

116TH CONGRESS  
1ST SESSION

# H. R. 2231

To direct the Federal Trade Commission to require entities that use, store, or share personal information to conduct automated decision system impact assessments and data protection impact assessments.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 10, 2019

Ms. CLARKE of New York introduced the following bill; which was referred to the Committee on Energy and Commerce

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## A BILL

To direct the Federal Trade Commission to require entities that use, store, or share personal information to conduct automated decision system impact assessments and data protection impact assessments.

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 “Algorithmic Account-  
5       ability Act of 2019”.

6       **SEC. 2. DEFINITIONS.**

7       In this Act:

1           (1) AUTOMATED DECISION SYSTEM.—The term  
2           “automated decision system” means a computational  
3           process, including one derived from machine learn-  
4           ing, statistics, or other data processing or artificial  
5           intelligence techniques, that makes a decision or fa-  
6           cilitates human decision making, that impacts con-  
7           sumers.

8           (2) AUTOMATED DECISION SYSTEM IMPACT AS-  
9           SESSMENT.—The term “automated decision system  
10          impact assessment” means a study evaluating an  
11          automated decision system and the automated deci-  
12          sion system’s development process, including the de-  
13          sign and training data of the automated decision  
14          system, for impacts on accuracy, fairness, bias, dis-  
15          crimination, privacy, and security that includes, at a  
16          minimum—

17                   (A) a detailed description of the automated  
18                   decision system, its design, its training, data,  
19                   and its purpose;

20                   (B) an assessment of the relative benefits  
21                   and costs of the automated decision system in  
22                   light of its purpose, taking into account rel-  
23                   evant factors, including—

24                           (i) data minimization practices;

1 (ii) the duration for which personal  
2 information and the results of the auto-  
3 mated decision system are stored;

4 (iii) what information about the auto-  
5 mated decision system is available to con-  
6 sumers;

7 (iv) the extent to which consumers  
8 have access to the results of the automated  
9 decision system and may correct or object  
10 to its results; and

11 (v) the recipients of the results of the  
12 automated decision system;

13 (C) an assessment of the risks posed by  
14 the automated decision system to the privacy or  
15 security of personal information of consumers  
16 and the risks that the automated decision sys-  
17 tem may result in or contribute to inaccurate,  
18 unfair, biased, or discriminatory decisions im-  
19 pacting consumers; and

20 (D) the measures the covered entity will  
21 employ to minimize the risks described in sub-  
22 paragraph (C), including technological and  
23 physical safeguards.

24 (3) COMMISSION.—The term “Commission”  
25 means the Federal Trade Commission.

1           (4) CONSUMER.—The term “consumer” means  
2 an individual.

3           (5) COVERED ENTITY.—The term “covered en-  
4 tity” means any person, partnership, or corporation  
5 over which the Commission has jurisdiction under  
6 section 5(a)(2) of the Federal Trade Commission  
7 Act (15 U.S.C. 45(a)(2)) that—

8           (A) had greater than \$50,000,000 in aver-  
9 age annual gross receipts for the 3-taxable-year  
10 period preceding the most recent fiscal year, as  
11 determined in accordance with paragraphs (2)  
12 and (3) of section 448(c) of the Internal Rev-  
13 enue Code of 1986;

14           (B) possesses or controls personal informa-  
15 tion on more than—

16                   (i) 1,000,000 consumers; or

17                   (ii) 1,000,000 consumer devices;

18           (C) is substantially owned, operated, or  
19 controlled by a person, partnership, or corpora-  
20 tion that meets the requirements under sub-  
21 paragraph (A) or (B); or

22           (D) is a data broker or other commercial  
23 entity that, as a substantial part of its business,  
24 collects, assembles, or maintains personal infor-  
25 mation concerning an individual who is not a

1 customer or an employee of that entity in order  
2 to sell or trade the information or provide third-  
3 party access to the information.

4 (6) DATA PROTECTION IMPACT ASSESSMENT.—

5 The term “data protection impact assessment”  
6 means a study evaluating the extent to which an in-  
7 formation system protects the privacy and security  
8 of personal information the system processes.

9 (7) HIGH-RISK AUTOMATED DECISION SYS-  
10 TEM.—The term “high-risk automated decision sys-  
11 tem” means an automated decision system that—

12 (A) taking into account the novelty of the  
13 technology used and the nature, scope, context,  
14 and purpose of the automated decision system,  
15 poses a significant risk—

16 (i) to the privacy or security of per-  
17 sonal information of consumers; or

18 (ii) of resulting in or contributing to  
19 inaccurate, unfair, biased, or discrimina-  
20 tory decisions impacting consumers;

21 (B) makes decisions, or facilitates human  
22 decision making, based on systematic and ex-  
23 tensive evaluations of consumers, including at-  
24 tempts to analyze or predict sensitive aspects of  
25 their lives, such as their work performance, eco-

