II

118TH CONGRESS
1ST SESSION

S. 2419

To prohibit certain uses of automated decision systems by employers, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 20, 2023

Mr. CASEY (for himself, Mr. SCHATZ, Mr. FETTERMAN, and Mr. SANDERS) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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A BILL

To prohibit certain uses of automated decision systems by employers, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''No Robot Bosses Act''.

SEC. 2. DEFINITIONS.

For purposes of this Act:

(1) AUTOMATED DECISION SYSTEM.—

(A) IN GENERAL.—The term ''automated decision system'' means a system, software, or process that—

(i) uses computation, in whole or in part, to determine outcomes, make or aid decisions (including through evaluations, metrics, or scoring), inform policy implementation, or collect data or observations, including such a system, software, or process derived from machine learning, statistics, or other data processing or artificial intelligence techniques; and

(ii) is not passive computing infrastructure.

(B) PASSIVE COMPUTING INFRASTRUCTURE.—For purposes of this paragraph, the term "passive computing infrastructure" means any intermediary technology that does not influence or determine the outcome of a decision, make or aid in a decision (including through evaluations, metrics, or scoring), inform policy implementation, or collect data or observations, including web hosting, domain registration, networking, caching, data storage, or cybersecurity.

(2) AUTOMATED DECISION SYSTEM OUTPUT.—The term "automated decision system output" means any information, assumption, prediction,

score, recommendation, decision, evaluation, metric, conclusion, inference, or profile generated by an automated decision system.

(3) CANDIDATE.—The term ‘‘candidate’’, with respect to an employer, means an individual who applies, or applied, to be employed by, or otherwise perform work for remuneration for, the employer.

(4) COVERED INDIVIDUAL.—The term ‘‘covered individual’’, with respect to an employer, means an individual—

(A) who is employed by, or otherwise performing work for remuneration for, the employer, including such an individual who is—

(i) any individual performing work for remuneration for an employer described in clauses (i)(I) and (ii) of paragraph (6)(A);

(ii) any individual performing work for remuneration for an entity described in paragraph (6)(A)(i)(II);

(iii) any individual performing work for remuneration for an employing office described in paragraph (6)(A)(i)(III);

(iv) any individual performing work for remuneration for an employing office described in paragraph (6)(A)(i)(IV); or

(v) any individual performing work for remuneration for an employing agency described in paragraph (6)(A)(i)(V); or

(B) who is a candidate with respect to the employer.

(5) EMPLOY.—The term "employ" has the meaning given such term in section 3 of the Fair Labor Standards Act of 1938 (29 U.S.C. 203).

(6) EMPLOYER.—

(A) IN GENERAL.—The term "employer" means any person who is—

(i)(I) a covered employer who is not described in any other subclause of this clause;

(II) an entity employing a State employee described in section 304(a) of the Government Employee Rights Act of 1991 (42 U.S.C. 2000e–16c(a));

(III) an employing office, as defined in section 101 of the Congressional Accountability Act of 1995 (2 U.S.C. 1301);

(IV) an employing office, as defined in section 411(c) of title 3, United States Code; or

(V) an employing agency covered under subchapter V of chapter 63 of title 5, United States Code; and

(ii) engaged in commerce (including government), or an industry or activity affecting commerce (including government).

(B) COVERED EMPLOYER.—In subparagraph (A), the term ''covered employer''—

(i) means any person engaged in commerce or in any industry or activity affecting commerce who employs, or otherwise engages for the performance of work for remuneration, 11 or more covered individuals;

(ii) includes—

(I) any person who acts, directly or indirectly, in the interest of a covered employer in relation to any individual performing work for remuneration for such covered employer;

(II) any successor in interest of a covered employer;

(III) any public agency; and

(IV) the Government Accountability Office and the Library of Congress; and

(iii) does not include any labor organization (other than when acting as an employer) or anyone acting in the capacity of officer or agent of such labor organization.

(C) PUBLIC AGENCY.—For purposes of this paragraph, a public agency shall be considered to be a person engaged in commerce or in an industry or activity affecting commerce.

(D) DEFINITIONS.—For purposes of this paragraph, the terms ''commerce'', ''person'', and ''public agency'' have the meanings given the terms in section 3 of the Fair Labor Standards Act of 1938 (29 U.S.C. 203).

(7) EMPLOYMENT-RELATED DECISION.—The term ''employment-related decision'' includes a decision by an employer with regard to—

(A) hiring a covered individual (including any decision with regard to recruiting, screening, interviewing, or selecting a candidate);

(B) firing, retaining, taking a disciplinary action against, demoting, or reassigning duties of a covered individual; or

(C) any other term, condition, or privilege of employment or work of the covered individual, such as relating to pay, scheduling, health care or long-term care coverage, benefits, or hours worked or promoting a covered individual.

