

1 H.340

2 Introduced by Representatives Priestley of Bradford, Arsenault of Williston,
3 Berbeco of Winooski, Cole of Hartford, Logan of Burlington,
4 Masland of Thetford, McGill of Bridport, Sibilias of Dover, and
5 White of Waitsfield

6 Referred to Committee on

7 Date:

8 Subject: Commerce and trade; consumer protection; artificial intelligence

9 Statement of purpose of bill as introduced: This bill proposes to regulate
10 developers and deployers of automated decision systems used in consequential
11 decisions in an effort to avoid algorithmic discrimination towards consumers.

12 An act relating to regulating developers and deployers of certain automated
13 decision systems

14 It is hereby enacted by the General Assembly of the State of Vermont:

15 Sec. 1. 9 V.S.A. chapter 118 is added to read:

16 CHAPTER 118. ARTIFICIAL INTELLIGENCE

17 Subchapter 1. Algorithmic Discrimination and Automated Decision Systems

18 § 4193a. DEFINITIONS

19 As used in this subchapter:

1 (1)(A) “Algorithmic discrimination” means any condition in which the
2 use of an automated decision system results in a differential treatment or
3 impact that disfavors an individual on the basis of the individual’s actual or
4 perceived age, color, disability, ethnicity, genetic information, immigration or
5 citizenship status, limited proficiency in the English language, national origin,
6 race, religion, reproductive health, sex, sexual orientation, gender identity,
7 veteran status, or other classification protected under the laws of this State or
8 federal law.

9 (B) “Algorithmic discrimination” does not include:

10 (i) a developer’s or deployer’s testing of the developer’s or
11 deployer’s own automated decision system to identify, mitigate, and prevent
12 discrimination;

13 (ii) expanding an applicant, customer, or participant pool to
14 increase diversity or redress historical discrimination; or

15 (iii) an act or omission by or on behalf of a private club or other
16 establishment that is not in fact open to the public, as set forth in Title II of the
17 federal Civil Rights Act of 1964, 42 U.S.C. § 2000a(e), as amended.

18 (2) “Auditor” refers to an independent entity, including an individual, a
19 nonprofit, a firm, a corporation, a partnership, a cooperative, or an association,
20 commissioned to perform an audit.

1 (3)(A) “Automated decision system” means a computational process
2 derived from machine learning, statistical modeling, data analytics, or artificial
3 intelligence that issues an output, including a score, classification, or
4 recommendation.

5 (B) “Automated decision system” does not include any software used
6 primarily for basic computerized processes, such as antimalware, antivirus,
7 autocorrect functions, calculators, databases, data storage, electronic
8 communications, firewall, internet domain registration, website loading,
9 networking, spam and robocall filtering, spellcheck tools, spreadsheets, web
10 caching, web hosting, or any tool that relates only to nonemployment internal
11 management affairs such as ordering office supplies or processing payments,
12 and that do not materially affect the rights, liberties, benefits, safety, or welfare
13 of any individual within the State.

14 (4) “Consequential decision” means a decision that has a material, legal,
15 or similarly significant effect on the provision or denial to any consumer of, or
16 the cost, terms, or availability of:

17 (A) educational and vocational training, including:

18 (i) assessment or grading, including detecting student cheating or
19 plagiarism;

20 (ii) accreditation;

21 (iii) certification;

1 (iv) admissions or enrollment; and

2 (v) financial aid or scholarships;

3 (B) employment or an employment opportunity, including:

4 (i) pay or promotion;

5 (ii) hiring or termination; and

6 (iii) automated task allocation;

7 (C) housing or lodging, including long-term or short-term rentals;

8 (D) essential utilities, including electricity, heat, water, internet or
9 telecommunications access, or transportation;

10 (E) family planning, including adoption services or reproductive
11 services, as well as assessments related to child protection services;

12 (F) health care or health insurance, including mental health care,
13 dental, or vision;

14 (G) financial services, including a financial service provided by a
15 mortgage company, mortgage broker, or creditor;

16 (H) law enforcement activities, including the allocation of law
17 enforcement personnel or assets, the enforcement of laws, maintaining public
18 order, or managing public safety;

19 (I) government services, including the determination, allocation, or
20 denial of public benefits and services; and

1 (J) a reasonable accommodation or other right granted under the civil
2 rights laws of this State.

