

## SB21-169: PROTECTING CONSUMERS FROM UNFAIR DISCRIMINATION IN INSURANCE PRACTICES

### Why is SB21-169 needed?

- ❖ The rapid expansion of big data - including consumer data sources, algorithms, and predictive models - has transformed insurance practices. These tools have the potential to benefit insurers and consumers by increasing efficiencies. However, the manner in which big data is used in insurers' "black box" systems creates the potential for real harms that unfairly discriminate against certain classes of consumers.
- ❖ Unchecked use of big data can unintentionally result in harm to people of color and other protected groups.

- A [Consumer Reports and ProPublica](#) study reported auto insurers charge higher average premiums to drivers living in predominantly minority urban neighborhoods than to drivers with similar safety records living in majority white neighborhoods. The study found many of the disparities in auto insurance prices between minority and white neighborhoods are wider than differences in risk can explain.
- [Researchers at MIT](#) studied three facial-analysis systems and found bias against women and people of color.
- [A study found](#) that a healthcare algorithm resulted in prioritizing healthier white patients over sicker black patients because it was based on past medical use and spending.
- A resume screening tool built by [Amazon](#) ended up discriminating against women because the tool was built predominantly from men's resumes and the AI software penalized any resume that contained the word "women".
- [A study](#) in Oklahoma looked at racial discrimination in the adjudication of earthquake insurance claims. After controlling for the earthquake event, distance to epicenter, policy-level differences, and other zip-code level differences, insurers were less likely to pay claims from zip-codes with higher percentages of Black populations and payments were lower in those areas.

- ❖ The Division of Insurance lacks the tools to examine the big data practices of insurers, and protect consumers from associated harms.

### How does SB21-169 address this problem?

- ❖ This bill holds insurers accountable for testing their big data systems to ensure they are not unfairly discriminating against protected classes, and requires them to take corrective action to address any consumer harms that are discovered. Insurers have a responsibility to ensure that these tools are not serving to perpetuate racial and other historic injustices.



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Department of  
Regulatory Agencies

Division of Insurance

- ❖ This legislation will require insurance companies to demonstrate to the Division how they are testing their data and tools to ensure they do not result in unfair discrimination. Specifically, this bill addresses the potential for systemic racism and other forms of discrimination against protected classes by:
  - Prohibiting the use of a protected class characteristic (such as race, ethnicity, and gender) in an insurance practice that results in **unfair** discrimination;
  - Establishing a stakeholder and rulemaking process to develop the rules by which insurance companies would test whether their use of big data is resulting in unfair discrimination against members of a protected class and how they would rectify those impacts; and
  - Providing a safe harbor to insurance companies that comply with the requirements of the bill and take action to remedy unfair discrimination on an ongoing and proactive basis.

### **Supporters:**

AARP Colorado State Office	Consumer Reports
Center for African American Health	Consumer Federation of America
Center for Economic Justice	CoPIRG (Colorado Public Interest Research Group)
Center for Health Progress	Healthier Colorado
Colorado Center on Law and Policy	Lutheran Advocacy Ministry - Colorado
Colorado Consumer Health Initiative	Mental Health Colorado
Colorado Organization for Latina Opportunity and Reproductive Rights	New Era Colorado
Colorado Children's Campaign	ONE Colorado
Colorado Cross-Disability Coalition	The Bell Policy Center