

[First Reprint]

ASSEMBLY, No. 5430

STATE OF NEW JERSEY

218th LEGISLATURE

INTRODUCED MAY 20, 2019

Sponsored by:

Assemblyman ANDREW ZWICKER

District 16 (Hunterdon, Mercer, Middlesex and Somerset)

Assemblyman HERB CONAWAY, JR.

District 7 (Burlington)

Assemblywoman BRITNEE N. TIMBERLAKE

District 34 (Essex and Passaic)

SYNOPSIS

“New Jersey Algorithmic Accountability Act”; requires certain businesses to conduct automated decision and data protection impact assessments.

CURRENT VERSION OF TEXT

As reported by the Assembly Science, Innovation and Technology Committee on June 10, 2019, with amendments.



(Sponsorship Updated As Of: 6/14/2019)

1 AN ACT requiring certain businesses to conduct automated decision
2 and data protection impact assessments and supplementing Title
3 56 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. This act shall be known and may be cited as the “New Jersey
9 Algorithmic Accountability Act.”

10

11 2. As used in P.L. , c. (C.) (pending before the
12 Legislature as this bill):

13 “Automated decision system” means a computational process,
14 including one derived from machine learning, statistics, or other
15 data processing or artificial intelligence techniques, that makes a
16 decision or facilitates human decision making and that impacts
17 consumers.

18 “Automated decision system impact assessment” means a study
19 evaluating an automated decision system and the automated
20 decision system’s development process, including the design and
21 training data of the automated decision system, for impacts on
22 accuracy, fairness, bias, discrimination, privacy, and security that
23 shall include, but not be limited to:

24 a detailed description of the best practices used to minimize the
25 risk of the¹ automated decision system, its design, decision training,
26 data collection, and purpose impacting accuracy, fairness, bias,
27 discrimination, privacy, and security¹;

28 a cost-benefit analysis of the automated decision system in light
29 of its purpose, taking into account relevant factors, including:

30 data minimization practices;

31 the duration for which personally identifiable information and
32 the results of the automated decision system are stored;

33 what information about the automated decision system is
34 available to consumers;

35 the extent to which consumers have access to the results of the
36 automated decision system and may correct or object to its results;
37 and

38 the recipients of the results of the decisions of the automated
39 decision system;

40 an assessment of the risks posed by the automated decision
41 system to the privacy or security of personally identifiable
42 information of consumers and the risks that the automated decision
43 system may result in or contribute to inaccurate, unfair, biased, or
44 discriminatory decisions impacting consumers; and

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AST committee amendments adopted June 10, 2019.

1 the measures the covered entity will employ to minimize the
2 risks posed, including technological and physical safeguards.

3 “Consumer” means an individual within this State who provides,
4 either knowingly or unknowingly, personally identifiable
5 information to a covered entity.

6 “Covered entity” means a corporation, partnership, firm,
7 enterprise, franchise, association, trust, sole proprietorship, union,
8 political organization, or other legal entity other than a State agency
9 or any political subdivision thereof, federal agency, or any
10 contractor or subcontractor employed by a State agency, political
11 subdivision thereof, or federal agency, that does business in this
12 State and that:

13 had greater than \$50,000,000 in average annual gross receipts for
14 the three taxable-year period preceding the most recent fiscal year,
15 as determined in accordance with paragraphs (2) and (3) of section
16 448(c) of the Internal Revenue Code, 26 U.S.C. s.448;

17 possesses or controls personally identifiable information on more
18 than:

19 1,000,000 consumers; or

20 1,000,000 consumer computers or mobile telecommunications
21 service devices; ¹or¹

22 is a data broker.

23 “Data broker” means a commercial entity that, as a substantial
24 part of its business, collects, assembles, or maintains personally
25 identifiable information concerning an individual who is not a
26 customer or an employee of that entity in order to sell or trade the
27 information or provide third-party access to the information.

28 “Data minimization” means the practice of limiting the collection
29 and storage of personally identifiable information to what is
30 relevant and necessary to accomplish a specific purpose.

31 “Data protection impact assessment” means a study evaluating
32 the extent to which an information system protects the privacy and
33 security of personally identifiable information the system processes.

34 “Director” means the Director of the Division of Consumer
35 Affairs in the Department of Law and Public Safety.

36 “Division” means the Division of Consumer Affairs in the
37 Department of Law and Public Safety.

38 “High-risk automated decision system” means an automated
39 decision system that:

40 takes into account the novelty of the technology used and the
41 nature, scope, context, and purpose of the automated decision
42 system that poses a significant risk:

43 to the privacy or security of personally identifiable information
44 of consumers; or

45 results in or contributes to inaccurate, unfair, biased, or
46 discriminatory decisions impacting consumers;

47 makes decisions, or facilitates human decision making, based on
48 systematic and extensive evaluations of consumers, including

1 attempts to analyze or predict sensitive aspects of their lives, such
2 as their work performance, economic situation, health, personal
3 preferences, interests, behavior, location, or movements, that:

4 alter legal rights of consumers; or

5 otherwise significantly impact consumers;

6 involves the personally identifiable information of a significant
7 number of consumers regarding race, color, national origin,
8 political opinions, religion, union membership, genetic data,
9 biometric data, health, gender, gender identity, sexuality, sexual
10 orientation, criminal convictions, or arrests;

11 systematically monitors a large, publicly accessible physical
12 place; or

13 meets any other criteria established by the division in rules and
14 regulations issued pursuant to section 7 of P.L. , c. (C.)
15 (pending before the Legislature as this bill).

