

SENATE No. 35

The Commonwealth of Massachusetts

PRESENTED BY:

Dylan A. Fernandes

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 fostering artificial intelligence responsibility.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Dylan A. Fernandes</i>	<i>Plymouth and Barnstable</i>	
<i>Michael D. Brady</i>	<i>Second Plymouth and Norfolk</i>	<i>2/24/2025</i>

SENATE No. 35

By Mr. Fernandes, a petition (accompanied by bill, Senate, No. 35) of Dylan A. Fernandes and Michael D. Brady for legislation to promote employee physical and mental health and wellbeing by limiting the use of electronic monitoring tools. Advanced Information Technology, the Internet and Cybersecurity.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Fourth General Court
(2025-2026)

An Act fostering artificial intelligence responsibility.

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

1 SECTION 1. The General Laws, as appearing in the 2022 Official Edition, is hereby
2 amended by adding, after chapter 149A, the following chapter:

3 Chapter 149B

4 Section 1. Definitions

5 (a) As used in this chapter, the following words shall have the following meanings unless
6 the context clearly requires otherwise:

7 “Authorized representative”, any person or organization appointed by the worker to serve
8 as a representative of the worker including, but not limited to, a labor organization as defined by
9 section 1 of chapter 150E section 1 of chapter 150A of the General Laws, 29 U.S.C. § 152(5) and
10 5 USC § 7103(a)(4), and 45 U.S. 151. Authorized representative shall not include a worker’s
11 employer.

"De-identified employee data", employee data that an employer has sought from their own electronic systems, from a vendor, or from a third-party source, aggregated, combined, or collected together, in a summary or other form so that the employee data cannot be identified as belonging to any specific employee.

“Automated Decision System (ADS),” any computational process, automated system, or algorithm utilizing machine learning, statistical modeling, data analytics, artificial intelligence, or similar methods that issues an output, including a score, classification, ranking, or recommendation, that is used to assist or replace human decision making on decisions that impact natural persons. "Automated decision tool" does not include a tool that does not assist or replace employment decision processes and that does not materially impact natural persons, including, but not limited to, a junk email filter, firewall, antivirus software, calculator, spreadsheet, database, data set, or other compilation of data.

“Automated Decision System (ADS) output” , any information, data, assumptions, predictions, scoring, recommendations, decisions, or conclusions generated by an ADS.

"Candidate", any natural person or their authorized representative seeking employment through an application, or who is screened or evaluated for recruitment, for a position of employment by a business operating in the commonwealth.

"Continuous incremental time-tracking tool", any system, application or instrument that continuously measures, records and/or tallies increments of time within a day during which an employee is or is not doing a particular activity or set of activities.

“Department”, the department of labor standards.

"Egregious misconduct", intentional or grossly negligent conduct that endangers the safety or well-being of the individual, co-workers, customers, or other persons, or that causes serious damage to the employer's or customers' property or business interests, including discrimination against or harassment of co-workers, customers, or other persons or violations of the law.

"Electronic monitoring tool", any system, application, or instrument that facilitates the collection of data concerning worker activities or communications by any means other than direct observation by a natural person, including but not limited to the use of a computer, telephone, wire, radio, camera, electromagnetic, photoelectronic, or photo-optical system, or obtaining employee data from a third-party.

"Employee Information", (also referred to as "information" or "employee data" or "data"), means any information that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular employee, regardless of how the information is collected, inferred, or obtained. Information includes, but is not limited to, the following:

(a) personal identity information, including the individual's name, contact information, government-issued identification numbers, financial information, criminal background, or employment history;

(b) biometric information, including data generated by automatic measurements of an individual's biological characteristics, such as a fingerprint, a voiceprint, eye retinas, irises, gait, or other unique biological patterns or characteristics that can be used, singly or in combination with other data, to identify a specific individual. "Biometric data" does not include:

- (i) a digital or physical photograph,
- (ii) an audio or video recording, or
- (iii) any data generated from a digital or physical photograph, or an audio or video recording, unless such data is generated to identify a specific individual.
- (c) health, medical, lifestyle, and wellness information, including the individual's medical history, physical or mental condition, diet or physical activity patterns, heart rate, medical treatment or diagnosis by a healthcare professional, health insurance policy number, subscriber identification number, or other unique identifier used to identify the individual; and
- (d) any data related to workplace activities, including the following:
- (i) human resources information, including the contents of an individual's personnel file or performance evaluations;
- (ii) work process information, such as data relating to an individual employee's performance or productivity, including but not limited to the quality and quantities of tasks performed, quality and quantities of items or materials handled or produced, rates or speeds of tasks performed, measurements or metrics of employee performance in relation to a quota, and time categorized as performing tasks or not performing tasks;
- (iii) data that captures workplace communications and interactions, including emails, texts, internal message boards, screenshots, and customer interaction and ratings;
- (iv) device usage and data, including, but not limited to keystroke recording, website, software, and application utilization, calls placed or geolocation information;

(v) audio, photo, or video data or other information collected from sensors, including movement tracking, thermal sensors, voiceprints, or facial recognition, emotion, and gait recognition;

(vi) inputs to or outputs generated by an automated employment decision tool that are linked to the individual;

(vii) data collected through electronic monitoring or continuous incremental time-tracking tools; and

(viii) data collected or generated on workers to mitigate the spread of infectious diseases, including COVID-19, or to comply with public health measures.

