ASSEMBLY, No. 2726

STATE OF NEW JERSEY

222nd LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2026 SESSION

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SYNOPSIS

Regulates use of automated employment decision tools in employment decisions to minimize discrimination in employment.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.

AN ACT concerning the use of automated employment decision tools to assist with employment decisions and supplementing Title 34 of the Revised Statutes.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. As used in P.L. , c. (C.) (pending before the Legislature as this bill):

"Automated employment decision tool" means a machine-based system that can, for a set of human-defined objectives provided by an employer or an individual acting on behalf of an employer, make predictions, recommendations, or decisions influencing recruitment, workforce, or employment decisions.

"Bias audit" means an impartial evaluation conducted by an independent auditor, including but not limited to:

a. rigorous assessment of an automated employment decision tool to determine its impact on persons of any category;

b. identification and documentation of any biases, risks, or potential discriminatory outcomes that arise from the automated employment decision tool's design, implementation, or use; and

c. clear, actionable recommendations to avoid, manage, or mitigate, identified biases and risks, and to ensure the safe, secure, and trustworthy use of the automated employment decision tool in employment decisions.

"Category" means race, color, national origin, ethnicity, sex, gender identity, sexual orientation, age, religion, marital or familial status, disability, and deriving income from any public assistance program.

"Commissioner" means the Commissioner of Labor and Workforce Development.

"Covered individual" means a candidate for employment or current employee being assessed by an automated employment decision tool to make an employment decision.

"Department" means Department of Labor and Workforce Development.

"Employer" means any individual, partnership, association, corporation, and the State and any county, municipality, or school district in the State, or any agency, authority, department, bureau, or instrumentality thereof, employing any person.

"Employment decision" means to screen a candidate for employment or otherwise to help decide compensation or any other terms, conditions, or privileges of employment.

"Impact ratio" means:

a. the ratio of the protected class that receives a favorable outcome and the proportion of the control class that receives a favorable outcome when the decision being made is binary,

including but not limited to the decision to hire or not and the decision to promote or not; or

b. the ratio of the difference between the average protected class outcome and the average control class outcome to a measure of the standard deviation of the outcome across the overall population when the decision being made is not binary, including but not limited to the decision to increase base salary or compensation of an employee.

"Independent auditor" means a person or group that is capable of exercising objective and impartial judgment on all issues within the scope of a bias audit of an automated employment decision tool. An auditor shall not be considered independent if the auditor:

a. is or was involved in using, developing, or distributing the automated employment decision tool;

b. at any point during the bias audit, has an employment relationship with an employer or employment agency that seeks to use or continue to use the automated employment decision tool or with a vendor that developed or distributes the automated employment decision tool; or

c. at any point during the bias audit, has a direct financial interest or a material indirect financial interest in an employer or employment agency that seeks to use or continue to use the automated employment decision tool or in a vendor that developed or distributed the automated employment decision tool.

"Scoring rate" means the rate at which individuals in a category receive a score above the sample's median score, where the score has been calculated by an automated employment decision tool.

"Screen" means to make a favorable or unfavorable determination about whether a candidate being considered for employment or employee being considered for promotion, termination, or performance review should be selected or advanced in the hiring or promotion process.

"Selection rate" means the rate at which favorable or adverse reactions are taken regarding individuals in a category in the employment decision process by an automated employment decision tool. This rate may be calculated by dividing the number of individuals with favorable or unfavorable outcomes in the category by the total number of individuals in the category.

