

The Artificial Intelligence Civil Rights Act

Senator Edward J. Markey (D-Mass.)
Section-by-Section

Section 1: Definitions *[Select definitions only]*

This section defines terms used throughout the bill, including:

- **Commission** means the Federal Trade Commission.
- **Consequential Action** means any action that is likely to significantly affect or contribute to the conditions, access, eligibility, cost, or terms of various critical areas of life, including employment, education, housing, utilities, health care, financial services, insurance, criminal justice, legal services, elections, government benefits, and public accommodations.
- **Covered Algorithm** means a computational process derived from machine learning, natural language processing, artificial intelligence, or methods of similar or greater complexity that is involved in a consequential action, including creating information, affecting the display or delivery of information, making decisions, or assisting human decision-making.
- **Developer** means any person, excluding individuals operating in non-commercial contexts, who designs, codes, customizes, or substantially modifies covered algorithms for use in interstate commerce.
- **Deployer** means any person, excluding individuals operating in non-commercial contexts, who uses a covered algorithm in interstate commerce.
- **Harm** means, with respect to a consequential action, a non-de minimis adverse effect on an individual or group of individuals on the basis of a protected characteristic; that involves the use of force, coercion, harassment, intimidation, or detention; or that involves the infringement of a right protected under the Constitution of the United States.
- **Protected Characteristic** means any of the following actual or perceived traits of an individual or group of individuals: race, color, ethnicity, national origin, religion, sex (including sexual orientation and gender identity), disability, limited English proficiency, biometric information, familial status, source of income, income level, age, veteran status, genetic information or medical conditions, or any other classification protected by Federal law.

Title I: Civil Rights

Section 101: Discrimination

This section prohibits developers or deploys from offering, licensing, promoting, selling, or using a covered algorithm in a manner that causes or contributes to a disparate impact or otherwise discriminates in the equal enjoyment of goods, services, or other activities or opportunities, related to a consequential action, on the basis of a protected characteristic.

Section 102: Pre-deployment evaluations and post-deployment impact assessments

This section requires developers and deployers to evaluate and audit their covered algorithm before and after deploying or offering their covered algorithm. First, developers and deployers must complete a preliminary evaluation to determine whether use of the covered algorithm may result in a harm. If so, the developer and deployer must secure an independent auditor to conduct a full pre-deployment evaluation of the covered algorithm. The section creates specific requirements for the audit. The independent auditor will submit a report to the developer or deployer after the audit is completed.

After the covered algorithm has been deployed, the deployer is required, on an annual basis, to assess whether any harm occurred from the use of the covered algorithm. If so, the deployer shall secure an independent auditor to conduct a full impact assessment. The independent auditor shall send its corresponding report to both the deployer and developer. The section creates specific requirements for the audit. Finally, on an annual basis, the developer shall review each impact assessment report submitted by a deployer and create a report.

This section provides the Commission rulemaking authority to promulgate rules for this section.

Title II: Covered Algorithm and Contract Standards

Section 201: Covered algorithm standards

This section creates developer and deployer standards when developing and deploying a covered algorithm. Specifically, the section requires developers and deployers to (1) take reasonable measures to prevent and mitigate harms identified by the pre-deployment evaluation and impact assessments; (2) provide an independent auditor with any information needed for an accurate and effective pre-deployment evaluation and impact assessment; (3) consult with communities who will be impacted during the development of the covered algorithm and prior to deployment of the covered algorithm; (4) certify that the use of the covered algorithm is not likely to result in harm or disparate impact and benefits of use of the algorithm outweigh harms; (5) ensure that the covered algorithm performs reasonably well and in a manner that is consistent with its expected and publicly-advertised purpose; and (6) ensure any data used in the design, development, deployment, or use of the covered algorithm is relevant and appropriate.

The section also prohibits any deceptive marketing of the covered algorithm and prohibits developers and deployers from knowingly offering or using a covered algorithm for a consequential action that has not been evaluated in the pre-deployment evaluation.

