

118TH CONGRESS  
1ST SESSION

# S. 2892

To direct the Federal Trade Commission to require impact assessments of automated decision systems and augmented critical decision processes, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

SEPTEMBER 21, 2023

Mr. WYDEN (for himself, Mr. BOOKER, Mr. HEINRICH, Mr. PETERS, Mr. CASEY, Mr. LUJÁN, Ms. BALDWIN, Mr. MERKLEY, Mr. WHITEHOUSE, Mr. SCHATZ, Ms. HIRONO, and Ms. WARREN) 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 direct the Federal Trade Commission to require impact assessments of automated decision systems and augmented critical decision processes, 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.**

4 This Act may be cited as the “Algorithmic Account-  
5 ability Act of 2023”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

1           (1) AUGMENTED CRITICAL DECISION PROC-  
2           ESS.—The term “augmented critical decision proc-  
3           ess” means a process, procedure, or other activity  
4           that employs an automated decision system to make  
5           a critical decision.

6           (2) AUTOMATED DECISION SYSTEM.—The term  
7           “automated decision system” means any system,  
8           software, or process (including one derived from ma-  
9           chine learning, statistics, or other data processing or  
10          artificial intelligence techniques and excluding pas-  
11          sive computing infrastructure) that uses computa-  
12          tion, the result of which serves as a basis for a deci-  
13          sion or judgment.

14          (3) BIOMETRICS.—The term “biometrics”  
15          means any information that represents a biological,  
16          physiological, or behavioral attribute or feature of a  
17          consumer.

18          (4) CHAIR.—The term “Chair” means the  
19          Chair of the Commission.

20          (5) COMMISSION.—The term “Commission”  
21          means the Federal Trade Commission.

22          (6) CONSUMER.—The term “consumer” means  
23          an individual.

24          (7) COVERED ENTITY.—

1 (A) IN GENERAL.—The term “covered en-  
2 tity” means any person, partnership, or cor-  
3 poration over which the Commission has juris-  
4 diction under section 5(a)(2) of the Federal  
5 Trade Commission Act (15 U.S.C. 45(a)(2))—

6 (i) that deploys any augmented crit-  
7 ical decision process; and

8 (I) had greater than \$50,000,000  
9 in average annual gross receipts or is  
10 deemed to have greater than  
11 \$250,000,000 in equity value for the  
12 3-taxable-year period (or for the pe-  
13 riod during which the person, partner-  
14 ship, or corporation has been in exist-  
15 ence, if such period is less than 3  
16 years) preceding the most recent fiscal  
17 year, as determined in accordance  
18 with paragraphs (2) and (3) of section  
19 448(c) of the Internal Revenue Code  
20 of 1986;

21 (II) possesses, manages, modi-  
22 fies, handles, analyzes, controls, or  
23 otherwise uses identifying information  
24 about more than 1,000,000 con-  
25 sumers, households, or consumer de-

1 vices for the purpose of developing or  
2 deploying any automated decision sys-  
3 tem or augmented critical decision  
4 process; or

5 (III) is substantially owned, oper-  
6 ated, or controlled by a person, part-  
7 nership, or corporation that meets the  
8 requirements under subclause (I) or  
9 (II);

10 (ii) that—

11 (I) had greater than \$5,000,000  
12 in average annual gross receipts or is  
13 deemed to have greater than  
14 \$25,000,000 in equity value for the 3-  
15 taxable-year period (or for the period  
16 during which the person, partnership,  
17 or corporation has been in existence,  
18 if such period is less than 3 years)  
19 preceding the most recent fiscal year,  
20 as determined in accordance with  
21 paragraphs (2) and (3) of section  
22 448(c) of the Internal Revenue Code  
23 of 1986; and

24 (II) deploys any automated deci-  
25 sion system that is developed for im-

1                   plementation or use, or that the per-  
2                   son, partnership, or corporation rea-  
3                   sonably expects to be implemented or  
4                   used, in an augmented critical deci-  
5                   sion process by any person, partner-  
6                   ship, or corporation if such person,  
7                   partnership, or corporation meets the  
8                   requirements described in clause (i);  
9                   or

10                   (iii) that met the criteria described in  
11                   clause (i) or (ii) within the previous 3  
12                   years.

13                   (B) INFLATION ADJUSTMENT.—For pur-  
14                   poses of applying this paragraph in any fiscal  
15                   year after the first fiscal year that begins on or  
16                   after the date of enactment of this Act, each of  
17                   the dollar amounts specified in subparagraph  
18                   (A) shall be increased by the percentage in-  
19                   crease (if any) in the consumer price index for  
20                   all urban consumers (U.S. city average) from  
21                   such first fiscal year that begins after such date  
22                   of enactment to the fiscal year involved.

23                   (8) CRITICAL DECISION.—The term “critical  
24                   decision” means a decision or judgment that has any  
25                   legal, material, or similarly significant effect on a

1 consumer's life relating to access to or the cost,  
2 terms, or availability of—

3 (A) education and vocational training, in-  
4 cluding assessment, accreditation, or certifi-  
5 cation;

6 (B) employment, workers management, or  
7 self-employment;

8 (C) essential utilities, such as electricity,  
9 heat, water, internet or telecommunications ac-  
10 cess, or transportation;

11 (D) family planning, including adoption  
12 services or reproductive services;

13 (E) financial services, including any finan-  
14 cial service provided by a mortgage company,  
15 mortgage broker, or creditor;

16 (F) healthcare, including mental  
17 healthcare, dental, or vision;

18 (G) housing or lodging, including any rent-  
19 al or short-term housing or lodging;

20 (H) legal services, including private arbi-  
21 tration or mediation; or

22 (I) any other service, program, or oppor-  
23 tunity decisions about which have a comparably  
24 legal, material, or similarly significant effect on

1           a consumer’s life as determined by the Commis-  
2           sion through rulemaking.

3           (9) DEPLOY.—The term “deploy” means to im-  
4           plement, use, or make available for sale, license, or  
5           other commercial relationship.

6           (10) DEVELOP.—The term “develop” means to  
7           design, code, produce, customize, or otherwise create  
8           or modify.