"Employee", shall have the same meaning as in section 148B of Chapter 149 of the General Laws.

"Employer", any person who directly or indirectly, or through an agent or any other person, employs, exercises, or reserves control, individually or jointly, over the wages, benefits, other compensation, hours, working conditions, access to work or job opportunities, or other terms or conditions of employment, of any worker, including the commonwealth, county, town, city, school district, public authority or other governmental subdivision of any kind. "Employer" includes any of the employer's agents, contractors, or subcontractors.

"Employment-related decision", any decision made by the employer that affects wages, benefits, other compensation, hours, schedule, performance evaluation, hiring, recruitment, discipline, promotion, termination, duties, assignment of work, access to work opportunities, productivity requirements, workplace health and safety, or other terms or conditions of

employment. For persons classified as independent contractors or for candidates for employment, this means the equivalent of these decisions based on their contract with or relationship to the employer.

“Essential job functions”, the fundamental duties of a position based upon work duties actually performed over the duration of employment, as revealed by objective evidence, including the amount of time workers spend performing each function, the consequences of not requiring individuals to perform the function, the terms of any applicable collective bargaining agreement, workers’ past and present work experiences and performance in the position in question, and the employer’s reasonable, nondiscriminatory judgment as to which functions are essential. Past and current written job descriptions may be evidence as to which functions are essential for achieving the purposes of the job, but may not be the sole basis for this determination absent the objective evidence described in this section.

"Impact assessment", an impartial evaluation by an independent auditor that complies with sections two and three of this chapter.

"Independent auditor", a person or entity that conducts an impact assessment of an automated employment decision tool in a manner that exercises objective and impartial judgment on all issues within the scope of such evaluation or assessment. A person is not an independent auditor of an automated employment decision tool if they currently or at any point in the five years preceding the impact assessment:

(a) are or were involved in using, developing, offering, licensing, or deploying the automated employment decision tool;

(b) have or had an employment relationship with a developer or deployer that uses, offers, or licenses the automated employment decision tool; or

(c) have or had a direct financial interest or a material indirect financial interest in a developer or deployer that uses, offers, or licenses the automated employment decision tool.

"Meaningful human oversight", a process that includes, at a minimum:

(a) the designation of at least one internal reviewer with sufficient expertise in the operation of automated employment decision tools, sufficient familiarity with the results of the most recent impact assessment of the employer's tool, and sufficient understanding of the outputs of the employer's tool to identify potential biases, errors, discrepancies, or inaccuracies produced by the tool;

(b) that sufficient authority and discretion be granted to the designated internal reviewer to dispute, rerun, or recommend the rejection of an output suspected to be invalid, inaccurate, or discriminatory; and

(c) that the designated internal reviewer has the time and resources available to review and evaluate the tool output in accordance with section 2 of this chapter.

"Periodic assessment of worker performance", assessing worker performance over the course of units of time equal to or greater than one calendar day.

"Vendor", any person or entity who sells, distributes, or develops for sale an automated employment decision tool to be used in an employment decision made by an employer in the commonwealth. "Vendor" includes any of the vendor's agents, contractors, or subcontractors.

Section 2. Electronic monitoring tools.

138 (a) It shall be unlawful for an employer to use an electronic monitoring tool to collect
139 employee information unless:

140 (i) the electronic monitoring tool is primarily used to accomplish any of the following
141 purposes:

142 (A) allowing a worker to accomplish or facilitating the accomplishment of an essential
143 job function;

144 (B) ensuring the quality of goods and services;

145 (C) conducting periodic assessment of worker performance;

146 (D) ensuring or facilitating compliance with employment, labor, or other relevant laws;

147 (E) protecting the health, safety, or security of workers, or the security of the employer's
148 facilities or computer networks; or

149 (F) administering wages and benefits.

150 The department of labor standards may establish additional exceptions under clause (i)
151 through notice and comment rulemaking in compliance with chapter 30A.

152 Nothing in this Act shall diminish an Employer's obligation under Massachusetts or
153 Federal Law to provide advance notice and to engage in good faith negotiations with a labor
154 organization representing any portion of its workforce before implementation.

155 (ii) the specific type and activated capabilities of an electronic monitoring tool must be
156 narrowly tailored to accomplish the employer's intended, legitimate purpose specified under (i).

