# What Trump Order Limiting State AI Regs Means For Insurers

By **Kathleen Birrane** (December 16, 2025)

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On Dec. 11, President Donald J. Trump issued an executive order aimed at preventing states from enacting or enforcing laws limiting the use or development of artificial intelligence technologies.

While the executive order will no doubt trigger debate and litigation, its impact on the insurance sector is likely to be minimal, at least with respect to state-based actions directed only at the use of AI in the business of insurance.

Under the McCarran-Ferguson Act, only federal laws that expressly and specifically regulate the business of insurance preempt inconsistent state insurance regulatory laws. Laws of general application, regulation or guidance, including an executive order, are themselves "reverse preempted" by state laws that were enacted for the purpose of regulating the business of insurance, including AI laws and directives that address AI as a method for carrying out state-regulated conduct.[1]

Hence, for insurers and insurance regulators, it is not the executive order, but the potential for action by Congress that is of greatest concern and interest.

Titled "Ensuring a National Policy Framework for Artificial Intelligence," the order proceeds from the assertion that fragmented, state-based regulation of AI will stifle innovation and impede the ability of the U.S. to compete effectively. The order declares that "[i]t is the policy of the United States to sustain and enhance the United States' global AI dominance through a minimally burdensome uniform national policy framework for AI."

Initially leaked in draft in October, the executive order calls for a single national standard that preempts conflicting state laws. While the order itself does not have the force of law and cannot, itself, preempt state laws, it directs the deployment of federal tools to deter and to penalize states in an effort to accomplish that objective.

Specifically, the order directs the creation of an AI litigation task force within the U.S. Department of Justice to identify and challenge state AI laws that are seen as unlawfully regulating interstate commerce, are preempted by existing federal regulations, or are otherwise deemed unlawful by the attorney general. The executive order requires the secretary of commerce to evaluate existing state AI laws and to refer those that the secretary considers onerous or in conflict with the executive order's policies to the task force.

Laws that allegedly "force" AI models to alter truthful outputs or require disclosures that might infringe on First Amendment rights are specifically targeted for referral to the task force. The executive order also proposes to tie federal funding to state AI regulatory policies, directing federal agencies to assess whether discretionary grants can be conditioned on state alignment with the order.

McCarran-Ferguson is likely to insulate state regulation of AI use in the business of insurance from the kinds of enforcement-related activities described in the order, particularly by the task force. Enacted in 1945, McCarran-Ferguson provides that the "business of insurance, and every person engaged therein, shall be subject to the laws of the several States which relate to the regulation or taxation of such business."[2]

"Acts of Congress" that do not expressly regulate the "business of insurance" do not preempt state laws or regulations that do regulate the "business of insurance."[3] And, state laws that do regulate the business of insurance reverse preempt federal laws and regulations that do not expressly apply to the business of insurance.

State regulation of AI use by insurers is uniformly tied to the state's regulation of the business of insurance. Further, states that have enacted comprehensive AI legislation have excluded insurance entities regulated by the department of insurance as to AI use for regulated activities in the business of insurance.[4] From a regulatory perspective, the use of AI in insurance is a methodology that insurers use to carry out activities that are already regulated, such as underwriting and pricing. Consequently, as states have recognized, the regulation of that methodology belongs with the state insurance regulators who have been given oversight of the underlying activities.

Consistent with this, states have been both disciplined and focused on their regulation of AI in the business of insurance, tying their regulatory oversight of AI technologies to their core regulatory remit. For example, the Model Bulletin on the Use of Artificial Intelligence Systems by Insurers, adopted unanimously by members of the National Association of Insurance Commissioners in 2023, requires insurers to develop and implement written AI programs focused on governance and risk management.[5]

The articulated statutory authority for the model bulletin are the state laws that regulate and establish standards for fairness, transparency and consumer protection in the transaction of the business of insurance. The premise of the model bulletin is that decisions or actions affecting consumers that are made or supported by advanced analytical and computational technologies, including artificial intelligence systems, must comply with all applicable insurance laws and regulations.

Given this disciplined approach, very few states have enacted laws that specifically target AI use by insurers. Where that has occurred, the statute is typically focused on a very specific use case, such as laws that are directed at the regulation of AI use for medical utilization review and the clarification that certain denials much be made by properly credentialed health care professionals and not by AI alone.[6]

While the combination of McCarran-Ferguson and disciplined regulation effectively insulates states from the executive order with respect to state oversight of the use of AI in the business of insurance, nothing prevents Congress itself from acting. The executive order follows failed attempts to secure a federal legislative moratorium on state-based AI regulation. The first effort to enact a federal moratorium failed when senators voted 99-1 in July to remove the language from the budget bill. A second attempt failed in early December when U.S. House of Representatives leaders removed the language from the National Defense Authorization Act, indicating that they would look for other legislative vehicles.

The NAIC has been proactive and vocal in urging Congress not to impose a broad federal moratorium on state legislative or regulatory authority over AI, pointing out the potential unintended consequences of such legislation on state insurance laws and regulations.

On Dec. 4, the NAIC advised congressional leaders that efforts to carve AI use out of state regulatory oversight of the business of insurance would be impractical and disruptive. For example, the predictive analytics, forecasting, and computational tools and models that are used by insurers to make state-regulated underwriting, pricing and claim processing decisions fall within the very broad federal definitions of AI technologies that have been proposed in moratorium legislation.

