

Effective Consumer Protection
Enhances and is a Necessary Component of using AI
What is the Impact of Losing the Human Element?

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Trust: AI, Insurance and Consumer Protection

Where Does Artificial Intelligence and Machine Learning Fit in this Drama?*



* With thanks to Robert Helfand, Pullman & Comley (retired)

Trust and the Promise of Insurance

Insurance is money for a promise

Policyholder claims come in (long) after premiums are paid

- ✓ Policyholders have little recourse if a claim is not paid
 - ✓ Typical Breach/K remedy – return amount paid (premiums)- is of little value if a claim denial is incorrect
 - ✓ For insurance markets to function, insurance consumers must trust that insurers will have both the financial resources to pay covered claims and the willingness to do so.
- Insurer Transparency and effective regulation encourage trust and are necessary elements for insurance markets to thrive.

AI, Insurance & Consumer Protection: A Growing Gap in Accountability?

- Few insurer employees fully understand the models they use, especially those developed by third-party data vendors.
- Regulators are charged with enforcing specific *statutory* mandates, guarding the industry's health, and protecting insurance consumers.
- AI challenges these regulatory functions and there is a growing gap between industry underwriting and claim practices, and the regulatory authority, resources, and expertise necessary to evaluate and police them.
- Consumers - Uncertain rights, less protection and seemingly irrelevant correlations used to predict and price their risks. And, even less transparency than before.
- Legislators have the authority and ability to update consumer protection laws to address the many challenges – and opportunities the data revolution is bringing.

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The Use of AI in Insurance

- [NAIC surveys](#) demonstrate that a large majority of auto and home insurers either are or intend to develop advanced AI models (including those considering them for the future) – 88% of auto insurers, 70% of home insurers
- A little under 50% of insurers rely on independent third-party vendors/modelers to aggregate and model consumer data
- Much of this information that is utilized (particularly by third-party vendors) is “non-traditional” or “unstructured” consumer data, such as consumer shopping habits, review of social media accounts, and other consumer documents previously unavailable and not digitalized.

The Use of AI in Insurance

- Much of this unstructured data may not be subject to traditional consumer protections laws, such as the federal Fair Credit Reporting Act, and consumers are left without effective means to view their “unstructured” information, learn how it was used, and the ability to question and correct inaccurate data.
- If potentially subject to the FCRA or similar laws, are modelers complying with them, are insurers evaluating their compliance, and are regulators examining insurers and modelers to determine if they are?
- Absent specific legislative authority, insurance regulators have uncertain authority over these third-party modelers which creates regulatory obstacles to even learning what consumer data is used and how.

Trust, AI, & Consumer Protection

Underwriting, Pricing, and Claim Management

AI is helping insurers achieve greater accuracy in risk assessments, more sophisticated pricing strategies and more efficient claim practices in communications with policyholders, coverage, damage evaluations, and paying policyholders what they are due. This 4X win for insurers, policyholders and claimants, and the public in general.

However, these potential benefits can easily become detriments to consumers. For example:

Price Optimization or the “*Loyalty Penalty*” as dubbed by the WSJ, where premiums are partly based not on risk, but a policyholder’s propensity to shop around for insurance.

Trust: AI, & Consumer Protection

Underwriting, Pricing, and Claim Management

Or, **Claim Optimization** - when does quicker and more efficient also equal a smaller claim payment than the claim is actually worth?

Claims Optimization: Modeling “low-balling?”

- Similar to Price Optimization, predictive models can measure individual policyholders’ “settlement elasticity” when providing and negotiating claim payouts.
- Can insurers incorporate data about the policyholder’s willingness to settle and for what amount in determining the claim’s reasonable value?
- *Are they doing so now?* Claim optimization, as defined, would violate State UCSPA and other common law and statutory requirements.

