

REVISED: Please note, due to a technological issue the correct version of this bill was not available to the Office of Legislative Research prior to file copy production. The issue has been resolved and the revised version of the bill analysis, for the most recent version of the bill, appears below.

OLR Bill Analysis

sSB 1103

AN ACT CONCERNING ARTIFICIAL INTELLIGENCE, AUTOMATED DECISION-MAKING AND PERSONAL DATA PRIVACY.

SUMMARY

This bill sets several requirements for state agencies' development and use of automated systems for "critical decisions" (i.e., those with a significant effect on an individual's life). Among other things, it requires the (1) Office of Policy and Management (OPM) secretary to designate an artificial intelligence (AI) officer to develop and adopt procedures for using automated systems and (2) Department of Administrative Services (DAS) commissioner to designate an AI implementation officer to inventory the automated systems by December 31, 2023, and periodically review agencies' use of them. Under the bill, state agencies developing, procuring, or using any automated system on or after January 1, 2024, must (1) satisfy the automated systems procedures and (2) notify the implementation officer, who may direct the agency to stop development, procurement, or use if he or she finds that it does not comply with the procedures.

Additionally, the bill establishes the Connecticut Artificial Intelligence Advisory Board in the legislative branch to hold public hearings on the draft procedures and advise state agencies on AI and automated system policies. It also establishes a task force to study AI and develop and make recommendations on adoption of an AI bill of rights.

Separately, the bill prohibits state contracting agencies from entering into a contract unless it has a provision requiring the business to comply with the consumer data privacy law. It also (1) exempts certain air

carriers from the consumer data privacy law and (2) modifies the prohibition on targeted advertisement for children between ages 13 and 16. The consumer data privacy law is effective July 1, 2023, and sets a framework for controlling and processing personal data.

EFFECTIVE DATE: July 1, 2023, except the task force provision is effective upon passage.

§ 1 — AUTOMATED SYSTEMS

Definitions

The bill's procedural and inventory requirements apply to "automated systems," which consist of automated decision systems, automated decision support systems, and automated final decision systems.

An "automated decision system" is a machine-based learning system or application developed, procured, or used to make, inform, or materially support a state agency's "critical decisions" (see below). It includes systems or applications derived from machine learning, statistics, or other data processing or AI techniques, but excludes passive computing infrastructure (e.g., web hosting, data storage, and other intermediary technology that does not influence or determine a decision's outcome).

An "automated decision support system" is an automated decision system that provides material information to inform an individual's conclusion, decision, or judgment on behalf of a state agency.

An "automated final decision system" is an automated decision system that makes a final conclusion, decision, or judgment on behalf of a state agency without intervention by an individual acting on behalf of a state agency.

The bill defines "critical decision" as any decision or judgment that has any legal, material, or similarly significant effect on an individual's life concerning access to, or the cost, terms, or availability of, the following:

1. education and vocational training, including assessment, accreditation, or certification;
2. employment, worker management, or self-employment;
3. essential utilities such as electricity, heat, water, Internet or telecommunications access, or transportation;
4. family planning services, including adoption or reproductive services;
5. financial services, including any financial service provided by a mortgage company;
6. services from a creditor or mortgage broker;
7. health care, including mental health care, dental care, or vision care;
8. housing or lodging, including any rental, short-term housing, or lodging;
9. legal services, including private mediation or arbitration; or
10. government benefits or public services.

§ 1 — AI OFFICER

Designation

By October 1, 2023, the bill requires the OPM secretary to designate an employee to serve as the AI officer. The employee must have (1) extensive knowledge of automated systems and AI analysis, governance, principles, practices, technology, terminology, and trends; and (2) experience in administration, planning, policy development, project management, and service coordination. The secretary may contract with a third party, if he deems it necessary, to help the officer do his or her duties.

Automated Systems Procedures

The bill requires the AI officer to biennially develop and adopt

automated systems procedures for state agencies to use in developing, procuring, and using automated systems for critical decisions. The officer must do so beginning by December 31, 2023, and in consultation with state agency heads and data officers. A state agency is any department, board, commission, council, institution, office, state higher education constituent unit, technical education and career school, or other agency in the executive, legislative, or judicial branch. (It is unclear whether all agencies have data officers.) The bill prohibits state agencies from developing, procuring, or using any automated system on or after January 1, 2024, unless it satisfies the procedural requirements the bill sets (see below).

