

Testimony on the Use of AI in Consequential Decisions

Tech:NYC Testimony for Senate Internet and Technology Hearing, 1/15— Last Updated: 1.12.26

Chair Gonzalez and Members of the Committee,

Thank you for the opportunity to provide Tech:NYC's perspective on this important issue area. Tech:NYC, represents over 550 technology companies operating and growing across New York, from early-stage startups to some of the world's largest technology firms.

New York is currently home to hundreds of AI-specific companies, and countless more across all industries that are leveraging the abilities that AI provides, both figures that increase on a daily basis. We lead the nation in applied AI across finance, healthcare, and logistics—sectors that drive our state's job creation and economic growth.

As the Committee itself recognized, the benefits of AI can be great, and advancements in AI have the potential to transform industries. The continued success of not only New York's tech ecosystem but also our broader statewide economy relies on preserving and expanding our state's role in developing and utilizing new AI systems.

We strongly believe that AI can be a powerful tool that helps "level the playing field" by allowing a three-person startup in Brooklyn or a small non-profit in Buffalo to "punch above their weight," streamlining complex tasks and analyzing data with the same sophistication as a global corporation.

However, this vision will only become a reality in New York if the regulatory environment we establish aligns with it. While we share this Committee's laudable goal of protecting consumers from algorithmic bias and discrimination, we have some reservations and concerns with the current slate of proposed solutions that we feel will have important unintended consequences that would instead turn AI from a tool for all into a tool for a few.

In crafting regulations, New York should be mindful to learn from the pitfalls of other states that have pursued similar measures, namely [Colorado](#), which originally passed legislation in 2024, but has had to delay implementation due to significant concerns around the complex compliance and liability issues the regulatory scheme established, much of which is similar to what has been proposed in New York.

In looking at the New York AI Act in particular, we have identified the following areas of concern:

The Burden of Onerous Audits, Costs, and Reporting - We are deeply concerned that the New York AI Act creates a regulatory bottleneck through its costs and aggressive audit and reporting schedule. The bill mandates multiple third-party audits and separate reports starting just six months after deployment.

The practical reality is that a robust ecosystem of qualified AI auditors simply does not exist yet. Without established, longstanding guidelines or a clear rubric for compliance, an unintended incentive may be established to work with the auditor(s) who provide the most favorable results in order to ensure compliance.

Furthermore, and perhaps the most impactful, is that New York will essentially be setting a cost threshold for the use of AI by any entity, placing an unknown additional cost for audits and reports. By adding these required costs, small businesses and nonprofits are priced out of using innovative lifelines that AI has created, leaving New Yorkers to suffer the consequences of a widening digital divide.

This unknown cost, combined with the person-power associated with having to oversee these processes for an entity, would inevitably lead to lower levels of adoption amongst less-resourced entities, widening the resource, knowledge, and ability gap.

Finally, New York must be cognizant of what the establishment of an auditing and reporting mechanism might lead to. If the mandated system results in an expensive or slow process, or if systems are designed in such a way that favors large vendors, then smaller companies, open-source maintainers, academic labs, and community projects will get pushed out of opportunities.

Compliance and Intellectual Property - The reporting mandates create a "compliance treadmill." By requiring new reports for every "substantial change"—a term only vaguely defined in the bill—developers and deployers face near-constant filing obligations that stifle iterative innovation. Furthermore, the bill lacks clear statutory protections for trade secrets. Forcing companies to "wait and see" how the Attorney General might protect their proprietary IP through future rulemaking is a risk no business should be asked to take.

Operational Hurdles - The bill's "human-in-the-loop" and notification requirements are well-intentioned but practically flawed. Mandating five-day advance notices for every AI interaction will simply cause "notice-fatigue" in consumers with endless alerts. More critically, requiring manual human review for every appeal is cost-prohibitive. While we agree that human overview is important, we must also recognize that humans do have ultimate decision-making power when it comes to offering a loan or a job, even if an AI system plays a role in that process. Most small entities simply do not have the staff to manually re-adjudicate every decision that contains some aspect of an AI system in its process.

Legal and Liability Risks - Finally, the enforcement framework invites a predatory litigation environment. By including a private right of action—similar to the litigious climate seen with Illinois' BIPPA—this bill opens the door to a flood of settlement-seeking lawsuits. This risk is amplified by an

unprecedented "rebuttable presumption of liability." Requiring a company to prove its innocence with "clear and convincing evidence" shifts the legal burden so heavily that many small entities will simply choose not to deploy AI at all.

As we continue to evaluate what avenues can be explored to identify and limit risks of discriminatory behavior, Tech:NYC would like to offer up potential tools to tackle this area of concern, in lieu of what has been proposed thus far:

- Bolster existing anti-discrimination practices by expanding funding to the OAG Consumer Protection division to create "fair AI testing" programs. This fund would provide grants to non-profit "testing" organizations—similar to "secret shoppers" in fair housing—to audit high-impact AI systems in the market (e.g., hiring or lending platforms).
- Require OAG to examine the existing anti-discrimination law (§ 296 of Article 15, Chapter 18) to identify any potential gaps in the existing law that would not cover the use of artificial intelligence tools and then have OAG submit recommendations to the Legislature on specific language that could be used to fill the gaps.

As conversations progress, Tech:NYC looks forward to continuing to work with the Legislature on this important topic.

Sincerely,
Alex Spyropoulos
Senior Director of Policy and Government Relations
Tech:NYC