16 “High-risk information system” means an information system
17 that:

18 takes into account the novelty of the technology used and the
19 nature, scope, context, and purpose of the information system:

20 poses a significant risk to the privacy or security of personally
21 identifiable information of consumers;

22 involves the personally identifiable information of a significant
23 number of consumers regarding race, color, national origin,
24 political opinions, religion, union membership, genetic data,
25 biometric data, health, gender, gender identity, sexuality, sexual
26 orientation, criminal convictions, or arrests;

27 systematically monitors a large, publicly accessible physical
28 place; or

29 meets any other criteria established by the division pursuant to
30 P.L. , c. (C.) (pending before the Legislature as this bill).

31 “Information system” means a process, automated or manual,
32 that involves personally identifiable information, such as the
33 collection, recording, organization, structuring, storage, alteration,
34 retrieval, consultation, use, sharing, disclosure, dissemination,
35 combination, restriction, erasure, or destruction of personally
36 identifiable information and does not include automated decision
37 systems.

38 “Personally identifiable information” means any information
39 that, regardless of how the information is collected, inferred, or
40 obtained, is linked or reasonably linkable to a specific consumer or
41 consumer’s computer, mobile telecommunications service device,
42 or any other Internet-connected device.

43 “Store” means the actions of a covered entity to retain personally
44 identifiable information and includes actions to store, collect,
45 assemble, possess, control, or maintain information.

46 “Use” means the actions of a person, partnership, or corporation
47 in using information, including actions to use, process, or access
48 information.

1 3. a. Not later one year after the date of enactment of
2 P.L. , c. (C.) (pending before the Legislature as this bill), the
3 ¹[[Director of the Division of Consumer Affairs in the Department
4 of Law and Public Safety] director¹ shall require that a covered
5 entity:

6 (1) conduct an automated decision system impact assessment of:

7 (a) the covered entity's existing high-risk automated decision
8 systems, as frequently as the director determines is necessary; and

9 (b) the covered entity's high-risk automated decision systems
10 developed since the previous automated decision system impact
11 assessment, if applicable, prior to its implementation;

12 (2) conduct a data protection impact assessment of:

13 (a) the covered entity's existing high-risk information systems,
14 as frequently as the director determines is necessary; and

15 (b) the covered entity's high-risk information systems developed
16 since the previous data protection impact assessment, if applicable,
17 prior to its implementation;

18 (3) conduct the impact assessments pursuant to paragraphs (1)
19 and (2) of subsection a. of this section in consultation with external
20 third parties, including independent auditors and independent
21 technology experts, if reasonably possible, as determined by the
22 director; ¹[[and]]¹

23 (4) make record of any indication of racial or other bias, or any
24 threat to the security of a consumer's personally identifiable
25 information, found in the impact assessments required pursuant to
26 paragraphs (1) and (2) of subsection a. of this section, including any
27 measures taken by the covered entity to remedy these issues ¹; and

28 (5) provide any other information the director may require¹.

29 b. A covered entity may evaluate similar high-risk automated
30 decision systems and high-risk information systems that present
31 similar risks to the high-risk automated decision systems and high-
32 risk information systems assessed pursuant to paragraphs (1) and
33 (2) of subsection a. of this section in a single assessment for
34 purposes of comparison.

35 c. The impact assessments and information required pursuant
36 to this section shall be submitted to the director upon completion
37 and may be made public by the covered entity.

38
39 4. A waiver of the requirements of, or an agreement entered
40 into after the effective date of P.L. , c. (C.) (pending before
41 the Legislature as this bill), that does not comply with, the
42 provisions of section 3 of P.L. , c. (C.) (pending before the
43 Legislature as this bill) between a covered entity and a consumer
44 shall be void and unenforceable.

45
46 5. If the director determines, after reviewing the impact
47 assessments and information submitted pursuant to subsection c. of

1 section 3 of P.L. , c. (C.) (pending before the Legislature as
2 this bill), that an interest of the residents of the State has been or is
3 being threatened or adversely affected by a practice that violates
4 section 3 of P.L. , c. (C.) (pending before the Legislature as
5 this bill), the Attorney General of the State may institute civil action
6 on behalf of the residents of the State in an appropriate district court
7 of the United States to obtain appropriate relief.

8
9 6. It shall be an unlawful practice and violation of P.L.1960,
10 c.39 (C.56:8-1 et seq.) for a covered entity to violate sections 3 or 4
11 of P.L. , c. (C.) (pending before the Legislature as this bill)
12 or to knowingly provide substantial assistance to any person,
13 partnership, or corporation whose actions violate sections 3 or 4 of
14 P.L. , c. (C.) (pending before the Legislature as this bill).

15
16 7. The director shall adopt, pursuant to the "Administrative
17 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), any rules and
18 regulations necessary to effectuate the purposes of P.L. ,
19 c. (C.) (pending before the Legislature as this bill).

20
21 8. This act shall take effect immediately.