H. R. 7449

To establish prohibitions on the use of automated systems in a discriminatory manner, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

April 7, 2022

Mr. Brown of Maryland (for himself and Ms. Schakowsky) introduced the following bill; which was referred to the Committee on Oversight and Reform, and in addition to the Committees on Education and Labor, Armed Services, Science, Space, and Technology, Intelligence (Permanent Select), and the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To establish prohibitions on the use of automated systems in a discriminatory manner, and for other purposes.

- 1 Be it enacted by the Senate and House of Representa-
- 2 tives of the United States of America in Congress assembled,
- 3 SECTION 1. SHORT TITLE.
- 4 This Act may be cited as the "Digital Civil and
- 5 Human Rights Act of 2022".

1 SEC. 2. PROHIBITION OF DISCRIMINATORY USE OF AUTO-

- 2 MATED SYSTEMS.
- 3 (a) IN GENERAL.—No Federal agency, court of the
- 4 United States, State government, local government, or
- 5 tribal government may use any automated decision system
- 6 that has a disparate impact on the basis of race, national
- 7 origin, color, religion, disability, or sex.
- 8 (b) Publicly Available Repository.—The head
- 9 of each Federal agency shall maintain a site on the public
- 10 website of the Federal agency that contains a bias
- 11 datasheet for each automated decision system used by
- 12 such Federal agency with the potential for a disparate im-
- 13 pact on the bases established under subsection (a).
- 14 (c) Definition.—In this section the term "bias
- 15 datasheet" means a datasheet conforming to the standard
- 16 published pursuant to section 22B of the National Insti-
- 17 tute of Standards and Technology Act.
- 18 (d) Prohibition Against Discrimination or Seg-
- 19 REGATION IN PLACES OF PUBLIC ACCOMMODATION.—
- 20 Section 201 of the Civil Rights Act of 1964 (42 U.S.C.
- 21 2000a) is amended by adding at the end the following:
- 22 "(f) It shall be an unlawful practice for a place of
- 23 public accommodation to use in its operations affecting
- 24 commerce any automated decision system (as such term
- 25 is defined in section 701) that has a disparate impact on
- 26 the basis of race, color, religion, sex, or national origin.".

- 1 (e) Unlawful Employment Practices.—Section
- 2 703 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-
- 3 2) is amended by adding at the end the following:
- 4 "(o) It shall be an unlawful employment practice for
- 5 a respondent, in connection with the selection or referral
- 6 of applicants or candidates for employment or promotion,
- 7 to use any automated decision system that has a disparate
- 8 impact on the basis of race, color, religion, sex, or national
- 9 origin.".
- 10 (f) Definitions in Civil Rights Act of 1964.—
- 11 Section 701 of the Civil Rights Act of 1964 (42 U.S.C.
- 12 2000e-2) is amended by adding at the end the following:
- 13 "(o) The term 'automated decision system' means
- 14 any system, software, or process (including one derived
- 15 from machine learning, statistics, or other data processing
- 16 or artificial intelligence techniques and excluding passive
- 17 computing infrastructure) that uses computation, the re-
- 18 sult of which serves as a basis for a decision or judgment.
- 19 "(p) The term 'court of the United States' has the
- 20 meaning given such term in section 451 of title 28, United
- 21 States Code.".
- 22 (g) Rulemaking.—Not later than 1 year after the
- 23 date of enactment of this Act, the head of each Federal
- 24 agency, in coordination with the Director of the Office of

- 1 Management and Budget, shall make rules to carry out
- 2 this section and the amendments made by this section.
- 3 SEC. 3. PROHIBITION OF BIAS IN USE OF AUTOMATED SYS-
- 4 TEMS BY THE DEPARTMENT OF DEFENSE.
- 5 (a) IN GENERAL.—Chapter 3 of title 10, United
- 6 States Code, is amended by adding at the end the fol-
- 7 lowing new section:
- 8 "§ 1301. Prohibition of use of automated systems with
- 9 bias
- 10 "(a) IN GENERAL.—None of the funds authorized to
- 11 be appropriated or otherwise made available for any fiscal
- 12 year for the Department of Defense may be used for the
- 13 use of any automated decision system with any adverse
- 14 distinction based on race, religion, sex, health, age, or any
- 15 other similar criteria.
- 16 "(b) Publicly Available Repository.—Not later
- 17 than one year after the effective date of this section, the
- 18 Secretary of Defense shall maintain a site on the public
- 19 website of the Department of Defense that contains a bias
- 20 datasheet for each automated decision system used by the
- 21 Department of Defense with the potential for an adverse
- 22 distinction on the bases established under subsection (a).
- 23 "(c) Definitions.—In this section:

- 1 "(1) The term 'automated decision system' has 2 the meaning given such term in section 701 of the 3 Civil Rights Act of 1964.
 - "(2) The term 'adverse distinction' has the meaning given such term through the application of the Geneva Conventions and customary international law.
 - "(3) The term 'bias datasheet' means a datasheet conforming to the standard published pursuant to section 22B of the National Institute of Standards and Technology Act and includes an addendum related to international law.".

(b) Report Required.—

- (1) In General.—Not later than 1 year after the date of the enactment of this Act, the Secretary of Defense, in coordination with the Secretary of State, shall submit to the appropriate congressional committees a report on the implementation of the amendments made by this section.
- (2) ELEMENTS.—The report required by subsection (b) shall include the following:
- (A) An accounting of regulations prescribed, revised, or withdrawn in the implementation of the prohibition created under subsection (a).

