SENATE BILL REPORT
SB 6299

As Reported by Senate Committee On:
Labor & Commerce, January 30, 2024

Title: An act relating to protecting employee rights in the workplace with regards to the use of digital technology.

Brief Description: Protecting employee rights in the workplace with regards to the use of digital technology.

Sponsors: Senators Stanford, Keiser, Conway, Hasegawa, Kuderer, Nobles and Valdez.

Brief History:
Committee Activity: Labor & Commerce: 1/29/24, 1/30/24 [DPS, DNP].

Brief Summary of First Substitute Bill

- Makes it unlawful for any employer to use a replica of an employee's voice or likeness without the employee's explicit consent for a specific use within 30 days prior to the use or to utilize artificial intelligence or generative artificial intelligence to evaluate or make employment decisions regarding current employees without written disclosure at the time of the employee's initial hire, or within 30 calendar days of the employer starting to use such technology.

SENATE COMMITTEE ON LABOR & COMMERCE

Majority Report: That Substitute Senate Bill No. 6299 be substituted therefor, and the substitute bill do pass.
  Signed by Senators Keiser, Chair; Conway, Vice Chair; Saldaña, Vice Chair; Hansen and Stanford.

Minority Report: Do not pass.
  Signed by Senators King, Ranking Member; Braun, MacEwen and Schoesler.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Staff: Susan Jones (786-7404)

Background: <u>Artificial Intelligence.</u> Artificial intelligence (AI) is defined and understood in different ways. The National Artificial Intelligence Initiative Act of 2020 (Act) defines AI as a machine-based system that can, for a given set of human-defined objectives, make predictions, recommendations or decisions influencing real or virtual environments. The Act further describes AI systems as systems using machine and human-based inputs to: (1) perceive real and virtual environments; (2) abstract such perceptions into models through analysis in an automated manner; and (3) use model inference to formulate options for information or action.

The Act established the National Artificial Intelligence Initiative, implemented by the United States President and tasked with ensuring continued United States leadership in AI research and development, leading the world in development and use of trustworthy AI systems in the public and private sectors, preparing the United States workforce for integration of AI systems across all sectors, and coordinating ongoing AI research and development among government agencies.

By executive order, the White House adopted the Act's definition of AI, and defined related concepts including generative AI, as the class of AI models that emulate the structure and characteristics of input data in order to generate derived synthetic content, which may include images, videos, audio, text, and other digital content.

The executive order states that AI adoption may be disruptive to the workforce and directs federal agencies to research and develop potential mitigations against such disruptions. The executive order states that in the workplace itself, AI should not be deployed in ways that undermine rights, worsen job quality, encourage undue worker surveillance, lessen market competition, introduce new health and safety risks, or cause harmful labor-force disruptions.

<u>Generative Artificial Intelligence.</u> Generative AI refers to technology that can mimic human ability to learn and create based on the underlying training data and guided by a user or prompt. Generative AI tools are therefore capable of performing complex decision-making or creative tasks typically performed by humans or with human oversight. Several forms of generative AI technology are currently widely accessible to consumers and can perform a wide range of functions.

State law does not define AI or expressly regulate its use.

Summary of Bill (First Substitute): It is unlawful for any employer to use a replica of an employee's voice or likeness without the explicit consent of the employee for a specific use. The consent must be within 30 days of the time of use, not at the employee's initial hire, and the employer must provide a reasonably specific description of the intended use.

It is also unlawful for any employer to utilize AI or generative AI to evaluate or otherwise

make employment decisions regarding current employees without written disclosure of the employer's use of such technology at the time of the employee's initial hire, or within 30 calendar days of the employer starting to use such technology for such purpose. The written disclosure must be understandable, in plain language, and in the employee's preferred language.

Nothing in the act may be construed as changing mandatory subjects of collective bargaining.

AI means technologies that enable machines, particularly computer software, to simulate human intelligence. Generative AI means technology that can mimic human ability to learn patterns from substantial amounts of data and create content based on the underlying training data, guided by a user or prompt.

EFFECT OF CHANGES MADE BY LABOR & COMMERCE COMMITTEE (First Substitute):

- Requires consent for the use of an employees voice or likeness to be within 30 days prior to the time of use, rather than at the time of use.
- Provides that nothing in the act shall be construed as changing mandatory subjects of collective bargaining.

Appropriation: None.

Fiscal Note: Not requested.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: Employees are used to having their pictures used but it is different with the use of AI. It needs to be clear to employees. There should be disclosure for the use of AI in employment decisions.

CON: This would be better included in the task force bill. The bill would prevent the use of AI for resume screening. We acknowledge that employees need safeguarding but the bill is overly broad and ambiguous. These are complex matters that require careful consideration and input. A robust task force would allow a more effective outcome.

Persons Testifying: PRO: Senator Derek Stanford, Prime Sponsor.

CON: Crystal Leatherman, Washington Retail Association; Robert (Bob) Battles, Association of Washington Business (AWB); Montana Miranda, Washington Hospitality

Association.

Persons Signed In To Testify But Not Testifying: No one.