HOUSE DOCKET, NO. 4827 FILED ON: 6/13/2025

HOUSE . . . . . No.

The Commonwealth of Massachusetts

PRESENTED BY:

Andres X. Vargas

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 to ensure non-discrimination by improving algorithmic systems.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
Andres X. Vargas	*3rd Essex*	*6/13/2025*

HOUSE DOCKET, NO. 4827 FILED ON: 6/13/2025

HOUSE . . . . . No.

By Representative Vargas of Haverhill, a petition (subject to Joint Rule 12) of Andres X. Vargas relative to non-discrimination by improving algorithmic systems. The Judiciary.

The Commonwealth of Massachusetts

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

An Act to ensure non-discrimination by improving algorithmic systems.

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

SECTION 5. The General Laws, as so appearing, are hereby amended by inserting after chapter 151F the following chapter:

CHAPTER 151G. Unlawful Algorithmic Discrimination

Section 1. Definitions

For the purposes of this chapter, all definitions set forth in section 1 of chapter 151B shall apply unless otherwise specified. Any term not explicitly defined in this section shall be interpreted following its plain and ordinary meaning, consistent with the purpose and intent of this chapter. The following terms shall, unless the context clearly requires otherwise, have the following meanings: —

“Affirmative action plan", efforts to expand an applicant, participant, or customer pool to raise the likelihood of increasing diversity or redressing historic discrimination, consistent with Massachusetts and federal law.

13 “Automated system”, any system, software, or process that uses computation as whole or
14 part of a system to determine outcomes, make or aid decisions, inform policy implementation,
15 collect data or observations, or otherwise interact with individuals and/or communities.
16 Automated systems include, but are not limited to, systems derived from machine learning,
17 statistics, or other data processing or artificial intelligence techniques, and exclude passive
18 computing infrastructure.

19 “Passive computing infrastructure”, any intermediary technology that does not influence
20 or determine the outcome of decision, make or aid in decisions, inform policy implementation, or
21 collect data or observations, including web hosting, domain registration, networking, caching,
22 data storage, or cybersecurity.

23 “Algorithmic eligibility determination”, a determination based in whole or in significant
24 part on an automated system to decide whether an individual or class of individuals qualifies for
25 a fundamental opportunity;

26 “Algorithmic targeting determination", a determination based in whole or in significant
27 part on an automated system to determine an individual’s receipt of advertising, marketing,
28 solicitations, or offers for a fundamental opportunity;

29 “Artificial intelligence”, a machine-based system that can, for a given set of human-
30 defined objectives, make predictions, recommendations or decisions influencing real or virtual
31 environments. Artificial intelligence systems use machine and human-based inputs to perceive
32 real and virtual environments; abstract such perceptions into models through analysis in an
33 automated manner; and use model inference to formulate options for information or action.

34 “Automated decision system”, a tool or a suite of tools that uses artificial intelligence or
35 another automated system to make an algorithmic eligibility determination, algorithmic targeting
36 determination, recommendation, classification, or categorization;

37 “Covered entity”, any person, business, organization, or government agency that is
38 subject to the jurisdiction of the Commonwealth of Massachusetts, excluding an individual
39 acting at their own direction and in a non-commercial context.

40 “Fundamental opportunity”, access to, security and authentication relating to, eligibility
41 for, cost of, terms of, or conditions related to any of the following:

42 (a) Employment, including hiring, pay, independent contracting, worker management,
43 promotion, and termination.

44 (b) Education and vocational training, including assessment, proctoring, promotion of
45 academic integrity, accreditation, certification, admissions, and provision of financial aid and
46 scholarships.

47 (c) Housing and lodging, including rental and short-term housing and lodging, home
48 appraisals, rental subsidies, and publicly supported housing.

49 (d) Essential utilities, including electricity, heat, water, municipal trash or sewage
50 services, internet, telecommunications service (including mobile phone service), and public
51 transportation.

52 (e) Healthcare, including mental healthcare, dental, vision, reproductive, and gender-
53 affirming care.

54 (f) Credit, banking, and other financial services.

55 (g) Insurance.

56 (h) Actions of the criminal justice system, law enforcement or intelligence operations,
57 child protective services, child welfare, and family services, including risk and threat
58 assessments, situational awareness and threat detection, investigations, watchlisting, bail
59 determinations, sentencing, administration of parole, surveillance, use of unmanned vehicles and
60 machines, and predictive policing.

61 (i) Government benefits and services, as well as identity verification, fraud prevention,
62 and assignment of penalties related to such benefits.

63 (j) adoption services.

64 "Protected characteristics", race, color, religious creed, national origin, sex, gender
65 identity, sexual orientation, genetic information, pregnancy, or a condition related to said
66 pregnancy including, but not limited to, breastfeeding, lactation or the need to express breast
67 milk for a nursing child, ancestry or status as a veteran of any individual, and other
68 characteristics protected by chapter 151B. The term "protected characteristic" shall also be
69 construed to include any combination of two or more protected characteristics.

70 "Regular", a frequency for audits which is reasonable given the system being audited and
71 which shall be at least every ninety days.

72 "Timely", within thirty days of any substantial change or update to an automated
73 decision system.

74 Section 2. Ban on Algorithmic Discrimination

75 (a) A covered entity shall not use an automated decision system to make or inform
76 decisions pertaining to fundamental opportunities in a manner that has the purpose or effect of
77 discriminating against a person or class of persons on the basis of a protected characteristic.

78 (b) Nothing in this Act shall prohibit covered entities from using individuals' personal
79 information to plan, guide, or implement an affirmative action plan that is otherwise compliant
80 with Massachusetts and federal law.

