PREAMENDED

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

LLS NO. 21-0594.01 Richard Sweetman x4333   **SENATE BILL 21-169**

SENATE SPONSORSHIP

Buckner,

HOUSE SPONSORSHIP

(None),

Senate Committees	**House Committees**
Business, Labor, & Technology	

A BILL FOR AN ACT

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

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at http://leg.colorado.gov.)

An insurer is prohibited from:
- Considering an individual's race, color, national or ethnic origin, religion, sex, sexual orientation, disability, or transgender status in any insurance practice; or
- Directly or indirectly using any external consumer data and information source, algorithm, or predictive model

(external data source) that unfairly discriminates against an individual based on an individual's race, color, national or ethnic origin, religion, sex, sexual orientation, disability, or transgender status.

On and after January 1, 2022, an insurer that uses one or more external data sources in any insurance practice shall submit certain disclosures to the division of insurance. The commissioner of insurance (commissioner) may examine and investigate an insurer's use of an external data source. If the commissioner determines that use of an external data source bears no direct causal relationship to insurance losses or to the condition of a property or applicant to be potentially insured and that the use of the external data source unfairly discriminates on the basis of an individual's membership in a protected class, the commissioner may promulgate rules restricting or prohibiting the use of the external data source.

---

1   *Be it enacted by the General Assembly of the State of Colorado:*

2   **SECTION 1. Legislative declaration.** (1) The general assembly

3   finds that:

4   (a)   Increasingly, insurers use external consumer data and

5   information sources, algorithms, and predictive models in their insurance

6   rating, underwriting, claims, and other business practices;

7   (b) Although such tools have the potential to benefit insurers and

8   consumers by simplifying and expediting insurance rating, underwriting,

9   and claims processes, the accuracy and reliability of external consumer

10   data and information sources can vary greatly, and some algorithms and

11   predictive models may lack a sufficient rationale for use in insurance

12   practices; and

13   (c) The use of particular external consumer data and information

14   sources, algorithms, and predictive models by insurers may have a

15   significant negative impact not only on the availability and affordability

16   of insurance for protected classes of consumers, but also on the utilization

17   of such insurance.

1   (2) The general assembly therefore declares that in order to ensure

2   that all Colorado residents have fair and equitable access to insurance

3   products, it is necessary to:

4   (a) Prohibit:

5   (I) Unfair discrimination based on an individual's race, color,

6   national or ethnic origin, religion, sex, sexual orientation, or gender

7   identity in any insurance practice; and

8   (II) The use of external consumer data and information sources,

9   algorithms, and predictive models, which use has the result of unfairly

10   discriminating against an individual based on an individual's race, color,

11   national or ethnic origin, religion, sex, sexual orientation, or gender

12   identity; and

13   (b) After notice and rule-making by the commissioner of

14   insurance, require insurers that use external consumer data and

15   information sources, algorithms, and predictive models to control for, or

16   otherwise demonstrate that such use does not result in, unfair

17   discrimination.

18   **SECTION 2.** In Colorado Revised Statutes, **add** 10-3-1104.9 as

19   follows:

20   **10-3-1104.9. Insurers' use of external consumer data and**

21   **information sources, algorithms, and predictive models -**

22   **consideration of protected class status prohibited - unfair**

23   **discrimination prohibited - rules - stakeholder process required -**

24   **investigations - definitions.** (1) NOTWITHSTANDING SECTION 10-3-1104

25   (1)(f), AN INSURER SHALL NOT, WITH REGARD TO ANY INSURANCE

26   PRACTICE:

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

1   COLOR, NATIONAL OR ETHNIC ORIGIN, RELIGION, SEX, SEXUAL

2   ORIENTATION, OR GENDER IDENTITY; OR

3   (b) PURSUANT TO RULES ADOPTED BY THE COMMISSIONER, USE

4   ANY EXTERNAL CONSUMER DATA AND INFORMATION SOURCE, ALGORITHM,

5   OR PREDICTIVE MODEL THAT UNFAIRLY DISCRIMINATES AGAINST AN

6   INDIVIDUAL BASED ON AN INDIVIDUAL'S RACE, COLOR, NATIONAL OR

7   ETHNIC ORIGIN, RELIGION, SEX, SEXUAL ORIENTATION, OR GENDER

8   IDENTITY.

9   (2) (a) THE COMMISSIONER SHALL ADOPT RULES FOR THE

10   IMPLEMENTATION OF THIS SECTION.

11   (b) THE COMMISSIONER SHALL ENGAGE IN A STAKEHOLDER

12   PROCESS PRIOR TO THE ADOPTION OF RULES FOR ANY TYPE OF INSURANCE

13   THAT INCLUDES CARRIERS, PRODUCERS, CONSUMER REPRESENTATIVES,

14   AND OTHER INTERESTED PARTIES. THE COMMISSIONER SHALL HOLD

15   STAKEHOLDER MEETINGS FOR STAKEHOLDERS OF DIFFERENT TYPES OF

16   INSURANCE TO ENSURE SUFFICIENT OPPORTUNITY TO CONSIDER FACTORS

17   AND PROCESSES RELEVANT TO EACH SUCH TYPE OF INSURANCE. THE

18   COMMISSIONER SHALL PROVIDE NOTICE OF SUCH STAKEHOLDER MEETINGS

19   ON THE DIVISION WEBSITE, AND STAKEHOLDER MEETINGS SHALL BE OPEN

20   TO THE PUBLIC.

21   (3) (a) AFTER THE STAKEHOLDER PROCESS DESCRIBED IN

22   SUBSECTION (2) OF THIS SECTION, THE COMMISSIONER SHALL ADOPT RULES

23   FOR SPECIFIC TYPES OF INSURANCE, BY INSURANCE PRACTICE, WHICH

24   RULES ESTABLISH MEANS BY WHICH AN INSURER MAY DEMONSTRATE THAT

25   IT HAS TESTED WHETHER ITS USE OF EXTERNAL CONSUMER DATA AND

26   INFORMATION SOURCES, ALGORITHMS, OR PREDICTIVE MODELS UNFAIRLY

27   DISCRIMINATES BASED ON AN INDIVIDUAL'S RACE, COLOR, NATIONAL OR

1 ETHNIC ORIGIN, RELIGION, SEX, SEXUAL ORIENTATION, OR GENDER

2 IDENTITY. ANY SUCH RULES SHALL NOT BECOME EFFECTIVE UNTIL

3 JANUARY 1, 2023, AT THE EARLIEST, FOR ANY TYPE OF INSURANCE.

4   (b) RULES ADOPTED PURSUANT TO THIS SECTION MUST REQUIRE

5 EACH INSURER TO:

6   (I) PROVIDE INFORMATION TO THE COMMISSIONER CONCERNING

7 THE EXTERNAL CONSUMER DATA AND INFORMATION SOURCES USED BY

8 THE INSURER IN THE DEVELOPMENT AND IMPLEMENTATION OF

9 ALGORITHMS AND PREDICTIVE MODELS FOR A PARTICULAR TYPE OF

10 INSURANCE AND INSURANCE PRACTICE;

11   (II) PROVIDE AN EXPLANATION OF THE MANNER IN WHICH THE

12 INSURER USES EXTERNAL CONSUMER DATA AND INFORMATION SOURCES,

13 ALGORITHMS, AND PREDICTIVE MODELS FOR THE PARTICULAR TYPE OF

14 INSURANCE AND INSURANCE PRACTICE;

15   (III) ESTABLISH AND MAINTAIN A RISK MANAGEMENT FRAMEWORK

16 THAT IS REASONABLY DESIGNED TO DETERMINE, TO THE EXTENT

17 PRACTICABLE, WHETHER THE INSURER'S USE OF EXTERNAL CONSUMER

18 DATA AND INFORMATION SOURCES, ALGORITHMS, AND PREDICTIVE

19 MODELS UNFAIRLY DISCRIMINATES AGAINST INDIVIDUALS BASED ON THEIR

20 RACE, COLOR, NATIONAL OR ETHNIC ORIGIN, RELIGION, SEX, SEXUAL

21 ORIENTATION, OR GENDER IDENTITY;

22   (IV) PROVIDE AN ASSESSMENT OF THE RESULTS OF THE RISK

23 MANAGEMENT FRAMEWORK AND ACTIONS TAKEN TO MINIMIZE THE RISK

24 OF UNFAIR DISCRIMINATION, INCLUDING ONGOING MONITORING; AND

25   (V) PROVIDE AN ATTESTATION BY THE INSURER'S CHIEF RISK

26 OFFICER THAT THE INSURER HAS IMPLEMENTED THE RISK MANAGEMENT

27 FRAMEWORK APPROPRIATELY ON A CONTINUOUS BASIS.

1   (c) INFORMATION SUBMITTED BY INSURERS TO COMPLY WITH THIS