9           (11) IDENTIFYING INFORMATION.—The term  
10          “identifying information” means any information,  
11          regardless of how the information is collected, in-  
12          ferred, predicted, or obtained that identifies or rep-  
13          resents a consumer, household, or consumer device  
14          through data elements or attributes, such as name,  
15          postal address, telephone number, biometrics, email  
16          address, internet protocol address, social security  
17          number, or any other identifying number, identifier,  
18          or code.

19          (12) IMPACT ASSESSMENT.—The term “impact  
20          assessment” means the ongoing study and evalua-  
21          tion of an automated decision system or augmented  
22          critical decision process and its impact on con-  
23          sumers.

24          (13) PASSIVE COMPUTING INFRASTRUCTURE.—  
25          The term “passive computing infrastructure” means

1 any intermediary technology that does not influence  
2 or determine the outcome of a decision, including—

3 (A) web hosting;

4 (B) domain registration;

5 (C) networking;

6 (D) caching;

7 (E) data storage; or

8 (F) cybersecurity.

9 (14) STATE.—The term “State” means each of  
10 the 50 States, the District of Columbia, and any ter-  
11 ritory or possession of the United States.

12 (15) SUMMARY REPORT.—The term “summary  
13 report” means documentation of a subset of infor-  
14 mation required to be addressed by the impact as-  
15 sessment as described in this Act or determined ap-  
16 propriate by the Commission.

17 (16) THIRD-PARTY DECISION RECIPIENT.—The  
18 term “third-party decision recipient” means any per-  
19 son, partnership, or corporation (beyond the con-  
20 sumer and the covered entity) that receives a copy  
21 of or has access to the results of any decision or  
22 judgment that results from a covered entity’s deploy-  
23 ment of an automated decision system or augmented  
24 critical decision process.



1 **SEC. 3. ASSESSING THE IMPACT OF AUTOMATED DECISION**  
2 **SYSTEMS AND AUGMENTED CRITICAL DECI-**  
3 **SION PROCESSES.**

4 (a) ACTS PROHIBITED.—

5 (1) IN GENERAL.—It is unlawful for—

6 (A) any covered entity to violate a regula-  
7 tion promulgated under subsection (b); or

8 (B) any person to knowingly provide sub-  
9 stantial assistance to any covered entity in vio-  
10 lating subsection (b).

11 (2) PREEMPTION OF PRIVATE CONTRACTS.—It  
12 shall be unlawful for any covered entity to commit  
13 the acts prohibited in paragraph (1), regardless of  
14 specific agreements between entities or consumers.

15 (b) REGULATIONS.—

16 (1) IN GENERAL.—Subject to paragraph (2),  
17 not later than 2 years after the date of enactment  
18 of this Act, the Commission shall, in consultation  
19 with the Director of the National Institute of Stand-  
20 ards and Technology, the Director of the National  
21 Artificial Intelligence Initiative, the Director of the  
22 Office of Science and Technology Policy, and other  
23 relevant stakeholders, including standards bodies,  
24 private industry, academia, technology experts, and  
25 advocates for civil rights, consumers, and impacted  
26 communities, promulgate regulations, in accordance

1 with section 553 of title 5, United States Code,  
2 that—

3 (A) require each covered entity to perform  
4 impact assessment of any—

5 (i) deployed automated decision sys-  
6 tem that was developed for implementation  
7 or use, or that the covered entity reason-  
8 ably expects to be implemented or used, in  
9 an augmented critical decision process by  
10 any person, partnership, or corporation  
11 that meets the requirements described in  
12 section 2(7)(A)(i); and

13 (ii) augmented critical decision proc-  
14 ess, both prior to and after deployment by  
15 the covered entity;

16 (B) require each covered entity to maintain  
17 documentation of any impact assessment per-  
18 formed under subparagraph (A), including the  
19 applicable information described in section 4(a)  
20 for 3 years longer than the duration of time for  
21 which the automated decision system or aug-  
22 mented critical decision process is deployed;

23 (C) require each person, partnership, or  
24 corporation that meets the requirements de-  
25 scribed in section 2(7)(A)(i) to disclose their

1 status as a covered entity to any person, part-  
2 nership, or corporation that sells, licenses, or  
3 otherwise provides through a commercial rela-  
4 tionship any automated decision system de-  
5 ployed by the covered entity in an automated  
6 decision system or augmented critical decision  
7 process;

8 (D) require each covered entity to submit  
9 to the Commission, on an annual basis, a sum-  
10 mary report for ongoing impact assessment of  
11 any deployed automated decision system or aug-  
12 mented critical decision process;

13 (E) require each covered entity to submit  
14 an initial summary report to the Commission  
15 for any new automated decision system or aug-  
16 mented critical decision process prior to its de-  
17 ployment by the covered entity;

18 (F) allow any person, partnership, or cor-  
19 poration over which the Commission has juris-  
20 diction under section 5(a)(2) of the Federal  
21 Trade Commission Act (15 U.S.C. 45(a)(2))  
22 that deploys any automated decision system or  
23 augmented critical decision process, but is not  
24 a covered entity, to submit to the Commission  
25 a summary report for any impact assessment

1 performed with respect to such system or pro-  
2 cess;

3 (G) require each covered entity, in per-  
4 forming the impact assessment described in  
5 subparagraph (A), to the extent possible, to  
6 meaningfully consult (including through  
7 participatory design, independent auditing, or  
8 soliciting or incorporating feedback) with rel-  
9 evant internal stakeholders (such as employees,  
10 ethics teams, and responsible technology teams)  
11 and independent external stakeholders (such as  
12 representatives of and advocates for impacted  
13 groups, civil society and advocates, and tech-  
14 nology experts) as frequently as necessary;

15 (H) require each covered entity to attempt  
16 to eliminate or mitigate, in a timely manner,  
17 any impact made by an augmented critical deci-  
18 sion process that demonstrates a likely material  
19 negative impact that has legal or similarly sig-  
20 nificant effects on a consumer’s life;

21 (I) establish definitions for—

22 (i) what constitutes “access to or the  
23 cost, terms, or availability of” with respect  
24 to a critical decision;

