AS INTRODUCED

An Act relating to insurance; enacting the Insurance
Consumer Rights Act; defining terms; prohibiting
discrimination by insurers; prohibiting the use of
algorithms and predictive models that unfairly
discriminate; directing Insurance Commissioner to
adopt rules; directing process for rule creation;
directing use of necessary provisions; permitting
Insurance Commissioner to investigate; clarifying
applicability of act; providing for codification; and
providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1.   NEW LAW   A new section of law to be codified

in the Oklahoma Statutes as Section 3701 of Title 36, unless there

is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Insurance

Consumer Rights Act".

SECTION 2.   NEW LAW   A new section of law to be codified

in the Oklahoma Statutes as Section 3702 of Title 36, unless there

is created a duplication in numbering, reads as follows:

As used in this act, unless the context otherwise requires:

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

2.   "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 sources include credit scores, social media habits, locations, purchasing habits, home ownership, educational attainment, occupation, licensures, civil judgments, and court records. The Insurance Commissioner may promulgate rules to further define external consumer data and information source for particular lines of insurance and insurance practices;

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

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

5.   "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 3.   NEW LAW   A new section of law to be codified

in the Oklahoma Statutes as Section 3703 of Title 36, unless there

is created a duplication in numbering, reads as follows:

Insurers shall not, with regard to any insurance practice:

A.   Unfairly discriminate based on race, color, national or

ethnic origin, religion, sex, sexual orientation, disability, gender

identity, or gender expression; or

B.   Pursuant to rules adopted by the Insurance Commissioner, use

any external consumer data and information sources, or 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.

SECTION 4.   NEW LAW   A new section of law to be codified

in the Oklahoma Statutes as Section 3704 of Title 36, unless there

is created a duplication in numbering, reads as follows:

A. 1.   The Insurance Commissioner shall adopt rules for the

implementation of this act.

1   2. The Insurance Commissioner shall engage in a stakeholder

2   process prior to the adoption of rules for any type of insurance

3   that includes carriers, producers, consumer representatives, and

4   other interested parties. The Commissioner shall hold stakeholder

5   meetings for stakeholders of different types of insurance to ensure

6   sufficient opportunity to consider factors and processes relevant to

7   each type of insurance. The Commissioner shall provide notice of

8   stakeholder meetings on the agency website. Stakeholder meetings

9   shall be open to the public.

10   B. After the stakeholder process described in paragraph 2 of

11   subsection A of this section, the Insurance Commissioner shall adopt

12   rules for specific types of insurance, by insurance practice, which

13   rules establish the means by which an insurer may demonstrate, to

14   the extent practicable, that it has tested whether its use of

15   external consumer data and information sources, as well as

16   algorithms or predictive models using external consumer data and

17   information sources, unfairly discriminates based on race, color,

18   national or ethnic origin, religion, sex, sexual orientation,

19   disability, gender identity, or gender expression. The rules shall

20   become effective January 1, 2023, at the earliest, for any type of

21   insurance, and the Commissioner shall consider solvency impacts, if

22   any, to insurers in adopting the rules.

23   C. Rules adopted pursuant to this act shall require each

24   insurer to:

1.   Provide information to the Insurance 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;

2.   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;

3.   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;

4.   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

5. Provide an attestation by one or more officers that the insurer has implemented a risk management framework or similar processes or procedures appropriately on a continuous basis.

C. The rules adopted by the Commissioner pursuant to this act must include provisions establishing:

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

2. 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 Department and found not to be unfairly discriminatory.

D. Documents, materials, and other information in the possession or control of the Oklahoma Insurance Department that are obtained by, created by, or disclosed to the Insurance Commissioner or any other person pursuant to this act or any rules adopted pursuant to this act are recognized as proprietary and containing trade secrets. All such documents, materials, and other information are confidential and privileged; are not subject to disclosure under the Oklahoma Open Records Act, or other open records, freedom of information, sunshine, or similar law 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 Insurance

Commissioner may use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as part of the Commissioner's official duties. The Insurance Commissioner shall not otherwise make the documents, materials, or other information public without the prior written consent of the insurer from when the documents, materials, or other information was obtained. The Insurance Commissioner may make data publicly available in an aggregated or de-identified format in a manner deemed appropriate by the Commissioner.

SECTION 5.   NEW LAW   A new section of law to be codified in the Oklahoma Statutes as Section 3705 of Title 36, unless there is created a duplication in numbering, reads as follows:

The Insurance Commissioner shall have the power to 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 Commissioner and the Oklahoma Insurance Department in any examination or investigation under this act.

SECTION 6.   NEW LAW   A new section of law to be codified in the Oklahoma Statutes as Section 3706 of Title 36, unless there is created a duplication in numbering, reads as follows:

Nothing in this act:

A.   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

B. May be construed to:

1. Prohibit the use of or to 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;

2. Prohibit the use of or to 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;

3. Prohibit the use of or to 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.

1   SECTION 7. This act shall become effective November 1, 2022.

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