(8) GOVERNMENT ENTITY.—The term ''government entity'' means—

(A) a Federal agency (as such term is defined in section 3371 of title 5, United States Code);

(B) a State or political subdivision thereof;

(C) any agency, authority, or instrumentality of a State or political subdivision thereof; or

(D) a Tribal government or political subdivision thereof.

(9) INDIAN TRIBE.—The term ''Indian Tribe'' means any Indian or Alaska Native tribe, band, nation, pueblo, village, community, component band, or component reservation individually identified (including parenthetically) in the list published most recently as of the date of enactment of this Act pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 5131).

(10) LABOR ORGANIZATION.—The term ''labor organization'' has the meaning given the term in section 2(5) of the National Labor Relations Act (29 U.S.C. 152(5)), except that such term shall also include—

(A) any organization composed of labor organizations, such as a labor union federation or a State or municipal labor body; and

(B) any organization which would be included in the definition for such term under such section 2(5) but for the fact that the organization represents—

(i) individuals employed by the United States, any wholly owned Government corporation, any Federal Reserve Bank, or any State or political subdivision thereof;

(ii) individuals employed by persons subject to the Railway Labor Act (45 U.S.C. 151 et seq.); or

(iii) individuals employed as agricultural laborers.

(11) PREDISPUTE ARBITRATION AGREEMENT.—The term ''predispute arbitration agreement'' means any agreement to arbitrate a dispute that has not

yet arisen at the time of the making of the agreement.

(12) PREDISPUTE JOINT-ACTION WAIVER.—The term ‘‘predispute joint-action waiver’’ means an agreement, whether or not part of a predispute arbitration agreement, that would prohibit, or waive the right of, one of the parties to the agreement to participate in a joint, class, or collective action in a judicial, arbitral, administrative, or other forum, concerning a dispute that has not yet arisen at the time of the making of the agreement.

(13) SECRETARY.—The term ‘‘Secretary’’ means the Secretary of Labor.

(14) STATE.—The term ‘‘State’’ means each of the several States of the United States, the District of Columbia, or any territory or possession of the United States.

(15) STATE ATTORNEY GENERAL.—The term ‘‘State attorney general’’ means—

(A) with respect to a State, the attorney general or chief law enforcement officer of the State, or another official or agency designated by the State to bring civil actions on behalf of the State or the residents of the State; and

(B) with respect to a Tribal government, the attorney general or chief law enforcement officer of the Tribal government, or another official or agency designated by the Tribal government to bring civil actions on behalf of the Tribal government or the Indian Tribe of the Tribal government.

(16) STATE PRIVACY REGULATOR.—The term ''State privacy regulator'' means—

(A) the chief consumer protection officer of a State; or

(B) a State consumer protection agency with expertise in data protection, including the California Privacy Protection Agency.

(17) TRIBAL GOVERNMENT.—The term ''Tribal government'' means the recognized governing body of an Indian Tribe.

SEC. 3. USE OF AN AUTOMATED DECISION SYSTEM BY AN EMPLOYER.

(a) EMPLOYMENT-RELATED DECISIONS.—

(1) IN GENERAL.—An employer—

(A) may not rely exclusively on an automated decision system in making an employment-related decision with respect to a covered individual; and

(B) may not use an automated decision system output in making an employment-related decision with respect to a covered individual unless—

(i) the automated decision system used to generate such automated decision system output has had pre-deployment testing and validation with respect to—

(I) the efficacy of the system;

(II) the compliance of the system with applicable employment discrimination laws, including—

(aa) title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.);

(bb) the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621 et seq.);

(cc) title I of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111 et seq.);

(dd) title II of the Genetic Information Nondiscrimination Act of 2008 (42 U.S.C. 2000ff et seq.);

(ee) section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d));

(ff) sections 501 and 505 of the Rehabilitation Act of 1973 (29 U.S.C. 791; 793); and

(gg) the Pregnant Workers Fairness Act (division II of the Consolidated Appropriations Act, 2023 (Public Law 117–328));

(III) the lack of any potential discriminatory impact of the system, including discriminatory impact based on race, color, religion, sex (including pregnancy, sexual orientation, or gender identity), national origin, age, or disability and genetic information (including family medical history); and

(IV) the compliance of the system with the Artificial Intelligence Risk Management Framework released by the National Institute of Standards and Technology on January 26, 2023, or successor framework;

(ii) such automated decision system is, not less than annually, independently tested for discriminatory impact described in clause (i)(III) or potential biases and the results of such test are made publicly available;

