

HOUSE BILL REPORT

HB 2401

As Reported by House Committee On: Labor & Workplace Standards

Title: An act relating to the use of artificial intelligence in job applications.

Brief Description: Concerning the use of artificial intelligence in job applications.

Sponsors: Representatives Hudgins, Smith, Van Werven, Wylie and Kloba.

Brief History:

Committee Activity:

Labor & Workplace Standards: 1/20/20, 2/3/20 [DPS].

Brief Summary of Substitute Bill

- Requires employers who use artificial intelligence on applicant videos to provide certain information, obtain consent, and delete interviews upon request.
- Restricts the use of artificial intelligence on applicants and the sharing of applicant videos.

HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 4 members: Representatives Sells, Chair; Chapman, Vice Chair; Gregerson and Ormsby.

Minority Report: Do not pass. Signed by 3 members: Representatives Mosbrucker, Ranking Minority Member; Chandler, Assistant Ranking Minority Member; Hoff.

Staff: Lily Smith (786-7175).

Background:

Washington's Law Against Discrimination (WLAD) establishes that it is a civil right to be free from discrimination based on race, national origin, sex, and other enumerated factors. Under WLAD, the Human Rights Commission has issued, in rule, a preemployment inquiry

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guide that provides examples of fair and unfair inquiries of job applicants. Current law does not address the use of specific technologies in the employment application or hiring process.

Artificial intelligence (AI) is the capability of a machine to simulate behavior that is considered intelligent. An AI system or program can analyze and respond to data in a way that mirrors a level of decisionmaking normally demonstrated by people. An AI program can be used in the employment hiring context to screen or evaluate applicants for desired characteristics or performance.

The Criminal Justice Training Commission requires a polygraph test or similar assessment for applicants to law enforcement positions.

Summary of Substitute Bill:

Requires employers who use AI analysis of applicant-submitted videos to:

- notify applicants and provide information regarding the use of AI;
- obtain consent from the applicant; and
- delete all copies of an applicant's interviews upon request.

Prohibits employers from:

- using AI to evaluate applicants without consent;
- sharing applicant videos, unless necessary for evaluation; or
- rejecting an applicant for refusing to consent.

Polygraph tests or similar assessments required for applicants to law enforcement positions are not considered AI.

Substitute Bill Compared to Original Bill:

The substitute bill specifies that polygraph tests and similar assessments required for applicants to law enforcement positions are not considered AI.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) There is an increasing use of AI and facial recognition technologies in employment screenings, where robots can now determine whether an applicant passes by how they act. Human interviewers may have biases, but with this technology, it is a real

concern that it is unclear how decisions are being made. While these systems improve, the bill would create transparency on whether the technology is reinforcing or mitigating biases.

(Opposed) None.

(Other) The bill may unintentionally affect the criminal justice hiring process, where there is a requirement for background examinations that includes a polygraph or similar test. There should be an exception for these agencies.

Persons Testifying: (In support) Representative Hudgins, prime sponsor.

(Other) James McMahan, Washington Association of Sheriffs and Police Chiefs.

Persons Signed In To Testify But Not Testifying: None.