1           (ii) what constitutes “possession”,  
2           “management”, “modification”, and “con-  
3           trol” with respect to identifying informa-  
4           tion;

5           (iii) the different categories of third-  
6           party decision recipients that a covered en-  
7           tity must document under section 5(1)(H);  
8           and

9           (iv) any of the services, programs, or  
10          opportunities described in subparagraphs  
11          (A) through (I) of section 2(8) for the pur-  
12          pose of informing consumers, covered enti-  
13          ties, and regulators, as the Commission  
14          deems necessary;

15          (J) establish guidelines for any person,  
16          partnership, or corporation to calculate the  
17          number of consumers, households, or consumer  
18          devices for which the person, partnership, or  
19          corporation possesses, manages, modifies, or  
20          controls identifying information for the purpose  
21          of determining covered entity status;

22          (K) establish guidelines for a covered enti-  
23          ty to prioritize different automated decision sys-  
24          tems and augmented critical decision processes

1            deployed by the covered entity for performing  
2            impact assessment; and

3            (L) establish a required format for any  
4            summary report, as described in subparagraphs  
5            (D), (E), and (F), to ensure that such reports  
6            are submitted in an accessible and machine-  
7            readable format.

8            (2) CONSIDERATIONS.—In promulgating the  
9            regulations under paragraph (1), the Commission—

10            (A) shall take into consideration—

11            (i) that certain assessment or docu-  
12            mentation of an automated decision system  
13            or augmented critical decision process may  
14            only be possible at particular stages of the  
15            development and deployment of such sys-  
16            tem or process or may be limited or not  
17            possible based on the availability of certain  
18            types of information or data or the nature  
19            of the relationship between the covered en-  
20            tity and consumers;

21            (ii) the duration of time between sum-  
22            mary report submissions and the timeliness  
23            of the reported information;

24            (iii) the administrative burden placed  
25            on the Commission and the covered entity;

1 (iv) the benefits of standardizing and  
2 structuring summary reports for compara-  
3 tive analysis compared with the benefits of  
4 less-structured narrative reports to provide  
5 detail and flexibility in reporting;

6 (v) that summary reports submitted  
7 by different covered entities may contain  
8 different fields according to the require-  
9 ments established by the Commission, and  
10 the Commission may allow or require sub-  
11 mission of incomplete reports;

12 (vi) that existing data privacy and  
13 other regulations may inhibit a covered en-  
14 tity from storing or sharing certain infor-  
15 mation; and

16 (vii) that a covered entity may require  
17 information from other persons, partner-  
18 ships, or corporations that develop any  
19 automated decision system deployed in an  
20 automated decision system or augmented  
21 critical decision process by the covered en-  
22 tity for the purpose of performing impact  
23 assessment; and

1 (B) may develop specific requirements for  
 2 impact assessments and summary reports for  
 3 particular—

4 (i) categories of critical decisions, as  
 5 described in subparagraphs (A) through (I)  
 6 of section 2(8) or any subcategory devel-  
 7 oped by the Commission; and

8 (ii) stages of development and deploy-  
 9 ment of an automated decision system or  
 10 augmented critical decision process.

11 (3) EFFECTIVE DATE.—The regulations de-  
 12 scribed in paragraph (1) shall take effect on the  
 13 date that is 2 years after such regulations are pro-  
 14 mulgated.

15 **SEC. 4. REQUIREMENTS FOR COVERED ENTITY IMPACT AS-**  
 16 **SESSMENT.**

17 (a) REQUIREMENTS FOR IMPACT ASSESSMENT.—In  
 18 performing any impact assessment required under section  
 19 3(b)(1) for an automated decision system or augmented  
 20 critical decision process, a covered entity shall do the fol-  
 21 lowing, to the extent possible, as applicable to such cov-  
 22 ered entity as determined by the Commission:

23 (1) In the case of a new augmented critical de-  
 24 cision process, evaluate any previously existing crit-  
 25 ical decision-making process used for the same crit-



1 ical decision prior to the deployment of the new aug-  
2 mented critical decision process, along with any re-  
3 lated documentation or information, such as—

4 (A) a description of the baseline process  
5 being enhanced or replaced by the augmented  
6 critical decision process;

7 (B) any known harm, shortcoming, failure  
8 case, or material negative impact on consumers  
9 of the previously existing process used to make  
10 the critical decision;

11 (C) the intended benefits of and need for  
12 the augmented critical decision process; and

13 (D) the intended purpose of the automated  
14 decision system or augmented critical decision  
15 process.

16 (2) Identify and describe any consultation with  
17 relevant stakeholders as required by section  
18 3(b)(1)(G), including by documenting—

19 (A) the points of contact for the stake-  
20 holders who were consulted;

21 (B) the date of any such consultation; and

22 (C) information about the terms and proc-  
23 ess of the consultation, such as—

1 (i) the existence and nature of any  
2 legal or financial agreement between the  
3 stakeholders and the covered entity;

4 (ii) any data, system, design, scenario,  
5 or other document or material the stake-  
6 holder interacted with; and

7 (iii) any recommendations made by  
8 the stakeholders that were used to modify  
9 the development or deployment of the auto-  
10 mated decision system or augmented crit-  
11 ical decision process, as well as any rec-  
12 ommendations not used and the rationale  
13 for such nonuse.

14 (3) In accordance with any relevant National  
15 Institute of Standards and Technology or other Fed-  
16 eral Government best practices and standards, per-  
17 form ongoing testing and evaluation of the privacy  
18 risks and privacy-enhancing measures of the auto-  
19 mated decision system or augmented critical decision  
20 process, such as—

21 (A) assessing and documenting the data  
22 minimization practices of such system or proc-  
23 ess and the duration for which the relevant  
24 identifying information and any resulting crit-  
25 ical decision is stored;

1           (B) assessing the information security  
2           measures in place with respect to such system  
3           or process, including any use of privacy-enhanc-  
4           ing technology such as federated learning, dif-  
5           ferential privacy, secure multi-party computa-  
6           tion, de-identification, or secure data enclaves  
7           based on the level of risk; and

8           (C) assessing and documenting the current  
9           and potential future or downstream positive and  
10          negative impacts of such system or process on  
11          the privacy, safety, or security of consumers  
12          and their identifying information.