(iii) the employer has provided the disclosure required under paragraph (2) with respect to such use of an automated decision system output;

(iv) such use is designed for purposes of making such an employment-related decision;

(v) the employer independently corroborates, via meaningful oversight by a human with appropriate and relevant experience, such automated decision system output;

(vi) not later than 7 days after making such an employment-related decision, the employer provides full, accessible, and meaningful documentation in plain language to such covered individual (at no cost to such covered individual) on the automated decision system output, including—

(I) a description of the automated decision system used to generate such automated decision system output;

(II) a description and explanation, in plain language, of the input data to such automated decision system used to generate such automated decision system output and a machine-readable copy of such data;

(III) a description and explanation of how such automated decision system output was used in making such employment-related decision; and

(IV) the reasoning for the use of such automated decision system output in such employment-related decision; and

(vii) the employer enables the covered individual to, after receiving such documentation—

(I) dispute (in a manner that is accessible and equitable and does not pose an unreasonable burden on the covered individual) such automated decision system output to a human with appropriate and relevant experience; and

(II) appeal such employment-related decision to a human with appropriate and relevant experience who is not the human for purposes of the corroboration under clause (v).

(2) DISCLOSURE.—

(A) IN GENERAL.—An employer that uses or intends to use an automated decision system output in making an employment-related decision with respect to a covered individual shall, in accordance with subparagraph (B), disclose to such covered individual—

(i) that the employer uses or intends to use an automated decision system output in making such an employment-related decision;

(ii) a description and explanation of the automated decision system used or intended to be used to generate such automated decision system output, including—

(I) the types of data collected or intended to be collected as inputs to the automated decision system and the circumstances of such collection;

(II) the characteristics that the automated decision system measures or is intended to measure, such as the knowledge, skills, or abilities of the covered individual;

(III) how such characteristics relate or would relate to any function required for the work or potential work of the covered individual;

(IV) how the system measures or is intended to measure such characteristics; and

(V) how the covered individual can interpret the automated decision system output in plain language;

(iii) the identity of the individual or entity that operates the automated decision system that provides such an automated decision system output;

(iv) how the employer uses or intends to use such an automated decision system output in making such an employment-related decision; and

(v) how the covered individual may dispute or appeal an employment-related decision made with respect to the covered individual using an automated decision system output.

(B) TIMING OF NOTICE.—

(i) INITIAL DISCLOSURE.—An employer shall provide the disclosure required under subparagraph (A)—

(I) in the case of a covered individual for whom an employment-related decision with regard to the hiring of the covered individual—

(aa) was made before the date of enactment of this Act, to the covered individual not later than 30 days after such date of enactment; or

(bb) is made on or after the date of enactment of this Act, to the covered individual, except as provided in subclause (II), prior to making such employment-related decision; and

(II) in the case of a candidate who applies to the employer on or after the date of enactment of this Act, prior to accepting an application by the candidate to be employed by, or otherwise perform work for remuneration for, the employer.

(ii) SUBSEQUENT DISCLOSURES.—Not later than 30 days after any information provided by an employer to a covered individual through a disclosure required under clause (ii) or (iv) of subparagraph (A) significantly changes or after any significant new information required to be provided in such a disclosure becomes available, the employer shall provide the covered individual with an updated disclosure.

(3) TRAINING.—An employer that uses or intends to use an automated decision system output in making an employment-related decision with respect to a covered individual shall train any individual or entity that operates the automated decision system

that provides such an automated decision system output or uses such automated decision system output on the use of such system, including on—

(A) the input information used by such automated decision system;

(B) the appeals process for such an automated decision system output;

(C) potential biases in automated decision systems;

(D) any limitations of the automated decision system;

(E) any potential adverse effects to covered individuals due to the automated decision system;

(F) any potential errors or problems related to the automated decision system; and

(G) examples of inappropriate uses of the automated decision system.

(b) MANAGEMENT BY AN AUTOMATED DECISION SYSTEM.—An employer that manages a covered individual through an automated decision system shall enable the covered individual to opt out of such management and be managed through a human manager who is able to make employment-related decisions with respect to the covered individual.

SEC. 4. ESTABLISHMENT OF TECHNOLOGY AND WORKER PROTECTION DIVISION.

(a) IN GENERAL.—There is established in the Department of Labor the Technology and Worker Protection Division.

(b) ADMINISTRATOR OF THE TECHNOLOGY AND WORKER PROTECTION DIVISION.—The President shall appoint an Administrator of the Technology and Worker Protection Division to head the Technology and Worker Protection Division.

