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(Original Signature of Member)

119TH CONGRESS
1ST SESSION

H. R.

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

IN THE HOUSE OF REPRESENTATIVES

Ms. BONAMICI introduced the following bill; which was referred to the
Committee on _____

A BILL

To prohibit certain uses of automated decision systems by
employers, 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 “No Robot Bosses Act”.

5 **SEC. 2. DEFINITIONS.**

6 For purposes of this Act:

7 (1) AUTOMATED DECISION SYSTEM.—

4 (i) uses computation, in whole or in
5 part, to determine outcomes, make or aid
6 decisions (including through evaluations,
7 metrics, or scoring), inform policy imple-
8 mentation, or collect data or observations,
9 including such a system, software, or proc-
10 ess derived from machine learning, statis-
11 tics, or other data processing or artificial
12 intelligence techniques; and
13 (ii) is not passive computing infra-
14 structure.

(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.

1 (2) AUTOMATED DECISION SYSTEM OUTPUT.—

2 The term “automated decision system output”
3 means any information, assumption, prediction,
4 score, recommendation, decision, evaluation, metric,
5 conclusion, inference, or profile generated by an
6 automated decision system.

14 (A) who is employed by, or otherwise per-
15 forming work for remuneration for, the em-
16 ployer, including such an individual who is—

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

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

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

1 (iv) any individual performing work
2 for remuneration for an employing office
3 described in paragraph (6)(A)(i)(IV); or
4 (v) any individual performing work for
5 remuneration for an employing agency de-
6 scribed in paragraph (6)(A)(i)(V); or
7 (B) who is a candidate with respect to the
8 employer.

12 (6) EMPLOYER.—

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

18 (II) an entity employing a State em-
19 ployee described in section 304(a) of the
20 Government Employee Rights Act of 1991
21 (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);

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

4 (V) an employing agency covered
5 under subchapter V of chapter 63 of title
6 5, United States Code; and

10 (B) COVERED EMPLOYER.—In subparagraph
11 graph (A), the term “covered employer”—

12 (i) means any person engaged in com-
13 mercial or in any industry or activity affect-
14 ing commerce who employs, or otherwise
15 engages for the performance of work for
16 remuneration, 11 or more covered individ-
17 uals;

18 (ii) includes—

19 (I) any person who acts, directly
20 or indirectly, in the interest of a cov-
21 ered employer in relation to any indi-
22 vidual performing work for remunera-
23 tion for such covered employer;

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

1 (III) any public agency; and
2 (IV) the Government Account-
3 ability Office and the Library of Con-
4

5 (iii) does not include any labor organi-
6 zation (other than when acting as an em-
7 ployer) or anyone acting in the capacity of
8 officer or agent of such labor organization.

9 (C) PUBLIC AGENCY.—For purposes of
10 this paragraph, a public agency shall be consid-
11 ered to be a person engaged in commerce or in
12 an industry or activity affecting commerce.

13 (D) DEFINITIONS.—For purposes of this
14 paragraph, the terms “commerce”, “person”,
15 and “public agency” have the meanings given
16 the terms in section 3 of the Fair Labor Stand-
17 ards Act of 1938 (29 U.S.C. 203).

18 (7) EMPLOYMENT-RELATED DECISION.—The
19 term “employment-related decision” includes a deci-
20 sion by an employer with regard to—

21 (A) hiring a covered individual (including
22 any decision with regard to recruiting, screen-
23 ing, interviewing, or selecting a candidate);

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

4 (C) any other term, condition, or privilege
5 of employment or work of the covered indi-
6 vidual, such as relating to pay, scheduling,
7 health care or long-term care coverage, benefits,
8 or hours worked or promoting a covered indi-
9 vidual.