3 (5) “Consumer” means an individual who is a resident of the State.

4 (6) “Deployer” means a person doing business in this State that uses an
5 automated decision system in a consequential decision in the State or provides
6 an automated decision system for use in a consequential decision by the
7 general public in the State. A developer shall also be considered a deployer if
8 its actions satisfy this definition.

9 (7) “Deployer-employer” means a deployer that is an employer.

10 (8) “Developer” means a person doing business in this State that
11 designs, codes, or produces an automated decision system for use in a
12 consequential decision or creates a substantial change with respect to an
13 automated decision system for use in a consequential decision, whether for its
14 own use in the State or for use by a third party in the State.

15 (9) “Developer-employer” means a developer that is an employer.

16 (10) “Employee” means an individual who performs services for and
17 under the control and direction of an employer for wages or other
18 remuneration, including former employees, or natural persons employed as
19 independent contractors to carry out work in furtherance of an employer’s
20 business enterprise who are not themselves employers.

1 (11) “Employer” means any person, firm, partnership, institution,
2 corporation, or association that employs one or more employees.

3 (12) “Software stack” means the group of individual software
4 components that work together to support the execution of an automated
5 decision system.

6 (13) “Substantial change” means any:

7 (A) deliberate change to an automated decision system that would
8 result in material inaccuracies in the reports created under section 4193f of this
9 title; or

10 (B) substantial change in the data that the automated decision system
11 uses as input or training data.

12 § 4193b. ALGORITHMIC DISCRIMINATION

13 It shall be unlawful discrimination for a developer or deployer to use, sell,
14 or share an automated decision system for use in a consequential decision or a
15 product featuring an automated decision system for use in a consequential
16 decision that produces algorithmic discrimination.

17 § 4193c. DEPLOYER AND DEVELOPER OBLIGATIONS

18 (a) Any deployer that employs an automated decision system for a
19 consequential decision shall inform the consumer prior to the use of the system
20 for a consequential decision in clear, conspicuous, and consumer-friendly
21 terms, made available in each of the languages in which the company offers its

1 end services, that automated decision systems will be used to make a
2 consequential decision or to assist in making a consequential decision.

3 (b) Any notice provided by a deployer to the consumer pursuant to
4 subsection (a) of this section shall include:

5 (1) a description of the personal characteristics or attributes that the
6 system will measure or assess;

7 (2) the method by which the system measures or assesses those
8 attributes or characteristics;

9 (3) how those attributes or characteristics are relevant to the
10 consequential decisions for which the system should be used;

11 (4) any human components of the system;

12 (5) how any automated components of the system are used to inform the
13 consequential decision; and

14 (6) a direct link to a publicly accessible page on the deployer's website
15 that contains a plain-language description of the:

16 (A) system's outputs;

17 (B) types and sources of data collected from natural persons and
18 processed by the system when it is used to make, or assists in making, a
19 consequential decision; and

20 (C) results of the most recent impact assessment, or an active link to
21 a web page where a consumer can review those results.

1 (c) Any deployer that employs an automated decision system for a
2 consequential decision shall provide the consumer with a single notice
3 containing a plain-language explanation of the decision that identifies the
4 principal reason or reasons for the consequential decision, including:

5 (1) the identity of the developer of the automated decision system used
6 in the consequential decision, if the deployer is not also the developer;

7 (2) a description of what the output of the automated decision system is,
8 such as a score, recommendation, or other similar description;

9 (3) the degree and manner to which the automated decision system
10 contributed to the decision;

11 (4) the types and sources of data processed by the automated decision
12 system in making the consequential decision;

13 (5) a plain language explanation of how the consumer's personal data
14 informed the consequential decision; and

15 (6) what actions, if any, the consumer might have taken to secure a
16 different decision and the actions that the consumer might take to secure a
17 different decision in the future.

