118TH CONGRESS
2D SESSION

S. 5152

To establish protections for individual rights with respect to computational algorithms, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 24, 2024

Mr. MARKEY (for himself and Ms. HIRONO) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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A BILL

To establish protections for individual rights with respect to computational algorithms, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*

2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the

5 "Artificial Intelligence Civil Rights Act of 2024".

6 (b) TABLE OF CONTENTS.—The table of contents for

7 this Act is as follows:

SEC. 2. DEFINITIONS.

In this Act:

(1) COLLECT; COLLECTION.—The terms "collect" and "collection", with respect to personal data, mean buying, renting, gathering, obtaining, receiving, accessing, or otherwise acquiring such data by any means.

(2) COMMISSION.—The term "Commission" means the Federal Trade Commission.

(3) CONSEQUENTIAL ACTION.—The term "consequential action" means an act that is likely to have a material effect on, or to materially contribute to, access to, security and authentication relating to,

1 eligibility for, cost of, terms of, or conditions related

2 to any of the following:

3 (A) Employment, including hiring, pay,

4 independent contracting, worker management,

5 promotion, and termination.

6 (B) Education and vocational training, in-

7 cluding assessment, proctoring, promotion of

8 academic integrity, accreditation, certification,

9 admissions, and provision of financial aid and

10 scholarships.

11 (C) Housing and lodging, including rental

12 and short-term housing and lodging, home ap-

13 praisals, rental subsidies, and publicly sup-

14 ported housing.

15 (D) Essential utilities, including electricity,

16 heat, water, municipal trash or sewage services,

17 internet and telecommunications service, and

18 public transportation.

19 (E) Health care, including mental health

20 care, and dental, vision, and adoption services.

21 (F) Credit, banking, and other financial

22 services.

23 (G) Insurance.

24 (H) Actions of the criminal justice system,

25 law enforcement or intelligence operations, im-

1 migration enforcement, border control (vetting,
2 screening, and inspection), child protective serv-
3 ices, child welfare, and family services, includ-
4 ing risk and threat assessments, situational
5 awareness and threat detection, investigations,
6 watchlisting, bail determinations, sentencing,
7 administration of parole, surveillance, use of
8 unmanned vehicles and machines, and pre-
9 dictive policing.

10 (I) Legal services, including court-ap-
11 pointed counsel services and alternative dispute
12 resolution services.

13 (J) Elections, including voting, redis-
14 tricting, voter eligibility and registration, sup-
15 port or advocacy for a candidate for Federal,
16 State, or local office, distribution of voting in-
17 formation, election security, and election admin-
18 istration.

19 (K) Government benefits and services, as
20 well as identity verification, fraud prevention,
21 and assignment of penalties.

22 (L) A public accommodation.

23 (M) Any other service, program, product,
24 or opportunity which has a comparable legal,
25 material, or similarly significant effect on an in-

5

dividual's life as determined by the Federal
Trade Commission through rules promulgated
pursuant to section 553 of title 5, United
States Code.

(4) COVERED ALGORITHM.—

(A) IN GENERAL.—The term "covered al-
gorithm" means a computational process de-
rived from machine learning, natural language
processing, artificial intelligence techniques, or
other computational processing techniques of
similar or greater complexity, that, with respect
to a consequential action—

(i) creates or facilitates the creation of
a product or information;

(ii) promotes, recommends, ranks, or
otherwise affects the display or delivery of
information that is material to the con-
sequential action;

(iii) makes a decision; or

(iv) facilitates human decision mak-
ing.

(B) MODIFIED DEFINITION BY RULE-
MAKING.—The Commission may promulgate
regulations under section 553 of title 5, United
States Code, to modify the definition of the

1 term "covered algorithm" as the Commission

2 considers appropriate.

3 (5) COVERED LANGUAGE.—The term "covered

4 language" means the 10 languages with the most

5 speakers in the United States, according to the most

6 recent data collected by the United States Census

7 Bureau.

8 (6) DE-IDENTIFIED DATA.—The term "de-iden-

9 tified data" means information—

10 (A) that does not identify and is not linked

11 or reasonably linkable to an individual or a de-

12 vice, regardless of whether the information is

13 aggregated; and

14 (B) with respect to which any developer or

15 deployer using such information—

16 (i) takes reasonable technical meas-

17 ures to ensure that the information cannot,

18 at any point, be used to re-identify any in-

19 dividual or device that identifies or is

20 linked or reasonably linkable to an indi-

21 vidual;

22 (ii) publicly commits in a clear and

23 conspicuous manner—

24 (I) to process and transfer the

25 information solely in a de-identified

1 form without any reasonable means

2 for re-identification; and

3 (II) to not attempt to re-identify

4 the information with any individual or

5 device that identifies or is linked or

6 reasonably linkable to an individual;

7 and

8 (iii) contractually obligates any person

9 that receives the information from the de-

10 veloper or deployer—

11 (I) to comply with all of the pro-

12 visions of this paragraph with respect

13 to such information; and

14 (II) to require that such contrac-

15 tual obligations be included in all sub-

16 sequent instances for which the infor-

17 mation may be received.

18 (7) DEPLOYER.—

19 (A) IN GENERAL.—The term "deployer"

20 means any person, other than an individual act-

21 ing in a non-commercial context, that uses a

22 covered algorithm in or affecting interstate

23 commerce.

1 (B) RULE OF CONSTRUCTION.—The terms

2 "deployer" and "developer" shall not be inter-

3 preted to be mutually exclusive.

4 (8) DEVELOPER.—

5 (A) IN GENERAL.—The term "developer"

6 means any person, other than an individual act-

7 ing in a non-commercial context, that designs,

8 codes, customizes, produces, or substantially

9 modifies an algorithm that is intended or rea-

10 sonably likely to be used as a covered algorithm

11 for such person's own use, or use by a third

12 party, in or affecting interstate commerce.

13 (B) ASSUMPTION OF DEVELOPER RESPON-

14 SIBILITIES.—In the event that a deployer uses

15 an algorithm as a covered algorithm, and no

16 person is considered the developer of the algo-

17 rithm for purposes of subparagraph (A), the

18 deployer shall be considered the developer of the

19 covered algorithm for the purposes of this Act.

20 (C) RULE OF CONSTRUCTION.—The terms

21 "developer" and "deployer" shall not be inter-

22 preted to be mutually exclusive.

23 (9) DISPARATE IMPACT.—

24 (A) IN GENERAL.—The term "disparate

25 impact" means an unjustified differential effect

1   on an individual or group of individuals on the

2   basis of an actual or perceived protected char-

3   acteristic.

4   (B) UNJUSTIFIED DIFFERENTIAL EF-

5   FECT.—For purposes of subparagraph (A), with

6   respect to the action, policy, or practice of a

7   person, a differential effect is unjustified if—

8   (i) the person fails to demonstrate

9   that such action, policy, or practice caus-

10   ing the differential effect is necessary to

11   achieve a substantial, legitimate, and non-

12   discriminatory interest; or

13   (ii) in the event the person dem-

14   onstrates such interest, an alternative ac-

15   tion, policy, or practice could serve such in-

16   terest with less differential effect.

17   (C) APPLICATION TO COVERED ALGO-

18   RITHMS.—With respect to demonstrating that a

19   covered algorithm causes or contributes to a

20   differential effect, the covered algorithm is pre-

21   sumed to be not separable for analysis and may

22   be analyzed holistically as a single action, pol-

23   icy, or practice, unless the developer or deployer

24   proves that the covered algorithm is separable

25   by a preponderance of the evidence.

1 　　　　(10) HARM.—The term "harm", with respect to

2 　a consequential action, means a non-de minimis ad-

3 　verse effect on an individual or group of individ-

4 　uals—

5 　　　　　　(A) on the basis of a protected char-

6 　　　　acteristic;

7 　　　　　　(B) that involves the use of force, coercion,

8 　　　　harassment, intimidation, or detention; or

9 　　　　　　(C) that involves the infringement of a

10 　　　　right protected under the Constitution of the

11 　　　　United States.

12 　　　　(11) INDEPENDENT AUDITOR.—

13 　　　　　　(A) IN GENERAL.—The term "independent

14 　　　　auditor" means an individual that conducts a

15 　　　　pre-deployment evaluation or impact assessment

16 　　　　of a covered algorithm in a manner that exer-

17 　　　　cises objective and impartial judgment on all

18 　　　　issues within the scope of such evaluation or as-

19 　　　　sessment.