10 (8) GOVERNMENT ENTITY.—The term “govern-
11 ment entity” means—

12 (A) a Federal agency (as such term is de-
13 fined in section 3371 of title 5, United States
14 Code);

15 (B) a State or political subdivision thereof:

16 (C) any agency, authority, or instrumen-
17 tality of a State or political subdivision thereof:

18 or

19 (D) a Tribal government or political sub-
20 division thereof

1 recently as of the date of enactment of this Act pursuant
2 ant to section 104 of the Federally Recognized In-
3 dian Tribe List Act of 1994 (25 U.S.C. 5131).

12 (B) any organization which would be in-
13 cluded in the definition for such term under
14 such section 2(5) but for the fact that the orga-
15 nization represents—

16 (i) individuals employed by the United
17 States, any wholly owned Government cor-
18 poration, any Federal Reserve Bank, or
19 any State or political subdivision thereof;

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

23 (iii) individuals employed as agricul-
24 tural laborers.

1 (11) PREDISPENSE ARBITRATION AGREEMENT.—

2 The term “predispute arbitration agreement” means
3 any agreement to arbitrate a dispute that has not
4 yet arisen at the time of the making of the agree-
5 ment.

6 (12) PREDISPUTE JOINT-ACTION WAIVER.—The
7 term “predispute joint-action waiver” means an
8 agreement, whether or not part of a predispute arbitra-
9 tion agreement, that would prohibit, or waive the
10 right of, one of the parties to the agreement to par-
11 ticipate in a joint, class, or collective action in a ju-
12 dicial, arbitral, administrative, or other forum, con-
13 cerning a dispute that has not yet arisen at the time
14 of the making of the agreement.

15 (13) SECRETARY.—The term “Secretary”
16 means the Secretary of Labor.

23 (A) with respect to a State, the attorney
24 general or chief law enforcement officer of the
25 State, or another official or agency designated

1 by the State to bring civil actions on behalf of
2 the State or the residents of the State; and

3 (B) with respect to a Tribal government,
4 the attorney general or chief law enforcement
5 officer of the Tribal government, or another of-
6 ficial or agency designated by the Tribal gov-
7 ernment to bring civil actions on behalf of the
8 Tribal government or the Indian Tribe of the
9 Tribal government.

10 (16) STATE PRIVACY REGULATOR.—The term
11 “State privacy regulator” means—

12 (A) the chief consumer protection officer of
13 a State; or
14 (B) a State consumer protection agency
15 with expertise in data protection.

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

19 **SEC. 3. USE OF AN AUTOMATED DECISION SYSTEM BY AN**
20 **EMPLOYER.**

21 (a) EMPLOYMENT-RELATED DECISIONS.—

22 (1) IN GENERAL.—An employer—

23 (A) may not rely exclusively on an auto-
24 mated decision system in making an employ-

1 ment-related decision with respect to a covered
2 individual; and

3 (B) may not use an automated decision
4 system output in making an employment-re-
5 lated decision with respect to a covered indi-
6 vidual unless—

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

11 (I) the efficacy of the system;
12 (II) the compliance of the system
13 with applicable employment discrimi-
14 nation laws, including—

15 (aa) title VII of the Civil
16 Rights Act of 1964 (42 U.S.C.
17 2000e et seq.);

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

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

24 (dd) title II of the Genetic
25 Information Nondiscrimination

1 Standards and Technology on January 26, 2023, or successor framework;
2

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

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

13 (iv) such use is designed for purposes
14 of making such an employment-related de-
15 cision;

16 (v) the employer independently cor-
17 robates, via meaningful oversight by a
18 human with appropriate and relevant expe-
19 rience, such automated decision system
20 output;

21 (vi) not later than 7 days after making
22 such an employment-related decision,
23 the employer provides full, accessible, and
24 meaningful documentation in plain language
25 to such covered individual (at no

1 cost to such covered individual) on the
2 automated decision system output, includ-
3 ing—

4 (I) a description of the auto-
5 mated decision system used to gen-
6 erate such automated decision system
7 output;

8 (II) a description and expla-
9 nation, in plain language, of the input
10 data to such automated decision sys-
11 tem used to generate such automated
12 decision system output and a ma-
13 chine-readable copy of such data;

