

House Health & Insurance
 05/28/2021 Upon Adjournment
 SB21-169 Restrict Insurers' Use Of External Consumer Data
 Typed Text of Testimony Submitted

| Name, Position, Representing | Typed Text of Testimony |
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| Kenneth Maestas For The Colorado Cross Disability Coalition (CCDC) | <p>Members of the House Health & Insurance Committee:</p> <p>My name is Kenny Maestas. I am the Legislative Coordinator for the Colorado Cross Disability Coalition (CCDC) and I'm writing to follow up on SB21-169 - Restrict Insurers' Use of External Consumer Data.</p> <p>We do not ever want to send mixed messaging and we wanted to clarify written testimony submitted earlier today.</p> <p>CCDC believes there is a lot of good that will come of SB21-169- Restrict Insurers' Use of External Consumer Data, however, our stance on being included is firm and cannot change.</p> <p>However, CCDC will offer its full support of SB21-169 with disability re-included.</p> <p>Thank you for your time and attention to this clarification!</p> <p>My best regards,</p> <p>Kenny Maestas</p> |
| Kenneth Maestas Amend The Colorado Cross Disability Coalition (CCDC) | <p>Members of the House Health & Insurance Committee:</p> <p>My name is Kenny Maestas. I am the Legislative Coordinator for the Colorado Cross Disability Coalition (CCDC) and I'm writing to express our concern with SB21-169 - Restrict Insurers' Use of External Consumer Data.</p> <p>This Bill was supposed to ensure that ALL Colorado residents have fair and equitable access to insurance. We were under the impression that SB21-169 was supposed to prohibit discrimination in insurance (health insurance, home, auto, general liability etc.), however people with disabilities (PWD) were. for some unknown reason, removed in the Senate.</p> <p>There was a substitution of 'gender identity' but the term 'disability' was REMOVED and not ever put back. Why would you intentionally disregard 10% of Colorado residents.</p> <p>The Colorado Cross Disability Coalition (CCDC) - URGENTLY request you to add back the term 'disability' so that we are not subject to possible unfair discrimination.</p> |

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| | <p>SB-169 will allow the Colorado Division of Insurance/Commissioner to examine and investigate an insurer's use of external consumer data and information sources, algorithms, or predictive models in a fair and nondiscriminatory manner. However, we find the removal of PWD extremely discriminatory!</p> <p>How can you assure Colorado insurance consumers with disabilities that their interests are ultimately being protected by trusted, informed Colorado experts, who can validate that their individual insurable risks are measured on the same 'level playing field' as others, and that the underwriting decisions are validated, fair, and transparent and non-discriminatory? We were left out!</p> <p>CCDC respectfully asks you to re-include the term 'disability' back into SB21-169 as it is the right thing to do and will lessen the chances of costly litigation to correct this matter later.</p> <p>Thank you for your time and attention.</p> <p>My best regards,</p> <p>Kenny Maestas</p> |
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RATING AUTOMOBILE INSURANCE

A critique of two studies

May 28, 2021



James Lynch
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My name is James Lynch. I am chief actuary and senior vice president of Research and Education at the Insurance Information Institute in New York. Founded in 1960, we are the trusted source of unique, data-driven insights to inform and empower consumers. Our membership includes seven of the 10 largest personal auto insurance writers in the United States. We provide objective, fact-based information about insurance – information that is rooted in economic and actuarial soundness.

I am a Fellow of the Casualty Actuarial Society, the leading property/casualty actuarial organization in the world, and have served on its board of directors. I have more than a quarter-century of experience in property/casualty insurance and reinsurance and have held senior actuarial positions at QBE the Americas and White Mountains Reinsurance of America.

At Triple-I, we commend the efforts to try to understand and address the topic of race and insurance. The entire property/casualty insurance industry – companies, academic researchers, regulators, trade associations – has been focusing on this important issue.

It seems clear that all parties sincerely want a more equitable society, and working cooperatively we can find solutions that address the issue of systemic racism while preserving the competitive environment that allows the insurance industry to keep its promises and protect its customers.

At the same time, it is important that the discussion be based on thorough, fact-based research. There are quite a few studies in progress, as will be noted later.

Triple-I has been asked to comment specifically on two studies conducted under the auspices of *Consumer Reports* magazine. These studies purport to document insurer practices that “magnify the economic effects of systemic racism.”

Consumer Reports has a well-deserved reputation for rigorous, independent product testing. Unfortunately, these particular studies fall well short of their normal standard.

One study gathered a few preliminary quotes of hypothetical grocery store employees and concluded that some insurer practices appear “to magnify the economic effects of systemic racism,” but this appears to be far too sweeping a conclusion to reach using such a sparse, imperfect dataset.

The other study, conducted in conjunction with ProPublica in 2017, attempted to be more rigorous, but it was a failure. It purported to find “substantial disparities in auto insurance prices between majority white and majority nonwhite neighborhoods. These disparities [it continued] were larger than risk levels could explain.”

That second study made elemental errors that, once corrected, showed the exact opposite of what ProPublica asserted: auto insurers charge prices that properly reflect the actual risk in both majority white and majority nonwhite neighborhoods.

There are certain things that are important to know about rating variables:

- First: They work. They are effective at gauging the likelihood that a customer will be in an accident.
- Second: Every rating variable has been proved effective through actuarial analysis of actual data.

- Third: They are filed in advance with state regulators, along with statistical proof of their effectiveness. And they can't be changed without similar statistical analysis.
- Fourth: Companies constantly review how effective these factors are. If they don't work in the real world, they are adjusted or abandoned.
- Last, but certainly not least: The setting of private-passenger auto insurance rates is a color-blind process. Insurers do not gather information based on race or income, nor do they discriminate against anyone on the basis of race or income.

The first *Consumer Reports* study, "Effects of Varying Education Level and Job Status on Online Auto Insurance Price Quotes," was published in January 2021. It concludes that some insurers vary rates by education and occupation. Education and occupation, they assert, correlate with race, so these rating factors appear to be unfairly discriminatory.

Consumer Reports focused on nine insurers. Four of them varied rates by education and occupation. Five did not.

This is hardly news. Insurers have openly used these rating variables for decades.

The *Consumer Reports* study has shortcomings. Some its researchers acknowledge. Others they do not.

The study candidly states, "The CR team did not attempt to identify or fully understand all the variables that affect quote premiums. ... Insurance companies . . . may take into account additional data or rating factors."

They gathered preliminary quotes, which insurers refine when the customer supplies more complete information. The quotes they rely upon are estimates. So the research condemns companies for charging prices that they might not be charging.

Those are the shortcomings they acknowledge. The researchers fail to acknowledge that the study does not attempt to pair the rates with the risk of loss. Insurers make or lose money on their ability to charge customers a rate that is commensurate with risk. Where they charge more or less, you can be sure they have found from experience that it is the thing to do. You can also be sure they have regulatory approval to vary the rates as they do.

The rigor that insurers live up to was crystallized more than 10 years ago, in 2008. After a report similar to the *Consumer Reports* study, the state of New Jersey revealed one company's rating factors and found them to be "actuarially valid." Exhibit 1, taken from that research, compares different levels of education and occupation by a standard industry metric, the loss relativity.

Exhibit 1

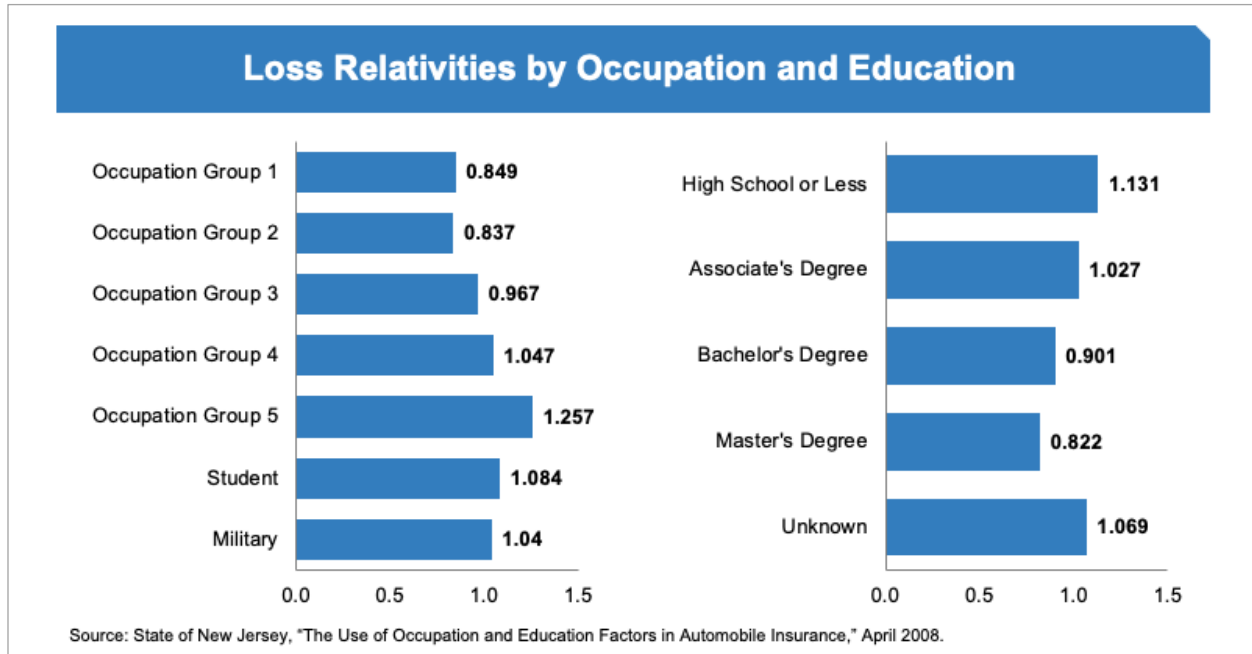


Exhibit 1 shows us that, for example, Occupation Group 1 (the report doesn't say what occupations are in that group) generate about 15 percent fewer claims than average, while Group 5 generates about 25 percent more claims than average. It also shows that people who were unable to advance beyond high school were significantly more likely to be in an accident than those with a master's degree.

