STATE OF NEW YORK

7735

2023-2024 Regular Sessions

IN SENATE

November 3, 2023

Introduced by Sen. CLEARE -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the executive law, in relation to the use of automated decision tools to make housing decisions

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The executive law is amended by adding a new section 296-b to read as follows:

§ 296-b. Unlawful discriminatory practices relating to automated decision tools. 1. For the purposes of this section, the following terms shall have the following meanings:

(a) "Automated decision tool" means any computational process, derived from machine learning, statistical modeling, data analytics, or artificial intelligence, that issues simplified output, including a score, classification, or recommendation, that is used to substantially assist or replace discretionary decision making for making housing decisions that impact natural persons. "Automated decision tool" does not include a tool that does not automate, support, substantially assist, or replace discretionary decision-making processes and that does not materially impact natural persons, including, but not limited to, a junk email filter, firewall, antivirus software, calculator, spreadsheet, database, data set, or other compilation of data.

(b) "Disparate impact analysis" means an impartial analysis, including but not limited to testing of the extent to which use of an automated decision tool is likely to result in an adverse impact to the detriment of any group on the basis of sex, race, ethnicity, or other protected class under this article. The results of such analysis shall be reported to the landlord implementing or using an automated decision tool. A disparate impact analysis shall differentiate between applicants who were selected and applicants who were not selected by the tool and shall include a disparate impact analysis as specified in the uniform stand-

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

LBD11808-01-3

ards and guidelines promulgated by the United States department of housing and urban development.

(c) "Housing decision" means to screen applicants for housing.

2. It shall be unlawful for a landlord to implement or use an automated decision tool that fails to comply with the following provisions:

(a) No less than annually, a disparate impact analysis shall be conducted to assess the actual impact of any automated decision tool used by any landlord to select applicants for housing within the state. Such disparate impact analysis shall be provided to the landlord but shall be publicly filed and shall be subject to all applicable privileges.

(b) A summary of the most recent disparate impact analysis of such tool as well as the distribution date of the tool to which the analysis applies shall be made publicly available on the website of the landlord prior to the implementation or use of such tool.

(c) No less than annually, any landlord using an automated decision tool shall provide to the division such summary of the most recent disparate impact analysis provided to the landlord on that tool.

3. (a) Any landlord that uses an automated decision tool to screen applicants for housing shall notify each such applicant of the following:

(i) That an automated decision tool will be used in connection with the assessment or evaluation of such applicant;

(ii) The characteristics that such automated decision tool will use in the assessment of such applicant;

(iii) Information about the type of data collected for such automated decision tool, the source of such data, and the landlord's data retention policy; and

(iv) If an application for housing is denied, the reason for such denial.

(b) The notice required by paragraph (a) of this subdivision shall be made no less than ten business days before the use of such automated decision tool and shall allow such applicant to request an alternative selection process or accommodation.

4. The attorney general may initiate an investigation if a preponderance of the evidence, including the summary of the most recent disparate impact analysis establishes a suspicion of a violation. The attorney general may also initiate in any court of competent jurisdiction any action of proceeding that may be appropriate or necessary for correction of any violation issued pursuant to this section, including mandating compliance with the provisions of this section or such other relief as may be appropriate.

5. The commissioner may initiate an investigation if a preponderance of the evidence, including a summary of the most recent disparate impact analysis establishes a suspicion of a violation. The commissioner may also initiate in a court of competent jurisdiction any action or proceeding that may be appropriate or necessary for the correction of any violation issued pursuant to this section, including mandating compliance with the provisions of this section or such other relief as may be appropriate.

§ 2. This act shall take effect immediately.