

Model State Artificial Intelligence Commission Law

Section 1. Short title. This Act may be cited as the Transparency and Fairness in Automated Decision-Making Commission Act.

Section 2. Findings. The [Legislature] finds that:

- (a) The state has begun to deploy the use of artificial intelligence, algorithms, facial recognition, and other automated decision systems;
- (b) that there are positive capabilities of these systems that can increase efficiency and augment the lives of the citizens of the state;
- (c) that private companies and software developers are often being contracted to build those systems;
- (d) that the use of the systems can vary broadly from impacts on health records, criminal penalties, benefit eligibility determinations, and student privacy;
- (e) that there is an inherent risk of bias and inaccuracy in the use of these technologies;
- (f) that there is limited public knowledge of the systems being used on the citizens of this state;
- (g) that there is insufficient regulation of the automated decision systems as well as the management and retention of the data they use and outputs they produce.

Section 3. Definitions. – As used in this Act, the term:

- (a) “Algorithm” means a specific procedure, set of rules, or order of operations designed to solve a problem or make a calculation, classification, or recommendation
- (b) “Automated Decision System” means any system that uses algorithms, machine learning, natural language processing or other artificial intelligence technique to make decisions or assist in decision making for the state or any subdivisions thereof.
- (c) “Commission” means the commission created in [Section 4 of this Act].
- (d) “Developer” means the person or entity that made the tool or other system using artificial intelligence utilized by the state.
- (e) “Source Code” is the original programming instructions of a piece of software, written in the language chosen by the programmer(s). The source code is different than a description of the system and the “object code,” which is used to execute the software on a computer system.
- (f) “Developmental documents” means all documents, data, records, and information used by the builder of the tools. This also includes any and all policies outlining the usage of the tool as well as validation frequency and methods.
- (g) “Validation” means the process by which algorithms and automated decision systems are tested and checked for metrics including but not limited to accuracy, effectiveness, and bias.

- (h) “Report” refers to the official report that the Commission is required to make publicly available.
- (i) “Training data” means the data used to inform the development of any Automated Decision System.
- (j) “Power of examination” means that the commission will have authority to examine the developmental documents, source code, and any documents related to validation. This is regardless of any trade secret or IP protection defense claimed by the developer.
- (k) “Independent validation study” is an evaluation, completed by an entity other than the one that developed the system, of the accuracy, efficacy, and any biases of an Automated Decision System.

Section 4. Commission Creation and Operation.

- (a) There shall be a special commission, known as the Transparency and Fairness in Automated Decision-making Commission, to review and publicly report on state uses of artificial intelligence and other automated decision systems and the effects of these systems, and to develop recommendations and best practices for the use of automated decision-making by state agencies.
- (b) The commission shall consist of the following members or their designees:
 - (1) 2 members of the house of representatives, 1 of whom shall be appointed by the minority leader; 2 members of the senate, 1 of whom shall be appointed by the minority leader;
 - (2) the chief justice of [the highest state judicial court];
 - (3) the attorney general;
 - (4) the inspector general;
 - (5) the secretary of health and human services;
 - (6) the secretary of [technology services];
 - (7) The secretary of [public safety and security];
 - (8) The chief counsel of the [public defender’s office];
 - (9) Three technologists that specialize and are able to interpret source code, consider technological development workflows, consult regarding validation, to be appointed by the governor. These representatives should be able to speak to both the capabilities and limitations of automated decision systems in order to inform the feasibility of the commission’s recommendations;
 - (10) Two representatives from non-profit organizations focusing on one or more of the following: open government, technology, privacy, ethics, or civil liberties, to be appointed by the governor;
 - (11) Two members of academic faculty from the state that are experts in the development, operation of, and social implications of data science, artificial intelligence, and machine learning, to be appointed by the governor.

- (c) All persons appointed to the commission shall have expertise in: artificial intelligence, technology, ethics, privacy, or computer science.
- (d) The appointing authorities shall coordinate their appointments to assure that commission membership is inclusive and reflects the racial, gender, geographic, urban, rural, and economic diversity of the state.
- (e) Members of the commission shall be appointed within 45 days of the effective date of this act.
- (f) At the first meeting, the commission shall elect from among themselves a chair, vice chair, and secretary position.
- (g) The commission shall complete the following two phases of study:
 - (1) The commission shall first review and catalogue each way algorithms or other automated decision systems are being used by the state. This survey should be complete and specific, including but not limited to: the identity of the developer and pertinent contract terms between the state and the developer; any state bodies or subdivisions using automated decision systems; the inputs used; the source of the inputs used; the purposes for which such systems are used; the validation policies, the logic of the automated decision system; the data maintenance and deletion policies; and the potential harms that could arise from the use of the system and how those risks are currently addressed. Inherent in this duty is the power of examination of this commission to survey and make public the systems used and their developers. The commission shall also review the experience other states have had in addressing the challenges of automated decision systems.
 - (2) The commission shall propose recommendations regarding the development and implementation of:
 - (i) The minimum technological standards and principles for all automated decision systems used by the state in any capacity;
 - (ii) A uniform data minimization, deletion and disclosure policy in order to maximize security and minimize unnecessary data exposure;
 - (iii) Procedures in which an individual affected by a decision made by a automated decision system used by the state may seek an opportunity to know the basis of that decision, including access to the factors, the logic, and techniques that produced the outcome, and procedures to correct that information or appeal the decision;
 - (iv) Procedures under which an individual may seek human review of an automated decision made about them;
 - (v) Procedures to ensure that automated decision systems do not reflect unfair bias or make impermissible discriminatory decisions;
 - (vi) Procedures to ensure that any automated decision systems considered by the state are only deployed after an adequate evaluation of its purpose and objectives, its benefits, as well as its risks;

- (vii) Procedures to ensure the accuracy, reliability, and validity of decisions made by automated decision systems used by the state;
 - (viii) Procedures to establish data provenance, and assure quality and relevance for the data input into algorithms.
 - (ix) Systems to secure automated decision systems against cybersecurity threats;
 - (x) A prohibition on secret profiling;
 - (xi) A prohibition on unitary scoring;
 - (xii) A system to ensure the public information about all automated decision systems is continually updated and readily available; and
 - (xiii) An appropriate permanent government body in order to continue work similar to and extending from the work of this commission.
- (h) The commission must solicit public input through public hearings and testimony. The commission must accept public comments both through a web-portal or email as well as through physical mail and must consider the written comments.
- (i) Comments must be accepted during the first 12 months of the commission as well as for 30 days following the publication of its report and recommendations.
- (j) A dedicated webpage must be published which includes:
- (1) Information regarding the location, time, and any public portions of each meeting;
 - (2) The members of the commission;
 - (3) Contact information;
 - (4) Information on methods to submit comments to the commission; and
 - (5) The reports of the commission.
- (k) The commission shall file a report of its findings under [paragraph 4(g)(1)] of this Act, by filing the same with the clerks of the senate and the house of representatives and the chairs of the senate and house committees on ways and means not later than [nine months from the enactment of this Act]. The report shall also be made public on the commission's webpage.
- (l) The commission shall file a report of its findings and recommendations, together with drafts of legislation necessary to carry those recommendations into effect, by filing the same with the clerks of the senate and the house of representatives and the chairs of the senate and house committees on ways and means not later than [eighteen months from the enactment of this Act]. The report shall also be made public on the commission's webpage.