

ASSEMBLY SCIENCE, INNOVATION AND TECHNOLOGY
COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 3854 and 4030

STATE OF NEW JERSEY

DATED: MAY 16, 2024

The Assembly Science, Innovation and Technology Committee reports favorably an Assembly Committee Substitute for Assembly Bill Nos. 3854 and 4030.

As substituted and reported, this bill regulates the use of automated employment decision tools during the employment decision process to minimize employment discrimination that may result from the use of the tools.

Under the bill, “automated employment decision tool” (AEDT) means a machine-based system that can, for a set of human-defined objectives provided by an employer or an individual acting on behalf of an employer, make predictions, recommendations, or decisions influencing recruitment, workforce, or employment decisions.

The bill prohibits the sale, development, deployment, use, or offer for sale of AEDTs in the State unless:

(1) the AEDT is the subject of a bias audit conducted in the past year prior to selling or offering the AEDT for sale;

(2) the sale of the AEDT includes, at no additional cost, an annual bias audit service that provides the results of that audit to the purchaser and a written plan to monitor the implementation of the recommendations in the audit report;

(3) the AEDT is sold, developed, deployed, used, or offered for sale with a notice stating that the AEDT is subject to the provisions of this bill; and

(4) the developer of the AEDT has implemented the recommendations of the most recent bias audit conducted and issued a press release announcing how the recommendations have been implemented.

The bill also requires an employer that uses an AEDT to provide a summary of the most recent bias audit on the employer’s website.

In addition, the bill provides that any employer who uses an AEDT to screen a covered individual for an employment decision is required to notify each covered individual at least 10 days before use that an AEDT, which is subject to a bias audit pursuant to this bill, will be used in connection with the covered individual’s candidacy.

In addition, the bill provides that any employer who uses an AEDT to screen a covered individual for an employment decision is required to notify each covered individual of the following within 30 days of the use of the tool:

(1) that an AEDT, which is subject to a bias audit, was used in connection with the candidate's application;

(2) the tool assessed the job qualifications or characteristics that the tool used to assess the covered individual's application;

(3) the sources of the data collected, the data retention policy of the employer, the name of the AEDT the employer used, and the vendor of the AEDT; and

(4) if the outcome of using the AEDT is adverse to the covered individual, sufficient disclosures to enable the covered individual to contest any such employment decision that results from the use of the AEDT.

An employer or employment agency is required to make certain information publicly available on the employment section of its website.

The bill provides for civil penalties to be collected for violations of its provisions, and establishes penalties for developers and employers and employment agencies that violate certain provisions of the bill.

The bill is intended to affirm certain rights of covered individuals for employment under the circumstances specified in the bill, and will not be construed to reduce, limit, or curtail any rights of any covered individual provided by law, or to limit the authority of the State or its agencies to investigate and enforce rights relating to bias and discrimination in employment, or to promulgate rules and regulations relating to bias and discrimination in employment.