(c) EMPLOYEES AND ADVISORY BOARDS OF THE DIVISION.—

(1) IN GENERAL.—The Administrator—

(A) may select, appoint, and employ, without regard to the provisions of sections 3309 through 3318 of title 5, United States Code, individuals, including technologists, directly to positions in the competitive service, as defined in section 2102 of such title, to carry out the duties of the Administrator under this Act; and

(B) may fix the compensation of the individuals described in subparagraph (A) without regard to chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for such individuals may not exceed the rate payable for level V of the Executive Schedule under section 5316 of that title.

(2) ADVISORY BOARDS.—

(A) ESTABLISHMENT.—The Administrator shall establish the following advisory boards to advise and consult with in the exercise of the functions of the Administrator under this Act and to provide information on emerging practices relating to the treatment of data by employers:

(i) The User Advisory Board, which shall be comprised of experts in consumer protection, privacy, civil rights, disability rights, labor organizations, and ethics.

(ii) The Research Advisory Board, which shall be comprised of individuals with academic and research expertise in privacy, cybersecurity, computer science, innovation, design, ethics, economics, civil rights law, disability law, labor organizations and public policy and representatives of labor organizations.

(iii) The Product Advisory Board, which shall be comprised of technologists, computer scientists, designers, product managers, attorneys, representatives of labor organizations, workplace technology experts, accessibility experts, and other representatives of employers and employees.

(iv) The Labor Advisory Board, which shall be comprised of representatives of labor organizations and representatives of workers.

(B) APPOINTMENTS.—The Administrator shall appoint members to the advisory boards established under subparagraph (A) without regard to party affiliation.

(C) MEETINGS.—Each advisory board established under subparagraph (A) shall meet—

(i) at the call of the Administrator; and

(ii) not less than 2 times annually.

(D) COMPENSATION AND TRAVEL EXPENSES.—A member of an advisory board established under subparagraph (A) who is not an officer or employee of the Federal Government shall—

(i) be entitled to receive compensation at a rate fixed by the Administrator while attending meetings of the advisory board, including travel time; and

(ii) receive travel expenses, including per diem in lieu of subsistence, in accordance with applicable provisions under subchapter I of chapter 57 of title 5, United States Code.

(E) EXEMPTION FROM THE FEDERAL ADVISORY COMMITTEE ACT.—Each advisory board established under subparagraph (A) shall be exempt from chapter 10 of title 5, United States Code.

(3) USE OF VOLUNTARY SERVICES.—The Administrator may, as may from time to time be needed, use any voluntary or uncompensated services.

(4) ATTORNEYS.—Attorneys appointed under this subsection may appear for and represent the Administrator in any litigation.

(d) OFFICES.—

(1) IN GENERAL.—The principal office of the Technology and Worker Protection Division shall be in the District of Columbia.

(2) REGIONAL, LOCAL, AND OTHER OFFICES.—The Administrator may establish regional, local, or other offices, including an office in the city of San Francisco, California or the San Francisco Bay area in California.

SEC. 5. REGULATIONS.

(a) IN GENERAL.—

(1) AUTHORITY.—

(A) IN GENERAL.—Except as provided in paragraph (2), the Secretary, acting through the Administrator, may prescribe such regulations as may be necessary to carry out this Act with respect to covered individuals described in section 2(4)(A) (other than covered individuals described in clauses (iii) through (v) of such section) and other individuals affected by employers described in subclause (I) or (II) of section 2(6)(A)(i), including individuals who are covered individuals described in section 2(4)(B) with respect to such employers.

(B) CONSULTATION.—In prescribing any regulations authorized under this paragraph, the Secretary, acting through the Administrator, may consult with—

(i) Federal agencies that have jurisdiction over Federal privacy laws or expertise in privacy, including the Federal Trade Commission;

(ii) Federal agencies that have jurisdiction over labor and employment issues, including the Equal Employment Opportunity Commission, the National Science Foundation, and the National Labor Relations Board; and

(iii) any other Federal agencies with relevant expertise, including the United States Access Board and the Office of Science and Technology Policy.

(2) GOVERNMENT ACCOUNTABILITY OFFICE; LIBRARY OF CONGRESS.—The Comptroller General of the United States and the Librarian of Congress shall prescribe any regulations described in paragraph (1)(A) with respect to covered individuals of the Government Accountability Office and the Library of Congress, respectively, and other individuals affected by the Comptroller General of the United States and the Librarian of Congress, respectively.

(b) EMPLOYEES COVERED BY CONGRESSIONAL ACCOUNTABILITY ACT OF 1995.—

(1) AUTHORITY.—Not later than 45 days after the Secretary prescribes any regulation under subsection (a)(1)(A), the Board of Directors of the Office of Compliance shall prescribe (in accordance with section 304 of the Congressional Accountability Act of 1995 (2 U.S.C. 1384)) such regulations as may be necessary to carry out this Act with respect to covered individuals described in section 2(4)(A)(iii) and other individuals affected by employers described in section 2(6)(A)(i)(III), including individuals who are covered individuals described in section 2(4)(B) with respect to such employers.

