STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2022

AN ACT

RELATING TO STATE AFFAIRS AND GOVERNMENT -- DEPARTMENT OF BUSINESS REGULATION

Introduced By: Representatives McNamara, Felix, Alzate, Potter, and Kislak

Date Introduced: January 28, 2022

Referred To: House Corporations

It is enacted by the General Assembly as follows:

SECTION 1. Chapter 42-14 of the General Laws entitled "Department of Business Regulation" is hereby amended by adding thereto the following sections:

42-14-20. Insurers' use of external consumer data and information sources, algorithms, and predictive models -- Unfair discrimination prohibited -- Rules -- Stakeholder process required.

(a) In addition to the methods and practices prohibited pursuant to title 27 or title 42, an insurer shall not, with regard to any insurance practice:

(1) Unfairly discriminate based on race, color, national or ethnic origin, religion, sex, sexual orientation, disability, gender identity, or gender expression; or

(2) Pursuant to rules adopted by the director of the department of business regulation (the "director") or in consultation with the health insurance commissioner (the "commissioner"), use any external consumer data and information sources, as well as any algorithms or predictive models that use external consumer data and information sources, in a way that unfairly discriminates based on race, color, national or ethnic origin, religion, sex, sexual orientation, disability, gender identity, or gender expression.

(b)(1) The director, in consultation with the commissioner, shall adopt rules for the implementation of this section.

(2) The director, in consultation with the commissioner, shall engage in a stakeholder process required.
process prior to the adoption of rules for any type of insurance that includes carriers, producers, consumer representatives, and other interested parties. The director, in consultation with the commissioner, shall hold stakeholder meetings for stakeholders of different types of insurance to ensure sufficient opportunity to consider factors and processes relevant to each type of insurance.

The director, in consultation with the commissioner, shall provide notice of stakeholder meetings on the department of business regulation’s website, and stakeholder meetings shall be open to the public.

(c)(1) After the stakeholder process described in subsection (b)(2) of this section, the director, in consultation with the commissioner, shall adopt rules and regulations for specific types of insurance, by insurance practice, which rules and regulations establish means by which an insurer may demonstrate, to the extent practicable, that it has tested whether its use of external consumer data and information sources, as well as algorithms or predictive models using external consumer data and information sources, unfairly discriminates based on race, color, national or ethnic origin, religion, sex, sexual orientation, disability, gender identity, or gender expression. The rules and regulations shall not become effective until January 1, 2023, at the earliest, for any type of insurance, and the director and the commissioner shall consider solvency impacts, if any, to insurers in adopting the rules. This process shall comply with the provisions of chapter 35 of title 42 ("administrative procedures").

(2) Rules adopted pursuant to this section shall require each insurer to:

(i) Provide information to the director or commissioner concerning the external consumer data and information sources used by the insurer in the development and implementation of algorithms and predictive models for a particular type of insurance and insurance practice;

(ii) Provide an explanation of the manner in which the insurer uses external consumer data and information sources, as well as algorithms and predictive models using external consumer data and information sources, for the particular type of insurance and insurance practice;

(iii) Establish and maintain a risk management framework or similar processes or procedures that are reasonably designed to determine, to the extent practicable, whether the insurer's use of external consumer data and information sources, as well as algorithms and predictive models using external consumer data and information sources, unfairly discriminates based on race, color, national or ethnic origin, religion, sex, sexual orientation, disability, gender identity, or gender expression;

(iv) Provide an assessment of the results of the risk management framework or similar processes or procedures and actions taken to minimize the risk of unfair discrimination, including ongoing monitoring; and
(v) Provide an attestation by one or more officers that the insurer has implemented the risk management framework or similar processes or procedures appropriately on a continuous basis.

(3) The rules adopted by the director in consultation with the commissioner pursuant to this section must include provisions establishing:

(i) A reasonable period of time for insurers to remedy any unfairly discriminatory impact in an algorithm or predictive model; and

(ii) The ability of insurers to use external consumer data and information sources, as well as algorithms or predictive models using external consumer data and information sources, that have been previously assessed by the division and found not to be unfairly discriminatory.

(4) Documents, materials, and other information in the possession or control of the department of business regulation that are obtained by, created by, or disclosed to the director, the commissioner, or any other person pursuant to this section or any rules adopted pursuant to this section are recognized as proprietary and containing trade secrets. All such documents, materials, and other information shall be deemed confidential and privileged and not subject to disclosure under the provisions of title 38 ("public records") or similar laws of this state; are not subject to subpoena; and are not subject to discovery or admissible in evidence in any private civil action. However, the director and the commissioner may use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as part of the director or commissioner’s official duties. The director and the commissioner shall not otherwise make the documents, materials, or other information public without the prior written consent of the insurer from which the documents, materials, or other information was obtained. The director and the commissioner may make data publicly available in an aggregated or de-identified format in a manner deemed appropriate by the director and the commissioner.


