

HOUSE No. 4029

The Commonwealth of Massachusetts

PRESENTED BY:

David Henry Argosky LeBoeuf

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to algorithmic accountability and bias prevention.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>David Henry Argosky LeBoeuf</i>	<i>17th Worcester</i>	<i>2/19/2021</i>

HOUSE No. 4029

By Mr. LeBoeuf of Worcester, a petition (accompanied by bill, House, No. 4029) of David Henry Argosky LeBoeuf relative to algorithmic accountability and bias prevention in the protection of consumers. Consumer Protection and Professional Licensure.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Second General Court
(2021-2022)**

An Act relative to algorithmic accountability and bias prevention.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Chapter 93 of the General Laws is hereby amended by adding the following section:-

2 Section 115. (a) As used in this section the following terms shall, unless the context
3 clearly requires otherwise, have the following meanings:

4 “Automated decision system”, a computational process, including one derived from
5 machine learning, statistics, or other data processing or artificial intelligence techniques, that
6 makes a decision or facilitates human decision making, that impacts consumers.

7 “Automated decision system impact assessment”, a study evaluating an automated
8 decision system and the automated decision system’s development process, including the design
9 and training data of the automated decision system, for impacts on accuracy, fairness, bias,
10 discrimination, privacy, and security that includes, at a minimum: (A) a detailed description of
11 the automated decision system, its design, its training, data, and its purpose; (B) an assessment of
12 the relative benefits and costs of the automated decision system in light of its purpose, taking

13 into account relevant factors, including (i) data minimization practices; (ii) the duration for
14 which personal information and the results of the automated decision system are stored; (iii)
15 what information about the automated decision system is available to consumers; (iv) the extent
16 to which consumers have access to the results of the automated decision system and may correct
17 or object to its results; and (v) the recipients of the results of the automated decision system; (C)
18 an assessment of the risks posed by the automated decision system to the privacy or security of
19 personal information of consumers and the risks that the automated decision system may result in
20 or contribute to inaccurate, unfair, biased or discriminatory decisions impacting consumers; and
21 (D) the measures the covered entity will employ to minimize the risks described in clause (C),
22 including technological and physical safeguards.

23 “Office”, office of consumer affairs and business regulation.

24 “Consumer”, an individual.

25 “Covered entity” any person, partnership, or corporation that: (A) had greater than
26 \$50,000,000 in average annual gross receipts for the 3-taxable-year period preceding the most
27 recent fiscal year, as determined in accordance with paragraphs (2) and (3) of section 448(c) of
28 the Internal Revenue Code of 1986; (B) possesses or controls personal information on more than:
29 (i) 1,000,000 consumers; or (ii) 1,000,000 consumer devices; (C) is substantially owned,
30 operated, or controlled by a person, partnership, or corporation that meets the requirements under
31 subparagraph (A) or (B); or (D) is a data broker or other commercial entity that, as a substantial
32 part of its business, collects, assembles, or maintains personal information concerning an
33 individual who is not a customer or an employee of that entity in order to sell or trade the
34 information or provide third-party access to the information.

35 “Data protection impact assessment”, a study evaluating the extent to which an
36 information system protects the privacy and security of personal information the system
37 processes.

38 “High-risk automated decision system”, an automated decision system that: (A) taking
39 into account the novelty of the technology used and the nature, scope, context, and purpose of
40 the automated decision system, poses a significant risk: (i) to the privacy or security of personal
41 information of consumers; or (ii) of resulting in or contributing to inaccurate, unfair, biased, or
42 discriminatory decisions impacting consumers; (B) makes decisions, or facilitates human
43 decision making, based on systematic and extensive evaluations of consumers, including
44 attempts to analyze or predict sensitive aspects of their lives, such as their work performance,
45 economic situation, health, personal preferences, interests, behavior, location, or movements,
46 that: (i) alter legal rights of consumers; or (ii) otherwise significantly impact consumers; (C)
47 involves the personal information of a significant number of consumers regarding race, color,
48 national origin, political opinions, religion, trade union membership, genetic data, biometric data,
49 health, gender, gender identity, sexuality, sexual orientation, criminal convictions, or arrests; (D)
50 systematically monitors a large, publicly accessible physical place; or (E) meets any other
51 criteria established by the Office in regulations issued pursuant to this section