20 　　　　　　(B) EXCLUSION.—An individual is not an

21 　　　　independent auditor of a covered algorithm if

22 　　　　such individual—

23 　　　　　　　　(i) is or was involved in using in a

24 　　　　　　commercial context, developing, offering, li-

1 censing, or deploying the covered algo-

2 rithm;

3   (ii) at any point during the pre-de-

4 ployment evaluation or impact assessment,

5 has an employment relationship (including

6 a contractor relationship) with a developer

7 or deployer that uses, offers, or licenses

8 the covered algorithm; or

9   (iii) at any point during the pre-de-

10 ployment evaluation or impact assessment,

11 has a direct financial interest or a material

12 indirect financial interest in a developer or

13 deployer that uses, offers, or licenses a cov-

14 ered algorithm, not including routine pay-

15 ment for the auditing services described in

16 subparagraph (A).

17 (12) INDIVIDUAL.—The term ''individual''

18 means a natural person in the United States.

19 (13) PERSONAL DATA.—

20 (A) IN GENERAL.—The term ''personal

21 data''—

22   (i) means information that identifies

23 or is linked or reasonably linkable, alone or

24 in combination with other information, to

25 an individual or an individual's device; and

1   (ii) shall include derived data and

2   unique persistent identifiers.

3   (B) EXCLUSION.—The term "personal

4   data" does not include de-identified data.

5   (14) PROCESS.—The term "process", with re-

6 spect to personal data, means to conduct or direct

7 any operation or set of operations performed on such

8 data, including analyzing, organizing, structuring,

9 retaining, storing, using, or otherwise handling such

10 data.

11   (15) PROTECTED CHARACTERISTIC.—The term

12 "protected characteristic" means any of the fol-

13 lowing actual or perceived traits of an individual or

14 group of individuals:

15   (A) Race.

16   (B) Color.

17   (C) Ethnicity.

18   (D) National origin or nationality.

19   (E) Religion.

20   (F) Sex (including a sex stereotype, preg-

21   nancy, childbirth, or a related medical condi-

22   tion, sexual orientation or gender identity, and

23   sex characteristics, including intersex traits).

24   (G) Disability.

25   (H) Limited English proficiency.

1   (I) Biometric information.

2   (J) Familial status.

3   (K) Source of income.

4   (L) Income level (not including the ability

5   to pay for a specific good or service being of-

6   fered).

7   (M) Age.

8   (N) Veteran status.

9   (O) Genetic information or medical condi-

10   tions.

11   (P) Any other classification protected by

12   Federal law.

13   (16) PUBLIC ACCOMMODATION.—

14   (A) IN GENERAL.—The term "public ac-

15   commodation" means—

16   (i) a business that offers goods or

17   services to the general public, regardless of

18   whether the business is operated for profit

19   or operates from a physical facility;

20   (ii) a park, road, or pedestrian path-

21   way open to the general public;

22   (iii) a means of public transportation;

23   or

24   (iv) a publicly owned or operated facil-

25   ity open to the general public.

1   (B) EXCLUSIONS.—The term "public ac-

2   commodation" does not include a private club

3   or establishment described in section 101(b)(2).

4   (17) STATE.—The term "State" means each of

5   the 50 States, the District of Columbia, Puerto Rico,

6   the United States Virgin Islands, Guam, American

7   Samoa, and the Commonwealth of the Northern

8   Mariana Islands.

9   (18) STATE DATA PROTECTION AUTHORITY.—

10   The term "State data protection authority" means

11   an independent public authority of a State that su-

12   pervises, investigates, and regulates data protection

13   and security law in the State, including handling

14   complaints lodged against persons for violations of

15   State and relevant Federal laws.

16   (19) TRANSFER.—The term "transfer", with

17   respect to personal data, means to disclose, release,

18   disseminate, make available, license, rent, or share

19   such data orally, in writing, electronically, or by any

20   other means.

TITLE I—CIVIL RIGHTS

SEC. 101. DISCRIMINATION.

23   (a) IN GENERAL.—A developer or deployer shall not

24   offer, license, promote, sell, or use a covered algorithm in

25   a manner that—

1   (1) causes or contributes to a disparate impact

2   in;

3   (2) otherwise discriminates in; or

4   (3) otherwise makes unavailable,

5 the equal enjoyment of goods, services, or other activities

6 or opportunities, related to a consequential action, on the

7 basis of a protected characteristic.

8   (b) EXCEPTIONS.—This section shall not apply to—

9   (1) the offer, licensing, or use of a covered algo-

10   rithm for the sole purpose of—

11   (A) a developer's or deployer's self-testing

12   (or auditing by an independent auditor at a de-

13   veloper's or deployer's request) to identify, pre-

14   vent, or mitigate discrimination, or otherwise to

15   ensure compliance with obligations, under Fed-

16   eral law; or

17   (B) expanding an applicant, participant, or

18   customer pool to raise the likelihood of increas-

19   ing diversity or redressing historic discrimina-

20   tion; or

21   (2) any private club or other establishment not

22   in fact open to the public, as described in section

23   201(e) of the Civil Rights Act of 1964 (42 U.S.C.

24   2000a(e)).

SEC. 102. PRE-DEPLOYMENT EVALUATIONS AND POST-DE-PLOYMENT IMPACT ASSESSMENTS.

(a) PRE-DEPLOYMENT EVALUATIONS.—Prior to deploying, licensing, or offering a covered algorithm (including deploying a material change to a previously-deployed covered algorithm or a material change made prior to deployment) for a consequential action, a developer or deployer shall conduct a pre-deployment evaluation in accordance with the following:

(1) PRELIMINARY EVALUATION.—

(A) PLAUSIBILITY OF HARM.—

(i) DEVELOPERS.—The developer shall conduct a preliminary evaluation of the plausibility that any expected use of the covered algorithm may result in a harm.

(ii) DEPLOYERS.—The deployer shall conduct a preliminary evaluation of the plausibility that any intended use of the covered algorithm may result in a harm.

(B) RESULTS.—Based on the results of the preliminary evaluation, the developer or deployer shall—

(i) in the event that a harm is not plausible, record a finding of no plausible harm, including a description of the devel-

1 oper's expected use or the deployer's in-
2 tended use of the covered algorithm, how
3 the preliminary evaluation was conducted,
4 and an explanation for the finding, and
5 submit such record to the Commission; and

6   (ii) in the event that a harm is plau-
7 sible, conduct a full pre-deployment evalua-
8 tion as described in paragraph (2).

9 (C) PREVIOUSLY-DEPLOYED COVERED AL-
10 GORITHMS.—When conducting a preliminary
11 evaluation of a material change to, or new use
12 of, a previously-deployed covered algorithm, the
13 developer or deployer may limit the scope of the
14 evaluation to whether use of the covered algo-
15 rithm may result in a harm as a result of the
16 material change or new use.

17 (2) FULL PRE-DEPLOYMENT EVALUATION.—

18   (A) FOR DEVELOPERS.—

19   (i) INDEPENDENT AUDITOR EVALUA-
20 TION.—If a developer determines a harm is
21 plausible during the preliminary evaluation
22 described in paragraph (1), the developer
23 shall engage an independent auditor to
24 conduct a pre-deployment evaluation.