81 (c) Nothing in this Act shall prohibit covered entities from using an automated decision
82 system for the purpose of self-testing to identify, prevent, or mitigate discrimination, or
83 otherwise ensure compliance with obligations, under Massachusetts or federal law.

84 Section 3. Requirements for Covered Entities Using Automated Decision Systems
85 Pertaining to Fundamental Opportunities

86 (a) Covered entities using automated decision systems to make or inform decisions
87 pertaining to fundamental opportunities must:

88 (1) conduct regular and/or timely audits to detect and mitigate any discriminatory
89 purposes or effects;

90 (2) maintain documentation of the system's design, training and evaluation data, decision-
91 making processes, audit outcomes, and any actions taken as a result of an audit;

92 (3) provide clear notice to persons when such systems are being used in a decision-
93 making process pertaining to their access to a fundamental opportunity or terms or conditions
94 thereof; and

95 (4) allow the persons to opt out of the use of the automated decision system. Methods to
96 opt out shall be no more cumbersome than the steps required to trigger use of the system. No
97 person shall be penalized in any way for opting out of the use of any automated decision system.

98 (5) require in writing that any service provider providing an automated decision system
99 implement and maintain measures reasonably designed to ensure that the service provider
100 complies with requirements of this Act.

101 (6) Make available, in a manner that is clear and readily available on the entity's website
102 or in a public use case inventory, a statement summarizing:

103 (I) The automated decision systems being used to make or inform decisions pertaining to
104 fundamental opportunities, including the process by which the automated decision system is used
105 in relation to fundamental opportunities;

106 (II) The datasets used in the development of the automated decision system, including but
107 not limited to:

108 (i) The sources or owners of the datasets,

109 (ii) The size of the datasets,

110 (iii) The nature of the information collected in the datasets,

111 (iv) Whether the datasets include any data protected by copyright, trademark, or patent,
112 or whether the datasets are entirely in the public domain,

113 (v) The methods of dataset acquisition, including whether the datasets were purchased or
114 licensed by the entity,

115 (vi) Whether the datasets include personal information as defined in Chapter 93H,
116 Section 1, and

117 (vii) The time period during which the datasets were collected, including a notice if the
118 collection is ongoing.

119 (III) How the covered entity manages known or reasonably foreseeable risks of
120 algorithmic discrimination that may arise from the development or intentional and substantial
121 modification of the types of systems described.

122 This requirement shall not be construed as a requirement for a covered entity to publicly
123 disclose a trade secret or information protected from disclosure by state or federal law.

124 (b) When a covered entity uses an automated decision system to make or inform a
125 decision pertaining to a fundamental opportunity for a minor person, the notice and opt-out
126 requirements above shall apply to any of the minor's parents and/or legal guardians.

127 (c) Covered entities that offer, provide, decide eligibility for, or otherwise make available
128 any product or service related to fundamental opportunities must offer an option to interact with
129 a human to receive support related to that product or service. This option shall exist regardless of
130 whether the covered entity uses artificial intelligence or an automated decision system in relation
131 to the product or service and must be clear and conspicuous. A covered entity that offers, sells,
132 leases, licenses, gives, or otherwise makes available an artificial intelligence or other automated
133 decision system that is intended to interact with individuals shall ensure the disclosure to each
134 individual who interacts with the artificial intelligence system that the individual is interacting
135 with an artificial intelligence system and that they have the option to interact with a human
136 instead.

137 Section 4. Liability

138 (a) Liability for violations of this Act shall attach to covered entities regardless of
139 whether:

140 (1) The violation is in whole or in part the fault of an automated decision system;

141 (2) The covered entity relies in whole or in part on a service provider for the automated
142 decision system;

143 (3) The covered entity complies with federal law; or

144 (4) The covered entity is aware of the discriminatory purpose or effect of the automated
145 decision system.

146 (b) Any provision of a contract or agreement of any kind, including a covered entity's
147 terms of service or policies, that purports to waive or limit in any way a person's rights under
148 this Act, including but not limited to any right to a remedy or means of enforcement, shall be
149 deemed contrary to state law and shall be void and unenforceable.

150 (c) In cases of violations where the covered entity relies in whole or in part on one or
151 more service providers, the covered entity and service providers shall be held jointly and
152 severally liable in any action authorized under this Act.

153 Section 5. Enforcement, Remedies, and Penalties

154 (a) Any person aggrieved by a violation of this Act shall have a right of action in the
155 Massachusetts Superior Court or as a supplemental claim in any federal court of competent
156 jurisdiction against an offending party. A prevailing party may recover for each violation:

157 (1) against an entity that negligently violates a provision of this Act, liquidated damages
158 of $5,000 or actual damages, whichever is greater;

159 (2) against an entity that intentionally or recklessly violates a provision of this Act,
160 liquidated damages of $5,000 or actual damages, whichever is greater;

161 (3) reasonable attorneys' fees and costs, including expert witness fees and other litigation
162 expenses; and

163 (4) equitable relief, as the State or federal court may deem appropriate.

164 (b) Violations of this Act by a Massachusetts state, county, or municipal government
165 employee shall be reasonably disciplined by their supervising agency. Disciplinary measures
166 may include retraining, suspension, or termination, subject to due process requirements and
167 provisions of collective bargaining agreements.

168 (c) Nothing in this section shall be construed to limit any person's rights under state or
169 federal law.

170 Section 6. Sections 4 and 5 of this Act shall take effect 6 months after enactment.