, NATIONAL OR
24 ETHNIC ORIGIN, RELIGION, SEX, SEXUAL ORIENTATION, DISABILITY, OR
25 TRANSGENDER STATUS IN ANY INSURANCE PRACTICE; OR

26 (b) DIRECTLY OR INDIRECTLY USE ANY EXTERNAL CONSUMER
27 DATA AND INFORMATION SOURCE, ALGORITHM, OR PREDICTIVE MODEL

1 THAT UNFAIRLY DISCRIMINATES AGAINST AN INDIVIDUAL BASED ON AN
2 INDIVIDUAL'S RACE, COLOR, NATIONAL OR ETHNIC ORIGIN, RELIGION, SEX,
3 SEXUAL ORIENTATION, DISABILITY, OR TRANSGENDER STATUS.

4 (2) (a) ON AND AFTER JANUARY 1, 2022, AN INSURER THAT USES
5 ONE OR MORE EXTERNAL CONSUMER DATA AND INFORMATION SOURCES,
6 ALGORITHMS, OR PREDICTIVE MODELS IN ANY INSURANCE PRACTICE SHALL
7 SUBMIT TO THE DIVISION, IN A FORM, MANNER, AND FREQUENCY
8 DETERMINED BY THE COMMISSIONER, THE FOLLOWING INFORMATION:

9 (I) A DESCRIPTION OF THE EXTERNAL CONSUMER DATA AND
10 INFORMATION SOURCES USED BY THE INSURER IN THE DEVELOPMENT AND
11 IMPLEMENTATION OF ALGORITHMS AND PREDICTIVE MODELS;

12 (II) AN INDICATION OF EACH INSURANCE PRACTICE IN WHICH THE
13 INSURER USES AN EXTERNAL CONSUMER DATA AND INFORMATION SOURCE,
14 ALGORITHM, OR PREDICTIVE MODEL;

15 (III) AN EXPLANATION OF THE MANNER IN WHICH THE INSURER
16 USES EXTERNAL CONSUMER DATA AND INFORMATION SOURCES,
17 ALGORITHMS, AND PREDICTIVE MODELS;

18 (IV) AN ATTESTATION THAT EACH EXTERNAL CONSUMER DATA
19 AND INFORMATION SOURCE, ALGORITHM, OR PREDICTIVE MODEL USED BY
20 THE INSURER DOES NOT:

21 (A) INTENTIONALLY OR UNINTENTIONALLY UTILIZE INFORMATION
22 CONCERNING ANY INDIVIDUAL'S RACE, COLOR, NATIONAL OR ETHNIC
23 ORIGIN, RELIGION, SEX, SEXUAL ORIENTATION, DISABILITY, OR
24 TRANSGENDER STATUS; OR

25 (B) RESULT IN PROXY DISCRIMINATION AGAINST AN INDIVIDUAL
26 ON THE BASIS OF AN INDIVIDUAL'S RACE, COLOR, NATIONAL OR ETHNIC
27 ORIGIN, RELIGION, SEX, SEXUAL ORIENTATION, DISABILITY, OR

1 TRANSGENDER STATUS; AND

2 (V) AN ASSESSMENT OF WHETHER THE USE OF EACH EXTERNAL
3 CONSUMER DATA AND INFORMATION SOURCE, ALGORITHM, OR PREDICTIVE
4 MODEL USED BY THE INSURER IN ANY INSURANCE PRACTICE MAY RESULT
5 IN UNFAIR DISCRIMINATION BASED ON AN INDIVIDUAL'S RACE, COLOR,
6 NATIONAL OR ETHNIC ORIGIN, RELIGION, SEX, SEXUAL ORIENTATION,
7 DISABILITY, OR TRANSGENDER STATUS, AND, IF SO, AN INDICATION OF THE
8 ACTIONS THAT THE INSURER HAS TAKEN TO MINIMIZE THE RISK OF SUCH
9 UNFAIR DISCRIMINATION, INCLUDING ONGOING MONITORING.

10 (b) THE COMMISSIONER SHALL PROMULGATE RULES CONCERNING
11 THE REQUIREMENTS DESCRIBED IN THIS SECTION.

12 (3)(a) PURSUANT TO SECTION 10-3-1106, THE COMMISSIONER MAY
13 EXAMINE AND INVESTIGATE AN INSURER'S USE OF AN EXTERNAL
14 CONSUMER DATA AND INFORMATION SOURCE, ALGORITHM, OR PREDICTIVE
15 MODEL IN ANY INSURANCE PRACTICE. INSURERS SHALL COOPERATE WITH
16 THE DIVISION FOR THE PURPOSES OF THIS SUBSECTION (3).

17 (b) IF THE COMMISSIONER DETERMINES THAT USE OF AN EXTERNAL
18 CONSUMER DATA AND INFORMATION SOURCE, ALGORITHM, OR PREDICTIVE
19 MODEL BEARS NO DIRECT CAUSAL RELATIONSHIP TO INSURANCE LOSSES OR
20 TO THE CONDITION OF A PROPERTY OR APPLICANT TO BE POTENTIALLY
21 INSURED AND THAT THE USE OF THE EXTERNAL CONSUMER DATA AND
22 INFORMATION SOURCE, ALGORITHM, OR PREDICTIVE MODEL UNFAIRLY
23 DISCRIMINATES ON THE BASIS OF AN INDIVIDUAL'S RACE, COLOR,
24 NATIONAL OR ETHNIC ORIGIN, RELIGION, SEX, SEXUAL ORIENTATION,
25 DISABILITY, OR TRANSGENDER STATUS, THE COMMISSIONER MAY
26 PROMULGATE RULES RESTRICTING OR PROHIBITING THE USE OF THE
27 EXTERNAL CONSUMER DATA AND INFORMATION SOURCE, ALGORITHM, OR

1 PREDICTIVE MODEL.

2 (4) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE
3 REQUIRES:

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

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

14 (c) "INSURANCE PRACTICE" MEANS A BUSINESS PRACTICE THAT
15 INSURERS TYPICALLY ENGAGE IN, INCLUDING MARKETING, UNDERWRITING,
16 PRICING, UTILIZATION MANAGEMENT, REIMBURSEMENT METHODOLOGIES,
17 CLAIMS SETTLEMENT, AND FRAUD DETECTION.

18 (d) "PREDICTIVE MODEL" MEANS A PREDICTIVE MODEL THAT
19 INFORMS HUMAN DECISION-MAKING IN INSURANCE PRACTICES.

20 **SECTION 3. Act subject to petition - effective date.** This act
21 takes effect at 12:01 a.m. on the day following the expiration of the
22 ninety-day period after final adjournment of the general assembly; except
23 that, if a referendum petition is filed pursuant to section 1 (3) of article V
24 of the state constitution against this act or an item, section, or part of this
25 act within such period, then the act, item, section, or part will not take
26 effect unless approved by the people at the general election to be held in

- 1 November 2022 and, in such case, will take effect on the date of the
- 2 official declaration of the vote thereon by the governor.