
SENATE BILL 5116

State of Washington

67th Legislature

2021 Regular Session

By Senator Hasegawa

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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; amending RCW 43.386.901; adding a new section to
5 chapter 49.60 RCW; adding a new chapter to Title 43 RCW; and
6 declaring an emergency.

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

8 NEW SECTION. **Sec. 1.** The legislature finds that:

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

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

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

1 (4) The average Washington resident is unlikely to understand
2 processes used by these automated decision systems, yet these systems
3 are increasingly used to make core government and business decisions
4 impacting the civil rights and liberties of Washingtonians, raising
5 significant concerns around due process, fairness, accountability,
6 and transparency.

7 (5) A growing body of research shows that reliance on automated
8 decision systems without adequate transparency, oversight, or
9 safeguards can undermine market predictability, harm consumers, and
10 deny historically disadvantaged or vulnerable groups the full measure
11 of their civil rights and liberties.

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

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

19 (1) "Agency" or "public agency" means any entity meeting the
20 definition of "public agency" as defined in RCW 42.30.020.

21 (2) "Algorithmic accountability report" means the report with
22 content enumerated in section 5(6) of this act.

23 (3) "Artificial intelligence-enabled profiling" means the
24 automated or semiautomated process by which the external or internal
25 characteristics of an individual are analyzed to determine, infer, or
26 characterize an individual's state of mind, character, propensities,
27 protected class status, political affiliation, religious beliefs or
28 religious affiliation, immigration status, or employability.

29 (4) "Automated decision system" means any electronic software,
30 system, or process designed to automate, aid, or replace a decision-
31 making process that impacts the welfare or rights of any Washington
32 resident, and that would otherwise be performed by humans. Automated
33 decision systems include, without limitation, tools that analyze data
34 sets to generate scores, predictions, classifications, or recommended
35 actions that are used by agencies to automate, aid, or replace
36 decision-making processes that impact the welfare or rights of any
37 Washington resident. Automated decision systems do not include tools
38 that do not automate, aid, or replace such decision-making processes,
39 including without limitation junk email filters, firewalls, antivirus

1 software, calculators, spreadsheets, databases, data sets, or other
2 compilations of data.

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

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

9 (7) "Use" means to operate an automated decision system or to
10 contract with a third party to operate an automated decision system
11 to automate, aid, or replace any decision-making process that would
12 otherwise be made by an agency.

13 NEW SECTION. **Sec. 3.** By January 1, 2022, the director of the
14 office of the chief information officer shall adopt rules pursuant to
15 chapter 34.05 RCW regarding the development, procurement, and use of
16 automated decision systems by a public agency. These rules must
17 incorporate the minimum standards and procedures set forth in
18 sections 4 and 5 of this act with respect to automated decision
19 systems including, but not limited to, a definition of systematic
20 discrimination or less favorable treatment as set forth in section
21 4(1) of this act. In adopting the rules, the director of the office
22 of the chief information officer must consult with representatives of
23 communities whose rights are disproportionately impacted by automated
24 decision systems as demonstrated by current studies.

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

28 (1) A public agency may not develop, procure, or use an automated
29 decision system that discriminates against an individual, or treats
30 an individual less favorably than another, in whole or in part, on
31 the basis of one or more factors enumerated in RCW 49.60.010. A
32 public agency may not develop, procure, or use an automated final
33 decision system to make a decision impacting the constitutional or
34 legal rights, duties, or privileges of any Washington resident, or to
35 deploy or trigger any weapon.

36 (2) A public agency may not operate, install, or commission the
37 operation or installation of equipment incorporating artificial
38 intelligence-enabled profiling in any place of public resort,

1 accommodation, assemblage, or amusement, as defined in RCW 49.60.040,
2 or use artificial intelligence-enabled profiling to make decisions
3 that produce legal effects or similarly significant effects
4 concerning individuals. Decisions that include legal effects or
5 similarly significant effects concerning consumers include, without
6 limitation, denial or degradation of consequential services or
7 support, such as financial or lending services, housing, insurance,
8 educational enrollment, criminal justice, employment opportunities,
9 health care services, and access to basic necessities, such as food
10 and water.

