The Stop Discrimination by Algorithms Act

Algorithms and automated decision-making can affect many parts of our lives, from the job postings we see online to the healthcare services we are offered at the doctor's office. This is increasingly the case as more of our activities have moved online during the pandemic. But it is not always clear when algorithms are in use or when they have excluded us from opportunities because of some aspect of our identities like our race, sex, or disability. For instance:

- Housing advertisers on Facebook have targeted ads to renters and buyers based on race, religion, sex, and familial status;[1]
- Lending algorithms have calculated higher interest rates for borrowers who attended Historically Black Colleges and Universities (HBCUs);[2]
- A healthcare algorithm has suggested that healthier white patients should receive more services to manage their health than sicker Black patients;[3] and
- Employment algorithms can filter applicants by how closely they match a business's current workers and screen out applicants with disabilities.[4]

The Stop Discrimination by Algorithms Act (SDAA) protects against algorithmic discrimination and promotes transparency about the presence of algorithms by:

(1) Banning discriminatory use of protected traits in automated decision-making about important life opportunities.
- Important life opportunities are spheres of life regulated by the DC Human Rights Act: education, employment, housing, and public accommodations including credit, healthcare, and insurance.
- SDAA bans discrimination in targeting information about important life opportunities.
  - Ex: Targeting ads for truck driver jobs only to men ages 21 to 40.[5]
- And it bans adverse decisions about someone's eligibility for, or the terms of, an important life opportunity based on a trait protected by the DC Human Rights Act, like race, sex, age, or sexual orientation.
  - Ex: Denying someone a mortgage because she lives or seeks to buy in a predominantly Black zip code.[6]
- Using protected traits in algorithms as part of a remedial diversity plan is permitted.

(2) Requiring companies to audit algorithms for discriminatory patterns in their algorithmic results.
- Entities that use algorithms or that produce algorithmic tools must:
  - Test to determine that algorithmic processing practices do not discriminate;
  - Analyze disparate impact risks (like using HBCU attendance as a proxy for race); and
  - Retain records documenting the methodology used to build the algorithm, the methodology used to make eligibility determinations, and the ultimate determinations made.
- These entities must annually report audit results and corrective steps to the Office of the Attorney General.

(3) Requiring disclosures and mandating explanations when algorithms negatively affect an important life opportunity.
- A one-time, plain language notice about the use of an algorithm, and
- A more robust disclosure and explanation when an algorithm results in an adverse decision about an important life opportunity.
  - Similar to the report generated under the Fair Criminal Records Screening for Housing Act, which explains the adverse decision, what information was used, and how it affected eligibility for housing.

SDAA applies to most entities that harness algorithmic decision-making.
- SDAA applies to entities making final determinations about important life opportunities (like employers choosing which worker to hire) and to third-party algorithmic service providers (like companies that design the algorithm to rank job applicants' suitability).
- Most small businesses are exempt, unless they are in the business of providing algorithmic data processing.

Both the Office of the Attorney General and harmed individuals can bring claims under SDAA.
- Remedies include injunctive relief, damages, restitution, and penalties similar to the DC Human Rights Act and the Consumer Protection Procedures Act.

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[2] Student Borrower Protection Center, *Educational Redlining* (2020), https://protectborrowers.org/wp-content/uploads/2020/02/Education-Redlining-Report.pdf.

[3] Ziad Obermeyer et al., *Dissecting racial bias in an algorithm used to manage the health of populations*, 366 SCIENCE 6464, 447-453 (2019), https://science.sciencemag.org/content/sci/366/6464/447.full.pdf.

[4] Drew Harwell, "A face-scanning algorithm increasingly decides whether you deserve the job," WASH. POST, Nov. 9, 2019, https://www.washingtonpost.com/technology/2019/10/22/ai-hiring-face-scanning-algorithm-increasingly-decides-whether-you-deserve-job/

[5] Elizabeth Dwoskin, "Men (only) at work: Job ads for construction workers and truck drivers on Facebook discriminated on gender, ACLU alleges," WASH. POST, Sept. 18, 2018, https://www.washingtonpost.com/technology/2018/09/18/employers-are-using-facebook-target-job-ads-police-officers-truck-drivers-sports-store-clerks-exclusively-men/.

[6] Zillow, *Black Applicants Are Far More Likely to be Denied a Mortgage, Limiting Opportunity to Live 'The American Dream'*, Aug. 4, 2020, http://zillow.mediaroom.com/2020-08-04-Black-Applicants-Are-Far-More-Likely-to-be-Denied-a-Mortgage-Limiting-Opportunity-to-Live-The-American-Dream