Proposed 2nd Substitute House Bill 1170 (H-2880.1/26)

House Technology, Economic Development, and Veterans Committee
By Representative Shavers

Original Bill:

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

Proposed 2nd Substitute House Bill (H-2880.1/26) compared to the Original Bill:

- Adds an intent section;
- Modifies the definition of "artificial intelligence" to generally refer to the use 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, instead of 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;
- Modifies the definition of "covered provider" by:
    - removing the monthly usership threshold;
    - adding thresholds based on both the computing power used to train a foundation model and the person's revenues; and
    - excluding public entities, tribal nations, and business-to-business systems;
- Replaces the definition of "generative artificial intelligence system" with a definition of "generative artificial intelligence," defined as an artificial intelligence system that generates novel data or content based on a foundation model;
- Modifies the definition of "personal information" to be the same as the definition in RCW 19.373.010, instead of the definition in RCW 19.255.005;
- Modifies the definition of "system provenance data" to include data that contains information that helps a user assess authenticity, instead of information related to content authenticity;
- Requires a covered provider to make available a "provenance detection tool" instead of an "artificial intelligence detection tool;"
- Removes the requirement that the provenance detection tool must not output any personal provenance data that is detected in content;
- Requires the provenance detection tool's results to be publicly accessible, instead of the tool being publicly accessible;
- Removes the requirement that the provenance detection tool must support an application programming interface;
- Requires a covered provider to consider, instead of incorporate, user feedback;
- Requires that when covered providers offer users the option of including manifest disclosures in content, the manifest disclosures must identify the content as artificial intelligence-generated or -modified content, instead of just artificial intelligence-generated;
- Establishes that manifest disclosures must be difficult to remove, and latent disclosures must be difficult to remove or recoverable, instead of permanent or extraordinarily difficult to remove;
- Requires that latent disclosures include the time and date that the disclosure was added, instead of the time and date of the content's creation or alteration;

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- Requires that latent disclosures include personal provenance information only to the extent that a user has chosen to add such information;
- Specifies that the types of products, services, websites, and applications exempted from the bill's requirements include products, services, websites, and applications that exclusively provide the sale of goods or services directly to consumers through the internet, allowing customers to browse, select, and purchase items virtually;
- Modifies the enforcement provisions by:
    - establishing that any waiver of the chapter is contrary to public policy and is void and unenforceable; and
    - limiting the per se violation of the Consumer Protection Act to apply to only actions brought by the Attorney General and establishing that only the Attorney General may bring an action under the Consumer Protection Act to enforce the chapter.

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BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: H-2880.1/26

ATTY/TYPIST: CC:akl

BRIEF DESCRIPTION: Informing users when content is developed or modified by artificial intelligence.

AN ACT Relating to informing users when content is developed or modified by artificial intelligence; and adding a new chapter to Title 19 RCW.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec. 1.** The legislature finds that as generative artificial intelligence models become increasingly sophisticated, and the content created by such models proliferates across commonly used platforms, it can be difficult for the public to trust the accuracy, authenticity, or origin of information accessed on the internet. Recent technological advances allow providers of generative artificial intelligence systems to use watermarking and other technologies to label or detect content created using their proprietary models. By ensuring that the public has access to reliable provenance data, the providers of generative artificial intelligence systems can improve the public's ability to assess the accuracy and authenticity of synthetic content, thereby helping to reduce risks of misinformation.

NEW SECTION. **Sec. 2.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Artificial intelligence" means the use 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.

(2)(a) "Covered provider" means a person who:

(i) Has used, or intends to use, a quantity of computing power greater than 10^26 integer or floating-point operations to train a foundation model, including the computing power used for the original training run and for any subsequent fine tuning, reinforcement learning, or other material modifications made to a preceding foundation model;

(ii) Uses such foundation model to create, code, or otherwise produce a generative artificial intelligence system that is publicly accessible within the geographic boundaries of the state, excluding generative artificial intelligence systems licensed or sold for business-to-business purposes; and

(iii) Collectively, together with any affiliates, had annual gross revenues in excess of $500,000,000 in the preceding calendar year.

(b) "Covered provider" does not mean public entities or tribal nations.

(3) "Generative artificial intelligence" means an artificial intelligence system that generates novel data or content based on a foundation model.

(4) "Latent" means present but not manifest.

(5) "Manifest" means easily perceived, understood, or recognized by a natural person.

(6) "Metadata" means structural or descriptive information about data.

(7) "Personal information" has the same meaning as defined in RCW 19.373.010.

(8) "Personal provenance data" means provenance data that contains either of the following:

(a) Personal information; or

(b) Unique device, system, or service information that is reasonably capable of being associated with a particular user.

(9) "Provenance data" means data that is embedded into digital content or that is included in the digital content's metadata for the

purpose of verifying the digital content's authenticity, origin, or history of modification.

