February 26, 2025

Re: SB 2: An Act Concerning Artificial Intelligence - Support if Amended

Dear Honorable Members of the General Law Committee,

Consumer Reports[1] writes to you regarding SB 2. Several sections of this bill are focused on a critically important issue—ensuring that artificial intelligence systems used in high-stakes decisions about Connecticut residents are transparent, free of bias, and that residents retain some autonomy and recourse.

We agree that legislation is needed to patch Connecticut's consumer protection laws and civil rights laws for the AI era. While these laws no doubt apply to AI products, the "black box" nature of these systems and their ability to partially stand in for human decision-makers with intent make cases difficult to bring in practice. Particularly key are the bill's consumer rights: the right to information before AI is used to help make a consequential decision, the right to a post-decision explanation, the right to review personal data and correct inaccuracies, and the right to appeal.

We appreciate Senator Maroney's commitment to this issue, and have engaged with him several times during the fall and winter. **However, in order for this bill to fulfill its intended purpose, amendments are necessary.**

When companies use predictive artificial intelligence to make critical decisions about Connecticut residents—such as whether a consumer gets a job, is offered their dream apartment, or qualifies for certain health services—consumers may be subject to bias, or erroneous conclusions. For example, one resume screening program identified two factors as the best predictors of future job performance: having played high school lacrosse and being named Jared.[2] Another assessment provided high scores in English proficiency even when questions

[1] Founded in 1936, Consumer Reports (CR) is an independent, nonprofit and nonpartisan organization that works with consumers to create a fair and just marketplace. Known for its rigorous testing and ratings of products, CR advocates for laws and company practices that put consumers first. CR is dedicated to amplifying the voices of consumers to promote safety, digital rights, financial fairness, and sustainability. The organization surveys millions of Americans every year, reports extensively on the challenges and opportunities for today's consumers, and provides ad-free content and tools to 6 million members across the U.S.

[2] Dave Gershgorn, Quartz, "Companies are on the hook if their hiring algorithms are biased," (Oct 22, 2018) https://qz.com/1427621/companies-are-on-the-hook-if-their-hiring-algorithms-are-biased

were answered exclusively in German.[3] A health care algorithm used widely by hospitals to identify which patients would receive additional care was found by independent researchers to be biased against Black patients; in attempting to predict which patients would become the sickest, it instead predicted who would spend the most money care.[4] A sepsis-prediction algorithm used by many hospitals nationally was found to not be nearly as accurate as the company selling it had claimed—and only slightly more accurate than simply flipping a coin.[5]

Our research suggests that consumers are uncomfortable with the use of AI in the types of high-stakes decisions that this bill covers. In May of 2024, Consumer Reports conducted a nationally representative study of 2,022 U.S. adults focused on the use of AI and algorithms in consequential decisions.[6] When asked how they feel about the use of AI and algorithms in a variety of situations—such as banks using algorithms to make underwriting decisions, landlords using AI to screen potential tenants, hospitals using AI to help make diagnoses—a majority of Americans said they were uncomfortable with each scenario.

Ensuring that companies making and using predictive AI and automated decision systems do basic due diligence is critical; informing consumers about how decisions are being made about them with their data is essential to their ability to exercise their existing rights under civil rights laws, consumer protection laws, and more. As written, however, we are concerned that SB 2 contains loopholes, exemptions, and shields for companies that seriously undermine the intent of the law. As such, we make the following suggestions.

Fix loopholes in definition of 'high-risk artificial intelligence system' and 'substantial factor' so that companies cannot escape responsibility: The "narrow procedural task" and the "detecting decision-making patterns" exemptions to the definition of "high risk artificial intelligence system" (HRAI) are unnecessary and ripe for abuse. This definition is critical; if a company can justify to itself that its system falls under one of these exemptions, it is released from many of the provisions related to high-stakes decisions.

"Narrow procedural task" is undefined, leaving ambiguous whether core activities this law should cover—such as screening and scoring resumes, or housing applicants—could be considered "narrow procedural tasks." The exemption is also unnecessary, since the law already

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[3] Sheridan Wall, Hilke Schellmann, MIT Technology Review, "We tested AI interview tools. Here's what we found," (July 7, 2021) https://www.technologyreview.com/2021/07/07/1027916/we-tested-ai-interview-tools/
[4] Ziad Obermeyer, Brian Powers, Christine Vogeli, Sendhil Mullainathan, *Science,* "Dissecting racial bias in an algorithm used to manage the health of populations" https://www.science.org/doi/10.1126/science.aax2342
[5] Arvind Narayanan and Sayash Kapoor, Financial Review, (Sept. 13, 2024) https://www.afr.com/technology/snake-oil-don-t-believe-the-artificial-intelligence-hype-20240909-p5k93y
[6] Consumer Reports Survey Group, A.I./Algorithmic Decision-making: Consumer Reports Nationally Representative Phone and Internet Survey, (July 9th, 2024) https://advocacy.consumerreports.org/wp-content/uploads/2024/07/CR-AES-AI-Algorithms-Report-7.25.24.pdf

enumerates and exempts elsewhere the types of technologies that execute narrow procedural tasks, such as spell-check, spreadsheets, databases, and more. It is unclear which scenarios the "detecting decision-making patterns" exemption will apply to. We recommend cutting both.