(2) AGENCY REGULATIONS.—The regulations prescribed under paragraph (1) shall be the same as substantive regulations promulgated by the Secretary under subsection (a)(1)(A) except insofar as the Board may determine, for good cause shown and stated together with the regulations prescribed under paragraph (1), that a modification of such regulations would be more effective for the implementation of the rights and protections involved under this section.

(c) EMPLOYEES COVERED BY CHAPTER 5 OF TITLE 3, UNITED STATES CODE.—

(1) AUTHORITY.—Not later than 45 days after the Secretary prescribes any regulation under subsection (a)(1)(A), the President (or the designee of the President) shall prescribe such regulations as may be necessary to carry out this Act with respect to covered individuals described in section 2(4)(A)(iv) and other individuals affected by employers described in section 2(6)(A)(i)(IV), including individuals who are covered individuals described in section 2(4)(B) with respect to such employers.

(2) AGENCY REGULATIONS.—The regulations prescribed under paragraph (1) shall be the same as substantive regulations promulgated by the Secretary under subsection (a)(1)(A) except insofar as the President (or designee) may determine, for good cause shown and stated together with the regulations prescribed under paragraph (1), that a modification of such regulations would be more effective for the implementation of the rights and protections involved under this section.

(d) EMPLOYEES COVERED BY CHAPTER 63 OF TITLE 5, UNITED STATES CODE.—

(1) AUTHORITY.—Not later than 45 days after the Secretary prescribes any regulation under subsection (a)(1)(A), the Director of the Office of Per-

sonnel Management shall prescribe such regulations as may be necessary to carry out this Act with respect to covered individuals described in section 2(4)(A)(v) and other individuals affected by employers described in section 2(6)(A)(i)(V), including individuals who are covered individuals described in section 2(4)(B) with respect to such employers.

(2) AGENCY REGULATIONS.—The regulations prescribed under paragraph (1) shall be the same as substantive regulations promulgated by the Secretary under subsection (a)(1)(A) except insofar as the Director may determine, for good cause shown and stated together with the regulations prescribed under paragraph (1), that a modification of such regulations would be more effective for the implementation of the rights and protections involved under this section.

SEC. 6. WHISTLEBLOWER PROTECTIONS.

No employer shall discriminate or retaliate (including through intimidation, threats, coercion, or harassment) against any covered individual of the employer—

(1) for exercising, or attempting to exercise, any right provided under this Act; or

(2) because the covered individual (or another individual acting at the request of the covered individual) has—

(A) filed a written or oral complaint to the employer or a Federal, State, or local government entity of a violation of section 3;

(B) sought assistance or intervention with respect to a worker privacy-related concern from the employer, a Federal, State, or local government, or a worker representative;

(C) instituted, caused to be instituted, or otherwise participated in any inquiry or proceeding under or related to this Act;

(D) given, or is about to give, any information in connection with any inquiry or proceeding relating to any right provided under this Act; or

(E) testified, or is about to testify, in any inquiry or proceeding relating to any right provided under this Act.

SEC. 7. ENFORCEMENT.

(a) IN GENERAL.—

(1) DEFINITION.—For purposes of this subsection:

(A) COVERED INDIVIDUAL.—The term "covered individual" means a covered individual—

(i) described in section 2(4)(A) (other than covered individuals described in clauses (iii) through (v) of such section); or

(ii) described in section 2(4)(B) with respect to an employer.

(B) EMPLOYER.—The term "employer" means an employer described in subclause (I) or (II) of section 2(6)(A)(i).

(2) ENFORCEMENT BY THE TECHNOLOGY AND WORKER PROTECTION DIVISION.—

(A) INVESTIGATION.—

(i) IN GENERAL.—To ensure compliance with the provisions of this Act, or any regulation or order issued under this Act, the Secretary, acting through the Administrator—

(I) may investigate and gather data regarding the wages, hours, and other conditions and practices of employment in any industry subject to this Act, and may enter and inspect any place or record (and make such transcriptions thereof), question any covered individual, and investigate any facts, conditions, practices, or matters as the Secretary may deem necessary or appropriate to determine whether an employer has violated any provision of this Act, or which may aid in the enforcement of the provisions of this Act; and

(II) may require, by general or special orders, an employer, to file with the Secretary, in such form as the Secretary may prescribe, annual or special reports or answers in writing to specific questions, furnishing to the Secretary such information or records as the Secretary may require as to the organization, business, conduct, practices, management, and relation to other corporations, partnerships, and individuals, of the employer.