(iii) the electronic monitoring tool may only be used to accomplish the employer's intended, legitimate purpose specified in (i), and must be customized and implemented in a manner ensuring that the execution of its duties undertaken in the manner least invasive to employees of the employer while accomplishing the employer's legitimate purposes as defined by (i);

(iv) the specific form of electronic monitoring is limited to the smallest number of workers, collects the least amount of data and is collected no more frequently than is necessary to accomplish the purpose, and the data collected is deleted once the purpose has been achieved.

(v) the employer must ensure that any employee data that is collected utilizing an electronic monitoring tool that is not necessary to accomplish the employer's intended, legitimate purpose is not disclosed to the employer and is promptly disposed of by the vendor;

(vi) the employer must ensure that employee data is not collected when the employee is off-duty; and

(vii) the employer must ensure that any employee data collected utilizing an electronic monitoring tool that is necessary to accomplish the employer's intended, legitimate purpose, is stored consistent with the commonwealth's data- and cyber- privacy laws, promptly disposed of as soon as the data is no longer needed, and is not utilized by the employer, the vendor or any other third party for any reason except as provided in section 2(c) and section 3(c) of this chapter.

(b) Any employer that uses an electronic monitoring tool shall give prior written notice and must obtain written consent from all candidates and employees subject to electronic monitoring and must also post said notice in a conspicuous place which is readily available for

viewing by candidates and employees, pursuant to sections 19B, 52C, and 190(i) of chapter 149 and section 99 of chapter 272. Such notice shall include, at a minimum, the following:

(i) a description of the purpose for which the electronic monitoring tool will be used, as specified in subparagraph (i) of paragraph (a) of this subdivision;

(ii) a description of the specific employee data to be collected, stored, secured, and disposed of (and the schedule therefore), and the activities, locations, communications, and job roles that will be electronically monitored by the tool;

(iii) a description of the dates, times, and frequency that electronic monitoring will occur;

(iv) whether and how any employee data collected by the electronic monitoring tool will be used as an input in an automated employment decision tool;

(v) whether and how any employee data collected by the electronic monitoring tool will alone or in conjunction with an automated employment decision tool be used to make an employment decision by the employer or employment agency;

(vi) whether and how any employee data collected by the electronic monitoring tool may be stored and utilized in discipline, in internal policy compliance, in administrative agency adjudications, and in litigation (whether or not it involves the employee as a party);

(vii) whether any employee data collected by the electronic monitoring tool will be used to assess employees' productivity performance or to set productivity standards, and if so, how;

(viii) a description of where any employee data collected by the electronic monitoring tool will be stored and the length of time it will be retained;

(ix) an explanation for how the specific electronic monitoring practice is the least invasive means available to accomplish the monitoring purpose;

(x) a statement that an employee is entitled to notice and maintains the right to refuse the sale, transfer, or disclosure of the employee's employee data subject to the provisions of section 2(f); and

(xi) a clear and reasonably understandable description of how an employee can exercise the rights described in this chapter.

Nothing in this Act shall diminish an Employer's obligation under Massachusetts or Federal Law to provide advance notice and to engage in good faith negotiations with a labor organization representing any portion of its workforce before implementation.

(c) An employer shall establish, maintain, and preserve for three years contemporaneous, true, and accurate records of data collected via an electronic monitoring tool to ensure compliance with employee or commissioner requests for data. The employer shall destroy any employee information collected via an electronic monitoring tool no later than thirty-seven months after collection unless the employee has provided written and informed consent to the retention of their data by the employer. An employer shall establish, implement and maintain reasonable administrative, technical and physical data security practices to protect the confidentiality, integrity and accessibility of employee data appropriate to the volume and nature of the employee data at issue. An employee shall have the right to request corrections to erroneous employee data.

(d) Notwithstanding the allowable purposes for electronic monitoring described in paragraph (a) of subdivision one of this section, an employer shall not:

221 (i) use an electronic monitoring tool in such a manner that results in a violation of labor,
222 employment, civil rights law or any other law of the commonwealth;

223 (ii) use an electronic monitoring tool or data collected via an electronic monitoring tool in
224 such a manner as to threaten the health, welfare, safety, or legal rights of employees or the
225 general public;

226 (iii) use an electronic monitoring tool to monitor employees who are off-duty and not
227 performing work-related tasks;

228 (iv) use an electronic monitoring tool in order to obtain information about an employee's
229 health, including health status and health conditions, the race, color, religious creed, national
230 origin, sex, gender identity, sexual orientation, genetic information, pregnancy or a condition
231 related to said pregnancy including, but not limited to, lactation or the need to express breast
232 milk for a nursing child, ancestry or status as a veteran or membership in any group protected
233 from employment discrimination under chapter 151B or any other applicable law;