The definition of "substantial factor" would allow companies making high-stakes decisions about Connecticut residents to evade accountability. First, there is the issue of (A)(i) – the requirement that the AI system alter the outcome of a decision. Imagining what the outcome of a decision would be in the absence of an AI recommendation is highly subjective when the AI recommendation is one of several factors, and indeed is something that even a human intimately involved in the decision might struggle to assess—much less someone external to the decision, such as the Attorney General. Second, (C) (human involvement in data processing) is also ambiguous. Human involvement should not exempt an otherwise covered system; there is ample research to suggest that humans tend to view automated systems as authoritative and trustworthy, and are inclined to defer to their recommendations—even when they suspect the system is malfunctioning.[7]

We suggest:

- Cutting exemptions listed under (B)(i) in the definition of "High risk artificial intelligence system"
- Amending the bill's definition of high-risk artificial intelligence system to read: "Substantial factor means a factor that: (i) assists in making a consequential decision; (ii) is capable of altering the outcome of a consequential decision; (iii) is generated by an artificial intelligence system." This would comport with SB 205, a similar bill passed into law by Colorado.

***Strengthen antidiscrimination protections*:** While this bill aims to address discrimination, it makes a significant departure from landmark anti-discrimination laws which prohibit discrimination outright. This bill instead adopts a "duty of care" approach, requiring that companies developing and using high-risk AI "use reasonable care to protect consumers from any known or reasonably foreseeable risks of algorithmic discrimination." It also provides companies with a rebuttable presumption shielding them from liability; if companies fulfill the largely procedural and documentation requirements of the bill, they are presumed to have met their duty of care—regardless of whether discrimination actually did occur.

This framework is problematic for a few reasons. First, it suggests that "algorithmic discrimination" is somehow less harmful or less important than other forms of discrimination, which state and federal laws prohibit. Second, it risks confusion; if a company uses a discriminatory AI hiring tool and it's brought to the attention of an enforcer, they may be sued

[7] See, e.g., Danielle Keats Citron, Washington University Law Review, 'Technological Due Process,' 2008 at 1271–72; https://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=1166&context=law_lawreview

under both this new algorithmic discrimination chapter, and existing employment discrimination laws. The company may be in compliance with the algorithmic discrimination statute, and in violation of employment antidiscrimination law. This dynamic will make such discrimination cases more complex to litigate, more confusing to juries, and may muddy the waters on what would have once been a straightforward finding of employment discrimination. Lastly, we are concerned that court decisions under this algorithmic discrimination bill could bleed into interpretation of existing civil rights statutes, weakening them.

We suggest removing the duty of care, and instead adding a prohibition against deployers using high risk AI tools in such a manner that causes discrimination, or developers selling or placing into the stream of commerce products that discriminate. Short of that, we would suggest eliminating the rebuttable presumption, which would allow the duty of care to remain flexible over time, as testing and debiasing high risk AI products becomes increasingly simple and cheap and what constitutes a "reasonable duty of care" evolves.

Provide necessary information in pre-use notice and explanation: Two critical provisions of this bill are the notice provided to consumers before AI is used to help make a high-stakes decision about them, and the explanation they receive after an adverse decision is made. The "black-box" nature of these systems—and the fact that, without a notice requirement, consumers rarely know they are in use—makes it difficult for the public and enforcers to discover the kinds of information needed to bring claims under existing civil rights and consumer protection laws. The bill's notice and explanation could go a long way towards rectifying that problem, but as currently written they lack some key information.

We suggest:

- Maintaining and strengthening the bill's transparency requirements by ensuring the pre-decision notices include a description of the personal characteristics or attributes that the high-risk AI system (HRAI) will measure or assess; the method by which the HRAI measures or assesses such attributes or characteristics; how such attributes or characteristics are relevant to the consequential decision for which the HRAI should be used; any human components of the HRAI, and; how automated components of the HRAI inform the consequential decision.

Remove exemption from consumers' right to appeal: An important provision in this bill is consumers' right to appeal. In the current draft of the bill, however, companies do not have to provide a right to appeal when doing so "is not in the best interest of the consumer." This is an overbroad exemption that will result in consumers being unfairly denied the right to appeal. Furthermore, consumers are better situated than companies to evaluate whether exercising their right to appeal is in their own best interest. When an appeals process is not in a consumer's best

interest, they can always choose not to pursue it. We recommend cutting this exemption, or limiting it to strictly when a delay might pose a risk to the life or safety of the consumer.

Remove overbroad exemptions and remove cure provision: Section 8 includes many exemptions, some of which are not justified or overbroad. It is not clear to us why, for example, companies covered by HIPAA—which serves a different purpose than this bill—should be exempt. It is also unclear to us why high-risk AI systems "acquired" by federal agencies should be exempt from the bill. It is also unclear why the entire insurance industry should be exempted; if the Insurance Commissioner intends to adopt regulations substantially similar to the contents of this bill, then this law should apply to insurance companies until such regulations are promulgated.

Additionally, we would suggest eliminating the cure provision. Attorneys General already have the discretion to no longer pursue a case if the facts are no longer compelling. Cure provisions create perverse incentives for compliance and hamstring regulators' ability to hold wrongdoers accountable.

Strengthen enforcement: Currently, this bill limits enforcement to the attorney general, a departure from Connecticut's existing civil rights and consumer protection laws, which enable residents to seek redress if they have been harmed. The Attorney General's office is already tasked with enforcing many laws, and limiting enforcement to this single office creates a risk of infrequent enforcement. We suggest adding a private right of action, as at least three other states contemplating similar bills have done.

We appreciate the intent of this bill and Senator Maroney's leadership on the issue; it is an urgent subject of legislation. Given the current draft of the bill, we plan to be supportive if a number of the amendments mentioned above are taken.

Sincerely,
Grace Gedye
Policy Analyst, Consumer Reports