October 4, 2021

Re: Consumer Reports Testimony Regarding [H.4029 - An Act relative to algorithmic accountability and bias prevention](#)

Dear Members of the Joint Committee on Consumer Protection and Professional Licensure:

Consumer Reports (CR)[1] supports the goals of Massachusetts' H.4029 — "An Act relative to algorithmic accountability and bias prevention." 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. Transparency efforts such as those included in this bill are necessary to provide clarity to both regulators and the public regarding algorithms' potential negative impacts. As automated decision making becomes more common in daily life, important decisions like who has access to housing, jobs, and other economic opportunities 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 companies are a good step in terms of providing transparency to the public.

However, due to the few protections that exist for consumers and citizens in regards to algorithmic bias, we recommend stronger provisions in order to mitigate discrimination that could arise as automated decision-making is adopted in routine processes. When these technologies decide who gets access to opportunities; 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 suggest several amendments to this bill that can help accomplish these goals.

First, this bill should also cover algorithms that are marketed and sold to businesses, not just individuals. Examples include tenant-screening algorithms for housing rentals and resume screening/video-interviewing software for job interviews, which can affect individuals' access to economic opportunities. These algorithms are not necessarily sold to affected individuals directly but are marketed to landlords and human resource departments. They can, however, discriminate against those trying to access these opportunities. These algorithms tend to use historical data on a renter's history or

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[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

who has gotten jobs successfully in the past, which have tended to exclude low-income individuals and/or people of color.[3] It is important that this bill requires transparency for certain sensitive applications for which AI can exacerbate inequality. Decisions made through artificial intelligence are often unexplainable and unaccountable; it is important that with decisions affecting individuals' economic opportunities, consumers deserve transparent and explainable processes with the ability to contest outcomes, something that is not possible with artificial intelligence.[4] An algorithm does not have to be sold directly to an individual in order to cause harm to that person; it is important that we also consider how the algorithm is used and who can be affected by it. Furthermore, stricter oversight is needed to ensure that these algorithms are not discriminating against people based on protected characteristics like race, gender, skin color, etc.

While the bill mentions that impact assessments should be submitted as often as determined necessary by the Office of Consumer Affairs and Business Regulation, it is important to note that companies are constantly updating algorithms to fix bugs and provide new features to products. Small changes can have a big impact on harmful effects, and it is important that the bill provides guidance on what sorts of triggers would mandate a resubmission of an impact assessment (for example, when an updated algorithm is found to discriminate based on protected class).

Because this bill does not mandate that companies use third-party auditing or mandate government-performed audits, it is possible that companies are not incentivized to fully disclose the issues with their algorithms or have the means to perform stringent auditing on their own technology. While this bill is a good first step for transparency, high-quality and robust impact assessments may not be achievable without requiring independent and unbiased auditing. While these provisions may not be appropriate for this particular bill, mandating external auditing should be something the legislature should consider in the future.

Ultimately, we must ensure that increased automation does not detract from individuals' civil rights and access to economic opportunities, and this requires a thorough evaluation of new technology before and during deployment. While the bill succeeds in outlining what data is required for impact assessments, our recommendations will help ensure that we are providing stricter oversight for sensitive decision-making that can particularly affect marginalized communities. We look forward to working with you to ensure these protections for Massachusetts residents.

Sincerely,
Nandita Sampath
Policy Analyst

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[3] Manish Raghavan and Solon Barocas, *Challenges for Mitigating Bias in Algorithmic HIring*, Brookings (December 6, 2019), https://www.brookings.edu/research/challenges-for-mitigating-bias-in-algorithmic-hiring/; Kaveh Waddell, *How Tenant Screening Reports Make it Hard for People to Bounce Back from Tough Times*, Consumer Reports (March 11, 2021), https://www.consumerreports.org/algorithmic-bias/tenant-screening-reports-make-it-hard-to-bounce-back-from-tough-times-a2331058426/
[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