234 (v) use an electronic monitoring tool in order to identify, punish, or obtain information
235 about employees engaging in activity protected under labor or employment law;

236 (vi) conduct audio or visual monitoring of bathrooms or other similarly private areas,
237 including locker rooms, changing areas, breakrooms, smoking areas, employee cafeterias,
238 lounges, areas designated to express breast milk, or areas designated for prayer or other religious
239 activity, including data collection on the frequency of use of those private areas;

240 (vii) conduct audio or visual monitoring of a workplace in an employee's residence, an
241 employee's personal vehicle, or property owned or leased by an employee;

(viii) use an electronic monitoring tool that incorporates facial recognition, unless such technology is necessary to protect the security of workers or the security of the employer's facilities;

(ix) use an electronic monitoring tool that incorporates gait, voice analysis, or emotion recognition technology;

(x) take adverse action against an employee based in whole or in part on their opposition or refusal to submit to a practice that the employee believes in good faith violates this article;

(xi) take adverse employment action against an employee on the basis of data collected via continuous incremental time-tracking tools except in the case of egregious misconduct; or

(xii) take adverse employment action against an employee based on any data collected via electronic monitoring if such data measures an employee's performance in relation to a performance standard that has not been previously, clearly, and unmistakably disclosed to such employee as well as to all other classes of employees to whom it applies in violation of subparagraph (vi) of paragraph (b) of subdivision one of this section, or if such data was collected without proper notice to employees or candidates pursuant to sections 19B, 52C, and 190(i) of chapter 149 and section 99 of chapter 272.

Nothing in this Act shall diminish an Employer's obligation under Massachusetts or Federal Law to provide advance notice and to engage in good faith negotiations with a labor organization representing any portion of its workforce before implementation.

(e) An employer shall not use employee data collected via an electronic monitoring tool for purposes other than those specified in the notice provided pursuant to paragraph (c) of subdivision one of this section.

(f) An employer shall not sell, transfer, or disclose employee data collected via an electronic monitoring tool to any other entity unless it is required to do so under federal law or the laws of the commonwealth, or necessary to do so to comply with an impact assessment of an automated employment decision tool pursuant to section one thousand twelve of this article.

(g) An employer shall not require employees to:

(i) physically implant devices that collect or transmit data, including devices that are installed subcutaneously or incorporated into items of clothing or personal accessories;

(ii) install applications on personal devices that collect or transmit employee data or to wear or embed those devices; or

(iii) carry or use any device with location tracking applications or services enabled unless the location tracking is:

(A) conducted during work hours only; and

(B) strictly necessary to accomplish essential job functions and narrowly limited to only the activities and times necessary to accomplish essential job functions.

(h) An employer shall not rely primarily on employee data collected through electronic monitoring when making hiring, promotion, disciplinary decisions up to and including termination, or compensation decisions. For an employer to satisfy the requirements of this paragraph:

(i) An employer shall establish meaningful human oversight of such decisions based in whole or in part on data collected through electronic monitoring.

(ii) A human decision-maker must actually review any information collected through electronic monitoring, verify that such information is accurate and up to date, review any pending employee requests to correct erroneous data, and exercise independent judgment in making each such decision; and

(iii) The human decision-maker must consider information other than information collected through electronic monitoring when making each such decision, such as but not limited to, supervisory or managerial evaluations, personnel files, employee work products, or peer reviews.

Nothing in this Act shall diminish an Employer's obligation under Massachusetts or Federal Law to provide advance notice and to engage in good faith negotiations with a labor organization representing any portion of its workforce before implementation.

(i) When an employer makes a hiring, promotion, termination, disciplinary or compensation decision based in whole or part on data gathered through the use of electronic monitoring, it shall disclose to affected employees no less than thirty days prior to the decision going into effect:

(i) that the decision was based in whole or part on data gathered through electronic monitoring;

(ii) the specific electronic monitoring tool or tools used to gather such data, how the tools work to gather and analyze the data, and the increments of time in which the data is gathered;

(iii) the specific data, and judgments based upon such data, used in the decision-making process; and

(iv) any information used in the decision-making process gathered through sources other than electronic monitoring.

Nothing in this Act shall diminish an Employer's obligation under Massachusetts or Federal Law to provide advance notice and to engage in good faith negotiations with a labor organization representing any portion of its workforce before implementation.