2   SECTION IS SUBJECT TO THE "COLORADO OPEN RECORDS ACT", PART 2 OF

3   ARTICLE 72 OF TITLE 24.

4   (4) PURSUANT TO SECTION 10-3-1106, THE COMMISSIONER MAY

5   EXAMINE AND INVESTIGATE AN INSURER'S USE OF AN EXTERNAL

6   CONSUMER DATA AND INFORMATION SOURCE, ALGORITHM, OR PREDICTIVE

7   MODEL IN ANY INSURANCE PRACTICE. INSURERS SHALL COOPERATE WITH

8   THE COMMISSIONER AND THE DIVISION IN ANY EXAMINATION OR

9   INVESTIGATION UNDER THIS SECTION.

10   (5) IN THE EVENT THAT IT IS DETERMINED, AS A RESULT OF AN

11   INSURER'S PROPER COMPLIANCE WITH THE REQUIREMENTS OF THIS

12   SECTION, THAT THE INSURER'S USE OF EXTERNAL CONSUMER DATA AND

13   INFORMATION SOURCES, ALGORITHMS, OR PREDICTIVE MODELS IS FOUND

14   TO UNFAIRLY DISCRIMINATE AGAINST INDIVIDUALS BASED ON THEIR RACE,

15   COLOR, NATIONAL OR ETHNIC ORIGIN, RELIGION, SEX, SEXUAL

16   ORIENTATION, OR GENDER IDENTITY, THE COMMISSIONER MAY ISSUE AN

17   ORDER TO THE INSURER, WHICH ORDER SHALL BE LIMITED TO:

18   (a) ANY NECESSARY RESTITUTION FOR CONSUMERS; AND

19   (b) ANY OTHER ACTION REQUIRED TO BE TAKEN BY THE INSURER

20   TO REMEDY THE UNFAIR DISCRIMINATION ON A PROSPECTIVE BASIS.

21   (6) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE

22   REQUIRES:

23   (a) "ALGORITHM" MEANS A COMPUTATIONAL PROCESS THAT

24   INFORMS HUMAN DECISION-MAKING IN INSURANCE PRACTICES.

25   (b) "EXTERNAL CONSUMER DATA AND INFORMATION SOURCE"

26   MEANS A DATA OR AN INFORMATION SOURCE THAT IS USED BY AN INSURER

27   TO SUPPLEMENT TRADITIONAL UNDERWRITING OR OTHER INSURANCE

1 PRACTICES OR TO ESTABLISH LIFESTYLE INDICATORS THAT ARE USED IN

2 INSURANCE PRACTICES. "EXTERNAL CONSUMER DATA AND INFORMATION

3 SOURCE" INCLUDES CREDIT SCORES, SOCIAL MEDIA HABITS, LOCATIONS,

4 PURCHASING HABITS, HOME OWNERSHIP, EDUCATIONAL ATTAINMENT,

5 OCCUPATION, LICENSURES, CIVIL JUDGMENTS, AND COURT RECORDS.

6 (c) "INSURANCE PRACTICE" MEANS MARKETING, UNDERWRITING,

7 PRICING, UTILIZATION MANAGEMENT, REIMBURSEMENT METHODOLOGIES,

8 CLAIMS MANAGEMENT, AND FRAUD DETECTION IN THE TRANSACTION OF

9 INSURANCE.

10 (d) "PREDICTIVE MODEL" MEANS A PROCESS OF USING

11 MATHEMATICAL AND COMPUTATIONAL METHODS THAT EXAMINE CURRENT

12 AND HISTORICAL DATA SETS FOR UNDERLYING PATTERNS AND CALCULATE

13 THE PROBABILITY OF AN OUTCOME.

14 (e) "UNFAIR DISCRIMINATION BASED ON AN INDIVIDUAL'S RACE,

15 COLOR, NATIONAL OR ETHNIC ORIGIN, RELIGION, SEX, SEXUAL

16 ORIENTATION, OR GENDER IDENTITY" INCLUDES THE USE OF AN EXTERNAL

17 CONSUMER DATA AND INFORMATION SOURCE, ALGORITHM, OR PREDICTIVE

18 MODEL WHOSE PREDICTIVE CAPABILITY IS DERIVED IN SUBSTANTIAL PART

19 FROM ITS CORRELATION WITH MEMBERSHIP IN ONE OR MORE OF SUCH

20 PROTECTED CLASSES.

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

22 follows:

23 **10-4-1405. Exemption from testing and reporting**

24 **requirements.** NOTWITHSTANDING SECTION 10-3-1104.9, THE

25 REQUIREMENTS OF SAID SECTION 10-3-1104.9 DO NOT APPLY TO INSURERS

26 OF EXEMPT COMMERCIAL POLICYHOLDERS, AS DEFINED BY RULE

27 PURSUANT TO SECTION 10-4-1402.

1   **SECTION 4. Act subject to petition - effective date.** This act

2 takes effect at 12:01 a.m. on the day following the expiration of the

3 ninety-day period after final adjournment of the general assembly; except

4 that, if a referendum petition is filed pursuant to section 1 (3) of article V

5 of the state constitution against this act or an item, section, or part of this

6 act within such period, then the act, item, section, or part will not take

7 effect unless approved by the people at the general election to be held in

8 November 2022 and, in such case, will take effect on the date of the

9 official declaration of the vote thereon by the governor.