Safeguards. In developing these automated systems procedures, the officer must consider requiring state agencies to develop, procure, and use automated systems in a way that is consistent with national and international standards. He or she must also consider imposing the following safeguards, where appropriate, to mitigate risk and ensure that:

1. state agencies develop, procure, and use automated systems consistent with state and federal laws, including those prohibiting discrimination and addressing privacy, civil rights, and civil liberties;
2. automated systems do not unlawfully and disproportionately impact any individual or group of individuals on the basis of any actual or perceived differentiating characteristic, including age, genetic information, color, ethnicity, race, creed, religion, national origin, ancestry, sex, gender identity or expression, sexual orientation, marital status, familial status, pregnancy, veteran status, disability, or lawful source of income;
3. any benefits that a state agency gains by using an automated system outweigh any risks inherent in using it;
4. each automated system is (a) applied and used consistent with the use cases for which the system was trained in order to ensure accuracy, reliability, and efficacy and (b) safe, secure, and

resilient, including in circumstances where the system is confronted with any systematic vulnerability, adversarial manipulation, or other malicious exploitation;

5. subject matter experts and users sufficiently understand the automated system's operations and outcomes;
6. individual roles and responsibilities are clearly defined, understood, and appropriately assigned consistent with the system's intended purpose;
7. the system's development, procurement, and use are documented and traceable, including the system's inputs and outputs for applications;
8. the system's design, development, procurement, monitoring, and intended purposes are appropriately transparent to the public under uniform protocols and public access requirements on releases and posting of appropriate information by each state agency using the system; and
9. data inputs are appropriately transparent under the Freedom of Information Act (FOIA).

Additionally, the bill requires the AI officer to consider safeguards to ensure each state agency that uses an automated system does the following:

1. examines the system, at least once every two years, to ensure compliance with the procedures;
2. supersedes, disengages, and deactivates any system application that demonstrates performance that is, or outcomes that are, inconsistent with the procedures or the bill's other systems requirements;
3. is appropriately transparent in disclosing any information relevant to the agency's use of the system;

4. implements safeguards to ensure that the system is properly applied, used, and functioning; and
5. provides appropriate training to all personnel responsible for developing, procuring, or using the automated system.

Draft and Public Hearing

Beginning by November 1, 2023, the bill requires the AI officer to biennially submit a preliminary draft of the automated systems procedures to the Connecticut Artificial Intelligence Advisory Board (see below). Within 30 days after receiving the draft, the board must hold a public hearing on the draft procedures and submit any suggested revisions to the officer.

After the public hearing and, if applicable, receiving any recommended revisions from the board, the AI officer must finalize the procedures and submit them to the board. The officer must send a copy of the final procedures to all state agency data officers and OPM must post them on its website.

Inventory

Beginning by December 31, 2024, the bill requires each state agency to biennially (1) do an inventory of the automated systems that the state agency uses, in a form the officer prescribes; and (2) submit the inventory to the officer and the board. OPM must make each inventory publicly available on its website.

§ 2 — CONNECTICUT ARTIFICIAL INTELLIGENCE ADVISORY BOARD

Membership

The bill establishes an 18-member Connecticut Artificial Intelligence Advisory Board, with 10 voting members and eight non-voting members. The bill places the board in the legislative branch.

Under the bill, the board consists of the following voting members: (1) two each appointed by the House speaker, Senate president pro tempore, and Senate and House minority leaders; and (2) the House and Senate General Law chairpersons or their appointees. All appointed

members must have professional experience or academic qualifications in matters related to automated systems, AI, AI governance and accountability, or other related fields.

Additional nonvoting ex-officio members must include the following officials or their designees: the DAS commissioner; chief data officer; Freedom of Information Commission executive director; Commission on Women, Children, Seniors, Equity and Opportunity executive director; attorney general, chief court administrator, state treasurer, and state comptroller. The House speaker and the Senate president pro tempore must each select a co-chair of the board from among the board members.

