



Assembly Bill (AB) 13 – Automated Decision Systems Accountability Act of 2021
Sponsor: The Greenlining Institute

SUMMARY

AB 13 – The Automated Decision Systems Accountability Act of 2021 – would require any business in California that provides a person with a program or device that uses an automated decision system (ADS) to establish processes to continually test for biases during its development and usage, and to conduct an assessment of discriminatory impacts that could potentially result from its use.

BACKGROUND

The vast amount of data collected and amassed nowadays, combined with the progress made in the field of artificial intelligence, has resulted in increasing development and use of algorithmic or automated decision-making processes.

As described in a 2019 report by The Brookings Institution’s Artificial Intelligence and Emerging Technology Initiative, “algorithmic or automated decision systems use data and statistical analyses to classify people and assess their eligibility for a benefit or penalty.” If thoughtfully designed and implemented, the application of these systems can assist with credit decisions, employment screening, insurance eligibility, and marketing, as well as the delivery of government services, criminal justice sentencing, and probation decisions.¹

Nonetheless, a survey released in 2018 by the Pew Research Center found that public attitudes toward algorithmic decision-making are generally negative, and reflect concern that many of these systems simply reinforce existing biases and disparities under the guise of algorithmic

neutrality. The survey revealed that six-in-ten Americans (58%) feel computer programs will always reflect the biases of the people who designed them, and that their use is unacceptable due to concerns regarding data privacy, fairness, and overall effectiveness.²

The growing application of algorithmic or automated decision-making systems raises questions about the real risks ADS may present to our individual autonomy, our rights and freedoms, and the sufficiency of laws designed to protect us from discrimination. The rapid proliferation of novel ADS also raises concerns regarding the respective responsibilities of ADS developers and ADS users. After all, “the input data used to train the systems could underrepresent members of protected classes or be infected by past discriminatory practices,” which “could inadvertently reproduce or magnify historical patterns of bias,” as suggested by Brookings.³

Existing California law safeguards the rights of persons in a variety of contexts against discrimination, harassment, and retaliation on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, and military and veteran status. These obligations create a legitimate and substantial state interest in ensuring that ADS do not result in discrimination.

According to a report by STAT News, hospitals are relying on AI during the COVID-19 pandemic to assist with patient care and identify those likely to develop severe symptoms. Some health

¹ *Fairness in Algorithmic Decision-making*
<https://www.brookings.edu/research/fairness-in-algorithmic-decision-making/>

² *Attitudes Toward Algorithmic Decision-making*
<https://www.pewresearch.org/internet/2018/11/16/attitudes-toward-algorithmic-decision-making/>

³ *Fairness in Algorithmic Decision-making*
<https://www.brookings.edu/research/fairness-in-algorithmic-decision-making/>



Assembly Bill (AB) 13 – Automated Decision Systems Accountability Act of 2021

Sponsor: The Greenlining Institute

insurance companies are also using algorithms to identify and proactively reach out to patients most at risk of contracting COVID-19.⁴ It is expected that banks, employers, law enforcement, and others may soon turn to AI as they seek to increase the contactless provision of services. In fact, the widespread need for financial assistance following the economic downturn, along with the increase in unemployment accompanying COVID-19 provides a number of compelling situations where ADS is likely to be used. According to the Greenlining Institute, economic empowerment requires access to things like credit, employment, and insurance, which often rely on data that banks, employers, and insurance companies gather, and the predictions their algorithms make about individuals.⁵ This accelerated interest in incorporating ADS technology as a means to address COVID-19 and its consequences signals an increasingly urgent need to establish accountability and transparency in these systems.

SOLUTION

This bill would require any business in California that provides a person with a program or device that uses ADS to develop processes to continually test for biases during the development and usage of the ADS. It would also require businesses to conduct impact assessments on their programs or devices to determine any disproportionate impacts on protected classes, to examine if the ADS serves reasonable objectives and furthers legitimate interests, and to compare alternatives to ADS or reasonable modifications that may be taken to limit adverse consequences on protected classes. The bill would further require these businesses, by March 1, 2023, and annually thereafter, to submit reports to the Department of Financial Protection and Innovation

(Department) providing specified information about their impact assessments, and to conduct additional assessments if significant modifications are made to the ADS. Violations of these provisions would be subject to civil penalties.

Finally, the bill would require the Department, by January 1, 2023, to make general information on the reporting process available on its internet website, and to develop a procedure for businesses to use in making the required reports. By March 1, 2023, the Department would also be required to establish an Automated Decision Systems Advisory Task Force, comprised of various representatives from the public and private sectors, for the purpose of reviewing and providing advice on the use of ADS.

SUPPORT

The Greenlining Institute (Sponsor)

BILL STATUS

Introduced on December 7, 2020.

FOR MORE INFORMATION

Edmundo Cuevas
Office of Assemblymember Ed Chau
(916) 319-2049; Edmundo.cuevas@asm.ca.gov

⁴ STAT’s guide to how hospitals are using AI to fight Covid-19 <https://www.statnews.com/2020/03/31/hospitals-artificial-intelligence-coronavirus/>

⁵ Data Privacy and Redlining <https://greenlining.org/our-work/technology-equity/data-privacy-digital-redlining/>