

1 "Algorithmic information availability determination" means
2 a determination based in whole or in significant part on an
3 algorithmic process that utilizes machine learning, artificial
4 intelligence, or similar techniques to determine an individual's
5 receipt of advertising, marketing, solicitations, or offers for
6 an important life opportunity.

7 "Covered entity" means any individual, firm, corporation,
8 partnership, cooperative, association, or any other
9 organization, legal entity, or group of individuals however
10 organized, including entities related by common ownership or
11 corporate control, that either makes algorithmic eligibility
12 determinations or algorithmic information availability
13 determinations, or relies on algorithmic eligibility
14 determinations or algorithmic information availability
15 determinations supplied by a service provider, and that meets
16 one or more of the following criteria:

- 17 (1) Possesses or controls personal information on more
18 than twenty-five thousand residents of the State;
- 19 (2) Has more than \$15,000,000 in average annualized gross
20 receipts for the three years preceding the most recent
21 fiscal year;



1 (3) Is a data broker, or other entity, that derives fifty
2 per cent or more of its annual revenue by collecting,
3 assembling, selling, distributing, providing access
4 to, or maintaining personal information, and some
5 proportion of the personal information concerns a
6 resident of the State who is not a customer or an
7 employee of that entity; or

8 (4) Is a service provider.

9 "Important life opportunities" means access to, approval
10 for, or offer of credit; insurance, education, employment,
11 housing, or place of public accommodation as defined in section
12 489-2.

13 "Personal information" means any information held by a
14 covered entity, regardless of how the information is collected,
15 inferred, derived, created, or obtained, that is linked or
16 reasonably linkable to an individual, household, or personal
17 device. "Personal information" includes but is not limited to:

18 (1) Individually identifiable information such as a real
19 name, alias, signature, date of birth, union
20 membership number, postal address, unique personal
21 identifier, online identifier, internet protocol



- 1 address, media access control address, unique device
2 identifier, email address, phone number, account name,
3 social security number, military identification
4 number, driver's license number, vehicle
5 identification number, passport number, or other
6 similar identifiers;
- 7 (2) A person's race, national origin, religious
8 affiliation, gender identity, sexual orientation,
9 marital status, or disability;
- 10 (3) Commercial information, including records of personal
11 property; products or services purchased, obtained, or
12 considered; or other purchasing or consuming histories
13 or tendencies;
- 14 (4) Real-time historical geolocation data more specific
15 than a fifty-mile radius;
- 16 (5) Education records, as defined in title 34, Code of
17 Federal Regulations section 99.3 or any successor
18 regulation;
- 19 (6) Biometric data, including voice signatures, facial
20 geometry, fingerprints, and retina or iris scans; and



1 (7) Inferences drawn from any of the information
2 identified in paragraphs (1) through (6) to create a
3 profile about an individual reflecting the
4 individual's predispositions, behavior, habits,
5 attitudes, intelligence, abilities, and aptitudes.

6 "Reasonably linkable to an individual, household, or
7 personal device" means personal information that can be used on
8 its own or in combination with other information reasonably
9 available to the covered entity, regardless of whether the other
10 information is held by the covered entity, to identify an
11 individual, household, or personal device.

12 "Service provider" means any entity that performs
13 algorithmic eligibility determinations or algorithmic
14 information availability determinations on behalf of another
15 entity.

16 § -2 **Prohibited practices; exemptions.** (a) A covered
17 entity shall not make an algorithmic eligibility determination
18 or an algorithmic information availability determination on the
19 basis of an individual's or class of individuals' actual or
20 perceived race, color, religion, national origin, sex, gender
21 identity or expression, sexual orientation, familial status,



1 source of income, or disability in a manner that segregates,
2 discriminates against, or otherwise makes important life
3 opportunities unavailable to an individual or class of
4 individuals.

5 (b) Any practice that has the effect or consequence of
6 violating subsection (a) shall be deemed to be an unlawful
7 discriminatory practice.

8 (c) Nothing in subsection (a) shall prohibit covered
9 entities from using an individual's personal information as part
10 of an affirmative action plan adopted pursuant to state or
11 federal law.

12 § -3 Relationships with service providers. Any covered
13 entity that relies in whole or in part on a service provider to
14 conduct an algorithmic eligibility determination or an
15 algorithmic information availability determination shall require
16 by written agreement that the service provider implement and
17 maintain measures reasonably designed to ensure that the service
18 provider complies with this chapter.