14 (III) a description and expla-
15 nation of how such automated deci-
16 sion system output was used in mak-
17 ing such employment-related decision;
18 and

19 (IV) the reasoning for the use of
20 such automated decision system out-
21 put in such employment-related deci-
22 sion; and

23 (vii) the employer enables the covered
24 individual to, after receiving such docu-
25 mentation—

1 (I) dispute (in a manner that is
2 accessible and equitable and does not
3 pose an unreasonable burden on the
4 covered individual) such automated
5 decision system output to a human
6 with appropriate and relevant experi-
7 ence; and

8 (II) appeal such employment-re-
9 lated decision to a human with appro-
10 priate and relevant experience who is
11 not the human for purposes of the
12 corroboration under clause (v).

13 (2) DISCLOSURE.—

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

20 (i) that the employer uses or intends
21 to use an automated decision system out-
22 put in making such an employment-related
23 decision;

24 (ii) a description and explanation of
25 the automated decision system used or in-

1 tended to be used to generate such auto-
2 mated decision system output, including—

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

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

12 (III) how such characteristics re-
13 late or would relate to any function
14 required for the work or potential
15 work of the covered individual;

16 (IV) how the system measures or
17 is intended to measure such charac-
18 teristics; and

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

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

1 (iv) how the employer uses or intends
2 to use such an automated decision system
3 output in making such an employment-re-
4 lated decision, and

5 (v) how the covered individual may
6 dispute or appeal an employment-related
7 decision made with respect to the covered
8 individual using an automated decision sys-
9 tem output.

10 (B) TIMING OF NOTICE.—

11 (i) INITIAL DISCLOSURE.—An em-
12 ployer shall provide the disclosure required
13 under subparagraph (A)—

14 (I) in the case of a covered indi-
15 vidual for whom an employment-re-
16 lated decision with regard to the hir-
17 ing of the covered individual—

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

23 (bb) is made on or after the
24 date of enactment of this Act, to
25 the covered individual, except as

1 provided in subclause (II), prior
2 to making such employment-re-
3 lated decision; and
4 (II) in the case of a candidate
5 who applies to the employer on or
6 after the date of enactment of this
7 Act, prior to accepting an application
8 by the candidate to be employed by,
9 or otherwise perform work for remu-
10 neration for, the employer.

11 (ii) SUBSEQUENT DISCLOSURES.—Not
12 later than 30 days after any information
13 provided by an employer to a covered indi-
14 vidual through a disclosure required under
15 clause (ii) or (iv) of subparagraph (A) sig-
16 nificantly changes or after any significant
17 new information required to be provided in
18 such a disclosure becomes available, the
19 employer shall provide the covered indi-
20 vidual with an updated disclosure.

1 that provides such an automated decision system
2 output or uses such automated decision system out-
3 put on the use of such system, including on—

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

6 (B) the appeals process for such an auto-
7 mated decision system output;

8 (C) potential biases in automated decision
9 systems;

10 (D) any limitations of the automated deci-
11 sion system;

12 (E) any potential adverse effects to covered
13 individuals due to the automated decision sys-
14 tem;

15 (F) any potential errors or problems re-
16 lated to the automated decision system; and

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

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

1 **SEC. 4. ESTABLISHMENT OF TECHNOLOGY AND WORKER**2 **PROTECTION DIVISION.**

3 (a) IN GENERAL.—There is established in the De-
4 partment of Labor the Technology and Worker Protection
5 Division.

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

11 (c) EMPLOYEES AND ADVISORY BOARDS OF THE DI-
12 VISION.—

13 (1) IN GENERAL.—The Administrator—
14 (A) may select, appoint, and employ, with-
15 out regard to the provisions of sections 3309
16 through 3318 of title 5, United States Code, in-
17 dividuals, including technologists, directly to po-
18 sitions in the competitive service, as defined in
19 section 2102 of such title, to carry out the du-
20 ties of the Administrator under this Act; and

21 (B) may fix the compensation of the indi-
22 viduals described in subparagraph (A) without
23 regard to chapter 51 and subchapter III of
24 chapter 53 of title 5, United States Code, relat-
25 ing to classification of positions and General
26 Schedule pay rates, except that the rate of pay

1 for such individuals may not exceed the rate
2 payable for level V of the Executive Schedule
3 under section 5316 of that title.