(ii) REPORTS AND ANSWERS.—An employer shall file the reports and answers (including information and records) required under clause (i)(II) in such manner, including under oath or otherwise, and within such reasonable time period as the Secretary may require.

(iii) JOINT INVESTIGATIONS.—The Secretary, acting through the Administrator, may conduct investigations and make requests for information, as authorized under this Act, on a joint basis with another Federal agency, a State attorney general, or a State agency.

(iv) OBLIGATION TO KEEP, PRESERVE, AND MAKE AVAILABLE RECORDS.—An employer shall make, keep, preserve, and make available to the Secretary records pertaining to compliance with this Act in accordance with section 11(c) of the Fair Labor Standards Act of 1938 (29 U.S.C. 211(c)) and in accordance with any regulation or order issued by the Secretary.

(B) ENFORCEMENT.—With respect to employers and covered individuals, the Secretary, acting through the Administrator, shall receive, investigate, and attempt to resolve complaints of violations of section 3 or 6 in the same manner that the Secretary receives, investigates, and attempts to resolve complaints of violations of sections 6 and 7 of the Fair Labor Standards Act of 1938 (29 U.S.C. 206 and 207).

(C) REFERRAL FOR CRIMINAL PROCEEDINGS.—If the Secretary, in the course of the performance of any act or duty under this Act, obtains evidence that any employer has engaged in conduct that may constitute a violation of Federal criminal law, the Secretary shall refer the matter to the Attorney General for prosecution under any applicable law. Nothing in this paragraph shall affect any other authority of the Secretary to disclose information.

(D) LITIGATION.—The Solicitor of Labor may appear for and represent the Secretary on any litigation brought under this subsection.

(3) PRIVATE RIGHT OF ACTION.—

(A) IN GENERAL.—

(i) COVERED INDIVIDUAL.—Notwithstanding any action by the Secretary under paragraph (2)(B), any covered individual adversely affected by an alleged violation of section 3 or 6, may commence a civil action against any person that violates such section in any Federal court of competent jurisdiction.

(ii) LABOR ORGANIZATION.—Notwithstanding any action by the Secretary under paragraph (2)(B), any labor organization adversely affected by an alleged violation of 3 or 6 may commence a civil action against any person that violates such section in any Federal court of competent jurisdiction.

(B) RELIEF.—

(i) IN GENERAL.—In a civil action brought under subparagraph (A) in which the covered individual or labor organization prevails, the court may award the covered individual or labor organization—

(I) damages of—

(aa) an amount equal to the sum of any actual damages sustained by the covered individual; or

(bb) not more than treble damages;

(II) statutory damages described in clause (iv);

(III) injunctive relief; and

(IV) equitable relief.

(ii) ATTORNEY'S FEES.—In a civil action brought under subparagraph (A) in which the covered individual or labor organization prevails, the court shall award the covered individual or labor organization reasonable attorney's fees and litigation costs.

(iii) TEMPORARY RELIEF FOR WHISTLEBLOWERS.—In a civil action brought under subparagraph (A) regarding a violation of section 6, the court may award the covered individual or labor organization temporary relief while the case is pending, including reinstatement.

(iv) STATUTORY DAMAGES.—The court may, in accordance with clause (v), award statutory damages under clause (i)(II) against a person in the following amounts:

(I) USING AN AUTOMATED DECISION SYSTEM FOR PROHIBITED ACTIVITIES.—For each violation of section 3 by an employer with respect to a covered individual, the court may, subject to clause (vi), award—

(aa) damages of an amount not less than $5,000 and not more than $20,000; or

(bb) for any willful or repeated violation by the employer, damages of an amount not less than $10,000 and not more than $40,000.

(II) RETALIATION ON WHISTLEBLOWERS.—For each violation of section 6, the court may, subject to clause (vi), award—

(aa) damages of an amount not less than $5,000 and not more than $50,000; or

(bb) for any willful or repeated violation, damages of an amount not less than $10,000 and not more than $100,000.

(v) CONSIDERATIONS FOR STATUTORY DAMAGES.—In determining the amount of statutory damages assessed under clause (iv), the court shall consider any relevant circumstances presented by the parties to the action, including—

(I) the nature and seriousness of the violation;

(II) the number of violations;

(III) the persistence of the misconduct;

(IV) the length of time over which the misconduct occurred;

(V) the willfulness of the misconduct of the employer; and

(VI) the assets, liabilities, and net worth of the employer.

