

ASSEMBLY, No. 3854

STATE OF NEW JERSEY

221st LEGISLATURE

INTRODUCED FEBRUARY 22, 2024

Sponsored by:

Assemblyman HERB CONAWAY, JR.

District 7 (Burlington)

Assemblyman MICHAEL VENEZIA

District 34 (Essex)

Co-Sponsored by:

Assemblywoman Quijano

SYNOPSIS

Regulates use of automated employment decision tools in hiring decisions.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 5/16/2024)

1 AN ACT concerning the use of automated employment decision
2 tools in hiring decisions and supplementing Title 34 of the
3 Revised Statutes.

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

7
8 1. a. As used in this act:

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 filter 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 the Department of
23 Labor and Workforce Development.

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

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

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

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

37 (3) the automated employment decision tool is sold or offered for
38 sale with a notice stating that the automated employment decision
39 tool is subject to the provisions of this act.

40 c. Any employer in the State who uses an automated decision
41 tool to screen a candidate for an employment decision shall provide
42 on its Internet website a summary of the most recent bias audit.

43 d. Any person who uses an automated employment decision
44 tool to screen a candidate for an employment decision shall notify
45 each candidate of the following within 30 days of use:

46 (1) that an automated employment decision tool, which is
47 subject to an audit for bias pursuant to this act, was used in
48 connection with the candidate’s candidacy;

1 (2) the job qualifications or characteristics that an automated
2 employment decision tool was used to assess in the candidate; and

3 (3) upon request of the candidate, the source of the data
4 collected and the data retention policy of the employer.

5 e. (1) Any person that violates any provision of this act shall be
6 liable for a civil penalty of not more than \$500 for that person's
7 first violation and each additional violation occurring on the same
8 day as the first violation, and not less than \$500 nor more than
9 \$1,500 for each subsequent violation. Violations shall accrue on a
10 daily basis for each automated employment decision tool that is
11 sold or offered for sale in violation of this act.

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

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

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

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

33
34 2. This act shall take effect on the first day of the third month
35 next following enactment, except that the commissioner may take
36 any anticipatory administrative action in advance as shall be
37 necessary for implementation.

38
39

40 STATEMENT

41

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

45 Under the bill, "automated employment decision tool" means any
46 system the function of which is governed by statistical theory, or
47 systems the parameters of which are defined by systems, including
48 inferential methodologies, linear regression, neural networks,

1 decision trees, random forests, and other learning algorithms, which
2 automatically filters candidates or prospective candidates for hire or
3 for any term, condition, or privilege of employment in a way that
4 establishes a preferred candidate or candidates.

5 The bill prohibits the sale of automated employment decision
6 tools in the State unless:

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

9 (2) the sale of the tool includes, at no additional cost, an annual
10 bias audit service that provides the results of the audit to the
11 purchaser; and

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

14 The bill provides that any employer in the State who uses an
15 automated decision tool to screen a candidate for an employment
16 decision shall provide on its website a summary of the most recent
17 bias audit.

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

22 (1) that an automated employment decision tool, which is
23 subject to an audit for bias, was used in connection with the
24 candidate's application for employment;

25 (2) the tool assessed the job qualifications or characteristics of
26 the candidate; and

27 (3) upon request of the candidate, the source of the data
28 collected and the data retention policy of the employer.

29 The bill provides for civil penalties to be collected for violations
30 of its provisions.

31 The bill is intended to affirm certain rights of candidates for
32 employment under the circumstances specified in the bill, and will
33 not be construed to reduce, limit, or curtail any rights of any
34 candidate provided by law, or to limit the authority of the State or
35 its agencies to investigate and enforce rights relating to bias and
36 discrimination in employment, or to promulgate rules and
37 regulations relating to bias and discrimination in employment.