
SENATE BILL 5527

State of Washington

66th Legislature

2019 Regular Session

By Senators Hasegawa, Nguyen, McCoy, and Keiser

Read first time 01/23/19. Referred to Committee on Environment, Energy & Technology.

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:

8 (1) Washington is a technology leader on a national and global
9 level and holds a distinctive position in creating frameworks around
10 technology that enhance innovation while protecting consumers and
11 promoting fairness, accountability, and transparency for all
12 Washingtonians.

13 (2) Automated decision systems are rapidly being adopted to make
14 or assist in core decisions in a variety of government and business
15 functions, including criminal justice, health care, education,
16 employment, public benefits, insurance, and commerce.

17 (3) These automated decision systems are often deployed without
18 public knowledge, are unregulated, and vendors selling the systems
19 may require restrictive contractual provisions that undermine
20 government transparency and accountability.

1 (4) The use of these systems to make core government and business
2 decisions raises concerns around due process, fairness,
3 accountability, and transparency, as well as other civil rights and
4 liberties.

5 (5) Reliance on automated decision systems without adequate
6 transparency, oversight, or safeguards can undermine market
7 predictability, harm consumers, and deny historically disadvantaged
8 or vulnerable groups the full measure of their civil rights and
9 liberties.

10 (6) In order to enhance innovation and ensure the use of these
11 systems in ways that benefit Washington residents, the legislature
12 intends to ensure the fair, transparent, and accountable use of
13 automated decision systems.

14 NEW SECTION. **Sec. 2.** The definitions in this section apply
15 throughout this chapter unless the context clearly requires
16 otherwise.

17 (1) "Algorithm" means a computerized procedure consisting of a
18 set of steps used to accomplish a determined task.

19 (2) "Algorithmic accountability report" means the report with
20 content enumerated in section 5(2) of this act.

21 (3) "Automated decision system" means any algorithm, including
22 one incorporating machine learning or other artificial intelligence
23 techniques, that uses data-based analytics to make or support
24 government decisions, judgments, or conclusions.

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

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

31 NEW SECTION. **Sec. 3.** By January 1, 2020, the chief privacy
32 officer appointed in RCW 43.105.369 shall adopt rules pursuant to
33 chapter 34.05 RCW regarding the development, procurement, and use of
34 automated decision systems by a public agency. These rules must
35 incorporate the minimum standards and procedures set forth in
36 sections 4 and 5 of this act with respect to automated decision
37 systems.

1 NEW SECTION. **Sec. 4.** The following provisions apply to a public
2 agency's development, procurement, or use of an automated decision
3 system:

4 (1) A public agency may not develop, procure, or use an automated
5 decision system that discriminates against an individual, or treats
6 an individual less favorably than another, in whole or in part, on
7 the basis of one or more factors enumerated in RCW 49.60.010. A
8 public agency may not develop, procure, or use an automated final
9 decision system to make a decision impacting the constitutional or
10 legal rights, duties, or privileges of any Washington resident, or to
11 deploy or trigger any weapon.

12 (2) A public agency shall develop, procure, or use an automated
13 decision system only after the public agency first completes an
14 algorithmic accountability report and that report is approved by the
15 chief privacy officer appointed in RCW 43.105.369, as set forth in
16 section 5 of this act.

17 (3) A public agency that develops, procures, or uses an automated
18 decision system must follow any conditions set forth in the relevant
19 approved algorithmic accountability report. In addition, the public
20 agency must, at a minimum:

21 (a) Give clear notice to an individual impacted by the automated
22 decision system of the fact that the system is in use; the system's
23 name, vendor, and version; what decision or decisions it will be used
24 to make or support; whether it is a final or support decision system;
25 what policies and guidelines apply to its deployment; and how the
26 individual can contest any decision made involving the system;

27 (b) Ensure the automated decision system and the data used in the
28 system are made freely available by the vendor before, during, and
29 after deployment for agency or independent third-party testing,
30 auditing, or research to understand its impacts, including potential
31 bias, inaccuracy, or disparate impacts;

32 (c) Ensure that any decision made or informed by the automated
33 decision system is subject to appeal, immediate suspension if a legal
34 right, duty, or privilege is impacted by the decision, and potential
35 reversal by a human decision maker through a timely process clearly
36 described and accessible to an individual impacted by the decision;
37 and

38 (d) Ensure the agency can explain the basis for its decision to
39 any impacted individual in terms understandable to a layperson

1 including, without limitation, by requiring the vendor to create such
2 an explanation.

