

HOUSE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Tricia Farley-Bouvier

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:	DATE ADDED:
<i>Tricia Farley-Bouvier</i>	<i>2nd Berkshire</i>	<i>1/14/2025</i>

HOUSE No.

[Pin Slip]

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 An Act fostering artificial intelligence responsibility

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

4 Chapter 149B

5 Section 1. Definitions

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

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

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

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

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

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

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

33 "Department" , the department of labor standards.

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

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

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

49 personal identity information, including the individual's name, contact information,
50 government-issued identification numbers, financial information, criminal background, or
51 employment history;

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

56 (i) a digital or physical photograph,
57 (ii) an audio or video recording, or
58 (iii) any data generated from a digital or physical photograph, or an audio or video
59 recording, unless such data is generated to identify a specific individual.

60 health, medical, lifestyle, and wellness information, including the individual's medical
61 history, physical or mental condition, diet or physical activity patterns, heart rate, medical
62 treatment or diagnosis by a healthcare professional, health insurance policy number, subscriber
63 identification number, or other unique identifier used to identify the individual; and

64 (d) any data related to workplace activities, including the following:

65 (i) human resources information, including the contents of an individual's personnel file
66 or performance evaluations;

67 (ii) work process information, such as data relating to an individual employee's
68 performance or productivity, including but not limited to the quality and quantities of tasks
69 performed, quality and quantities of items or materials handled or produced, rates or speeds of
70 tasks performed, measurements or metrics of employee performance in relation to a quota, and
71 time categorized as performing tasks or not performing tasks;

72 (iii) data that captures workplace communications and interactions, including emails,
73 texts, internal message boards, screenshots, and customer interaction and ratings;

74 (iv) device usage and data, including, but not limited to key stroke recording, website,
75 software, and application utilization, calls placed or geolocation information;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

138 Section 2. Electronic monitoring tools.

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

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

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

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

146 (C) conducting periodic assessment of worker performance;

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

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

150 (F) administering wages and benefits.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

207

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

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

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

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

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

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

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

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

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

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

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

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

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

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

253 (xii) take adverse employment action against an employee based on any data collected
254 via electronic monitoring if such data measures an employee's performance in relation to a
255 performance standard that has not been previously, clearly, and unmistakably disclosed to such
256 employee as well as to all other classes of employees to whom it applies in violation of
257 subparagraph (vi) of paragraph (b) of subdivision one of this section, or if such data was
258 collected without proper notice to employees or candidates pursuant to sections 19B, 52C, and
259 190(i) of chapter 149 and section 99 of chapter 272.

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

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

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

270 (g) An employer shall not require employees to:

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

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

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

277 (A) conducted during work hours only; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

434 Section 4. Notice requirement.

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

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

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

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

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

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

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

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

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

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

461 (i) written in clear and plain language;

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

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

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

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

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

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

475 Section 5. Restricted uses of automated decision tools.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

520 Section 6. Anti-retaliation provisions for impacted workers.

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

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

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

530 technology may, in his professional opinion and/or educational or work related- experience, lead
531 to harm of a natural person, damage to physical property, an illegal action, an action contrary to
532 the licensure or certification requirements of the Federal Government, Commonwealth, or an
533 applicable private licensing or certifying authority, or an outcome contrary to the goal of the
534 employer, and the employer refused or otherwise failed to adjust the output;

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

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

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

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

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

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

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

558 No employee shall be penalized by an employer in any way as a result of any action on
559 the part of an employee to seek his or her rights under the provisions of this chapter.

560 Any employer who discharges or in any other manner discriminates against any
561 employee because such employee has made a complaint to the attorney general or any other
562 department, agency, or person, or assists the attorney general or department in any investigation
563 under this chapter, or has instituted, or caused to be instituted any proceeding under or related to
564 this chapter, or has testified or is about to testify in any such proceedings, shall have violated this
565 section and shall be punished or shall be subject to a civil citation or order as provided in section
566 27C.

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

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

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

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

577 Section 66.

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

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

587 Section 24.

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

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

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

604 i) a description of the objective of the automated decision system;

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

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

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

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

612 iv) testing for:

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

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

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

624 Any reasonably foreseeable misuse of the automated decision-making system and the
625 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.