
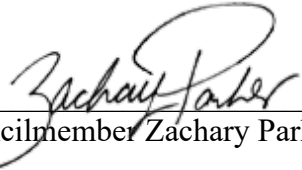


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2 Councilmember Anita Bonds

  
Councilmember Robert C. White, Jr.

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5 Councilmember Janeese Lewis George

  
Councilmember Charles Allen

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10 Councilmember Zachary Parker

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15 A BILL  
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18 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA  
19 \_\_\_\_\_  
20

21 To prohibit users of algorithmic decision-making from utilizing algorithmic eligibility  
22 determinations in a discriminatory manner, to require corresponding notices to  
23 individuals whose personal information is used, and to provide for appropriate means of  
24 civil enforcement.  
25

26 BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this  
27 act may be cited as the “Stop Discrimination by Algorithms Act of 2023”.

28 Sec. 2. Findings and declaration of policy.

29 The Council of the District of Columbia makes the following findings:

30 (a) It is the sense of the Council that technological advancements should support the  
31 dignity and well-being of the people of the District.

32 (b) Computers and data-derived decision-making tools play ever larger roles in modern  
33 life. As of 2019, 90 percent of U.S. adults regularly used the internet. Approximately 76 percent  
34 of households in the District of Columbia have a broadband internet subscription, and many who  
35 lack a home internet connection use smartphones to go online.

36 (c) When District residents engage in online activities like posting on social media,  
37 searching web-based listings for an apartment, or submitting electronic job applications, they  
38 generate personalized information that is harvested by data collectors. Data collectors can track  
39 hundreds of categories of data about specific individuals including age, gender, employment  
40 status and place of employment, income level, sexual orientation, national origin, and religion.

41 (d) Companies often use data from both online and offline sources to create algorithms,  
42 which are tools that use machine learning and personal data to make educated guesses about an  
43 individual's preferences, abilities, and future behavior. These algorithms are then incorporated  
44 into decision-making processes that affect many aspects of life.

45 (e) Increasingly, algorithms determine an individual's opportunities to secure  
46 employment, insurance, credit, housing, and public accommodations, as well as access to  
47 information about those opportunities.

48 (f) Algorithms often rely on personal traits protected under the D.C. Human Rights Act.  
49 And algorithmic decision-making can amplify discrimination based on race, gender, sexual  
50 orientation, disability, age, source of income, credit information, and other protected traits when  
51 algorithmic models replicate existing societal inequalities. Algorithmic decision-making systems  
52 that fail to account for bias disproportionately harm marginalized communities.

53 (g) Despite their prevalence and the potential problems they pose, algorithms are poorly  
54 understood by most individuals, in part because of the many entities involved and the lack of  
55 accountability among those entities.

56 (h) This act seeks to protect individuals and classes of individuals from the harm that  
57 results when algorithmic decision-making processes operate without transparency, rely on  
58 protected traits and other personal data that are correlated with those traits, or disproportionately

59 limit access to and information about important life opportunities. The act combats these  
60 challenges by:

61 (1) Encouraging transparency and accountability by requiring covered entities to  
62 provide notice to individuals about how the covered entity uses personal information in  
63 algorithmic decisions, including additional information when the algorithmic decision results in  
64 an adverse action, audit its algorithmic determination practices for discriminatory processing or  
65 impact, and report this information to the Office of the Attorney General;

66 (2) Prohibiting adverse algorithmic decision-making based on protected traits, or  
67 that have the effect of making decisions based on such traits; and

68 (3) Creating public investigatory and enforcement authority, and an individual  
69 right of action.

70 Sec. 3. Definitions.

71 The following words and terms when used in this act have the following meanings:

72 (1) “Adverse action” means a denial, cancellation, or other adverse change or assessment  
73 regarding an individual’s eligibility for, opportunity to access, or terms of access to important  
74 life opportunities.

75 (2) “Algorithmic eligibility determination” means a determination based in whole or in  
76 significant part on an algorithmic process that utilizes machine learning, artificial intelligence, or  
77 similar techniques to determine an individual’s eligibility for, or opportunity to access, important  
78 life opportunities.