19 § -4 Right to notice and disclosure. (a) A covered
20 entity shall:



- 1 (1) Develop a notice that explains how the covered entity
- 2 uses personal information in algorithmic eligibility
- 3 determinations and algorithmic information
- 4 availability determinations, including:
- 5 (A) What personal information the covered entity
- 6 collects, generates, infers, uses, and retains;
- 7 (B) What sources the covered entity uses to collect,
- 8 generate, or infer personal information;
- 9 (C) Whether the personal information is shared, sold,
- 10 leased, or exchanged with any service providers
- 11 for any kind of consideration, and if so, the
- 12 names of those service providers, including
- 13 subsidiaries of the service providers;
- 14 (D) A brief description of the relationship between
- 15 the personal information and the algorithmic
- 16 eligibility or algorithmic information
- 17 availability determinations;
- 18 (E) How long the covered entity will hold the
- 19 personal information; and
- 20 (F) The rights provided under this chapter;



- 1 (2) Ensure that the notice developed and made available
- 2 under paragraph (1) of this subsection:
- 3 (A) Is clear, concise, and complete;
- 4 (B) Does not contain unrelated, confusing, or
- 5 contradictory materials; and
- 6 (C) Is in a format that is:
 - 7 (i) Prominent and easily accessible;
 - 8 (ii) Capable of fitting on one printed page; and
 - 9 (iii) Provided in English, as well as in any non-
 - 10 English language spoken by at least five
 - 11 hundred individuals in the State population;
- 12 (3) Within thirty days after changing its collection or
- 13 use practices or policies in a way that affects the
- 14 content of the notice required by paragraph (1),
- 15 update that notice;
- 16 (4) Make the notice required under paragraph (1)
- 17 continuously and conspicuously available:
 - 18 (A) On the covered entity's website or mobile
 - 19 application, if the covered entity maintains a
 - 20 website or mobile application; and



1 (B) At the physical place of business or any offline
2 equivalent the covered entity maintains; and

3 (5) Send the notice required under paragraph (1) to an
4 individual before the first algorithmic information
5 availability determination it makes about the
6 individual by:

7 (A) Mail, if the personal information was gathered
8 through the individual contacting or contracting
9 with the covered entity through mail;

10 (B) Email, if the personal information was gathered
11 through the individual contacting or contracting
12 with the covered entity through email, or if the
13 covered entity has the individual's email address
14 for another reason;

15 (C) Informing individuals through a "pop-up"
16 notification upon navigation to the covered
17 entity's website or within the covered entity's
18 mobile application; or

19 (D) Providing a clear and conspicuous link on the
20 covered entity's website's homepage, or the home



1 screen of its mobile application, leading to the
2 notice.

3 (b) A covered entity need not provide the notice described
4 under subsection (a) if another covered entity has provided
5 notice to the same individual for the same action as part of a
6 contracted arrangement with the covered entity.

7 (c) A covered entity that is subject to subsection (a)(1),
8 with respect to any individual whose personal information the
9 covered entity holds as described in that subsection, shall not
10 use any personal information of the individual in an algorithmic
11 eligibility determination unless the covered entity has provided
12 the individual with notice consistent with that subsection.

13 (d) If a covered entity takes any adverse action with
14 respect to any individual that is based in whole or in part on
15 the results of an algorithmic eligibility determination, the
16 covered entity shall provide the individual a written or
17 electronic disclosure that includes:

18 (1) The covered entity's name, address, email address, and
19 telephone number;

20 (2) The factors the determination depended on; and

21 (3) An explanation that the individual may:



- 1 (A) Access any personal information pertaining to
- 2 that individual that the covered entity used to
- 3 make the determination;
- 4 (B) Submit corrections to that information; and
- 5 (C) If the individual submits corrections, request
- 6 that the covered entity conduct a reasoned
- 7 reevaluation of the relevant algorithmic
- 8 eligibility determination, conducted by a human,
- 9 based on the corrected data.

10 **§ -5 Auditing for discriminatory processing and**
11 **reporting requirement.** (a) A covered entity shall annually
12 audit its algorithmic eligibility determination and algorithmic
13 information availability determination practices to:

- 14 (1) Determine whether the processing practices
- 15 discriminate in a manner prohibited under
- 16 section -2;
- 17 (2) Analyze disparate-impact risks of algorithmic
- 18 eligibility determinations and algorithmic information
- 19 availability determinations based on actual or
- 20 perceived race, color, religion, national origin, sex,
- 21 gender identity or expression, sexual orientation,



- 1 familial status, genetic information, source of
2 income, or disability;
- 3 (3) Create and retain for at least five years an audit
4 trail that records, for each algorithmic eligibility
5 determination:
- 6 (A) The type of algorithmic eligibility determination
7 made;
- 8 (B) The data used in the determination, including the
9 source of the data;
- 10 (C) The methodology used by the entity to establish
11 the algorithm;
- 12 (D) The algorithm used to make the determination;
- 13 (E) Any data or sets of data used to train the
14 algorithm;
- 15 (F) Any testing and results for model performance
16 across different subgroups or for discriminatory
17 effects;
- 18 (G) The methodology used to render the determination;
19 and
- 20 (H) The ultimate decision rendered;
- 21 (4) Conduct annual impact assessments of:



- 1 (A) Existing systems that render algorithmic
- 2 eligibility determinations and algorithmic
- 3 information availability determinations; and
- 4 (B) Prior to implementation, new systems that render
- 5 algorithmic eligibility determinations and
- 6 algorithmic information availability
- 7 determinations;
- 8 (5) Conduct the audits under paragraphs (1), (2), and (3)
- 9 in consultation with third parties who have
- 10 substantial information about or participated in the
- 11 covered entity's algorithmic eligibility
- 12 determinations and algorithmic information
- 13 availability determinations, including service
- 14 providers; and
- 15 (6) Identify and implement reasonable measures to address
- 16 risks of an unlawful disparate impact identified in
- 17 the audits and impact assessments conducted under
- 18 paragraphs (1), (2), and (3), including the risks
- 19 posed by determinations made by the covered entity's
- 20 service providers.