52 “High-risk information system”, an information system that: (A) taking into account the
53 novelty of the technology used and the nature, scope, context, and purpose of the information
54 system, poses a significant risk to the privacy or security of personal information of consumers;
55 (B) involves the personal information of a significant number of consumers regarding race,
56 color, national origin, political opinions, religion, trade union membership, genetic data,
57 biometric data, health, gender, gender identity, sexuality, sexual orientation, criminal

58 convictions, or arrests; (C) systematically monitors a large, publicly accessible physical place; or
59 (D) meets any other criteria established by the Office in regulations issued pursuant to this
60 section.

61 “Information system”, (A) means a process, automated or not, that involves personal
62 information, such as the collection, recording, organization, structuring, storage, alteration,
63 retrieval, consultation, use, sharing, disclosure, dissemination, combination, restriction, erasure,
64 or destruction of personal information; and (B) does not include automated decision systems.

65 “Personal information”, any information, regardless of how the information is collected,
66 inferred, or obtained that is reasonably linkable to a specific consumer or consumer device.

67 “Store”, (A) means the actions of a person, partnership, or corporation to retain
68 information; and (B) includes actions to store, collect, assemble, possess, control, or maintain
69 information.

70 “Use”, the actions of a person, partnership, or corporation in using information, including
71 actions to use, process, or access information.

72 (b) A covered entity shall not: (1) violate a regulation promulgated under subsection (c);
73 or (2) knowingly provide substantial assistance to any person, partnership, or corporation whose
74 actions violate subsection (c).

75 (c)(1) Not later than 2 years after the date of enactment of this section, the Office shall
76 promulgate regulations, that: (A) require each covered entity to conduct automated decision
77 system impact assessments of (i) existing high-risk automated decision systems, as frequently as
78 the Office determines is necessary; and (ii) new high-risk automated decision systems, prior to

79 implementation, provided that a covered entity may evaluate similar high-risk automated
80 decision systems that present similar risks in a single assessment; (B) require each covered entity
81 to conduct data protection impact assessments of (i) existing high-risk information systems, as
82 frequently as the Office determines is necessary; and (ii) new high-risk information systems,
83 prior to implementation; provided that a covered entity may evaluate similar high-risk
84 information systems that present similar risks in a single assessment; (C) require each covered
85 entity to conduct the impact assessments under clauses (A) and (B), if reasonably possible, in
86 consultation with external third parties, including independent auditors and independent
87 technology experts; and (D) require each covered entity to reasonably address in a timely manner
88 the results of the impact assessments under clauses (A) and (B).

89 (2) The impact assessments under clauses (A) and (B) of paragraph 1 may be made
90 public by the covered entity at its sole discretion.

91 (d) It shall be unlawful for any covered entity to commit the acts prohibited in subsection
92 (b), regardless of specific agreements between entities or consumers.

93 (e) (1) A violation of subsection (b) shall be an unfair or deceptive act or practice under
94 chapter 93A.

95 (2)(A) The Office shall enforce this section in the same manner, by the same means, and
96 with the same jurisdiction, powers, and duties provided to it pursuant to chapter 24A or any other
97 general or special law. The Office may impose civil penalties or fines for a violation of
98 subsection (b). The Office may refer any violation of this section to the attorney general.

99 (i) Except as provided in clause (iii), the attorney general, before initiating a civil action
100 under paragraph (1), shall provide written notification to the Office that the attorney general
101 intends to bring such civil action.

102 (ii) The notification required under clause (i) shall include a copy of the complaint to be
103 filed to initiate the civil action.

104 (iii) If it is not feasible for the attorney general to provide the notification required under
105 clause (i) before initiating a civil action under paragraph (1), the attorney general shall notify the
106 Office immediately upon instituting the civil action.

107 (d) Any person who is aggrieved as a result of a violation of this section, or the attorney
108 general, may bring an action for recovery of actual damages or \$100,000 per violation,
109 whichever is greater, and other relief, including injunctive relief, civil penalties and attorney's
110 fees as provided by chapter 93A.