STATE OF NEW YORK

8129

2023-2024 Regular Sessions

IN ASSEMBLY

October 13, 2023

Introduced by M. of A. VANEL -- read once and referred to the Committee on Science and Technology

AN ACT to amend the state technology law, in relation to enacting the New York artificial intelligence bill of rights

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Short title. This act shall be known and may be cited as the "New York artificial intelligence bill of rights".

§ 2. Legislative intent. This legislature hereby finds that this generation of humans is the first in history to have the ability to create technologies that can make decisions which previously could have only been made by humans. States and countries across the world are grappling with critical questions of how we can use these technologies to solve our problems, how we can avoid or manage the new problems that these technologies may create, and how we can control these powerful technologies.

Therefore, the legislature declares that any New York resident affected by any system making decisions without human intervention be entitled to certain rights and protections to ensure that the system impacting their lives do so lawfully, properly, and with meaningful oversight.

Among these rights and protections are (i) the right to safe and effective systems; (ii) protections against algorithmic discrimination; (iii) protections against abusive data practices; (iv) the right to have agency over one's data; (v) the right to know when an automated system is being used; (vi) the right to understand how and why an automated system contributed to outcomes that impact one; (vii) the right to opt out of an automated system; and (viii) the right to work with a human in the place of an automated system.

The legislature also finds that automated systems will continue to be developed and evolve both within the state and outside the state. It is

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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therefore critical that New York does not overburden the development of innovative systems that better the state and its residents, nor drive the development of such systems to foreign states or countries with less appropriate regulation, nor threaten the security of our state, country, and its people.

To these ends, the legislature declares that the white paper published by the White House Office of Science and Technology titled "Blueprint for an AI Bill of Rights" in October of 2022 is commensurate with the goals of this state in relation to artificial intelligence.

§ 3. The state technology law is amended by adding a new article IV to read as follows:

ARTICLE IV
ARTIFICIAL INTELLIGENCE BILL OF RIGHTS

Section 401. Definitions.
402. Application.
403. Construction.
404. Safe and effective systems.
405. Algorithmic discrimination practices.
406. Data privacy.
407. Notice and explanation.
408. Human alternatives, consideration, and fallback.
409. Penalties; no private cause of action.

§ 401. Definitions. As used in this article, the following terms shall have the following meanings:

1. "Civil rights, civil liberties, and privacy" or "rights, opportunity, and access" means such rights and protections provided for in the United States Constitution, federal law, the laws and constitution of the state of New York, and privacy and other freedoms that exist in both the public and private sector contexts, which shall include, but shall not be limited to:

(a) freedom of speech;
(b) voting rights;
(c) protections from discrimination;
(d) protections from excessive or unjust punishment; and
(e) protections from unlawful surveillance.

2. "Equal opportunity" means equal access to education, housing, credit, employment, and other programs.

3. "Access to critical resources or services" means such resources and services that are fundamental for the well-being, security, and equitable participation of New York residents in society, which shall include, but shall not be limited to:

(a) healthcare;
(b) financial services;
(c) safety;
(d) social services;
(e) non-deceptive information about goods and services; and
(f) government benefits.

4. "Algorithmic discrimination" means circumstances where an automated system contributes to an unjustified different treatment or impact which disfavors people based on their age, color, creed, disability, domestic violence victim status, gender identity or expression, familial status, marital status, military status, national origin, predisposing genetic characteristics, pregnancy-related condition, prior arrest or conviction record, race, sex, sexual orientation, or veteran status or any other classification protected by law.

5. "Automated system" means any system, software, or process that affects New York residents and that uses computation as a whole or part of a system to determine outcomes, make or aid decisions, inform policy implementation, collect data or observations, or otherwise interact with New York residents or communities. Automated systems shall include, but not be limited to, systems derived from machine learning, statistics, or other data processing or artificial intelligence techniques, and shall exclude passive computing infrastructure.

6. "Passive computing infrastructure" shall include any intermediary technology that does not influence or determine the outcome of decisions, make or aid in decisions, inform policy implementation, or collect data or observations, including web hosting, domain registration, networking, caching, data storage, or cybersecurity.

7. "Communities" means neighborhoods, social network connections, families, people connected by affinity, identity, or shared traits and formal organizational ties. This includes Tribes, Clans, Bands, Rancherias, Villages, and other Indigenous communities.