They also fail to acknowledge that the study looks only at one type of job – working in a grocery store. To conclude that occupation is an unfairly discriminatory variable, one would have to look at many, many occupations. Do lawyers pay a lot for insurance? What about doctors or nurses? Search the internet and you'll get yes and no answers for each, and other jobs as well. Research that looks at only one industry can't tell you what is going on in the myriad ways that Americans make a living.

This type of research is common among self-styled consumer advocates like the Consumer Federation of America or *Consumer Reports*. They use a team of interns or researchers to grab a handful of internet quotes and publish what they have found. The work can generate some news stories or some click-bait. Policymakers, trying to determine whether insurers are behaving illegally or inappropriately, need meatier research.

The other study, conducted by ProPublica and published by *Consumer Reports* in 2017, alleges that auto insurers systematically price-gouged minority communities and areas with predominantly low-income households. Their work concluded that “some major insurers charge minority neighborhoods as much as 30 percent more than other areas with similar accident costs.”

That charge is simply inaccurate and has been proved inaccurate several times over. Researchers, regulators and policymakers who took the allegations seriously, examined them from different perspectives and, in every instance that I am aware of, found them wanting.

ProPublica looked at ZIP code-level auto insurance losses in four states where that information is publicly available. They fit a complicated mathematical model to those losses and compared the model’s predictions of losses to the premium that a hypothetical driver would pay in those ZIP codes. They said they found “many of the disparities in auto insurance prices between minority and white neighborhoods are wider than differences in risk can explain.”

I can explain it: Their model was wrong.

Triple-I hired a highly respected actuarial firm, Pinnacle Actuarial Solutions, whose overview of the ProPublica study found “multiple concerns with the analysis and resulting conclusions.” The most prominent: ProPublica didn’t properly handle ZIP codes in which there wasn’t a lot of data. The branch of mathematics that deals with thin data is called credibility, and it is part of the standard actuarial curriculum.

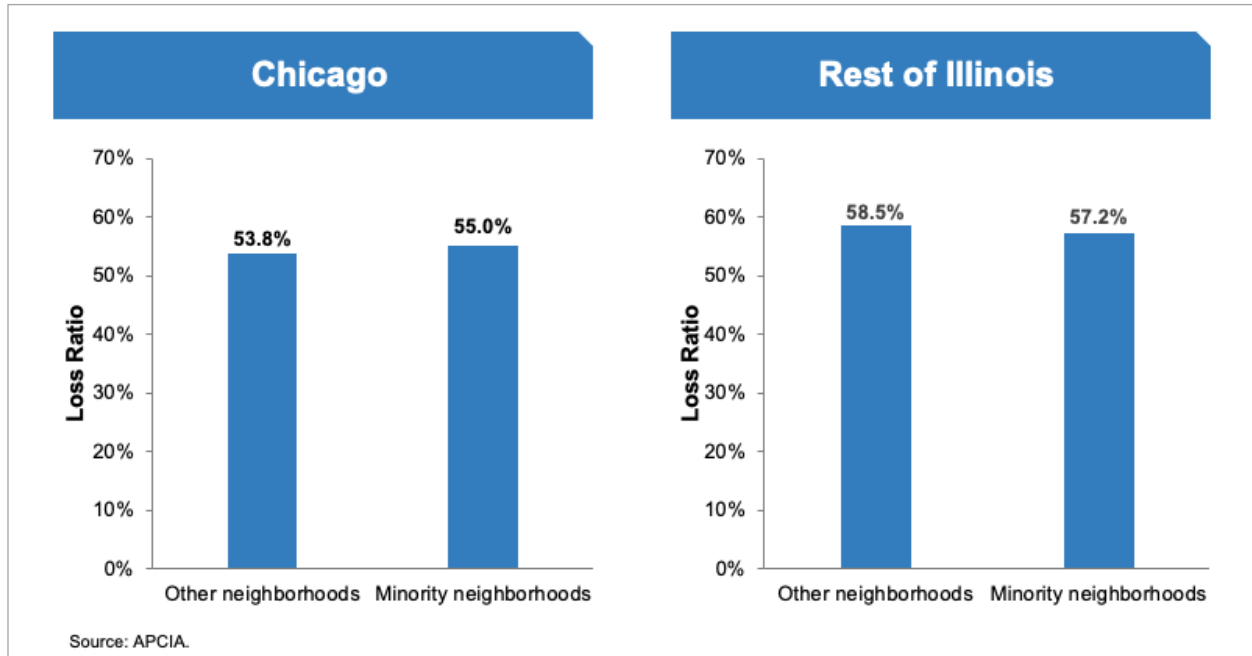
ProPublica’s analysts created a complicated model but made a simple mistake.

It is actually not too hard to determine whether pricing models discriminate against minority neighborhoods. You just need to look at the loss ratio – the amount an insurer pays in losses, divided by the amount it collects in premiums. Comparing the loss ratio in minority neighborhoods with loss ratios in other neighborhoods paints a much different picture than what ProPublica displayed.

If ProPublica were correct, minority neighborhoods would have loss ratios substantially lower than those of other neighborhoods. People buying insurance there would receive less back in loss payments than do customers in other areas. Lower loss ratios in minority neighborhoods would be evidence of discrimination.

Exhibit 2 is what one trade group found, using the same loss data ProPublica got, and the actual premium data that corresponded with those losses, which came from state regulators.

Exhibit 2



This exhibit shows Chicago and the rest of Illinois separately, because ProPublica focused on the state this way, and the two areas are very different, in both demographics and traffic patterns.

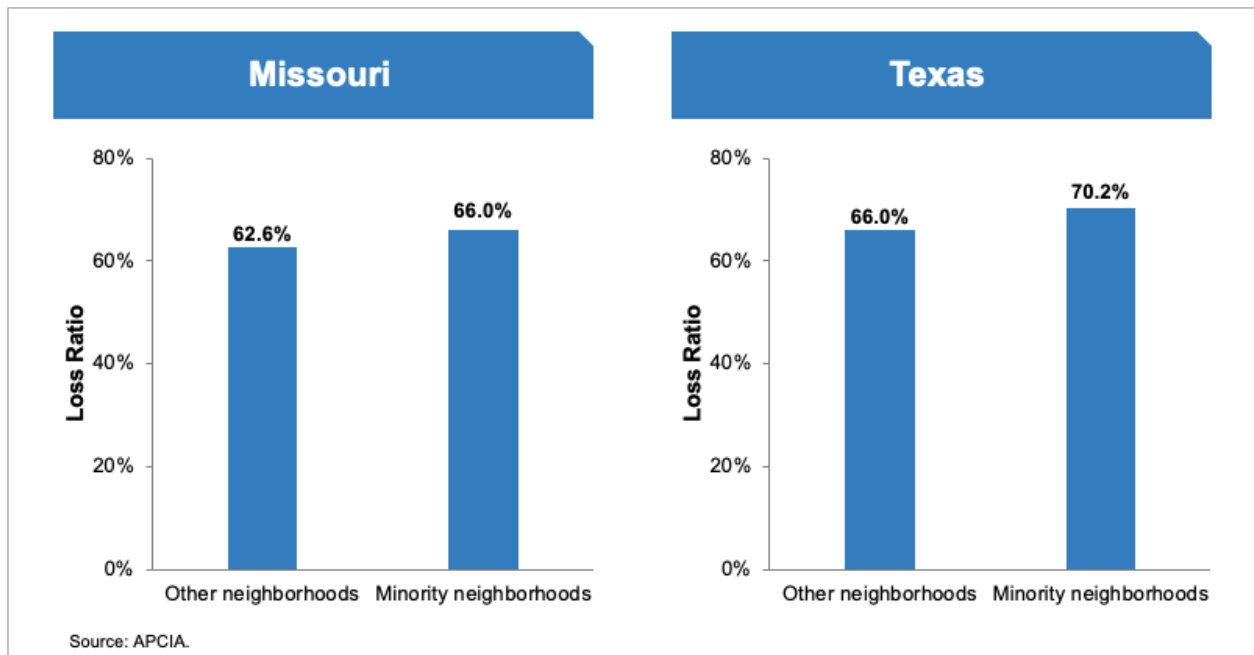
In both cases, the loss ratios are quite close. In Chicago (on the left) minority neighborhoods posted a loss ratio of 55 percent, meaning that for every dollar of premium policyholders paid, 55 cents was used to cover claims. That's slightly more than what happened in other neighborhoods, where 53.8 cents of every premium dollar was used to pay claims.

So in Chicago, people in minority neighborhoods posted a higher loss ratio. This means they actually got a slightly better deal than customers in other neighborhoods, since they received slightly more of their premium back to address claims, though the difference is pretty small and likely due to chance.

In the rest of Illinois, the situation is similar. Minority neighborhoods posted a loss ratio of 57.2 percent, just a little bit less than other neighborhoods. Again, the results are close. There is nothing approaching the level of overcharging that ProPublica’s analysis implies. In fact, there is no evidence of overcharging.

Exhibit 3 shows results in two other states where ProPublica found discrepancies, and again you can see that when you look at real data, there is no evidence suggesting the level of inequities that ProPublica alleged. ProPublica got the analysis entirely wrong.

Exhibit 3



If you need further proof, the state of Missouri did its own, more comprehensive analysis and concluded that, “No evidence was found that would indicate that higher

rated territories are charged more *relative to risk* than lower-rated territories,” adding in a footnote, “ProPublica got the analysis entirely wrong.”

Remember a few moments ago, I pointed out that the biggest mistake ProPublica made was failing to make standard actuarial adjustments to the data. What would happen if you used ProPublica’s methods, but adjusted them?

California regulators actually did this. They used ProPublica’s modeling to look for discrimination in individual rate filings, but before they did, they made the appropriate actuarial adjustments. California classified neighborhoods as underserved and non-underserved, but those terms align closely with minority and other neighborhoods.