4 (2) ADVISORY BOARDS.—

5 (A) ESTABLISHMENT.—The Administrator
6 shall establish the following advisory boards to
7 advise and consult with in the exercise of the
8 functions of the Administrator under this Act
9 and to provide information on emerging prac-
10 tices relating to the treatment of data by em-
11 ployers:

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

16 (ii) The Research Advisory Board,
17 which shall be comprised of individuals
18 with academic and research expertise in
19 privacy, cybersecurity, computer science,
20 innovation, design, ethics, economics, civil
21 rights law, disability law, labor organiza-
22 tions and public policy and representatives
23 of labor organizations.

24 (iii) The Product Advisory Board,
25 which shall be comprised of technologists,

1 computer scientists, designers, product
2 managers, attorneys, representatives of
3 labor organizations, workplace technology
4 experts, accessibility experts, and other
5 representatives of employers and employ-
6 ees.

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

11 (B) APPOINTMENTS.—The Administrator
12 shall appoint members to the advisory boards
13 established under subparagraph (A) without re-
14 gard to party affiliation.

15 (C) REPRESENTATION FROM ACROSS RE-
16 GIONS AND SECTORS.—In appointing members
17 to each advisory board established under sub-
18 paragraph (A), the Administrator shall ensure
19 that the membership of such boards includes in-
20 dividuals who—

21 (i) represent a range of geographic re-
22 gions of the United States and its terri-
23 tories, including rural, suburban, and
24 urban areas;

1 (ii) provide perspectives and expertise
2 from employers of varying sizes, including
3 small- and medium-sized businesses;

4 (iii) include individuals with scientific
5 expertise relevant to the use of automated
6 decision systems in the workplace; and

7 (iv) reflect experience from distinct
8 sectors of the economy and worker protec-
9 tion fields to ensure that the advisory
10 boards collectively consider the interests of
11 employees and employers across all major
12 industries and regions.

13 (D) MEETINGS.—Each advisory board es-
14 tablished under subparagraph (A) shall meet—
15 (i) at the call of the Administrator;
16 and
17 (ii) not less than 2 times annually.

18 (E) COMPENSATION AND TRAVEL EX-
19 PENSES.—A member of an advisory board es-
20 tablished under subparagraph (A) who is not an
21 officer or employee of the Federal Government
22 shall—

23 (i) be entitled to receive compensation
24 at a rate fixed by the Administrator while

1 attending meetings of the advisory board,
2 including travel time; and

3 (ii) receive travel expenses, including
4 per diem in lieu of subsistence, in accord-
5 ance with applicable provisions under sub-
6 chapter I of chapter 57 of title 5, United
7 States Code.

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

19 (d) OFFICES.—

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

1 **SEC. 5. REGULATIONS.**

2 (a) IN GENERAL.—

3 (1) AUTHORITY.—

4 (A) IN GENERAL.—Except as provided in
5 paragraph (2), the Secretary, acting through
6 the Administrator, may prescribe such regula-
7 tions as may be necessary to carry out this Act
8 with respect to covered individuals described in
9 section 2(4)(A) (other than covered individuals
10 described in clauses (iii) through (v) of such
11 section) and other individuals affected by em-
12 ployers described in subclause (I) or (II) of sec-
13 tion 2(6)(A)(i), including individuals who are
14 covered individuals described in section 2(4)(B)
15 with respect to such employers.