Terms and Meetings

The bill requires that all initial board appointments be made by September 1, 2023. Each appointed member's term is coterminous with his or her appointing authority's term, and the appointing authority must fill any vacancy for the balance of the unexpired term. A board member may serve more than one term. The co-chairs must jointly schedule the first board meeting, which must be held by October 1, 2023.

The bill requires the board to meet at least twice a year and may meet at other times as the co-chairs jointly deem or by a majority of board members.

The bill requires the General Law administrative staff to serve as the board's administrative staff.

Powers and Duties

The bill establishes the following powers and duties for the board:

1. advise state agencies on AI and automated systems policy, including best practices for using AI and automated systems;
2. hold a public hearing on the AI officer's draft automated systems procedures and make revisions (see § 1 above);
3. issue reports and recommendations to the General Assembly;

4. request that any state agency data officer or state agency head appear before the board to answer questions, if requested by at least two board members;
5. request assistance and data from any state agency as necessary and available to carry out the board's purposes;
6. make recommendations to the legislative leaders concerning AI and automated systems policy; and
7. establish bylaws to govern the board's procedures.

§ 3 — AI IMPLEMENTATION OFFICER

The bill requires the DAS commissioner to designate an employee by October 1, 2023, to serve as the AI implementation officer. The bill sets the same knowledge and experience requirements as it does for the AI officer designated by OPM.

The bill requires the implementation officer to perform several duties related to automated systems, such as creating an inventory of all automated systems state agencies use for critical decisions. The DAS commissioner may contract with a third party, if she deems it necessary, to help the implementation officer do his or her duties.

Oversight of State Agency Automated Systems

Under the bill, any state agency that intends to develop, procure, or use any automated system on or after January 1, 2024, must provide the implementation officer, in a form and manner the officer prescribes, at least 60 days' advance written notice of its intended action.

Within 90 days after the implementation officer receives any notice, he or she may review it and any available documentation on the system's operation and any related safeguards to determine whether developing, procuring, or using the system would satisfy the automated systems procedure requirements. If the implementation officer does not make any determination during this period, the state agency that submitted the notice may develop, procure, or use the system.

If the implementation officer determines that any automated system that a state agency develops, procures, or uses does not satisfy the procedures, the officer must direct the agency to immediately stop these actions. On and after July 1, 2025, the implementation officer:

1. may periodically reevaluate any automated system that is developed, procured, or used by any state agency to ensure that the system satisfies the automated systems procedure requirements;
2. must, at least biennially, reevaluate any automated system that any state agency develops, procures, or uses, if the officer determines that the automated system poses any significant risk; and
3. may take other actions if he or she deems it appropriate to carry out the purposes above.

Inventory of Automated Systems

By December 31, 2023, the bill requires the AI implementation officer to inventory all automated systems that state agencies use for critical decisions. The inventory must include each automated system's name and vendor, if any, and a description of the system's general capabilities. This description must include:

1. any reasonably foreseeable capability of the automated system that is outside of any state agency's intended use of the system;
2. whether the automated system was used, or may be used, to independently make, inform, or materially support a conclusion, decision, or judgment, and the resulting impact on state residents;
3. each type of data input that was used by the automated system; how the inputted data was collected, generated, or processed; and the type or types of data the automated system generated or is reasonably likely to generate;

4. whether the automated system (a) discriminated against any individual or group of individuals in violation of state or federal law, or (b) disproportionately and unlawfully impacted any individual or group of individuals on the basis of any actual or perceived differentiating characteristic, including age, genetic information, color, ethnicity, race, creed, religion, national origin, ancestry, sex, gender identity or expression, sexual orientation, marital status, familial status, pregnancy, veteran status, disability, or lawful source of income;
5. a description of the purpose and intended use of the automated system, including (a) which decision or decisions the system was used to make, inform, or materially support, (b) whether the system is an automated final decision system or automated decision support system, and (c) the benefit or benefits the system was supposed to confer and any data or research needed for determining whether the system conferred the purported benefit or benefits; and
6. (a) how the data used or generated by the automated system was processed and stored; (b) whether the state agency or agencies that developed, procured, or used the system intend to share access to it or data with any other person, such person's name; and (c) why the state agency or agencies intend to share access or data with that person.

Under the bill, the implementation officer must, as part of the required inventory, determine whether any automated system included in the inventory:

1. infringed on any legal right of any state resident; and
2. was publicly disclosed under FOIA in an appropriately transparent manner.