79 (3) “Algorithmic information availability determination” means a determination based in  
80 whole or in significant part on an algorithmic process that utilizes machine learning, artificial

81 intelligence, or similar techniques to determine an individual’s receipt of advertising, marketing,  
82 solicitations, or offers for an important life opportunity.

83 (4) “Covered entity” means any individual, firm, corporation, partnership, cooperative,  
84 association, or any other organization, legal entity, or group of individuals however organized,  
85 including entities related by common ownership or corporate control, that either makes  
86 algorithmic eligibility determinations or algorithmic information availability determinations, or  
87 relies on algorithmic eligibility determinations or algorithmic information availability  
88 determinations supplied by a service provider, and that meets one of the following criteria:

89 (A) Possesses or controls personal information on more than 25,000 District  
90 residents;

91 (B) Has greater than \$15 million in average annualized gross receipts for the 3  
92 years preceding the most recent fiscal year;

93 (C) Is a data broker, or other entity, that derives 50 percent or more of its annual  
94 revenue by collecting, assembling, selling, distributing, providing access to, or maintaining  
95 personal information, and some proportion of the personal information concerns a District  
96 resident who is not a customer or an employee of that entity; or

97 (D) Is a service provider.

98 (5) “Important life opportunities” means access to, approval for, or offer of credit,  
99 education, employment, housing, a place of public accommodation as defined in section 102(24)  
100 of the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official  
101 Code § 2-1401.02(24)), or insurance.

102 (6)(A) “Personal information” means any information held by a covered entity –  
103 regardless of how the information is collected, inferred, derived, created, or obtained – that is  
104 linked or reasonably linkable to an individual, household, or a personal device.

105 (B) Information is reasonably linkable to an individual, household, or personal  
106 device if it can be used on its own or in combination with other information reasonably available  
107 to the covered entity, regardless of whether such other information is held by the covered entity,  
108 to identify an individual, household, or personal device.

109 (C) Examples of personal information include:

110 (i) Individually identifiable information such as a real name, alias,  
111 signature, date of birth, union membership number, postal address, unique personal identifier,  
112 online identifier, internet protocol address, media access control (MAC) address, unique device  
113 identifier, email address, phone number, account name, social security number, military  
114 identification number, driver’s license number, vehicle identification number, passport number,  
115 or other similar identifiers;

116 (ii) A person’s race, national origin, religious affiliation, gender identity,  
117 sexual orientation, marital status, or disability;

118 (iii) Commercial information, including records of personal property,  
119 products or services purchased, obtained, or considered, or other purchasing or consuming  
120 histories or tendencies;

121 (iv) Real-time or historical geolocation data more specific than a 50-mile  
122 radius;

123 (v) Education records, as defined in 34 C.F.R. § 99.3 or any successor  
124 regulation;

125 (vi) Biometric data, including voice signatures, facial geometry,  
126 fingerprints, and retina/iris scans;  
127 (vii) Inferences drawn from any of the information identified in sub-  
128 subparagraphs (i)-(vi) to create a profile about an individual reflecting the individual's  
129 predispositions, behavior, habits, attitudes, intelligence, abilities, and aptitudes.

130 (7) "Service provider" means any entity that performs algorithmic eligibility  
131 determinations or algorithmic information availability determinations on behalf of another entity.

132 Sec. 4. Prohibited practices.

133 (a) In general.

134 (1) A covered entity shall not make an algorithmic eligibility determination or an  
135 algorithmic information availability determination on the basis of an individual's or class of  
136 individuals' actual or perceived race, color, religion, national origin, sex, gender identity or  
137 expression, sexual orientation, familial status, source of income, or disability in a manner that  
138 segregates, discriminates against, or otherwise makes important life opportunities unavailable to  
139 an individual or class of individuals.

140 (2) Any practice that has the effect or consequence of violating paragraph (1) of  
141 this subsection shall be deemed to be an unlawful discriminatory practice.