16 (B) CONSULTATION.—In prescribing any
17 regulations authorized under this paragraph,
18 the Secretary, acting through the Adminis-
19 trator, may consult with—

20 (i) Federal agencies that have juris-
21 diction over Federal privacy laws or exper-
22 tise in privacy, including the Federal
23 Trade Commission;

24 (ii) Federal agencies that have juris-
25 diction over labor and employment issues,
26 including the Equal Employment Oppor-

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

17 (b) EMPLOYEES COVERED BY CONGRESSIONAL AC-
18 COUNTABILITY ACT OF 1995.—

1 to covered individuals described in section
2 2(4)(A)(iii) and other individuals affected by em-
3 ployers described in section 2(6)(A)(i)(III), including
4 individuals who are covered individuals described in
5 section 2(4)(B) with respect to such employers.

6 (2) AGENCY REGULATIONS.—The regulations
7 prescribed under paragraph (1) shall be the same as
8 substantive regulations promulgated by the Sec-
9 retary under subsection (a)(1)(A) except insofar as
10 the Board may determine, for good cause shown and
11 stated together with the regulations prescribed
12 under paragraph (1), that a modification of such
13 regulations would be more effective for the imple-
14 mentation of the rights and protections involved
15 under this section.

16 (c) EMPLOYEES COVERED BY CHAPTER 5 OF TITLE
17 3, UNITED STATES CODE.—

18 (1) AUTHORITY.—Not later than 45 days after
19 the Secretary prescribes any regulation under sub-
20 section (a)(1)(A), the President (or the designee of
21 the President) shall prescribe such regulations as
22 may be necessary to carry out this Act with respect
23 to covered individuals described in section
24 2(4)(A)(iv) and other individuals affected by employ-
25 ers described in section 2(6)(A)(i)(IV), including in-

1 dividuals who are covered individuals described in
2 section 2(4)(B) with respect to such employers.

3 (2) AGENCY REGULATIONS.—The regulations
4 prescribed under paragraph (1) shall be the same as
5 substantive regulations promulgated by the Sec-
6 retary under subsection (a)(1)(A) except insofar as
7 the President (or designee) may determine, for good
8 cause shown and stated together with the regula-
9 tions prescribed under paragraph (1), that a modi-
10 fication of such regulations would be more effective
11 for the implementation of the rights and protections
12 involved under this section.

13 (d) EMPLOYEES COVERED BY CHAPTER 63 OF TITLE
14 5, UNITED STATES CODE.—

15 (1) AUTHORITY.—Not later than 45 days after
16 the Secretary prescribes any regulation under sub-
17 section (a)(1)(A), the Director of the Office of Per-
18 sonnel Management shall prescribe such regulations
19 as may be necessary to carry out this Act with re-
20 spect to covered individuals described in section
21 2(4)(A)(v) and other individuals affected by employ-
22 ers described in section 2(6)(A)(i)(V), including indi-
23 viduals who are covered individuals described in sec-
24 tion 2(4)(B) with respect to such employers.

11 SEC. 6. WHISTLEBLOWER PROTECTIONS.

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

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

17 (2) because the covered individual (or another
18 individual acting at the request of the covered indi-
19 vidual) has—

20 (A) filed a written or oral complaint to the
21 employer or a Federal, State, or local govern-
22 ment entity of a violation of section 3;

23 (B) sought assistance or intervention with
24 respect to a worker privacy-related concern

1 from the employer, a Federal, State, or local
2 government, or a worker representative;

3 (C) instituted, caused to be instituted, or
4 otherwise participated in any inquiry or pro-
5 ceeding under or related to this Act;

6 (D) given, or is about to give, any informa-
7 tion in connection with any inquiry or pro-
8 ceeding relating to any right provided under
9 this Act; or

10 (E) testified, or is about to testify, in any
11 inquiry or proceeding relating to any right pro-
12 vided under this Act.