2. a. It shall be unlawful to sell, develop, deploy, use, or offer for sale in the State an automated employment decision tool unless:

(1) the automated employment decision tool is the subject of a bias audit conducted in the past year prior to selling or offering the automated employment decision tool for sale;

(2) the sale of the automated employment decision tool includes, at no additional cost, an annual bias audit service that provides the results of that audit to the purchaser and a written plan to monitor the implementation of the recommendations in the audit report;

(3) the automated employment decision tool is sold, developed, deployed, used, or offered for sale with a notice stating that the automated employment decision tool is subject to the provisions of P.L. , c. (C.) (pending before the Legislature as this bill); and

(4) the developer of the automated employment decision tool has implemented the recommendations of the most recent bias audit conducted and issued a press release announcing how the recommendations have been implemented.

b. Any employer in the State who uses an automated employment decision tool to screen a covered individual for an employment decision shall provide on its Internet website a summary of the most recent bias audit.

c. Any employer who uses an automated employment decision tool to screen a covered individual for an employment decision shall notify each covered individual at least 10 days before use that an automated employment decision tool, which is subject to a bias audit pursuant to P.L. , c. (C.) (pending before the Legislature as this bill), will be used in connection with the covered individual's application.

d. To comply with subsection c. of this section, an employer or employment agency in the State shall provide notice to a candidate for employment by providing notice in a clear and conspicuous manner:

(1) on the employment section of its website at least 10 business days before use of an automated employment decision tool;

(2) in a job posting at least 10 business days before use of an automated employment decision tool; or

(3) to candidates for employment via U.S. mail or electronic mail at least 10 business days before use of an automated employment decision tool.

e. To comply with subsection c. of this section, an employer or employment agency shall provide notice to an employee being assessed by an automated employment decision tool who resides in the State by providing notice in a clear and conspicuous manner:

(1) in a written policy or procedure that is provided to employees at least 10 business days before use of an automated employment decision tool;

(2) in a job posting at least 10 business days before use of an automated employment decision tool; or

(3) via U.S. mail or electronic mail at least 10 business days before use of an automated employment decision tool.

f. Any employer who uses an automated employment decision tool to screen a covered individual for an employment decision shall notify each covered individual of the following within 30 days of use:

(1) that an automated employment decision tool, which is subject to a bias audit pursuant to P.L. , c. (C.) (pending

before the Legislature as this bill), was used in connection with the covered individual's application;

(2) the job qualifications or characteristics that an automated employment decision tool used to assess the covered individual's application;

(3) the sources of the data collected, the data retention policy of the employer, the name of the automated employment decision tool the employer used, and the vendor of the automated employment decision tool; and

(4) if the outcome of the employment decision is adverse to the covered individual, sufficient disclosures to enable the covered individual to contest any such employment decision that results from the use of the automated employment decision tool, which sufficient disclosures shall include but not be limited to providing a statement of specific reasons for an adverse employment decision in writing to applicants against whom adverse employment action is taken.

g. Before the use of an automated employment decision tool, an employer or employment agency in the State shall make the following publicly available on the employment section of its website in a clear and conspicuous manner that is accessible, machine-readable, and downloadable, in addition to a hard copy that shall be made available upon request:

(1) the date of the most recent bias audit of the automated employment decision tool and a summary of the results, which shall include the source and explanation of the data used to conduct the bias audit, the number of individuals the automated employment decision tool assessed that fall within an unknown category, and the number of applicants or candidates, the selection rates or scoring rates, as applicable, and the impact ratios for all categories; and

(2) the date of operation of the automated employment decision tool.

An employer or employment agency shall keep the summary of results and distribution date posted for at least 10 years after its latest use of the automated employment decision tool for an employment decision and issue a press release when the report is made publicly available.

3. a. (1) Any developer of an automated employment decision tool that is found to violate subsection a. of section 2 of P.L. , c. (C.) (pending before the Legislature as this bill) shall be liable for a civil penalty of not more than $1,500 for that developer's first violation and each additional violation occurring on the same day as the first violation. Such civil penalty shall increase by two percent for each subsequent day the developer remains in violation of P.L. , c. (C.) (pending before the Legislature as this bill). Violations shall accrue on a daily basis for each automated employment decision tool that is sold or offered for

sale in violation of P.L. , c. (C.) (pending before the Legislature as this bill).

(2) Any employer or employment agency that violates subsection b., c., d., e., f., or g. of section 2 of P.L. , c. (C.) (pending before the Legislature as this bill) shall be liable for a civil penalty of not more than $500 for a first violation and for each subsequent violation.

