



The Honorable Giovanni Capriglione, Chair  
House Pensions, Investments and Financial Services Committee  
PO Box 2910  
Austin, Texas 78768-2910  
*via email: giovanni.capriglione@house.texas.gov*

Re: Comments of the Insurance Council of Texas (ICT) on draft legislation “The Texas Responsible AI Governance Act (TRAIGA)”

Dear Chairman Capriglione:

The members of the Insurance Council of Texas (ICT) appreciate the opportunity to submit preliminary comments on your proposed draft legislation regulating use of artificial intelligence (“AI”). Our members include over 400 insurance companies doing business in Texas providing insurance policies and coverages in auto, home, and commercial insurance. Even though our members have significant concerns with this initial draft, we are committed to working with you and your office to accomplish the overall goal of regulating unfair discrimination and unfair trade practices, including those that may result from the use of AI.

We hope the additional background information provided in these comments will assist in understanding why this draft bill raises concerns and could cause regulatory confusion and complications in underwriting, rating, and coverage for both consumers of property and casualty insurance and for insurers doing business in the state. As drafted, we believe TRAIGA would impose both new regulators and new standards inconsistent with Texas insurance law that has been carefully crafted and developed over the past several decades.

Texas has extensive laws in place to prohibit unfair trade practices and unfair discrimination. These laws strike a balance between allowing insurance rates to be matched to risk—a critical component of a well-functioning insurance market for consumers and insurers—and prohibitions or restrictions on the use of certain factors in rating, underwriting, and other aspects of the business of insurance. These provisions also apply regardless of the specific tools (of which AI is one category) being employed. These laws are codified in the Texas Insurance Code, including specific provisions in Title 5, Subtitle C, Chapters 541, 542, 544, and other sections. Under Texas Insurance Code Chapter 544 (see §§ 544.002 and 544.052), insurers are prohibited from unfair and discriminatory actions in insuring or providing coverage or charging a different rate because of the person’s race, color, religion, or national origin; other factors, including age, gender, marital status, and geographic location are subject to restrictions on use described in more detail below. In addition, Texas law prohibits insurers from engaging in unfair discrimination or permitting unfair discrimination between individuals of the same class and of essentially the same hazard. This includes unfair discrimination in the premium, fees, or rate charged, benefits payable under the policy, or any terms or conditions of the insurance policy. It is important to note that Insurance Code § 544.003 provides for limited exceptions to these provisions if “...the refusal, limitation, or charge is based on sound underwriting or actuarial principles reasonably related to actual

or anticipated loss experience.” However, certain provisions in the draft bill do not recognize this important distinction, and we are concerned that the bill would create a conflicting set of requirements when AI is utilized.

TDI regulates the business of insurance for unfair discrimination or unfair trade practices and the scope of this regulatory authority includes instances where an insurer may use AI in the business of insurance. There are specific laws on unfair trade practices in Chapter 541 where the TDI can regulate use and/or application of AI or third-party data in marketing, underwriting, and rating. Under Chapter 542, unfair claims practices laws give TDI the authority to evaluate an insurer’s use of AI for unfair claim practices.

This extensive regulation of insurance is based on a variety of existing laws including use of enforcement proceedings; market conduct examinations that permit a regulator wide authority to review practices, including use of AI, software, or other third-party information; and regulation of corporate governance by requiring disclosure of frameworks addressing an insurer’s use of AI systems.

In addition, rate filing requirements for certain property and casualty lines require insurers to file rates and justification to show compliance that rates are not unfairly discriminatory, not excessive, and are not inadequate. TDI’s administrative rules for rate filings require disclosure of the use of any third-party data.

With those general concerns as background, the following are examples of a few specific concerns based on a preliminary review of the draft bill:

1. There are terms describing prohibited discrimination that seem overly broad and conflict with the Insurance Code anti-discrimination provisions. For example, the term “algorithmic discrimination” as defined in the TRAIGA draft includes several different categories of what would be unfair discrimination that differ from the long-standing terms for unfair discrimination in Insurance Code Chapter 544. Also, and as one example, the draft bill language prohibits discrimination by age. Age may be a rating factor used by property and casualty insurers in underwriting and rating of automobile insurance. The draft makes no reference to permissible differences in rates, coverages, etc., based on sound actuarial or underwriting principles.
2. In TRAIGA § 551.107, the proposed bill creates private causes of action. ICT members strongly oppose any new law of this type that creates private causes of action. Insurers are already subject to causes of action for violation of the Insurance Code’s unfair discrimination provisions.
3. As drafted, TRAIGA §§ 551.102 - 555.105, and Chapter 552, creates new regulatory agencies, new standards, and allows multiple different entities, including the Attorney General, to regulate and enforce this law. This will cause considerable confusion and uncertainty for insurers who are regulated by TDI and would have to respond to multiple agencies unfamiliar with the regulation of insurance. TDI has the staff and expertise to ensure companies are not engaged in discriminatory or unfair practices, including in the use of AI.
4. There are vague provisions in the draft bill that would make compliance extremely difficult if not impossible. For example, the definition of “contributing factors” is vague and seems


to imply some type of proxy discrimination standard. It is not clear what is meant by intentional or substantial modification. Insurers may need to modify systems using internal data to assure compliance with insurance laws.

There are other sections of the draft bill that are problematic and we would be happy to discuss those as this progresses.

In closing, we note that other states that have considered laws similar to TRAIGA have included some type of language that would not subject insurers to compliance with a new AI regulation given existing state regulation of insurance. We believe something similar should be done with Texas' law. Without changes to the draft bill, it could cause considerable disruption and uncertainty, particularly in the property casualty insurance market, where TDI already enforces compliance with existing laws and regulations to prevent unfair practices and discrimination. Texas has an existing regulatory and enforcement framework in place to monitor insurers' practices in the marketplace and this includes an insurer's use of AI. Texas boasts one of the nation's strongest and most competitive property and casualty insurance markets, driven by a robust regulatory framework that promotes fair practices and innovation. Preserving this environment is essential to maintaining a stable market that meets consumer needs, encourages competition, and upholds the high standards already in place.

We are working with other insurance trade groups to review and provide feedback on the draft bill and likely share similar concerns that your office may hear from those groups. We look forward to further engagement with you and your staff on this legislation. Please contact us if you have any questions about these comments.

Respectfully,



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Albert Betts  
Executive Director  
Insurance Council of Texas

cc: Angie Cervantes, Government and Legislative Affairs Manager, Insurance Council of Texas  
Jon Schnautz, Legal and Legislative Advocacy Counsel, Insurance Council of Texas  
Jay Thompson, Counsel, Mitchell, Williams, Selig, Gates & Woodyard, PLLC