Clear and Transparent Disclosure Requirements Alone do not Protect Consumers – these terms are often not clear, not transparent, and most important

“ . . . It is a matter almost of common knowledge that a very small percentage of policyholders are actually cognizant of the provisions of their policies, and many of them are ignorant of the names of the companies issuing the said policies. The policies are prepared by the experts of the companies, they are highly technical in their phraseology, they are complicated and voluminous—the one before us covering thirteen pages of the transcript—and in their numerous conditions and stipulations, furnishing what sometimes may be veritable traps for the unwary . . .” *Raulet v. Northwestern Ins. Co.*, 107 P. 298 (Cal.)

Transparency, Privacy, and Consumer Rights

- “Clear and Transparent” standards alone are inadequate Consumer Protection
- Consumers don’t read form contracts and Terms and Conditions, including insurance policies, as demonstrated by decades of studies.
- Examples: online purchases, financial documents, and insurance policies
- 18th and 19th Century English common law doctrines such as *Caveat Emptor* and a pure Freedom of Contract ideology have long been abandoned as the guiding philosophy for consumer contracts.
- Especially for insurance policies, due to the money for a promise nature and the lack of any alternatives should an insurer deny a claim.

7,500 Online Shoppers Unknowingly Sold Their Souls

Published April 15, 2010 | FOXNews.com

A computer game retailer revealed that it legally owns the souls of thousands of online shoppers, thanks to a clause in the terms and conditions agreed to by online shoppers.

ADVERTISEMENT

The retailer, British firm **GameStation**, added the "immortal soul clause" to the contract signed before making any online purchases earlier this month. It states that customers grant the company the right to claim their soul.

"By placing an order via this Web site on the first day of the fourth month of the year 2010 Anno Domini, you agree to grant Us a non transferable option to claim, for now and for ever more, your immortal soul. Should We wish to exercise this option, you agree to surrender your immortal soul, and any claim you may have on it, within 5 (five) working days of receiving written notification from gamesation.co.uk or one of its duly authorised minions."

GameStation's form also points out that "we reserve the right to serve such notice in 6 (six) foot high letters of fire, however we can accept no liability for any loss or damage caused by such an act. If you a) do not believe you have an immortal soul, b) have already given it to another party, or c) do not wish to grant Us such a license, please click the link below to nullify this sub-clause and proceed with your transaction."

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Transparency, Privacy, and Consumer Rights

NAIC AI/ML Surveys - PPA

The NAIC surveys also asked insurers several other questions and their answers frame this issue and why legislation is necessary.

“...Insurers were asked to identify if they were providing additional information about data elements to consumers other insurers than what is required by law. The answer, although the number of reporting companies is lower than expected, is almost unanimously “no” for each of the insurer operations, except for rating, which had about 32% of the responses reporting “yes.” The second question is similar but asks whether consumers are told the purposes of data elements beyond what is required by law. For this question, the answer was almost unanimously “no . . .”