142 (b) Exemptions.

143 (1) Nothing in subsection (a) shall limit the availability of the exemptions in  
144 section 103 of the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38;  
145 D.C. Official Code § 2-1401.03).

146 (2) Nothing in this act shall prohibit covered entities from using individuals’  
147 personal information to s part of an affirmative action plan, adopted pursuant to District or  
148 federal law

149 (C)make algorithmic eligibility determinations or algorithmic information  
150 availability determinations

151 Sec. 5. Relationships with service providers.

152 Any covered entity that relies in whole or in part on a service provider to conduct an  
153 algorithmic eligibility determination or an algorithmic information availability determination  
154 shall require by written agreement that the service provider implement and maintain measures  
155 reasonably designed to ensure that the service provider complies with this act.

156 Sec. 6. Right to notice and disclosure.

157 (a) Notice requirement.

158 A covered entity shall:

159 (1) Develop a notice about how the covered entity uses personal information in  
160 algorithmic eligibility determinations and algorithmic information availability determinations,  
161 including:

162 (A) What personal information the covered entity collects, generates,  
163 infers, uses, and retains;

164 (B) What sources the covered entity uses to collect, generate, or infer  
165 personal information;

166 (C) Whether the personal information is shared, sold, leased, or exchanged  
167 with any service providers for any kind of consideration, and if so, the names of those service  
168 providers, including subsidiaries of the service providers;

169 (D) A brief description of the relationship between the personal  
170 information and the algorithmic information availability or algorithmic eligibility  
171 determinations;

172 (E) How long the covered entity will hold the personal information; and

173 (F) The rights provided under this act;

174 (2) Ensure that the notice developed and made available under paragraph (1) of  
175 this subsection:

176 (A) Is clear, concise, and complete;

177 (B) Does not contain unrelated, confusing, or contradictory materials; and

178 (C) Is in a format that is:

179 (i) Prominent and easily accessible;

180 (ii) Capable of fitting on one printed page; and

181 (iii) Provided in English, as well as in any non-English language

182 spoken by at least 500 individuals in the District of Columbia population.

183 (3) Within 30 days after changing its collection or use practices or policies in a  
184 way that affects the content of the notice required by paragraph (1) of this subsection, update that  
185 notice;

186 (4) Make the notice required under paragraph (1) of this subsection continuously  
187 and conspicuously available:

188 (A) On the covered entity's website or mobile application, if the covered  
189 entity maintains a website or mobile application;

190 (B) At the physical place of business or any offline equivalent the covered  
191 entity maintains; and



192 (5) Send the notice required under paragraph (1) of this subsection to an  
193 individual before the first algorithmic information availability determination it makes about the  
194 individual, by:

195 (A) Mail, if the personal information was gathered through the individual  
196 contacting or contracting with the covered entity through mail;

197 (B) Email, if the personal information was gathered through the individual  
198 contacting or contracting with the covered entity through email, or if the covered entity has the  
199 individual's email address for another reason;

200 (C) Informing individuals through a "pop-up" notification upon navigation  
201 to the covered entity's website or within the covered entity's mobile application; or

202 (D) Providing a clear and conspicuous link on the covered entity's  
203 website's homepage, or the home screen of its mobile application, leading to the notice.

204 (b) A covered entity need not provide the notice described under subsection (a) of this  
205 section if another covered entity has provided notice to the same individual for the same action  
206 as part of a contracted arrangement with the covered entity.

207 (c) Prohibited acts.

208 A covered entity that is subject to paragraph (a)(1), with respect to any individual whose  
209 personal information the covered entity holds as described in that paragraph, may not use any  
210 personal information of the individual in an algorithmic eligibility determination unless the  
211 covered entity has provided the individual with notice consistent with that paragraph.

212 (d) Adverse action disclosure requirements.

