



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

HB5116

Introduced 2/8/2024, by Rep. Daniel Didech

SYNOPSIS AS INTRODUCED:

New Act

Creates the Automated Decision Tools Act. Provides that, on or before January 1, 2026, and annually thereafter, a deployer of an automated decision tool shall perform an impact assessment for any automated decision tool the deployer uses or designs, codes, or produces that includes specified information. Provides that a deployer shall, at or before the time an automated decision tool is used to make a consequential decision, notify any natural person who is the subject of the consequential decision that an automated decision tool is being used to make, or be a controlling factor in making, the consequential decision and provide specified information. Provides that a deployer shall establish, document, implement, and maintain a governance program that contains reasonable administrative and technical safeguards to map, measure, manage, and govern the reasonably foreseeable risks of algorithmic discrimination associated with the use or intended use of an automated decision tool. Provides that, within 60 days after completing an impact assessment required by the Act, a deployer shall provide the impact assessment to the Department of Human Rights. Provides that the Attorney General may bring a civil action against a deployer for a violation of the Act.

LRB103 36408 SPS 66510 b

1 AN ACT concerning business.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the
5 Automated Decision Tools Act.

6 Section 5. Definitions. As used in this Act:

7 "Algorithmic discrimination" means the condition in which
8 an automated decision tool contributes to unjustified
9 differential treatment or impacts disfavoring people based on
10 their actual or perceived race, color, ethnicity, sex,
11 religion, age, national origin, limited English proficiency,
12 disability, veteran status, genetic information, reproductive
13 health, or any other classification protected by State law.

14 "Artificial intelligence" means a machine-based system or
15 technology operating on datasets that can, for a given set of
16 human-defined objectives, make predictions, recommendations,
17 or decisions influencing a real or virtual environment.

18 "Automated decision tool" means a system or service that
19 uses artificial intelligence and has been specifically
20 developed and marketed to, or specifically modified to, make,
21 or be a controlling factor in making, consequential decisions.

22 "Consequential decision" means a decision or judgment that
23 has a legal, material, or similarly significant effect on an

1 individual's life relating to the impact of, access to, or the
2 cost, terms, or availability of, any of the following:

3 (1) employment, worker management, or self-employment,
4 including, but not limited to, all of the following:

5 (A) pay or promotion;

6 (B) hiring or termination; and

7 (C) automated task allocation;

8 (2) education and vocational training, including, but
9 not limited to, all of the following:

10 (A) assessment, including, but not limited to,
11 detecting student cheating or plagiarism;

12 (B) accreditation;

13 (C) certification;

14 (D) admissions; and

15 (E) financial aid or scholarships;

16 (3) housing or lodging, including rental or short-term
17 housing or lodging;

18 (4) essential utilities, including electricity, heat,
19 water, Internet or telecommunications access, or
20 transportation;

21 (5) family planning, including adoption services or
22 reproductive services, as well as assessments related to
23 child protective services;

24 (6) healthcare or health insurance, including mental
25 health care, dental, or vision;

26 (7) financial services, including a financial service

1 provided by a mortgage company, mortgage broker, or
2 creditor;

3 (8) the criminal justice system, including, but not
4 limited to, all of the following:

5 (A) risk assessments for pretrial hearings;

6 (B) sentencing; and

7 (C) parole;

8 (9) legal services, including private arbitration or
9 mediation;

10 (10) voting; and

11 (11) access to benefits or services or assignment of
12 penalties.

13 "Deployer" means a person, partnership, State or local
14 government agency, or corporation that uses an automated
15 decision tool to make a consequential decision.

16 "Impact assessment" means a documented risk-based
17 evaluation of an automated decision tool that meets the
18 criteria of Section 10.

19 "Sex" includes pregnancy, childbirth, and related
20 conditions, gender identity, intersex status, and sexual
21 orientation.

22 "Significant update" means a new version, new release, or
23 other update to an automated decision tool that includes
24 changes to its use case, key functionality, or expected
25 outcomes.