Here are the results of analyzing rate filings from two different insurers. In the first, the insurance company was found to charge 25 percent more in underserved neighborhoods – but the company experienced losses 40 percent higher in those areas. In the other, the underserved were charged 25 percent more – but they had losses 27 percent higher.

In both cases, using actual data from actual filings, the Department of Insurance found that the areas in question paid considerably more for insurance – but that they also had considerably more expensive claim costs. This was consistent with the loss ratio analysis in Illinois, Missouri and Texas that we just looked at. It was consistent with what Missouri regulators found. The groups that pay higher insurance bills are higher risks to the insurance company. That’s the way insurance is supposed to be. A fair rate is one that is neither excessive, inadequate, or unfairly discriminatory.

And it’s another way of saying that ProPublica got the analysis entirely wrong.

The growing awareness of historical injustices make these unprecedented times. As the insurance industry, along with the rest of America's business and governmental institutions, examines past injustices and appropriate remedies, it makes sense to incorporate high quality, relevant research.

I belong to committees in two professional organizations that are both examining the matter: the Casualty Actuarial Society and the American Academy of Actuaries. The NAIC is conducting research. The Insurance Research Council, which recently began a closer relationship with Triple-I, is looking into the impact of insurance credit scores and race.

At Triple-I, we would strongly recommend any insurance policymakers or regulators look to research from organizations like these that have a credible, long-term commitment to understanding and improving the industry.

Thank you Madame Chair and members of the committee.

My name is Adam Fox, and I am the Deputy Director at the Colorado Consumer Health Initiative.

CCHI is a non-profit, non-partisan membership based organization working to ensure that all Coloradans have equitable access to high-quality and affordable health care.

I am submitting this written testimony to express CCHI's strong support for SB169. This legislation will ensure that the use of big data, algorithms, and predictive models used in insurance is not discriminatory to avoid perpetuating racial and historic injustices.

In many ways, this is a black box that is very difficult to shine a light into, but that's what this bill would do. By establishing rules for insurance companies to test their use of big data tools for discrimination and demonstrate to the Division of Insurance they are not using them in a discriminatory manner, we will be protecting consumers from misuse of big data.

Big data can be used responsibly, but there are an increasing number of examples where it is being used, whether intentionally or not, in ways that exacerbate economic and racial injustices, including in health management.

A 2019 study identified a case where a widely used algorithm essentially concluded that Black patients were healthier than equally sick white patients because it used costs as a proxy for health. Less money was spent on Black patients, likely because of barriers to care and structural racism, so the algorithm erroneously concluded that they were healthier and denied them access to extra services being provided to white patients through care management structures. The racial bias of this algorithm was estimated to reduce the number of Black patients identified for extra care by half despite them having equal health needs to white patients.

We understand that big data may be used in discriminatory ways in other types of insurance. Again, whether this is intentional or not, this entrenches disparities and racial inequities by denying protected classes of people the services they should receive or making them more expensive. Coloradans' ability to afford homeowners or car insurance, for instance, can have a direct impact on a person's ability to have stable housing, transportation, or stay employed, which in turn affects their health and economic wellbeing. Use of data in a discriminatory manner in these products perpetuates the disparities and racial injustices we see across health and economic outcomes.

Under this bill, insurance companies will have the opportunity to learn from this process, evaluate their data systems, and keep consumers whole while unraveling deep-rooted systems of discrimination they may not have even been aware they were using in their data tools.

Big data can be a powerful, but that data can engrain biases and injustice if not used properly, and we need to make sure this power is not used in ways that continue systems of discrimination, oppression, or racism. For these reasons, we ask you to vote yes on SB169.

Please do not hesitate to reach out to me if you have any questions.

Adam Fox
Deputy Director
Colorado Consumer Health Initiative
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May 28, 2021

SB 169 Testimony before Colorado House Health & Insurance Committee

By Kelly Campbell, representing American Property Casualty Insurance Association (APCIA)

Honorable Chair and Members of the Committee:

I want to thank Commissioner Conway for the conversations he had with APCIA and other stakeholders. APCIA believes it is past time to address the inequality that exists in our country with substantive and durable solutions. We appreciate the improvements that are reflected in the amendments the committee will discuss later today. However, we believe that SB 169 does not fulfill its intended purpose of addressing systemic inequities while supporting a sound insurance market.

Due to the limited time, I will focus only on the definition of “unfair discrimination” as we believe this is the heart of the legislation.

APCIA had one overriding goal in conversations with the Commissioner. That goal was and remains to ensure the definition of those terms are consistent with two important bodies of law:

- (1) The risk-based pricing structure as it exists in Colorado’s insurance code and
- (2) The law of unintentional discrimination (which includes disparate impact discrimination).

SB 169 and the proposed amendments do not reconcile with the provisions of Colorado’s insurance code. To illustrate, I refer you to the proposed definition provision (page 6, lines 8-18) and, specifically to the phrase “including losses and costs for underwriting”. The existing insurance code lists criteria that must be considered in setting rates to comply with the statute’s prohibition against rates that are “excessive, inadequate, or unfairly discriminatory”. The proposed definition excludes those criteria and ignores their importance in satisfying the excessiveness, inadequacy, and unfair discrimination standards imposed on rates by the statute.

As proposed, the definition is inconsistent with the law of unintentional discrimination (including disparate impact discrimination). The courts (both federal and state) have recognized, over the last 55+ years of developing the law in this area, the need for an objective standard for determining the extent of discrimination inherent in a particular practice. Most often that standard requires a *material* difference in the impact that a practice has on a protected class versus its impact on a majority class for the practice to be defined as unfairly discriminatory.

An easy example is “materiality” in the employment context, which is defined by the 4/5ths rule. If 60% of job applicants in a majority class are hired and only 50% in the minority class are hired, the difference is considered insignificant and not discriminatory under the 4/5ths rule. In other cases, statistical tests of significance or a showing of a disparity of two or more standard deviations have been applied. Whether it is the 4/5ths rule or some other statistical test, courts allow for some adverse impact on a protected class if the adverse impact is not significant based on an objective standard. The point is that the law recognizes not all adverse impact is unlawful, and the proposed definition is inconsistent with that principle.



APCIA believes aligning these bodies of law is critical to achieving the stated objective of this legislation, to address systemic inequality, and to maintain a viable insurance market. We look forward to continuing to work with Commissioner Conway and members of the General Assembly to address those goals.



Written Testimony to Strongly Support SB21-169

My name is Karla Gonzales Garcia. I am the Policy Director for the Colorado Organization for Latina Opportunity and Reproductive Rights (COLOR). COLOR works to engage and empower the Latino community to speak out about the policies that impacts our community.

We are committed to ensuring that Latinas and our families are able to make personal decisions about health, have access to affordable health services and that we are each able to live our lives with dignity. We are honored to testify in support of Bill 169, a bill that seeks to take steps to protect consumers from unfair discrimination in insurance practices. In particular, it is focused on addressing ways that algorithms are used by insurance companies to deny coverage, charge an exorbitant amount of money on premiums and the fact that these practices hurts communities who are already struggling with health inequities, poverty, lack of opportunities, and systemic oppression.

Racial discrimination has been part of the insurance sector landscape for quite some time. Early forms of discrimination, such as race-based premiums and redlining have been replaced with the subtler damage from coverage discrimination and rates based on how data is collected, interpreted and used to withhold eligibility and/or charge exorbitant premiums.

The outright denial of housing insurance in certain neighborhoods that happened be majority communities of color or the use of gender or race as explicit categories that could result in higher charges for auto or health coverage may not occur as often, but insurance companies have developed sophisticated arguments using data in a specific way to continue to take away coverage from marginalized people or charge them more for basic coverage.

Consumer advocates have express for some time a concern about unregulated use of all kinds of data and the way it is used to perpetuate intentional and unintentional bias and discrimination in coverage and pricing.

We are here to urge you to support SB169, as discriminatory practices in the insurance industry need to have an stop if we want to reach equity in our state.

Submitted by: Karla Gonzales Garcia, Policy Director, Colorado Organization for Latina Opportunity and Reproductive Rights (COLOR), 303-393-0382

MEMORANDUM OF SUPPORT FOR SB 21-169

An Act Concerning Protecting Consumers From Unfair Discrimination in Insurance Practices

STATEMENT OF SUPPORT: Consumer Reports strongly supports SB 21-169, which would prevent insurance companies from using data and algorithms that result in unfair discrimination against consumers, based on their race, income, gender or other economic or personal characteristics. This legislation would address longstanding concerns that insurers are varying insurance prices based on highly questionable socioeconomic data relating to credit history, education, occupation and other characteristics. The bill would require insurers to eliminate practices that directly or indirectly treat customers differently according to their race, color, national or ethnic origin, religion, sex, sexual orientation, or gender identity. It also bans insurers from using any external consumer data and information source, predictive models, or algorithms that unfairly discriminate against consumers based on these characteristics. While the bill establishes a prohibition against direct or proxy discrimination, it provides insurers the opportunity to demonstrate that their use of data, algorithms, or models does not result in unfair discrimination.

Insurance should be priced fairly, based on the risk posed by the insured. However, many insurance companies use a range of socioeconomic factors to price and underwrite insurance policies, including credit history, education level, and occupational status. This practice is highly problematic, because as discussed below, these factors are highly correlated with race and income, and may result in discriminatory pricing for people of color and people with low- and moderate-incomes.

In CR's research and reporting about auto insurance, we have found that the use of credit history data, educational level and occupational status to price auto insurance unfairly raises rates for drivers with a good or excellent driving record. We believe that states should base pricing and underwriting decisions on driving-related factors, including driver safety record; miles driven per year; and years of experience on the road, that are more closely related to risk. There is an urgent need for states to improve public oversight of insurance pricing practices, to ensure fair pricing for all.

By creating an explicit process to evaluate and test the data and algorithms insurance companies use for insurance pricing, SB 21-169 can help ensure that "protected classes" will indeed be protected against unfair discriminatory pricing, and that ratings factors that are highly correlated with race, income or other prohibited characteristics will no longer be permitted. Consumers expect that the rules of the road for insurance pricing should be fair and non-discriminatory. By creating a process to review insurance pricing practices fairly, Colorado can ensure pricing will be fair and non-discriminatory, and increase public confidence that only valid data and algorithms will be used for pricing and underwriting.

