

117TH CONGRESS  
2D SESSION

# S. 5351

To clarify the applicability of civil rights law to algorithmic decisions, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

DECEMBER 21, 2022

Mr. PORTMAN introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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## A BILL

To clarify the applicability of civil rights law to algorithmic decisions, 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 “Stopping Unlawful  
5 Negative Machine Impacts through National Evaluation  
6 Act”.

7 **SEC. 2. DEFINITIONS.**

8 In this Act:

9 (1) **ARTIFICIAL INTELLIGENCE.**—The term “ar-  
10 tificial intelligence” has the meaning given the term

1 in section 238(g) of the John S. McCain National  
2 Defense Authorization Act for Fiscal Year 2019 (10  
3 U.S.C. 2358 note).

4 (2) ARTIFICIAL INTELLIGENCE SYSTEM.—The  
5 term “artificial intelligence system” means any data  
6 system, software, application, tool, or utility that op-  
7 erates in whole or in part using dynamic or static  
8 machine learning algorithms or other forms of artifi-  
9 cial intelligence, including a data system, software,  
10 application, tool, or utility—

11 (A) that is established primarily for the  
12 purpose of researching, developing, or imple-  
13 menting artificial intelligence technology; and

14 (B) for which the artificial intelligence ca-  
15 pability is integrated into another system or  
16 business process, operational activity, or tech-  
17 nology system.

18 (3) COVERED CIVIL RIGHTS LAW.—The term  
19 “covered civil rights law” means—

20 (A) the Civil Rights Act of 1964 (42  
21 U.S.C. 2000a et seq.), the Age Discrimination  
22 in Employment Act of 1967 (29 U.S.C. 621 et  
23 seq.), the Americans with Disabilities Act of  
24 1990 (42 U.S.C. 12101 et seq.), title V of the  
25 Rehabilitation Act of 1973 (29 U.S.C. 791 et

1 seq.), section 6(d) of the Fair Labor Standards  
2 Act of 1938 (29 U.S.C. 206(d)), title II of the  
3 Genetic Information Nondiscrimination Act of  
4 2008 (42 U.S.C. 2000ff et seq.), subchapter II  
5 of chapter 43 of title 38, United States Code,  
6 title IX of the Education Amendments of 1972  
7 (20 U.S.C. 1681 et seq.), the Age Discrimina-  
8 tion Act of 1975 (42 U.S.C. 6101 et seq.), and  
9 any provision of Federal, State, or local law, in-  
10 cluding the Constitution of the United States,  
11 that prohibits discrimination in public or pri-  
12 vate employment (including contracting), or in  
13 the provision of a program or activity or accom-  
14 modation, on the basis of a protected class; and

15 (B) the Immigration and Nationality Act  
16 (8 U.S.C. 1101 et seq.), the Voting Rights Act  
17 of 1965 (52 U.S.C. 10301 et seq.), and any  
18 provision of Federal, State, or local law, includ-  
19 ing the Constitution of the United States, that  
20 prohibits discrimination concerning legal status  
21 or a legal right on the basis of a protected  
22 class.

23 (4) COVERED ENTITY.—The term “covered en-  
24 tity” means any person (including a partnership,

1 corporation, Federal, State, or local agency, or enti-  
2 ty) that is subject to a covered civil rights law.

3 (5) DIRECTOR.—The term “Director” means  
4 the Director of the National Institute for Standards  
5 and Technology.

6 **SEC. 3. APPLICABILITY OF CIVIL RIGHTS LAWS TO DECI-**  
7 **SIONS MADE BY OR AUGMENTED BY ALGO-**  
8 **RITHMS.**

9 (a) PURPOSE.—The purpose of this section to remove  
10 any doubt about the liability described in subsection (b)  
11 of a covered entity described in subsection (b).

12 (b) LIABILITY.—A covered entity that uses artificial  
13 intelligence to make or inform a decision that has an im-  
14 pact on a person that is addressed by a covered civil rights  
15 law, including whether to provide a program or activity  
16 or accommodation to a person, shall be liable for a claim  
17 of discrimination under the corresponding covered civil  
18 rights law in the same manner and to the same extent  
19 (including being liable pursuant to that law’s standard of  
20 culpability) as if the covered entity had made such decision  
21 without the use of artificial intelligence.

1 **SEC. 4. REQUIREMENT FOR NATIONAL INSTITUTE OF**  
2 **STANDARDS AND TECHNOLOGY PROGRAM OF**  
3 **TECHNOLOGY EVALUATIONS OF BIAS AND**  
4 **DISCRIMINATION IN ARTIFICIAL INTEL-**  
5 **LIGENCE SYSTEMS.**

6 (a) ESTABLISHMENT OF TECHNOLOGY EVALUATION  
7 PROGRAM.—Not later than 1 year after the date of the  
8 enactment of this Act, the Director shall establish a pro-  
9 gram for conducting technology evaluations to assess and  
10 assist in mitigating bias and discrimination in artificial in-  
11 telligence systems of covered entities with respect to race,  
12 sex, age, disability, and other classes or characteristics  
13 protected by covered civil rights laws. In establishing such  
14 program, the Director shall ensure that such evaluations  
15 effectively approximate real-world applications of artificial  
16 intelligence systems.

17 (b) PRIORITY EVALUATION AREAS.—In carrying out  
18 the program required under subsection (a), the Director  
19 shall prioritize the conduct of technology evaluations to  
20 mitigate bias in—

21 (1) the applications identified as high risk by  
22 previous technology evaluations and strategy docu-  
23 ments;

24 (2) speech recognition and synthesis;

25 (3) recommendation systems, including for fi-  
26 nancial and criminal justice applications;

1           (4) sensitive image recognition technology, in-  
2           cluding facial and gait recognition systems; and

3           (5) any other artificial intelligence use case that  
4           poses a high risk for discrimination based on classes  
5           or characteristics protected by covered civil rights  
6           laws, such as image and video synthesis, text genera-  
7           tion, and conversation and information systems.

8           (c) PARTICIPATION.—In designing technology evalua-  
9           tions under subsection (a), the Director shall ensure the  
10          participation of any industry and nongovernmental experts  
11          and entities in the fields of artificial intelligence, machine  
12          learning, computer science, social sciences, civil rights, and  
13          civil liberties seeking to participate in such evaluations.

14          (d) AUTHORIZATION OF APPROPRIATIONS.—There is  
15          authorized to be appropriated to the Director such sums  
16          as may be necessary to carry out this section for each of  
17          the fiscal years 2023 through 2028.

18          (e) SUNSET.—The program required under sub-  
19          section (a) shall terminate on December 31, 2028.

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