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March 6, 2024

House Economic Matters Committee
Attn: Joy Jones, Assistant to Chair
Room 231, House Office Building
Annapolis, Maryland 21401

RE: HB 1255 - "Labor and Employment - Automated Employment Decision Tools - Prohibition" (Unfavorable)

Dear Chair Wilson and Members of the House Economic Matters Committee:

On behalf of the Computer & Communications Industry Association (CCIA), I write to respectfully oppose HB 1255. CCIA is an international, not-for-profit trade association[1] representing a broad cross-section of communications and technology firms. While CCIA shares the Committee's concern and agrees more work can and must be done to study the potential implications of automated systems and related technology, HB 1255 is not ready for primetime.

1. **Automated decision-making is complex. The use of this technology can generate both benefits and drawbacks. Since AI systems are nuanced, there could be a variety of unintended consequences if one were to regulate these technologies in haste.**

The span of automated decision-making is elaborate and often misunderstood.[2] At its core, algorithmically informed decision-making is simply a set of techniques that can be used for doing tasks that would otherwise be accomplished manually or using traditional, non-AI technology. These technologies are data-driven and can efficiently process massive amounts of data to create gains in productivity and accuracy and support technological and scientific breakthroughs. Algorithmically-informed decision models touch almost every aspect of our day-to-day activities. This includes filtering spam emails, using ride-share apps, online shopping, plagiarism scans, using smartwatches to track a workout, monitoring online test taking, and pre-authorizing medical insurance before a visit.

However, ambiguous and inconsistent regulation at the state or local levels would undermine business certainty, creating significant confusion surrounding compliance. This type of regulatory patchwork may deter new entrants, harming competition and consumers. While we understand the importance of mitigating potential algorithmic bias, we must also strike the correct balance to avoid stifling the use of technology when organizations are looking to use AI technology as an essential tool to help their businesses.

For example, the definition of "algorithmic decision system" provided in HB 1255 is so overly broad, that it captures everyday administrative tools such as video conference software or autocorrect. CCIA suggests

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[1] For over 50 years, CCIA has promoted open markets, open systems, and open networks. CCIA members employ more than 1.6 million workers, invest more than $100 billion in research and development, and contribute trillions of dollars in productivity to the global economy. A list of CCIA members is available at https://www.ccianet.org/members.

[2] *See generally* Mike Masnick, *The Latest Version Of Congress's Anti-Algorithm Bill Is Based On Two Separate Debunked Myths & A Misunderstanding Of How Things Work*, Techdirt (Nov. 11, 2021), https://www.techdirt.com/2021/11/10/latest-version-congresss-anti-algorithm-bill-is-based-two-separate-debunked-myths-misunderstanding-how-things-work/.

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changing the definition of "algorithmic decision system" to: *"algorithmic decision system" means a system or service that uses artificial intelligence and is specifically intended to autonomously make consequential decisions. An automated decision tool does not include a system or service that is purely accessory to a consequential decision.* This would ensure that the scope of the definition excludes AI tools that were not intended to fall within the purview of this legislation.

Additionally, the definition of "automated employment decision tool" suffers from similar problems. The definition is so broad that it would encompass a simple filter on a job application site that sorts applicants by basic requirements for the job (*e.g.*, a required degree). It would even capture the federal government's use of salary scales to set pay rates, as they employ a decision algorithm to determine the appropriate pay rate based on various factors.

Further, given the rapid pace of change in AI and the risk of stifling innovation and creating compliance ambiguities, it is important to provide businesses with an outline of the ways that an automated decision tool (ADT) cannot be used rather than to provide how it can be used. CCIA also believes it is important to emphasize that something that is illegal under current Maryland employment laws, such as discrimination based on a protected class, is illegal whether performed by a human or an ADT.