The Use of Credit History for Insurance Pricing

The use of credit history for pricing and tier placement in auto insurance has an especially large impact on customer premiums that results in sharply higher rates for many drivers, that are not justified by these drivers' driving ability or risk. The practice of using credit score has now been banned in five other states – California, Hawaii, Massachusetts, Michigan, and Washington.

Consumer Reports has raised concerns for many years about the use of credit information in auto insurance pricing. In 2006, Consumer Reports published *Caution! The secret score behind auto insurance* which alerted consumers that credit-based insurance scores had become as important in determining their annual premiums as their driving record and the neighborhood of residence.¹ The same year, the Consumer Reports' advocacy division published an in-depth white paper entitled *Score Wars: Consumers Caught in the Crossfire--The Case for Banning Credit Information in Insurance Pricing*.²

Though we published these reports 15 years ago, our concerns over the use of credit data in insurance underwriting have not abated and the points we made then about the negative public policy ramifications of using credit history remain highly relevant today.

These include:

- secrecy in determining insurance scores, such that consumers cannot reasonably know what goes in them;
- serious problems with the accuracy of information contained in credit files that underlie insurance scores derived from credit information;
- the unfavorable impact on low-income and minority communities when credit scores function as proxies for race and income, and
- the insufficiency of current laws to protect against unfair results in states that allow the practice.

In September, 2015, Consumer Reports published the results of a two-year investigation into auto insurance pricing that revealed a very serious problem with auto insurance pricing in many states where credit history is allowed. We gathered more than 2 billion price quotes across 33,000+ residential U.S. ZIP codes to understand the factors that raise rates, including every zip code in Colorado.³

Our investigation revealed that how one drives may have little to do with how much one pays, and may depend more heavily on socioeconomic factors, such as education, occupation, gender, marital status and credit history. At the national level, Consumer Reports found that single drivers paid a median of \$190 more for merely having “good” credit, compared to consumers with the best credit. That national difference was \$1,200 for consumers with “poor” credit scores. However, the differences were even sharper in Colorado, where a driver with a clean driving record, but only “good” instead of “excellent” credit history would pay \$235 more in premiums. A driver with a clean driving record and “poor” credit would pay a whopping \$1,652 more – an extra \$137 per month.

Perhaps even more shocking, consumers with clean driving records but with poor credit paid considerably more for their auto insurance than drivers with a drunken driving conviction but an excellent credit history. In Colorado, the top insurers reported an average rate of \$2,773 for auto coverage for consumers with a clean driving record and poor credit, compared to an average rate of \$1,632 for drivers with a drunken driving conviction and excellent credit.⁴ Looking at it another way, this means a driver with a clean driving record – no accidents or traffic violations – but who happens to have poor credit, is being charged \$1,141

¹ *Caution! The Secret Score Behind Your Auto Insurance*, Consumer Reports, Aug. 2006, available at <http://consumersunion.org/pdf/CR-Aug2006.pdf>

² Garcia, Norma P. *Score Wars: Consumers Caught in the Crossfire – The Case for Banning the Use of Credit Information in Insurance* (2006), Consumers Union, available at <http://consumersunion.org/pdf/ScoreWars.pdf>

³ *The Truth About Car Insurance*, Consumer Reports, Sept. 2015, available at <http://www.consumerreports.org/cro/car-insurance/auto-insurance-special-report/index.htm>.

⁴ Ibid.

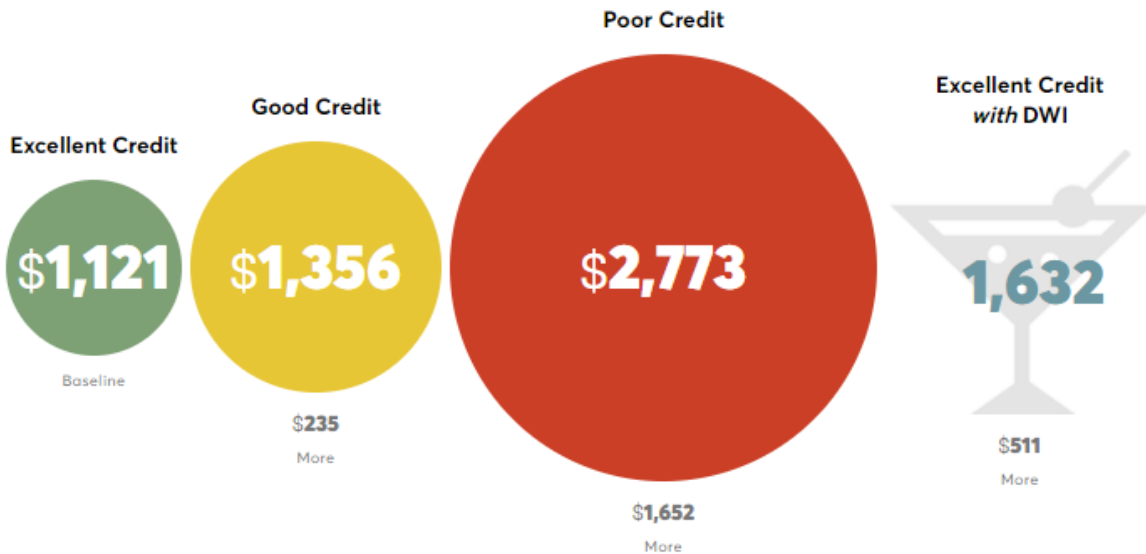
more in premiums than the drunk driver with the DUI conviction. (See Colorado credit score chart, next page)

We believe it is patently unfair and unwise to let convicted drunk drivers pay less for their auto insurance than an excellent driver with poor credit. When this is allowed, excellent credit can function as a socio-economic buffer against being charged the highest rates, even if one has engaged in and has been convicted of the worst driving behavior possible--drunken driving. When use of credit score is allowed, good drivers with poor credit can end up subsidizing the rates paid by convicted drunken drivers with excellent credit. In a pricing scheme that does not allow the use of credit information and places more

COLORADO

Insurance Costs by Credit Score

Rates shown are the average new-customer premium for adult single drivers with a clean driving record and poor, good, or excellent credit. We compare these to the average premium for a driver with excellent credit and a driving while intoxicated (DWI) conviction.



Source: "The Secret Score Behind Your Rates," *Consumer Reports*, September, 2015⁵

emphasis on driving behavior, such as number of miles driven and driving record, such a result would not be possible.

As noted above, there are currently four other states which do not allow the use of credit information in auto insurance pricing decisions -- California, Hawaii, Massachusetts and Michigan. For years, the insurance companies operating in these markets have been able to price auto insurance without using a

⁵ "The Secret Score Behind Your Rates," *Consumer Reports*, September, 2015, available at: <https://www.consumerreports.org/cro/car-insurance/credit-scores-affect-auto-insurance-rates/index.htm>

consumer's credit information, so we know it is both highly possible and feasible for them to also do this in Colorado.

In CR's view, Colorado should require insurance companies, when setting prices, to prioritize a person's actual driving history and other driving-related factors over any other information. The key driving-related factors that should be considered include miles driven per year; years of experience behind the wheel; and driving safety record.

Insurance Credit Scores Are Secret. Proprietary Scores, Which Customers Do Not Have Access To

Credit reports were originally developed for "credit-granting purposes," for banks and lenders to make decisions about credit-based products like mortgages, loans and credit cards. But beginning in the 1990s, insurance companies began to use adopt the use of credit history for pricing and underwriting purposes. This represented a significant form of "mission creep" for credit reports, since the data collected were not originally intended or collected for this purpose. Income and race are prohibited as ratings factors, yet the use of credit history can serve as a proxy for both. We are highly concerned that the use of credit history has a disparate impact on low- and moderate-income drivers, and drivers of color. Many insurance companies have turned a deaf ear to the concerns of consumer and civil rights organizations about these issues, and show little concern for the negative impacts of these non-driving ratings factors on their customers.

To prepare insurance credit scores, insurance companies buy data from credit reporting agencies, and cherry-pick particular variables and measures to create proprietary, secret algorithms for calculating an insurance credit score that is unique to that company. The credit history used is derived from credit reports, but it is not the same as the more common FICO and consumer-reporting agency scores that consumers can obtain for a fee.

This secretive insurance industry practice means consumers are being judged on measures that are not visible and transparent, that vary from company to company. While insurance companies are required to provide adverse action notices if a decision is made to reject customers or raise their rates, customers cannot reasonably know how the insurance company is calculating the score, and the specific information they are relying on to make their pricing and underwriting determinations.

Research Confirms That Significant Errors in Credit Reports are Common and Can Harm Consumers

Consumers also have good reason to be concerned about the use of credit scores for pricing auto insurance, because the underlying credit reports used to calculate these secret, proprietary scores are riddled with errors and inaccuracies.

In 2014, Consumer Reports National Research Center conducted a nationally representative survey of 3,112 participants regarding credit report.⁶ Among our findings, we learned:

- Twenty percent (20%) of respondents who checked their credit reports found errors that could negatively affect their credit scores, such as non-collectible old debt that was still listed, incorrect account information (payment history or credit limit, for example), accounts that were not theirs, and information about the wrong people.
- Two-thirds of credit report consumers who found one or more errors tried to correct them. Approximately 58% of those who tried to resolve a credit report error ran into challenges (e.g.

⁶ *How Your Credit Card Can Help You—Or Hurt You*, Consumer Reports, Nov. 2014, available at <http://www.consumerreports.org/cro/magazine/2015/01/how-your-credit-report-can-help-you-or-hurt-you/index.htm>

were ignored, confused, rejected, or lied to) with credit reporting agencies or data furnishers in their pursuit to resolve credit report errors.