(j) It shall be unlawful for an employer to use electronic monitoring, alone or in conjunction with an automated employment decision system, unless the employer's proposed use of electronic monitoring has been the subject of an impact assessment. Such impact assessments must:

(i) be conducted no more than one year prior to the use of such electronic monitoring, or where the electronic monitoring began before the effective date of this article, within six months of the effective date of this article;

(ii) be conducted by an independent and impartial party with no financial or legal conflicts of interest;

(iii) evaluate whether the data protection and security practices surrounding the electronic monitoring are consistent with applicable law and cybersecurity industry best practices;

(iv) identify which allowable purpose(s) described in this chapter;

(vi) consider and describe any other ways in which the electronic monitoring could result in a violation of applicable law and, for any finding that a violation of law may occur, any necessary or appropriate steps to prevent such violation of law; and

(vii) consider and describe whether the electronic monitoring may negatively impact employees' privacy and job quality, including wages, hours, and working conditions.

Nothing in this Act shall diminish an Employer's obligation under Massachusetts or Federal Law to provide advance notice and to engage in good faith negotiations with a labor organization representing any portion of its workforce before implementation.

Section 3. Automated decision tools used for employment-related decisions.

a) It shall be unlawful for an employer to use an automated employment decision tool for an employment decision, alone or in conjunction with electronic monitoring, unless such tool has been the subject of an impact assessment. Impact assessments must:

(i) be conducted no more than one year prior to the use of such tool, or where the tool was in use by the employer before the effective date of this article, within six months of the effective date of this article;

(ii) be conducted by an independent and impartial party with no financial or legal conflicts of interest;

(iii) identify and describe the attributes and modeling techniques that the tool uses to produce outputs;

(iv) evaluate whether those attributes and techniques are a scientifically valid means of evaluating an employee or candidate's performance or ability to perform the essential functions

of a role, and whether those attributes may function as a proxy for belonging to a protected class under chapter 151B or any other applicable law;

(v) consider, identify, and describe any disparities in the data used to train or develop the tool and describe how those disparities may result in a disparate impact on persons based on their race, color, religious creed, national origin, sex, gender identity, sexual orientation, genetic information, pregnancy or a condition related to said pregnancy including, but not limited to, lactation or the need to express breast milk for a nursing child, ancestry or status as a veteran, and what actions may be taken by the employer or vendor of the tool to reduce or remedy any disparate impact;

(vi) consider, identify, and describe any outputs produced by the tool that may result in a disparate impact on persons based on their race, color, religious creed, national origin, sex, gender identity, sexual orientation, genetic information, pregnancy or a condition related to said pregnancy including, but not limited to, lactation or the need to express breast milk for a nursing child, ancestry or status as a veteran, and what actions may be taken by the employer or vendor of the tool to reduce or remedy that disparate impact;

(vii) evaluate whether the use of the tool may limit accessibility for persons with disabilities, or for persons with any specific disability, and what actions may be taken by the employer or vendor of the tool to reduce or remedy the concern;

(viii) consider and describe potential sources of adverse impact against individuals or groups based on race, color, religious creed, national origin, sex, gender identity, sexual orientation, genetic information, pregnancy or a condition related to said pregnancy including,

but not limited to, lactation or the need to express breast milk for a nursing child, ancestry or status as a veteran that may arise after the tool is deployed;

(ix) identify and describe any other assessment of risks of discrimination or a disparate impact of the tool on individuals or groups based on race, color, religious creed, national origin, sex, gender identity, sexual orientation, genetic information, pregnancy or a condition related to said pregnancy including, but not limited to, lactation or the need to express breast milk for a nursing child, ancestry or status as a veteran that arise over the course of the impact assessment, and what actions may be taken to reduce or remedy that risk;

(x) for any finding of a disparate impact or limit on accessibility, evaluate whether the data set, attribute, or feature of the tool at issue is the least discriminatory method of assessing a candidate's performance or ability to perform job functions;

(xi) consider and describe any other ways in which the tool could result in a violation of applicable law and, for any finding that a violation of law may occur, any necessary or appropriate steps to prevent such violation of law;

(xii) consider and describe whether use of the tool may negatively impact employees' privacy and job quality, including wages, hours, and working conditions; and

(xiii) be submitted in its entirety or an accessible summary form to the department for inclusion in a public registry of such impact assessments within sixty days of completion and distributed to employees who may be subject to the tool.

(b) An employer shall conduct or commission subsequent impact assessments each year that the tool is in use to assist or replace employment decisions. Subsequent impact assessments

shall comply with the requirements of paragraph (a) of this section, and shall assess and describe any change in the validity or disparate impact of the tool.

(c) An employer or its vendor shall retain all documentation pertaining to the design, development, use, and data of an automated employment decision tool that may be necessary to conduct an impact assessment. To the extent held by a vendor, the employer shall be granted a license to access this documentation and share this documentation with a labor organization to the extent required by federal or state law, or to the extent required by a court or agency in connection with employment or labor litigation. This includes but is not limited to the source of the data used to develop the tool, the technical specifications of the tool, individuals involved in the development of the tool, and historical use data for the tool. Such documentation must include a historical record of versions of the tool, such that an employer shall be able to attest in the event of litigation disputing an employment decision, the nature and specifications of the tool as it was used at the time of that employment decision. Such documentation shall be stored in accordance with such record-keeping, data retention, and security requirements as the commissioner may specify, and in such a manner as to be legible and accessible to the party conducting an impact assessment.

