

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

**PREAMENDED**

*This Unofficial Version Includes Committee  
Amendments Not Yet Adopted on Second Reading*

LLS NO. 21-0594.01 Richard Sweetman x4333

**SENATE BILL 21-169**

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**SENATE SPONSORSHIP**

**Buckner**, Fields, Moreno, Story

**HOUSE SPONSORSHIP**

**Ricks and Esgar**,

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**Senate Committees**

Business, Labor, & Technology

**House Committees**

Health & Insurance

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**A BILL FOR AN ACT**

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

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**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.

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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 -**  
25 **consideration of protected class status prohibited - unfair**  
26 **discrimination prohibited - rules - stakeholder process required -**  
27 **investigations - definitions - repeal. (1) IN ADDITION TO THE METHODS**

1 AND PRACTICES PROHIBITED PURSUANT TO SECTION 10-3-1104 (1)(f), AN  
2 INSURER SHALL NOT, WITH REGARD TO ANY INSURANCE PRACTICE:

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

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

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

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

25 (3) (a) AFTER THE STAKEHOLDER PROCESS DESCRIBED IN  
26 SUBSECTION (2) OF THIS SECTION, THE COMMISSIONER SHALL ADOPT RULES  
27 FOR SPECIFIC TYPES OF INSURANCE, BY INSURANCE PRACTICE, WHICH

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

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 AS WELL AS ALGORITHMS AND PREDICTIVE MODELS USING EXTERNAL  
22 CONSUMER DATA AND INFORMATION SOURCES, FOR THE PARTICULAR TYPE  
23 OF INSURANCE AND INSURANCE PRACTICE;

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

1 AS ALGORITHMS AND PREDICTIVE MODELS USING EXTERNAL CONSUMER  
2 DATA AND INFORMATION SOURCES, UNFAIRLY DISCRIMINATES BASED ON  
3 RACE, COLOR, NATIONAL OR ETHNIC ORIGIN, RELIGION, SEX, SEXUAL  
4 ORIENTATION, DISABILITY, GENDER IDENTITY, OR GENDER EXPRESSION;

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

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

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

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

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

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

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

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

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

1 THIS SECTION AND ANY CHANGES IN INSURANCE RATES THAT HAVE  
2 RESULTED FROM THE PROHIBITIONS DESCRIBED IN SUBSECTION (1) OF THIS  
3 SECTION.

4 (b) THIS SUBSECTION (5) IS REPEALED, EFFECTIVE JULY 1, 2025.

5 (6) NOTWITHSTANDING ANY PROVISION OF THIS SECTION TO THE  
6 CONTRARY, THIS SECTION DOES NOT APPLY TO:

7 (a) TITLE INSURANCE, AS DEFINED IN SECTION 10-11-102 (8);

8 (b) BONDS EXECUTED BY QUALIFIED SURETY COMPANIES  
9 PURSUANT TO PART 3 OF ARTICLE 4 OF THIS TITLE 10; OR

10 (c) INSURERS ISSUING COMMERCIAL INSURANCE POLICIES; EXCEPT  
11 THAT THIS SECTION DOES APPLY TO INSURERS THAT ISSUE BUSINESS  
12 OWNERS' POLICIES OR COMMERCIAL GENERAL LIABILITY POLICIES, WHICH  
13 BUSINESS OWNERS' POLICIES OR COMMERCIAL GENERAL LIABILITY POLICIES  
14 HAVE ANNUAL PREMIUMS OF TEN THOUSAND DOLLARS OR LESS.

15 (7) NOTHING IN THIS SECTION:

16 (a) REQUIRES AN INSURER TO COLLECT FROM AN APPLICANT OR  
17 POLICYHOLDER THE RACE, COLOR, NATIONAL OR ETHNIC ORIGIN, RELIGION,  
18 SEX, SEXUAL ORIENTATION, DISABILITY, GENDER IDENTITY, OR GENDER  
19 EXPRESSION OF AN INDIVIDUAL; OR

20 (b) MAY BE CONSTRUED TO:

21 (I) PROHIBIT THE USE OF, OR REQUIRE LIFE, ANNUITY, LONG-TERM  
22 CARE, OR DISABILITY INSURERS TO TEST, MEDICAL, FAMILY HISTORY,  
23 OCCUPATIONAL, DISABILITY, OR BEHAVIORAL INFORMATION RELATED TO  
24 A SPECIFIC INDIVIDUAL, WHICH INFORMATION, BASED ON ACTUARIALLY  
25 SOUND PRINCIPLES, HAS A DIRECT RELATIONSHIP TO MORTALITY,  
26 MORBIDITY, OR LONGEVITY RISK UNLESS SUCH INFORMATION IS  
27 OTHERWISE INCLUDED IN THE TESTING OF AN ALGORITHM OR PREDICTIVE



1 MODEL THAT ALSO USES EXTERNAL CONSUMER DATA AND INFORMATION  
2 SOURCES;

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

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

12 (IV) PROHIBIT THE USE OF OR REQUIRE THE TESTING OF  
13 LONGSTANDING AND WELL-ESTABLISHED COMMON INDUSTRY PRACTICES  
14 IN SETTLING CLAIMS OR TRADITIONAL UNDERWRITING PRACTICES UNLESS  
15 SUCH PRACTICES OR FACTORS ARE OTHERWISE INCLUDED IN THE TESTING  
16 OF AN ALGORITHM OR PREDICTIVE MODEL THAT ALSO USES EXTERNAL  
17 CONSUMER DATA AND INFORMATION SOURCES.

18 (9) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE  
19 REQUIRES:

20 (a) "ALGORITHM" MEANS A COMPUTATIONAL OR MACHINE  
21 LEARNING PROCESS THAT INFORMS HUMAN DECISION MAKING IN  
22 INSURANCE PRACTICES.

23 (b) (I) "EXTERNAL CONSUMER DATA AND INFORMATION SOURCE"  
24 MEANS A DATA OR AN INFORMATION SOURCE THAT IS USED BY AN INSURER  
25 TO SUPPLEMENT TRADITIONAL UNDERWRITING OR OTHER INSURANCE  
26 PRACTICES OR TO ESTABLISH LIFESTYLE INDICATORS THAT ARE USED IN  
27 INSURANCE PRACTICES. "EXTERNAL CONSUMER DATA AND INFORMATION

1 SOURCE" INCLUDES CREDIT SCORES, SOCIAL MEDIA HABITS, LOCATIONS,  
2 PURCHASING HABITS, HOME OWNERSHIP, EDUCATIONAL ATTAINMENT,  
3 OCCUPATION, LICENSURES, CIVIL JUDGMENTS, AND COURT RECORDS.

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

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

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

14 (e) "UNFAIRLY DISCRIMINATE" AND "UNFAIR DISCRIMINATION"  
15 INCLUDE THE USE OF ONE OR MORE EXTERNAL CONSUMER DATA AND  
16 INFORMATION SOURCES, AS WELL AS ALGORITHMS OR PREDICTIVE MODELS  
17 USING EXTERNAL CONSUMER DATA AND INFORMATION SOURCES, THAT  
18 HAVE A CORRELATION TO RACE, COLOR, NATIONAL OR ETHNIC ORIGIN,  
19 RELIGION, SEX, SEXUAL ORIENTATION, DISABILITY, GENDER IDENTITY, OR  
20 GENDER EXPRESSION, AND THAT USE RESULTS IN A DISPROPORTIONATELY  
21 NEGATIVE OUTCOME FOR SUCH CLASSIFICATION OR CLASSIFICATIONS,  
22 WHICH NEGATIVE OUTCOME EXCEEDS A REASONABLE CORRELATION TO  
23 THE UNDERLYING INSURANCE PRACTICE, INCLUDING LOSSES AND COSTS  
24 FOR UNDERWRITING.

25 **SECTION 3. Act subject to petition - effective date.** This act  
26 takes effect at 12:01 a.m. on the day following the expiration of the  
27 ninety-day period after final adjournment of the general assembly; except

1 that, if a referendum petition is filed pursuant to section 1 (3) of article V  
2 of the state constitution against this act or an item, section, or part of this  
3 act within such period, then the act, item, section, or part will not take  
4 effect unless approved by the people at the general election to be held in  
5 November 2022 and, in such case, will take effect on the date of the  
6 official declaration of the vote thereon by the governor.