1   (ii) PRE-DEPLOYMENT EVALUATION

2   REQUIREMENTS.—The evaluation required

3   under clause (i) shall include a detailed re-

4   view and description, sufficient for an indi-

5   vidual having ordinary skill in the art to

6   understand the functioning, risks, uses,

7   benefits, limitations, and other pertinent

8   attributes of the covered algorithm, includ-

9   ing—

10   (I) the covered algorithm's design

11   and methodology, including the inputs

12   the covered algorithm is designed to

13   use to produce an output and the out-

14   puts the covered algorithm is designed

15   to produce;

16   (II) how the covered algorithm

17   was created, trained, and tested, in-

18   cluding—

19   (aa) any metric used to test

20   the performance of the covered

21   algorithm;

22   (bb) defined benchmarks

23   and goals that correspond to

24   such metrics, including whether

25   there was sufficient representa-

1   tion of demographic groups that
2   are reasonably likely to use or be
3   affected by the covered algorithm
4   in the data used to create or
5   train the algorithm, and whether
6   there was sufficient testing
7   across such demographic groups;

8   (cc) the outputs the covered
9   algorithm actually produces in
10   testing;

11   (dd) a description of any
12   consultation with relevant stake-
13   holders, including any commu-
14   nities that will be impacted by
15   the covered algorithm, regarding
16   the development of the covered
17   algorithm, or a disclosure that no
18   such consultation occurred;

19   (ee) a description of which
20   protected characteristics, if any,
21   were used for testing and evalua-
22   tion, and how and why such
23   characteristics were used, includ-
24   ing—

1   (AA) whether the test-
2   ing occurred in comparable
3   contextual conditions to the
4   conditions in which the cov-
5   ered algorithm is expected to
6   be used; and

7   (BB) if protected char-
8   acteristics were not available
9   to conduct such testing, a
10   description of alternative
11   methods the developer used
12   to conduct the required as-
13   sessment;

14   (ff) any other computational
15   algorithm incorporated into the
16   development of the covered algo-
17   rithm, regardless of whether such
18   precursor computational algo-
19   rithm involves a consequential ac-
20   tion; and

21   (gg) a description of the
22   data and information used to de-
23   velop, test, maintain, or update
24   the covered algorithm, includ-
25   ing—

1   (AA) each type of per-

2   sonal data used, each source

3   from which the personal

4   data was collected, and how

5   the each type of personal

6   data was inferred and proc-

7   essed;

8   (BB) the legal author-

9   ization for collecting and

10   processing the personal

11   data; and

12   (CC) an explanation of

13   how the data (including per-

14   sonal data) used is rep-

15   resentative, proportional,

16   and appropriate to the devel-

17   opment and intended uses of

18   the covered algorithm;

19   (III) the potential for the covered

20   algorithm to produce a harm or to

21   have a disparate impact in the equal

22   enjoyment of goods, services, or other

23   activities or opportunities, and a de-

24   scription of such potential harm or

25   disparate impact;

1   (IV) alternative practices and
2   recommendations to prevent or miti-
3   gate harm and recommendations for
4   how the developer could monitor for
5   harm after offering, licensing, or de-
6   ploying the covered algorithm; and

7   (V) any other information the
8   Commission deems pertinent to pre-
9   vent the covered algorithm from caus-
10   ing harm or having a disparate impact
11   in the equal enjoyment of goods, serv-
12   ices, or other activities or opportuni-
13   ties, as prescribed by rules promul-
14   gated by the Commission pursuant to
15   section 553 of title 5, United States
16   Code.

17   (iii) REPORT.—The independent audi-
18   tor shall submit to the developer a report
19   on the evaluation conducted under this
20   subparagraph, including the findings and
21   recommendations of such independent
22   auditor.

23   (B) FOR DEPLOYERS.—

24   (i) INDEPENDENT AUDITOR EVALUA-
25   TION.—If a deployer determines a harm is

1 plausible during the preliminary evaluation

2 described in paragraph (1), the deployer

3 shall engage an independent auditor to

4 conduct a pre-deployment evaluation.

5 (ii) PRE-DEPLOYMENT EVALUATION

6 REQUIREMENTS.—The evaluation required

7 under clause (i) shall include a detailed re-

8 view and description, sufficient for an indi-

9 vidual having ordinary skill in the art to

10 understand the functioning, risks, uses,

11 benefits, limitations, and other pertinent

12 attributes of the covered algorithm, includ-

13 ing—

14 (I) the manner in which the cov-

15 ered algorithm makes or contributes

16 to a consequential action and the pur-

17 pose for which the covered algorithm

18 will be deployed;

19 (II) the necessity and proportion-

20 ality of the covered algorithm in rela-

21 tion to its planned use, including the

22 intended benefits and limitations of

23 the covered algorithm and a descrip-

24 tion of the baseline process being en-

1 hanced or replaced by the covered al-

2 gorithm, if applicable;

3 (III) the inputs that the deployer

4 plans to use to produce an output, in-

5 cluding—

6 (aa) the type of personal

7 data and information used and

8 how the personal data and infor-

9 mation will be collected, inferred,

10 and processed;

11 (bb) the legal authorization

12 for collecting and processing the

13 personal data; and

14 (cc) an explanation of how

15 the data used is representative,

16 proportional, and appropriate to

17 the deployment of the covered al-

18 gorithm;

19 (IV) the outputs the covered al-

20 gorithm is expected to produce and

21 the outputs the covered algorithm ac-

22 tually produces in testing;

23 (V) a description of any addi-

24 tional testing or training completed by

25 the deployer for the context in which

1 the covered algorithm will be de-

2 ployed;

3   (VI) a description of any con-

4 sultation with relevant stakeholders,

5 including any communities that will

6 be impacted by the covered algorithm,

7 regarding the deployment of the cov-

8 ered algorithm;

9   (VII) the potential for the cov-

10 ered algorithm to produce a harm or

11 to have a disparate impact in the

12 equal enjoyment of goods, services, or

13 other activities or opportunities in the

14 context in which the covered algo-

15 rithm will be deployed and a descrip-

16 tion of such potential harm or dis-

17 parate impact;

18   (VIII) alternative practices and

19 recommendations to prevent or miti-

20 gate harm in the context in which the

21 covered algorithm will be deployed and

22 recommendations for how the deployer

23 could monitor for harm after offering,

24 licensing, or deploying the covered al-

25 gorithm; and

1   (IX) any other information the

2   Commission deems pertinent to pre-

3   vent the covered algorithm from caus-

4   ing harm or having a disparate impact

5   in the equal enjoyment of goods, serv-

6   ices, or other activities or opportuni-

7   ties as prescribed by rules promul-

8   gated by the Commission pursuant to

9   section 553 of title 5, United States

10   Code.

11   (iii) REPORT.—The independent audi-

12   tor shall submit to the deployer a report on

13   the evaluation conducted under this sub-

14   paragraph, including the findings and rec-

15   ommendations of such independent audi-

16   tor.

17   (b) DEPLOYER ANNUAL IMPACT ASSESSMENT.—

18 After the deployment of a covered algorithm, a deployer

19 shall, on an annual basis, conduct an impact assessment

20 in accordance with the following:

21   (1) PRELIMINARY IMPACT ASSESSMENT.—The

22   deployer shall conduct a preliminary impact assess-

23   ment of the covered algorithm to identify any harm

24   that resulted from the covered algorithm during the

25   reporting period and—

1   (A) if no resulting harm is identified by

2   such assessment, shall record a finding of no

3   harm, including a description of the developer's

4   expected use or the deployer's intended use of

5   the covered algorithm, how the preliminary

6   evaluation was conducted, and an explanation

7   for such finding, and submit such finding to the

8   Commission; and

9   (B) if a resulting harm is identified by

10   such assessment, shall conduct a full impact as-

11   sessment as described in paragraph (2).

12   (2) FULL IMPACT ASSESSMENT.—In the event

13 that the covered algorithm resulted in harm during

14 the reporting period, the deployer shall engage an

15 independent auditor to conduct a full impact assess-

16 ment with respect to the reporting period, includ-

17 ing—

18   (A) an assessment of the harm that re-

19   sulted or was reasonably likely to have been

20   produced during the reporting period;

21   (B) a description of the extent to which

22   the covered algorithm produced a disparate im-

23   pact in the equal enjoyment of goods, services,

24   or other activities or opportunities, including

25   the methodology for such evaluation, of how the

1 covered algorithm produced or likely produced

2 such disparity;

3 (C) a description of the types of data input

4 into the covered algorithm during the reporting

5 period to produce an output, including—

6 (i) documentation of how data input

7 into the covered algorithm to produce an

8 output is represented and complete de-

9 scriptions of each field of data; and

10 (ii) whether and to what extent the

11 data input into the covered algorithm to

12 produce an output was used to train or

13 otherwise modify the covered algorithm;

14 (D) whether and to what extent the cov-

15 ered algorithm produced the outputs it was ex-

16 pected to produce;

17 (E) a detailed description of how the cov-

18 ered algorithm was used to make a consequen-

19 tial action;

20 (F) any action taken to prevent or mitigate

21 harms, including how relevant staff are in-

22 formed of, trained about, and implement harm

23 mitigation policies and practices, and rec-

24 ommendations for how the deployer could mon-

1 itor for and prevent harm after offering, licens-

2 ing, or deploying the covered algorithm; and

3 (G) any other information the Commission

4 deems pertinent to prevent the covered algo-

5 rithm from causing harm or having a disparate

6 impact in the equal enjoyment of goods, serv-

7 ices, or other activities or opportunities as pre-

8 scribed by rules promulgated by the Commis-

9 sion pursuant to section 553 of title 5, United

10 States Code.

11 (3) REPORTS.—

12 (A) TO THE DEPLOYER.—After the en-

13 gagement of the independent auditor, the inde-

14 pendent auditor shall submit to the deployer a

15 report on the impact assessment conducted

16 under paragraph (2), including the findings and

17 recommendations of such independent auditor.