(d) If an initial or subsequent impact assessment requires the collection of employee data to assess a tool's disparate impact on employees, such data shall be collected, processed, stored, retained, and disposed of in such a manner as to protect the privacy of employees, and shall comply with any data retention and security requirements specified by the commissioner. Employee data provided to auditors for the purpose of an impact assessment shall not be shared with the employer, nor shall it be shared with any person, business entity, or other organization unless strictly necessary for the completion of the impact assessment.

(e) If an initial or subsequent impact assessment concludes that a data set, feature, or application of the automated employment decision tool results in a disparate impact on individuals or groups based on race, color, religious creed, national origin, sex, gender identity, sexual orientation, genetic information, pregnancy or a condition related to said pregnancy including, but not limited to, lactation or the need to express breast milk for a nursing child, ancestry or status as a veteran, or unlawfully limits accessibility for persons with disabilities, an employer shall refrain from using the tool until it:

(i) takes reasonable and appropriate steps to remedy that disparate impact or limit on accessibility and describe in writing to employees, the auditor, and the department what steps were taken; and

(ii) if the employer believes the impact assessment finding of a disparate impact or limit on accessibility is erroneous, or that the steps taken in accordance with subparagraph (i) of this paragraph sufficiently address those findings such that the tool may be lawfully used in accordance with this article, describes in writing to employees, the auditor, and the department how the data set, feature, or application of the tool is the least discriminatory method of assessing an employee's performance or ability to complete essential functions of a position.

(f) It shall be unlawful for an independent auditor, vendor, or employer to manipulate, conceal, or misrepresent the results of an impact assessment.

(g) Nothing in this article shall be construed as prohibiting an employer from implementing a lawful affirmative action plan or engaging in otherwise lawful efforts to reduce or eliminate bias in employment-related decisions.

Nothing in this Section shall diminish an Employer's obligation under Massachusetts or Federal Law to provide advance notice and to engage in good faith negotiations with a labor organization representing any portion of its workforce before implementation.

Section 4. Notice requirement.

(a) Any employer that uses an automated employment decision tool to assess or evaluate an employee or candidate shall notify employees and candidates subject to the tool no less than ten business days before such use:

(i) that an automated employment decision tool will be used in connection with the assessment or evaluation of such employee or candidate;

(ii) the job qualifications and characteristics that such automated employment decision tool will assess, what employee or candidate data or attributes the tool will use to conduct that assessment, and what kind of outputs the tool will produce as an evaluation of such employee or candidate;

(iii) what employee or candidate data is collected for the automated employment decision tool, the source of such data and the employer's data retention policy. Information pursuant to this section shall not be disclosed where such disclosure would violate local, state, or federal law, or interfere with a law enforcement investigation;

(iv) the results of the most recent impact assessment of the automated employment decision tool, including any findings of a disparate impact and associated response from the employer, or information about how to access that information if publicly available;

(v) information about how an employee or candidate may request an alternative selection process or accommodation that does not involve the use of an automated employment decision tool and details about that alternative process or accommodation process; and

(vi) information about how the employee or candidate may:

(A) request reevaluation of the employment decision made by the automated employment decision tool in accordance with section one thousand thirteen of this article; and

(B) notification of the employee or candidate's right to file a complaint in a civil court in accordance with section seven of this chapter or otherwise exercise the rights described in this chapter.

(b) The notice required by this section shall be:

(i) written in clear and plain language;

(ii) included in each job posting or advertisement for each position for which the automated employment decision tool will be used;

(iii) posted on the employer's website in any language that the employer regularly uses to communicate with employees;

(iv) provided directly to each candidate who applies for a position in the language with which that candidate communicates with the employer;

(v) made available in formats that are reasonably accessible to and usable by individuals with disabilities; and

(vi) otherwise presented in a manner that ensures the notice clearly and effectively communicates the required information to employees.

Nothing in this Section shall diminish an Employer's obligation under Massachusetts or Federal Law to provide advance notice and to engage in good faith negotiations with a labor organization representing any portion of its workforce before implementation.

Section 5. Restricted uses of automated decision tools.

(a) Notwithstanding the provisions of subdivision one of this section, an employer shall not, alone or in conjunction with an electronic monitoring tool, use an automated decision tool:

(i) in such a manner that results in a violation of labor, employment, or civil rights law or any other law of the commonwealth;

(ii) in a manner that harms or is likely to harm the health or safety of employees, including by setting productivity quotas in a manner that is likely to cause physical or mental illness or injury;

(iii) to make predictions about an employee or candidate for employment's behavior, beliefs, intentions, personality, emotional state, or other characteristic or behavior;

(iv) to predict, interfere with, restrain, or coerce employees engaging in activity protected under labor and employment law;

(v) to subtract from an employee's wages time spent exercising their legal rights;

(vi) in a manner that deviates from the specification of the automated employment decision tool as implemented after the incorporation of any alterations made pursuant to the impact assessment required by subdivision one of this section; or

(vii) that involves facial recognition, gait, or emotion recognition technologies.