18 (d)(1) A deployer shall provide and explain a process for a consumer to
19 appeal a decision, which shall at minimum allow the consumer to:

20 (A) formally contest the decision;

21 (B) provide information to support their position; and

1 (C) obtain meaningful human review of the decision.

2 (2) For an appeal made pursuant to subdivision (1) of this subsection:

3 (A) a deployer shall designate a human reviewer who:

4 (i) is trained and qualified to understand the consequential
5 decision being appealed, the consequences of the decision for the consumer,
6 how to evaluate and how to serve impartially, including by avoiding
7 prejudgment of the facts at issue, conflict of interest, and bias;

8 (ii) does not have a conflict of interest for or against the deployer
9 or the consumer;

10 (iii) was not involved in the initial decision being appealed;

11 (iv) shall enjoy protection from dismissal or its equivalent,
12 disciplinary measures, or other adverse treatment for exercising their functions
13 under this section; and

14 (v) shall be allocated sufficient human resources by the deployer
15 to conduct an effective appeal of the decision; and

16 (B) the human reviewer shall consider the information provided by
17 the consumer in their appeal and may consider other sources of information
18 relevant to the consequential decision.

19 (3) A deployer shall respond to a consumer's appeal not later than 45
20 after receipt of the appeal. That period may be extended once by an additional
21 45 days where reasonably necessary, taking into account the complexity and

1 number of appeals. The deployer shall inform the consumer of any extension
2 not later than 45 days after receipt of the appeal, together with the reasons for
3 the delay.

4 (e) The deployer or developer of an automated decision system is legally
5 responsible for the quality and accuracy of all consequential decisions made,
6 including any bias or algorithmic discrimination resulting from the operation
7 of the automated decision system.

8 (f) A developer shall not use, sell, or share an automated decision system
9 for use in a consequential decision or a product featuring an automated
10 decision system for use in a consequential decision that has not passed an
11 independent audit, in accordance with section 4193e of this title. If an
12 independent audit finds that an automated decision system for use in a
13 consequential decision does produce algorithmic discrimination, the developer
14 shall not use, sell, or share the system until the algorithmic discrimination has
15 been proven to be rectified by a post-adjustment audit.

16 (g) Except as provided in subsection 4193e(a) of this title, the rights and
17 obligations under this section may not be waived by any person, partnership,
18 association, or corporation.

19 § 4193d. WHISTLEBLOWER PROTECTIONS

20 (a) Developer-employers and deployer-employers of automated decision
21 systems used in consequential decisions shall not:

1 (1) prevent an employee from disclosing information to the Attorney
2 General, including through terms and conditions of employment or seeking
3 to enforce terms and conditions of employment, if the employee has reasonable
4 cause to believe the information indicates a violation of this subchapter; or

5 (2) retaliate against an employee for disclosing information to the
6 Attorney General pursuant to subdivision (1) of this subsection.

7 (b) Developer-employers and deployer-employers of automated decision
8 systems used in consequential decisions shall provide a clear notice to all
9 employees working on automated decision systems of their rights and
10 responsibilities under this subchapter, including the right of employees of
11 contractors and subcontractors to use the developer's internal process for
12 making protected disclosures pursuant to subsection (c) of this section. A
13 developer-employer or deployer-employer is presumed to be in compliance
14 with the requirements of this subsection if the developer-employer or deployer-
15 employer does either of the following:

16 (1) at all times:

17 (A) posts and displays within all workplaces maintained by
18 the developer-employer or deployer-employer a notice to all employees of
19 their rights and responsibilities under this subchapter;

20 (B) ensures that all new employees receive equivalent notice; and

1 (C) ensures that employees who work remotely periodically receive
2 an equivalent notice; or

3 (2) not less frequently than once every year, provides written notice
4 to all employees of their rights and responsibilities under this subchapter and
5 ensures that the notice is received and acknowledged by all of those
6 employees.

7 (c) Each developer-employer shall provide a reasonable internal process
8 through which an employee may anonymously disclose information to the
9 developer if the employee believes in good faith that the information indicates
10 that the developer has violated any provision of this subchapter or any other
11 law, or has made false or materially misleading statements related to its safety
12 and security protocol, or failed to disclose known risks to employees,
13 including, at a minimum, a monthly update to the person who made the
14 disclosure regarding the status of the developer's investigation of the
15 disclosure and the actions taken by the developer in response to the disclosure.

