

January 12, 2025

### **Memo of Support for S1169A and A8884 – the NY AI Act**

The Consumer Federation of America (CFA) is an association of over 200 non-profit consumer organizations that was established in 1968 to advance the consumer interest through research, advocacy, and education.

CFA is supportive of the New York AI Act (S1169A) and urges you to advance and pass this bill.

New York has done well to address future-looking problems and require transparency for frontier models through the RAISE act, but we can't move past the desperate need to regulate the way so many important decisions about people's lives are mediated through AI decision-making tools.

The status quo is that you wouldn't know if an AI was being used to make an important decision about you – and if you wanted to investigate details about that decision, you would be out of luck.

The New York AI Act addresses the persistent and opaque algorithmic discrimination found in hiring, housing, healthcare, consumer goods pricing, insurance, finance, and lending. It fills the confounding gaps that remain in the simple knowledge that a key decision in your life is being made with AI at all, let alone by what company, and whether it has been tested for accuracy or tailored appropriately.

It provides clear roadmaps for trust to be earned, essential for both the public and the companies.

Well before people knew about ChatGPT at the end of 2022, there were countless documented examples of algorithmic bias being surfaced. Those systems have not stopped operating, and are used in sectors including but not limited to:

- **Hiring:** Workday, a popular technology vendor for over 11,000 businesses including more than 65% of Fortune 500 companies<sup>1</sup>, is

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<sup>1</sup> *The Latest Media Resources*, WORKDAY NEWSROOM, <https://newsroom.workday.com/company-overview> (last visited Jan. 12, 2026).

the subject of an ongoing lawsuit credibly alleging age-related bias in their resume scanners.<sup>2</sup> And in 2017, Amazon admitted that their hiring algorithm learned from past résumé data that reflected male-dominated hiring, causing it to penalize features associated with women (e.g., “women’s” and graduates of women’s colleges) and therefore created hiring decisions that were discriminatory to women.<sup>3</sup>

- **Healthcare:** Epic Health Systems marketed the Epic Sepsis Model as an algorithm that can predict when patients are experiencing sepsis—a life-threatening emergency. The model, which uses statistical models to predict details about sepsis. It was adopted widely by hospitals throughout the country and marketed as 76–83% accurate. But when validated independently, the system’s accuracy was shown to be significantly lower. In a study of over 27,000 patients in a Michigan Hospital, researchers found that the Epic Sepsis Model’s prediction was closer to 63% accurate—and that there was significant “alert fatigue” among hospital staff because the tool generated alarming results for 18% of all hospital patients (most of which turned out not to have sepsis) while failing to identify risk in 67% of the total patients that actually experienced sepsis.<sup>4</sup>
- **Pricing:** Instacart is one of many engaging in what’s called “surveillance” or “personalized” pricing – the use of data to provide different prices to different people for sometimes no discernible reason but to charge people more.<sup>5</sup>

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<sup>2</sup> *AI Bias Lawsuit Against Workday Reaches Next Stage as Court Grants Conditional Certification of ADEA Claim*, LAW & THE WORKPLACE (June 11, 2025), <https://www.lawandtheworkplace.com/2025/06/ai-bias-lawsuit-against-workday-reaches-next-stage-as-court-grants-conditional-certification-of-adea-claim/>

<sup>3</sup> Amazon Scrapped ‘Sexist AI’ Tool, BBC NEWS (Oct. 10, 2018), <https://www.bbc.com/news/technology-45809919>.

<sup>4</sup> Casey Ross, *Epic’s Sepsis Algorithm Struggles in the Real World. Its Variables May Be Why*, STAT (Sept. 27, 2021), <https://www.statnews.com/2021/09/27/epic-sepsis-algorithm-antibiotics-model/>

<sup>5</sup> Derek Kravitz, *Instacart’s AI-Enabled Pricing Experiments May Be Inflating Your Grocery Bill, CR and Groundwork Collaborative Investigation Finds*, CONSUMER REPS. (Dec. 9, 2025), <https://www.consumerreports.org/money/questionable-business-practices/instacart-ai-pricing-experiment-inflating-grocery-bills-a1142182490/>

- **Finance:** Users flagged that Apple Card (issued by Goldman Sachs) was approving women for substantially lower credit limits than men with similar financial profiles.<sup>6</sup>
- **Housing:** Rental screening tools like RentGrow have been shown to generate flawed screening reports that confuse data like names, criminal histories, and other “bad” data that improperly lead to rejections for housing.<sup>7</sup>
- **Education:** AI software used to try to proctor exams had a faulty object recognition program that erroneously and unacceptably led to police being called to several students houses. This happened most recently in Baltimore.<sup>8</sup> This is in part the reason that New York State rightfully banned the use of facial recognition in schools.<sup>9</sup>

Use of some of these tools continue, and now there are even less reliable systems being rolled out that use Large Language Models in a decision-making process.

