

BILL ANALYSIS

C.S.H.B. 5118

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Trade, Workforce & Economic Development
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The bill author has informed the committee that the rapid rise of artificial intelligence (AI) in everyday employment, particularly in hiring processes, has led to the use of automated employment decision tools that use algorithms and large datasets to help screen and evaluate job applicants, offering the potential to streamline hiring. The bill author has also informed the committee, however, that if not designed or monitored properly, these tools can unintentionally produce biased outcomes, for example, disadvantaging women returning from maternity leave by penalizing gaps in employment. C.S.H.B. 5118 seeks to address this issue by directing the Texas Workforce Commission, in collaboration with the Department of Information Resources, to conduct a comprehensive study on automated employment decision tools.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Workforce Commission in SECTION 2 of this bill.

ANALYSIS

C.S.H.B. 5118 requires the Texas Workforce Commission (TWC), in consultation and collaboration with the Department of Information Resources (DIR), to conduct a study on the use of artificial intelligence (AI) systems and automated employment decision tools in employment and hiring practices of employers, including state agencies. The bill defines "employer" by reference to statutory provisions relating to the payment of wages and does the following:

- requires TWC, in conducting the study, to do the following:
 - evaluate the current and future use in hiring decisions of AI systems, including automated employment decision tools;
 - outline the methods and tools available for detecting and auditing bias in the deployment of AI systems and automated employment decision tools in an employer's or state agency's hiring process;
 - determine the following:
 - the minimum transparency and disclosure requirements for AI system vendors to effectively audit for bias and the accountability requirements to redress resulting bias; and
 - the use of external, independent review for bias in AI systems and automated employment decision tools used by employers and state agencies in hiring decisions;

- identify existing deficiencies in oversight, auditability, and regulatory protections regarding AI systems and automated employment decision tools used in hiring decisions in Texas; and
 - analyze the state's ability to evaluate and recognize bias and other risks in the use of AI systems and automated employment decision tools in hiring decisions;
- requires DIR to assist TWC in conducting the study by examining and providing information on the following:
 - the use of AI systems and automated employment decision tools in state agency hiring practices; and
 - regulatory procedures that may assist in decreasing bias and other risks posed by state agencies deploying AI systems and automated employment decision tools for use in hiring decisions;
- authorizes TWC, in conducting the study, to consult the following:
 - state agencies and private sector employers with experience in:
 - the deployment of AI systems and automated employment decision tools; and
 - the ethical use of AI systems and automated employment decision tools; and
 - state agencies that specialize in technical support related to AI security to assist with evaluating the use of AI systems in hiring decision processes;
- authorizes TWC, in addition to any money appropriated by the legislature, to solicit and accept federal funds and gifts, grants, or donations from any source to administer and finance the study;
- requires TWC, not later than November 15, 2026, to submit to the governor, the lieutenant governor, the speaker of the house of representatives, and the chair of the standing committee of each house of the legislature with primary jurisdiction over TWC a written report that includes:
 - the study's results;
 - any recommendations for legislative or other action to increase transparency and decrease bias in the use of AI systems in employment decisions;
 - a sector specific risk assessment for bias in the use of AI systems in state agency hiring processes; and
 - a proposal to establish a method of funding research on AI bias;
- establishes that the bill expires September 1, 2027; and
- requires TWC to adopt rules necessary to administer the bill's provisions and implement any related programs authorized under the bill's provisions.

C.S.H.B. 5118 defines the following terms for purposes of the bill's provisions:

- "artificial intelligence system" as a system of machine learning and related technologies that use data to train statistical models for the purpose of enabling computer systems to perform tasks normally associated with human intelligence or perception, such as computer vision, speech or natural language processing, and content generation;
- "automated employment decision tool" as a computational process or software application that uses algorithms, machine learning, statistical modeling, data analytics, or an artificial intelligence system to assess an applicant's suitability for a position;
- "bias" as the use of an AI system or an automated employment decision tool in an employer or state agency's hiring process that results in discrimination prohibited under applicable Labor Code provisions or federal antidiscrimination laws; and
- "state agency" as a department, commission, board, office, or other agency in the executive branch of state government created by the state constitution or a state statute, including a university system or a public institution of higher education.

EFFECTIVE DATE

September 1, 2025.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 5118 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute omits the provisions from the introduced that amended the Labor Code to do the following:

- prohibit an employer from using an automated employment decision tool in regard to an applicant except under the following conditions:
 - a bias audit of the automated employment decision tool has been conducted by an impartial, independent auditor at the employer's request to determine whether the data incorporated into the automated employment decision tool may have the effect of causing employment discrimination prohibited under state or federal antidiscrimination laws; and
 - the employer has posted the bias audit results on the employer's publicly accessible website;
- prohibit an employer from using an automated employment decision tool in regard to an applicant unless the employer has done the following:
 - notified the applicant that such a tool may be used to assess the applicant's fitness for the position; and
 - provided the applicant with information describing how the tool will be used to assess the applicant's fitness for the position, including what characteristics may be evaluated for that purpose;
- require TWC to adopt rules for the administration of the introduced version's provisions; and
- define the following terms for the introduced version's purposes:
 - "algorithm" as a computerized procedure consisting of a set of steps used to accomplish a determined task; and
 - "applicant" as a person applying for a job offered by an employer.

The substitute includes provisions, absent from the introduced, that do the following:

- require TWC, in consultation and collaboration with DIR, to conduct a study on the use of AI systems and automated employment decision tools in employment and hiring practices of employers, including state agencies;
- define "employer" by reference to statutory provisions relating to the payment of wages;
- require TWC, in conducting the study, to do the following:
 - evaluate the current and future use in hiring decisions of AI systems, including automated employment decision tools;
 - outline the methods and tools available for detecting and auditing bias in the deployment of AI systems and automated employment decision tools in an employer's or state agency's hiring process;
 - determine the following:
 - the minimum transparency and disclosure requirements for AI system vendors to effectively audit for bias and the accountability requirements to redress resulting bias; and
 - the use of external, independent review for bias in AI systems and automated employment decision tools used by employers and state agencies in hiring decisions;
 - identify existing deficiencies in oversight, auditability, and regulatory protections regarding AI systems and automated employment decision tools used in hiring decisions in Texas; and
 - analyze the state's ability to evaluate and recognize bias and other risks in the use of AI systems and automated employment decision tools in hiring decisions;
- require DIR to assist TWC in conducting the study by examining and providing information on certain matters;

- authorizes TWC, in conducting the study, to consult certain state agencies and private sector employers with specified experience and specializations;
- authorize TWC, in addition to any money appropriated by the legislature, to solicit and accept federal funds and gifts, grants, or donations from any source to administer and finance the study;
- require TWC, not later than November 15, 2026, to submit to the governor, the lieutenant governor, the speaker of the house of representatives, and the chair of the standing committee of each house of the legislature with primary jurisdiction over TWC a written report that includes certain information and content;
- establish that the bill expires September 1, 2027;
- require TWC to adopt rules necessary to administer the substitute's provisions and implement any related programs authorized by those provisions; and
- defines the following terms for the substitute's purposes:
 - "bias" as the use of an AI system or an automated employment decision tool in an employer or state agency's hiring process that results in discrimination prohibited under applicable Labor Code provisions or federal antidiscrimination laws; and
 - "state agency" as a department, commission, board, office, or other agency in the executive branch of state government created by the state constitution or a state statute, including a university system or a public institution of higher education.