AMENDMENT TO H.R. 8818

OFFERED BY MS. CLARKE OF NEW YORK

Page 156, after line 22, insert the following:

1 **SEC. 125. CIVIL RIGHTS AND ALGORITHMS.**

2 (a) CIVIL RIGHTS PROTECTIONS.—

3 (1) IN GENERAL.—A covered entity or service

4 provider may not collect, process, retain, or transfer

5 covered data in a manner that discriminates in or

6 otherwise makes unavailable the equal enjoyment of

7 goods or services on the basis of race, color, religion,

8 national origin, sex, or disability.

9 (2) EXCEPTIONS.—This subsection does not

10 apply to—

11 (A) the collection, processing, retention, or

12 transfer of covered data for the purpose of—

13 (i) self-testing by a covered entity or

14 service provider to prevent or mitigate un-

15 lawful discrimination;

16 (ii) expanding an applicant, partici-

17 pant, or customer pool; or

18 (iii) solely determining participation of

19 an individual in market research; or

2

1 (B) any private club or other establishment

2 not open to the public, as described in section

3 201(e) of the Civil Rights Act of 1964 (42

4 U.S.C. 2000a(e)).

5 (3) FTC ENFORCEMENT ASSISTANCE.—

6 (A) IN GENERAL.—Whenever the Commis-

7 sion obtains information that a covered entity

8 or service provider may have collected, proc-

9 essed, retained, or transferred covered data in

10 violation of this subsection, the Commission

11 shall transmit such information, as allowable

12 under Federal law, to any Executive agency

13 with authority to initiate enforcement actions or

14 proceedings relating to such violation.

15 (B) ANNUAL REPORT.—Not later than 3

16 years after the date of the enactment of this

17 Act, and annually thereafter, the Commission

18 shall submit to Congress a report that includes

19 a summary of—

20 (i) the types of information the Com-

21 mission transmitted to Executive agencies

22 under subparagraph (A) during the pre-

23 vious 1-year period; and

24 (ii) how such information relates to

25 Federal civil rights laws.

1   (C) TECHNICAL ASSISTANCE.—In trans-
2   mitting information to an Executive agency
3   under subparagraph (A), the Commission may
4   consult and coordinate with, and provide tech-
5   nical and investigative assistance to, as appro-
6   priate, such Executive agency.

7   (D) COOPERATION WITH OTHER AGEN-
8   CIES.—The Commission may implement this
9   subsection by executing agreements or memo-
10   randa of understanding with appropriate Exec-
11   utive agencies

12 (b) COVERED ALGORITHM ASSESSMENT AND EVAL-
13 UATION.—

14   (1) COVERED ALGORITHM IMPACT ASSESS-
15   MENT.—

16   (A) IMPACT ASSESSMENT.—Notwith-
17   standing any other provision of law, not later
18   than 2 years after the date of the enactment of
19   this Act, and annually thereafter, as well as
20   upon deployment, a large data holder that uses
21   a covered algorithm to make a consequential de-
22   cision, solely or in part, shall conduct, or shall
23   engage a certified independent auditor to con-
24   duct, an impact assessment of such algorithm
25   in accordance with subparagraph (B).

4

1 (B) IMPACT ASSESSMENT SCOPE.—An im-
2 pact assessment required under subparagraph
3 (A) shall include the following:

4 (i) A statement of the purpose for
5 which the covered algorithm is deployed,
6 and the extent to which the use of the cov-
7 ered algorithm is consistent with or varies
8 from the developer's description of the in-
9 tended purpose.

10 (ii) A detailed description of the data
11 used by the covered algorithm, including
12 the specific categories of data that are
13 processed as inputs by the covered algo-
14 rithm being deployed, and an explanation
15 of how the data used is representative, pro-
16 portional, and appropriate to the deploy-
17 ment of the covered algorithm.

18 (iii) A description of the outputs pro-
19 duced by the covered algorithm.

20 (iv) An assessment of the necessity
21 and proportionality of the covered algo-
22 rithm in relation to its stated purpose, in-
23 cluding benefits and limitations.

1   (v) If applicable, an overview of the

2   type of data the large data holder used to

3   retrain the covered algorithm.

4   (vi) If applicable, metrics for evalu-

5   ating the covered algorithm's performance

6   and known limitations.

7   (vii) If applicable, transparency meas-

8   ures, including information identifying to

9   individuals when a covered algorithm is in

10   use.

