

SB169_L.022

HOUSE COMMITTEE OF REFERENCE AMENDMENT

Committee on Health & Insurance.SB21-169 be amended as follows:

1 Amend reengrossed bill, strike everything below the enacting clause and
2 substitute:

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

5 (a) Increasingly, insurers use external consumer data and
6 information sources, as well as algorithms and predictive models using
7 external consumer data and information sources, in their insurance rating,
8 underwriting, claims, and other business practices;

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

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

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

24 (a) Prohibit:

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

28 (II) The use of external consumer data and information sources,
29 as well as algorithms and predictive models using external consumer data
30 and information sources, which use has the result of unfairly
31 discriminating based on race, color, national or ethnic origin, religion,
32 sex, sexual orientation, disability, gender identity, or gender expression;
33 and

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

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

41 **10-3-1104.9. Insurers' use of external consumer data and**

1 **information sources, algorithms, and predictive models -**
2 **consideration of protected class status prohibited - unfair**
3 **discrimination prohibited - rules - stakeholder process required -**
4 **investigations - definitions - repeal.** (1) IN ADDITION TO THE METHODS
5 AND PRACTICES PROHIBITED PURSUANT TO SECTION 10-3-1104 (1)(f), AN
6 INSURER SHALL NOT, WITH REGARD TO ANY INSURANCE PRACTICE:
7 (a) UNFAIRLY DISCRIMINATE BASED ON RACE, COLOR, NATIONAL
8 OR ETHNIC ORIGIN, RELIGION, SEX, SEXUAL ORIENTATION, DISABILITY,
9 GENDER IDENTITY, OR GENDER EXPRESSION; OR
10 (b) PURSUANT TO RULES ADOPTED BY THE COMMISSIONER, USE
11 ANY EXTERNAL CONSUMER DATA AND INFORMATION SOURCES, AS WELL
12 AS ANY ALGORITHMS OR PREDICTIVE MODELS THAT USE EXTERNAL
13 CONSUMER DATA AND INFORMATION SOURCES, IN A WAY THAT UNFAIRLY
14 DISCRIMINATES BASED ON RACE, COLOR, NATIONAL OR ETHNIC ORIGIN,
15 RELIGION, SEX, SEXUAL ORIENTATION, DISABILITY, GENDER IDENTITY, OR
16 GENDER EXPRESSION.
17 (2) (a) THE COMMISSIONER SHALL ADOPT RULES FOR THE
18 IMPLEMENTATION OF THIS SECTION.
19 (b) THE COMMISSIONER SHALL ENGAGE IN A STAKEHOLDER
20 PROCESS PRIOR TO THE ADOPTION OF RULES FOR ANY TYPE OF INSURANCE
21 THAT INCLUDES CARRIERS, PRODUCERS, CONSUMER REPRESENTATIVES,
22 AND OTHER INTERESTED PARTIES. THE COMMISSIONER SHALL HOLD
23 STAKEHOLDER MEETINGS FOR STAKEHOLDERS OF DIFFERENT TYPES OF
24 INSURANCE TO ENSURE SUFFICIENT OPPORTUNITY TO CONSIDER FACTORS
25 AND PROCESSES RELEVANT TO EACH TYPE OF INSURANCE. THE
26 COMMISSIONER SHALL PROVIDE NOTICE OF STAKEHOLDER MEETINGS ON
27 THE DIVISION WEBSITE, AND STAKEHOLDER MEETINGS SHALL BE OPEN TO
28 THE PUBLIC.
29 (3) (a) AFTER THE STAKEHOLDER PROCESS DESCRIBED IN
30 SUBSECTION (2) OF THIS SECTION, THE COMMISSIONER SHALL ADOPT RULES
31 FOR SPECIFIC TYPES OF INSURANCE, BY INSURANCE PRACTICE, WHICH
32 RULES ESTABLISH MEANS BY WHICH AN INSURER MAY DEMONSTRATE, TO
33 THE EXTENT PRACTICABLE, THAT IT HAS TESTED WHETHER ITS USE OF
34 EXTERNAL CONSUMER DATA AND INFORMATION SOURCES, AS WELL AS
35 ALGORITHMS OR PREDICTIVE MODELS USING EXTERNAL CONSUMER DATA
36 AND INFORMATION SOURCES, UNFAIRLY DISCRIMINATES BASED ON RACE,
37 COLOR, NATIONAL OR ETHNIC ORIGIN, RELIGION, SEX, SEXUAL
38 ORIENTATION, DISABILITY, GENDER IDENTITY, OR GENDER EXPRESSION.
39 THE RULES SHALL NOT BECOME EFFECTIVE UNTIL JANUARY 1, 2023, AT
40 THE EARLIEST, FOR ANY TYPE OF INSURANCE, AND THE COMMISSIONER
41 SHALL CONSIDER SOLVENCY IMPACTS, IF ANY, TO INSURERS IN ADOPTING
42 THE RULES.
43 (b) RULES ADOPTED PURSUANT TO THIS SECTION MUST REQUIRE

1 EACH INSURER TO:

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

7 (II) PROVIDE AN EXPLANATION OF THE MANNER IN WHICH THE
8 INSURER USES EXTERNAL CONSUMER DATA AND INFORMATION SOURCES,
9 AS WELL AS ALGORITHMS AND PREDICTIVE MODELS USING EXTERNAL
10 CONSUMER DATA AND INFORMATION SOURCES, FOR THE PARTICULAR TYPE
11 OF INSURANCE AND INSURANCE PRACTICE;