8. "Social network" means any connection of persons which exists online or offline.

9. "Families" means any relationship, whether by blood, choice, or otherwise, where one or more persons assume a caregiver role, primary or shared, for one or more others, or where individuals mutually support and are committed to each other's well-being.

10. "Equity" means the consistent and systematic fair, just, and impartial treatment of all New York residents. Systemic, fair, and just treatment shall take into account the status of New York residents who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; women, girls, and non-binary people; lesbian, gay, bisexual, transgender, queer, and intersex persons; older adults; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality.

11. "Sensitive data" means any data and metadata:

(a) that pertains to a New York resident in a sensitive domain;

(b) that are generated by technologies in a sensitive domain;

(c) that can be used to infer data from a sensitive domain;

(d) about a New York resident, such as disability-related data, genomic data, biometric data, behavioral data, geolocation data, data related to the criminal justice system, relationship history, or legal status such as custody and divorce information, and home, work, or school environmental data;

(e) that has the reasonable potential to be used in ways that are likely to expose New York residents to meaningful harm, such as a loss of privacy or financial harm due to identity theft; or

(f) that is generated by a person under the age of eighteen.

12. "Sensitive domain" means a particular area, field, or sphere of activity in which activities being conducted can cause material harms, including significant adverse effects on human rights such as autonomy and dignity, as well as civil liberties and civil rights.

13. "Surveillance technology" means products or services marketed for or that can be lawfully used to detect, monitor, intercept, collect, exploit, preserve, protect, transmit, or retain data, identifying information, or communications concerning New York residents or groups.

14. "Underserved communities" means communities that have been systematically denied a full opportunity to participate in aspects of economic, social, and civic life.

§ 402. Application. The rights contained within this article shall be construed as applying to New York residents against persons developing automated systems that have the potential to meaningfully impact New York residents':

1. civil rights, civil liberties, and privacy;

2. equal opportunities; or

3. access to critical resources or services.

§ 403. Construction. The rights contained within this article shall be construed as harmonious and mutually supportive.

§ 404. Safe and effective systems. 1. New York residents have the right to be protected from unsafe or ineffective automated systems. These systems must be developed in collaboration with diverse communities, stakeholders, and domain experts to identify and address any potential concerns, risks, or impacts.

2. Automated systems shall undergo pre-deployment testing, risk identification and mitigation, and shall also be subjected to ongoing monitoring that demonstrates they are safe and effective based on their intended use, mitigation of unsafe outcomes including those beyond the intended use, and adherence to domain-specific standards.

3. If an automated system fails to meet the requirements of this section, it shall not be deployed or, if already in use, shall be removed. No automated system shall be designed with the intent or a reasonably foreseeable possibility of endangering the safety of any New York resident or New York communities.

4. Automated systems shall be designed to proactively protect New York residents from harm stemming from unintended, yet foreseeable, uses or impacts.

5. New York residents are entitled to protection from inappropriate or irrelevant data use in the design, development, and deployment of automated systems, and from the compounded harm of its reuse.

6. Independent evaluation and reporting that confirms that the system is safe and effective, including reporting of steps taken to mitigate potential harms, shall be performed and the results made public whenever possible.

§ 405. Algorithmic discrimination practices. 1. No New York resident shall face discrimination by algorithms, and all automated systems shall be used and designed in an equitable manner.

2. The designers, developers, and deployers of automated systems shall take proactive and continuous measures to protect New York residents and communities from algorithmic discrimination, ensuring the use and design of these systems in an equitable manner.

3. The protective measures required by this section shall include proactive equity assessments as part of the system design, use of representative data, protection against proxies for demographic features, and assurance of accessibility for New York residents with disabilities in design and development.

4. Automated systems shall undergo pre-deployment and ongoing disparity testing and mitigation, under clear organizational oversight.

5. Independent evaluations and plain language reporting in the form of an algorithmic impact assessment, including disparity testing results and mitigation information, shall be conducted for all automated systems.

6. New York residents shall have the right to view such evaluations and reports.

§ 406. Data privacy. 1. New York residents shall be protected from abusive data practices via built-in protections and shall maintain agency over the use of their personal data.

