

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

REENGROSSED

*This Version Includes All Amendments
Adopted in the House of Introduction*

LLS NO. 21-0594.01 Richard Sweetman x4333

SENATE BILL 21-169

SENATE SPONSORSHIP

Buckner, Fields, Moreno, Story

HOUSE SPONSORSHIP

Ricks and Esgar,

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.*

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, 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 on the utilization
17 of 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:

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

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

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

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

20 10-3-1104.9. Insurers' use of external consumer data and
21 information sources, algorithms, and predictive models -
22 consideration of protected class status prohibited - unfair
23 discrimination prohibited - rules - stakeholder process required -
24 investigations - definitions. (1) IN ADDITION TO THE METHODS AND
25 PRACTICES PROHIBITED PURSUANT TO SECTION 10-3-1104 (1)(f), AN
26 INSURER SHALL NOT, WITH REGARD TO ANY INSURANCE PRACTICE:

27 (a) UNFAIRLY DISCRIMINATE BASED ON AN INDIVIDUAL'S RACE,

1 COLOR, NATIONAL OR ETHNIC ORIGIN, RELIGION, SEX, SEXUAL
2 ORIENTATION, OR GENDER IDENTITY; OR

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

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

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

21 (3) (a) AFTER THE STAKEHOLDER PROCESS DESCRIBED IN
22 SUBSECTION (2) OF THIS SECTION, THE COMMISSIONER SHALL ADOPT RULES
23 FOR SPECIFIC TYPES OF INSURANCE, BY INSURANCE PRACTICE, WHICH
24 RULES ESTABLISH MEANS BY WHICH AN INSURER MAY DEMONSTRATE THAT
25 IT HAS TESTED WHETHER ITS USE OF EXTERNAL CONSUMER DATA AND
26 INFORMATION SOURCES, ALGORITHMS, OR PREDICTIVE MODELS UNFAIRLY
27 DISCRIMINATES BASED ON AN INDIVIDUAL'S RACE, COLOR, NATIONAL OR

1 ETHNIC ORIGIN, RELIGION, SEX, SEXUAL ORIENTATION, OR GENDER
2 IDENTITY. ANY SUCH RULES SHALL NOT BECOME EFFECTIVE UNTIL
3 JANUARY 1, 2023, AT THE EARLIEST, FOR ANY TYPE OF INSURANCE.

4 (b) RULES ADOPTED PURSUANT TO THIS SECTION MUST REQUIRE
5 EACH INSURER TO:

6 (I) PROVIDE INFORMATION TO THE COMMISSIONER CONCERNING
7 THE EXTERNAL CONSUMER DATA AND INFORMATION SOURCES USED BY
8 THE INSURER IN THE DEVELOPMENT AND IMPLEMENTATION OF
9 ALGORITHMS AND PREDICTIVE MODELS FOR A PARTICULAR TYPE OF
10 INSURANCE AND INSURANCE PRACTICE;

11 (II) PROVIDE AN EXPLANATION OF THE MANNER IN WHICH THE
12 INSURER USES EXTERNAL CONSUMER DATA AND INFORMATION SOURCES,
13 ALGORITHMS, AND PREDICTIVE MODELS FOR THE PARTICULAR TYPE OF
14 INSURANCE AND INSURANCE PRACTICE;

15 (III) ESTABLISH AND MAINTAIN A RISK MANAGEMENT FRAMEWORK
16 THAT IS REASONABLY DESIGNED TO DETERMINE, TO THE EXTENT
17 PRACTICABLE, WHETHER THE INSURER'S USE OF EXTERNAL CONSUMER
18 DATA AND INFORMATION SOURCES, ALGORITHMS, AND PREDICTIVE
19 MODELS UNFAIRLY DISCRIMINATES AGAINST INDIVIDUALS BASED ON THEIR
20 RACE, COLOR, NATIONAL OR ETHNIC ORIGIN, RELIGION, SEX, SEXUAL
21 ORIENTATION, OR GENDER IDENTITY;

