

HOUSE BILL REPORT

HB 1170

As Reported by House Committee On:

Technology, Economic Development, & Veterans

Title: An act relating to informing users when content is developed or modified by artificial intelligence.

Brief Description: Informing users when content is developed or modified by artificial intelligence.

Sponsors: Representatives Shavers, Taylor, Ryu, Ramel, Fosse, Wylie, Pollet, Ormsby and Hill.

Brief History:

Committee Activity:

Technology, Economic Development, & Veterans: 1/17/25, 1/28/25 [DPS].

Brief Summary of Substitute Bill

- Requires providers of certain generative artificial intelligence (AI) systems to make an AI detection tool available to users.
- Requires providers of certain generative AI systems to offer users the option of including disclosures in content created or altered by the systems.
- Requires providers of certain generative AI systems to include latent disclosures in content created by their systems.

HOUSE COMMITTEE ON TECHNOLOGY, ECONOMIC DEVELOPMENT, & VETERANS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Ryu, Chair; Kloba, Vice Chair; Cortes, Donaghy, Paul, Shavers, Simmons and Thomas.

Minority Report: Do not pass. Signed by 5 members: Representatives Barnard, Ranking

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.

Minority Member; Keaton, Penner, Volz and Waters.

Staff: Emily Poole (786-7106).

Background:

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.

By Executive Order, the White House adopted the Act's definition of AI and defined related concepts, including defining "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.

Summary of Substitute Bill:

Artificial Intelligence Detection Tool.

A person that produces a generative artificial intelligence (AI) system that has over 1,000,000 monthly visitors or users and is publicly accessible in Washington (a "covered provider") is required to make available an AI detection tool at no cost to the user.

The tool must:

- allow a user to assess whether image, video, or audio content was created or altered by the covered provider's generative AI system;
- output any system provenance data that is detected in the content;
- not output any personal provenance data that is detected in the content, to the extent technically feasible;
- be publicly accessible, with some exceptions;
- allow a user to upload content or provide a uniform resource locator linking to online content; and
- support an application programming interface that allows a user to invoke the tool without visiting the covered provider's website.

A covered provider is prohibited from:

- collecting or retaining personal information from users of the tool, with certain exceptions;
- retaining any content submitted to the tool for longer than is necessary; and
- retaining any personal provenance data from content submitted to the tool.

Disclosures.

A covered provider is required to offer the user the option to include a manifest disclosure in image, video, or audio content created or altered by the covered provider's generative AI system. The disclosure must:

- identify content as AI-generated content;
- be clear, conspicuous, appropriate for the medium of the content, and understandable to a reasonable person; and
- be permanent or extraordinarily difficult to remove, to the extent it is technically feasible.

A covered provider is required to include a latent disclosure in AI-generated image, video, or audio content created by the covered provider's generative AI system. To the extent it is technically feasible and reasonable, the disclosure must convey all of the following information:

- the name of the covered provider;
- the name and version number of the generative AI system that created or altered the content;
- the time and date of the content's creation or alteration; and
- a unique identifier.

The latent disclosure must also be detectable by the covered provider's AI detection tool, consistent with widely accepted industry standards, and permanent or extraordinarily difficult to remove, to the extent it is technically feasible.

If a covered provider licenses its generative AI system to a third party, the covered provider must require that the licensee maintain the system's capability to include required disclosures. If a covered provider knows that a third-party licensee modified a licensed generative AI system such that it is no longer capable of including the required disclosures, the covered provider must revoke the license. A third-party licensee must cease using a licensed generative AI system after the license for the system has been revoked.

The requirements regarding AI detection tools and disclosures do not apply to any product, service, internet website, or application that provides exclusively video game, television, streaming, movie, or interactive experiences.

Enforcement.

Violations of requirements relating to AI detection tools and disclosures are deemed to affect public interest and constitute an unfair or deceptive act in trade or commerce for purposes of the Consumer Protection Act.

Prior to initiating an action for a violation, the Attorney General is required to issue a notice of violation to the covered provider, if the Attorney General determines that a cure is possible. If the covered provider fails to cure the violation within 45 days of receipt of the

notice, the Attorney General may bring an action.

Definitions.

"Artificial intelligence system" is defined as "an engineered or machine-based system that varies in its level of autonomy and that can, for explicit or implicit objectives, infer from the input it receives how to generate outputs that can influence physical or virtual environments."

"Covered provider" is defined as "a person that creates, codes, or otherwise produces a generative artificial intelligence system that has over 1,000,000 monthly visitors or users and is publicly accessible within the geographic boundaries of the state." "Covered provider" does not mean government agencies or tribal nations.

"Generative artificial intelligence system" means "an artificial intelligence system that can generate derived synthetic content, including text, images, video, and audio, that emulates the structure and characteristics of the artificial intelligence system's training data."

The following additional terms are defined: latent, manifest, metadata, personal information, personal provenance data, provenance data, and system provenance data.

Substitute Bill Compared to Original Bill:

As compared to the original bill, the substitute bill:

- changes the definition of "artificial intelligence" to a definition of "artificial intelligence system";
- establishes that a "covered provider" does not include government agencies or tribal nations;
- modifies the definition of "system provenance data" to refer to information that helps a user assess authenticity, instead of information related to content authenticity;
- specifies that the requirement that an AI detection tool does not output personal provenance data applies only to the extent that it is technically feasible; and
- requires the Attorney General to allow covered providers an opportunity to cure violations prior to initiating a civil action.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on January 28, 2025.

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) This bill is a step toward ensuring the ethical use of AI. The bill only applies to tools that have a million users per month. This bill is aligned with a recent California law, and it creates a consistent standard for developers and consumers. The California bill was negotiated extensively, and it takes a pragmatic approach. The bill is also based on a bipartisan proposal at the federal level. This bill will help provide some comfort around the presence of deep fakes. Consumers have a right to know what is real and what is fake. Large technology companies have already implemented the requirements in this bill, and it only applies to the largest providers, many of which are already subject to similar requirements in the European Union. This bill will not stifle start-ups. The AI Task Force should take a more active approach.

(Opposed) This bill is problematic, because it requires technology that does not exist. There is no foolproof method to watermark content in a way that cannot be removed. The definitions in the bill could implicate the vast majority of consumer-generated software. This bill turns covered providers into the AI police. The bill should not have a private right of action, especially because it is tied to the Consumer Protection Act, and there is no specific harm described in the bill. This bill will result in an increase in litigation. There is no widely accepted standard to meet the bill's requirements of visibility and permanence. It is unclear if the bill would apply to business-to-business applications. The bill sponsor should have worked with the AI Task Force. The bill should provide for an opportunity to cure potential violations. The disclosure requirements could violate First Amendment rights, because people have the right not to speak. The bill could result in bias against AI-generated speech.

Persons Testifying: (In support) Representative Clyde Shavers, prime sponsor; Jai Jaisimha, Transparency Coalition.ai; and Tom Kemp.

(Opposed) Robert Singleton, Chamber of Progress; John Coleman, Foundation for Individual Rights and Expression; Kelly Fukai, Washington Technology Industry Association; Rose Feliciano, TECHNET; and Crystal Leatherman, Washington Retail Association .

Persons Signed In To Testify But Not Testifying: None.