1 Section 10. Impact assessment.

2 (a) On or before January 1, 2026, and annually thereafter,
3 a deployer of an automated decision tool shall perform an
4 impact assessment for any automated decision tool the deployer
5 uses that includes all of the following:

6 (1) a statement of the purpose of the automated
7 decision tool and its intended benefits, uses, and
8 deployment contexts;

9 (2) a description of the automated decision tool's
10 outputs and how they are used to make, or be a controlling
11 factor in making, a consequential decision;

12 (3) a summary of the type of data collected from
13 natural persons and processed by the automated decision
14 tool when it is used to make, or be a controlling factor in
15 making, a consequential decision;

16 (4) an analysis of potential adverse impacts on the
17 basis of sex, race, color, ethnicity, religion, age,
18 national origin, limited English proficiency, disability,
19 veteran status, or genetic information from the deployer's
20 use of the automated decision tool;

21 (5) a description of the safeguards implemented, or
22 that will be implemented, by the deployer to address any
23 reasonably foreseeable risks of algorithmic discrimination
24 arising from the use of the automated decision tool known
25 to the deployer at the time of the impact assessment;

26 (6) a description of how the automated decision tool

1 will be used by a natural person, or monitored when it is
2 used, to make, or be a controlling factor in making, a
3 consequential decision; and

4 (7) a description of how the automated decision tool
5 has been or will be evaluated for validity or relevance.

6 (b) A deployer shall, in addition to the impact assessment
7 required by subsection (a), perform, as soon as feasible, an
8 impact assessment with respect to any significant update.

9 (c) This Section does not apply to a deployer with fewer
10 than 25 employees unless, as of the end of the prior calendar
11 year, the deployer deployed an automated decision tool that
12 impacted more than 999 people per year.

13 Section 15. Notification and accommodations.

14 (a) A deployer shall, at or before the time an automated
15 decision tool is used to make a consequential decision, notify
16 any natural person who is the subject of the consequential
17 decision that an automated decision tool is being used to
18 make, or be a controlling factor in making, the consequential
19 decision. A deployer shall provide to a natural person
20 notified under this subsection all of the following:

21 (1) a statement of the purpose of the automated
22 decision tool;

23 (2) the contact information for the deployer; and

24 (3) a plain language description of the automated
25 decision tool that includes a description of any human

1 components and how any automated component is used to
2 inform a consequential decision.

3 (b) If a consequential decision is made solely based on
4 the output of an automated decision tool, a deployer shall, if
5 technically feasible, accommodate a natural person's request
6 to not be subject to the automated decision tool and to be
7 subject to an alternative selection process or accommodation.
8 After a request is made under this subsection, a deployer may
9 reasonably request, collect, and process information from a
10 natural person for the purposes of identifying the person and
11 the associated consequential decision. If the person does not
12 provide that information, the deployer shall not be obligated
13 to provide an alternative selection process or accommodation.

14 Section 20. Governance program.

15 (a) A deployer shall establish, document, implement, and
16 maintain a governance program that contains reasonable
17 administrative and technical safeguards to map, measure,
18 manage, and govern the reasonably foreseeable risks of
19 algorithmic discrimination associated with the use or intended
20 use of an automated decision tool. The safeguards required by
21 this subsection shall be appropriate to all of the following:

- 22 (1) the use or intended use of the automated decision
23 tool;
- 24 (2) the deployer's role as a deployer;
- 25 (3) the size, complexity, and resources of the

1 deployer;

2 (4) the nature, context, and scope of the activities
3 of the deployer in connection with the automated decision
4 tool; and

5 (5) the technical feasibility and cost of available
6 tools, assessments, and other means used by a deployer to
7 map, measure, manage, and govern the risks associated with
8 an automated decision tool.

