
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1729 Session of
2023

INTRODUCED BY NEILSON, HOHENSTEIN, McNEILL, JAMES, SANCHEZ,
DELLOSO AND WARREN, SEPTEMBER 29, 2023

REFERRED TO COMMITTEE ON LABOR AND INDUSTRY, SEPTEMBER 29, 2023

AN ACT

1 Amending the act of October 27, 1955 (P.L.744, No.222), entitled
2 "An act prohibiting certain practices of discrimination
3 because of race, color, religious creed, ancestry, age or
4 national origin by employers, employment agencies, labor
5 organizations and others as herein defined; creating the
6 Pennsylvania Human Relations Commission in the Governor's
7 Office; defining its functions, powers and duties; providing
8 for procedure and enforcement; providing for formulation of
9 an educational program to prevent prejudice; providing for
10 judicial review and enforcement and imposing penalties,"
11 further providing for definitions; providing for use of
12 automated employment decision tool; and further providing for
13 civil penalties.

14 The General Assembly of the Commonwealth of Pennsylvania
15 hereby enacts as follows:

16 Section 1. Section 4 of the act of October 27, 1955
17 (P.L.744, No.222), known as the Pennsylvania Human Relations
18 Act, is amended by adding clauses to read:

19 Section 4. Definitions.--As used in this act unless a
20 different meaning clearly appears from the context:

21 * * *

22 (bb) The term "automated employment decision tool" means any
23 system the function of which is governed by statistical theory,

1 or systems the parameters of which are defined by systems,
2 including inferential methodologies, linear regression, neural
3 networks, decision trees, random forests and other learning
4 algorithms, which automatically filter individuals or
5 prospective individuals for employment or for any term,
6 condition or privilege of employment in a way that establishes a
7 preferred individual or individuals. The term does not include a
8 tool that does not automate, support, substantially assist or
9 replace discretionary decision-making processes and that does
10 not materially impact natural persons, including, but not
11 limited to, a junk email filter, firewall, antivirus software,
12 calculator, spreadsheet, database, data set or other compilation
13 of data.

14 (cc) The term "bias audit" means an impartial evaluation by
15 an independent auditor, including, but not limited to, testing
16 of an automated employment decision tool to assess the tool's
17 disparate impact on individuals protected against discrimination
18 under the provisions of this act.

19 (dd) The term "employment decision" means to screen
20 individuals for employment or promotion or to otherwise help to
21 decide compensation or any other terms, conditions or privileges
22 of employment in this Commonwealth.

23 Section 2. The act is amended by adding a section to read:

24 Section 5.4. Use of Automated Employment Decision Tool.--(a)
25 An employer or employment agency that uses an automated
26 employment decision tool to make or assist in making an
27 employment decision shall:

28 (1) Notify each individual at least ten days prior to their
29 interview that an automated employment decision tool may be used
30 to make or assist in making an employment decision.

1 (2) Provide each individual with information at least ten
2 days prior to their interview explaining how the automated
3 employment decision tool works and what general types of
4 characteristics it uses to evaluate individuals for an
5 employment decision.

6 (3) Obtain, prior to the interview, the individual's consent
7 to use an automated employment decision tool to make or assist
8 in making an employment decision.

9 An employer or employment agency may not use an automated
10 employment decision tool to evaluate individuals who have not
11 consented to the use of an automated employment decision tool.

12 (b) An automated employment decision tool shall not be used
13 to make or assist in making an employment decision unless the
14 automated employment decision tool has been the subject of a
15 bias audit conducted no more than one year prior to the use of
16 the tool and a summary of the results of the most recent bias
17 audit has been made available on the employer's or employment
18 agency's publicly accessible Internet website.

19 Section 3. Section 9.3 of the act is amended to read:

20 Section 9.3. Civil Penalties.--(a) The Commission shall
21 have the power to adopt a schedule of civil penalties for
22 violation of section 5(h)(5) by the advertiser and the publisher
23 in instances where the complainant does not take action to
24 secure housing accommodations or financing and is not denied
25 housing accommodations or financing based on the alleged
26 discriminatory language in the advertisement. The schedule of
27 penalties, guidelines for their imposition and procedures for
28 appeal shall be published in the Pennsylvania Bulletin, provided
29 that the Commission shall, within two (2) years of such
30 publication, promulgate a regulation setting forth the schedule

1 of penalties, guidelines and procedures. Any such penalty shall
2 not exceed the sum of five hundred dollars (\$500.00). Duly
3 authorized agents of the Commission shall have the power and
4 authority to issue citations and impose penalties for any such
5 violations. Any such penalty imposed may be appealed to the
6 Commission pursuant to regulations promulgated under this act.
7 [All proceedings shall be conducted in accordance with the
8 provisions of 2 Pa.C.S. (relating to administrative law and
9 procedure).]

10 (b) The Commission shall have the power to adopt a schedule
11 of civil penalties for violation of section 5.4(a) and (b) by an
12 employer or employment agency. The schedule of penalties,
13 guidelines for their imposition and procedures for appeal shall
14 be published in the next available issue of the Pennsylvania
15 Bulletin, provided that the Commission shall, within two years
16 of such publication, promulgate a regulation setting forth the
17 schedule of penalties, guidelines and procedures. Any such
18 penalty shall not exceed the sum of five hundred dollars
19 (\$500.00) for a first violation and not less than five hundred
20 dollars (\$500.00) nor more than one thousand five hundred
21 dollars (\$1,500.00) for each subsequent violation. Duly
22 authorized agents of the Commission shall have the power and
23 authority to issue citations and impose penalties for any such
24 violations. Any such penalty imposed may be appealed to the
25 Commission pursuant to regulations promulgated under this act.

26 (c) All proceedings under this section shall be conducted in
27 accordance with the provisions of 2 Pa.C.S. (relating to
28 administrative law and procedure).

29 Section 4. This act shall take effect in 60 days.