1	(B) An identification and assessment of
2	any automated decision systems used by the
3	Department of Defense prior to the enactment
4	of this Act which had an adverse distinction
5	based on race, religion, sex, health, age, or any
6	other similar criteria.
7	(C) Recommendations for actions to affirm
8	the same prohibition for all parties to the Gene-
9	va Conventions.
10	(3) Form.—The report under paragraph (1)
11	shall be submitted in unclassified form, but may
12	contain a classified annex. The unclassified portion
13	of the report shall be posted on a publicly available
14	website of the Department of Defense.
15	(c) Definition.—In this section the term "appro-
16	priate congressional committees" means—
17	(1) the congressional defense committees;
18	(2) the Committee on Foreign Relations and
19	the Select Committee on Intelligence of the Senate;
20	and
21	(3) the Committee on Foreign Affairs and the
22	Permanent Select Committee on Intelligence of the
23	House of Representatives.
24	(d) CLERICAL AMENDMENT.—The table of sections
25	at the beginning of such chapter is amended by inserting

1	after the item relating to section 130k the following new
2	item:
	"130l. Prohibition of use of automated systems with bias.".
3	(e) Effective Date.—The amendments made by
4	this section shall take effect on the date that is one year
5	after the date of the enactment of this Act.
6	SEC. 4. REPORT ON INTELLIGENCE COMMUNITY USE OF
7	AUTOMATED DECISION SYSTEMS WITH BIAS.
8	(a) In General.—Not later than 180 days after the
9	date of the enactment of this Act, the Director of National
10	Intelligence shall submit to the appropriate congressional
11	committees a report on the use within the intelligence
12	community of automated decision systems with an adverse
13	distinction based on race, religion, sex, health, age, or any
14	other similar criteria.
15	(b) Elements.—The report required by subsection
16	(a) shall include the following:
17	(1) An accounting of the automated decision
18	systems used by the intelligence community, exclud-
19	ing cyberspace operations, with the potential for an
20	adverse distinction based on race, religion, sex
21	health, age, or any other similar criteria.
22	(2) An assessment of any adverse distinctions
23	based on race, religion, sex, health, age, or any other

similar criteria.

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1	(3) An assessment of the impact of a prohibi-
2	tion within the intelligence community on automated
3	decision systems with an adverse distinction based
4	on race, religion, sex, health, age, or any other simi-
5	lar criteria.
6	(4) An assessment of the programs and funding
7	required to replace within the intelligence commu-
8	nity any automated decision systems with an adverse
9	distinction based on race, religion, sex, health, age
10	or any other similar criteria.
11	(c) Form.—The report under subsection (a) may be
12	submitted in classified form, but if so submitted shall in-
13	clude an unclassified executive summary. The unclassified
14	portion of the report shall be posted on a publicly available
15	website of the Office of the Director of National Intel-
16	ligence.
17	(d) Definition.—In this section:
18	(1) The term "appropriate congressional com-
19	mittees" means—
20	(A) the congressional defense committees;
21	(B) the Committee on Foreign Relations
22	and the Select Committee on Intelligence of the
23	Senate; and

1	(C) the Committee on Foreign Affairs and
2	the Permanent Select Committee on Intelligence
3	of the House of Representatives.
4	(2) The term "intelligence community" has the
5	meaning given such term in section 3003(4) of title
6	50, United States Code.
7	(3) The term "automated decision system" has
8	the meaning given such term in section 701 of the
9	Civil Rights Act of 1964.
10	(4) The term "adverse distinction" has the
11	meaning given such term through the application of
12	the Geneva Conventions and customary international
13	law.
14	SEC. 5. ESTABLISHMENT OF DATASHEET STANDARDS ON
15	AUTOMATED DECISION SYSTEM BIAS.
16	(a) In General.—The National Institute of Stand-
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	ards and Technology Act (15 U.S.C. 271 et seq.) is
18	ards and Technology Act (15 U.S.C. 271 et seq.) is amended by inserting after section 22A the following new
18 19	
	amended by inserting after section 22A the following new
19	amended by inserting after section 22A the following new section:
19 20	amended by inserting after section 22A the following new section: "SEC. 22B. AUTOMATED DECISION SYSTEM BIAS
19 20 21	amended by inserting after section 22A the following new section: "SEC. 22B. AUTOMATED DECISION SYSTEM BIAS DATASHEETS.
19 20 21 22	amended by inserting after section 22A the following new section: "SEC. 22B. AUTOMATED DECISION SYSTEM BIAS DATASHEETS. "(a) IN GENERAL.—The Director of the Institute, in

- 1 maintain standards for reporting bias in an automated de-
- 2 cision system.
- 3 "(b) Elements.—The standards described in sub-
- 4 section (a) shall require the following:
- 5 "(1) An assessment of bias on the basis of race,
- 6 national origin, color, religion, disability, sex, sexual
- 7 orientation, or gender identity.
- 8 "(2) The source, size, and characteristics of any
- 9 dataset used as the basis for the automated decision
- 10 system.
- 11 "(3) The content is accessible and machine
- readable in accordance with the 21st Century Inte-
- grated Digital Experience Act (44 U.S.C. 3501
- note).
- 15 "(4) Any other requirements as determined by
- the Director.
- 17 "(c) Definitions.—In this section the term 'auto-
- 18 mated decision system' has the meaning given such term
- 19 in section 701 of the Civil Rights Act of 1964.".
- 20 (b) Deadline for Implementation.—Not later
- 21 than 18 months after the date of the enactment of this
- 22 Act, the Director shall initially publish the standards re-
- 23 quired under subsection (a).