11 (3) A public agency shall develop, procure, or use an automated
12 decision system only after the public agency first completes an
13 algorithmic accountability report and after that the director of the
14 office of the chief information officer approves the report, as set
15 forth in section 5 of this act.

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

20 (a) Give clear notice in plain language to an individual impacted
21 by the automated decision system of the following:

22 (i) The fact that the system is in use;

23 (ii) The system's name, vendor, and version;

24 (iii) What decision or decisions it will be used to make or
25 support;

26 (iv) Whether it is an automated final decision system or
27 automated support decision system and whether and through what
28 process a human verifies or confirms decisions made by the automated
29 decision system;

30 (v) What policies and guidelines apply to its deployment; and

31 (vi) How an individual may contest any decision made involving
32 the automated decision system as required pursuant to this section;

33 (b) Ensure the automated decision system and the data used to
34 develop the system are made freely available by the vendor before,
35 during, and after deployment for agency or independent third-party
36 testing, auditing, or research to understand its impacts, including
37 potential bias, inaccuracy, or disparate impacts;

38 (c) Ensure that any decision made or informed by the automated
39 decision system is subject to appeal, immediate suspension if a legal
40 right, duty, or privilege is impacted by the decision, and potential

1 reversal by a human decisionmaker through a timely process not to
2 exceed 20 days, and clearly described and accessible to an individual
3 impacted by the decision; and

4 (d) Ensure the agency can explain the basis for its decision to
5 any impacted individual in terms understandable to a layperson
6 including, without limitation, by requiring the vendor to create such
7 an explanation.

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

15 NEW SECTION. **Sec. 5.** (1) A public agency intending to develop,
16 procure, or use an automated decision system must produce an
17 algorithmic accountability report for that system, and that system
18 must be approved by the director of the office of the chief
19 information officer prior to deployment, according to the procedures
20 set forth in this section.

21 (2) Agencies already using an automated decision system as of the
22 effective date of this section must comply with all provisions and
23 procedures set forth in this chapter by January 1, 2022. If such an
24 agency is not in compliance by that date, the agency must immediately
25 cease use of the automated decision system until such time as
26 compliance is achieved.

27 (3) The agency intending to develop, procure, or use an automated
28 decision system must submit the algorithmic accountability report to
29 the director of the office of the chief information officer prior to
30 any use of the automated decision system. The director of the office
31 of the chief information officer must post the algorithmic
32 accountability report on the office of the chief information
33 officer's public website and invite public comment on the algorithmic
34 accountability report for a period of no less than 30 days.

35 (4) After receiving public comment, the director of the office of
36 the chief information officer must determine whether the intended use
37 of the automated decision system meets the minimum standards set
38 forth in section 4 of this act. On the basis of that determination,
39 the director of the office of the chief information officer may

1 approve the use of the automated decision system in accordance with
2 rules and procedures set forth in the algorithmic accountability
3 report, deny it, or make changes to rules and procedures set forth in
4 the algorithmic accountability report prior to approval.

5 (5) Except as provided in subsection (2) of this section, no
6 agency may develop, procure, or use an automated decision system
7 prior to obtaining the approval required in this section, and after
8 approval, such an agency may use the automated decision system only
9 in accordance with the policies and procedures set forth in the
10 approved algorithmic accountability report.