16 § 4193e. AUDITS

17 (a) Prior to deployment of an automated decision system for use in a
18 consequential decision, six months after deployment, and at least every 18
19 months thereafter for each calendar year an automated decision system is in
20 use in consequential decisions after the first post-deployment audit, the
21 developer and deployer shall be jointly responsible for ensuring that an

1 independent audit is conducted in compliance with the provisions of this
2 section to ensure that the product does not produce algorithmic discrimination
3 and complies with the provisions of this subchapter. The developer and
4 deployer shall enter into a contract specifying which party is responsible for
5 the costs, oversight, and results of the audit. Absent an agreement of
6 responsibility through contract, the developer and deployer shall be jointly and
7 severally liable for any violations of this section. Regardless of final findings,
8 the deployer or developer shall deliver all audits conducted under this section
9 to the Attorney General.

10 (b) A deployer or developer may contract with more than one auditor to
11 fulfill the requirements of this section.

12 (c) The audit shall include the following:

13 (1) an analysis of data management policies, including whether personal
14 or sensitive data relating to a consumer is subject to data security protection
15 standards that comply with the requirements of applicable State law;

16 (2) an analysis of the system validity and reliability according to each
17 specified use case listed in the entity's reporting document filed by the
18 developer or deployer pursuant to section 4193f of this title;

19 (3) a comparative analysis of the system's performance when used on
20 consumers of different demographic groups and a determination of whether the
21 system produces algorithmic discrimination in violation of this subchapter by

1 each intended and foreseeable identified use as identified by the deployer and
2 developer pursuant to section 4193f of this title;

3 (4) an analysis of how the technology complies with existing relevant
4 federal, State, and local labor, civil rights, consumer protection, privacy, and
5 data privacy laws; and

6 (5) an evaluation of the developer's or deployer's documented risk
7 management policy and program as set forth in section 4193g of this title for
8 conformity with subsection 4193g(a) of this title.

9 (d) The Attorney General may adopt further rules as necessary to ensure
10 that audits under this section assess whether or not automated decision systems
11 used in consequential decisions produce algorithmic discrimination and
12 otherwise comply with the provisions of this subchapter.

13 (e) The independent auditor shall have complete and unredacted copies of
14 all reports previously filed by the deployer or developer pursuant to section
15 4193f of this title.

16 (f) An audit conducted under this section shall be completed in its entirety
17 without the assistance of an automated decision system.

18 (g)(1) An auditor shall be an independent entity, including an individual,
19 nonprofit, firm, corporation, partnership, cooperative, or association.

1 (2) For the purposes of this subchapter, no auditor may be
2 commissioned by a developer or deployer of an automated decision system
3 used in consequential decisions if the auditor:

4 (A) has already been commissioned to provide any auditing or
5 nonauditing service, including financial auditing, cybersecurity auditing, or
6 consulting services of any type, to the commissioning company in the past 12
7 months;

8 (B) is or was involved in using, developing, integrating, offering,
9 licensing, or deploying the automated decision system;

10 (C) has or had an employment relationship with a developer or
11 deployer that uses, offers, or licenses the automated decision system; or

12 (D) has or had a direct financial interest or a material indirect
13 financial interest in a developer or deployer that uses, offers, or licenses the
14 automated decision system.

15 (3) Fees paid to auditors may not be contingent on the result of the audit
16 and the commissioning company shall not provide any incentives or bonuses
17 for a positive audit result.

18 (h) The Attorney General may adopt rules to ensure:

19 (1) the independence of auditors under this section;

1 (2) that teams conducting audits incorporate feedback from communities
2 that may foreseeably be the subject of algorithmic discrimination with respect
3 to the automated decision system being audited; and

4 (3) that the requirements of an audit as set forth in subsection (c) of this
5 section are updated to reflect responsible evaluation practices and include
6 adequate information to enforce this subchapter.

