SUBSTITUTE HOUSE BILL 1655

State of Washington   **66th Legislature**   **2019 Regular Session**

By House Innovation, Technology & Economic Development (originally sponsored by Representatives Hudgins, Shea, Morris, Kloba, and Valdez)

READ FIRST TIME 02/22/19.

1   AN ACT Relating to establishing guidelines for government
2 procurement and use of automated decision systems in order to protect
3 consumers, improve transparency, and create more market
4 predictability; adding a new section to chapter 49.60 RCW; and adding
5 a new chapter to Title 43 RCW.

6   BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7   NEW SECTION. **Sec. 1.** The legislature finds that Washington is a
8 technology leader on a national and global level and holds a
9 distinctive position in creating frameworks around technology that
10 enhance innovation while protecting consumers and promoting fairness,
11 accountability, and transparency for all Washingtonians.

12   NEW SECTION. **Sec. 2.** The definitions in this section apply
13 throughout this chapter unless the context clearly requires
14 otherwise.
15   (1) "Algorithm" means a computerized procedure consisting of a
16 set of steps used to accomplish a determined task.
17   (2) "Algorithmic impact inventory" means the report with content
18 enumerated in section 3 of this act.
19   (3) "Automated decision system" means any algorithm, including
20 one incorporating machine learning or other artificial intelligence

techniques, that uses data-based analytics to make or support government decisions, judgments, or conclusions.

(4) "Automated final decision system" means an automated decision system that makes final decisions, judgments, or conclusions without human intervention.

(5) "Automated support decision system" means an automated decision system that provides information to inform the final decision, judgment, or conclusion of a human decision maker.

NEW SECTION. **Sec. 3.** (1) The office of the chief information officer shall conduct a review and make an inventory of all automated decision systems that are being used, developed, or procured by state agencies. By December 1, 2020, the office of the chief information officer shall provide to the legislature an algorithmic impact inventory report that includes clear and understandable statements of the following for each automated decision system:

(a) The automated decision system's name, vendor, and version;

(b) A description of the automated decision system's general capabilities, including reasonably foreseeable capabilities outside the scope of the agency's proposed use and whether the automated decision system is used or may be used to deploy or trigger any weapon;

(c) The type or types of data inputs that the technology uses; how that data is generated, collected, and processed; and the type or types of data the automated decision system is reasonably likely to generate;

(d) Whether the automated decision system has been tested by an independent third party, has a known bias, or is untested for bias;

(e) A description of the purpose and proposed use of the automated decision system, including: What decision or decisions it will be used to make or support; whether it is an automated final decision system or automated support decision system; and its intended benefits, including any data or research demonstrating those benefits;

(f) Whether the automated decision system makes decisions affecting the constitutional or legal rights, duties, or privileges of any Washington resident;

(g) Whether the automated decision system gives notice to an individual impacted by the automated decision system of the fact that

the automated decision system is in use and provides the following
information:

(i) The automated decision system's name, vendor, and version;

(ii) What decision or decisions it will be used to make or
support;

(iii) Whether it is an automated final decision system or
automated support decision system;

(iv) What policies and guidelines apply to its deployment;

(v) Whether a human verifies or confirms decisions made by the
automated decision system; and

(vi) How an individual can contest any decision made involving
the automated decision system;

(h) Whether the automated decision system ensures that the agency
can explain the basis for its decision to any impacted individual in
terms understandable to a layperson including, without limitation, by
requiring the vendor to create such an explanation;

(i) Whether the automated decision system is subject to appeal,
immediate suspension if a legal right, duty, or privilege is impacted
by the decision, and potential reversal by a human decision maker
through a timely process clearly described and accessible to an
individual impacted by the decision;

(j) A description of any potential impacts of the automated
decision system on civil rights and liberties and potential disparate
impacts on marginalized communities, and a mitigation plan;

(k) A clear use and data management policy, including protocols
for the following:

(i) How and when the automated decision system will be deployed
or used and by whom, including but not limited to: The factors that
will be used to determine where, when, and how the technology is
deployed; and other relevant information, such as whether the
technology will be operated continuously or used only under specific
circumstances. If the automated decision system will be operated or
used by another entity on the agency's behalf, the algorithmic
accountability report must explicitly include a description of the
other entity's access and any applicable protocols; and

(ii) How automated decision system data will be securely stored
and accessed, and whether an agency intends to share access to the
automated decision system or the data from that automated decision
system with any other entity, and why; and

1   (l) A description of the fiscal impact of the automated decision
2 system, including: Initial acquisition costs; ongoing operating costs
3 such as maintenance, licensing, personnel, legal compliance, use
4 auditing, data retention, and security costs; any cost savings that
5 would be achieved through the use of the technology; and any current
6 or potential sources of funding, including any subsidies or free
7 products being offered by vendors or governmental entities.

8   (2) The office of the chief information officer shall report to
9 the legislature annually on the progress of the review and inventory
10 process in subsection (1) of this section until the inventory is
11 completed.

12   NEW SECTION. **Sec. 4.** By January 1, 2021, the chief privacy
13 officer appointed in RCW 43.105.369 shall adopt rules pursuant to
14 chapter 34.05 RCW regarding the development, procurement, and use of
15 automated decision systems by state agencies. These rules apply to
16 automated decision systems inventoried in section 3 of this act and
17 must address any issues of bias identified in the algorithmic impact
18 inventory.

19   NEW SECTION. **Sec. 5.** A new section is added to chapter 49.60
20 RCW to read as follows:

21   (1) It is an unfair practice for any automated decision system to
22 discriminate against an individual, or to treat an individual less
23 favorably than another, in whole or in part, on the basis of one or
24 more factors enumerated in RCW 49.60.010.

25   (2) For the purposes of this section, "automated decision system"
26 has the same meaning as defined in section 2 of this act.

27   NEW SECTION. **Sec. 6.** Sections 1 through 4 of this act
28 constitute a new chapter in Title 43 RCW.

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