11 (6) Each algorithmic accountability report must include clear and
12 understandable statements of the following:

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

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

19 (c) (i) The type or types of data inputs that the technology uses;
20 (ii) how that data is generated, collected, and processed; and (iii)
21 the type or types of data the system is reasonably likely to
22 generate;

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

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

31 (f) A description of how the agency plans to comply with each
32 requirement set forth in section 4 of this act;

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

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

39 (i) A clear use and data management policy, including specific
40 protocols for the following:

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

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

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

17 (iv) How the agency will ensure that all personnel who operate
18 the automated decision system or access its data are properly trained
19 and able to ensure compliance with the use and data management policy
20 prior to use of the automated decision system;

21 (v) A description of any public or community engagement held and
22 any future public or community engagement plans in connection with
23 the automated decision system; and

24 (vi) A description of the fiscal impact of the automated decision
25 system, including: Initial acquisition costs; ongoing operating costs
26 such as maintenance, licensing, personnel, legal compliance, use
27 auditing, data retention, and security costs; any cost savings that
28 would be achieved through the use of the technology; and any current
29 or potential sources of funding, including any subsidies, incentives,
30 or free products being offered by vendors or governmental entities.

31 NEW SECTION. **Sec. 6.** (1) By December 1, 2021, the office of the
32 chief information officer shall make publicly available on its
33 website a comprehensive inventory of all automated decision systems
34 that have been proposed for or are being used, developed, or procured
35 by state agencies, including all algorithmic accountability reports
36 relating to such systems. Beginning January 1, 2022, the office of
37 the chief information officer shall make publicly available on its
38 website metrics on all approvals, conditional approvals, or denials

1 of agency proposals to develop, procure, or use automated decision
2 systems, including written explanations of each decision.

3 (2) (a) Beginning January 1, 2022, the office of the chief
4 information officer shall conduct an annual audit that includes the
5 following:

6 (i) Whether each agency that uses, develops, or procures an
7 automated decision system has complied with the terms of its approved
8 algorithmic accountability report;

9 (ii) Descriptions of any known or reasonably suspected violations
10 of any algorithmic accountability report policies;

11 (iii) Any systematic issues, such as bias, disproportionate
12 impacts on marginalized or vulnerable communities, raised by use of
13 automated decision systems;

14 (iv) Publishing recommendations, if any, relating to revision to
15 this chapter or to specific automated decision system algorithmic
16 accountability reports.

17 (b) The first annual audit must be made publicly available on the
18 chief information officer's website by March 1, 2022, and annually
19 thereafter on or before March 1st.

20 (3) Beginning January 1, 2022, each agency using an automated
21 decision system must publish on its website annual metrics regarding
22 the number of requests for human review of a decision rendered by the
23 automated decision system it received and the outcome of the human
24 review.

25 NEW SECTION. **Sec. 7.** Any person who is injured by a material
26 violation of this chapter may institute proceedings against the
27 public agency deploying the automated decision system in a court of
28 competent jurisdiction for injunctive relief, including restoration
29 of the government benefit in question, declaratory relief, or a writ
30 of mandate to enforce this chapter. Actionable injuries under this
31 section include, but are not limited to, denial or interference with:
32 Any government benefit, direct or indirect financial harm, physical
33 harm or threats to persons or property, discrimination in goods,
34 services, or economic opportunity, interference with constitutional
35 or statutory rights or privileges, interference with the right to
36 vote or participate in free and fair elections, or other impacts on
37 human welfare; if any of the foregoing occur due to the use of an
38 automated decision system that does not meet the standards set forth
39 in this chapter.

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

3 It is an unfair practice for any automated decision system to
4 discriminate against an individual, or to treat an individual less
5 favorably than another, in whole or in part, on the basis of one or
6 more factors enumerated in RCW 49.60.010. For the purposes of this
7 section, "automated decision system" has the same meaning as defined
8 in section 2 of this act.

9 NEW SECTION. **Sec. 9.** Sections 1 through 7 of this act
10 constitute a new chapter in Title 43 RCW.

11 **Sec. 10.** RCW 43.386.901 and 2020 c 257 s 14 are each amended to
12 read as follows:

13 Sections 1 through 9 and 11 through 13 of this act take effect
14 July 1, (~~(2021)~~) 2026.

15 NEW SECTION. **Sec. 11.** This act is necessary for the immediate
16 preservation of the public peace, health, or safety, or support of
17 the state government and its existing public institutions, and takes
18 effect immediately.

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