18 (B) TO THE DEVELOPER.—Not later than

19 30 days after the submission of a report on an

20 impact assessment under subparagraph (A), a

21 deployer shall submit to the developer of the

22 covered algorithm a summary of such report,

23 subject to the trade secret and privacy protec-

24 tions described in subsection (e)(3).

1 (c) DEVELOPER ANNUAL REVIEW OF ASSESS-
2 MENTS.—A developer shall, on an annual basis, review
3 each impact assessment summary submitted by a deployer
4 of its covered algorithm under subsection (b)(3)(B) for the
5 following purposes:

6   (1) To assess how the deployer is using the cov-
7   ered algorithm, including the methodology for as-
8   sessing such use.

9   (2) To assess the type of data the deployer is
10   inputting into the covered algorithm to produce an
11   output and the types of outputs the covered algo-
12   rithm is producing.

13   (3) To assess whether the deployer is complying
14   with any relevant contractual agreement with the de-
15   veloper and whether any remedial action is nec-
16   essary.

17   (4) To compare the covered algorithm's per-
18   formance in real-world conditions versus pre-deploy-
19   ment testing, including the methodology used to
20   evaluate such performance.

21   (5) To assess whether the covered algorithm is
22   causing harm or is reasonably likely to be causing
23   harm.

24   (6) To assess whether the covered algorithm is
25   causing, or is reasonably likely to be causing, a dis-

1 parate impact in the equal enjoyment of goods, serv-

2 ices, or other activities or opportunities, and, if so,

3 how and with respect to which protected char-

4 acteristic.

5 (7) To determine whether the covered algorithm

6 needs modification.

7 (8) To determine whether any other action is

8 appropriate to ensure that the covered algorithm re-

9 mains safe and effective.

10 (9) To undertake any other assessment or re-

11 sponsive action the Commission deems pertinent to

12 prevent the covered algorithm from causing harm or

13 having a disparate impact in the equal enjoyment of

14 goods, services, or other activities or opportunities,

15 as prescribed by rules promulgated by the Commis-

16 sion pursuant to section 553 of title 5, United

17 States Code.

18 (d) JOINT DEVELOPER AND DEPLOYER OBLIGA-

19 TIONS.—If a person is both the developer and deployer

20 of a covered algorithm, the person may conduct combined

21 pre-deployment evaluations and annual assessments, pro-

22 vided that each combined evaluation or assessment satis-

23 fies all requirements for both developers and deployers.

24 (e) REPORTING AND RETENTION REQUIREMENTS.—

1   (1) REPORTING.—A developer or deployer that

2   conducts a full pre-deployment evaluation, full im-

3   pact assessment, or developer annual review of as-

4   sessments shall—

5   (A) not later than 30 days after comple-

6   tion, submit the evaluation, assessment, or re-

7   view to the Commission;

8   (B) upon request, make the evaluation, as-

9   sessment, or review available to Congress; and

10   (C) not later than 30 days after comple-

11   tion—

12   (i) publish a summary of the evalua-

13   tion, assessment, or review on the website

14   of the developer or deployer in a manner

15   that is easily accessible to individuals; and

16   (ii) submit such summary to the Com-

17   mission.

18   (2) RETENTION.—A developer or deployer shall

19   retain all evaluations, assessments, and reviews de-

20   scribed in this section for a period of not fewer than

21   5 years.

22   (3) TRADE SECRETS AND PRIVACY.—A devel-

23   oper or deployer—

24   (A) may redact and segregate any trade

25   secret (as defined in section 1839 of title 18,

1 United States Code) from public disclosure

2 under this subsection; and

3   (B) shall redact and segregate personal

4 data from public disclosure under this sub-

5 section.

6 (f) RULEMAKING.—

7   (1) AUTHORITY.—The Commission may, in ac-

8 cordance with section 553 of title 5, United States

9 Code, promulgate such rules as may be necessary to

10 carry out this section.

11   (2) ADDITIONAL REGULATIONS.—Not later

12 than 18 months after the date of enactment of this

13 Act, the Commission shall—

14   (A) promulgate rules, pursuant to section

15   553 of title 5, United States Code, specifying—

16   (i) what information and factors a de-

17   veloper or deployer shall consider in mak-

18   ing the preliminary evaluation or prelimi-

19   nary impact assessment described in sub-

20   sections (a)(1) and (b)(1), respectively;

21   (ii) what information a developer or

22   deployer shall include in a summary of an

23   evaluation, assessment, or developer review

24   described in subsection (e)(1)(C); and

1   (iii) the extent to and process by

2   which a developer may request additional

3   information from a deployer, including the

4   purposes for which a developer is per-

5   mitted to use such additional information;

6   and

7   (B) in promulgating such rules, consider

8   the need to protect the privacy of personal data,

9   as well as the need for information sharing by

10   developers and deployers to comply with this

11   section and inform the public.

TITLE II—COVERED ALGORITHM AND CONTRACT STANDARDS

SEC. 201. COVERED ALGORITHM STANDARDS.

15   (a) COVERED ALGORITHM USE.—A developer or

16 deployer shall do the following:

17   (1) Take reasonable measures to prevent and

18 mitigate any harm identified by a pre-deployment

19 evaluation described in section 102(a) or an impact

20 assessment described in section 102(b).

21   (2) Take reasonable measures to ensure that an

22 independent auditor has all necessary information to

23 complete an accurate and effective pre-deployment

24 evaluation described in section 102(a) or an impact

25 assessment described in section 102(b).

1   (3) With respect to a covered algorithm, consult

2 stakeholders, including any communities that will be

3 impacted by the covered algorithm, regarding the de-

4 velopment or deployment of the covered algorithm

5 prior to the deploying, licensing, or offering the cov-

6 ered algorithm.

7   (4) With respect to a covered algorithm, certify

8 that, based on the results of a pre-deployment eval-

9 uation described in section 102(a) or an impact as-

10 sessment described in section 102(b)—

11   (A) use of the covered algorithm is not

12 likely to result in harm or disparate impact in

13 the equal enjoyment of goods, services, or other

14 activities or opportunities;

15   (B) the benefits from the use of the cov-

16 ered algorithm to individuals affected by the

17 covered algorithm likely outweigh the harms

18 from the use of the covered algorithm to such

19 individuals; and

20   (C) use of the covered algorithm is not

21 likely to result in deceptive practices.

22   (5) Ensure that any covered algorithm of the

23 developer or deployer functions—

1   (A) at a level that would be considered rea-
2   sonable performance by an individual with ordi-
3   nary skill in the art; and

4   (B) in a manner that is consistent with its
5   expected and publicly-advertised performance,
6   purpose, or use.

7   (6) Ensure any data used in the design, devel-
8   opment, deployment, or use of the covered algorithm
9   is relevant and appropriate to the deployment con-
10   text and the publicly-advertised purpose or use.

11   (7) Ensure use of the covered algorithm as in-
12   tended is not likely to result in a violation of this
13   Act.

14   (b) DECEPTIVE MARKETING OF A PRODUCT OR
15   SERVICE.—It shall be unlawful for a developer or deployer
16   to engage in false, deceptive, or misleading advertising,
17   marketing, or publicizing of a covered algorithm of the de-
18   veloper or deployer.

19   (c) OFF-LABEL USE.—

20   (1) DEVELOPERS.—It shall be unlawful for a
21   developer to knowingly offer or license a covered al-
22   gorithm for any consequential action other than
23   those evaluated in the pre-deployment evaluation de-
24   scribed in section 102(a).

1   (2) DEPLOYERS.—It shall be unlawful for a

2 deployer to knowingly use a covered algorithm for

3 any consequential action other than a use evaluated

4 in the pre-deployment evaluation described in section

5 102(a), unless the deployer agrees to assume the re-

6 sponsibilities of a developer required by this Act.