The regulation of these activities fall squarely within the purview of state insurance regulators under McCarran-Ferguson. Prohibiting state regulators from the regulation and oversight of the methodologies used to perform regulated functions would effectively prevent state regulators from overseeing those functions.

It is hard to imagine that Congress has an appetite to disrupt or unwind the state-based regulation of insurance as part of an effort to establish a uniform national AI regulatory framework, minimalist or otherwise. However, a more realistic question may be the extent of congressional tolerance for the inefficiencies and inconsistencies that are inherent in the current state-by-state review procedures for models and data sets used by insurers, particularly those developed by third-party model and data vendors.

Since the 2023 adoption of the model bulletin, working groups within the NAIC's Innovation, Cybersecurity, and Technology (H) Committee have been charged with developing the next regulatory steps for the oversight of AI use in the business of insurance. The Big Data and Artificial Intelligence (H) Working Group has been charged with proposing an appropriate framework for the enforcement of the bulletin, including regulatory tools for assessing the written program required under the model bulletin, the governance and risk management controls adopted by insurers, and standards to be deployed by regulators when evaluating in-scope data sets and models.

In addition, the Third-Party Data and Models Working Group has been charged with the development of a regulatory framework for overseeing third-party data and predictive models. While progress is being made with respect to each of these charges, the current approaches are built on the standard decentralized state-by-state approach that Congress has sometimes refused to tolerate in the absence of a compelling need to sacrifice speed and uniformity over truly unique state interests.

For example, models used to assess underwriting factors are not constructed for use solely in a single jurisdiction, and statutes and regulations related to pricing and underwriting standards have great uniformity across jurisdictions. However, an entity that develops such a model for use by an insurer has to navigate a patchwork of differing licensing and oversight regimes and the model itself is subject to separate review and approval processes in every state in which it is used.

The scope of review differs, as do the standards being deployed by departments of insurance and their contract reviewers as to the acceptability of the model itself, including how and on what data it was trained, how its accuracy was validated, and whether it was subject to testing for unfair discrimination. Consequently, it can take model vendors and insurers a very long time to implement a model nationally, and there is rarely uniformity in approval and approval conditions across states.

As the NAIC's Dec. 4 letter confirms, "[s]tate insurance regulators understand that AI is a transformative technology that can be leveraged to benefit insurance policyholders by, among other things, creating new product offerings, improving the efficiency of the insurance business, and transforming the consumer experience." Given that, balancing speed to market, reasonable uniformity, and efficient review and approval processes will be important considerations for state regulators as they work to retain primary regulatory jurisdiction over AI use in insurance.

Uniform licensing and reciprocity for insurance producers resulted from a congressional mandate that required states to produce such a system or lose authority over producer licensing, by a date certain. The highly effective and innovative centralized standard development and form filing and approval commission established through the Interstate Insurance Product Regulation Commission through an interstate compact was developed to avoid congressional authorization of an alternative federal charter and reflects an ideal balance between the need for state solvency and consumer protection oversight and the benefit of centralized product development and approval.

While Congress is hardly likely to dismantle McCarran-Ferguson, what the executive order and congressional activities may portend is a federal expectation that states will adopt regulatory schemes that provide sound regulatory oversight of AI uses by insurers through a more cost-effective, efficient and consistent centralized process. State regulators have been particularly adept at perceiving and meeting that moment and pivoting to regulatory approaches that address legitimate concerns about efficiency, redundancy, uniformity and speed while retaining state-based regulatory oversight. This may be such a moment.

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***Disclosure: Birrane was the inaugural chair of the NAIC's Innovation, Cybersecurity and Technology (H) Committee and the primary author of the NAIC's Model Bulletin on the Use of Artificial Intelligence Systems by Insurers.***



[1] 15 U.S.C. §§ 1011-1015 (1988).

[2] 15 U.S.C. at § 1012(a).

[3] Id. at § 1012(b).

[4] For example, the Texas Responsible Artificial Intelligence Governance Act ("TRAIGA") contains safe harbors for entities engaged in the business of insurance that are regulated by the Texas Department of Insurance. Under the Act, TDI retains exclusive jurisdiction over the regulation and oversight of the business of insurance. § 552.002(2). Likewise, the core provisions of the Act relating to Unlawful discrimination do not apply to an insurance entity when providing insurance services that are subject to state statutes regulating unfair practices, including unfair discrimination, in the business of insurance. § 550.056(d).

[5] NAIC, Model Bulletin on the Use of Artificial Intelligence Systems by Insurers (Dec. 4, 2023). Over half of all states have adopted this or similar guidance. The National Association of Insurance Commissioner (NAIC) is the U.S. standard setting organization for insurance regulation and is governed by the chief insurance regulators in the 50 states, the District of Columbia, and the five U.S. territories.

[6] See, e.g. California: Senate Bill 1120 (2024) (Physicians Make Decisions Act); Illinois: House Bill 2472 (2024), (Ins-Adverse Determination Act); Maryland: House Bill 820 (2025). A notable exception is the Colorado AI in Insurance Act of 2021 which is more broadly focused on unfair discrimination in insurance practices and requires the Colorado Division of Insurance to develop rules that impose unfair discrimination/bias testing requirements on insurers that use external consumer data and information sources in insurance practices. While more broadly stated, the Act is focused on regulated insurance practices that fall well within the scope of McCarran-Ferguson.