In 2012, the Federal Trade Commission (FTC) investigation yielded similar findings and estimated that almost 20 percent of consumers had at least one credit report that contained errors.⁷ Over five percent had errors significant enough to place them in an inferior credit category for FICO's car loan specialty score, making it more likely they would pay more for a loan.⁸ Further, many Americans are spending valuable time working, sometimes fruitlessly, to correct the errors in their credit files. In 2011, consumers contacted the big three CRAs about eight million times with their accuracy concerns.⁹ Consumers have also taken their concerns to the CFPB. In 2013, the agency collected about 24,200 complaints about credit reporting issues, and 73 percent of those complaints cited "incorrect information" in relation to credit reports.¹⁰

The credit standing of consumers can be unfairly damaged by mistakes made by multiple other parties in the financial system. It is therefore highly questionable for auto insurance companies to then use this information for pricing, underwriting and tier placement purposes. Priority concerns include the dubious accuracy of credit histories and scores; the lag time and lack of follow-up by creditors in removing non-existent debts from collections; and the fact that consumers may have experienced legitimate, life-threatening emergencies and illnesses that impair their earning capacity and economic status, due to no fault of their own.

When consumers have negative information reported on their credit report – sometimes unfairly so, as we have just seen -- their options for credit are usually restricted. It becomes harder to "shop around," and they will have fewer choices, and credit will be priced higher for credit cards, loans, mortgages and other financial products.

When credit scores are used for insurance purposes, this impact is multiplied in ways that it hard for consumers to perceive and see. Consumers will have fewer choices for auto insurance coverage, and these will be more highly priced. When financial hard times strike, credit becomes scarce, and auto premiums will tend to cost more, even if the situation resulted from a general contraction of the economy, a plant closure, a regional economic downturn, or other factors that are completely beyond a consumer's control.

This additional financial burden of higher auto insurance premiums unfairly hurts consumers who may have a perfect or very good driving record, who must rely on their cars to get to work to earn wages and

⁷ FED. TRADE COMM'N, *REPORT TO CONGRESS UNDER SECTION 319 OF THE FAIR AND ACCURATE CREDIT TRANSACTIONS ACT OF 2003 2* (2012) [hereinafter 2012 ACCURACY REPORT], available at <https://www.ftc.gov/sites/default/files/documents/reports/section-319-fair-and-accurate-credit-transactions-act-2003-fifth-interim-federal-trade-commission/130211factareport.pdf>

⁸ *Id.* at 47. Based on the FTC's estimate that the credit reporting industry has files on 200 million consumers, it can be concluded that about 10 million consumers would be put into the more expensive credit category due to credit reporting errors. See *supra* text accompanying note 7.

⁹ CONSUMER FINANCIAL PROTECTION BUREAU, *KEY DIMENSIONS AND PROCESSES IN THE U.S. CREDIT REPORTING SYSTEM 7* (2012), available at http://files.consumerfinance.gov/f/201212_cfpb_creditreporting-white-paper.pdf (discussing historical rise of three largest CRAs), at 27.

¹⁰ CONSUMER FIN. PROTECTION BUREAU, *CONSUMER RESPONSE ANNUAL REPORT: JANUARY 1- DECEMBER 31, 2013 19* (2014), available at http://files.consumerfinance.gov/f/201403_cfpb_consumer-response-annual-report-complaints.pdf. The CFPB began collecting complaints about credit reporting issues in October 2012. Consumer Fin. Protection Bureau, *Credit Reporting Complaint Snapshot 2* (2014), available at http://files.consumerfinance.gov/f/201402_cfpb_snapshot_credit-reporting-complaints.pdf.

pay their bills. We suspect many consumers would be deeply concerned to learn that auto insurance companies are using credit information to make pricing decisions, because of the poor quality of some of the underlying data, and this “piling on” effect, that in particular penalizes low and moderate-income households.

In April 2017, Consumer Reports and *ProPublica* published additional research that showed that insurance companies unfairly increase car insurance prices for people who live in predominantly minority neighborhoods, showing that drivers of color in those neighborhoods paid 30% more than people living in zip codes with comparable risk. The analysis focused on 4 states that publicly release auto insurance claims information by zip code (California, Illinois, Missouri and Texas).¹¹

The Use of Education Level and Occupational Title for Auto Insurance Pricing

In addition to credit history, auto insurers use other non-driving rating factors that can have a big impact on rates even for drivers with clean records and deserve greater scrutiny. These factors include considering education level, occupation, and homeowner vs. renter status, which like credit-based ratings, are closely tied to socio-economic status.¹²

In the current socio-economic environment in the United States, education level and occupation continue to be closely tied to race and income, factors which otherwise cannot legally be considered by insurance companies in calculating insurance premiums.

According to the National Center for Education Statistics, among 25 to 29 year olds, Blacks and Hispanic people are less likely than Whites or Asians to have completed a high school diploma, earn a college degree and significantly less likely to have earned an advanced degree.¹³ In 2014, Blacks were approximately half as likely to hold bachelors’ degrees as Whites, and Hispanics were approximately one-third as likely to hold bachelors’ degrees as Whites. As for Masters degrees or higher, the gaps grow even larger with 9.0 percent of Whites holding such degrees, followed by 3.9 percent of Blacks and only 2.9 percent of Hispanics.

When education level is considered in insurance pricing decisions, those with the least education will pay more. The Bureau of Labor Statistics reports that educational attainment is closely related to one’s earning. Individuals with advanced degrees earn more than those with only bachelor degrees, some college but no degree, no college, high school diploma only, or no high school diploma.¹⁴

According to the Bureau of Labor Statistics data from 2010, compared to Whites and Asians, a significantly smaller percentage of Blacks and Hispanics are employed in the highest paying occupations classified as the “management, professional or related fields,” which are occupations that translate into lower auto insurance rates when occupation is considered in pricing.¹⁵

¹¹ Angwin, J., Larson, J., Kirchner, J., and Mattu, S., “Car Insurance Companies Charge Higher Rates in Some Minority Neighborhoods,” Consumer Reports and ProPublica, April 2017, available at: <http://www.consumerreports.org/consumer-protection/car-insurance-companies-charge-higher-rates-in-some-minority-neighborhoods/>

¹² These factors are not meant to be an exclusive list of rating factors that may be deserving of the Colorado Legislature’s and Insurance Commissioner’s attention.

¹³ Nat’l Ctr. For Educ. Statistics, Digest of Education Statistics, https://nces.ed.gov/programs/digest/d14/tables/dt14_104.20.asp.

¹⁴ U.S. Dep’t of Labor, Bureau of Labor Statistics, TED: The Economics Daily, Median weekly earnings by educational attainment in 2014 (2015), <http://www.bls.gov/opub/ted/2015/median-weekly-earnings-by-education-gender-race-and-ethnicity-in-2014.htm>.

¹⁵ U.S. Dep’t of Labor, Bureau of Labor Statistics, TED: The Economics Daily, Earnings and employment by occupation, race, ethnicity, sex, 2010 (2011), http://www.bls.gov/opub/ted/2011/ted_20110914.htm.

The number of people who are affected by pricing based on occupational title is very large. According to the Bureau of Labor Statistics, some 1.3 million Colorado residents work in occupational categories with an annual salary of \$40,000 or less. These workers are likely to be required to pay higher rates for auto insurance, by virtue of not holding a managerial or professional job title. Among the occupation titles included in this group are: food preparation and serving workers; nursing assistants, healthcare support and home care workers; retail sales and cashiers; building and grounds workers; and janitors, laborers and warehouse stockers. These workers are statistically more likely to be workers of color, who could experience disparate impact because of higher insurance rates.

On January 28, 2021, Consumer Reports released a new investigative report, “Why Your Education and Job Could Mean You’re Paying Too Much for Car Insurance”¹⁶ and white paper¹⁷ that raise concerns about this unfair and discriminatory practice, which could result in many low- and moderate-income drivers and drivers of color paying more for their auto insurance than risk would indicate.

As part of our investigation to understand how insurers are using education and occupation to set premiums, Consumer Reports requested 869 unique online auto insurance quotes from nine different insurers. CR studied 21 ZIP codes in six states (Illinois, Louisiana, Minnesota, New Jersey, Oregon and Washington) plus Washington, D.C. CR sought quotes for a hypothetical 30-year-old woman who owns her 2016 Toyota Camry LE and has a clean driving record, shopping for her states’ minimum required coverage. The only details that varied between quote requests were her education level and job title.

CR found that:

- On average for the six states, three companies provided preliminary quotes that were more expensive on average for consumers with less education: Liberty Mutual (\$62 more annually), Geico (\$115 more annually), and Progressive (\$101 more annually).
- Two companies provided preliminary quotes that were more expensive on average for an applicant who was a cashier compared to an executive: Geico (\$97 more annually), and Progressive (\$31 more annually).
- Some quotes collected by CR were much higher. Because people with more education are likelier to work professional jobs, this kind of pricing can hit low-income consumers doubly hard. In Hoboken, NJ, for example, Geico quoted a hypothetical cashier without a high school degree an annual premium that was \$455 higher than an identical driver with an executive job title and advanced degree.