(10) "System provenance data" means provenance data that is not reasonably capable of being associated with a particular user and that contains either of the following:

(a) Information regarding the type of device, system, or service that was used to generate a piece of digital content; or

(b) Information that helps a user assess authenticity.

NEW SECTION. **Sec. 3.** (1) A covered provider shall make available a provenance detection tool at no cost to the user that meets all of the following criteria:

(a) The tool allows a user to assess whether image, video, or audio content, or content that is any combination thereof, was created or altered by the covered provider's generative artificial intelligence system;

(b) The tool outputs any system provenance data that is detected in the content;

(c) The tool's results are publicly accessible, whether by release of the tool directly or by services that provide access to the tool's outputs, and a covered provider may impose reasonable limitations on access to the tool to prevent, or respond to, demonstrable risks to the security or integrity of its generative artificial intelligence system;

(d) The tool allows a user to upload content or provide a uniform resource locator linking to online content; and

(e) Users can invoke the tool without visiting the covered provider's internet website, for instance, through an application programming interface.

(2) A covered provider shall collect user feedback related to the efficacy of the covered provider's provenance detection tool and consider relevant feedback as part of any attempt to improve the efficacy of the tool.

(3) A covered provider may not do any of the following:

(a) Collect or retain personal information from users of the covered provider's provenance detection tool, except:

(i) A covered provider may collect and retain the contact information of a user who submits feedback pursuant to subsection (2) of this section if the user opts in to being contacted by the covered provider; and

(ii) User information collected may only be used to evaluate and improve the efficacy of the covered provider's provenance detection tool;

(b) Retain any content submitted to the provenance detection tool for longer than is necessary to comply with this section; or

(c) Retain any personal provenance data from content submitted to the provenance detection tool by a user.

NEW SECTION. **Sec. 4.** (1) A covered provider shall offer the user the option to include a manifest disclosure in image, video, or audio content, or content that is any combination thereof, created or altered by the covered provider's generative artificial intelligence system that meets all of the following criteria:

(a) The disclosure identifies content as artificial intelligence-generated or artificial intelligence-modified content;

(b) The disclosure is clear, conspicuous, appropriate for the medium of the content, and understandable to a reasonable person; and

(c) The disclosure is difficult to remove, to the extent it is technically feasible.

(2) A covered provider shall include a latent disclosure in artificial intelligence-generated image, video, or audio content, or content that is any combination thereof, created by the covered provider's generative artificial intelligence system that meets all of the following criteria:

(a) To the extent it is technically feasible and reasonable, the disclosure conveys all of the following information, either directly or through a link to a permanent internet website:

(i) The name of the covered provider;

(ii) The name and version number of the generative artificial intelligence system that created or altered the content;

(iii) The time and date that the disclosure was added to the generated or altered content;

(iv) A unique identifier; and

(v) Personal provenance information only to the extent that a user has affirmatively chosen to add such information;

(b) The disclosure is detectable by the covered provider's provenance detection tool;

(c) The disclosure is consistent with widely accepted industry standards;

(d) The disclosure is difficult to remove or recoverable, to the extent it is technically feasible.

(3)(a) If a covered provider licenses its generative artificial intelligence system to a third party, the covered provider shall require by contract that the licensee maintain the system's capability to include a disclosure required by subsection (2) of this section in content the system creates or alters.

(b) If a covered provider knows that a third-party licensee modified a licensed generative artificial intelligence system such that it is no longer capable of including a disclosure required by subsection (2) of this section in content the system creates or alters, the covered provider shall revoke the license within 96 hours of discovering the licensee's action.

(c) A third-party licensee shall cease using a licensed generative artificial intelligence system after the license for the system has been revoked by the covered provider pursuant to (b) of this subsection.

NEW SECTION. **Sec. 5.** This act does not apply to any product, service, internet website, or application that provides exclusively video game, television, streaming, movie, or interactive experiences including, but not limited to, the sale of goods or services directly to consumers through the internet, allowing customers to browse, select, and purchase items virtually.

NEW SECTION. **Sec. 6.** (1) Any waiver of the provisions of this chapter is contrary to public policy and is void and unenforceable.

(2) The attorney general may bring an action in the name of the state, or as parens patriae on behalf of persons residing in the state, to enforce this chapter. For actions brought by the attorney general to enforce this chapter, the legislature finds that the practices covered by this chapter are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. For actions brought by the attorney general to enforce this chapter, a violation of this chapter is not reasonable in relation to the development and preservation of business and is an unfair or deceptive act in trade or commerce and an unfair method of competition for purposes of applying the consumer protection act, chapter 19.86 RCW.

(3) Only the attorney general can bring an action under the consumer protection act, chapter 19.86 RCW, pursuant to this section.

NEW SECTION. **Sec. 7.** Sections 1 through 6 of this act constitute a new chapter in Title 19 RCW.

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