



April 1, 2021

The Honorable Ed Chau
Legislative Office Building, Room 162
PO Box 942849
Sacramento, CA 94249

Re: AB 13 — SUPPORT IF AMENDED

Dear Chair Chau:

Consumer Reports¹ writes with a “support if amended” position on AB 13. 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 Bias in algorithms can stem from a variety of factors, such as non-inclusive datasets, biased data collection methods, and algorithmic model type. The requirements for the impact assessment this bill would mandate from potential vendors and from the agency using the technology are a good step in terms of providing transparency to the public. The impact assessments might also 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.

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>

However, due to the few protections that exist for consumers and citizens in regards to algorithmic bias, we need strong provisions in order to mitigate discrimination that could arise as governments adopt more automated decision-making in routine processes. When these technologies decide who gets access to services; transparency, accountability, and the ability to correct errors or contest decisions becomes of the utmost importance particularly since marginalized communities tend to be most affected by these decisions. We request several amendments to this bill that can help accomplish these goals.

First, we recommend that artificial intelligence-enabled profiling used in determining access to basic services such as housing, financial services, education, criminal justice, healthcare services should be prohibited (similar to the 2021 bill in WA state, SB 5116, on government use of algorithms³). Decisions made through artificial intelligence are often unexplainable and unaccountable, and it is important that fundamentally essential decisions should not be made by an opaque algorithm that even its designers cannot understand. These determinations should be made through a transparent and explainable process with the ability to contest outcomes, something that is not possible with artificial intelligence.⁴

We also recommend some kind of continual evaluation process that would require vendors to update the agencies who have procured their technology whenever significant changes have been made to their algorithms or when other statistical biases occur due to these updates. As technology companies are constantly updating their algorithms to fix bugs and provide new features to their products, it is important that government agencies are kept up to date on the effects of the technology they use so they can reevaluate how and if they should be used in high-risk decision-making. This should be included as part of the contract with the vendor when a contract is awarded.

In regards to the impact assessments mentioned in this bill, we recommend stricter oversight for determining whether agencies should be awarding contracts to potential vendors. This includes having a task force or other authority composed of individuals from various groups like academia and civil society who assess submitted automated decision impact assessments from bid responses and decide which vendors to award contracts. This method could instead or also include posting bids publicly and taking into account public comment before awarding a contract.

Furthermore, the bill does not mention any requirements for agencies that choose to develop their own algorithms instead of procuring technology from third-party vendors. We suggest

³ S.B 5116, 2021 Reg. Sess. (Wash. 2021)
<https://legiscan.com/WA/text/SB5116/id/2232132/Washington-2021-SB5116-Introduced.pdf>

⁴ Greg Satell and Josh Sutton, *We Need AI That is Explainable, Auditable, and Transparent*, Harvard Business Review: Technology (October 28, 2019),
<https://hbr.org/2019/10/we-need-ai-that-is-explainable-auditable-and-transparent>

requiring the same information mentioned from the outlined impact assessments in this situation along with a similar oversight process mentioned above. And, we recommend making public the existing automated decision systems that are already in use, along with their respective impact assessments since the public deserves transparency on what kinds of algorithms are currently being used in government.

Ultimately, we must ensure that increased automation does not detract from Californians' civil rights and access to basic resources, and this requires a thorough evaluation of new technology before deployment. While we believe the bill succeeds in outlining what is required for impact assessments from both the vendor and the public agencies using procured technology, our recommendations will help ensure that we are only implementing automated decision-making into government that contributes to fair and equitable outcomes, particularly for marginalized communities. We look forward to working with you to ensure these protections for California residents.

Sincerely,

Nandita Sampath
Policy Analyst
Consumer Reports

Cc: Members, Assembly Privacy and Consumer Protection Committee