1            nomic situation, health, personal preferences,  
2            interests, behavior, location, or movements,  
3            that—

4                    (i) alter legal rights of consumers; or  
5                    (ii) otherwise significantly impact con-  
6            sumers;

7            (C) involves the personal information of a  
8            significant number of consumers regarding  
9            race, color, national origin, political opinions,  
10            religion, trade union membership, genetic data,  
11            biometric data, health, gender, gender identity,  
12            sexuality, sexual orientation, criminal convic-  
13            tions, or arrests;

14            (D) systematically monitors a large, pub-  
15            licly accessible physical place; or

16            (E) meets any other criteria established by  
17            the Commission in regulations issued under sec-  
18            tion 3(b)(1).

19            (8) HIGH-RISK INFORMATION SYSTEM.—The  
20            term “high-risk information system” means an in-  
21            formation system that—

22                    (A) taking into account the novelty of the  
23                    technology used and the nature, scope, context,  
24                    and purpose of the information system, poses a

1 significant risk to the privacy or security of per-  
2 sonal information of consumers;

3 (B) involves the personal information of a  
4 significant number of consumers regarding  
5 race, color, national origin, political opinions,  
6 religion, trade union membership, genetic data,  
7 biometric data, health, gender, gender identity,  
8 sexuality, sexual orientation, criminal convic-  
9 tions, or arrests;

10 (C) systematically monitors a large, pub-  
11 licly accessible physical place; or

12 (D) meets any other criteria established by  
13 the Commission in regulations issued under sec-  
14 tion 3(b)(1).

15 (9) INFORMATION SYSTEM.—The term “infor-  
16 mation system”—

17 (A) means a process, automated or not,  
18 that involves personal information, such as the  
19 collection, recording, organization, structuring,  
20 storage, alteration, retrieval, consultation, use,  
21 sharing, disclosure, dissemination, combination,  
22 restriction, erasure, or destruction of personal  
23 information; and

24 (B) does not include automated decision  
25 systems.

1           (10) **PERSONAL INFORMATION.**—The term  
2 “personal information” means any information, re-  
3 gardless of how the information is collected, in-  
4 ferred, or obtained that is reasonably linkable to a  
5 specific consumer or consumer device.

6           (11) **STORE.**—The term “store”—

7           (A) means the actions of a person, part-  
8 nership, or corporation to retain information;  
9 and

10           (B) includes actions to store, collect, as-  
11 semble, possess, control, or maintain informa-  
12 tion.

13           (12) **USE.**—The term “use” means the actions  
14 of a person, partnership, or corporation in using in-  
15 formation, including actions to use, process, or ac-  
16 cess information.

17 **SEC. 3. DATA PROTECTION AUTHORITY.**

18           (a) **ACTS PROHIBITED.**—It is unlawful for any cov-  
19 ered entity to—

20           (1) violate a regulation promulgated under sub-  
21 section (b); or

22           (2) knowingly provide substantial assistance to  
23 any person, partnership, or corporation whose ac-  
24 tions violate subsection (b).

25           (b) **REGULATIONS.**—



1           (1) IN GENERAL.—Not later than 2 years after  
2 the date of enactment of this section, the Commis-  
3 sion shall promulgate regulations, in accordance with  
4 section 553 of title 5, United States Code, that—

5           (A) require each covered entity to conduct  
6 automated decision system impact assessments  
7 of—

8           (i) existing high-risk automated deci-  
9 sion systems, as frequently as the Commis-  
10 sion determines is necessary; and

11           (ii) new high-risk automated decision  
12 systems, prior to implementation;

13 provided that a covered entity may evaluate  
14 similar high-risk automated decision systems  
15 that present similar risks in a single assess-  
16 ment;

17           (B) require each covered entity to conduct  
18 data protection impact assessments of—

19           (i) existing high-risk information sys-  
20 tems, as frequently as the Commission de-  
21 termines is necessary; and

22           (ii) new high-risk information sys-  
23 tems, prior to implementation;

1 provided that a covered entity may evaluate  
2 similar high-risk information systems that  
3 present similar risks in a single assessment;

4 (C) require each covered entity to conduct  
5 the impact assessments under subparagraphs  
6 (A) and (B), if reasonably possible, in consulta-  
7 tion with external third parties, including inde-  
8 pendent auditors and independent technology  
9 experts; and

10 (D) require each covered entity to reason-  
11 ably address in a timely manner the results of  
12 the impact assessments under subparagraphs  
13 (A) and (B).

14 (2) OPTIONAL PUBLICATION OF IMPACT AS-  
15 SESSMENTS.—The impact assessments under sub-  
16 paragraphs (A) and (B) may be made public by the  
17 covered entity at its sole discretion.

