

**Department of Legislative Services**  
 Maryland General Assembly  
 2024 Session

**FISCAL AND POLICY NOTE**  
**First Reader**

Senate Bill 957 (Senator Hester)  
 Finance

**Labor and Employment – Automated Employment Decision Tools – Prohibition**

This bill generally prohibits an employer from using an automated employment decision tool (AEDT) to screen applicants for employment or otherwise help the employer decide compensation or other terms, conditions, or privileges of employment in the State. However, an employer may use an AEDT under specified conditions if impact assessments required by the bill determine that using an AEDT would not involve a high-risk action. If an employer uses an AEDT, the employer must notify affected applicants as specified within 30 days after the employer uses the AEDT. The bill specifies violations and civil penalties. The Maryland Department of Labor (MDL) must adopt regulations to implement the bill.

**Fiscal Summary**

**State Effect:** General fund expenditures for MDL increase by \$162,000 in FY 2025 and by \$188,900 in FY 2026 for contractual personnel costs. Assuming a general level of compliance by employers, the bill’s penalty provisions do not materially affect State finances or operations; thus revenues are not affected. The bill does not apply to the State as an employer.

(in dollars)	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	162,000	188,900	0	0	0
Net Effect	(\$162,000)	(\$188,900)	\$0	\$0	\$0

*Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease*

**Local Effect:** None. The bill does not apply to local governments as employers.

**Small Business Effect:** Minimal.

## Analysis

**Bill Summary:** An AEDT is defined as an algorithmic decision system that automatically filters applicants or potential applicants for employment or for a term, condition, or employment privilege that establishes a preferred applicant for employment. “High-risk” means an act that is likely to result in unlawful discrimination or have an unlawful disparate impact on an individual or group or individuals on the basis of an actual or perceived characteristic.

Employers that use AEDTs must conduct annual impact assessments of their systems.

**Current Law:** State law generally prohibits an employer with at least 15 employees from discharging, failing or refusing to hire, or otherwise discriminating against any individual with respect to the individual’s compensation, terms, conditions, or privileges of employment because of race, color, religion, sex, age, national origin, marital status, sexual orientation, gender identity, genetic information, or disability. The State and local governments are considered employers.

Regardless of employer size, under the State’s Equal Pay for Equal Work law, an employer may not discriminate between employees in any occupation by providing less favorable employment opportunities based on sex or gender identity or paying a wage to employees of one sex or gender identity at a rate less than the rate paid to employees of another sex or gender identity if both employees work in the same establishment and perform work of comparable character or work on the same operation, in the same business, or of the same type. The State and local governments are considered employers.

The federal Equal Employment Opportunity Commission (EEOC) is responsible for enforcing federal laws that make it illegal to discriminate against a job applicant or an employee because of the person’s race, color, religion, sex (including pregnancy, gender identity, and sexual orientation), national origin, age (40 or older), disability, or genetic information. It is also illegal to discriminate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit. Most employers with at least 15 employees are covered by EEOC laws (20 employees in age discrimination cases). Most labor unions and employment agencies are also covered. Antidiscrimination laws apply to all types of work situations, including hiring, firing, promotions, harassment, training, wages, and benefits.

**State Expenditures:** MDL advises that it does not have the technological expertise to develop or evaluate tools or processes designed to assess the impact of an AEDT, nor does it have the knowledge to determine high-risk activities. Therefore, MDL needs to hire one contractual assistant Attorney General (AAG) and one contractual information

technology (IT) programmer through the end of fiscal 2026 to develop and promulgate the regulations. The AAG will promulgate regulations and offer guidance on what constitutes a violation. The contractual IT programmer will (1) evaluate existing AEDT systems to determine functionality and how these tools are utilized by employers, (2) formulate and create an impact assessment evaluation process with input from the AAG, and (3) determine a methodology for evaluating AEDT systems that could be translated into regulations.

Accordingly, general fund expenditures increase by \$162,032 in fiscal 2025, which accounts for the bill’s October 1, 2024 effective date. This estimate reflects the cost of hiring one contractual AAG and one contractual IT programmer as described above. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Contractual Positions	2
Salaries and Fringe Benefits	\$143,065
Operating Expenses	<u>18,967</u>
<b>Total FY 2025 State Expenditures</b>	<b>\$162,032</b>

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses through fiscal 2026.

This estimate does not include any health insurance costs that could be incurred for specified contractual employees under the State’s implementation of the federal Patient Protection and Affordable Care Act.

The bill does not apply to the State as an employer.

**Additional Comments:** There are no enforcement mechanisms in the bill, thus it is unclear who has the legal authority to enforce the civil penalties that the bill imposes. MDL has concerns that establishing an administrative complaint and penalty process without statutory authorization would exceed the scope of the Commissioner of Labor and Industry’s authority. To the extent that it does not, MDL may need additional resources to enforce the bill.

### **Additional Information**

**Recent Prior Introductions:** Similar legislation has not been introduced within the last three years.

**Designated Cross File:** HB 1255 (Delegate Bartlett) - Economic Matters.

**Information Source(s):** Maryland Commission on Civil Rights; Maryland Department of Labor; U.S. Equal Employment Opportunity Commission; Department of Legislative Services

**Fiscal Note History:** First Reader - March 5, 2024  
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