(3) Each instance in which notice is not provided to a covered individual at least 10 days before use of an automated employment decision tool in violation of subsection c. of section 2 of P.L. , c. (C.) (pending before the Legislature as this bill) constitutes a single violation.

(4) Each instance in which notice is not provided to a covered individual within 30 days in violation of subsection f. of section 2 of P.L. , c. (C.) (pending before the Legislature as this bill) constitutes a single violation, and each 30-day period thereafter in which notice is not provided to a candidate constitutes a separate violation.

b. All penalties assessed under this section shall be payable to the State Treasurer and may be recovered with costs in a summary proceeding commenced by the commissioner pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

c. The department, in consultation with the Division on Civil Rights in the Department of Law and Public Safety, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall promulgate rules and regulations to effectuate the purposes of P.L. , c. (C.) (pending before the Legislature as this bill).

d. The provisions of P.L. , c. (C.) (pending before the Legislature as this bill) are intended to affirm certain rights of covered individuals under the circumstances specified in P.L. , c. (C.) (pending before the Legislature as this bill), and shall not be construed to reduce, limit, or curtail any rights of any covered individual provided by law, or to limit the authority of the State or its agencies to investigate and enforce rights relating to bias and discrimination in employment, or to promulgate rules and regulations relating to bias and discrimination in employment.

4. This act shall take effect on the first day of the third month next following enactment, except that the commissioner may take any anticipatory administrative action in advance as shall be necessary for implementation.

STATEMENT

This bill regulates the use of automated employment decision tools during the employment decision process to minimize employment discrimination that may result from the use of the tools.

Under the bill, "automated employment decision tool" (AEDT) means a machine-based system that can, for a set of human-defined objectives provided by an employer or an individual acting on behalf of an employer, make predictions, recommendations, or decisions influencing recruitment, workforce, or employment decisions.

The bill prohibits the sale, development, deployment, use, or offer for sale of AEDTs in the State unless:

(1) the AEDT is the subject of a bias audit conducted in the past year prior to selling or offering the AEDT for sale;

(2) the sale of the AEDT includes, at no additional cost, an annual bias audit service that provides the results of that audit to the purchaser and a written plan to monitor the implementation of the recommendations in the audit report;

(3) the AEDT is sold, developed, deployed, used, or offered for sale with a notice stating that the AEDT is subject to the provisions of this bill; and

(4) the developer of the AEDT has implemented the recommendations of the most recent bias audit conducted and issued a press release announcing how the recommendations have been implemented.

The bill also requires an employer that uses an AEDT to provide a summary of the most recent bias audit on the employer's website.

In addition, the bill provides that any employer who uses an AEDT to screen a covered individual for an employment decision is required to notify each covered individual at least 10 days before use that an AEDT, which is subject to a bias audit pursuant to this bill, will be used in connection with the covered individual's candidacy.

In addition, the bill provides that any employer who uses an AEDT to screen a covered individual for an employment decision is required to notify each covered individual of the following within 30 days of the use of the tool:

(1) that an AEDT, which is subject to a bias audit, was used in connection with the candidate's application;

(2) the tool assessed the job qualifications or characteristics that the tool used to assess the covered individual's application;

(3) the sources of the data collected, the data retention policy of the employer, the name of the AEDT the employer used, and the vendor of the AEDT; and

(4) if the outcome of using the AEDT is adverse to the covered individual, sufficient disclosures to enable the covered individual to

contest any such employment decision that results from the use of the AEDT.

An employer or employment agency is required to make certain information publicly available on the employment section of its website.

The bill provides for civil penalties to be collected for violations of its provisions, and establishes penalties for developers and employers and employment agencies that violate certain provisions of the bill.

The bill is intended to affirm certain rights of covered individuals for employment under the circumstances specified in the bill, and will not be construed to reduce, limit, or curtail any rights of any covered individual provided by law, or to limit the authority of the State or its agencies to investigate and enforce rights relating to bias and discrimination in employment, or to promulgate rules and regulations relating to bias and discrimination in employment.