



February 4, 2021

The Honorable Sam Hunt
405 Legislative Building
PO Box 40422
Olympia, WA 98504

Re: SB 5116 — Support

Dear Chair Hunt:

Consumer Reports¹ writes in support of SB 5116. Consumer Reports (CR) recognizes that government procurement, development, and usage of emerging technologies has a substantial impact on the precedent it sets for the private sector, therefore affecting consumers in the long run. Algorithms are relatively new to legislative discussion, with few laws regulating these technologies that have the potential to be discriminatory to vulnerable or marginalized communities and even create harmful physical and mental effects.

As automated decision making becomes more common in government, important decisions like who has access to financial services, education, and other basic necessities are put in the hands of algorithms which tend to be opaque and often biased.² While bias in algorithms can stem from a variety of factors, such as non-inclusive datasets, biased data collection methods, and algorithmic model type, the algorithmic accountability report required by this bill will help provide not only transparency to the public but also will force agencies to question whether or not certain automated decision making actually contributes to more equitable, and not just more efficient, allocation of resources and services.

Furthermore, SB 5116 could be used as a model for regulation of the private sector as legislatures around the country begin to consider addressing algorithmic bias. There are currently

¹ Consumer Reports is an independent, nonprofit membership organization that works side by side with consumers to create a fairer, safer, and healthier world. For over 80 years, CR has provided evidence-based product testing and ratings, rigorous research, hard-hitting investigative journalism, public education, and steadfast policy action on behalf of consumers' interests. Unconstrained by advertising, CR has exposed landmark public health and safety issues and strives to be a catalyst for pro-consumer changes in the marketplace.

² Dillon Reisman, Meredith Whittaker, and Kate Crawford, *Algorithms Are Making Government Decisions. The Public Needs to Have a Say*, ACLU (Apr. 10, 2018), <https://www.aclu.org/issues/privacy-technology/surveillance-technologies/algorithms-are-making-government-decisions>

few federal laws specifically regulating the use of algorithms or requiring algorithmic transparency mechanisms, and other states are only now beginning to address these issues. The processes outlined in this bill with regard to the algorithmic accountability report requirements, public display of these reports, and the required comment period before agency use are important foundational steps to minimize some of the harms that algorithm data processing can inflict on residents. And, the emphasis this bill places on addressing potential impacts on marginalized communities is vital as these groups tend to be the most affected by an algorithm's biases.

Importantly, the bill prohibits the use of artificial-intelligence enabled profiling for denying or the degradation of consequential services like housing, financial services, education, criminal justice, healthcare services, and access to other basic necessities. As no algorithm will ever be 100 percent perfect, it is important that these basic services cannot be taken away from any resident due to an erroneous decision from an opaque algorithm. However, the definition of “artificial intelligence-enabled profiling” is overbroad — encompassing any “automated or semi-automated process” used to evaluate an individual’s “character” or “propensities” — and could potentially prevent the state from using simple calculations for making decisions on resource allocation. We suggest the language be narrowed to target automated processes that rely upon unaccountable and unexplainable machine learning techniques, or that more clearly identifies very narrow characteristics that should never be assessed by an algorithm.

Ultimately, we believe this bill would be a huge step in protecting the rights of Washingtonians, particularly as public agencies begin to more heavily rely on algorithms. We urge you to support SB 5116. Please do not hesitate to contact CR should you need additional information.

Sincerely,

Nandita Sampath
Policy Analyst

Cc: The Honorable Bob Hasagawa
Members, Washington State Government & Elections Committee