13          (4) Perform ongoing testing and evaluation of  
14          the current and historical performance of the auto-  
15          mated decision system or augmented critical decision  
16          process using measures such as benchmarking  
17          datasets, representative examples from the covered  
18          entity's historical data, and other standards, includ-  
19          ing by documenting—

20                (A) a description of what is deemed suc-  
21                cessful performance and the methods and tech-  
22                nical and business metrics used by the covered  
23                entity to assess performance;

24                (B) a review of the performance of such  
25                system or process under test conditions or an

1 explanation of why such performance testing  
2 was not conducted;

3 (C) a review of the performance of such  
4 system or process under deployed conditions or  
5 an explanation of why performance was not re-  
6 viewed under deployed conditions;

7 (D) a comparison of the performance of  
8 such system or process under deployed condi-  
9 tions to test conditions or an explanation of  
10 why such a comparison was not possible;

11 (E) an evaluation of any differential per-  
12 formance associated with consumers' race,  
13 color, sex, gender, age, disability, religion, fam-  
14 ily status, socioeconomic status, or veteran sta-  
15 tus, and any other characteristics the Commis-  
16 sion deems appropriate (including any combina-  
17 tion of such characteristics) for which the cov-  
18 ered entity has information, including a descrip-  
19 tion of the methodology for such evaluation and  
20 information about and documentation of the  
21 methods used to identify such characteristics in  
22 the data (such as through the use of proxy  
23 data, including ZIP Codes); and

24 (F) if any subpopulations were used for  
25 testing and evaluation, a description of which

1           subpopulations were used and how and why  
2           such subpopulations were determined to be of  
3           relevance for the testing and evaluation.

4           (5) Support and perform ongoing training and  
5           education for all relevant employees, contractors, or  
6           other agents regarding any documented material  
7           negative impacts on consumers from similar auto-  
8           mated decision systems or augmented critical deci-  
9           sion processes and any improved methods of devel-  
10          oping or performing an impact assessment for such  
11          system or process based on industry best practices  
12          and relevant proposals and publications from ex-  
13          perts, such as advocates, journalists, and academics.

14          (6) Assess the need for and possible develop-  
15          ment of any guard rail for or limitation on certain  
16          uses or applications of the automated decision sys-  
17          tem or augmented critical decision process, including  
18          whether such uses or applications ought to be pro-  
19          hibited or otherwise limited through any terms of  
20          use, licensing agreement, or other legal agreement  
21          between entities.

22          (7) Maintain and keep updated documentation  
23          of any data or other input information used to de-  
24          velop, test, maintain, or update the automated deci-

1        sion system or augmented critical decision process,  
2        including—

3                (A) how and when such data or other  
4                input information was sourced and, if applica-  
5                ble, licensed, including information such as—

6                        (i) metadata and information about  
7                        the structure and type of data or other  
8                        input information, such as the file type,  
9                        the date of the file creation or modifica-  
10                        tion, and a description of data fields;

11                        (ii) an explanation of the methodology  
12                        by which the covered entity collected, in-  
13                        ferred, or obtained the data or other input  
14                        information and, if applicable, labeled, cat-  
15                        egorized, sorted, or clustered such data or  
16                        other input information, including whether  
17                        such data or other input information was  
18                        labeled, categorized, sorted, or clustered  
19                        prior to being collected, inferred, or ob-  
20                        tained by the covered entity; and

21                        (iii) whether and how consumers pro-  
22                        vided informed consent for the inclusion  
23                        and further use of data or other input in-  
24                        formation about themselves and any limita-

1           tions stipulated on such inclusion or fur-  
2           ther use;

3           (B) why such data or other input informa-  
4           tion was used and what alternatives were ex-  
5           plored; and

6           (C) other information about the data or  
7           other input information, such as—

8                   (i) the representativeness of the  
9                   dataset and how this factor was measured,  
10                  including any assumption about the dis-  
11                  tribution of the population on which the  
12                  augmented critical decision process is de-  
13                  ployed; and

14                   (ii) the quality of the data, how the  
15                  quality was evaluated, and any measure  
16                  taken to normalize, correct, or clean the  
17                  data.

18           (8) Evaluate the rights of consumers, such as—

19                   (A) by assessing the extent to which the  
20                  covered entity provides consumers with—

21                           (i) clear notice that such system or  
22                           process will be used; and

23                           (ii) a mechanism for opting out of  
24                           such use;

1 (B) by assessing the transparency and  
2 explainability of such system or process and the  
3 degree to which a consumer may contest, cor-  
4 rect, or appeal a decision or opt out of such  
5 system or process, including—

6 (i) the information available to con-  
7 sumers or representatives or agents of con-  
8 sumers about the system or process, such  
9 as any relevant factors that contribute to  
10 a particular decision, including an expla-  
11 nation of which contributing factors, if  
12 changed, would cause the system or proc-  
13 ess to reach a different decision, and how  
14 such consumer, representative, or agent  
15 can access such information;

16 (ii) documentation of any complaint,  
17 dispute, correction, appeal, or opt-out re-  
18 quest submitted to the covered entity by a  
19 consumer with respect to such system or  
20 process; and

21 (iii) the process and outcome of any  
22 remediation measure taken by the covered  
23 entity to address the concerns of or harms  
24 to consumers; and



1 (C) by describing the extent to which any  
2 third-party decision recipient receives a copy of  
3 or has access to the results of such system or  
4 process and the category of such third-party de-  
5 cision recipient, as defined by the Commission  
6 in section 3(b)(1)(I)(iii).

