

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Insurance, Securities and Banking



Bill 24-558, the “Stop Discrimination by Algorithms Act of 2021”

Testimony of

Karima M. Woods

Commissioner

Department of Insurance, Securities and Banking

Before the

Committee on Government Operations and Facilities

Councilmember Robert C. White, Chairperson

Council of the District of Columbia

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Virtual Platform

Good afternoon, Chairperson White, Council members, and staff of the Committee on Government Operations and Facilities. I am Karima Woods, Commissioner of the Department of Insurance, Securities and Banking (DISB). On behalf of Mayor Muriel Bowser, I want to thank you for the opportunity to share the Department's concerns about Bill 24-558, the "Stop Discrimination by Algorithms Act of 2021" (the Bill).

DISB's mission is three-fold: to (1) cultivate a regulatory environment that protects consumers and attracts and retains financial services firms to the District; (2) empower and educate residents; and (3) provide financing for small businesses. We accomplish this by effectively regulating the District's financial services industries to ensure District residents have access to a wide choice of financial services and service providers. DISB also provides a variety of targeted financial empowerment programs, promotes a positive business climate that encourages fair and open competition, supports economic development, and fosters business growth in the District.

I. Overview of Bill 24-558

As currently drafted, the Bill prohibits covered entities from using algorithmic eligibility determinations on the basis of the protected classes set forth in the District's Human Rights Act. Such determinations include access to, approval for, or offer of credit and insurance, among others. The bill also establishes annual

auditing and reporting requirements for covered entities, and a new notice requirement. Finally, the legislation would vest the Office of the Attorney General (OAG) with civil enforcement authority and create a private right of action for persons aggrieved by violations of the act.

II. DISB's Opposition to Bill 24-558

For decades, we have benefitted from technological advancements that have impacted every facet of our daily lives. In recent years, these advancements have become more sophisticated and allowed for better delivery of services to countless individuals. The financial services industry has been no exception. For example, financial services companies' use algorithms, artificial intelligence, machine learning and big data to make critical underwriting and pricing decisions that allow for a well-functioning marketplace for insurance and loan products and services.

While DISB supports the intent of the Bill, we request that the Council amend the legislation to exempt entities and individuals licensed and regulated by DISB, as well as national banks and federal credit unions, from the definition of "covered entity." DISB-regulated entities should not be subject to the provisions of the Bill for the following reasons: (1) the Bill duplicates core insurance and lending regulatory functions currently administered by DISB, which could create unnecessary confusion and uncertainty; (2) the Bill includes standards that are inconsistent with existing laws governing financial services companies. For

example, it is standard practice for insurers to equitably distinguish between individuals or groups of individuals who have similar risk characteristics in order to make accurate predictions and develop appropriate rates; (3) the Bill would impose significant and costly regulatory compliance burdens on financial services companies operating in the District that will be passed along to consumers; and (4), the Bill would adversely impact the financial services marketplace in the District by stifling innovation, reducing competition, and increasing the cost of financial products and services sold to District residents and consumers.

DISB's mission requires the agency to balance the regulatory burdens it places upon the entities it regulates with the District's interests. This delicate balance that DISB staff work diligently to strike must be achieved while providing robust consumer protection and fostering dynamic, competitive markets. DISB has cultivated a broad and nuanced perspective from the collective experience and expertise of its staff and its well-developed relationships with members of the industry, consumers and other regulators, and should continue to be the sole entity in District government tasked with regulating such entities.

The Council has already delegated to the Commissioner of DISB a comprehensive and highly technical regulatory scheme, which has been codified in the insurance and banking codes and includes expressed anti-discrimination and unfair and deceptive trade practice provisions, including the Insurance Unfair

Trade Practices Act, the Compulsory/No-Fault Motor Vehicle Insurance Act, and the Mortgage Lenders and Brokers Act.

Specifically, the Insurance Unfair Trade Practices Act prohibits discrimination between individuals in the same class for life insurance, accident and health insurance, and property and casualty insurance. The act also prohibits unfair discrimination in a property and casualty policy or a life, health or annuity policy solely because the applicant or insured, or an employee of either, is mentally or physically impaired.

Likewise, the Compulsory/No-Fault Motor Vehicle Insurance Act prohibits discrimination in motor vehicle insurance for any reasons provided under the District's Human Rights Act.

Lastly, the Mortgage Lenders and Brokers Act prohibits engaging in any unfair or deceptive practice toward any person. The act also prohibits making, in any manner, false or deceptive statements or representation, including with regard to the rates, points, or other financing terms or conditions for a residential mortgage loan; or engaging in bait-and-switch advertising. The Act also prohibits unfair steering and improper use of credit scores.

III. DISB's Current Technology Initiative: Private Passenger Ratemaking Review

Presently, DISB has existing authority to issue data calls to insurers to collect the appropriate and necessary information to effectively review and evaluate the algorithms of insurers. Earlier this year, DISB initiated a review of issuers of private passenger automobile insurance in the District to examine whether any unintentional bias exists in the algorithms used by those insurers. This builds upon previous work by DISB to determine whether certain insurers use of models is operating as expected. To date, DISB has held a public hearing and issued a request for comment to the industry and public on the scope of the examination, the treatment of underwriting and rating factors, how actuarial guidance applies to protected classes, and criteria for evaluating potential bias. We are in the process of developing a data call to request relevant information from all insurers writing automobile insurance in the District. DISB has engaged an algorithmic auditing consultant firm to assist in its review. If DISB determines insurers' underwriting and rating practices result in unintentional bias, we will take necessary action to address violations.

Further, we also know that the Federal Reserve, the Office of the Comptroller of the Currency, the Consumer Financial Protection Bureau, and the Conference of State Bank Supervisors have all made it a priority to address

discrimination and bias in the development and marketing of financial products and services.

Finally, according to the National Conference of State Legislators, of approximately 58 bills that have been introduced to address bias in the use of algorithms, 17 of those bills were rejected. No state has attempted to impose the type of comprehensive regulatory scheme, or delegate regulatory authority to the state attorney general, as contemplated by Bill 24-558. Of the seven bills that have been enacted, four establish task forces to study this issue; two, Illinois and Vermont, delegate authority to the Department of Commerce and Economic Opportunity and the Agency for Digital Services, respectively, to monitor limited aspects of the use of algorithms; one, Colorado, creates an insurance specific law by amending the state's insurance unfair trade practice law.

Conclusion

An algorithm is simply a process used to perform a calculation. Like any other technology, it is not inherently good nor bad. We support this Bill's goal of ensuring that District residents and businesses are not harmed by businesses that would use technology to exploit them.

However, we believe the legislation goes too far for the reasons I have stated previously. Accordingly, we ask the Committee to amend the definition of

“covered entity” to exempt entities and individuals licensed and regulated by DISB, as well as national banks and federal credit unions.

I appreciate the opportunity to appear before this Committee and thank you for the support that you have shown to DISB. I look forward to answering any questions you may have.