(a) The director or the commissioner may examine and investigate an insurer's use of an external consumer data and information source, algorithm, or predictive model in any insurance practice. Insurers shall cooperate with the director and commissioner and the department of business regulation (the "department") in any examination or investigation under this section.

(b)(1) The director shall provide a report to the governor and the general assembly by December 31, 2023, and annually by December 31 thereafter. This report shall include:

(i) Information concerning any rules adopted pursuant to § 42-14-20;

(ii) Information concerning any changes in insurance rates that have resulted from the prohibitions described in § 42-14-20;

(iii) A summary of the stakeholder engagement process described in § 42-14-20; and
(iv) A description of data sources, if any, discussed during the stakeholder engagement process, which data sources insurers may use to comply with § 42-14-20.

(c) The provisions of § 42-14-20 and § 42-14-21 shall not apply to:

(1) Title insurance;

(2) Bonds executed by qualified surety companies; or

(3) Insurers issuing commercial insurance policies, except that this section and § 42-14-20 shall apply to insurers that issue business owners' policies or commercial general liability policies, which business owners' policies or commercial general liability policies have annual premiums of ten thousand dollars ($10,000) or less.

(d) Nothing in this section or § 42-14-20:

(1) Requires an insurer to collect from an applicant or policyholder the race, color, national or ethnic origin, religion, sex, sexual orientation, disability, gender identity, or gender expression of an individual; or

(2) May be construed to:

(i) Prohibit the use of, or require life, annuity, long-term care, or disability insurers to test, medical, family history, occupational, disability, or behavioral information related to a specific individual, which information, based on actuarially sound principles, has a direct relationship to mortality, morbidity, or longevity risk unless such information is otherwise included in the testing of an algorithm or predictive model that also uses external consumer data and information sources;

(ii) Prohibit the use of, or require life, annuity, long-term care, or disability insurers to test, traditional underwriting factors being used for the exclusive purpose of determining insurable interest or eligibility for coverage unless such factors are otherwise included in the testing of an algorithm or predictive model that also uses external consumer data and information sources; or

(iii) Prohibit the use of or require the testing of longstanding and well-established common industry practices in settling claims or traditional underwriting practices unless such practices or factors are otherwise included in the testing of an algorithm or predictive model that also uses external consumer data and information sources.

(e) As used in this section and § 42-14-20, unless the context otherwise requires:

(1) "Algorithm" means a computational or machine learning process that informs human decision making in insurance practices.

(2) "Commissioner" means the state health insurance commissioner.

(3) "Department" means the department of business regulation.

(4) "Director" means the director of the department of business regulation.

(5) "External consumer data and information source" means a data or an information source...
that is used by an insurer to supplement traditional underwriting or other insurance practices or to
establish lifestyle indicators that are used in insurance practices. "External consumer data and
information source" includes credit scores, social media habits, locations, purchasing habits, home
ownership, educational attainment, occupation, licenses, civil judgments, and court records. The
director, in consultation with the commissioner, may promulgate rules to further define "external
consumer data and information source" for particular lines of insurance and insurance practices.

(6) "Insurance practice" means marketing, underwriting, pricing, utilization management,
reimbursement methodologies, and claims management in the transaction of insurance.

(7) "Predictive model" means a process of using mathematical and computational methods
that examine current and historical data sets for underlying patterns and calculate the probability
of an outcome.

(8) "Unfairly discriminate" and "unfair discrimination" include the use of one or more
external consumer data and information sources, as well as algorithms or predictive models using
external consumer data and information sources, that have a correlation to race, color, national or
ethnic origin, religion, sex, sexual orientation, disability, gender identity, or gender expression, and
that use results in a disproportionately negative outcome for such classification or classifications,
which negative outcome exceeds the reasonable correlation to the underlying insurance practice,
including losses and costs for underwriting.

SECTION 2. This act shall take effect upon passage.

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This act would prohibit the use of any external consumer data and information sources, as well as any algorithms or predictive models that use external consumer data and information sources, in a way that unfairly discriminates based on race, color, national or ethnic origin, religion, sex, sexual orientation, disability, gender identity, or gender expression, by an insurer in regard to any insurance practice. The act would further direct the director of business regulation, in consultation with the health insurance commissioner, to promulgate rules and regulations to enforce these provisions.

This act would take effect upon passage.