7 (9) Identify any likely material negative impact  
8 of the automated decision system or augmented crit-  
9 ical decision process on consumers and assess any  
10 applicable mitigation strategy, such as by—

11 (A) identifying and measuring any likely  
12 material negative impact of the system or proc-  
13 ess on consumers, including documentation of  
14 the steps taken to identify and measure such  
15 impact;

16 (B) documenting any steps taken to elimi-  
17 nate or reasonably mitigate any likely material  
18 negative impact identified, including steps such  
19 as removing the system or process from the  
20 market or terminating its development;

21 (C) with respect to the likely material neg-  
22 ative impacts identified, documenting which  
23 such impacts were left unmitigated and the ra-  
24 tionale for the inaction, including details about  
25 the justifying non-discriminatory, compelling in-

1           terest and why such interest cannot be satisfied  
2           by other means (such as where there is an  
3           equal, zero-sum trade-off between impacts on 2  
4           or more consumers or where the required miti-  
5           gating action would violate civil rights or other  
6           laws); and

7           (D) documenting standard protocols or  
8           practices used to identify, measure, mitigate, or  
9           eliminate any likely material negative impact on  
10          consumers and how relevant teams or staff are  
11          informed of and trained about such protocols or  
12          practices.

13          (10) Describe any ongoing documentation of  
14          the development and deployment process with re-  
15          spect to the automated decision system or aug-  
16          mented critical decision process, including informa-  
17          tion such as—

18                 (A) the date of any testing, deployment, li-  
19                 censure, or other significant milestones; and

20                 (B) points of contact for any team, busi-  
21                 ness unit, or similar internal stakeholder that  
22                 was involved.

23          (11) Identify any capabilities, tools, standards,  
24          datasets, security protocols, improvements to stake-  
25          holder engagement, or other resources that may be

1 necessary or beneficial to improving the automated  
2 decision system, augmented critical decision process,  
3 or the impact assessment of such system or process,  
4 in areas such as—

5 (A) performance, including accuracy,  
6 robustness, and reliability;

7 (B) fairness, including bias and non-  
8 discrimination;

9 (C) transparency, explainability,  
10 contestability, and opportunity for recourse;

11 (D) privacy and security;

12 (E) personal and public safety;

13 (F) efficiency and timeliness;

14 (G) cost; or

15 (H) any other area determined appropriate  
16 by the Commission.

17 (12) Document any of the impact assessment  
18 requirements described in paragraphs (1) through  
19 (11) that were attempted but were not possible to  
20 comply with because they were infeasible, as well as  
21 the corresponding rationale for not being able to  
22 comply with such requirements, which may in-  
23 clude—

24 (A) the absence of certain information  
25 about an automated decision system developed

1 by other persons, partnerships, and corpora-  
2 tions;

3 (B) the absence of certain information  
4 about how clients, customers, licensees, part-  
5 ners, and other persons, partnerships, or cor-  
6 porations are deploying an automated decision  
7 system in their augmented critical decision  
8 processes;

9 (C) a lack of demographic or other data  
10 required to assess differential performance be-  
11 cause such data is too sensitive to collect, infer,  
12 or store; or

13 (D) a lack of certain capabilities, including  
14 technological innovations, that would be nec-  
15 essary to conduct such requirements.

16 (13) Perform and document any other ongoing  
17 study or evaluation determined appropriate by the  
18 Commission.

19 (b) RULE OF CONSTRUCTION.—Nothing in this Act  
20 should be construed to limit any covered entity from add-  
21 ing other criteria, procedures, or technologies to improve  
22 the performance of an impact assessment of their auto-  
23 mated decision system or augmented critical decision proc-  
24 ess.



1 (C) the covered entity's intended purpose  
2 for the automated decision system or aug-  
3 mented critical decision process;

4 (D) an identification of any stakeholders  
5 consulted by the covered entity as required by  
6 section 3(b)(1)(G) and documentation of the ex-  
7 istence and nature of any legal agreements be-  
8 tween the stakeholders and the covered entity;

9 (E) documentation of the testing and eval-  
10 uation of the automated decision system or aug-  
11 mented critical decision process, including—

12 (i) the methods and technical and  
13 business metrics used to assess the per-  
14 formance of such system or process and a  
15 description of what metrics are deemed  
16 successful performance;

17 (ii) the results of any assessment of  
18 the performance of such system or process  
19 and a comparison of the results of any as-  
20 sessment under test and deployed condi-  
21 tions; and

22 (iii) an evaluation of any differential  
23 performance of such system or process as-  
24 sessed during the impact assessment;

1 (F) any publicly stated guard rail for or  
2 limitation on certain uses or applications of the  
3 automated decision system or augmented crit-  
4 ical decision process, including whether such  
5 uses or applications ought to be prohibited or  
6 otherwise limited through any terms of use, li-  
7 censing agreement, or other legal agreement be-  
8 tween entities;

9 (G) documentation about the data or other  
10 input information used to develop, test, main-  
11 tain, or update the automated decision system  
12 or augmented critical decision process includ-  
13 ing—

14 (i) how and when the covered entity  
15 sourced such data or other input informa-  
16 tion; and

17 (ii) why such data or other input in-  
18 formation was used and what alternatives  
19 were explored;

20 (H) documentation of whether and how the  
21 covered entity implements any transparency or  
22 explainability measures, including—

23 (i) which categories of third-party de-  
24 cision recipients receive a copy of or have  
25 access to the results of any decision or

1 judgment that results from such system or  
2 process; and

3 (ii) any mechanism by which a con-  
4 sumer may contest, correct, or appeal a de-  
5 cision or opt out of such system or process,  
6 including the corresponding website for  
7 such mechanism, where applicable;

8 (I) any likely material negative impact on  
9 consumers identified by the covered entity and  
10 a description of the steps taken to remediate or  
11 mitigate such impact;

12 (J) a list of any impact assessment re-  
13 quirements that were attempted but were not  
14 possible to comply with because they were infea-  
15 sible, as well as the corresponding rationale for  
16 not being able to comply with such require-  
17 ments; and

18 (K) any additional capabilities, tools,  
19 standards, datasets, security protocols, improve-  
20 ments to stakeholder engagement, or other re-  
21 sources identified by an impact assessment as  
22 necessary or beneficial to improve the perform-  
23 ance of impact assessment or the development  
24 and deployment of any automated decision sys-  
25 tem or augmented critical decision process that



1 the covered entity determines appropriate to  
2 share with the Commission;

3 (2) include, in addition to the information re-  
4 quired under paragraph (1), any relevant additional  
5 information from section 4(a) the covered entity  
6 wishes to share with the Commission;

7 (3) follow any format or structure requirements  
8 specified by the Commission; and

9 (4) include additional criteria that are essential  
10 for the purpose of consumer protection, as deter-  
11 mined by the Commission.