13 **SEC. 7. ENFORCEMENT.**

14 (a) IN GENERAL.—

15 (1) DEFINITION.—For purposes of this sub-
16 section:

17 (A) COVERED INDIVIDUAL.—The term
18 “covered individual” means a covered indi-
19 vidual—

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

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

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

6 (A) INVESTIGATION.—

12 (I) may investigate and gather
13 data regarding the wages, hours, and
14 other conditions and practices of em-
15 ployment in any industry subject to
16 this Act, and may enter and inspect
17 any place or record (and make such
18 transcriptions thereof), question any
19 covered individual, and investigate any
20 facts, conditions, practices, or matters
21 as the Secretary may deem necessary
22 or appropriate to determine whether
23 an employer has violated any provi-
24 sion of this Act, or which may aid in

3 (II) may require, by general or
4 special orders, an employer, to file
5 with the Secretary, in such form as
6 the Secretary may prescribe, annual
7 or special reports or answers in writing
8 to specific questions, furnishing to
9 the Secretary such information or
10 records as the Secretary may require
11 as to the organization, business, conduct,
12 practices, management, and relation
13 to other corporations, partnerships,
14 and individuals, of the employer.

23 (iii) JOINT INVESTIGATIONS.—The
24 Secretary, acting through the Adminis-
25 trator, may conduct investigations and

1 make requests for information, as authorized
2 under this Act, on a joint basis with
3 another Federal agency, a State attorney
4 general, or a State agency.

5 (iv) OBLIGATION TO KEEP, PRESERVE,
6 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.

14 (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).

23 (C) REFERRAL FOR CRIMINAL PRO-
24 CEEDINGS.—If the Secretary, in the course of the performance of any act or duty under this

1 Act, obtains evidence that any employer has en-
2 gaged in conduct that may constitute a viola-
3 tion of Federal criminal law, the Secretary shall
4 refer the matter to the Attorney General for
5 prosecution under any applicable law. Nothing
6 in this paragraph shall affect any other author-
7 ity of the Secretary to disclose information.

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

11 (3) PRIVATE RIGHT OF ACTION.—

12 (A) IN GENERAL.—

13 (i) COVERED INDIVIDUAL.—Notwith-
14 standing any action by the Secretary under
15 paragraph (2)(B), any covered individual
16 adversely affected by an alleged violation of
17 section 3 or 6, may commence a civil ac-
18 tion against any person that violates such
19 section in any Federal court of competent
20 jurisdiction.

21 (ii) LABOR ORGANIZATION.—Notwith-
22 standing any action by the Secretary under
23 paragraph (2)(B), any labor organization
24 adversely affected by an alleged violation of
25 3 or 6 may commence a civil action against

1 any person that violates such section in
2 any Federal court of competent jurisdiction.
3

4 (B) RELIEF.—

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

10 (I) damages of—

11 (aa) an amount equal to the
12 sum of any actual damages sus-
13 tained by the covered individual;
14 or

15 (bb) not more than treble
16 damages;

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

19 (III) injunctive relief; and

20 (IV) equitable relief.

21 (ii) ATTORNEY'S FEES.—In a civil ac-
22 tion brought under subparagraph (A) in
23 which the covered individual or labor orga-
24 nization prevails, the court shall award the
25 covered individual or labor organization

1 reasonable attorney's fees and litigation
2 costs.

3 (iii) TEMPORARY RELIEF FOR WHIS-
4 TLEBLOWERS.—In a civil action brought
5 under subparagraph (A) regarding a viola-
6 tion of section 6, the court may award the
7 covered individual or labor organization
8 temporary relief while the case is pending,
9 including reinstatement.

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

15 (I) USING AN AUTOMATED DECI-
16 SION SYSTEM FOR PROHIBITED AC-
17 TIVITIES.—For each violation of sec-
18 tion 3 by an employer with respect to
19 a covered individual, the court may,
20 subject to clause (vi), award—

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

24 (bb) for any willful or re-
25 peated violation by the employer,

4 (II) RETALIATION ON WHISTLE-
5 BLOWERS.—For each violation of sec-
6 tion 6, the court may, subject to
7 clause (vi), award—

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

11 (bb) for any willful or re-
12 peated violation, damages of an
13 amount not less than \$10,000
14 and not more than \$100,000.