7 **SEC. 202. RELATIONSHIPS BETWEEN DEVELOPERS AND**

8   **DEPLOYERS.**

9   (a) DEVELOPER RESPONSIBILITIES.—A developer

10 shall do the following:

11   (1) Upon the reasonable request of the

12 deployer, make available to the deployer information

13 necessary to demonstrate the compliance of the

14 deployer with the requirements of this Act, includ-

15 ing—

16   (A) making available a report of the pre-

17 deployment evaluation described in section

18 102(a) or the annual review of assessments con-

19 ducted by the developer under section 102(c);

20 and

21   (B) providing information necessary to en-

22 able the deployer to conduct and document a

23 pre-deployment evaluation under section 102

24 (a) or an impact assessment under section

25 102(b).

1   (2) Either—

2   (A) allow and cooperate with reasonable

3   assessments conducted by the deployer or the

4   deployer's designated independent auditor; or

5   (B) arrange for an independent auditor to

6   conduct an assessment of the developer's poli-

7   cies and practices in support of the obligations

8   under this Act using an appropriate and accept-

9   ed control standard or framework and assess-

10   ment procedure for such assessments, and pro-

11   vide a report of such assessment to the deployer

12   upon request.

13   (b) CONTRACTS BETWEEN DEVELOPERS AND

14 DEPLOYERS.—

15   (1) REQUIREMENTS.—A developer may offer or

16 license a covered algorithm to a deployer pursuant

17 to a written contract between the developer and

18 deployer, provided that the contract—

19   (A) clearly sets forth the data processing

20   procedures of the developer with respect to any

21   collection, processing, or transfer of data per-

22   formed on behalf of the deployer;

23   (B) clearly sets forth—

24   (i) instructions for collecting, proc-

25   essing, or transferring data by the devel-

1 oper or deployer in the context of the use

2 of the covered algorithm;

3 (ii) instructions for deploying the cov-

4 ered algorithm as intended;

5 (iii) the nature and purpose of any

6 collection, processing, or transferring of

7 data;

8 (iv) the type of data subject to such

9 collection, processing, or transferring;

10 (v) the duration of such processing of

11 data; and

12 (vi) the rights and obligations of both

13 parties, including a method by which the

14 developer shall notify the deployer of mate-

15 rial changes to its covered algorithm;

16 (C) shall not relieve a developer or

17 deployer of any requirement or liability imposed

18 on such developer or deployer under this Act;

19 (D) prohibits both the developer and

20 deployer from combining data received from or

21 collected on behalf of the other party with data

22 the developer or deployer received from or col-

23 lected on behalf of another party; and

24 (E) shall not prohibit a developer or

25 deployer from raising concerns to any relevant

1 enforcement agency with respect to the other

2 party.

3 (2) RETENTION OF CONTRACT.—Each devel-

4 oper shall retain for a period of 10 years a copy of

5 each contract entered into with a deployer to which

6 it provides requested products or services.

7 (c) RULE OF CONSTRUCTION.—For purposes of this

8 section, any requirement for a developer to contract with,

9 assist, and follow the instructions of a deployer shall be

10 read to include a requirement to contract with, assist, and

11 follow the instructions of a government entity if the devel-

12 oper is providing a service to a government entity.

SEC. 203. HUMAN ALTERNATIVES AND OTHER PROTEC-

TIONS.

15 (a) RIGHT TO HUMAN ALTERNATIVES.—

16 (1) RULEMAKING.—Not later than 2 years after

17 the date of enactment of this Act, the Commission

18 shall promulgate regulations in accordance with sec-

19 tion 553 of title 5, United States Code, to identify

20 the circumstances and manner in which a deployer

21 shall provide to an individual a means to opt-out of

22 the use of a covered algorithm for a consequential

23 action and to elect to have the consequential action

24 concerning the individual undertaken by a human

25 without the use of a covered algorithm.

1   (2) CONSIDERATIONS.—In promulgating the
2   regulations under paragraph (1), the Commission
3   shall consider the following:

4   (A) How to ensure that any notice or re-
5   quest from a deployer regarding the right to a
6   human alternative is clear and conspicuous, in
7   plain language, easy to execute, and at no cost
8   to an individual.

9   (B) How to ensure that any such notice to
10   individuals is effective, timely, and useful.

11   (C) The specific types of consequential ac-
12   tions for which a human alternative is appro-
13   priate, considering the magnitude of the action
14   and risk of harm.

15   (D) The extent to which a human alter-
16   native would be beneficial to individuals and the
17   public interest.

18   (E) The extent to which a human alter-
19   native can prevent or mitigate harm.

20   (F) The risk of harm to individuals beyond
21   the requestor if a human alternative is available
22   or not available.

23   (G) The technical and economic feasibility
24   of providing a human alternative in different
25   circumstances.

1   (H) Any other considerations the Commis-

2   sion deems appropriate to balance the need to

3   give an individual control over a consequential

4   action related to such individual with the prac-

5   tical feasibility and effectiveness of granting

6   such control.

7   (b) INDIVIDUAL AUTONOMY.—A developer or

8 deployer may not condition, effectively condition, attempt

9 to condition, or attempt to effectively condition the exer-

10 cise of any individual right under this Act or individual

11 choice through—

12   (1) the use of any false, fictitious, fraudulent,

13   or materially misleading statement or representa-

14   tion; or

15   (2) the design, modification, or manipulation of

16   any user interface with the purpose or substantial

17   effect of obscuring, subverting, or impairing a rea-

18   sonable individual's autonomy, decision making, or

19   choice to exercise any such right.

20   (c) RIGHT TO APPEAL.—

21   (1) RULEMAKING.—Not later than 2 years after

22   the date of enactment of this Act, the Commission

23   shall promulgate regulations in accordance with sec-

24   tion 553 of title 5, United States Code, to identify

25   the circumstances and manner in which a deployer

1 shall provide to an individual a mechanism to appeal

2 to a human a consequential action resulting from

3 the deployer's use of a covered algorithm.

4 (2) CONSIDERATIONS.—In promulgating the

5 regulations under paragraph (1), the Commission

6 shall do the following:

7 (A) Ensure that the appeal mechanism is

8 clear and conspicuous, in plain language, easy-

9 to-execute, and at no cost to individuals.

10 (B) Ensure that the appeal mechanism is

11 proportionate to the consequential action.

12 (C) Ensure that the appeal mechanism is

13 reasonably accessible to individuals with disabil-

14 ities, timely, usable, effective, and non-discrimi-

15 natory.

16 (D) Require, where appropriate, a mecha-

17 nism for individuals to identify and correct any

18 personal data used by the covered algorithm.

19 (E) Specify training requirements for

20 human reviewers with respect to a consequen-

21 tial action.

22 (F) Consider any other circumstances, pro-

23 cedures, or matters the Commission deems ap-

24 propriate to balance the need to give an indi-

25 vidual a right to appeal a consequential action

1   related to such individual with the practical fea-

2   sibility and effectiveness of granting such right.

3 (d) PROHIBITION ON RETALIATION.—

4   (1) IN GENERAL.—A developer or deployer may

5 not discriminate or retaliate against an individual

6 (including by denying or threatening to deny the

7 equal enjoyment of goods, services, or other activi-

8 ties or opportunities in relation to a consequential

9 action) because the individual exercised any right

10 under this Act or refused to waive any such right.

11   (2) RULES OF CONSTRUCTION.—

12   (A) DIFFERENTIAL IN SERVICE OR

13   GOODS.—Nothing in this subsection shall pro-

14   hibit a developer or deployer from denying serv-

15   ice to an individual, charging an individual a

16   different price or rate, or providing a different

17   level or quality of goods or services to an indi-

18   vidual if the differential in service is necessary

19   and directly related to the value provided to the

20   developer or deployer by the covered algorithm.

21   (B) LOYALTY PROGRAMS.—Nothing in this

22   subsection shall prohibit a developer or deployer

23   from offering loyalty, rewards, premium fea-

24   tures, discounts, or club card programs that

25   provide benefits or rewards based on frequency

1 of patronizing, or the amount of money spent

2 at, a business consistent with this Act.

3 (e) WHISTLEBLOWER PROTECTION.—A developer or

4 deployer may not, directly or indirectly, discharge, demote,

5 suspend, threaten, harass, or otherwise discriminate or re-

6 taliate against an individual for reporting or attempting

7 to report a violation of this Act.

TITLE III—TRANSPARENCY

SEC. 301. NOTICE AND DISCLOSURE.