(b) An employer shall not rely primarily on output from an automated decision tool when making hiring, promotion, termination, disciplinary, or compensation decisions. For an employer to satisfy the requirements of this paragraph:

(i) An employer must establish meaningful human oversight of such decisions based in whole or in part on the output of automated employment decision tools.

In determining whether an internal reviewer employs the requisite knowledge and skill to provide meaningful human oversight, relevant factors include the relative complexity and specialized nature of the automated decision tool, the reviewer's general experience, the reviewer's training and experience in the field, the preparation and study the reviewer is able to give the matter and whether it is feasible to refer the matter to, or associate or consult with, an expert with established competence in the field automated decision tools.

(ii) A human decision-maker must actually review any output of an automated employment decision tool and exercise independent judgment in making each such decision;

(iii) The human decision-maker must consider information other than automated employment decision tool outputs when making each such decision, such as but not limited to supervisory or managerial evaluations, personnel files, employee work products, or peer reviews; and

(iv) An employer shall consider information other than automated employment decision tool outputs when making hiring, promotion, termination, disciplinary, or compensation decisions, such as supervisory or managerial evaluations, personnel files, employee work products, or peer reviews.

(c) An employer shall not require employees or candidates to consent to the use of an automated employment decision tool in an employment decision in order to be considered for an employment decision, nor shall an employer discipline or disadvantage an employee or candidate for employment as a result of their request for accommodation.

Nothing in this Act shall diminish an Employer's obligation under Massachusetts or Federal Law to provide advance notice and to engage in good faith negotiations with a labor organization representing any portion of its workforce before implementation.

Section 6. Anti-retaliation provisions for impacted workers.

a) An employee shall be protected from termination, disciplinary action, retaliation, or other adverse employment action for refusing to follow the output of an artificial intelligence system, automated decision system, algorithm, or other similar technology if the following conditions are met:

i) The employee holds independent judgment and discretion in executing their work duties, or the work duties to be performed by the employee require licensure or certification by the commonwealth as a condition of employment, independent accreditation by the employer;

ii) The employee has notified a supervisor, manager, or their employer that the output from the artificial intelligence system, automated decision system, algorithm, or other

similar technology may, in the employee's professional opinion and/or educational or work related- experience, lead to harm of a natural person, damage to physical property, an illegal action, an action contrary to the licensure or certification requirements of the Federal government, commonwealth, or an applicable private licensing or certifying authority, or an outcome contrary to the goal of the employer, and the employer refused or otherwise failed to adjust the output;

iii) The employee has refused to follow the output in good faith and with the knowledge or reasonable belief, based upon training, education, or experience, that the output would cause harm or have an adverse impact; and

iv) Due to the urgency of the potential harm or adverse impact, there is not enough time for the output to be corrected through department action.

Nothing in this Act shall diminish an Employer's obligation under Massachusetts or Federal Law to provide advance notice and to engage in good faith negotiations with a labor organization representing any portion of its workforce before implementation.

The attorney general shall promulgate procedures, rules, or regulations pursuant to this chapter. The division of licensing shall also promulgate procedures, rules, or regulations pursuant to this chapter.

b) The Office of the Attorney General shall promulgate additional procedures, rules, or regulations in order to further the Commonwealth's interest in protecting consumers and the public good from violations of privacy rights and harms resulting from the use of artificial intelligence and automated-decision systems.

Such regulations shall consider, including but not limited to, bias testing, appropriate disclosures, clear, conspicuous, and reasonably understandable notice, whether there exists a client-professional relationship, best and current practices and models utilized by other states and the federal government to ensure regulations are responsive to emerging technologies, and appropriate additional documentation that is reasonably necessary to assist the Office to evaluate the inputs and outputs and monitor the performance of artificial intelligence and automated decision-making systems for the risk of bias and consumer harm.

Section 7. Civil claims for adverse employment action taken based on prohibited conduct.

No employee shall be penalized by an employer in any way as a result of any action on the part of an employee to seek the employee's rights under the provisions of this chapter.

Any employer who discharges or in any other manner discriminates against any employee because such employee has made a complaint to the attorney general or any other department, agency, or person, or assists the attorney general or department in any investigation under this chapter, or has instituted, or caused to be instituted any proceeding under or related to this chapter, or has testified or is about to testify in any such proceedings, shall have violated this section and shall be punished or shall be subject to a civil citation or order as provided in section 27C.