1 (b) A covered entity shall annually submit a report
2 containing the results of the audit mandated under this section
3 to the department of the attorney general on a form provided by
4 the department of the attorney general. The report shall
5 contain the following information:

6 (1) The types of algorithmic eligibility determinations
7 and algorithmic information availability
8 determinations that the covered entity makes;

9 (2) The data and methodologies that the covered entity
10 uses to establish the algorithms;

11 (3) The optimization criteria of the algorithms used to
12 make the determinations;

13 (4) Any data or sets of data used to train the algorithms,
14 and the source or sources of the data;

15 (5) The methodologies the covered entity uses to render
16 the determinations;

17 (6) Any performance metrics the entity uses to gauge the
18 accuracy of the assessments, including accuracy,
19 confidence intervals, and how those assessments are
20 obtained;



- 1 (7) The frequency, methodology, and results of the impact
2 assessments or risk assessments that the entity has
3 conducted;
- 4 (8) Within the description of each of the decisions in
5 paragraphs (1) through (7), the rationale for each
6 decision;
- 7 (9) Whether the covered entity has received complaints
8 from individuals regarding the algorithmic eligibility
9 determinations and algorithmic information
10 availability determinations it has made; and
- 11 (10) If the covered entity has determined that one or more
12 of the exemptions referred to in section -2(c)
13 apply to practices that would otherwise violate
14 section -2(a), a declaration and explanation of the
15 covered entity's reliance on those exemptions.
- 16 (c) To the extent consistent with federal law or state
17 law, a covered entity may, in place of the report required by
18 subsection (a), submit to the department of the attorney general
19 a report previously submitted to a federal, state, or other
20 government entity, if that report contains the required
21 information or is supplemented with missing information.



1 (d) The attorney general may adopt rules pursuant to
2 chapter 91 necessary to implement the reporting provisions under
3 this section.

4 **§ -6 Enforcement; penalties.** (a) In any case in which
5 the attorney general has reason to believe that any person has
6 used, is using, or intends to use any method, act, or practice
7 in violation of this chapter or rule adopted under this chapter,
8 or has failed to provide a notice, a disclosure, or a report
9 required by this chapter, the attorney general may commence
10 appropriate civil action for:

- 11 (1) A temporary or permanent injunction;
12 (2) Penalties as described in subsection (c);
13 (3) Damages or restitution; or
14 (4) Any other relief that the court considers appropriate.

15 (b) In the course of an investigation to determine whether
16 to seek relief, the attorney general may subpoena witnesses;
17 administer oaths; examine an individual under oath; require
18 sworn written responses to written questions; and compel
19 production of records, books, papers, contracts, and other
20 documents.



1 (c) Any covered entity or service provider that violates
2 this chapter shall be liable for a civil penalty of not more
3 than \$10,000 for each violation, which may be recovered in a
4 civil action brought by the attorney general.

5 (d) Any civil penalty assessed for a violation of this
6 chapter, and the proceeds of any settlement of an action brought
7 pursuant to this section, shall be deposited in the litigation
8 deposits trust account under section 28-16.

9 (e) Any person aggrieved by a violation of this chapter
10 may bring a civil action in any court of competent jurisdiction,
11 and the court may award an amount not less than \$100 and not
12 greater than \$10,000 per violation or actual damages, whichever
13 is greater.

14 (f) In a civil action brought under either subsection (c)
15 or (e) in which the plaintiff prevails, the court may also
16 award:

- 17 (1) Punitive damages;
- 18 (2) Reasonable attorneys' fees and litigation costs; and
- 19 (3) Any other relief, including equitable or declaratory
20 relief, that the court determines appropriate.



1 (g) In a civil action brought under subsection (e), a
2 violation of this chapter or a rule adopted under this chapter
3 with respect to an individual constitutes a concrete and
4 particularized injury to that individual."

5 SECTION 2. This Act does not affect rights and duties that
6 matured, penalties that were incurred, and proceedings that were
7 begun before its effective date.

8 SECTION 3. This Act shall take effect upon its approval.

9

INTRODUCED BY:



S.B. NO. 59

Report Title:

Department of the Attorney General; Algorithmic Decision-Making; Algorithmic Discrimination; Artificial Intelligence; Report

Description:

Prohibits users of algorithmic decision-making from utilizing algorithmic eligibility determinations in a discriminatory manner. Requires users of algorithmic decision-making to send corresponding notices to individuals whose personal information is used. Requires users of algorithmic decision-making to submit annual reports to the Department of the Attorney General. Provides means of civil enforcement.

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