11   (viii) If applicable, post-deployment

12   monitoring and user safeguards, including

13   a description of the oversight process in

14   place to address issues as they arise.

15   (ix) The potential for use of the cov-

16   ered algorithm to cause a harm, including

17   harm to an individual or group of individ-

18   uals on the basis of protected characteris-

19   tics, whether an individual is a covered

20   minor, or an individual's political party

21   registration, and a detailed description of

22   steps the large data holder has taken or

23   will take to mitigate potential harms from

24   the covered algorithm to an individual or

25   group of individuals.

6

1   (C) REPORT.—A certified independent
2 auditor engaged under subparagraph (A) shall
3 submit a report of its findings and rec-
4 ommendations to the large data holder.

5   (2) ALGORITHM DESIGN EVALUATION.—

6   (A) DESIGN EVALUATION.—Notwith-
7 standing any other provision of law, not later
8 than 2 years after the date of the enactment of
9 this Act, a covered entity or service provider
10 that knowingly develops a covered algorithm de-
11 signed, wholly or in part, to make a consequen-
12 tial decision shall, prior to deploying the cov-
13 ered algorithm in interstate commerce, conduct,
14 or engage a certified independent auditor to
15 conduct, a design evaluation of the covered al-
16 gorithm in accordance with subparagraph (B).

17   (B) DESIGN EVALUATION SCOPE.—The de-
18 sign evaluation required under subparagraph
19 (A) shall provide the following:

20   (i) The purpose of the covered algo-
21   rithm, the intended use cases, and the ben-
22   efits and limitations of the covered algo-
23   rithm.

24   (ii) The covered algorithm's method-
25   ology.

1   (iii) The inputs the covered algorithm

2   is intended to use and the outputs the in-

3   tended algorithm is designed to produce.

4   (iv) An overview of how the covered

5   algorithm was trained and tested, includ-

6   ing—

7   (I) the types of data used to

8   train the covered algorithm and how

9   the data was collected and processed;

10   and

11   (II) measures used to test per-

12   formance of the covered algorithm.

13   (v) The potential for use of the cov-

14   ered algorithm to cause harm, including

15   harm to an individual or group of individ-

16   uals on the basis of protected characteris-

17   tics, whether an individual is a covered

18   minor, or an individual's political party

19   registration, and a detailed description of

20   steps the covered entity or service provider

21   has taken or will take to mitigate potential

22   harms from the covered algorithm to an in-

23   dividual or group of individuals.

24   (C) REPORT.—A certified independent

25   auditor engaged under subparagraph (A) shall

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1   submit a report of its findings and rec-
2   ommendations to the covered entity or service
3   provider.

4   (D) COMPLIANCE ASSISTANCE.—A covered
5   entity or service provider that develops a cov-
6   ered algorithm shall provide a large data holder
7   that is subject to paragraph (1) with the tech-
8   nical capability to access or otherwise make
9   available to such large data holder the informa-
10   tion reasonably necessary for the large data
11   holder to comply with its requirement to con-
12   duct an impact assessment under this title, in-
13   cluding documentation regarding a covered al-
14   gorithm's capabilities, known limitations, and
15   guidelines for intended use. Nothing in this title
16   shall require the disclosure of trade secrets or
17   other information.

18   (3) OTHER CONSIDERATIONS.—

19   (A) AVAILABILITY.—

20   (i) LARGE DATA HOLDERS.—A large
21   data holder that does not engage a cer-
22   tified independent auditor for an impact
23   assessment under paragraph (1) shall sub-
24   mit each impact assessment of the large
25   data holder under paragraph (1) to the

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1 National Telecommunications and Infor-
2 mation Administration not later than 30
3 days after completing the impact assess-
4 ment.

5 (ii) COVERED ENTITIES.—A covered
6 entity that does not engage a certified
7 independent auditor for a design evalua-
8 tion under paragraph (2) shall submit each
9 design evaluation of the covered entity
10 under paragraph (2) to the National Tele-
11 communications and Information Adminis-
12 tration not later than 30 days after com-
13 pleting the design evaluation.

14 (iii) ENGAGED AUDITORS.—A covered
15 entity, service provider, or large data hold-
16 er that engages a certified independent
17 auditor for an impact assessment or design
18 evaluation under paragraph (1) or (2)
19 shall—

20 (I) certify to the National Tele-
21 communications and Information Ad-
22 ministration, not later than 30 days
23 after the covered entity or service pro-
24 vider receives each certified inde-
25 pendent auditor's report of findings

10

1 and recommendations, that the cov-
2 ered entity or service provider has
3 completed the impact assessment or
4 design evaluation; and

5 (II) retain the certified inde-
6 pendent auditor's report of findings
7 and recommendations for at least 5
8 years.

