1   H.263

2   Introduced by Representatives Cina of Burlington, Anthony of Barre City,

3   Colburn of Burlington, Cordes of Lincoln, Lippert of

4   Hinesburg, Toleno of Brattleboro, and Wood of Waterbury

5   Referred to Committee on

6   Date:

7   Subject: Information technology; Agency of Digital Services; State

8   procurement; automated decision system

9   Statement of purpose of bill as introduced: This bill proposes to require:

10   (1) the Secretary of Digital Services to conduct a review and inventory of all

11   automated decision systems that are developed, used, or procured by the State;

12   (2) the Secretary of Digital Services to adopt standards and practices on the

13   development, use, and procurement of automated decision systems by the

14   State; and (3) any discrimination by an automated decision system to be

15   deemed as an unfair practice.

16   An act relating to State development, use, and procurement of automated
17   decision systems

1   It is hereby enacted by the General Assembly of the State of Vermont:

2   Sec. 1. AUTOMATED DECISION SYSTEM; STATE PROCUREMENT;

3   INVENTORY; REPORT

4   (a) Definitions. As used in this section:

5   (1) "Algorithm" means a computerized procedure consisting of a set of

6   steps used to accomplish a determined task.

7   (2) "Automated decision system" means any algorithm, including one

8   incorporating machine learning or other artificial intelligence techniques, that

9   uses data-based analytics to make or support government decisions, judgments,

10   or conclusions.

11   (3) "Automated final decision system" means an automated decision

12   system that makes final decisions, judgments, or conclusions without human

13   intervention.

14   (4) "Automated support decision system" means an automated decision

15   system that provides information to inform the final decision, judgment, or

16   conclusion of a human decision maker.

17   (b) Inventory. The Secretary of Digital Services, in consultation with the

18   Secretary of Administration, shall conduct a review and make an inventory of

19   all automated decision systems that are being developed, used, or procured by

20   the State. The inventory shall include the following for each automated

21   decision system:

1   (1) the automated decision system's name, vendor, and version;

2   (2) a description of the automated decision system's general capabilities,

3   including reasonably foreseeable capabilities outside the scope of the agency's

4   proposed use and whether the automated decision system is used or may be

5   used to deploy or trigger any weapon;

6   (3) the type or types of data inputs that the technology uses, how that

7   data is generated, collected, and processed, and the type or types of data the

8   automated decision system is reasonably likely to generate;

9   (4) whether the automated decision system has been tested by an

10   independent third party, has a known bias, or is untested for bias;

11   (5) a description of the purpose and proposed use of the automated

12   decision system, including:

13   (A) what decision or decisions it will be used to make or support;

14   (B) whether it is an automated final decision system or automated

15   support decision system; and

16   (C) its intended benefits, including any data or research

17   demonstrating those benefits;

18   (6) whether the automated decision system makes decisions affecting

19   the constitutional or legal rights, duties, or privileges of any Vermont resident;

1   (7) whether the automated decision system gives notice to an individual

2   impacted by the automated decision system of the fact that the automated

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

4   (A) the automated decision system's name, vendor, and version;

5   (B) what decision or decisions it will be used to make or support;

6   (C) whether it is an automated final decision system or automated

7   support decision system;

8   (D) what policies and guidelines apply to its deployment;

9   (E) whether a human verifies or confirms decisions made by the

10   automated decision system; and

11   (F) how an individual can contest any decision made involving the

12   automated decision system;

13   (8) whether the automated decision system ensures that the agency can

14   explain the basis for its decision to any impacted individual in terms

15   understandable to a layperson including:

16   (A) by requiring the vendor to create such an explanation;

17   (B) whether the automated decision system is subject to appeal or

18   immediate suspension if a legal right, duty, or privilege is impacted by the

19   decision; and

1   (C) potential reversal by a human decision maker through a timely

2   process clearly described and accessible to an individual impacted by the

3   decision;

4   (9) a description of any potential impacts of the automated decision

5   system on civil rights and liberties and potential disparate impacts on

6   marginalized communities, and a mitigation plan; and

7   (10) a clear use and data management policy, including protocols for the

8   following:

9   (A) how and when the automated decision system will be

10   deployed or used and by whom, including but not limited to:

11   (i) the factors that will be used to determine where, when, and

12   how the technology is deployed;

13   (ii) whether the technology will be operated continuously or

14   used only under specific circumstances; and

15   (iii) if the automated decision system will be operated or used

16   by another entity on the agency's behalf, the algorithmic accountability

17   report described in subsection (c) of this section must explicitly include a

18   description of the other entity's access and any applicable protocols;

19   (B) how automated decision system data will be securely stored

20   and accessed, and whether an agency intends to share access to the

1   automated decision system or the data from that automated decision system

2   with any other entity, and why;

3   (C) a description of the fiscal impact of the automated decision

4   system, including:

5   (i) initial acquisition costs; ongoing operating costs such as

6   maintenance, licensing, personnel, legal compliance, use auditing, data

7   retention, and security costs;

8   (ii) any cost savings that would be achieved through the use of

9   the technology; and

10   (iii) any current or potential sources of funding, including any

11   subsidies or free products being offered by vendors or governmental

12   entities.

13   (c) Report. On or before December 1, 2021, the Secretary of Digital

14   Services shall submit to the House Committee on Energy and Technology and

15   the Senate Committee on Finance a report on the inventory described in

16   subsection (b) of this section.

17   Sec. 2. 3 V.S.A. § 3302 is amended to read:

18   § 3302. APPOINTMENT OF SECRETARY; POWERS AND DUTIES

19   * * *

20   (b) The Secretary shall serve as the administrative head of the Agency of

21   Digital Services, and shall have the following responsibilities:

1   (1) coordinate and optimize the use of technology within State

2   government;

3   (2) approve, in consultation with the Agency of Administration, State

4   government information technology contracts and procurement activity;

5   (3) review and approve State government information technology and

6   cybersecurity policies;

7   (4) approve State government information technology recruitment and

8   classification of employees; ~~and~~

9   (5) supervise all information technology employees and contractors in

10   State government; and

11   (6) adopt, in consultation with Agency of Administration, standards and

12   practices regarding State development, procurement, use, and issues of bias, in

13   automated decision systems, as defined in subsection. 3305(b) of this

14   subchapter.

15   Sec. 3. 3 V.S.A. § 3305 is added to read:

16   § 3305. AUTOMATED DECISION SYSTEMS; UNFAIR PRACTICES

17   (a)(1) It is an unfair practice for any automated decision system to

18   discriminate against any individual on the basis of race, color, religion,

19   national origin, sex, sexual orientation, gender identity, ancestry, place of birth,

20   age, crime victim status, or physical or mental condition.

1	 (2) The enforcement provisions and protections against retaliation in

2	9 V.S.A. 4506 shall apply to this section.

3	 (b) For the purposes of this section, "automated decision system" means

4	any algorithm, including one incorporating machine learning or other artificial

5	intelligence techniques, that uses data-based analytics to make or support

6	government decisions, judgments, or conclusions.

7	Sec. 4. EFFECTIVE DATE

8	 This act shall take effect on passage.