213 If a covered entity takes any adverse action with respect to any individual that is based in  
214 whole or in part on the results of an algorithmic eligibility determination, the covered entity shall  
215 provide the individual a written or electronic disclosure that includes:

216 (1) The covered entity’s name, address, email address, and telephone number;

217 (2) The factors the determination depended on; and

218 (3) An explanation that the individual may:

219 (A) Access any personal information described in section 3(6)(A)-(C),  
220 pertaining to that individual, that the covered entity used to make the determination;

221 (B) Submit corrections to that information; and

222 (C) If the individual submits corrections, request that the covered entity  
223 conduct a reasoned reevaluation of the relevant algorithmic eligibility determination, conducted  
224 by a human, based on the corrected data.

225 Sec. 7. Auditing for Discriminatory Processing and Reporting Requirement.

226 (a) Auditing requirement.

227 A covered entity shall annually audit its algorithmic eligibility determination and  
228 algorithmic information availability determination practices to:

229 (1) Determine whether the processing practices discriminate in a manner  
230 prohibited by section 4 of this act;

231 (2) Analyze disparate-impact risks of algorithmic eligibility determinations and  
232 algorithmic information availability determinations based on actual or perceived race, color,  
233 religion, national origin, sex, gender identity or expression, sexual orientation, familial status,  
234 genetic information, source of income, or disability;

235 (3) Create and retain for at least 5 years an audit trail that records, for each  
236 algorithmic eligibility determination:

- 237 (A) The type of algorithmic eligibility determination made;
- 238 (B) The data used in the determination, including the source of any such  
239 data;
- 240 (C) The methodology used by the entity to establish the algorithm;
- 241 (D) The algorithm used to make the determination;
- 242 (E) Any data or sets of data used to train the algorithm;
- 243 (F) Any testing and results for model performance across different  
244 subgroups or for discriminatory effects;
- 245 (G) The methodology used to render the determination; and
- 246 (H) The ultimate decision rendered;

247 (4) Conduct annual impact assessments of:

- 248 (A) Existing systems that render algorithmic eligibility determinations and  
249 algorithmic information availability determinations; and
- 250 (B) Prior to implementation, new systems that render algorithmic  
251 eligibility determinations and algorithmic information availability determinations;

252 (5) Conduct the audits under paragraphs (1), (2), and (3) of this subsection in  
253 consultation with third parties who have substantial information about or participated in the  
254 covered entity's algorithmic eligibility determinations and algorithmic information availability  
255 determinations, including service providers; and

256 (6) Identify and implement reasonable measures to address risks of an unlawful  
257 disparate impact identified in the audits and impact assessments conducted under paragraphs (1),

258 (2), and (3) of this subsection, including the risks posed by determinations made by the covered  
259 entity's service providers.

260 (b)(1) Report.

261 A covered entity shall annually submit a report containing the results of the audit  
262 mandated under this section to the Office of the Attorney General for the District of Columbia on  
263 a form provided by the Office of the Attorney General. The report shall contain the following  
264 information:

265 (A) The types of algorithmic eligibility determination and algorithmic  
266 information availability determination that the covered entity makes;

267 (B) The data and methodologies that the covered entity uses to establish  
268 the algorithms;

269 (C) The optimization criteria of the algorithms used to make the  
270 determinations;

271 (D) Any data or sets of data used to train the algorithms, and the source or  
272 sources of that data;

273 (E) The methodologies the covered entity uses to render the  
274 determinations;

275 (F) Any performance metrics the entity uses to gauge the accuracy of the  
276 assessments, including accuracy, confidence intervals, and how those assessments are obtained;

277 (G) The frequency, methodology, and results of the impact assessments or  
278 risk assessments that the entity has conducted;

279 (H) Within the description of each of the above decisions, the rationale for  
280 each of these decisions;

281 (I) Whether the covered entity has received complaints from individuals  
282 regarding the algorithmic eligibility determinations and algorithmic information availability  
283 determinations it has made; and

284 (J) If the covered entity has determined that one or more of the exemptions  
285 referred to in section 4(b) apply to practices that would otherwise violate section 4(a), a  
286 declaration and explanation of the covered entity's reliance on those exemptions.

