

On behalf of AFT Maryland's over 18,000 members, I appreciate the opportunity to provide testimony on SB 936.

AFT Maryland appreciates the aims of this bill. In the absence of coherent federal policy regulating artificial intelligence, it is important that the states step up and protect workers and consumers from foreseeable AI harms. Automated decision-making systems impact workers and consumers statewide, and regulating these AI models is a deserving task for the legislature. With SB 936, we are concerned that the current language creates loopholes which will allow companies to easily evade the disclosure requirements contained within the bill.

If left unaddressed, these loopholes will render nearly all the protections of SB 936 entirely ineffective. While we would love to be able to support state legislation that protects Marylanders from algorithm discrimination, AFT Maryland opposes this bill in its current form and implores you to work to address the bill's weaknesses.

The definition of consumer excludes workers and those traditionally considered to be consumers:

We tend to think of consumers as actors within a commercial context-- buyers of goods or services. This bill is written to define consumers in a way that "does not include an individual acting in a commercial or employment context." Since consumers are the only individuals receiving protection in this bill, it is strange that the legislation is written to define consumers as excluding those traditionally thought of as engaging in commerce. In addition, this bill makes repeated reference to employment decisions throughout the text, but definitionally excludes workers with this "employment context" carve out.

Marylanders deserve protection from automated decision making in the workplace. Using a definition of "consumer" which bears little relation to the commonly understood definition of consumer is shameful and needs to immediately be addressed. When legislators define words to have definitions that run contrary to their commonly understood meanings, confidence in our democracy suffers. These protections need to apply to consumers (i.e. Marylanders who "act in a commercial context" by buying goods and services). It also must apply to workers and others in an employment context.

There are loopholes in this bill that will allow companies to easily skirt consumer protections:

Again, AFT Maryland appreciates the stated aims of this bill, which seeks to prevent Marylanders from suffering discrimination at the hands of automated decision-making systems. As currently written, this bill simply will not accomplish those aims. The bill suffers from multiple loopholes and poor definitions which, unless addressed, will foreseeably allow AI companies to skirt the protections in this bill.

1) The protections in this bill apply only when an automated decision system is a "substantial factor" in making a "consequential decision." Similar bills have been introduced across the country, and "substantial factor" was swapped in for "controlling factor" after it was reported that these bills were based on model language written by lobbyists for a company called Workday, which makes automated decision-making systems.¹ When activists pushed back on "controlling factor" as a definition which would exclude any real-life automated decision system from oversight, "substantial factor" began to be used to address the concerns of civil rights groups. In SB 936, "substantial factor" has been effectively redefined back to controlling factor, by defining it as something which is the "principal basis for making a consequential decision." We're back to where Workday and the tech companies want this bill- written to prevent it from ever being applied to their software. By simply advertising (or putting into their terms of service) that their program cannot be the principal basis for making a consequential decision, companies can evade this law.

¹ <https://therecord.media/human-resources-artificial-intelligence-state-legislation-workday>

2) For companies that don't want to evade the requirements of this bill through fine print alone, the legislation offers three additional carve outs for trade secrets and confidential and proprietary information. There is nothing in this legislation which enables any instrumentality of the state to evaluate asserted exemptions for trade secrets, confidentiality, or proprietary information. Manufacturers of the automated decision-making systems covered by this bill will likely over-assert these exemptions.

Marylanders deserve legislation that cannot be defeated by fine print. Protecting the citizens of this state from automated decision-making systems should not be left to lobbyists from companies that sell those systems. We deserve to have legislative definitions of terms that resemble the actual and common definitions of those words, not definitions which contort language itself. Marylanders deserve to have bills written to protect them, not written by lobbyists seeking to hoodwink them.

I hope the legislature will address the serious issues plaguing this bill.