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

21 (I) the nature and seriousness of
22 the violation;

23 (II) the number of violations:

24 (III) the persistence of the mis-
25 conduct;

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

3 (V) the willfulness of the mis-
4 conduct of the employer; and

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

7 (vi) ADJUSTMENT FOR INFLATION.—

16 (C) RIGHTS OF THE SECRETARY AND A
17 STATE ATTORNEY GENERAL.—Prior to an cov-
18 ered individual or labor organization bringing a
19 civil action under subparagraph (A), such cov-
20 ered individual or labor organization shall, in
21 writing, notify the Secretary and any relevant
22 State attorney general of the intent to com-
23 mence such civil action. Upon receiving such
24 notice, the Secretary and State attorney general

1 shall each, not later than 60 days after receiv-
2 ing such notice—

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

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

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

9 (ii) notify such covered individual or
10 labor organization.

11 (D) REMEDIES FOR STATE EMPLOYEES.—

12 (i) WAIVER OF SOVEREIGN IMMU-
13 NITY.—A State's receipt or use of Federal
14 financial assistance for any program or ac-
15 tivity of a State shall constitute a waiver
16 of sovereign immunity, under the 11th
17 Amendment to the Constitution of the
18 United States or otherwise, to a suit
19 brought by a covered individual of that
20 program or activity, or a labor organiza-
21 tion representing such a covered individual,
22 under this paragraph for equitable, legal,
23 or other relief authorized under this para-
24 graph.

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

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

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

20 (iv) DEFINITION OF PROGRAM OR AC-
21 TIVITY.—In this subparagraph, the term
22 “program or activity” has the meaning
23 given the term in section 606 of the Civil
24 Rights Act of 1964 (42 U.S.C. 2000d-4a).

(E) REMEDIES FOR TRIBAL GOVERNMENT

EMPLOYEES.—

(i) WAIVER OF SOVEREIGN IMMU-

NITY.—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).

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

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

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

10 (iv) DEFINITION OF PROGRAM OR AC-
11 TIVITY.—In this subparagraph, the term
12 “program or activity” has the meaning
13 given the term in section 606 of the Civil
14 Rights Act of 1964 (42 U.S.C. 2000d-4a).

15 (4) ENFORCEMENT BY THE GOVERNMENT AC-
16 COUNTABILITY OFFICE AND LIBRARY OF CON-
17 GRESS.—Notwithstanding any other provision of this
18 subsection, in the case of the Government Account-
19 ability Office and the Library of Congress, the au-
20 thority of the Secretary under this subsection shall
21 be exercised respectively by the Comptroller General
22 of the United States and the Librarian of Congress,
23 respectively.

24 (b) EMPLOYEES COVERED BY CONGRESSIONAL AC-
25 COUNTABILITY ACT OF 1995.—The powers, remedies, and

1 procedures provided in the Congressional Accountability
2 Act of 1995 (2 U.S.C. 1301 et seq.) to the Board (as de-
3 fined in section 101 of that Act (2 U.S.C. 1301)), or any
4 person, alleging a violation of section 202(a)(1) of that
5 Act (2 U.S.C. 1312(a)(1)) shall be the powers, remedies,
6 and procedures this Act provides to that Board, or any
7 person, with regard to an allegation of a violation of sec-
8 tion 3 or 6 against a covered individual described in sec-
9 tion 2(4)(A)(iii) or described in section 2(4)(B) with re-
10 spect to an employer described in section 2(6)(A)(i)(III).

11 (c) EMPLOYEES COVERED BY CHAPTER 5 OF TITLE
12 3, UNITED STATES CODE.—The powers, remedies, and
13 procedures provided in chapter 5 of title 3, United States
14 Code, to the President, the Merit Systems Protection
15 Board, or any person, alleging a violation of section
16 412(a)(1) of that title, shall be the powers, remedies, and
17 procedures this Act provides to the President, that Board,
18 or any person, respectively, with regard to an allegation
19 of a violation of section 3 or 6 against a covered individual
20 described in section 2(4)(A)(iv) or described in section
21 2(4)(B) with respect to an employer described in section
22 2(6)(A)(i)(IV).