Section 202: Relationships between developers and deployers

This section requires developers to provide deployers with necessary information to demonstrate compliance with this Act, including reports on pre-deployment evaluations and annual reviews. Developers must either cooperate with assessments conducted by deployers or arrange for an independent auditor to assess their practices and provide reports to the deployer.

Additionally, the section sets requirements for contracts between developers and deployers. Developers can offer or license a covered algorithm to deployers under a written contract that clearly outlines data processing procedures, deployment instructions, data collection and processing details, and rights and obligations. The contract cannot exempt either party from liability under the Act and prohibits combining data with that from other parties. Developers must keep a copy of each contract with deployers for 10 years.

Section 203: Human alternatives and other protections

This section requires the Commission, within two years of passage of this Act, to promulgate regulations that allow individuals to opt-out of algorithmic decisions in consequential actions and choose human decision-making instead. The regulations should ensure clarity, timeliness, no cost to individuals, risk mitigation, and the technical feasibility of providing human alternatives. Additionally, this section requires the Commission to promulgate rules that provide individuals with a right to appeal consequential actions made by algorithms to a human decisionmaker.

This section further prohibits developer or deployers from using deceptive tactics to impair their ability to exercise their rights under this Act and from retaliating against individuals for exercising their rights under this Act. It additionally provides whistleblower protections.

Title III: Transparency

Section 301: Notice and disclosure

This section requires developers and deployers to make publicly available a detailed and accurate representation of their responsibilities that fall under this Act, the reports and summaries as required under Section 102, the categories of the personal data used, and how that data is transferred to third parties. If a developer or deployer makes a material change to the disclosure, it is required to notify affected individuals impacted by the material change. Additionally, this section requires deployer to provide a direct notice to individuals prior to their interaction with the covered algorithm, which includes an overview of an individual's rights. Finally, this section requires developers and deployers to create an easily accessible mechanism for an individual impacted by a covered algorithm to report potential violations of this Act.

This section provides the Commission rulemaking authority to promulgate rules for this section.

Section 302: Study on explanations regarding the use of covered algorithms

This section requires the Commission to conduct a study, within 18 months of passage of the Act, with public input, on the feasibility of requiring deployers to provide individuals with a clear, accessible, no-cost mechanism to receive an explanation of how a covered algorithm affects or affected them. The study will assess the clarity, feasibility, technical limitations, and security measures for providing explanations, as well as recommendations for Congress on implementing related regulations. This study shall be done in consultation with the National Institute of Standards and Technology, the National Telecommunications and Information Administration, and the White House Office of Science and Technology Policy.

Section 303: Consumer awareness

This section requires the Commission to publish, no later than 90 days after enactment of this Act, on its website a page that describes the provisions, obligations, and rights as determined by the Act. The Commission shall keep this site updated with any changes. Additionally, this section requires the Commission to publish a report that describes and summarizes the information received in the pre-deployment evaluations, impact assessments, and developer reviews. The Commission must then create a public digital repository with each pre-deployment evaluation, impact assessment, and developer review received by the Commission as required in Section 102. The public repository will be appropriately redacted.

Title IV: Enforcement

This Title identifies the Commission as the agency charged with enforcing the first three Titles of this Act. This Title also establishes a private right of action and provides for enforcement by state Attorneys General in coordination with the Commission for civil penalties against violators.

Title V: Federal Resources

Section 501: Occupational series relating to algorithm auditing

This section requires the Office of Personnel Management to create a new occupational series for Federal Government jobs related to algorithm auditing. The new series is based on recommendations from a Government Accountability Office report on AI accountability.

Section 502: United States Digital Service algorithm auditors

This section requires Administrator of the United States Digital Service (USDS) to establish a career track specifically for algorithm auditing and hire professionals in this field.

Section 503: Additional Federal resources

This section authorizes funding for the Commission and other federal agencies to implement the provisions of this Act.