3 (4) A procurement contract for an automated decision system
4 entered into by a public agency must ensure the minimum standards set
5 forth in this section can be effectuated without impairment,
6 including requiring the vendor to waive any legal claims that may
7 impair these minimum standards. Such a contract may not contain
8 nondisclosure or other provisions that prohibit or impair these
9 minimum standards.

10 NEW SECTION. **Sec. 5.** (1) A public agency intending to develop,
11 procure, or use an automated decision system must produce an
12 algorithmic accountability report for that system, and that system
13 must be approved by the chief privacy officer appointed in RCW
14 43.105.369 prior to deployment. The agency must submit the
15 algorithmic accountability report to the chief privacy officer. The
16 chief privacy officer must post the algorithmic accountability report
17 on the chief privacy officer's office's public web site and invite
18 public comment on the algorithmic accountability report for a period
19 of no less than thirty days. After receiving public comment, the
20 chief privacy officer must determine whether the intended use of the
21 automated decision system meets the minimum standards set forth in
22 section 4 of this act. On the basis of that determination, the chief
23 privacy officer may approve the algorithmic accountability report,
24 deny it, or make changes to it prior to approval.

25 (2) Each algorithmic accountability report must include clear and
26 understandable statements of the following:

27 (a) The automated decision system's name, vendor, and version; a
28 description of its general capabilities, including reasonably
29 foreseeable capabilities outside the scope of the agency's proposed
30 use;

31 (b) The type or types of data inputs that the technology uses;
32 how that data is generated, collected, and processed; and the type or
33 types of data the system is reasonably likely to generate;

34 (c) A description of the purpose and proposed use of the
35 automated decision system, including what decision or decisions it
36 will be used to make or support; whether it is a final or support
37 decision system; and its intended benefits, including any data or
38 research demonstrating those benefits;

1 (d) A description of how the agency plans to comply with each
2 requirement set forth in section 4 of this act;

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

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

14 (ii) Any additional rules that will govern use of the automated
15 decision system and what processes will be required prior to each use
16 of the automated decision system;

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

21 (iv) How the agency will ensure that all personnel who operate
22 the automated decision system or access its data are knowledgeable
23 about and able to ensure compliance with the use and data management
24 policy prior to use of the automated decision system;

25 (f) A description of any public or community engagement held and
26 any future public or community engagement plans in connection with
27 the automated decision system;

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

31 (h) A description of the fiscal impact of the automated decision
32 system, including: Initial acquisition costs; ongoing operating costs
33 such as maintenance, licensing, personnel, legal compliance, use
34 auditing, data retention, and security costs; any cost savings that
35 would be achieved through the use of the technology; and any current
36 or potential sources of funding, including any subsidies or free
37 products being offered by vendors or governmental entities.

38 NEW SECTION. **Sec. 6.** Any person who is injured by a material
39 violation of this chapter, including denial of any government benefit

1 on the basis of an automated decision system that does not meet the
2 standards set forth in this chapter, may institute proceedings
3 against the public agency deploying the automated decision system in
4 a court of competent jurisdiction for injunctive relief, including
5 restoration of the government benefit in question, declaratory
6 relief, or a writ of mandate to enforce this chapter.

7 NEW SECTION. **Sec. 7.** A new section is added to chapter 49.60
8 RCW to read as follows:

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

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

15 NEW SECTION. **Sec. 8.** Sections 1 through 6 of this act
16 constitute a new chapter in Title 43 RCW.

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