2. Privacy violations shall be mitigated through design choices that include privacy protections by default, ensuring that data collection conforms to reasonable expectations and that only strictly necessary data for the specific context is collected.

3. Designers, developers, and deployers of automated systems must seek and respect the decisions of New York residents regarding the collection, use, access, transfer, and deletion of their data in all appropriate ways and to the fullest extent possible. Where not possible, alternative privacy by design safeguards must be implemented.

4. Automated systems shall not employ user experience or design decisions that obscure user choice or burden users with default settings that are privacy-invasive.

5. Consent shall be used to justify the collection of data only in instances where it can be appropriately and meaningfully given. Any consent requests shall be brief, understandable in plain language, and provide New York residents with agency over data collection and its specific context of use.

6. Any existing practice of complex notice-and-choice for broad data use shall be transformed, emphasizing clarity and user comprehension.

7. Enhanced protections and restrictions shall be established for data and inferences related to sensitive domains. In sensitive domains, individual data and related inferences may only be used for necessary functions, safeguarded by ethical review and use prohibitions.

8. New York residents and New York communities shall be free from unchecked surveillance; surveillance technologies shall be subject to heightened oversight, including at least pre-deployment assessment of their potential harms and scope limits to protect privacy and civil liberties.

9. Continuous surveillance and monitoring shall not be used in education, work, housing, or any other contexts where the use of such surveillance technologies is likely to limit rights, opportunities, or access.

10. Whenever possible, New York residents shall have access to reporting that confirms respect for their data decisions and provides an assessment of the potential impact of surveillance technologies on their rights, opportunities, or access.

§ 407. Notice and explanation. 1. New York residents shall be informed when an automated system is in use and New York residents shall be informed how and why the system contributes to outcomes that impact them.

2. Designers, developers, and deployers of automated systems shall provide accessible plain language documentation, including clear descriptions of the overall system functioning, the role of automation, notice of system use, identification of the individual or organization responsible for the system, and clear, timely, and accessible explanations of outcomes.

3. The provided notice shall be kept up-to-date, and New York residents impacted by the system shall be notified of any significant changes to use cases or key functionalities.

4. New York residents shall have the right to understand how and why an outcome impacting them was determined by an automated system, even when the automated system is not the sole determinant of the outcome.

5. Automated systems shall provide explanations that are technically valid, meaningful to the individual and any other persons who need to understand the system and proportionate to the level of risk based on the context.

6. Summary reporting, including plain language information about these automated systems and assessments of the clarity and quality of notice and explanations, shall be made public whenever possible.

§ 408. Human alternatives, consideration, and fallback. 1. New York residents shall have the right to opt out of automated systems, where appropriate, in favor of a human alternative. The appropriateness of such an option shall be determined based on reasonable expectations in a given context, with a focus on ensuring broad accessibility and protecting the public from particularly harmful impacts. In some instances, a human or other alternative may be mandated by law.

2. New York residents shall have access to a timely human consideration and remedy through a fallback and escalation process if an automated system fails, produces an error, or if they wish to appeal or contest its impacts on them.

3. The human consideration and fallback process shall be accessible, equitable, effective, maintained, accompanied by appropriate operator training, and should not impose an unreasonable burden on the public.

4. Automated systems intended for use within sensitive domains, including but not limited to criminal justice, employment, education, and health, shall additionally be tailored to their purpose, provide meaningful access for oversight, include training for New York residents interacting with the system, and incorporate human consideration for adverse or high-risk decisions.

5. Summary reporting, which includes a description of such human governance processes and an assessment of their timeliness, accessibility, outcomes, and effectiveness, shall be made publicly available whenever possible.

§ 409. Penalties; no private cause of action. 1. Where an operator of an automated system violates or causes a violation of any of the rights stated within this article, such operator shall be liable to the people of this state for a penalty not less than three times such damages caused.

2. The penalty provided for in subdivision one of this section may be recovered by an action brought by the attorney general in any court of competent jurisdiction.

3. Nothing set forth in this article shall be construed as creating, establishing, or authorizing a private cause of action by an aggrieved person against an operator of an automated system who has violated, or is alleged to have violated, any provision of this article.

§ 4. This act shall take effect on the ninetieth day after it shall have become a law.