12 **SEC. 6. REPORTING; PUBLICLY ACCESSIBLE REPOSITORY.**

13 (a) ANNUAL REPORT.—Not later than 1 year after  
14 the effective date described in section 3(b)(3), and annu-  
15 ally thereafter, the Commission shall publish publicly on  
16 the website of the Commission a report describing and  
17 summarizing the information from the summary reports  
18 submitted under subparagraph (D), (E), or (F) of section  
19 3(b)(1) that—

20 (1) is accessible and machine readable in ac-  
21 cordance with the 21st Century Integrated Digital  
22 Experience Act (44 U.S.C. 3501 note); and

23 (2) describes broad trends, aggregated statis-  
24 tics, and anonymized lessons learned about per-  
25 forming impact assessments of automated decision

1 systems or augmented critical decision processes, for  
2 the purposes of updating guidance related to impact  
3 assessments and summary reporting, oversight, and  
4 making recommendations to other regulatory agen-  
5 cies.

6 (b) PUBLICLY ACCESSIBLE REPOSITORY.—

7 (1) IN GENERAL.—

8 (A) ESTABLISHMENT.—

9 (i) DEVELOPMENT.—Not later than  
10 180 days after the Commission promul-  
11 gates the regulations required under sec-  
12 tion 3(b)(1), the Commission shall develop  
13 a publicly accessible repository designed to  
14 publish a limited subset of the information  
15 about each automated decision system and  
16 augmented critical decision process for  
17 which the Commission received a summary  
18 report under subparagraph (D), (E), or  
19 (F) of section 3(b)(1) in order to facilitate  
20 consumer protection.

21 (ii) PUBLICATION.—Not later than  
22 180 days after the effective date described  
23 in section 3(b)(3), the Commission shall  
24 make the repository publicly accessible.

1                   (iii) UPDATES.—The Commission  
2                   shall update the repository on a quarterly  
3                   basis.

4                   (B) PURPOSE.—The purposes of the repos-  
5                   itory established under subparagraph (A) are—

6                   (i) to inform consumers about the use  
7                   of automated decision systems and aug-  
8                   mented critical decision processes;

9                   (ii) to allow researchers and advocates  
10                  to study the use of automated decision sys-  
11                  tems and augmented critical decision proc-  
12                  esses; and

13                  (iii) to ensure compliance with the re-  
14                  quirements of this Act.

15                  (C) CONSIDERATIONS.—In establishing the  
16                  repository under subparagraph (A), the Com-  
17                  mission shall consider—

18                  (i) how to provide consumers with  
19                  pertinent information regarding augmented  
20                  critical decision processes while minimizing  
21                  any potential commercial risk to any cov-  
22                  ered entity of providing such information;

23                  (ii) what information, if any, to in-  
24                  clude regarding the specific automated de-

1 cision systems deployed in the augmented  
2 critical decision processes;

3 (iii) how to document information,  
4 when applicable, about how to contest or  
5 seek recourse for a critical decision in a  
6 manner that is readily accessible by the  
7 consumer; and

8 (iv) how to streamline the submission  
9 of summary reports under subparagraph  
10 (D), (E), or (F) of section 3(b)(1) to allow  
11 the Commission to efficiently populate in-  
12 formation into the repository to minimize  
13 or eliminate any burden on the Commis-  
14 sion.

15 (D) REQUIREMENTS.—The Commission  
16 shall design the repository established under  
17 subparagraph (A) to—

18 (i) be publicly available and easily dis-  
19 coverable on the website of the Commis-  
20 sion;

21 (ii) allow users to sort and search the  
22 repository by multiple characteristics (such  
23 as by covered entity, date reported, or cat-  
24 egory of critical decision) simultaneously;

1 (iii) allow users to make a copy of or  
2 download the information obtained from  
3 the repository, including any subsets of in-  
4 formation obtained by sorting or searching  
5 as described in clause (ii), in accordance  
6 with current guidance from the Office of  
7 Management and Budget, such as the  
8 Open, Public, Electronic, and Necessary  
9 Government Data Act (44 U.S.C. 101  
10 note);

11 (iv) be in accordance with user experi-  
12 ence and accessibility best practices such  
13 as those described in the 21st Century In-  
14 tegrated Digital Experience Act (44 U.S.C.  
15 3501 note);

16 (v) include a limited subset of infor-  
17 mation from the summary reports, as ap-  
18 plicable, under subparagraph (D), (E), or  
19 (F) of section 3(b)(1) that includes—

20 (I) the identity of the covered en-  
21 tity that submitted such summary re-  
22 port, including any link to the website  
23 of the covered entity;

24 (II) the specific critical decision  
25 that the augmented critical decision

1 process makes, along with the cat-  
2 egory of the critical decision;

3 (III) any publicly stated prohib-  
4 ited applications of the automated de-  
5 cision system or augmented critical  
6 decision process, including whether  
7 such prohibition is enforced through  
8 any terms of use, licensing agreement,  
9 or other legal agreement between enti-  
10 ties;

11 (IV) to the extent possible, the  
12 sources of any data used to develop,  
13 test, maintain, or update the auto-  
14 mated decision system or augmented  
15 critical decision process;

16 (V) to the extent possible, the  
17 type of technical and business metrics  
18 used to assess the performance of the  
19 augmented critical decision process  
20 when deployed; and

21 (VI) the link to any web page  
22 with instructions or other information  
23 related to a mechanism by which a  
24 consumer may contest, correct, or ap-  
25 peal a decision or opt out of the auto-

1 mated decision system or augmented  
2 critical decision process; and

3 (vi) include information about design,  
4 use, and maintenance of the repository, in-  
5 cluding—

6 (I) how frequently the repository  
7 is updated;

8 (II) the date of the most recent  
9 such update;

10 (III) the types of information  
11 from the summary reports submitted  
12 under subparagraph (D), (E), or (F)  
13 of section 3(b)(1) that are and are not  
14 included in the repository; and

15 (IV) any other information about  
16 the design, use, and maintenance the  
17 Commission determines is—

18 (aa) relevant to consumers  
19 and researchers; or

20 (bb) essential for consumer  
21 education and recourse.