10 (a) IN GENERAL.—Each developer or deployer shall

11 make publicly available, in plain language and in a clear,

12 conspicuous, not misleading, easy-to-read, and readily ac-

13 cessible manner, a disclosure that provides a detailed and

14 accurate representation of the developer or deployer's

15 practices regarding the requirements under this Act.

16 (b) CONTENT OF DISCLOSURE.—The disclosure re-

17 quired under subsection (a) shall include, at a minimum,

18 the following:

19 (1) The identity and the contact information

20 of—

21 (A) the developer or deployer to which the

22 disclosure applies (including the developer or

23 deployer's point of contact and electronic mail

24 address, as applicable for any inquiry con-

1 cerning a covered algorithm or individual rights

2 under this Act); and

3 (B) any other entity within the same cor-

4 porate structure as the developer or deployer to

5 which personal data is transferred by the devel-

6 oper or deployer.

7 (2) A link to the website containing the devel-

8 oper or deployer's summaries of pre-deployment

9 evaluations, impact assessments, and annual review

10 of assessments, as applicable.

11 (3) The categories of personal data the devel-

12 oper or deployer collects or processes in the develop-

13 ment or deployment of a covered algorithm and the

14 processing purpose for each such category.

15 (4) Whether the developer or deployer transfers

16 personal data, and, if so, each third party to which

17 the developer or deployer transfers such data and

18 the purpose for which such data is transferred, ex-

19 cept with respect to a transfer to a governmental en-

20 tity pursuant to a court order or law that prohibits

21 the developer or deployer from disclosing such trans-

22 fer.

23 (5) A prominent description of how an indi-

24 vidual can exercise the rights described in this Act.

1　　　(6) A general description of the developer or

2　deployer's practices for compliance with the require-

3　ments described in sections 102 and 201.

4　　　(7) The following disclosure:

5　　　"The audit of this algorithm was conducted to

6　comply with the Artificial Intelligence Civil Rights

7　Act of 2024, which seeks to avoid the use of any al-

8　gorithm that has a disparate impact on certain pro-

9　tected classes of individuals. The audit does not

10　guarantee that this algorithm is safe or in compli-

11　ance with all applicable laws.".

12　　　(8) The effective date of the disclosure.

13　(c) LANGUAGES.—The disclosure required under sub-

14　section (a) shall be made available in each covered lan-

15　guage in which the developer or deployer operates or pro-

16　vides a good or service.

17　(d) ACCESSIBILITY.—The disclosure required under

18　subsection (a) shall be made available in a manner that

19　is reasonably accessible to and usable by individuals with

20　disabilities.

21　(e) MATERIAL CHANGES.—

22　　　(1) NOTIFICATION.—If a developer or deployer

23　makes a material change to the disclosure required

24　under subsection (a), the developer or deployer shall

1 notify each individual affected by such material
2 change prior to implementing the material change.

3 (2) REQUIREMENTS.—Each developer or
4 deployer shall take all reasonable measures to pro-
5 vide to each affected individual a direct electronic
6 notification regarding any material change to the
7 disclosure, in each covered language in which the
8 disclosure is made available, and taking into account
9 available technology and the nature of the relation-
10 ship with such individual.

11 (3) LOG OF MATERIAL CHANGES.—

12 (A) RETENTION PERIOD.—Beginning after
13 the date of enactment of this Act, each devel-
14 oper or deployer shall retain a copy of each pre-
15 vious version of the disclosure required under
16 subsection (a) for a period of at least 10 years
17 after the last day on which such version was ef-
18 fective and publish each such version on its
19 website.

20 (B) LOG OF MATERIAL CHANGES.—Each
21 developer or deployer shall make publicly avail-
22 able, in a clear, conspicuous, and readily acces-
23 sible manner, a log describing the date and na-
24 ture of each material change to its disclosure
25 during the retention period described in sub-

1 paragraph (A), and such descriptions shall be

2 sufficient for a reasonable individual to under-

3 stand the material effect of each material

4 change.

5 (C) CLARIFICATION.—The obligations de-

6 scribed in this paragraph shall not apply to any

7 previous version of a developer or deployer's

8 disclosure of practices regarding the collection,

9 processing, and transfer of personal data, or

10 any material change to such disclosure, that

11 precedes the date of enactment of this Act.

12 (f) SHORT-FORM NOTICE.—

13 (1) IN GENERAL.—A deployer shall provide a

14 short-form notice regarding a covered algorithm it

15 develops, offers, licenses, or uses in a manner that—

16 (A) is concise, clear, conspicuous, in plain

17 language, and not misleading;

18 (B) is readily accessible to individuals with

19 disabilities;

20 (C) is based on what is reasonably antici-

21 pated within the context of the relationship be-

22 tween the individual and the deployer;

23 (D) includes an overview of each applicable

24 individual right and disclosure in a manner that

25 draws attention to any practice that may be un-

1 expected to a reasonable individual or that in-

2 volves a consequential action; and

3   (E) is not more than 500 words in length.

4 (2) TIMING OF NOTICE.—

5   (A) EXISTING RELATIONSHIP.—If a

6 deployer has a relationship with an individual,

7 the deployer shall provide an electronic version

8 of the short-form notice directly to the indi-

9 vidual upon the individual's first interaction

10 with the covered algorithm.

11   (B) NO RELATIONSHIP.—If a deployer

12 does not have a relationship with an individual,

13 the deployer shall provide the short-form notice

14 in a clear, conspicuous, accessible, and not mis-

15 leading manner on their website.

16 (3) RULEMAKING.—The Commission shall pro-

17 mulgate regulations in accordance with section 553

18 of title 5, United States Code, to establish the min-

19 imum content required to be included in the short-

20 form notice described in paragraph (1), which—

21   (A) shall not exceed the content require-

22 ments described in subsection (b); and

23   (B) shall include a template or model for

24 such short-form notice.

1 (g) REPORTING MECHANISM.—Each developer or
2 deployer shall make publicly available, in a clear, con-
3 spicuous, and readily accessible manner, a mechanism for
4 an individual impacted by a covered algorithm to report
5 to the developer or deployer potential violations of this
6 Act.

SEC. 302. STUDY ON EXPLANATIONS REGARDING THE USE OF COVERED ALGORITHMS.

9 (a) STUDY.—

10 (1) IN GENERAL.—The Commission shall con-
11 duct a study, with notice and public comment, on
12 the feasibility of requiring deployers to provide a
13 clear, conspicuous, easy-to-use, no-cost mechanism
14 that is accessible for individuals with disabilities and
15 allows an individual to receive an explanation as to
16 whether and how a covered algorithm used by the
17 deployer affects or affected an individual.

18 (2) REQUIREMENTS.—The study required
19 under paragraph (1) shall include the following:

20 (A) How explanations can be provided in a
21 manner that is clear, conspicuous, easy-to-use,
22 no-cost, accessible to individuals with disabil-
23 ities, and calibrated to the level of risk based on
24 the covered algorithm.

1   (B) An assessment of the feasibility of a

2   requirement for deployers to provide a mecha-

3   nism for individuals who may be affected or

4   were affected by a covered algorithm to request

5   an explanation that—

6   (i) includes information—

7   (I) regarding why the covered al-

8   gorithm produced the result it pro-

9   duced with respect to the individual

10   making the request; and

11   (II) that is truthful, accurate,

12   and scientifically valid;

13   (ii) identifies at least the most signifi-

14   cant factors used to inform the covered al-

15   gorithm's outputs; and

16   (iii) includes any other information

17   deemed relevant by the Commission to pro-

18   vide an explanation for an individual who

19   may be affected or was affected by a cov-

20   ered algorithm.

21   (C) An assessment of what information a

22   developer must provide a deployer in order to

23   ensure explanations can be provided to individ-

24   uals upon request.

1   (D) The extent to which current technical

2   capabilities of covered algorithms impacts the

3   feasibility of providing explanations.

4   (E) How a deployer can take reasonable

5   measures to verify the identity of an individual

6   making a request for an explanation to ensure

7   that the deployer provides an explanation only

8   to the affected individual, including steps a

9   deployer should take to ensure the safe and se-

10   cure storage, collection, and deletion of personal

11   information.

12   (F) Recommendations for Congress on how

13   to implement regulations around mechanisms

14   for explanations.

15 (3) CONSULTATION.—In conducting the study

16 required under this subsection, the Commission shall

17 consult with the National Institute of Science of

18 Technology, the National Telecommunications and

19 Information Administration, the Office of Science

20 and Technology Policy, and any other agency

21 deemed relevant by the Commission.