18 (c) PREEMPTION OF PRIVATE CONTRACTS.—It shall  
19 be unlawful for any covered entity to commit the acts pro-  
20 hibited in subsection (a), regardless of specific agreements  
21 between entities or consumers.

22 (d) ENFORCEMENT BY THE COMMISSION.—

23 (1) UNFAIR OR DECEPTIVE ACTS OR PRAC-  
24 TICES.—A violation of subsection (a) shall be treated  
25 as a violation of a rule defining an unfair or decep-

1 tive act or practice under section 18(a)(1)(B) of the  
2 Federal Trade Commission Act (15 U.S.C.  
3 57a(a)(1)(B)).

4 (2) POWERS OF THE COMMISSION.—

5 (A) IN GENERAL.—The Commission shall  
6 enforce this section in the same manner, by the  
7 same means, and with the same jurisdiction,  
8 powers, and duties as though all applicable  
9 terms and provisions of the Federal Trade  
10 Commission Act (15 U.S.C. 41 et seq.) were in-  
11 corporated into and made a part of this section.

12 (B) PRIVILEGES AND IMMUNITIES.—Any  
13 person who violates subsection (a) shall be sub-  
14 ject to the penalties and entitled to the privi-  
15 leges and immunities provided in the Federal  
16 Trade Commission Act (15 U.S.C. 41 et seq.).

17 (C) AUTHORITY PRESERVED.—Nothing in  
18 this section shall be construed to limit the au-  
19 thority of the Commission under any other pro-  
20 vision of law.

21 (e) ENFORCEMENT BY STATES.—

22 (1) IN GENERAL.—If the attorney general of a  
23 State has reason to believe that an interest of the  
24 residents of the State has been or is being threat-  
25 ened or adversely affected by a practice that violates

1 subsection (a), the attorney general of the State  
2 may, as *parens patriae*, bring a civil action on behalf  
3 of the residents of the State in an appropriate dis-  
4 trict court of the United States to obtain appro-  
5 priate relief.

6 (2) RIGHTS OF COMMISSION.—

7 (A) NOTICE TO COMMISSION.—

8 (i) IN GENERAL.—Except as provided  
9 in clause (iii), the attorney general of a  
10 State, before initiating a civil action under  
11 paragraph (1), shall provide written notifi-  
12 cation to the Commission that the attorney  
13 general intends to bring such civil action.

14 (ii) CONTENTS.—The notification re-  
15 quired under clause (i) shall include a copy  
16 of the complaint to be filed to initiate the  
17 civil action.

18 (iii) EXCEPTION.—If it is not feasible  
19 for the attorney general of a State to pro-  
20 vide the notification required under clause  
21 (i) before initiating a civil action under  
22 paragraph (1), the attorney general shall  
23 notify the Commission immediately upon  
24 instituting the civil action.

1 (B) INTERVENTION BY COMMISSION.—The  
2 Commission may—

3 (i) intervene in any civil action  
4 brought by the attorney general of a State  
5 under paragraph (1); and

6 (ii) upon intervening—

7 (I) be heard on all matters arising  
8 in the civil action; and

9 (II) file petitions for appeal of a  
10 decision in the civil action.

11 (3) INVESTIGATORY POWERS.—Nothing in this  
12 subsection may be construed to prevent the attorney  
13 general of a State from exercising the powers conferred  
14 on the attorney general by the laws of the  
15 State to conduct investigations, to administer oaths  
16 or affirmations, or to compel the attendance of witnesses  
17 or the production of documentary or other  
18 evidence.

19 (4) VENUE; SERVICE OF PROCESS.—

20 (A) VENUE.—Any action brought under  
21 paragraph (1) may be brought in—

22 (i) the district court of the United  
23 States that meets applicable requirements  
24 relating to venue under section 1391 of  
25 title 28, United States Code; or

1 (ii) another court of competent juris-  
2 diction.

3 (B) SERVICE OF PROCESS.—In an action  
4 brought under paragraph (1), process may be  
5 served in any district in which—

6 (i) the defendant is an inhabitant,  
7 may be found, or transacts business; or

8 (ii) venue is proper under section  
9 1391 of title 28, United States Code.

10 (5) ACTIONS BY OTHER STATE OFFICIALS.—

11 (A) IN GENERAL.—In addition to a civil  
12 action brought by an attorney general under  
13 paragraph (1), any other officer of a State who  
14 is authorized by the State to do so may bring  
15 a civil action under paragraph (1), subject to  
16 the same requirements and limitations that  
17 apply under this subsection to civil actions  
18 brought by attorneys general.

19 (B) SAVINGS PROVISION.—Nothing in this  
20 subsection may be construed to prohibit an au-  
21 thorized official of a State from initiating or  
22 continuing any proceeding in a court of the  
23 State for a violation of any civil or criminal law  
24 of the State.

1 **SEC. 4. NO PREEMPTION.**

2       Nothing in this Act may be construed to preempt any

3 State law.

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