7 § 4193f. AUTOMATED DECISION SYSTEM REPORTING

8 REQUIREMENTS

9 (a) Every developer and deployer of an automated decision system used in
10 a consequential decision shall comply with the reporting requirements of this
11 section. Regardless of final findings, reports shall be filed with the Attorney
12 General prior to deployment of an automated decision system used in a
13 consequential decision and then annually, or after each substantial change to
14 the system, whichever comes first.

15 (b) Together with each report required to be filed under this section,
16 developers and deployers shall file with the Attorney General a copy of the last
17 completed independent audit required by this subchapter and a legal attestation
18 that the automated decision system used in a consequential decision:

19 (1) does not violate any provision of this subchapter; or

1 (2) may violate or does violate one or more provisions of this article,
2 that there is a plan of remediation to bring the automated decision system into
3 compliance with this subchapter, and a summary of the plan of remediation.

4 (c) Developers of automated decision systems shall file with the Attorney
5 General a report containing the following:

6 (1) a description of the system including:

7 (A) a description of the system's software stack;

8 (B) the purpose of the system and its expected benefits; and

9 (C) the system's current and intended uses, including what
10 consequential decisions it will support and what stakeholders will be impacted;

11 (2) the intended outputs of the system and whether the outputs can be or
12 are otherwise appropriate to be used for any purpose not previously articulated;

13 (3) the methods for training of their models including:

14 (A) any pre-processing steps taken to prepare datasets for the training
15 of a model underlying an automated decision system;

16 (B) descriptions of the datasets upon which models were trained and
17 evaluated, how and why datasets were collected and the sources of those

18 datasets, and how that training data will be used and maintained;

19 (C) the quality and appropriateness of the data used in the automated
20 decision system's design, development, testing, and operation;

1 (D) whether the data contains sufficient breadth to address the range
2 of real-world inputs the automated decision system might encounter and how
3 any data gaps have been addressed; and

4 (E) steps taken to ensure compliance with privacy, data privacy,
5 data security, and copyright laws;

6 (4) use and data management policies;

7 (5) any other information necessary to allow the deployer to understand
8 the outputs and monitor the system for compliance with this subchapter;

9 (6) any other information necessary to allow the deployer to comply
10 with the requirements of subsection (d) of this section;

11 (7) a description of the system’s capabilities and any developer-imposed
12 limitations, including capabilities outside of its intended use, when the system
13 should not be used, any safeguards or guardrails in place to protect against
14 unintended, inappropriate, or disallowed uses, and testing of any safeguards or
15 guardrails;

16 (8) an internal risk assessment including documentation and results of
17 testing conducted to identify all reasonably foreseeable risks related to
18 algorithmic discrimination, validity and reliability, privacy and autonomy, and
19 safety and security, as well as actions taken to address those risks, and
20 subsequent testing to assess the efficacy of actions taken to address risks; and

1 (9) whether the system should be monitored and, if so, how the system
2 should be monitored.

3 (d) Deployers of automated decision systems used in consequential
4 decisions shall file with the Attorney General a report containing the
5 following:

6 (1) a description of the system, including:

7 (A) a description of the system's software stack;

8 (B) the purpose of the system and its expected benefits; and

9 (C) the system's current and intended uses, including what
10 consequential decisions it will support and what stakeholders will be impacted;

11 (2) the intended outputs of the system and whether the outputs can be
12 or are otherwise appropriate to be used for any purpose not previously
13 articulated;

14 (3) whether the deployer collects revenue or plans to collect revenue
15 from use of the automated decision system in a consequential decision and, if
16 so, how it monetizes or plans to monetize use of the system;

17 (4) whether the system is designed to make consequential decisions
18 itself or whether and how it supports consequential decisions;

19 (5) a description of the system's capabilities and any deployer-imposed
20 limitations, including capabilities outside of its intended use, when the system
21 should not be used, any safeguards or guardrails in place to protect against

1 unintended, inappropriate, or disallowed uses, and testing of any safeguards or
2 guardrails;

3 (6) an assessment of the relative benefits and costs to the consumer
4 given the system's purpose, capabilities, and probable use cases;

5 (7) an internal risk assessment including documentation and results of
6 testing conducted to identify all reasonably foreseeable risks related to
7 algorithmic discrimination, accuracy and reliability, privacy and autonomy,
8 and safety and security, as well as actions taken to address those risks, and
9 subsequent testing to assess the efficacy of actions taken to address risks; and

10 (8) whether the system should be monitored and, if so, how the
11 system should be monitored.