9 (iv) OTHER AVAILABILITY.—A cov-
10 ered entity, service provider, or large data
11 holder that conducts an impact assessment
12 or design evaluation under this sub-
13 section—

14 (I) shall, upon request, make
15 such impact assessment or evaluation
16 available to Congress; and

17 (II) may make a summary of
18 such impact assessment or evaluation
19 publicly available in a place that is
20 easily accessible to individuals.

21 (B) TRADE SECRETS.—A covered entity or
22 service provider may redact and segregate any
23 trade secret (as defined in section 1839 of title
24 18, United States Code) or other confidential or

1 proprietary information from public disclosure

2 under this subsection.

3 (4) GUIDANCE.—Not later than 2 years after

4 the date of the enactment of this Act, the Secretary

5 of Commerce shall publish guidance regarding com-

6 pliance with this section.

7 (5) RULEMAKING.—The Secretary of Commerce

8 may promulgate regulations, in accordance with sec-

9 tion 553 of title 5, United States Code, as necessary

10 to establish a process by which an entity shall sub-

11 mit an impact assessment or design evaluation con-

12 ducted under paragraph (1) or (2), or a certification

13 of an impact assessment or design evaluation con-

14 ducted under paragraph (1) or (2) by a certified

15 independent auditor, to the National Telecommuni-

16 cations and Information Administration.

17 (6) CERTIFIED INDEPENDENT AUDITOR DE-

18 FINED.—For the purposes of this section, the term

19 "certified independent auditor"—

20 (A) means a person that conducts a design

21 evaluation or impact assessment of a covered al-

22 gorithm in a manner that exercises objective

23 and impartial judgment on all issues within the

24 scope of such evaluation or assessment; and

12

1 　　　　　(B) does not include a person if such per-

2 　　　son—

3 　　　　　　　(i) is or was involved in using, devel-

4 　　　　　oping, offering, licensing, or deploying the

5 　　　　　covered algorithm;

6 　　　　　　　(ii) at any point during the design

7 　　　　　evaluation or impact assessment, has or

8 　　　　　had an employment relationship with a

9 　　　　　covered entity or service provider that

10 　　　　　uses, offers, or licenses the covered algo-

11 　　　　　rithm; or

12 　　　　　　　(iii) at any point during the design

13 　　　　　evaluation or impact assessment, has or

14 　　　　　had a direct financial interest or a material

15 　　　　　indirect financial interest in a covered enti-

16 　　　　　ty or service provider that uses, offers, or

17 　　　　　licenses the covered algorithm.

18 **SEC. 126. CONSEQUENTIAL DECISION OPT-OUT.**

19 　　(a) IN GENERAL.—Beginning not later than 90 days

20 after the date on which the guidance required by sub-

21 section (c) is issued, a covered entity that uses a covered

22 algorithm to make or facilitate a consequential decision

23 shall—

24 　　　　　(1) provide—

1 (A) notice to each individual subject to
2 such use of the covered algorithm; and

3 (B) an opportunity for the individual to
4 opt out of such use of the covered algorithm
5 and to instead have such consequential decision
6 made by a human; and

7 (2) abide by any opt-out designation made by
8 an individual under paragraph (1)(B), unless allow-
9 ing the individual to opt out would be demonstrably
10 impracticable due to technological limitations or
11 would be prohibitively costly, and the covered entity
12 shall provide to the individual a detailed description
13 regarding the inability to comply with the request
14 due to technology or cost.

15 (b) NOTICE.—The notice required under subsection
16 (a)(1)(A) shall—

17 (1) be clear and conspicuous and not mis-
18 leading;

19 (2) provide meaningful information about how
20 the covered algorithm makes or facilitates a con-
21 sequential decision, including the range of potential
22 outcomes;

23 (3) be provided in each language in which the
24 covered entity—

14

1   (A) provides a product or service subject to

2   the use of the covered algorithm; or

3   (B) carries out activities related to such

4   product or service; and

5   (4) be reasonably accessible to and usable by in-

6   dividuals living with disabilities.

7   (c) GUIDANCE.—Not later than 2 years after the date

8 of the enactment of this Act, the Commission shall, in con-

9 sultation with the Secretary of Commerce, publish guid-

10 ance regarding compliance with this section.

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