SENATE, No. 1588

STATE OF NEW JERSEY

221st LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2024 SESSION

Sponsored by:
Senator ANDREW ZWICKER
District 16 (Hunterdon, Mercer, Middlesex and Somerset)

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

CURRENT VERSION OF TEXT
Introduced Pending Technical Review by Legislative Counsel.

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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36   STATEMENT
37
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.