22 (b) REPORT.—Not later than 18 months after the

23 date of enactment of this Act, the Commission shall sub-

24 mit to the Committee on Commerce, Science, and Trans-

25 portation of the Senate and the Committee on Energy and

1 Commerce of the House of Representatives a report that
2 includes the findings of the study conducted under sub-
3 section (a), together with recommendations for such legis-
4 lation and administrative action as the Commission deter-
5 mines appropriate.

SEC. 303. CONSUMER AWARENESS.

7 (a) NOTICE OF CONSUMER RIGHTS.—

8 (1) IN GENERAL.—Not later than 90 days after
9 the date of enactment of this Act, the Commission
10 shall publish, on the internet website of the Commis-
11 sion, a web page that describes each provision, right,
12 obligation, and requirement of this Act (categorized
13 with respect to individuals, deployers, and devel-
14 opers) and the remedies, exemptions, and protections
15 associated with this Act, in plain and concise lan-
16 guage, in each covered language, and in an easy-to-
17 understand manner.

18 (2) UPDATES.—The Commission shall update
19 the information published under paragraph (1) on a
20 quarterly basis as necessitated by any change in law,
21 regulation, guidance, or judicial decision.

22 (b) ANNUAL REPORT.—Not later than 2 years after
23 the date of enactment of this Act, and annually thereafter,
24 the Commission shall publish on the internet website of
25 the Commission a report that—

1   (1) describes and summarizes the information

2 contained in any pre-deployment evaluation, impact

3 assessment, and developer review submitted to the

4 Commission in accordance with this Act;

5   (2) describes broad trends, aggregated statis-

6 tics, and anonymized information about performing

7 impact assessments of covered algorithms, for the

8 purposes of updating guidance related to impact as-

9 sessments and summary reporting, oversight, and

10 making recommendations to other regulatory agen-

11 cies; and

12   (3) is accessible and machine readable in ac-

13 cordance with the 21st Century Integrated Digital

14 Experience Act (44 U.S.C. 3501 note).

15 (c) PUBLICLY ACCESSIBLE REPOSITORY.—

16   (1) ESTABLISHMENT.—

17   (A) IN GENERAL.—Not later than 180

18 days after the Commission publishes the first

19 annual report under subsection (b), the Com-

20 mission shall develop a publicly accessible repos-

21 itory to publish each pre-deployment evaluation,

22 impact assessment, and developer review sub-

23 mitted to the Commission in accordance with

24 section 102.

1   (B) REQUIREMENTS.—The Commission
2   shall design the repository established under
3   subparagraph (A) to—

4   (i) be publicly available and easily dis-
5   coverable on the internet website of the
6   Commission;

7   (ii) allow users to sort and search the
8   repository by multiple characteristics (such
9   as by developer or deployer and date re-
10   ported) simultaneously;

11   (iii) allow users to make a copy of or
12   download the information obtained from
13   the repository, including any subsets of in-
14   formation obtained by sorting or searching
15   as described in clause (ii), in accordance
16   with current guidance from the Office of
17   Management and Budget, such as the
18   Open, Public, Electronic, and Necessary
19   Government Data Act (44 U.S.C. 101
20   note);

21   (iv) be in accordance with user experi-
22   ence and accessibility best practices, such
23   as those described in the 21st Century In-
24   tegrated Digital Experience Act (44 U.S.C.
25   3501 note); and

1   (v) include information about the de-
2   sign, use, and maintenance of the reposi-
3   tory, including any other information de-
4   termined appropriate by the Commission.
5   (2) PUBLICATION OF ADDITIONAL SUM-
6 MARIES.—The Commission shall publish in the re-
7 pository any pre-deployment evaluation, impact as-
8 sessment, and developer review not later than 30
9 days after receiving such evaluation, assessment, or
10 review, except if the Commission has good cause to
11 delay such publication.
12   (3) TRADE SECRETS AND PRIVACY.—The Com-
13 mission—
14   (A) may redact and segregate any trade
15   secret (as defined in section 1839 of title 18,
16   United States Code) from public disclosure
17   under this subsection; and
18   (B) shall redact and segregate personal
19   data from public disclosure under this sub-
20   section.

TITLE IV—ENFORCEMENT

SEC. 401. ENFORCEMENT BY THE COMMISSION.

23 (a) UNFAIR OR DECEPTIVE ACTS OR PRACTICES.—
24 A violation of title I, II, or III or a regulation promulgated
25 thereunder shall be treated as a violation of a rule defining

1 an unfair or deceptive act or practice under section
2 18(a)(1)(B) of the Federal Trade Commission Act (15
3 U.S.C. 57a(a)(1)(B)).

4 (b) POWERS OF THE COMMISSION.—

5 (1) IN GENERAL.—Except as provided in sub-
6 section (c), the Commission shall enforce this Act
7 and the regulations promulgated under this Act in
8 the same manner, by the same means, and with the
9 same jurisdiction, powers, and duties as though all
10 applicable terms and provisions of the Federal Trade
11 Commission Act (15 U.S.C. 41 et seq.) were incor-
12 porated into and made a part of this Act.

13 (2) PRIVILEGES AND IMMUNITIES.—Any person
14 who violates title I, II, or III or a regulation promul-
15 gated thereunder shall be subject to the penalties
16 and entitled to the privileges and immunities pro-
17 vided in the Federal Trade Commission Act (15
18 U.S.C. 41 et seq.).

19 (3) AUTHORITY PRESERVED.—Nothing in this
20 Act shall be construed to limit the authority of the
21 Commission under any other provision of law.

22 (4) RULEMAKING.—The Commission may pro-
23 mulgate in accordance with section 553 of title 5,
24 United States Code, such rules as may be necessary
25 to carry out this Act.

1 (c) JURISDICTION .—Notwithstanding section 4,
2 5(a)(2), or 6 of the Federal Trade Commission Act (15
3 U.S.C. 44, 45(a)(2), 46) or any jurisdictional limitation
4 of the Commission, the Commission shall also enforce this
5 Act and the regulations promulgated under this Act, in
6 the same manner provided in subsections (a) and (b), with
7 respect to—

8   (1) organizations not organized to carry on
9   business for their own profit or that of their mem-
10   bers;

11   (2) common carriers subject to the Communica-
12   tions Act of 1934 (47 U.S.C. 151 et seq.) and all
13   Acts amendatory thereof and supplementary thereto;

14   (3) a bank, savings and loan institution de-
15   scribed in section 18(f)(3) of the Federal Trade
16   Commission Act (15 U.S.C. 57a(f)(3)), or Federal
17   credit union described in section 18(f)(4) of such
18   Act;

19   (4) an air carrier or foreign air carrier subject
20   to the Federal Aviation Act of 1958 (49 U.S.C. App.
21   1301 et seq.); or

22   (5) a person, partnership, or corporation sub-
23   ject to the Packers and Stockyards Act, 1921 (7
24   U.S.C. 181 et seq.), as amended.

1 **SEC. 402. ENFORCEMENT BY STATES.**

2   (a) IN GENERAL.—In any case in which the attorney

3 general of a State or a State data protection authority

4 has reason to believe that an interest of the residents of

5 the State has been or is threatened or adversely affected

6 by the engagement of a person in a practice that violates

7 title I, II, or III, or a regulation promulgated thereunder,

8 the attorney general may, as parens patriae, bring a civil

9 action on behalf of the residents of the State in an appro-

10 priate Federal district court of the United States that

11 meets applicable requirements relating to venue under sec-

12 tion 1391 of title 28, United States Code, to—

13   (1) enjoin any such violation by the person;

14   (2) enforce compliance with the requirements of

15   this Act;

16   (3) obtain a permanent, temporary, or prelimi-

17   nary injunction or other appropriate equitable relief;

18   (4) obtain civil penalties in the amount of

19    $15,000 per violation, or 4 percent of the defend-

20   ant's average gross annual revenue over the pre-

21   ceding 3 years, whichever is greater;

22   (5) obtain damages, restitution, or other com-

23   pensation on behalf of the residents of such State;

24   (6) obtain reasonable attorneys' fees and litiga-

25   tion costs; and

1   (7) obtain such other relief as the court may

2 consider to be appropriate.