23 (d) EMPLOYEES COVERED BY CHAPTER 63 OF TITLE
24 5, UNITED STATES CODE.—The powers, remedies, and
25 procedures provided in title 5, United States Code, to an

1 employing agency, provided in chapter 12 of that title to
2 the Merit Systems Protection Board, or provided in that
3 title to any person, alleging a violation of chapter 63 of
4 that title, shall be the powers, remedies, and procedures
5 this Act provides to that agency, that Board, or any per-
6 son, respectively, with regard to an allegation of a viola-
7 tion of section 3 or 6 against a covered individual de-
8 scribed in section 2(4)(A)(v) or described in section
9 2(4)(B) with respect to an employer described in section
10 2(6)(A)(i)(V).

11 (e) ENFORCEMENT BY STATES.—

12 (1) IN GENERAL.—In any case in which a State
13 attorney general or a State privacy regulator has
14 reason to believe that an interest of the residents of
15 a State has been or is adversely affected by any per-
16 son who violates any provision of section 3 or 6, in-
17 cluding a regulation or order prescribed under this
18 Act, the State attorney general or State privacy reg-
19 ular, as parens patriae, may bring a civil action on
20 behalf of the residents of the State in an appropriate
21 State court or an appropriate district court of the
22 United States to—

23 (A) enjoin further violation of such provi-
24 sion by the person;

25 (B) compel compliance with such provision;

1 (C) obtain damages (including statutory
2 damages described in paragraph (4)), civil pen-
3 alties, restitution, or other compensation on be-
4 half of the residents of the State; or

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

13 (A) intervene in such action; and

14 (B) upon intervening—

15 (i) be heard on all matters arising in

16 such civil action; and

17 (ii) file petitions for appeal of a deci-

18 sion in such action.

1 plaint in the action instituted by or on behalf of the
2 Secretary for a violation that is alleged in such com-
3 plaint. In a case brought by the Secretary that af-
4 fects the interests of a State, the State attorney gen-
5 eral or State privacy regulator may intervene as of-
6 right pursuant to the Federal Rules of Civil Proce-
7 dure.

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

15 (B) in the case of such a violation that re-
16 sults in the discharge of an employee or other
17 serious economic harm to an employee by such
18 a person who has, within the preceding 5 years,
19 committed another such violation resulting in
20 such a discharge or other serious economic
21 harm, not more than \$100,000 for each such
22 violation.

1 iting, or affecting the authority of a State attorney
2 general or State privacy regulator to—

6 (B) exercise the powers conferred on the
7 State attorney general or State privacy regu-
8 lator by the laws of the State, including the
9 ability to conduct investigations, administer
10 oaths or affirmations, or compel the attendance
11 of witnesses or the production of documentary
12 or other evidence.

13 (f) ARBITRATION AND CLASS ACTION.—Notwith-
14 standing any other provision of law, no predispute arbitra-
15 tion agreement or predispute joint-action waiver shall be
16 valid or enforceable with respect to any alleged violation
17 of section 3 or 6.

18 SEC. 8. COORDINATION.

19 In carrying out this Act, the Secretary, acting
20 through the Administrator, shall coordinate with any ap-
21 propriate Federal agency or State regulator to promote
22 consistent regulatory treatment of automated decision sys-
23 tems.

1 SEC. 9. RELATION TO OTHER LAWS.

2 Except as explicitly provided otherwise in this Act,

3 nothing in this Act shall be construed to preempt, modify,

4 limit, or supersede—

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

6 (2) the authority of the Federal Trade Commis-

7 sion, Equal Employment Opportunity Commission,

8 National Labor Relations Board, or any other Fed-

9 eral agency.

10 SEC. 10. SEVERABILITY.

11 If any provision of this Act or the application of such

12 provision to any person or circumstance is held to be un-

13 constitutional, the remainder of this Act and the applica-

14 tion of the provisions of such to all other persons or cir-

15 cumstances shall not be affected thereby.