It’s plain and simple – untested, broken, opaque, and discriminatory automated decision systems simply have no place making important decisions in the life of New Yorkers

Beyond achieving just this, the law creates necessary whistleblower protections and draws a clear line banning social scoring, a commonsense consensus measure that is as urgent as ever with an increasingly authoritarian regime at the federal level.

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<sup>6</sup> Clare Duffy, Apple Co-Founder Steve Wozniak Says Apple Card Discriminated against His Wife, CNN, (Nov. 10, 2019) <https://www.cnn.com/2019/11/10/business/goldman-sachs-apple-card-discrimination>.

<sup>7</sup> Wiener, Aaron. “D.C. Contractor Sued for Alleged Improper Screening of Hopeful Tenants.” *The Washington Post*, (October 3, 2024) <https://www.washingtonpost.com/dc-md-va/2024/10/03/dc-housing-lawsuit-rentgrow/>.

<sup>8</sup> Chris Papst, Same AI Gun Detection Software That Missed School Shooting, Falsely Flags Maryland Student, WBFF (Nov. 13, 2025), <https://foxbaltimore.com/news/project-baltimore/baltimore-county-student-ai-software-omnilert>.

<sup>9</sup> *New York Bans Facial Recognition in Schools After Report Finds Risks Outweigh Potential Benefits*, AP NEWS, reprinted in WXXI NEWS (Sept. 28, 2023), <https://www.wxxi.com/news/2023-09-28/new-york-bans-facial-recognition-in-schools-after-report-finds-risks-outweigh-potential-benefits>



**This approach specifically is smart and addresses common criticisms:**

Frequent concerns about AI tools from industry commonly center around definitions and risk of frivolous lawsuits as well as a gesture toward the little existing law as a reason it's not necessary.

There is often a claim of “overbroad definitions” that include inescapable and functional tools like spam filters or Google Maps. While this is often overblown, the definitions in 1169A have common-sense exemptions and focus on how a tool has to influence decisions.

The standard is that they have to take reasonable care to prevent foreseeable risk of discrimination, not that they could be sued for any potential discrimination that occurs in the use of their system that could not have been foreseen. The bill also creates a safe harbor for developers that are acting in good faith – protecting innovation, especially small developers that aren't making tools for important decision-making purposes.

It also addresses the deficiencies in other existing AI hiring laws, like Local Law 144 right here in New York City.<sup>10</sup> And it goes beyond the data-driven pricing law passed in the state.<sup>11</sup> Firstly, transparency alone only gets us so far, and secondly, New Yorkers outside of the city should be able to enjoy similar protection.

**One recommended change** is to include the content from Section 88, the high-risk AI system reporting requirements, in an easy-to-understand notice to help better inform consumers and help make a decision. Otherwise, it is hard to make an informed decision and what the trade-offs – including significant waiting – actually will be. It's important to note that it's not the *presence* of a system that causes problems, it's one that is discriminatory or otherwise unacceptable.

**Conclusion**

Life in the digital age is increasingly unfair and deceptive. Algorithms increasingly mediate critical determinations for New Yorkers – housing

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<sup>10</sup> Automated Employment Decision Tools (AEDT), DCWP, <https://www.nyc.gov/site/dca/about/automated-employment-decision-tools.page> (last visited Jan. 12, 2026).

<sup>11</sup> Protecting New Yorkers From Secret Online Price Hikes: Governor Hochul Announces Nation-Leading Surveillance Pricing Law Now in Effect, Governor Kathy Hochul, <https://www.governor.ny.gov/news/protecting-new-yorkers-secret-online-price-hikes-governor-hochul-announces-nation-leading> (last visited Jan. 12, 2026).



eligibility, hiring decisions, credit rate determinations, what content they're shown, and more. This is often done with no transparency or choice for consumers, and to the detriment of their opportunities and bank accounts.

The NY AI Act would benefit New Yorkers by establishing strong protections against harmful biases and discrimination in AI systems without levying significant burdens onto businesses. It puts a reasonable responsibility on AI developers or deployers that use their tools to provide notice when AI is used to make a consequential life decision and allow an opt-out for those decisions in most circumstances.

It directs those same entities to evaluate the impacts of their systems, and to mitigate concerning outcomes. It provides critical whistleblower protections for employees and incentives for self-reporting of potential violations of the law. The law also creates a private right of action, a common-sense provision that allows people to sue when their rights are violated, and that individual harm doesn't have to be resolved by an overburdened Attorney General.

Urgent action is needed as all sorts of critical decisions are being made based off AI predictions and decisions – the NY AI act would create critical guardrails and tools to address that and protect New Yorkers.

Ben Winters  
Director of AI & Privacy  
[bwinters@consumerfed.org](mailto:bwinters@consumerfed.org)