With this study, CR is adding to more than a decade of research that raises concerns about the use of education and occupation in setting auto insurance prices. Examples include the following:

Florida: When the Florida Office of Insurance Regulation investigated the use of education and occupation as rating factors in 2007, the state found that there was a “demonstrable correlation between occupation, education, and income-level and ethnicity.” Auto insurance companies had neglected to investigate the potential negative effects or disparate impacts on low-income and

¹⁶ Consumer Reports, available at: , “Why Your Education and Job Could Mean You’re Paying Too Much for Car Insurance,” 1/28/21, (available online at <https://www.consumerreports.org/car-insurance/why-your-education-and-job-could-mean-youre-paying-too-much-for-car-insurance/>)

¹⁷ Consumer Reports Digital Lab, *Effects of Varying Education Level and Job Status on Online Auto Insurance Price Quotes*, 1/28/21, available at: <https://advocacy.consumerreports.org/research/report-effects-of-varying-education-level-and-job-status-on-online-auto-insurance-price-quotes/>

minority drivers of using these factors, the investigation found, or whether doing so violated drivers' civil rights. The report also noted the long history of using race as a rating factor in life insurance underwriting, a practice that led to multistate investigations and corrective actions by the National Association of Insurance Commissioners and state insurance commissioners.¹⁸ The report also noted there was a long history of race being used as a ratings factor for the life insurance industry, which led to multi-state investigations and corrective actions by the NAIC and state insurance commissioners. The use of occupational categories for life and auto insurance developed shortly after using race became unacceptable and illegal, beginning in the 1960s.¹⁹

Ten-City analysis: In 2013, the Consumer Federation of America reported that several major national insurers often quoted higher premiums to good drivers with less education and/or lower-paying jobs, based on quotes collected in 10 urban areas across the country. The report expressed concern that insurers that did not use education and occupation in setting rates may feel competitive pressure to do so and urged state insurance commissioners to address the issue.²⁰

New York: In 2014, the New York Public Interest Research Group found that New York drivers with less education or a lower-status occupation often pay significantly more than their more highly educated and better-paid counterparts—in one case, as much as 41% more.²¹

CR's 2021 study, more focused in scope, suggests similar effects when insurance companies ask about education or occupation in their online price-quote processes. Specifically, we found that when these factors are used, people with less education and lower-paying jobs are, on average, quoted higher prices than those with more education and higher-paying jobs and similar driving records and habits.

CR's findings underscore the fundamental unfairness of basing auto insurance pricing decisions on rating factors that are unrelated to driving records and habits, and over which consumers have little control. Pricing auto insurance based on non-driving factors like education and occupation is unacceptable because it magnifies the economic impacts of systemic racism. The ability to attain a particular level of education, and to hold a particular job title, often reflects longstanding income, wealth, racial, and gender disparities, and unequal access to education and higher-paying jobs. Auto insurance companies are generally prohibited from considering race and income when setting prices, yet in many states they are currently allowed to consider job level and education attainment, which—as noted above—closely correlate with race and income.

After three years of investigation and analysis, in 2017, the New York Department of Financial Services issued and finalized a regulation to ban the use of education and occupation for pricing and tier

¹⁸ McCarty, Commissioner Kevin M., "The Use of Occupation and Education as Underwriting/Rating Factors for Private Passenger Automobile Insurance" (PDF), *Florida Office of Insurance Regulation*, March 2007, <http://www.floir.com/siteDocuments/OCCRateRpt.pdf>

¹⁹ McCarty, Commissioner Kevin M., "The Use of Education and Occupation as Underwriting/Ratings Factors for Private Passenger Automobile Insurance," *Florida Office of Insurance Regulation*, March 2007, available at: <http://www.floir.com/siteDocuments/OCCRateRpt.pdf>

²⁰ Consumer Federation of America, "Major Auto Insurers Charge Higher Rates to High School Graduates and Blue Collar Workers," 7/22/2013, available at: https://consumerfed.org/press_release/major-auto-insurers-charge-higher-rates-to-high-school-graduates-and-blue-collar-workers/

²¹ New York Public Interest Research Group, "Top NY Auto Insurers Charge Higher Rates to HS Grads and Blue Collar Workers: NYPIRG Requests that NY Regulator Review Insurer Rate-setting Practices" (PDF), news release, April 3, 2014, https://www.nypirg.org/pubs/consumer/2014.4_NYPIRG-auto-insurance-analysis.pdf. See also: The Western New York Law Center, "Major Auto Insurers Charge Higher Rates to High School Graduates and Low Income Workers" (PDF), 1-2, 2015, <http://wnylc.com/wp-content/uploads/2015/09/July-2015-Western-New-York-Law-Center-Auto-Insurance-Report.pdf>.

placement in New York State, unless companies could demonstrate that the use of these factors is not unfairly discriminatory.²² This announcement made New York the third state after California (1988) and Massachusetts (2007) to ban use of education and occupation for auto insurance pricing.²³ In addition, the NY DFS announced that major insurers such as Liberty Mutual, Allstate and Progressive had reached agreements with the agency to come into compliance with the regulation, and take steps to eliminate any continuing impact of their prior use of education level attained and/or occupational status in initial tier placement.²⁴

The New York DFS noted that many New York drivers were being charged higher rates in New York based on their education and occupation, without adequate actuarial justification. According to the December 13, 2017 NY DFS news release:

“The use of education and occupation in determining insurance rates can penalize drivers without college degrees or who work in low-wage jobs or industries. The result is that drivers with higher education and income pay less for auto insurance with no evidence that they are better drivers.

DFS conducted a multi-year investigation, which revealed that some, but not all, insurers in New York use an individual’s education level and/or educational status in establishing initial tier placement without a clear demonstration of the required relationship between these factors and driving ability. As a result, classes of insureds have been placed in less favorably rated tiers, which may lead to higher premiums, without sufficient actuarial support that an individual’s education level and/or occupational status related to his or her driving ability or habits in such a way that the insurer would have a different risk of loss.”²⁵

In its investigation, the NY DFS found that insurance companies failed to prove that their use of these factors was not unfairly discriminatory. The DFS regulation states that “*insurers failed to provide...any convincing evidence to support the necessary relationship for the use of an insured’s level of education attained, whether alone or in combination with occupational status.*”²⁶ The 2017 New York investigation raises concerns that some insurers continue to use education and occupation as ratings factors for pricing in other states, without adequate public scrutiny or justification.

The Use of Socioeconomic Factors Such as Credit History, Education and Occupation Negatively Impacts Economic Opportunity for Low- and Moderate-Income Drivers

In considering this issue, we would also urge you to consider the following additional points.

- ***Like every other state except for New Hampshire, Colorado legally requires all drivers to maintain car insurance.*** Most Colorado drivers rely on cars for their livelihoods, to get to school and to medical appointments, and for many other vital purposes. Auto insurance companies’ persistent use of drivers’ credit histories and other socioeconomic data to price car insurance

²² New York State Department of Financial Services, “NY DFS Announces Final Regulation and Agreements with Two Major Insurers to Protect New York Drivers from Unfairly Discriminatory Auto Insurance Rates” news release, 12/13/17, available at: <http://www.dfs.ny.gov/about/press/pr1712131.htm>

²³ The state of Michigan banned the use of education, occupation, credit score and other socioeconomic ratings factors in 2020, taking effect on July 1, 2020.

²⁴ Ibid.

²⁵ Ibid.

²⁶ New York Department of Financial Services, Second Amendment to 11 NYCRR 154 (Insurance Regulation 150), Private Passenger Motor Vehicle Insurance Multi-Tier Programs, 154.6(a)(2) available at: http://www.dfs.ny.gov/insurance/r_finala/2017/rf150a2txt.pdf

imposes an unfair burden that disproportionately affects Colorado residents of color and lower-income people, who may also lack access to reliable public transportation.

- ***Access to affordable transportation, especially a car, is a critical foundation for individuals and families to earn income and build savings and wealth***, according to researchers and social policy experts. The relationship between affordable transportation and social mobility actually appears to be stronger than many other factors in a neighborhood, including crime, elementary school test scores, and the percentage of two-parent families, according to Harvard economist Nathaniel Hendren.²⁷ Similarly, the Rudin Center for Transportation Policy at New York University has found that having access to a vehicle is often a critical link for workers to increase income and employment opportunity.²⁸ If auto insurance is unfairly priced because of the use of credit history as a ratings factor, residents of low-income neighborhoods will confront continued economic isolation from good job opportunities in urban, suburban and rural areas, where many better jobs may simply be unreachable by alternative means.

Conclusion:

Consumer Reports, strongly urges you to support SB 21-169 to improve fairness in auto insurance pricing for Colorado drivers and prevent discrimination against consumers based on their race, income, gender or other factors. This important bill creates strong guardrails to protect against unfair discrimination, and a formal process for reviewing whether data, algorithms and predictive models are unfairly discriminatory.

By requiring insurers to “stress test” and validate any data, algorithms or predictive models that are used, Colorado can ensure that that insurance will be priced fairly for its residents, and prevent the use of unfair discrimination in pricing and underwriting.

By voting to approve this bill, legislators can increase consumer public confidence in the pricing practices of the insurance industry. For auto insurance, the bill will help ensure that consumers are not unfairly judged by factors that have nothing to do with their ability to drive safely, and to avoid traffic violations and accidents.

We urge you to please support and cosponsor SB 21-169 and to vote YES on this important public interest legislation.

For more information, contact:

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²⁷ Bouchard, Mikalya. “Transportation Emerges As Crucial to Escaping Poverty,” The New York Times, The Upshot, May 7, 2015, available at: <https://www.nytimes.com/2015/05/07/upshot/transportation-emerges-as-crucial-to-escaping-poverty.html>

²⁸ Kaufman, S., Moss, M., Hernandez, J. and Tyndall, J., “Mobility, Economic Opportunity and New York City Neighborhoods,” Rudin Center for Transportation, New York University Wagner Center,, updated November 2015, available at: <https://wagner.nyu.edu/files/faculty/publications/JobAccessNov2015.pdf>



FR: New Era Colorado

RE: Support for Senate Bill 169, Restrict Insurers' Use Of External Consumer Data

Thank you committee members for taking the time to read this today.

My name is Arianna Morales and I'm the Regional Advocacy Manager for New Era Colorado, here to testify on behalf of New Era to urge you to support Senate Bill 169. New Era Colorado is a nonpartisan nonprofit organization that works to mobilize and empower the next generation to participate in democracy and move our state forward to become a better place for us all. One of the key issues we work on is economic justice, often through our student debt work at the legislature, because we see how this issue uniquely impacts our generation who face several barriers when it comes to being able to achieve economic freedom and stability.

Young people, especially young people of color, are facing impossible barriers to achieving economic stability such as the crushing weight of their student debt, the rising cost of housing, limited access to a living wage and discriminatory practices in systems and institutions that are supposedly meant to serve us. Insurance companies currently rely on practices and data systems that are products of and perpetuate systemic racism and white supremacy. Data is not neutral – this isn't a new concept nor is it surprising considering who creates these algorithms and the low amount of accountability there is when utilizing them. Refusing to acknowledge and/or take accountability for how data and algorithms discriminate against people of color and other marginalized communities is choosing to be complacent in a system that has continuously proven to disadvantage these communities.