An individual subjected to an adverse employment action based on conduct prohibited by this Act may file a civil action against an employer, as well as the president, treasurer, and any responsible managers of the employer in their individual capacity. If liability is found, the employee shall be entitled to restitution and consequential damages, as well as liquidated damages constituting double the amount of restitution, pre- and post- judgment interest,

reasonable attorneys' fees and costs. Where appropriate, a court may also impose punitive damages.

Nothing in this section shall limit the availability of other remedies at law or in equity.

SECTION 2. Chapter 30 of the General Laws, as appearing in the 2020 Official Edition, is hereby amended by adding the following section:

Section 66.

Any agency or department of the commonwealth, or any entity acting on behalf of an agency or department, shall be prohibited from, directly or indirectly, utilizing or applying any automated decision system in performing any function that: (i) is related to the delivery of any public assistance benefit; (ii) will have a material impact on the rights, civil liberties, safety, or welfare of any individual within the commonwealth; or (iii) affects any statutorily or constitutionally provided right of an individual; unless such utilization or application is specifically authorized in law.

SECTION 3. Chapter 30B of the General Laws, as appearing in the 2022 Official Edition, is hereby amended by adding the following section:

Section 24.

a) No executive office, department, division, agency, or commission of the commonwealth shall authorize any procurement, purchase, or acquisition of any service or system utilizing, or relying on, automated decision systems, except where the use of such system is specifically authorized in law.

591 An automated decision system is any computational process, automated system, or
592 algorithm utilizing machine learning, statistical modeling, data analytics, artificial intelligence,
593 or similar methods that issues an output, including a score, classification, ranking, or
594 recommendation, that is used to assist or replace human decision making on decisions that
595 impact natural persons.

596 b) No state agency shall utilize or apply any automated decision system unless the
597 agency, or an entity acting on behalf of such state agency, shall have conducted an impact
598 assessment for the application and use of such automated decision system. Following the first
599 impact assessment, an impact assessment shall be conducted at least once every two years. An
600 impact assessment shall be conducted prior to any material change to the automated decision-
601 making system that may change the outcome or effect of such system. Such impact assessments
602 shall include:

603 i) a description of the objectives of the automated decision system;

604 ii) an evaluation of the ability of the automated decision system to achieve its stated
605 objectives;

606 iii) a description and evaluation of the objectives and development of the automated
607 decision system including:

608 1) A summary of the underlying algorithms, computational modes, and artificial
609 intelligence tools that are used within the automated decision system; and

610 2) The design and training data used to develop the automated decision-making
611 process.

612 iv) testing for:

613 1) Accuracy, fairness, bias, and discrimination, and an assessment of whether the use
614 of the automated decision-making system produces discriminatory results on the basis of a
615 consumer's or a class of consumers' actual or perceived race, ethnicity, religion, national origin,
616 sex, gender, gender identity, sexual orientation, familial status, biometric information, source of
617 income, or disability and outlines mitigations for any identified performance differences in
618 outcomes across relevant groups impacted by such use;

619 2) Any cybersecurity vulnerabilities and privacy risks resulting from the deployment
620 and use of the automated decision-making system, and the development or existence of
621 safeguards to mitigate the risks;

622 3) Any public health or safety risks resulting from the deployment and use of the
623 automated decision-making system;

624 4) Any reasonably foreseeable misuse of the automated decision-making system and
625 the development or existence of safeguards against such misuse;

626 v) the extent to which the deployment and use of the automated decision-making system
627 requires the input of sensitive and personal data, how that data is used and stored, and any
628 control users may have over their data; and

629 vi) the notification mechanism or procedure, if any, by which individuals impacted by the
630 utilization of the automated decision-making system may be notified of the use of such
631 automated decision-making system and of the individual's personal data, and informed of their
632 rights and options relating to such use.

633 c) Notwithstanding the provisions of this section or any other law, if an impact
634 assessment finds that the automated decision-making system produces discriminatory or biased
635 outcomes, the state agency shall cease any utilization, application, or function of such automated
636 decision-making system, and of any information produced using that system.

637 d) Any impact assessment conducted pursuant to this section shall be submitted to the
638 governor, the president of the senate, and the speaker of the house at least 60 days prior to the
639 implementation of the automated decision-making system that is the subject of such assessment.
640 The impact statement of an automated decision-making system that is approved and utilized,
641 shall be published on the website of the relevant agency. If the state agency makes a
642 determination that the disclosure of any information required in the impact assessment would
643 result in a substantial negative impact on health or safety of the public, infringe upon the privacy
644 rights of individuals, or significantly impact the state agency's ability to protect its information
645 technology, it may redact such information, provided that an explanatory statement on the
646 process by which the state agency made such determination is published along with the redacted
647 impact assessment.