12 (III) ESTABLISH AND MAINTAIN A RISK MANAGEMENT FRAMEWORK
13 OR SIMILAR PROCESSES OR PROCEDURES THAT ARE REASONABLY DESIGNED
14 TO DETERMINE, TO THE EXTENT PRACTICABLE, WHETHER THE INSURER'S
15 USE OF EXTERNAL CONSUMER DATA AND INFORMATION SOURCES, AS WELL
16 AS ALGORITHMS AND PREDICTIVE MODELS USING EXTERNAL CONSUMER
17 DATA AND INFORMATION SOURCES, UNFAIRLY DISCRIMINATES BASED ON
18 RACE, COLOR, NATIONAL OR ETHNIC ORIGIN, RELIGION, SEX, SEXUAL
19 ORIENTATION, DISABILITY, GENDER IDENTITY, OR GENDER EXPRESSION;

20 (IV) PROVIDE AN ASSESSMENT OF THE RESULTS OF THE RISK
21 MANAGEMENT FRAMEWORK OR SIMILAR PROCESSES OR PROCEDURES AND
22 ACTIONS TAKEN TO MINIMIZE THE RISK OF UNFAIR DISCRIMINATION,
23 INCLUDING ONGOING MONITORING; AND

24 (V) PROVIDE AN ATTESTATION BY ONE OR MORE OFFICERS THAT
25 THE INSURER HAS IMPLEMENTED THE RISK MANAGEMENT FRAMEWORK OR
26 SIMILAR PROCESSES OR PROCEDURES APPROPRIATELY ON A CONTINUOUS
27 BASIS.

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

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

33 (II) THE ABILITY OF INSURERS TO USE EXTERNAL CONSUMER DATA
34 AND INFORMATION SOURCES, AS WELL AS ALGORITHMS OR PREDICTIVE
35 MODELS USING EXTERNAL CONSUMER DATA AND INFORMATION SOURCES,
36 THAT HAVE BEEN PREVIOUSLY ASSESSED BY THE DIVISION AND FOUND NOT
37 TO BE UNFAIRLY DISCRIMINATORY.

38 (d) DOCUMENTS, MATERIALS, AND OTHER INFORMATION IN THE
39 POSSESSION OR CONTROL OF THE DIVISION THAT ARE OBTAINED BY,
40 CREATED BY, OR DISCLOSED TO THE COMMISSIONER OR ANY OTHER
41 PERSON PURSUANT TO THIS SECTION OR ANY RULES ADOPTED PURSUANT
42 TO THIS SECTION ARE RECOGNIZED AS PROPRIETARY AND CONTAINING
43 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 INFORMATION CONCERNING ANY RULES ADOPTED PURSUANT TO
27 THIS SECTION AND ANY CHANGES IN INSURANCE RATES THAT HAVE
28 RESULTED FROM THE PROHIBITIONS DESCRIBED IN SUBSECTION (1) OF THIS
29 SECTION.

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

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

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

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

36 (c) INSURERS ISSUING COMMERCIAL INSURANCE POLICIES; EXCEPT
37 THAT THIS SECTION DOES APPLY TO INSURERS THAT ISSUE BUSINESS
38 OWNERS' POLICIES OR COMMERCIAL GENERAL LIABILITY POLICIES, WHICH
39 BUSINESS OWNERS' POLICIES OR COMMERCIAL GENERAL LIABILITY POLICIES
40 HAVE ANNUAL PREMIUMS OF TEN THOUSAND DOLLARS OR LESS.

41 (7) NOTHING IN THIS SECTION:

42 (a) REQUIRES AN INSURER TO COLLECT FROM AN APPLICANT OR
43 POLICYHOLDER THE RACE, COLOR, NATIONAL OR ETHNIC ORIGIN, RELIGION,

1 SEX, SEXUAL ORIENTATION, DISABILITY, GENDER IDENTITY, OR GENDER
2 EXPRESSION OF AN INDIVIDUAL; OR

3 (b) MAY BE CONSTRUED TO:

4 (I) PROHIBIT THE USE OF, OR REQUIRE LIFE, ANNUITY, LONG-TERM
5 CARE, OR DISABILITY INSURERS TO TEST, MEDICAL, FAMILY HISTORY,
6 OCCUPATIONAL, DISABILITY, OR BEHAVIORAL INFORMATION RELATED TO
7 A SPECIFIC INDIVIDUAL, WHICH INFORMATION, BASED ON ACTUARIALLY
8 SOUND PRINCIPLES, HAS A DIRECT RELATIONSHIP TO MORTALITY,
9 MORBIDITY, OR LONGEVITY RISK UNLESS SUCH INFORMATION IS
10 OTHERWISE INCLUDED IN THE TESTING OF AN ALGORITHM OR PREDICTIVE
11 MODEL THAT ALSO USES EXTERNAL CONSUMER DATA AND INFORMATION
12 SOURCES;

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

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

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

28 (9) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE
29 REQUIRES:

30 (a) "ALGORITHM" MEANS A COMPUTATIONAL OR MACHINE
31 LEARNING PROCESS THAT INFORMS HUMAN DECISION MAKING IN
32 INSURANCE PRACTICES.

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

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

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

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

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

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

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