22 (2) AUTHORIZATION OF APPROPRIATIONS.—  
23 There are authorized to be appropriated to the Com-  
24 mission such sums as are necessary to carry out this  
25 subsection.

1 **SEC. 7. GUIDANCE AND TECHNICAL ASSISTANCE; OTHER**  
2 **REQUIREMENTS.**

3 (a) GUIDANCE AND TECHNICAL ASSISTANCE FROM  
4 THE COMMISSION.—

5 (1) IN GENERAL.—The Commission shall pub-  
6 lish guidance on how to meet the requirements of  
7 sections 4 and 5, including resources such as docu-  
8 mentation templates and guides for meaningful con-  
9 sultation, that is developed by the Commission after  
10 consultation with the Director of the National Insti-  
11 tute of Standards and Technology, the Director of  
12 the National Artificial Intelligence Initiative, the Di-  
13 rector of the Office of Science and Technology Pol-  
14 icy, and other relevant stakeholders, including stand-  
15 ards bodies, private industry, academia, technology  
16 experts, and advocates for civil rights, consumers,  
17 and impacted communities.

18 (2) ASSISTANCE IN DETERMINING COVERED  
19 ENTITY STATUS.—In addition to the guidance re-  
20 quired under paragraph (1), the Commission shall—

21 (A) issue guidance and training materials  
22 to assist persons, partnerships, and corpora-  
23 tions in evaluating whether they are a covered  
24 entity; and

25 (B) regularly update such guidance and  
26 training materials in accordance with any feed-



1 back or questions from covered entities, experts,  
2 or other relevant stakeholders.

3 (b) OTHER REQUIREMENTS.—

4 (1) PUBLICATION.—Nothing in this Act shall  
5 be construed to limit a covered entity from publi-  
6 cizing any documentation of the impact assessment  
7 maintained under section 3(b)(1)(B), including in-  
8 formation beyond what is required to be submitted  
9 in a summary report under subparagraph (D) or (E)  
10 of section 3(b)(1), unless such publication would vio-  
11 late the privacy of any consumer.

12 (2) PERIODIC REVIEW OF REGULATIONS.—The  
13 Commission shall review the regulations promul-  
14 gated under section 3(b) not less than once every 5  
15 years and update such regulations as appropriate.

16 (3) REVIEW BY NIST AND OSTP.—The Commis-  
17 sion shall make available, in a private and secure  
18 manner, to the Director of the National Institute of  
19 Standards and Technology, the Director of the Of-  
20 fice of Science and Technology Policy, and the head  
21 of any Federal agency with relevant regulatory juris-  
22 diction over an augmented critical decision process  
23 any summary report submitted under subparagraph  
24 (D), (E), or (F) of section 3(b)(1) for review in  
25 order to develop future standards or regulations.

1 **SEC. 8. RESOURCES AND AUTHORITIES.**

2 (a) BUREAU OF TECHNOLOGY.—

3 (1) ESTABLISHMENT.—

4 (A) IN GENERAL.—There is established  
5 within the Commission the Bureau of Tech-  
6 nology (in this subsection referred to as the  
7 “Bureau”).

8 (B) DUTIES.—The Bureau shall engage in  
9 activities that include:

10 (i) Aiding or advising the Commission  
11 with respect to the technological aspects of  
12 the functions of the Commission, includ-  
13 ing—

14 (I) preparing, conducting, facili-  
15 tating, managing, or otherwise ena-  
16 bling studies, workshops, audits, com-  
17 munity participation opportunities, or  
18 other similar activities; and

19 (II) any other assistance deemed  
20 appropriate by the Commission or  
21 Chair.

22 (ii) Aiding or advising the Commis-  
23 sion with respect to the enforcement of this  
24 Act.

25 (iii) Providing technical assistance to  
26 any enforcement bureau within the Com-

1 mission with respect to the investigation  
2 and trial of cases.

3 (2) CHIEF TECHNOLOGIST.—The Bureau shall  
4 be headed by a Chief Technologist.

5 (3) STAFF.—

6 (A) APPOINTMENTS.—

7 (i) IN GENERAL.—Subject to subpara-  
8 graph (B), the Chair may, without regard  
9 to the civil service laws (including regula-  
10 tions), appoint personnel with experience  
11 in fields such as management, technology,  
12 digital and product design, user experience,  
13 information security, civil rights, tech-  
14 nology policy, privacy policy, humanities  
15 and social sciences, product management,  
16 software engineering, machine learning,  
17 statistics, or other related fields to enable  
18 the Bureau to perform its duties.

19 (ii) MINIMUM APPOINTMENTS.—Not  
20 later than 2 years after the date of enact-  
21 ment of this Act, the Chair shall appoint  
22 not less than 50 personnel.

23 (B) EXCEPTED SERVICE.—The personnel  
24 appointed in accordance with subparagraph (A)  
25 may be appointed to positions described in sec-

1           tion 213.3102(r) of title 5, Code of Federal  
2           Regulations.

3           (4) AUTHORIZATION OF APPROPRIATIONS.—

4           There are authorized to be appropriated to the Com-  
5           mission such sums as are necessary to carry out this  
6           subsection.

7           (b) ADDITIONAL PERSONNEL IN THE BUREAU OF  
8           CONSUMER PROTECTION.—

9           (1)        ADDITIONAL        PERSONNEL.—Notwith-  
10          standing any other provision of law, the Chair may,  
11          without regard to the civil service laws (including  
12          regulations), appoint 25 additional personnel to the  
13          Division of Enforcement of the Bureau of Consumer  
14          Protection.

15          (2) AUTHORIZATION OF APPROPRIATIONS.—

16          There are authorized to be appropriated to the Com-  
17          mission such sums as are necessary to carry out this  
18          subsection.

