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TESTIMONY ON 25-S 627,
RELATING TO COMMERCIAL LAW – GENERAL REGULATORY PROVISIONS – ARTIFICIAL INTELLIGENCE ACT
May 12, 2025

The ACLU of Rhode Island has a strong interest in monitoring the growing use of artificial intelligence (AI) in the spheres in which it is being applied in light of the potential impact of discrimination in its application. While we recognize the benefits of AI in certain arenas, we take great pause in AI's potential for biased choices. We are particularly concerned when these systems make unfettered decisions in critical areas of decision-making, such as housing, employment, health care, and access to government services – leading to worse and often discriminatory outcomes for women, patients with disabilities, and people of color, among other vulnerable groups.

AI outputs are only as good as the data and the algorithm inputs going in. As such, bias is often inherent in the decisions made by AI systems. Bias is also in the data that is used to train the AI systems – data that is often under-representative of people of color, women, or other groups – and in the systems' designs and applications. This problem has been well-documented.

That is why we strongly support this legislation's goal of regulating AI in key areas where algorithmic discrimination is likely to occur and have an adverse impact on individuals. At the same time, we believe the bill needs to be strengthened in order to provide more meaningful protection to the public. We summarize some of our points in that regard below:

1. **Private Right of Action:** The legislation expressly prevents a private right of action by aggrieved individuals: "Nothing in this chapter shall be construed as providing the basis for a private right of action for violations of this chapter." (p. 23, lines 25-26). We believe that the most important remedy that this bill could provide would be to authorize a private right of action for victims of discriminatory decisions stemming from high-risk artificial intelligence systems. Under this bill, only the Attorney General could bring a claim, which unnecessarily limits the recourse available to victims of these systems. A private right of action serves, in our view, as a much stronger incentive to encourage compliance with the law and avoids the limited resources available if action can only be taken by the AG.[1]

[1] At the hearing on this bill, Sen. Zurier expressed concerns about the ability of courts to handle disputes involving a complex and technical area of the law if a private cause of action were included. But the bill *already* envisions courts adjudicating disputes under the law – when suits are brought by the Attorney General. Including a private cause of actions only expands the number of people who can seek relief, not whether a court will be called upon to resolve disputes under this statute. Further, we note that courts adjudicate many types of very complex cases – antitrust violations, copyright disputes, medical malpractice, to name a few – that can be extremely technical, but where expert witnesses often are used. That is simply the nature of the judicial system.

2. **Rebuttable Presumptions:** Under this legislation, developers whose programs create discriminatory results are granted a rebuttable presumption that they used reasonable care if the developer complied with certain provisions in this chapter (Page 5, lines 25-29; page 10, lines 3-6). However, the compliance standards themselves are mostly reporting requirements. While developers may be required to disclose potential risks of algorithmic discrimination associated with their programs, they would still be allowed to use them. They do not even need to mitigate documented discriminatory harms – they need only report that they have tried to do so. We therefore believe that a rebuttable presumption is unwarranted and creates too many loopholes for developers who implement problematic AI models. As such, these presumptions should be eliminated.

3. **Sandbox Workshop Provision:** This legislation appears to be based in part on a bill being debated in Connecticut. That bill, unlike this one, contains a "sandbox" provision that establishes a program to "facilitate the development, testing, and deployment of innovative artificial intelligence systems in the state... designed to... encourage the responsible deployment of artificial intelligence systems while balancing the need for consumer protection, privacy and public safety."[2] We believe that this legislation should include a similar sandbox provision to workshop and evaluate any potential high-risk artificial intelligence systems before they are implemented in Rhode Island.

4. **Enforcement:** From our initial review of this legislation, it is unclear how enforcement of this legislation will work practically. As currently written, the bill requires developers to disclose to the Attorney General that they possess a high-risk artificial intelligence system and any potential untoward consequences that could flow from the use of that system. Page 7, lines 18-23. But they need only do that after 1,000 people have been harmed by the system's algorithmic discrimination. Not only is it unclear exactly what enforcement measures the Attorney General's office can then implement, it also disregards the significant difficulty in confirming that so many people have been discriminatorily impacted by the system.[3]

We applaud this legislation for acknowledging the very real problem of algorithmic discrimination in the use of AI for various important purposes. However, we believe there must be stronger restrictions on, and more robust remedies for, high-risk algorithmic use when it is capable of yielding – and a developer learns it does actually yield – biased outputs.

Thank you for considering our views.

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[2] Page 33, lines 1006-1019 https://legiscan.com/CT/text/SB00002/id/3231228/Connecticut-2025-SB00002-Comm_Sub.pdf

[3] At the committee hearing on this bill, Sen. DiPalma pointed to the state's data breach law which requires notification to the Attorney General only if the information of more than 500 people has been breached. But direct notification to affected individuals themselves is mandated without reaching that threshold. In addition, the two situations are not the same in terms of AG notification. The data breach law requires only an objective determination that the personal information of 500 people has been breached, not knowledge that 500 people have been specifically harmed by the breach. Under this bill, however, no reporting is required until the developer has somehow determined that 1,000 people have actually been victims of discrimination through use of the system. How a developer would ever find that out is hard to fathom.