287 (2) To the extent consistent with federal law or other District law, a covered entity  
288 may, in place of the report required by paragraph (1) of this subsection, submit to the Office of  
289 the Attorney General a report previously submitted to a federal, District, or other government  
290 entity, if that report contains the required information or is supplemented with the missing  
291 information.

292 (3) Nothing in this section shall affect Freedom of Information Act exemptions  
293 that protect trade secrets and other information from public disclosure, as provided by section  
294 204 of the District of Columbia Administrative Procedure Act, approved March 29, 1977 (D.C.  
295 Law 1-96; D.C. Official Code § 2-534).

296 (d) The Attorney General for the District of Columbia, pursuant to the District of  
297 Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C.  
298 Official Code § 2-501 *et seq.*), may issue rules to implement the reporting provisions of this  
299 section.

300 Sec. 8. Enforcement.

301 (a) Enforcement by Attorney General.

302 In any case in which the Attorney General for the District of Columbia has reason to  
303 believe that any person has used, is using, or intends to use any method, act, or practice in

304 violation of this act or a regulation promulgated under this act, or has failed to provide a notice, a  
305 disclosure, or a report required by this act, the Attorney General for the District of Columbia may  
306 commence appropriate civil action in the Superior Court of the District of Columbia for:

- 307 (1) A temporary or permanent injunction;
- 308 (2) Penalties as described in subsection (c)(1) of this section;
- 309 (3) Damages or restitution; or
- 310 (4) Any other relief that the court considers appropriate.

311 (b) Investigatory powers of Attorney General.

312 In the course of an investigation to determine whether to seek relief, the Attorney General  
313 for the District of Columbia may subpoena witnesses, administer oaths, examine an individual  
314 under oath, require sworn written responses to written questions, and compel production of  
315 records, books, papers, contracts, and other documents. A subpoena issued pursuant to this  
316 subsection shall be issued in compliance with the procedures specified in section 110a(b)-(e) of  
317 the Attorney General for the District of Columbia Clarification and Elected Term Amendment  
318 Act of 2010, effective October 22, 2015 (D.C. Law 21-36; D.C. Official Code § 1-301.88d(b)-  
319 (e)).

320 (c) Attorney General actions for violations.

321 (1) Any covered entity or service provider that violates any provision of this act  
322 shall be liable for a civil penalty of not more than \$10,000 for each violation, which may be  
323 recovered in a civil action brought in the name of the District of Columbia by the Attorney  
324 General.

325 (2) Any civil penalty assessed for a violation under any provision of this act, and  
326 the proceeds of any settlement of an action brought pursuant to this subsection, shall be

327 deposited in the Litigation Support Fund established in section 106b of the Attorney General for  
328 the District of Columbia Clarification and Elected Term Amendment Act of 2010, effective  
329 October 22, 2015 (D.C. Law 21-36; D.C. Official Code § 1-301.86b).

330 (d) Civil actions for violations.

331 Any person aggrieved by a violation of this act may bring a civil action in any court of  
332 competent jurisdiction, and the court may award an amount not less than \$100 and not greater  
333 than \$10,000 per violation or actual damages, whichever is greater.

334 (e) Relief.

335 In a civil action brought under either subsection (c) or (d) of this section in which the  
336 plaintiff prevails, the court may also award:

337 (1) Punitive damages;

338 (2) Reasonable attorney's fees and litigation costs; and

339 (3) Any other relief, including equitable or declaratory relief, that the court  
340 determines appropriate.

341 (f) Injury in fact.

342 In a civil action brought under subsection (d) of this section, a violation of this act or a  
343 regulation promulgated under this act with respect to an individual constitutes a concrete and  
344 particularized injury to that individual.

345 Sec. 9. Fiscal impact statement.

346 The Council adopts the fiscal impact statement in the committee report as the  
347 fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975,  
348 approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

349 Sec. 10. Effective date.

350           This act shall take effect following approval by the Mayor (or in the event of  
351 veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional  
352 review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved  
353 December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the  
354 District of Columbia Register.