The bill requires the AI implementation officer to prepare and submit a report to the General Law Committee by December 31, 2024, that contains the inventory.

§§ 1-4 — DISCLOSURES AND RESTRICTIONS

The bill explicitly subjects the AI officer, AI implementation officer, and the AI advisory board to FOIA. Under the bill, the AI provisions must not be construed to:

1. require disclosing any trade secret;
2. abrogate any work product protection; or
3. restrict the officers', advisory board's, or any state agency's ability to (a) conduct any internal research to develop, improve, or repair any product, service, or technology; (b) prevent, detect, protect against, or respond to, or investigate, report, or prosecute any person responsible for any security incident, identity theft, fraud, harassment, malicious or deceptive activity, or illegal activity; or (c) preserve the integrity or security of any system.

Under the bill, a "trade secret" is information, including a formula, pattern, compilation, program, device, method, technique, process, drawing, cost data, or customer list that (1) derives actual or potential independent economic value from not being generally known to, and not being readily ascertainable by proper means by, other individuals who can get economic value from its disclosure or use, and (2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

§ 8 — TASK FORCE TO STUDY AI

The bill establishes a nine-member task force to study AI. The task force must (1) develop, and make recommendations for adopting, an AI bill of rights based on the White House Office of Science and Technology Policy's "Blueprint for an AI Bill of Rights" and (2) study the feasibility of, and make recommendations for, establishing a department of AI enablement to help state agencies and municipalities ethically implement AI technologies.

The task force must consist of the following members:

1. two appointments each by the House speaker, Senate president

- pro tempore, and the governor;
2. one appointment each by the House and Senate majority and minority leaders; and
 3. the DAS commissioner, or her designee.

The bill allows legislative appointees to be General Assembly members. The House speaker and Senate president pro tempore must select the task force's chairpersons from the members. The chairpersons must schedule the first task force meeting within 60 days after the bill passes. The bill requires the General Law administrative staff to serve as the task force's administrative staff.

By January 1, 2024, the bill requires the task force to submit a report on its findings and recommendations to the General Law Committee. The task force terminates on the date it submits the report or January 1, 2024, whichever is later.

§§ 5-7 — CONSUMER DATA PRIVACY LAW

Beginning July 1, 2023, existing law (i.e., the consumer data privacy law) sets a framework for controlling and processing personal data. The framework requires a controller (i.e., an individual or legal entity that determines the purpose and means of processing personal data) to limit the collection of personal data and establish security practices, among other things.

Contract Requirement

Regardless of any state law, the bill prohibits state contracting agencies from entering into any contract with a business on or after July 1, 2023, unless the contract contains a provision requiring the business to comply with all applicable provisions of the consumer data privacy law. By law, a state contracting agency is an executive branch agency, board, commission, department, office, institution, or council. The definition excludes (1) the offices of the Secretary of the State, State Treasurer, State Comptroller, and Attorney General with respect to their constitutional functions and (2) any state agency with respect to contracts specific to the constitutional and statutory functions of the

Office of the State Treasurer.

Exemption

The consumer data privacy law exempts various entities from its requirements. The bill expands the exemption to include any air carrier (i.e., a U.S. citizen that provides air transportation by any means) that is regulated under the Federal Aviation Act of 1958 (49 U.S.C. § 40101 et seq.), and the Airline Deregulation Act (49 U.S.C. § 41713).

Targeted Advertising Prohibition

Existing law prohibits controllers from processing a consumer’s personal data for purposes of targeted advertising without the consumer’s consent for consumers who are at least 13 years old, but under 16 years old. Under current law, the prohibition applies only if the controller both has actual knowledge that the consumer’s age is in this range and willfully disregards it. Under the bill, the prohibition applies in either case (i.e., actual knowledge or willful disregard of the consumer’s age).

BACKGROUND

Related Bill

sSB 1058, § 9, reported favorably by the General Law Committee, contains an identical provision prohibiting a controller that has actual knowledge or willfully disregards the consumer’s age from processing the consumer’s data for targeted advertising without the consumer’s consent.

COMMITTEE ACTION

General Law Committee

Joint Favorable Substitute

Yea 23 Nay 0 (03/09/2023)