Senate Bill 169 seeks to halt that complacency by creating modes of accountability for testing the tools insurance companies use to ensure that they're not unfairly discriminating against communities on the basis of their identity. Young people shouldn't be afraid of being taken advantage of when getting health care or car insurance for the first time. In some instances they may be the first person in their family who is able to access these systems and with no prior history or knowledge, they need to know that insurance companies are operating with the consumers best interest in mind or at the very least, without discriminating against them. We need and deserve a fair system that centers and puts the most marginalized first.

Hardworking people should be able to take control of their futures but economic mobility and freedom is hindered by systems such as the insurance industry that make it increasingly difficult to responsibly build economic capital. This bill would set up an infrastructure for young folks of color and other marginalized groups that would protect them from being discriminated against and aid them in building economic stability, safety and mobility. That is why we strongly urge that you support this bill. Thank you for your time.

Talking points

- This bill would set up an infrastructure for young folks of color and other marginalized groups that would protect them from being discriminated against and to aid them in building economic stability, safety and opportunity
- This bill addresses current insurance practices that perpetuate systemic racism and inequality.
- Insurance companies should not be complacent in a system that continues to disadvantage people of color and other protected classes.
 - They should be held accountable for ensuring their tools do not perpetuate historic racism and systemic bias.
 - For example, by unfairly charging higher premiums to certain populations, insurers are preventing Coloradoan families from raising out of poverty.
- We need to understand more about these algorithms to help push back against unfair discrimination.

Possible questions

- How can data be racist? Not neutral?
 - Thank you for your question. I am not an expert on data practices and algorithms however, data and algorithms are susceptible to human bias and error because they're made by humans. Without having a process of accountability and method for review, that bias can aid in perpetuating systemic racism.
 - Even in the data we collect as an organization, we have to be careful and intentional about how we're collecting the data, how we interpret the data and what we use it for. Insurance companies should be held to the same standard.



May 27, 2021
Colorado State Representatives
200 E. Colfax Ave.,
Denver, CO 80203

Dear Representatives,

The Aurora Chamber of Commerce is the voice of the business community in the Eastern Metro area and beyond. We are writing you today to substantially re-write or totally reject Senate Bill 169.

SB 169 is a one-size fits all that will almost certainly force homeowners and motorists to pay higher homeowners and automobile insurance rates. The bill gives the head of the Colorado Division of Insurance the unchecked power to ignore actuarial and mathematical data that will hurt our communities. The bill also targets the ability of auto insurers to give pricing relief to teachers, firefighters, and other professionals whose employees have an actuarially safer driving record. This will hit rural communities, small businesses and working families particularly hard.

At a time when families and businesses are facing unprecedented spikes in cost of living and cost of doing business, a law that artificially limits the ability of insurers to provide actuarially justified price relief for safe driving makes no sense.

There is no need for this legislation. It is already a violation of both state and federal law for insurance companies to discriminate based on race and gender and the Colorado Division of Insurance has acted on their authority to audit insurance companies for unfair discrimination.

Teachers, firefighters, police officers and nurses are historically good drivers and receive a much-deserved discount based on their occupation. If the Insurance Commissioner were to disallow the above factors, insurance rates would significantly increase for Coloradans.

According to industry data, under SB 169 annual increases would be:

- 73% of teachers would see an average premium increase of 30% (\$528)
- 61% of firefighters would see an average increase of 18% (\$359)
- 49% of police officers would see an average increase of 20% (\$425)
- 42% of nurses would see an average increase of 18% (\$330)

We ask you to oppose Senate Bill 169 or for there to be amendments adopted to protect Colorado's good drivers from significant premium increases.

Thank you,

A handwritten signature in black ink, appearing to read 'Kevin Hougen', written in a cursive style.

Kevin Hougen
President & CEO
Aurora Chamber of Commerce



May 28, 2021

House Health & Human Services Committee

Re: Letter of Support for SB21-169 Restrict Insurers' Use Of External Consumer Data

One Colorado Education Fund (OCEF) is the state's leading advocacy organization for lesbian, gay, bisexual, transgender, and queer Coloradans and their families. In addition to our work over the past 11 years advancing policy measures to help close the gap between legal and lived equality for LGBTQ Coloradans, We have also invested heavily in our health equity work to understand the challenges and barriers faced by the community in achieving a healthy and sustainable life.

A key piece of understanding that we developed early in our organization's history is that unless the insurance industry is specifically given direction not to take actions that could be seen as discriminatory in an effort to increase revenue they will do it. This is why it is still important for us to recognize that back in 2013 before the Affordable Care Act went into full effect in Colorado the Division of Insurance published Bulletin No. B-4.49 " *Insurance Unfair Practices Act Prohibitions on Discrimination Based Upon Sexual Orientation*" that provided the industry guidance about anti-discrimination provisions within state law in relation to sexual orientation and transgender status (gender identity). And because bulletins do not carry the same enforceability of a regulation it took until 2017 for all of the plans offered on the Connect for Health exchange to be in compliance with the bulletin and that was also the first year that no plans offered in the state had transgender-specific exclusions. And while this compliance has continued on the surface level we still interact and assist Coloradans who experience the denial of LGBTQ-specific medical coverage through their insurance coverage 8 years after the initial bulletin was published.

And it is with this understanding that we support Senate Bill 21-169. As we have all experienced technological advancements and reliance on data driving narratives, conversations, and ultimately policy decisions in a manner that was not seen even a decade ago. And with that expansive growth comes the promise of improved outcomes for everyone from the insurer to the consumer. But while we enter this new age with so much promise we can not negate the need for true accountability and transparency with insures data systems, algorithms, and other predictive models to help ensure there isn't any intentional or unintentional discriminatory activity taking place that will ultimately negatively impact the end consumer a Coloradan.

Sincerely,

Michael Crews
Policy Director

Dear Mr. Chair Rodriguez, Ms. Vice Chair Danielson, Esteemed Members of the Senate Business, Labor and Technology Committee, and Senator Buckner,

My name is Cindy Stevens, a credentialed and licensed insurance professional in Colorado, and I support SB21-169 a Bill to ensure that all Colorado residents have fair and equitable access to insurance.

This is a bill that prohibits discrimination in insurance (not just health insurance but home, auto, general liability etc.). **This Bill has changed in a very NEGATIVE way for persons with disabilities (PWDs).** If I understand correctly, disability and transgender terms were removed in the Senate, with a substitution of “gender identity”, but the term disability was REMOVED. As a disability advocate, parent to an adult with multiple disabilities, and a volunteer for the **Colorado Cross Disability Coalition (CCDC) - we URGENTLY need you to add back “disability” so that this population is not subject to possible unfair discrimination.**

In our personal situation, our son is a very good driver, but his disability makes his speech hard to be clearly understood sometimes. When trying to obtain auto quotes for comparison, he has been frustrated with customer service representatives who do not explain rates to him. As a result, my husband will call on his behalf, “as our son” (they are both Mr. Stevens) so that he can fully question the rationale behind the auto quote, sometimes with a better price outcome. We have wondered if our son’s communication is a detriment to this process.

Insurance entails the act or process of evaluating insurable risks and determining premiums on the basis of likelihood of loss. Second, the insurance profession has a definition of discrimination and Insurance laws prohibit “unfair discrimination”—that is, the formulation of rates on the basis of criteria that do not fairly measure the actual risk involved. Unfair or illegal treatment of or denial of rights to persons on the basis of certain arbitrarily chosen attributes or characteristics, including race, gender, religion, creed, age, medical condition, pregnancy, sexual orientation/preference, physical appearance, marital status, **physical or mental disability**, or national origin. **Definition Source: International Risk Management Institute (IRMI)**

As a risk management professional, I have maintained several certifications with ongoing education requirements to ensure I understand the complexities of corporate insurance markets. But as a parent of a person with a disability, this understanding sometimes just “goes into gray”, especially trying to understand Medicaid waivers and services, where nothing seems clear “black and white”. Actuarial and underwriting concepts are advanced, data driven, and to the average person, are truly “mysterious”, confusing, and intimidating.

With the passage of SB-169, knowing that the Colorado Division of Insurance/Commissioner may examine and investigate an insurer’s use of an external consumer data and information sources, algorithms, or predictive models *in a fair and nondiscriminatory manner* can assure Colorado insurance consumers that their interests are ultimately being protected by trusted, informed Colorado experts, who can validate that their individual insurable risks are measured on the same “level playing field” as others, and that the underwriting decisions are validated, fair, and transparent and non-discriminatory. (Something they would have great difficulty investigating on their own.) **This should INCLUDE persons with disabilities, the only class of Coloradoans that are excluded.**

On behalf of the Colorado Cross Disability Coalition (CCDC), for whom I volunteer, we respectfully ask you to please support this IMPORTANT change to SB21-169, and then to support it as amended.

Thank you.

Sincerely,

Cindy Stevens, CPCU, Colorado P&C license

Parent to an adult with disabilities who lives with me, (on the DD Wait List)

Parker, Colorado

Dear Esteemed Members of the House Health and Insurance committee, and Senator Buckner,

My name is Cindy Stevens, a credentialed and licensed insurance professional in Colorado, and I support SB21-169 a Bill to ensure that all Colorado residents have fair and equitable access to insurance.

This is a bill that prohibits discrimination in insurance (not just health insurance but home, auto, general liability etc.). **This Bill has changed in a very NEGATIVE way for persons with disabilities (PWDs).** If I understand correctly, disability and transgender terms were removed in the Senate, with a substitution of “gender identity”, but the term disability was REMOVED. As a disability advocate, parent to an adult with multiple disabilities, and a volunteer for the **Colorado Cross Disability Coalition (CCDC) - we URGENTLY need you to add back “disability” so that this population is not subject to possible unfair discrimination.**

In our personal situation, our son is a very good driver, but his disability makes his speech hard to be clearly understood sometimes. When trying to obtain auto quotes for comparison, he has been frustrated with customer service representatives who do not explain rates to him. As a result, my husband will call on his behalf, “as our son” (they are both Mr. Stevens) so that he can fully question the rationale behind the auto quote, sometimes with a better price outcome. We have wondered if our son’s communication is a detriment to this process.

