

LEGISLATIVE POSITION:

Unfavorable

Senate Bill 957 – Labor and Employment - Automated Employment Decision Tools - Prohibition

Senate Finance Committee

Thursday, March 14, 2024

Dear Chairwoman Beidle and Members of the Committee:

Founded in 1968, the Maryland Chamber of Commerce is the leading voice for business in Maryland. We are a statewide coalition of more than 6,800 members and federated partners working to develop and promote strong public policy that ensures sustained economic health and growth for Maryland businesses, employees, and families.

SB 957 would prohibit an employer from using an automated employment decision tool unless the tool was subject to an impact assessment each year that determines that using the tool would not involve a high-risk action. It also requires an employer to notify each applicant within 30 days that the automated employment decision tool was used.

Impact Assessment

SB 957 imposes requirements on employers that are burdensome and not feasible. The timing requirement to complete impact assessments is problematic. The legislation requires an impact assessment be completed “during the year that immediately precedes the date the employer first begins using the automated employment decision tool”. If an employer is already using a tool, they cannot retroactively conduct the impact assessment for prior usage. Also, what type of evaluation would be considered an “impact assessment”? And who is responsible for completing the impact assessment? The employer would not be in a position to complete the assessment themselves, so would this fall on the Maryland Department of Labor? This raises the question of whether the Department has existing resources and staff to carry out this new requirement. Additionally, an annual impact assessment that establishes no discrimination seems very burdensome and difficult to assess.

Liability

Many employers may not realize they utilize AI in their operations and hiring practices. However, if they engage a recruiting firm, a common practice, and the firm utilizes AI-powered software without the employer’s awareness, it raises concerns that the employer could be held liable with civil penalties assessed per violation. Furthermore, if an employer doesn’t realize a contracted recruiting firm is using AI-powered hiring tools and the employer is found in violation, they would be held liable for *each* failure to provide the notice, potentially resulting in hundreds of violations (applicants) just for one job posting.

New York City Legislation

We urge the committee to consider very similar legislation that was passed in New York City. [Researchers at Cornell University concluded](#) that the law has very limited value for job seekers.

The city then modified the law by narrowing the scope to only cover automated employment decision tools that are being used without any human oversight, however they are still struggling with implementation and this law has not been proven to elicit compliance.

Definitions

The Chamber has concerns with definitions used in SB 957. “Algorithmic decision system” is defined as, “*a computational process that facilitates decision making, including decisions derived from machines, statistics, facial recognition, and decisions on paper*”. Instead, we suggest that this means “*a system or service that uses artificial intelligence and is specifically intended to autonomously make consequential decisions. An automated decision tool does not include a system or service that is purely accessory to algorithmic discrimination or a consequential decision*”. This ensures that SB 957 does not capture every day administrative tools like video conference software or autocorrect.

The “automated employment decision tool” definition is overly restrictive and unnecessarily narrow. There are numerous potential applications for such tools, some of which may not yet be fully understood. Instead of delineating prescribed usage guidelines for these tools, it would be more prudent to identify the prohibited uses or highlight existing illegal practices under employment laws, affirming their continued illegality when utilized with an automated employment decision tool.

The Chamber believes that the use of AI in the hiring and promoting process has been essential in helping streamline the review, outreach, vetting, and onboarding process of potential employees, but we are concerned SB 957 would impede the ability of businesses to find and hire qualified candidates. Any potential limitation on the use of technology for hiring purposes could lead to unnecessary barriers to finding qualified candidates for a job. This is not an appropriate policy choice given the current and historically tight labor market.

For these reasons, the Chamber respectfully requests an **unfavorable report** on **SB 957**.