2. **There are several ongoing studies at the national level aimed at understanding how to balance the capabilities and risks of algorithmically informed decision-making. These studies are intended to inform appropriately tailored and impactful regulation of such systems.**

The AI systems that lawmakers seek to regulate are complex and warrant adequate understanding to reach intended outcomes appropriately. For example, the National Artificial Intelligence Initiative (NAII) was established by bipartisan federal legislation enacted in 2021.[3] The NAII is tasked with ensuring continued U.S. leadership in AI R&D while preparing the present and future U.S. workforce to integrate AI systems across all sectors of the economy and society. Importantly, NAII is doing so in partnership with academia, industry, non-profits, and civil society organizations. Most recently, the U.S. Congress passed legislation to create a training program to help federal employees responsible for purchasing and managing AI technologies better understand the capabilities and risks they pose to the American people.[4]

The National Institute of Standards and Technology (NIST) also launched the AI Risk Management Framework (RMF)[5], an ongoing effort aimed at helping organizations better manage risks in the design, development, use, and evaluation of AI products, services, and systems. The draft of the AI RMF was released in January 2023.[6] The NIST National Cybersecurity Center of Excellence[7] is also leading federal regulatory efforts to establish practices for testing, evaluating, verifying, and validating AI systems—exactly the type of standard that will help inform impact assessments such as those described in the bill.

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[3] National Artificial Intelligence Initiative Act of 2020, Pub. L. No. 116-283, § 5001-5501, 134 Stat. 4523-4547 (2021).
[4] AI Training Act, Pub. L. No. 117-207, 136 Stat. 2238 (2022).
[5] NIST, *AI Risk Management Framework*, https://www.nist.gov/itl/ai-risk-management-framework (last accessed Feb. 24, 2023).
[6] NIST, *Artificial Intelligence Risk Management Framework (AI RMF 1.0)* (Jan. 2023), https://nvlpubs.nist.gov/nistpubs/ai/NIST.AI.100-1.pdf.
[7] NIST*, National Cybersecurity Center of Excellence, Mitigation of AI/ML Bias in Context*, https://www.nccoe.nist.gov/projects/mitigating-aiml-bias-context (last accessed Feb. 24, 2023).

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The deliberate, thoughtful, and bipartisan fashion in which leaders at the federal level are approaching the wide variety of issues associated with artificial intelligence and algorithmic decision-making is encouraging. These ongoing studies by national experts should signal the complexity of the issue. Lawmakers should wait for and review forthcoming best practices by technical experts to help inform the development of national standards and regulations.

3. Key definitions necessary for businesses to comply with impact assessment requirements should be clear.

Under the current definitions provided requiring businesses to carry out impact assessments for automated employment decision tools, many of the outlined requirements are unclear and difficult for businesses to comply with. For example, it is unclear what type of evaluation can be considered an "impact assessment" under its current definition. Additionally, an employer may use an ADT if the tool has undergone an impact assessment; however, the bill does not specify who must carry out the assessment, whether the results of the assessment, possibly containing proprietary information, will be publicized, and where those assessments would be housed within the Maryland Department of Labor. Employers may also be unaware of the use of an ADT if they utilize a recruitment service that uses an ADT but does not disclose it to the employer.

Further, the requirement to carry out an impact assessment for an ADT during the year that immediately precedes the date the employer first begins using the ADT is problematic. Specifically, it is not clear how a business would comply with this requirement if the employer is already using an ADT. In this case, an employer lacks the ability to retrospectively conduct an impact assessment.

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CCIA urges Committee members to first study both the benefits and drawbacks of algorithmic technologies and to engage with practitioners and stakeholders to support the ongoing development of practicable solutions. It is also important to note that we have already seen Governments such as New York City recently pass similar legislation that has been delayed due to complexities regarding implementation. We appreciate the Committee's consideration of these comments and stand ready to provide additional information as the General Assembly considers proposals related to technology policy.

Sincerely,

Jordan Rodell
State Policy Manager
Computer & Communications Industry Association