(vi) ADJUSTMENT FOR INFLATION.—The dollar amounts referred to subclauses (I) and (II) of clause (iv) shall be increased annually, for fiscal year 2025 and every fiscal year thereafter, by the percent increase, if any, in the consumer price index for all urban consumers for the most recent 12-month period for which applicable data is available.

(C) RIGHTS OF THE SECRETARY AND A STATE ATTORNEY GENERAL.—Prior to an covered individual or labor organization bringing a civil action under subparagraph (A), such covered individual or labor organization shall, in writing, notify the Secretary and any relevant State attorney general of the intent to commence such civil action. Upon receiving such notice, the Secretary and State attorney general shall each, not later than 60 days after receiving such notice—

(i) determine whether to intervene in such action and, upon intervening—

(I) be heard on all matters arising in such action; and

(II) file petitions for appeal of a decision in such action; and

(ii) notify such covered individual or labor organization.

(D) REMEDIES FOR STATE EMPLOYEES.—

(i) WAIVER OF SOVEREIGN IMMUNITY.—A State's receipt or use of Federal financial assistance for any program or activity of a State shall constitute a waiver of sovereign immunity, under the 11th Amendment to the Constitution of the United States or otherwise, to a suit brought by a covered individual of that program or activity, or a labor organization representing such a covered individual, under this paragraph for equitable, legal, or other relief authorized under this paragraph.

(ii) OFFICIAL CAPACITY.—An official of a State may be sued in the official capacity of the official by any covered individual or such a labor organization who has complied with the procedures under this paragraph, for injunctive relief that is authorized under this paragraph. In such a suit the court may award to the prevailing party those costs authorized by section 722 of the Revised Statutes (42 U.S.C. 1988).

(iii) APPLICABILITY.—With respect to a particular program or activity, clause (i) applies to conduct that occurs—

(I) after the date of enactment of this Act; and

(II) on or after the day on which a State first receives or uses Federal financial assistance for that program or activity.

(iv) DEFINITION OF PROGRAM OR ACTIVITY.—In this subparagraph, the term ‘‘program or activity’’ has the meaning given the term in section 606 of the Civil Rights Act of 1964 (42 U.S.C. 2000d–4a).

(E) REMEDIES FOR TRIBAL GOVERNMENT EMPLOYEES.—

(i) WAIVER OF SOVEREIGN IMMUNITY.—A Tribal government's receipt or use of Federal financial assistance for any program or activity of the Tribal government shall constitute a waiver of sovereign immunity to a suit brought by a covered individual of that program or activity, or a labor organization representing such a covered individual, under this paragraph for equitable, legal, or other relief authorized under this paragraph.

(ii) OFFICIAL CAPACITY.—An official of a Tribal government may be sued in the official capacity of the official by any covered individual or such a labor organization who has complied with the procedures under this paragraph for injunctive relief that is authorized under this paragraph. In such a suit the court may award to the prevailing party those costs authorized by section 722 of the Revised Statutes (42 U.S.C. 1988).

(iii) APPLICABILITY.—With respect to a particular program or activity, clause (i) applies to conduct that occurs—

(I) after the date of enactment of this Act; and

(II) on or after the day on which a Tribal government first receives or uses Federal financial assistance for that program or activity.

(iv) DEFINITION OF PROGRAM OR ACTIVITY.—In this subparagraph, the term ''program or activity'' has the meaning given the term in section 606 of the Civil Rights Act of 1964 (42 U.S.C. 2000d–4a).

(4) ENFORCEMENT BY THE GOVERNMENT ACCOUNTABILITY OFFICE AND LIBRARY OF CONGRESS.—Notwithstanding any other provision of this subsection, in the case of the Government Accountability Office and the Library of Congress, the authority of the Secretary under this subsection shall be exercised respectively by the Comptroller General

of the United States and the Librarian of Congress, respectively.

(b) EMPLOYEES COVERED BY CONGRESSIONAL ACCOUNTABILITY ACT OF 1995.—The powers, remedies, and procedures provided in the Congressional Accountability Act of 1995 (2 U.S.C. 1301 et seq.) to the Board (as defined in section 101 of that Act (2 U.S.C. 1301)), or any person, alleging a violation of section 202(a)(1) of that Act (2 U.S.C. 1312(a)(1)) shall be the powers, remedies, and procedures this Act provides to that Board, or any person, with regard to an allegation of a violation of section 3 or 6 against a covered individual described in section 2(4)(A)(iii) or described in section 2(4)(B) with respect to an employer described in section 2(6)(A)(i)(III).

