STATE OF NEW YORK

773--C

2025-2026 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 8, 2025

Introduced by M. of A. ROSENTHAL, LASHER -- read once and referred to the Committee on Banks -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported and referred to the Committee on Codes -- recommitted to the Committee on Codes in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the banking law, in relation to the use of automated lending decision-making tools to make lending decisions

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

Section 1. The banking law is amended by adding a new section 103-a to read as follows:

§ 103-a. Use of automated lending decision-making tools to make lending decisions. 1. For the purposes of this section, the following terms shall have the following meanings:

(a) "Automated lending decision-making tool" means any software that uses algorithms, computational models, or artificial intelligence techniques, or a combination thereof, to materially automate or replace human decision-making regarding lending decisions that impact natural persons. "Automated lending decision-making tool" shall not include any software used primarily for basic computerized processes, such as calculators, spellcheck tools, autocorrect functions, spreadsheets, electronic communications, or any tool that relates only to internal management affairs such as ordering office supplies or processing payments, and that do not materially impact any lending decisions relating to natural persons.

(b) "Lending decision" means any determination made by a covered entity or its agent, whether automated, manual or a combination thereof,

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

LBD02503-06-6

that affects the approval, denial, offer, counteroffer, or modification of the terms or conditions of a loan or credit application, including decisions regarding creditworthiness, loan amounts, interest rates, collateral requirements, repayment, or any other material term, and any determination that considers any factor that results or may result in "adverse action" as such term is defined in the federal Fair Credit Reporting Act 15 U.S.C. 1681a(k).

(c) "Covered entity" means any banking organization, foreign banking corporation licensed by the superintendent to transact business in this state pursuant to article five of this chapter, interstate branch authorized by the superintendent to transact business in this state pursuant to article five-C of this chapter, and licensed lenders pursuant to article nine of this chapter. Covered entity shall not include any national bank, federal savings bank, federal savings and loan association, federal credit union, federal trust company or foreign banking corporation organized under the laws of the United States.

(d) "Material change" means any modification to an automated lending decision-making tool which directly impacts the tool's outputs.

2. No less than annually, each covered entity that uses automated lending decision-making tools shall work with an independent third party to conduct an impact assessment substantially completed and bearing the signature of one or more individuals responsible for meaningful human review for the lawful application and use of such automated lending decision-making tools. An impact assessment shall be conducted prior to any material change to any automated lending decision-making tool that may change the outcome or effect of such tool. An impact assessment final report summarizing the conclusions of the initial impact assessment shall be posted on such covered entity's website prior to the implementation and use of such automated lending decision-making tool and updated on the entity's website following each subsequent assessment. Such impact assessment final report shall include:

(a) a description of the objectives of the automated lending decision-making tool;

(b) an evaluation of the ability of the automated lending decision-making tool to achieve its stated objectives;

(c) a description and evaluation of the objectives and development of the automated lending decision-making tool including:

(i) a summary of the underlying algorithms, computational modes, and artificial intelligence tools that are used within the automated lending decision-making tool; and

(ii) the design and training data used to develop the automated lending decision-making tool process;

(d) testing for:

(i) accuracy, fairness, bias and discrimination, and an assessment of whether the use of the automated lending decision-making tool produces discriminatory results on the basis of a consumer's or a class of consumers' actual or perceived race, color, ethnicity, religion, national origin, sex, gender, gender identity, sexual orientation, familial status, biometric information, lawful source of income, age, or disability and, outlines mitigations for any identified performance differences in outcomes across relevant groups impacted by such use;

(ii) any cybersecurity vulnerabilities and privacy risks resulting from the deployment and use of the automated lending decision-making tool, and the development or existence of safeguards to mitigate the risks;

(iii) any public health or safety risks resulting from the deployment and use of the automated lending decision-making tool; and

(iv) any reasonably foreseeable misuse of the automated lending decision-making tool and the development or existence of safeguards against such misuse;

(e) the extent to which the deployment and use of the automated lending decision-making tool requires input of sensitive and personal data, how that data is used and stored, and any control users may have over their data; and

(f) the notification mechanism or procedure, if any, by which individuals impacted by the utilization of the automated lending decision-making tool may be notified of the use of such automated lending decision-making tool and of the individual's personal data, and informed of their rights and options relating to such use.

3. In addition to the powers conferred to the superintendent in subdivision six of this section, a covered entity shall retain the full impact assessment and summary for a period of seven years and shall, upon notice by the superintendent, provide such full assessment and summary to the department within seven days.

4. Notwithstanding the provisions of this article or any other law, if an impact assessment finds that the automated lending decision-making tool produces discriminatory or biased outcomes, such covered entity shall, within thirty days of such findings, report such findings to the department. Upon such report being received by the department, the department shall direct such covered entity to cease any utilization, application, or function of such automated lending decision-making tool, and of any information produced using such tool.

5. (a) Any covered entity that uses an automated lending decision-making tool to screen applicants for a loan shall notify each such applicant of the following in a clearly visible plain-language summary requiring distinct affirmative acknowledgement from other terms and agreements:

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

(ii) The criteria that such automated lending decision-making tool will use in the assessment of such applicant;

(iii) Information about the type of data collected for such automated lending decision-making tool, the source of such data, and the covered entity's data retention policy; and

(iv) If an application for a loan is denied through use of the automated lending decision-making tool, to the extent practicable, the reason for such denial.

(b) The notice required by paragraph (a), with the exception of the information required in subparagraph (iv) of such paragraph, of this subdivision shall be made no less than twenty-four hours before the use of such automated lending decision-making tool. The notice required by subparagraph (iv) of such paragraph (a) shall be made within twenty-four hours after such denial.

(c) If an application for a loan is denied based on personal information that is incorrect, the applicant, upon receipt of the notice required by subparagraph (iv) of paragraph (a) of this subdivision, shall have thirty days to correct such information and appeal such denial. Upon receipt of the appeal request, the lender shall have thirty days to respond to the applicant's appeal request.

6. The superintendent shall have the power to make such investigations as the superintendent deems necessary to determine whether any covered

entity has violated any of the provisions of this section. To the extent necessary therefor, the superintendent may require the attendance of and examine any person under oath, and shall have the power to compel the production of all relevant books, records, accounts, and documents. The superintendent shall have the power to make such examinations of the books, records, accounts and documents used in the business of any covered entity as the superintendent deems necessary to determine whether any such covered entity has violated any of the provisions of this section, or to secure information lawfully required by the superintendent.

7. Notwithstanding the provisions of subdivision two of this section, the superintendent may, upon a finding that a covered entity has deployed an automated lending decision-making tool which produced discriminatory or biased outcomes, require, in accordance with the rules and regulations promulgated by the superintendent, (a) additional annual reports, (b) annual reports with additional information, (c) a combination of paragraphs (a) and (b) of this subdivision, and/or (d) that such covered entity provide any and all additional reports to the department directly.

8. The provisions of this section shall be severable, and if any phrase, clause, sentence, or provision is declared to be invalid, or is preempted by federal law or regulation, the validity of the remainder of this section shall not be affected thereby. If any provision of this section, or its application to any person or circumstance, is held to be invalid or preempted by federal law, the remainder of this section and its application to other persons or circumstances shall not be affected and shall continue in full force and effect to the maximum extent permitted by law.

§ 2. This act shall take effect on the ninetieth day after it shall have become a law.