Insurance entails the act or process of evaluating insurable risks and determining premiums on the basis of likelihood of loss. Second, the insurance profession has a definition of discrimination and Insurance laws prohibit “unfair discrimination”—that is, the formulation of rates on the basis of criteria that do not fairly measure the actual risk involved. Unfair or illegal treatment of or denial of rights to persons on the basis of certain arbitrarily chosen attributes or characteristics, including race, gender, religion, creed, age, medical condition, pregnancy, sexual orientation/preference, physical appearance, marital status, **physical or mental disability**, or national origin. **Definition Source: International Risk Management Institute (IRMI)**

As a risk management professional, I have maintained several certifications with ongoing education requirements to ensure I understand the complexities of corporate insurance markets. But as a parent of a person with a disability, this understanding sometimes just “goes into gray”, especially trying to understand Medicaid waivers and services, where nothing seems clear “black and white”. Actuarial and underwriting concepts are advanced, data driven, and to the average person, are truly “mysterious”, confusing, and intimidating.

With the passage of SB-169, knowing that the Colorado Division of Insurance/Commissioner may examine and investigate an insurer’s use of an external consumer data and information sources, algorithms, or predictive models *in a fair and nondiscriminatory manner* can assure Colorado insurance consumers that their interests are ultimately being protected by trusted, informed Colorado experts, who can validate that their individual insurable risks are measured on the same “level playing field” as others, and that the underwriting decisions are validated, fair, and transparent and non-discriminatory. (Something they would have great difficulty investigating on their own.) **This should INCLUDE persons with disabilities, the only class of Coloradans that are excluded.**

On behalf of the Colorado Cross Disability Coalition (CCDC), for whom I volunteer, we respectfully ask you to please support this IMPORTANT change to SB21-169, and then to support it as amended.

Thank you.

Sincerely,

Cindy Stevens, CPCU, Colorado P&C license

Parent to an adult with disabilities who lives with me, (on the DD Wait List)

Parker, Colorado

[SB21-169 Restrict Insurers' Use of External Consumer Data](#)

Friday, May 28, 2021

House Health & Insurance

Opposition Testimony, Laura Rizzo, Denver Metro Chamber of Commerce

Thank you, Madame Chair and members of the committee, for the opportunity to provide this written testimony. My name is Laura Rizzo and I am the senior vice president of external affairs for the Denver Metro Chamber of Commerce. I submit this testimony on behalf of the Chamber, our 3,000 members and their 400,000 employees, to express our opposition to Senate Bill 169.

Senate Bill 169 is a one-size-fits-all policy that will almost certainly result in higher insurance rates for homeowners and motorists in Colorado. Employees that have an actuarially demonstrable safer driving record, like teachers, firefighters and nurses to name a few, may no longer receive premium discounts if the use of external data is prohibited.

But most importantly, these are protections that exist today for a reason. It is already a violation of both state and federal law for insurance companies to discriminate based on race and gender. Insurance companies are already required to file the factors they use in underwriting and rating, and the Commissioner already has the authority to deny insurance company rating factors if they are found to be unfairly discriminatory.

Companies need to be able to analyze risk and price products accordingly. This bill would limit their ability to use data to make those decisions, without clear benefit or additional protections to consumers.

We respectfully ask the committee to oppose Senate Bill 169. Thank you.



The Bell Policy Center

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Restrict Insurers' Use of External Consumer Data (SB21-169)

Testimony to House Health & Insurance Committee

Andrea Kuwik, Policy Analyst • May 28, 2021

Thank you for the opportunity to submit written testimony in support of [SB21-169](#). My name is Andrea Kuwik, and I'm a policy analyst with the Bell Policy Center. The Bell Policy Center provides policymakers, advocates, and the public with reliable resources to create a practical policy agenda that promotes economic mobility for every Coloradan.

A variety of analyses show the indiscriminate use of external data in insurance practices can be an inadequate indicator of consumer risk and liability. For example:

- In a national [study by Pro Publica](#), researchers find, even when individuals have the same risk level, insurers charge higher premiums to consumers of color vs their white counterparts.
- In a separate report by [Consumer Reports](#), analysts highlight factors like one's credit score can dictate the cost of one's car insurance more so than driving history.

However, we do know several prominent forms of external data, including credit history, homeownership, and place of residence very much reflect the impacts of both historical and ongoing discriminatory public policy. Some examples include:

- **Homeownership:** In 2020, the Bell released a series of briefs on Colorado's [racial wealth gap](#). In an examination of [homeownership](#) throughout our state, we see that there have always been historical discrepancies in white homeownership vs those among Black, Native American, Latinx, and Asian Coloradans. Concerningly, however, we see over the years this gap has not only continued, but grown. As noted in this brief, continuing gaps continued to be connected to the deeply discriminatory and racist policies such as redlining, restrictive zonings and covenants, and both historical termination and relocation efforts that impacted Native American communities.
- **Access to Affordable Credit:** Through both our [ongoing research](#) and [partnerships in communities](#) across our state, we also know there are tremendous disparities, based upon race, in communities' access to affordable credit. For example, the [Center for Investigative Reporting](#) finds, even when controlling for a host of social and economic variables, those from communities of color, as compared to their white counterparts, are more likely to be denied non-Federal Housing Administration mortgage loans. Additionally, [reporting by LendingTree](#) finds, across income levels, Black adults are more than twice as likely to be denied a variety of traditional credit options compared to white adults. Concerningly, as it relates to what we're discussing today, when denied affordable credit options, Coloradans of color are left with more expensive lending options, which have higher interest rates and fees. These products are connected to [greater default rates](#), which negatively impacts a person's credit score.

Of course, homeownership rates, place of residence, and credit scores are just three of many, many examples where the data reflects historical biases, racism, and discriminatory policies. By creating the structures posed by SB21-169, and asking insurers to intentionally examine the data they use to cover residents across our state, we can reduce the ongoing impacts of unjust policies and practices that disproportionately impact certain communities.

Thank you again for the opportunity to submit written testimony in support of SB21-169, and thank you to Representatives Ricks and Esgar for bringing forward this important bill.



Consumer Federation of America

Testimony of Consumer Federation of America Before the House Health and Insurance Committee in Support of SB 21-169-Restrict Insurers' Use of External Consumer Data

May 28, 2021

Chair Lontine, Vice Chair Caraveo, members of the Committee, thank you for receiving our testimony. Consumer Federation of America (CFA) strongly supports SB 21-169, which prohibits unfair discrimination on the basis of race, color, or other factors in insurance, and which will help ensure that all Colorado consumers have fair access to affordable insurance. Founded in 1968, CFA is an association of nonprofit consumer organizations that works to advance consumer interests through research, advocacy, and education.

SB 21-169 bans insurers from unfairly discriminating based on someone's race, color, national or ethnic origin, religion, sex, sexual orientation, or gender identity in any insurance practice. It also bans insurers from using external consumer data and information sources, predictive models, or algorithms that unfairly discriminate against consumers based on these characteristics. The bill ensures that after hearing from stakeholders and going through a rulemaking process, the Insurance Commissioner will adopt rules to ensure that insurance carriers' use of data and models does not result in unfair discrimination, while giving companies the opportunity to mitigate any biases in their algorithms. One of the proposed amendments to the bill also includes a definition of unfair discrimination.

Auto insurers use numerous non-driving characteristics such as credit history, ZIP code, gender, education, occupation, homeownership status, and marital status to calculate premiums. These factors tend to have a disproportionate impact on people of color or other protected classes, and perpetuate systemic biases.

For example, African-American consumers face higher average premiums when several of these characteristics are used. Data from the 2018 American Community Survey shows that 69.6% of Whites own their homes, but only 41.4% of African-Americans do. 33.9% of White Americans have a bachelor's degree or higher; only 22% of African-Americans do. By contrast, 16% of white Americans work in service occupations, while 24.5% of African-Americans work in them.

While the average credit score for white Americans is 724, the average credit score for African-Americans is 677. Latinx and Indigenous customers see similar demographic disparities. With each of these rating elements, the higher premiums are associated with the characteristics that are more common among people of color.

Consider the impact of credit history on auto insurance premiums. Recently CFA acquired data on auto insurance premiums for every ZIP code in Colorado from Quadrant Information Systems, LLC. We found that a 35 year old driver with excellent credit pays an average annual premium of \$592.11 for basic auto insurance in Colorado. But if that driver has fair credit, their premium rises to \$785.67, almost \$200 more. If they have poor credit, their average annual premium is \$1,019.59, over \$400 more, even when all the drivers have clean driving records and buy the same coverage.

We also researched the impact of a driver's gender on car insurance premiums in Colorado. On average, the premium for a 35 year old woman with a perfect driving record is \$811.12. However, a 35 year old man who has a perfect driving record pays an average premium of \$787.13. That is a 3% average gender penalty imposed on female Coloradans, while some companies charge women 7-9% more than men.

Consumers' premiums should be based on their driving behavior and their records, not on their race or gender or other protected characteristics. This bill, however, does not proscribe or prescribe any rating factors. Instead, it ensures that factors don't use protected classes whether intentionally or unintentionally. If companies or the Division find disproportionate impacts on people of color, it creates a process to eliminate or mitigate those problems.

SB 21-169 holds insurers accountable for testing their data systems, algorithms, and models to ensure that they are not unfairly discriminating against protected classes, and it requires them to take corrective action to fix any problems. By adopting this bill, Colorado has an opportunity to reduce systemic racism and address unfair discrimination in auto insurance markets, which will increase insurance availability and affordability, especially in the state's most vulnerable communities.

We strongly urge you to support this bill and favorably report it out of committee. Please contact us at mdelong@consumerfed.org if you have questions. Thank you.