9 (b) The governance program required by this Section shall
10 be designed to do all of the following:

11 (1) identify and implement safeguards to address
12 reasonably foreseeable risks of algorithmic discrimination
13 resulting from the use or intended use of an automated
14 decision tool;

15 (2) if established by a deployer, provide for the
16 performance of impact assessments as required by Section
17 10;

18 (3) conduct an annual and comprehensive review of
19 policies, practices, and procedures to ensure compliance
20 with this Act;

21 (4) maintain for 2 years after completion the results
22 of an impact assessment; and

23 (5) evaluate and make reasonable adjustments to
24 administrative and technical safeguards in light of
25 material changes in technology, the risks associated with
26 the automated decision tool, the state of technical

1 standards, and changes in business arrangements or
2 operations of the deployer.

3 (c) A deployer shall designate at least one employee to be
4 responsible for overseeing and maintaining the governance
5 program and compliance with this Act. An employee designated
6 under this subsection shall have the authority to assert to
7 the employee's employer a good faith belief that the design,
8 production, or use of an automated decision tool fails to
9 comply with the requirements of this Act. An employer of an
10 employee designated under this subsection shall conduct a
11 prompt and complete assessment of any compliance issue raised
12 by that employee.

13 (d) This Section does not apply to a deployer with fewer
14 than 25 employees unless, as of the end of the prior calendar
15 year, the deployer deployed an automated decision tool that
16 impacted more than 999 people per year.

17 Section 25. Public statement of policy. A deployer shall
18 make publicly available, in a readily accessible manner, a
19 clear policy that provides a summary of both of the following:

20 (1) the types of automated decision tools currently in
21 use or made available to others by the deployer; and

22 (2) how the deployer manages the reasonably
23 foreseeable risks of algorithmic discrimination that may
24 arise from the use of the automated decision tools it
25 currently uses or makes available to others.

1 Section 30. Algorithmic discrimination.

2 (a) A deployer shall not use an automated decision tool
3 that results in algorithmic discrimination.

4 (b) On and after January 1, 2027, a person may bring a
5 civil action against a deployer for violation of this Section.
6 In an action brought under this subsection, the plaintiff
7 shall have the burden of proof to demonstrate that the
8 deployer's use of the automated decision tool resulted in
9 algorithmic discrimination that caused actual harm to the
10 person bringing the civil action.

11 (c) In addition to any other remedy at law, a deployer that
12 violates this Section shall be liable to a prevailing
13 plaintiff for any of the following:

- 14 (1) compensatory damages;
15 (2) declaratory relief; and
16 (3) reasonable attorney's fees and costs.

17 Section 35. Impact assessment.

18 (a) Within 60 days after completing an impact assessment
19 required by this Act, a deployer shall provide the impact
20 assessment to the Department of Human Rights.

21 (b) A deployer who knowingly violates this Section shall
22 be liable for an administrative fine of not more than \$10,000
23 per violation in an administrative enforcement action brought
24 by the Department of Human Rights. Each day on which an

1 automated decision tool is used for which an impact assessment
2 has not been submitted as required under this Section shall
3 give rise to a distinct violation of this Section.

4 (c) The Department of Human Rights may share impact
5 assessments with other State entities as appropriate.

6 Section 40. Civil actions.

7 (a) The Attorney General may bring a civil action in the
8 name of the people of the State of Illinois against a deployer
9 for a violation of this Act.

10 (b) A court may award in an action brought under this
11 Section all of the following:

- 12 (1) injunctive relief;
13 (2) declaratory relief; and
14 (3) reasonable attorney's fees and litigation costs.

15 (b) The Attorney General, before commencing an action
16 under this Section for injunctive relief, shall provide 45
17 days' written notice to a deployer of the alleged violations
18 of this Act. The deployer may cure, within 45 days after
19 receiving the written notice described in this subsection, the
20 noticed violation and provide the person who gave the notice
21 an express written statement, made under penalty of perjury,
22 that the violation has been cured and that no further
23 violations shall occur. If the deployer cures the noticed
24 violation and provides the express written statement, a claim
25 for injunctive relief shall not be maintained for the noticed

1 violation.