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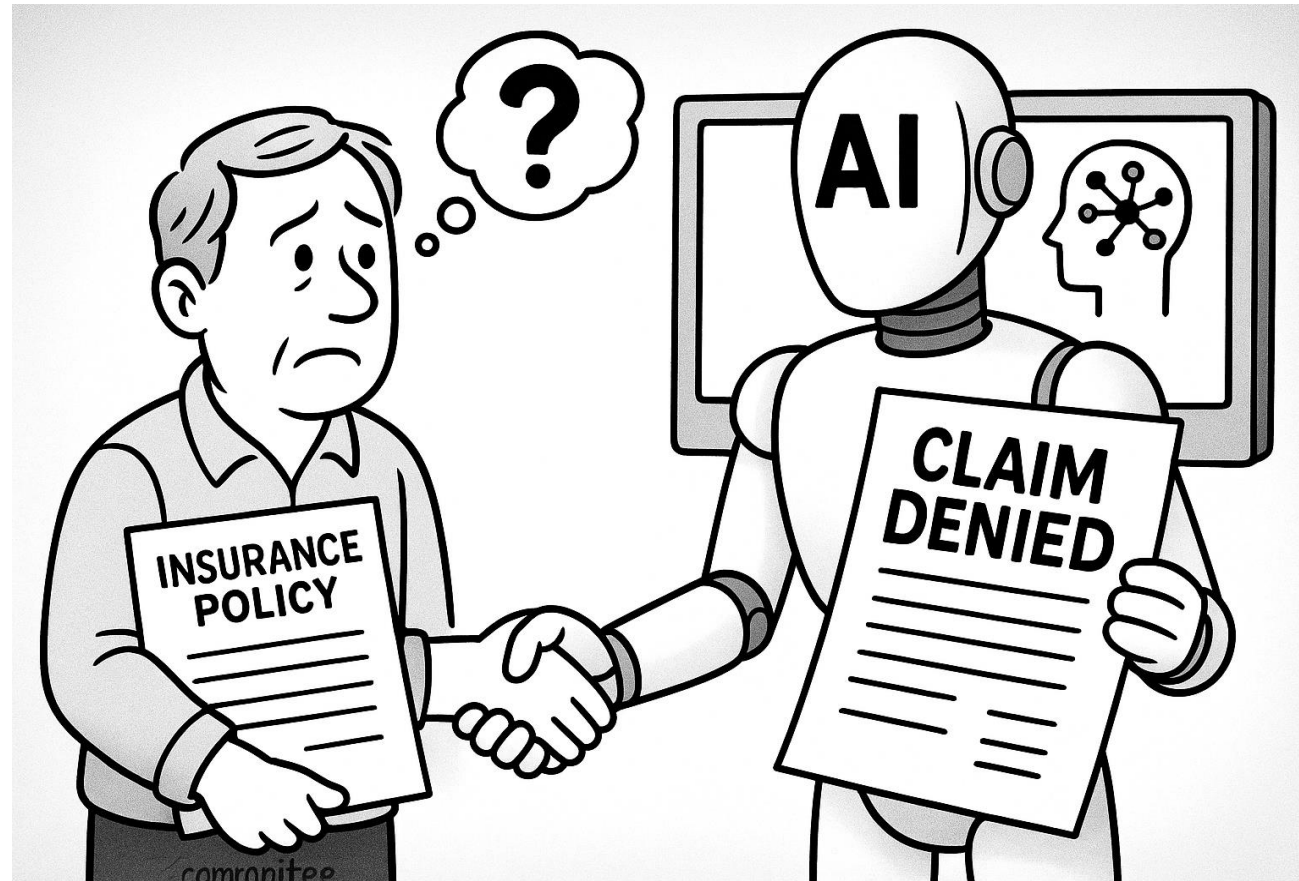
Insurance is money for a promise

The ongoing revolution in data, artificial intelligence and machine learning, and predictive analytics can not only provide better insurer-policyholder satisfaction, but could also significantly enhance transparency, credibility, and the insurance consumers' trust in insurance. As used and regulated now, it is fair to say there is less transparency, fewer rights for consumers to know what data has been collected on them, how it was used, and to correct their own consumer information:

“The findings reveal declining confidence in AI across key areas, emphasizing the critical need for insurers to address these concerns through transparency, education, and tangible benefits.” [Insurity, 2025 AI in Insurance Report, February 20, 2025](#)

This shouldn't be the future. Effective Consumer Protection enables Trust and enhances Insurance and Insurance Markets.

Created by ChatGPT on
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And, Thank You

Insurers' Use of Criminal History Information

NCOIL July 17, 2021 "Resolution Regarding the Use of
Certain Rating Factors"

BE IT FURTHER RESOLVED that NCOIL views as contrary to public policy and unfairly discriminatory the use of all data in the underwriting of private, non-commercial insurance that is: related to non-pending arrests, charges and indictments that do not result in conviction; related to convictions that do not relate in any way to fraud; or are not related to the insurability of a prospective or existing policyholder, and urges state legislatures to prohibit its use;

Full resolution available at: <https://ncoil.org/special-committee-on-race-in-insurance-underwriting-2/>