3 (b) RIGHTS OF THE COMMISSION.—

4   (1) NOTICE TO THE COMMISSION.—

5   (A) IN GENERAL.—Subject to subpara-

6   graph (C), the attorney general of a State shall

7   notify the Commission in writing that the attor-

8   ney general intends to bring a civil action under

9   subsection (a) before the filing of the civil ac-

10   tion.

11   (B) CONTENTS.—The notification required

12   under subparagraph (A) with respect to a civil

13   action shall include a copy of the complaint to

14   be filed to initiate the civil action.

15   (C) EXCEPTION.—The notification de-

16   scribed in subparagraph (A) shall not be re-

17   quired if the attorney general of the State de-

18   termines that it is not feasible to provide such

19   notice before filing the action.

20   (2) INTERVENTION BY THE COMMISSION.—

21 Upon receiving notice under paragraph (1), the

22 Commission shall have the right to intervene in the

23 action that is the subject of the notice.

1   (3) EFFECT OF INTERVENTION.—If the Com-

2   mission intervenes in an action under subsection (a),

3   it shall have the right—

4   (A) to be heard with respect to any matter

5   that arises in that action; and

6   (B) file a petition for appeal.

7   (c) INVESTIGATORY POWERS.—Nothing in this sec-

8 tion may be construed to prevent the attorney general of

9 a State from exercising the powers conferred on the attor-

10 ney general by the laws of the State to—

11   (1) conduct investigations;

12   (2) administer oaths or affirmations; or

13   (3) compel the attendance of witnesses or the

14   production of documentary or other evidence.

15 **SEC. 403. PRIVATE RIGHT OF ACTION.**

16   (a) ENFORCEMENT BY INDIVIDUALS.—

17   (1) IN GENERAL.—Any individual or class of in-

18   dividuals alleging a violation of title I, II, or III, or

19   a regulation promulgated thereunder, may bring a

20   civil action in any court of competent jurisdiction.

21   (2) RELIEF.—In a civil action brought under

22   paragraph (1) in which the plaintiff prevails, the

23   court may award—

24   (A) treble damages or $15,000 per viola-

25   tion, whichever is greater;

1   (B) nominal damages;

2   (C) punitive damages;

3   (D) reasonable attorney's fees and litiga-

4   tion costs; and

5   (E) any other relief, including equitable or

6   declaratory relief, that the court determines ap-

7   propriate.

8   (3) RIGHTS OF THE COMMISSION AND STATE

9 ATTORNEYS GENERAL.—

10   (A) IN GENERAL.—Prior to an individual

11   bringing a civil action under paragraph (1),

12   such individual shall notify the Commission and

13   the attorney general of the State where such in-

14   dividual resides, in writing and including a de-

15   scription of the allegations included in the civil

16   action, that such individual intends to bring a

17   civil action under such paragraph. Not later

18   than 60 days after receiving such notice, the

19   Commission and State attorney general shall

20   each or jointly make a determination and re-

21   spond to such individual as to whether they will

22   intervene in such action. The Commission and

23   State attorney general shall have a right to in-

24   tervene in any civil action under paragraph (1),

25   and upon intervening, to be heard on all mat-

1 ters arising in such action and file petitions for
2 appeal of a decision in such action. If a State
3 attorney general does intervene, they shall only
4 be heard with respect to the interests of the
5 residents of their State.

6 (B) RETAINED AUTHORITY.—Subpara-
7 graph (A) shall not be construed to limit the
8 authority of the Commission or any applicable
9 State attorney general to, at a later date, com-
10 mence a civil action or intervene by motion if
11 the Commission or State attorney general does
12 not commence a proceeding or civil action with-
13 in the 60-day period described in such subpara-
14 graph.

15 (b) INVALIDITY OF PRE-DISPUTE ARBITRATION
16 AGREEMENTS AND PRE-DISPUTE JOINT ACTION WAIV-
17 ERS.—

18 (1) IN GENERAL.—Notwithstanding any other
19 provision of law, no pre-dispute arbitration agree-
20 ment or pre-dispute joint action waiver shall be valid
21 or enforceable with regard to a dispute arising under
22 this Act.

23 (2) APPLICABILITY.—Any determination as to
24 whether or how this subsection applies to any dis-
25 pute shall be made by a court, rather than an arbi-

1 trator, without regard to whether such agreement

2 purports to delegate such determination to an arbi-

3 trator.

4 (3) DEFINITIONS.—For purposes of this sub-

5 section:

6 (A) PRE-DISPUTE ARBITRATION AGREE-

7 MENT.—The term "pre-dispute arbitration

8 agreement" means any agreement to arbitrate a

9 dispute that has not arisen at the time of the

10 making of the agreement.

11 (B) PRE-DISPUTE JOINT-ACTION WAIV-

12 ER.—The term "pre-dispute joint-action waiv-

13 er" means an agreement, whether or not part

14 of a pre-dispute arbitration agreement, that

15 would prohibit or waive the right of 1 of the

16 parties to the agreement to participate in a

17 joint, class, or collective action in a judicial, ar-

18 bitral, administrative, or other related forum,

19 concerning a dispute that has not yet arisen at

20 the time of the making of the agreement.

21 **SEC. 404. SEVERABILITY.**

22 If any provision of this Act, or the application thereof

23 to any person or circumstance, is held invalid, the remain-

24 der of this Act, and the application of such provision to

1 other persons not similarly situated or to other cir-

2 cumstances, shall not be affected by the invalidation.

SEC. 405. RULES OF CONSTRUCTION.

4 Nothing in this Act shall be construed to—

5 (1) waive or otherwise limit any requirement

6 under the National Labor Relations Act (29 U.S.C.

7 151 et seq.) for an employer (as such term is de-

8 fined in section 2 of such Act (29 U.S.C. 152)) to

9 bargain collectively regarding the deployment or ef-

10 fects of a covered algorithm;

11 (2) absolve an employer of any obligation to en-

12 sure a covered algorithm and its effects comply with

13 health and safety laws;

14 (3) allow an employer to deploy a covered algo-

15 rithm that interferes with the rights of employees

16 under any Federal, State, or local law; or

17 (4) absolve any other duty or requirement

18 under any other Federal, State, or local law.

TITLE V—FEDERAL RESOURCES

SEC. 501. OCCUPATIONAL SERIES RELATING TO ALGO-

RITHM AUDITING.

22 Not later than 270 days after the date of enactment

23 of this Act, the Director of the Office of Personnel Man-

24 agement shall exercise the authority of the Director under

25 section 5105 of title 5, United States Code, to establish

1 a new occupational series and associated policies covering
2 Federal Government positions in the field of algorithm au-
3 diting (as described in the report of the Government Ac-
4 countability Office entitled "Artificial Intelligence: An Ac-
5 countability Framework for Federal Agencies and Other
6 Entities" (GAO–21–519SP), dated June 30, 2021), which
7 shall include algorithm auditing practices, platform audit-
8 ing, evaluation and assessment of artificial intelligence
9 systems, computer security, independent evaluation and
10 audits of computer systems, data science, statistics, audit-
11 ing of anticompetitive practices, and related fields.

SEC. 502. UNITED STATES DIGITAL SERVICE ALGORITHM AUDITORS.

14 (a) IN GENERAL.—Not later than 180 days after the
15 date of enactment of this Act, the Administrator of the
16 United States Digital Service shall—

17   (1) establish a track for algorithm auditing;
18   and

19   (2) hire algorithm audit practitioners.

20 (b) FTC PRIORITY.—The Administrator of the
21 United States Digital service, in coordination with the
22 Commission, shall ensure—

23   (1) the algorithm auditing track staffing and
24   expertise meets the needs of the Commission and
25   other relevant Federal agencies with obligations to

1 implement Office of Management and Budget

2 Memorandum M–24–10; and

3   (2) once hired, algorithm auditing track per-

4 sonnel and projects prioritize the efforts of the Com-

5 mission.

SEC. 503. ADDITIONAL FEDERAL RESOURCES.

7   (a) AUTHORIZATION OF APPROPRIATIONS.—There is

8 authorized to be appropriated to the Commission and

9 other Federal agencies enumerated in this Act such sums

10 as may be necessary to carry out this Act.

11   (b) COMMISSION PERSONNEL.—Notwithstanding any

12 other provision of law, the Commission may hire not more

13 than 500 additional personnel to accomplish the work of

14 the Commission with respect to unfair or deceptive acts

15 or practices relating to the development or deployment of

16 covered algorithms in accordance with this Act.

○