

# ASSEMBLY, No. 4909

## STATE OF NEW JERSEY 220th LEGISLATURE

INTRODUCED DECEMBER 5, 2022

**Sponsored by:**

**Assemblywoman SADAF F. JAFFER**

**District 16 (Hunterdon, Mercer, Middlesex and Somerset)**

**Assemblyman REGINALD W. ATKINS**

**District 20 (Union)**

**Assemblyman STERLEY S. STANLEY**

**District 18 (Middlesex)**

**Co-Sponsored by:**

**Assemblyman Danielsen**

**SYNOPSIS**

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

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 12/5/2022)**

1 AN ACT concerning the use of automated tools to assist with hiring  
2 decisions and supplementing Title 34 of the Revised Statutes.

3

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

6

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

9 “Automated employment decision tool” means any system the  
10 function of which is governed by statistical theory, or systems the  
11 parameters of which are defined by systems, including inferential  
12 methodologies, linear regression, neural networks, decision trees,  
13 random forests, and other learning algorithms, which automatically  
14 filters candidates or prospective candidates for hire or for any term,  
15 condition or privilege of employment in a way that establishes a  
16 preferred candidate or candidates.

17 “Bias audit” means an impartial evaluation, including but not  
18 limited to testing, of an automated employment decision tool to  
19 assess its predicted compliance with the provisions of the “Law  
20 Against Discrimination,” P.L. 1945, c. 169 (C. 10:5-1 et seq.), and  
21 any other applicable law relating to discrimination in employment.

22 “Commissioner” means the Commissioner of Labor and  
23 Workforce Development.

24 “Department” means Department of Labor and Workforce  
25 Development.

26 “Employment decision” means to screen candidates for  
27 employment or otherwise to help to decide compensation or any  
28 other terms, conditions or privileges of employment in the State.

29 b. It shall be unlawful to sell or offer for sale in the State an  
30 automated employment decision tool unless:

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

33 (2) The sale of the tool includes, at no additional cost, an annual  
34 bias audit service that provides the results of the audit to the  
35 purchaser; and

36 (3) The tool is sold or offered for sale with a notice stating that  
37 the tool is subject to the provisions of P.L. , c. (C. )  
38 (pending before the Legislature as this bill).

39 c. Any person who uses an automated employment decision  
40 tool to screen a candidate for an employment decision shall notify  
41 each candidate of the following within 30 days of the use of the  
42 tool:

43 (1) That an automated employment decision tool, which is  
44 subject to an audit for bias pursuant to P.L. , c. (C. )  
45 (pending before the Legislature as this bill), was used in connection  
46 with the candidate’s application for employment; and

47 (2) The tool assessed the job qualifications or characteristics of  
48 the candidate.

1 d. (1) Any person that violates any provision of  
2 P.L. , c. (C. ) (pending before the Legislature as this bill)  
3 shall be liable for a civil penalty of not more than \$500 for that  
4 person's first violation and each additional violation occurring on  
5 the same day as the first violation, and not less than \$500 nor more  
6 than \$1,500 for each subsequent violation. Violations shall accrue  
7 on a daily basis for each automated employment decision tool that  
8 is sold or offered for sale in violation of P.L. c. (C. )  
9 (pending before the Legislature as this bill).

10 (2) Each instance in which notice is not provided to a candidate  
11 within 30 days in violation of subsection b. of this section  
12 constitutes a single violation, and each 30-day period thereafter in  
13 which the notice is not provided to the candidate constitutes a  
14 separate violation.

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

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

25 g. This act is intended to affirm certain rights of candidates for  
26 employment under the circumstances specified in this act, and shall  
27 not be construed to reduce, limit, or curtail any rights of any  
28 candidate provided by law, or to limit the authority of the State or  
29 its agencies to investigate and enforce rights relating to bias and  
30 discrimination in employment, or to promulgate rules and  
31 regulations relating to bias and discrimination in employment.

32

33 2. This act shall take effect immediately.

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#### STATEMENT

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

41 Under the bill, "automated employment decision tool" means any  
42 system the function of which is governed by statistical theory, or  
43 systems the parameters of which are defined by systems, including  
44 inferential methodologies, linear regression, neural networks,  
45 decision trees, random forests, and other learning algorithms, which  
46 automatically filters candidates or prospective candidates for hire or  
47 for any term, condition or privilege of employment in a way that  
48 establishes a preferred candidate or candidates.

1 The bill prohibits the sale of automated employment decision  
2 tools in the State unless:

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

5 (2) The sale of the tool includes, at no additional cost, an annual  
6 bias audit service that provides the results of the audit to the  
7 purchaser; and

8 (3) The tool is sold or offered for sale with a notice stating that  
9 the tool is subject to the provisions of the bill.

10 In addition, the bill provides that any person who uses an  
11 automated employment decision tool to screen a candidate for an  
12 employment decision is required to notify each candidate of the  
13 following within 30 days of the use of the tool:

14 (1) That an automated employment decision tool, which is  
15 subject to an audit for bias, was used in connection with the  
16 candidate's application for employment; and

17 (2) The tool assessed the job qualifications or characteristics of  
18 the candidate.

19 The bill provides for civil penalties to be collected for violations  
20 of its provisions.

21 The bill is intended to affirm certain rights of candidates for  
22 employment under the circumstances specified in the bill, and will  
23 not be construed to reduce, limit, or curtail any rights of any  
24 candidate provided by law, or to limit the authority of the State or  
25 its agencies to investigate and enforce rights relating to bias and  
26 discrimination in employment, or to promulgate rules and  
27 regulations relating to bias and discrimination in employment.