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

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

1 (c) DOCUMENTS, MATERIALS, AND OTHER INFORMATION IN THE
2 POSSESSION OR CONTROL OF THE DIVISION THAT ARE OBTAINED BY,
3 CREATED BY, OR DISCLOSED TO THE COMMISSIONER OR ANY OTHER
4 PERSON PURSUANT TO THIS SECTION OR ANY RULES ADOPTED PURSUANT
5 TO THIS SECTION ARE RECOGNIZED AS PROPRIETARY AND CONTAINING
6 TRADE SECRETS. ALL SUCH DOCUMENTS, MATERIALS, AND OTHER
7 INFORMATION ARE CONFIDENTIAL AND PRIVILEGED; ARE NOT SUBJECT TO
8 DISCLOSURE UNDER THE "COLORADO OPEN RECORDS ACT", PART 2 OF
9 ARTICLE 72 OF TITLE 24, OR OTHER OPEN RECORDS, FREEDOM OF
10 INFORMATION, SUNSHINE, OR SIMILAR LAW OF THIS STATE; ARE NOT
11 SUBJECT TO SUBPOENA; AND ARE NOT SUBJECT TO DISCOVERY OR
12 ADMISSIBLE IN EVIDENCE IN ANY PRIVATE CIVIL ACTION. HOWEVER, THE
13 COMMISSIONER MAY USE THE DOCUMENTS, MATERIALS, OR OTHER
14 INFORMATION IN THE FURTHERANCE OF ANY REGULATORY OR LEGAL
15 ACTION BROUGHT AS PART OF THE COMMISSIONER'S OFFICIAL DUTIES. THE
16 COMMISSIONER SHALL NOT OTHERWISE MAKE THE DOCUMENTS,
17 MATERIALS, OR OTHER INFORMATION PUBLIC WITHOUT THE PRIOR WRITTEN
18 CONSENT OF THE INSURER FROM WHICH THE DOCUMENTS, MATERIALS, OR
19 OTHER INFORMATION WAS OBTAINED. THE COMMISSIONER MAY MAKE
20 DATA PUBLICLY AVAILABLE IN AN AGGREGATED OR DE-IDENTIFIED
21 FORMAT IN A MANNER DEEMED APPROPRIATE BY THE COMMISSIONER.

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

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

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

12 (6) (a) IN THE REPORT SUBMITTED BY THE DEPARTMENT OF
13 REGULATORY AGENCIES TO THE LEGISLATIVE COMMITTEES OF REFERENCE
14 DURING THE FIRST TWO WEEKS OF THE 2023 REGULAR LEGISLATIVE
15 SESSION, PURSUANT TO PART 2 OF ARTICLE 7 OF TITLE 2, THE DIVISION
16 SHALL INCLUDE INFORMATION CONCERNING ANY CHANGES IN INSURANCE
17 RATES THAT HAVE RESULTED FROM THE PROHIBITIONS DESCRIBED IN
18 SUBSECTION (1) OF THIS SECTION.

19 (b) THIS SUBSECTION (6) IS REPEALED, EFFECTIVE JULY 1, 2023.

20 (7) NOTWITHSTANDING ANY PROVISION OF THIS SECTION TO THE
21 CONTRARY, THIS SECTION DOES NOT APPLY TO:

- 22 (a) TITLE INSURANCE, AS DEFINED IN SECTION 10-11-102 (8); OR
- 23 (b) BONDS EXECUTED BY QUALIFIED SURETY COMPANIES
24 PURSUANT TO PART 3 OF ARTICLE 4 OF THIS TITLE 10.

25 (8) NOTWITHSTANDING ANY PROVISION OF THIS SECTION TO THE
26 CONTRARY, NOTHING IN THIS SECTION REQUIRES AN INSURER TO COLLECT
27 FROM AN APPLICANT OR POLICYHOLDER THE RACE, COLOR, NATIONAL OR

1 ETHNIC ORIGIN, RELIGION, SEX, SEXUAL ORIENTATION, OR GENDER
2 IDENTITY OF AN INDIVIDUAL.

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

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

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

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

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

23 (e) "UNFAIR DISCRIMINATION BASED ON AN INDIVIDUAL'S RACE,
24 COLOR, NATIONAL OR ETHNIC ORIGIN, RELIGION, SEX, SEXUAL
25 ORIENTATION, OR GENDER IDENTITY" INCLUDES THE USE OF AN EXTERNAL
26 CONSUMER DATA AND INFORMATION SOURCE, ALGORITHM, OR PREDICTIVE
27 MODEL WHOSE PREDICTIVE CAPABILITY IS DERIVED IN SUBSTANTIAL PART

1 FROM ITS CORRELATION WITH MEMBERSHIP IN ONE OR MORE OF SUCH
2 PROTECTED CLASSES.

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

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

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