Comments of the Center for Economic Justice to the

NCOIL Property and Casualty Committee

September 26, 2016

The Center for Economic Justice (CEJ) submits the following recommendations to NCOIL for regulatory activity related to insurers' use of big data and consumer protection.

For purposes of these recommendations, "big data" means large data sets of personal consumer information with associated data mining and predictive modeling used for any aspect of an insurers' operation, including, but not limited to, marketing, sales, underwriting, pricing and claim settlement.

CEJ proposes three actions to enable regulators to better monitor insurers' use of big data and resulting market and consumer impacts and to provide regulatory guardrails to prevent abusive practices without stifling innovation and consumer benefit. The three actions are a model law or laws to:

1. Develop a model law to require regulators to collect information from insurers regarding the insurers' sources and uses of data and to publish a compilation of these data sources and uses. The purpose is to ensure regulators are monitoring insurance markets regarding big data applications and informing policy makers and the public about these big data sources and uses. Such data collection and publication is a foundation for regulatory and legislation oversight of insurer practices and accountability of insurers to the public.

2. Develop a model law to provide the same consumer protections for insurers' use of personal consumer information as those for consumer credit information found in the Fair Credit Reporting Act and the NCOIL Insurance Credit Scoring Model Law.

3. Develop a model law to provide consumer protection and regulatory guardrails for ownership and licensing of consumer-generated data used by insurers, including, but not limited to data generated from auto telematics, home telematics and wearable devices. In addition to making clear that consumer-generated data is owned by the consumer, innovation in insurer-consumer interaction will require licensing of those data to insurers.

Regulatory Big Data

1. Require insurers to report the name and description of each source of data, the source of the data and the use or uses of the data including pricing (including underwriting), marketing, claims settlement, antifraud and other.
2. Require the use of a data reporting template developed by the NAIC, if the NAIC develops such a template.
3. Require the commissioner to compile and publish the results of the reporting without identification of a specific insurer to a particular data source or type.

Insurer Responsibility and Consumer Protections for Insurers' Use of Big Data

1. Develop a model law describing insurer responsibilities and consumer rights regarding insurers' use of big data. The model law shall include, at a minimum, requirements, for:
    a. insurers' submission of big data sources and uses to regulators,
    b. insurers' submission of big data algorithms and related insurer data to regulators,
    c. protection of personal consumer information and insurer trade secrets in the big data-related submissions to regulators;
    d. insurers' disclosure and consumer protections related to insurers' big data usage, modeled after the disclosure and consumer protection requirements for users of information provided by consumer reporting agencies pursuant to the Fair Credit Reporting Act including, but not limited to:
        i. disclosure by the insurer to the consumer of intended use of the data;
        ii. consent by the consumer to the insurer's use of the data
        iii. clear and specific disclosure by the insurer to the consumer of potential outcomes if the consumer declines permission to use the data;
        iv. adverse action notice by the insurer to the consumer if the use of the data results in an adverse action
        v. disclosure to the consumer of the actual consumer's data used for inspection by the consumer;
        vi. ability of the consumer to correct erroneous information;
        vii. reassessment of the data by the insurer if data are corrected; and
        viii. a provision for life events exceptions to use of the data if the life event may result in unfavorable data due to events outside of the consumer's control.

<u>Ownership and Consumer Protections for Consumer-Generated Data Related to Insurance</u>

1. Develop a model law regarding ownership and licensing of data generated by consumers, vehicles or properties and used by insurers, including, but not limited to, data generated by vehicle telematics, home or property telematics, mobile phones and wearable devices. The model law shall declare that such data is owned by the consumer and shall include provisions for licensing of such data by consumers to insurers in a manner that balances consumer protection and sovereignty with insurer and public needs for access to such data loss prevention and mitigation and innovation in insurance products and insurer-consumer interaction. Such licensing provisions shall include, but not be limited to:
    a. consumer-tested disclosure to consumers of the sources and uses of the consumer-generated data;
    b. affirmative agreements – opt-in – by the consumer for collection of the data and for each intended use of the data;
    c. prompt access to the consumer-generated data by the consumer upon request with provision of the data by the insurer to the consumer in a format and medium which, among other things, allows consumers to take the data to another insurer;
    d. prohibition against use of the consumer-generated data by the insurer for any purpose other than those agreed to by the consumer;
    e. prohibition against sale of the consumer-generated data by the insurer to any third-party without affirmative consent by the consumer and compensation to the consumer by the insurer; and
    f. standards for all-industry databases of specific types of consumer-generated data.