19          (c) ESTABLISHMENT OF AGREEMENTS OF COOPERA-

20          TION.—The Commission shall negotiate agreements of co-  
21          operation, as needed, with any relevant Federal agency  
22          with respect to information sharing and enforcement ac-  
23          tions taken regarding the development or deployment of  
24          an automated decision system to make a critical decision  
25          or of an augmented critical decision process. Such agree-

1 ments shall include procedures for determining which  
2 agency shall file an action and providing notice to the non-  
3 filing agency, where feasible, prior to initiating a civil ac-  
4 tion to enforce any Federal law within such agencies' ju-  
5 risdictions regarding the development or deployment of an  
6 automated decision system to make a critical decision or  
7 of an augmented critical decision process by a covered en-  
8 tity.

9 **SEC. 9. ENFORCEMENT.**

10 (a) ENFORCEMENT BY THE COMMISSION.—

11 (1) UNFAIR OR DECEPTIVE ACTS OR PRAC-  
12 TICES.—A violation of this Act or a regulation pro-  
13 mulgated thereunder shall be treated as a violation  
14 of a rule defining an unfair or deceptive act or prac-  
15 tice under section 18(a)(1)(B) of the Federal Trade  
16 Commission Act (15 U.S.C. 57a(a)(1)(B)).

17 (2) POWERS OF THE COMMISSION.—

18 (A) IN GENERAL.—The Commission shall  
19 enforce this Act and the regulations promul-  
20 gated under this Act in the same manner, by  
21 the same means, and with the same jurisdic-  
22 tion, powers, and duties as though all applicable  
23 terms and provisions of the Federal Trade  
24 Commission Act (15 U.S.C. 41 et seq.) were in-  
25 corporated into and made a part of this Act.

1 (B) PRIVILEGES AND IMMUNITIES.—Any  
2 person who violates this Act or a regulation  
3 promulgated thereunder shall be subject to the  
4 penalties and entitled to the privileges and im-  
5 munities provided in the Federal Trade Com-  
6 mission Act (15 U.S.C. 41 et seq.).

7 (C) AUTHORITY PRESERVED.—Nothing in  
8 this Act shall be construed to limit the author-  
9 ity of the Commission under any other provi-  
10 sion of law.

11 (D) RULEMAKING.—The Commission shall  
12 promulgate in accordance with section 553 of  
13 title 5, United States Code, such additional  
14 rules as may be necessary to carry out this Act.

15 (b) ENFORCEMENT BY STATES.—

16 (1) IN GENERAL.—If the attorney general of a  
17 State has reason to believe that an interest of the  
18 residents of the State has been or is being threat-  
19 ened or adversely affected by a practice that violates  
20 this Act or a regulation promulgated thereunder, the  
21 attorney general of the State may, as *parens patriae*,  
22 bring a civil action on behalf of the residents of the  
23 State in an appropriate district court of the United  
24 States to obtain appropriate relief.

25 (2) RIGHTS OF COMMISSION.—

1 (A) NOTICE TO COMMISSION.—

2 (i) IN GENERAL.—Except as provided  
3 in clause (iii), the attorney general of a  
4 State, before initiating a civil action under  
5 paragraph (1), shall provide written notifi-  
6 cation to the Commission that the attorney  
7 general intends to bring such civil action.

8 (ii) CONTENTS.—The notification re-  
9 quired under clause (i) shall include a copy  
10 of the complaint to be filed to initiate the  
11 civil action.

12 (iii) EXCEPTION.—If it is not feasible  
13 for the attorney general of a State to pro-  
14 vide the notification required under clause  
15 (i) before initiating a civil action under  
16 paragraph (1), the attorney general shall  
17 notify the Commission immediately upon  
18 instituting the civil action.

19 (B) INTERVENTION BY COMMISSION.—The  
20 Commission may—

21 (i) intervene in any civil action  
22 brought by the attorney general of a State  
23 under paragraph (1); and

24 (ii) upon intervening—

1 (I) be heard on all matters arising in the civil action; and

2  
3 (II) file petitions for appeal of a  
4 decision in the civil action.

5 (3) INVESTIGATORY POWERS.—Nothing in this  
6 subsection may be construed to prevent the attorney  
7 general of a State from exercising the powers conferred on the attorney general by the laws of the  
8 State to conduct investigations, to administer oaths  
9 or affirmations, or to compel the attendance of witnesses or the production of documentary or other  
10 evidence, or to compel the attendance of witnesses or the production of documentary or other  
11 evidence.  
12 evidence.

13 (4) VENUE; SERVICE OF PROCESS.—

14 (A) VENUE.—Any action brought under  
15 paragraph (1) may be brought in—

16 (i) the district court of the United  
17 States that meets applicable requirements  
18 relating to venue under section 1391 of  
19 title 28, United States Code; or

20 (ii) another court of competent jurisdiction.  
21

22 (B) SERVICE OF PROCESS.—In an action  
23 brought under paragraph (1), process may be  
24 served in any district in which—



1 (i) the defendant is an inhabitant,  
2 may be found, or transacts business; or

3 (ii) venue is proper under section  
4 1391 of title 28, United States Code.

5 (5) ACTIONS BY OTHER STATE OFFICIALS.—

6 (A) IN GENERAL.—In addition to a civil  
7 action brought by an attorney general under  
8 paragraph (1), any other officer of a State who  
9 is authorized by the State to do so may bring  
10 a civil action under paragraph (1), subject to  
11 the same requirements and limitations that  
12 apply under this subsection to civil actions  
13 brought by attorneys general.

14 (B) SAVINGS PROVISION.—Nothing in this  
15 subsection may be construed to prohibit an au-  
16 thorized official of a State from initiating or  
17 continuing any proceeding in a court of the  
18 State for a violation of any civil or criminal law  
19 of the State.

20 **SEC. 10. COORDINATION.**

21 In carrying out this Act, the Commission shall coordi-  
22 nate with any appropriate Federal agency or State regu-  
23 lator to promote consistent regulatory treatment of auto-  
24 mated decision systems and augmented critical decision  
25 processes.

**1 SEC. 11. NO PREEMPTION.**

- 2       Nothing in this Act may be construed to preempt any  
3 State, tribal, city, or local law, regulation, or ordinance.

○