

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.

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

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) NONDISCLOSURE OF IMPACT ASSESSMENT.—
2 Nothing in this Act should be construed to require a cov-
3 ered entity to share with or otherwise disclose to the Com-
4 mission or the public any information contained in an im-
5 pact assessment performed in accordance with this Act,
6 except for any information contained in the summary re-
7 port required under subparagraph (D) or (E) of section
8 3(b)(1).

9 **SEC. 5. REQUIREMENTS FOR SUMMARY REPORTS TO THE**
10 **COMMISSION.**

11 The summary report that a covered entity is required
12 to submit under subparagraph (D) or (E) of section
13 3(b)(1) for any automated decision system or augmented
14 critical decision process shall, to the extent possible—

15 (1) contain information from the impact assess-
16 ment of such system or process, as applicable, in-
17 cluding—

18 (A) the name, website, and point of con-
19 tact for the covered entity;

20 (B) a detailed description of the specific
21 critical decision that the augmented critical de-
22 cision process is intended to make, including
23 the category of critical decision as described in
24 subparagraphs (A) through (I) of section 2(8);

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.

○