(c) EMPLOYEES COVERED BY CHAPTER 5 OF TITLE 3, UNITED STATES CODE.—The powers, remedies, and procedures provided in chapter 5 of title 3, United States Code, to the President, the Merit Systems Protection Board, or any person, alleging a violation of section 412(a)(1) of that title, shall be the powers, remedies, and procedures this Act provides to the President, that Board, or any person, respectively, with regard to an allegation of a violation of section 3 or 6 against a covered individual described in section 2(4)(A)(iv) or described in section

2(4)(B) with respect to an employer described in section 2(6)(A)(i)(IV).

(d) EMPLOYEES COVERED BY CHAPTER 63 OF TITLE 5, UNITED STATES CODE.—The powers, remedies, and procedures provided in title 5, United States Code, to an employing agency, provided in chapter 12 of that title to the Merit Systems Protection Board, or provided in that title to any person, alleging a violation of chapter 63 of that title, shall be the powers, remedies, and procedures this Act provides to that agency, that Board, or any person, respectively, with regard to an allegation of a violation of section 3 or 6 against a covered individual described in section 2(4)(A)(v) or described in section 2(4)(B) with respect to an employer described in section 2(6)(A)(i)(V).

(e) ENFORCEMENT BY STATES.—

(1) IN GENERAL.—In any case in which a State attorney general or a State privacy regulator has reason to believe that an interest of the residents of a State has been or is adversely affected by any person who violates any provision of section 3 or 6, including a regulation or order prescribed under this Act, the State attorney general or State privacy regulator, as parens patriae, may bring a civil action on behalf of the residents of the State in an appropriate

State court or an appropriate district court of the United States to—

(A) enjoin further violation of such provision by the person;

(B) compel compliance with such provision;

(C) obtain damages (including statutory damages described in paragraph (4)), civil penalties, restitution, or other compensation on behalf of the residents of the State; or

(D) obtain reasonable attorney's fees and other litigation costs reasonably incurred.

(2) RIGHTS OF AGENCY.—Before initiating a civil action under paragraph (1), the State attorney general or State privacy regulator, as the case may be, shall notify the Secretary in writing of such civil action. Upon receiving such notice, the Secretary may—

(A) intervene in such action; and

(B) upon intervening—

(i) be heard on all matters arising in such civil action; and

(ii) file petitions for appeal of a decision in such action.

(3) PREEMPTIVE ACTION BY AGENCY.—In any case in which a civil action is instituted by or on be-

half of the Secretary for violation of this Act or a regulation promulgated under this Act, a State attorney general or State privacy regulator may not, during the pendency of such action, institute a civil action against any defendant named in the complaint in the action instituted by or on behalf of the Secretary for a violation that is alleged in such complaint. In a case brought by the Secretary that affects the interests of a State, the State attorney general or State privacy regulator may intervene as of right pursuant to the Federal Rules of Civil Procedure.

(4) STATUTORY DAMAGES.—In a civil action instituted under paragraph (1), a court may award statutory damages under paragraph (1)(C) against a person for a violation of any provision of section 3 or 6—

(A) in an amount not more than $50,000 for each such violation; or

(B) in the case of such a violation that results in the discharge of an employee or other serious economic harm to an employee by such a person who has, within the preceding 5 years, committed another such violation resulting in such a discharge or other serious economic harm, not more than $100,000 for each such violation.

(5) PRESERVATION OF STATE POWERS.—Except as provided in paragraph (3), no provision of this subsection shall be construed as altering, limiting, or affecting the authority of a State attorney general or State privacy regulator to—

(A) bring an action or other regulatory proceeding arising solely under the laws in effect in that State; or

(B) exercise the powers conferred on the State attorney general or State privacy regulator by the laws of the State, including the ability to conduct investigations, administer oaths or affirmations, or compel the attendance of witnesses or the production of documentary or other evidence.

(f) ARBITRATION AND CLASS ACTION.—Notwithstanding any other provision of law, no predispute arbitration agreement or predispute joint-action waiver shall be valid or enforceable with respect to any alleged violation of section 3 or 6.

SEC. 8. COORDINATION.

In carrying out this Act, the Secretary, acting through the Administrator, shall coordinate with any appropriate Federal agency or State regulator to promote consistent regulatory treatment of automated decision systems.

SEC. 9. RELATION TO OTHER LAWS.

Except as explicitly provided otherwise in this Act, nothing in this Act shall be construed to preempt, modify, limit, or supersede—

(1) any provision of Federal or State law; or

(2) the authority of the Federal Trade Commission, Equal Employment Opportunity Commission, National Labor Relations Board, or any other Federal agency.

SEC. 10. SEVERABILITY.

If any provision of this Act or the application of such provision to any person or circumstance is held to be unconstitutional, the remainder of this Act and the application of the provisions of such to all other persons or circumstances shall not be affected thereby.

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