12 (e) The Attorney General shall:

13 (1) adopt rules:

14 (A) for a process whereby developers and deployers may request
15 redaction of portions of reports required under this section to ensure that they
16 are not required to disclose sensitive and protected information; and

17 (B) to determine reasonably foreseeable risks related to algorithmic
18 discrimination, validity and reliability, privacy and autonomy, and safety and
19 security, pursuant to subsections (c) and (d) of this section; and

1 (2) maintain an online database that is accessible to the general public
2 with reports, redacted in accordance with this section, and audits required by
3 this subchapter, which shall be updated biannually.

4 (f) For automated decision systems already in deployment for use in
5 consequential decisions on or before July 1, 2025, developers and deployers
6 shall not later than 18 months after July 1, 2025 complete and file the reports
7 and complete the independent audit required by this subchapter.

8 § 4193g. RISK MANAGEMENT POLICY AND PROGRAM

9 (a) Each developer or deployer of automated decision systems used in
10 consequential decisions shall plan, document, and implement a risk
11 management policy and program to govern development or deployment, as
12 applicable, of the automated decision system. The risk management policy and
13 program shall specify and incorporate the principles, processes, and personnel
14 that the deployer uses to identify, document, and mitigate known or reasonably
15 foreseeable risks of algorithmic discrimination covered under section 4193b of
16 this title. The risk management policy and program shall be an iterative
17 process planned, implemented, and regularly and systematically reviewed and
18 updated over the life cycle of an automated decision system, requiring regular,
19 systematic review and updates, including updates to documentation. A risk
20 management policy and program implemented and maintained pursuant to this
21 subsection shall be reasonable considering the:

1 (1) guidance and standards set forth in version 1.0 of the Artificial
2 Intelligence Risk Management Framework published by the National Institute
3 of Standards and Technology in the U.S. Department of Commerce, or the
4 latest version of the Artificial Intelligence Risk Management Framework
5 published by the National Institute of Standards and Technology if, in the
6 Attorney General’s discretion, the latest version of the Artificial Intelligence
7 Risk Management Framework published by the National Institute of Standards
8 and Technology in the U.S. Department of Commerce is at least as stringent as
9 version 1.0;

10 (2) size and complexity of the developer or deployer;

11 (3) nature, scope, and intended uses of the automated decision system
12 developed or deployed for use in consequential decisions; and

13 (4) sensitivity and volume of data processed in connection with
14 the automated decision system.

15 (b) A risk management policy and program implemented pursuant to
16 subsection (a) of this section may cover multiple automated decision systems
17 developed by the same developer or deployed by the same deployer for use in
18 consequential decisions if sufficient.

19 (c) The Attorney General may require a developer or a deployer to
20 disclose the risk management policy and program implemented pursuant to

1 subsection (a) of this section in a form and manner prescribed by the Attorney
2 General. The Attorney General may evaluate the risk management policy and
3 program to ensure compliance with this section.

4 § 4193h. ENFORCEMENT AND RULEMAKING

5 (a) A person who violates this subchapter or rules adopted pursuant to this
6 subchapter commits an unfair and deceptive act in commerce in violation of
7 section 2453 of this title (Vermont Consumer Protection Act). A consumer
8 harmed by a violation is eligible to all remedies provided under the Vermont
9 Consumer Protection Act.

10 (b) The Attorney General has the same authority to adopt rules to
11 implement the provisions of this section and to conduct civil investigations,
12 enter into assurances of discontinuance, bring civil actions, and take other
13 enforcement actions as provided under chapter 63, subchapter 1 of this title.

14 Sec. 2. EFFECTIVE DATE

15 This act shall take effect on July 1, 2025.