

ASSEMBLY COMMITTEE SUBSTITUTE FOR  
**ASSEMBLY, Nos. 3854 and 4030**

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**STATE OF NEW JERSEY**  
**221st LEGISLATURE**

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ADOPTED MAY 16, 2024

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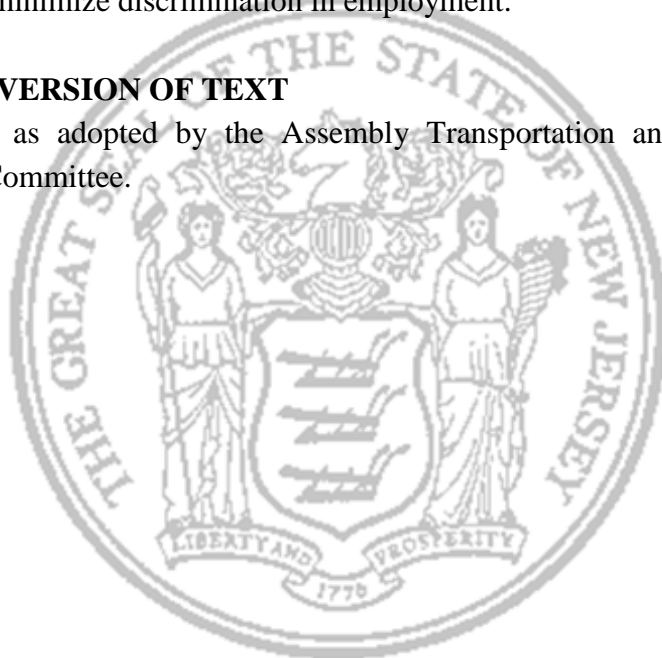
**Assemblywoman Quijano and Assemblyman Venezia**

**SYNOPSIS**

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

**CURRENT VERSION OF TEXT**

Substitute as adopted by the Assembly Transportation and Independent Authorities Committee.



**(Sponsorship Updated As Of: 6/3/2024)**

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

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

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

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

15 “Bias audit” means an impartial evaluation conducted by an  
16 independent auditor, including but not limited to:

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

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

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

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

30 “Commissioner” means the Commissioner of Labor and  
31 Workforce Development.

32 “Covered individual” means a candidate for employment or  
33 current employee being assessed by an automated employment  
34 decision tool to make an employment decision.

35 “Department” means Department of Labor and Workforce  
36 Development.

37 “Employer” means any individual, partnership, association,  
38 corporation, and the State and any county, municipality, or school  
39 district in the State, or any agency, authority, department, bureau, or  
40 instrumentality thereof, employing any person.

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

44 “Impact ratio” means:

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

1 but not limited to the decision to hire or not and the decision to  
2 promote or not; or

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

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

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

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

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

24 “Scoring rate” means the rate at which individuals in a category  
25 receive a score above the sample’s median score, where the score has  
26 been calculated by an automated employment decision tool.

27 “Screen” means to make a favorable or unfavorable determination  
28 about whether a candidate being considered for employment or  
29 employee being considered for promotion, termination, or  
30 performance review should be selected or advanced in the hiring or  
31 promotion process.

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

38  
39 2. a. It shall be unlawful to sell, develop, deploy, use, or offer  
40 for sale in the State an automated employment decision tool unless:

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

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

- 1 (3) the automated employment decision tool is sold, developed,  
2 deployed, used, or offered for sale with a notice stating that the  
3 automated employment decision tool is subject to the provisions of  
4 P.L. , c. (C. ) (pending before the Legislature as this bill);  
5 and
- 6 (4) the developer of the automated employment decision tool has  
7 implemented the recommendations of the most recent bias audit  
8 conducted and issued a press release announcing how the  
9 recommendations have been implemented.
- 10 b. Any employer in the State who uses an automated  
11 employment decision tool to screen a covered individual for an  
12 employment decision shall provide on its Internet website a summary  
13 of the most recent bias audit.
- 14 c. Any employer who uses an automated employment decision  
15 tool to screen a covered individual for an employment decision shall  
16 notify each covered individual at least 10 days before use that an  
17 automated employment decision tool, which is subject to a bias audit  
18 pursuant to P.L. , c. (C. ) (pending before the Legislature as  
19 this bill), will be used in connection with the covered individual's  
20 application.
- 21 d. To comply with subsection c. of this section, an employer or  
22 employment agency in the State shall provide notice to a candidate  
23 for employment by providing notice in a clear and conspicuous  
24 manner:
- 25 (1) on the employment section of its website at least 10 business  
26 days before use of an automated employment decision tool;
- 27 (2) in a job posting at least 10 business days before use of an  
28 automated employment decision tool; or
- 29 (3) to candidates for employment via U.S. mail or electronic mail  
30 at least 10 business days before use of an automated employment  
31 decision tool.
- 32 e. To comply with subsection c. of this section, an employer or  
33 employment agency shall provide notice to an employee being  
34 assessed by an automated employment decision tool who resides in  
35 the State by providing notice in a clear and conspicuous manner:
- 36 (1) in a written policy or procedure that is provided to employees  
37 at least 10 business days before use of an automated employment  
38 decision tool;
- 39 (2) in a job posting at least 10 business days before use of an  
40 automated employment decision tool; or
- 41 (3) via U.S. mail or electronic mail at least 10 business days  
42 before use of an automated employment decision tool.
- 43 f. Any employer who uses an automated employment decision  
44 tool to screen a covered individual for an employment decision shall  
45 notify each covered individual of the following within 30 days of use:
- 46 (1) that an automated employment decision tool, which is subject  
47 to a bias audit pursuant to P.L. , c. (C. ) (pending before the

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

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

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

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

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

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

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

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

37

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

- 1 (2) Any employer or employment agency that violates subsection  
2 b., c., d., e., f., or g. of section 2 of P.L. , c. (C. ) (pending  
3 before the Legislature as this bill) shall be liable for a civil penalty  
4 of not more than \$500 for a first violation and for each subsequent  
5 violation.
- 6 (3) Each instance in which notice is not provided to a covered  
7 individual at least 10 days before use of an automated employment  
8 decision tool in violation of subsection c. of section 2 of  
9 P.L. , c. (C. ) (pending before the Legislature as this bill)  
10 constitutes a single violation.
- 11 (4) Each instance in which notice is not provided to a covered  
12 individual within 30 days in violation of subsection f. of section 2 of  
13 P.L. , c. (C. ) (pending before the Legislature as this bill)  
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 b. 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 c. The department, in consultation with the Division on Civil  
23 Rights in the Department of Law and Public Safety, pursuant to the  
24 “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et  
25 seq.), shall promulgate rules and regulations to effectuate the  
26 purposes of P.L. , c. (C. ) (pending before the Legislature as  
27 this bill).
- 28 d. The provisions of P.L. , c. (C. ) (pending before the  
29 Legislature as this bill) are intended to affirm certain rights of  
30 covered individuals under the circumstances specified in  
31 P.L. , c. (C. ) (pending before the Legislature as this bill),  
32 and shall not be construed to reduce, limit, or curtail any rights of  
33 any covered individual provided by law, or to limit the authority of  
34 the State or its agencies to investigate and enforce rights relating to  
35 bias and discrimination in employment, or to promulgate rules and  
36 regulations relating to bias and discrimination in employment.  
37
- 38 4. This act shall take effect on the first day of the third month  
39 next following enactment, except that the commissioner may take  
40 any anticipatory administrative action in advance as shall be  
41 necessary for implementation.