

ACLU OF RI POSITION: OPPOSE/AMEND

**TESTIMONY ON 23-S-697,
AN ACT RELATING TO INSURANCE – PRODUCER LICENSING ACT
May 2, 2023**

This bill makes numerous revisions to the state’s insurance laws. There are only two of particular interest and concern to our organization, but they are both of importance.

First, we have concerns about a discrete section of the bill which creates a section on “Unfair discrimination.” (page 40) As an organization strongly in support of anti-discriminatory policies and practices in insurance and other regulated industries, we wish to note the narrowness of this language which constrains us to oppose, as written, this particular section.

This legislation’s anti-discrimination provision would prohibit such acts as “discrimination between persons as to the premiums or rates charged for insurance policies,” but only on the basis of “race, color, creed, national origin, or disability.” As far as anti-discrimination clauses go, this is extremely narrow, and excludes protection from discrimination based on a number of other protected classes in other areas of the law – such as religion, gender identity and expression, or sexual orientation – that should be protected in this context as well.

We therefore urge that this section be amended to better match the more robust anti-discrimination language contained in other statutes such that all Rhode Islanders may be protected from discriminatory practices. To the extent that other current laws specifically dealing with insurance are similarly deficient in providing more encompassing anti-discrimination protection, the solution is to expand the protections in those laws, not to have this new law mirror them.

Secondly, deep within the bill is a lengthy new section on cybersecurity. Any legislation addressing this topic must, we believe, ensure that it contains vigorous protections for consumers from breaches of their information. We are not convinced this bill necessarily does so as currently written. For example, if a licensee fails to take appropriate steps, as required by the legislation, to prevent cybersecurity breaches, or to implement the information security program established in the bill, or to properly investigate or report a serious cybersecurity event, the only stated remedy is that the commissioner may “take action that is necessary or appropriate to enforce” the chapter. [Page 50, line 24-26.] In addition to being extremely vague, it is not the sort of language that sends a strong deterrent message. Further, while it may be a drafting error, a separate section on “Penalties” [Page 52, lines 28-21] actually contains no penalties. Perhaps most troubling of all, the bill specifically bars any private cause of action under the statute [Page 41, lines 6-8], potentially leaving victims of negligent or even bad faith cybersecurity breaches by insurers without an essential enforcement tool in light of the agency’s limited enforcement resources.

We also have some concerns with the “confidentiality” provision of this new chapter, beginning on Page 50, line 27. While we fully recognize the importance of confidentiality for many of the security-related records that will be shared with the department by licensees, this section would appear to keep secret such basic documents as a licensee’s annual certification to the state that they have complied with this law. [See the reference to 27-1.3-4(i) on Page 50, line 30.] By also shielding any “confidential” documents from subpoena, discovery or admissibility in “any private civil action,” this section would appear to significantly hamstring efforts to hold licensees judicially responsible for major security breaches.

Finally, since this chapter also references insurers’ needs to comply with provisions of the state’s current identity theft protection law [See, e.g., Page 49, lines 11 and 33], it is unclear how these two statutes ultimately mesh or how this bill seeks to make them mesh.

Considering the far-reaching nature of this section, we believe it would be appropriate to remove it from the legislation and consider it as a separate bill for individualized consideration. This will ensure that it gets the careful attention it deserves and that it does not have the effect of establishing a cybersecurity protocol that can be honored in the breach and leave victims with little recourse or remedies.

Thank you in advance for your consideration of our views.