SENATE . . . . No. 33

The Commonwealth of Massachusetts

PRESENTED BY:

Jason M. Lewis

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act establishing a commission on automated decision-making by government in the commonwealth.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
Jason M. Lewis	*Fifth Middlesex*	
Michael O. Moore	*Second Worcester*	*2/15/2023*
James B. Eldridge	*Middlesex and Worcester*	*3/13/2023*

SENATE . . . . No. 33

By Mr. Lewis, a petition (accompanied by bill, Senate, No. 33) of Jason M. Lewis and Michael O. Moore for legislation to establish a commission on automated decision-making by government in the commonwealth. Advanced Information Technology, the Internet and Cybersecurity.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. *2688* OF 2021-2022.]

The Commonwealth of Massachusetts

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**In the One Hundred and Ninety-Third General Court
(2023-2024)**

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An Act establishing a commission on automated decision-making by government in the commonwealth.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1   Chapter 7D of the General Laws, as amended by chapter 64 of the acts of 2020, is hereby

2   further amended by inserting after section 10 the following new section:-

3   Section 11. (a) As used in this section, the following words shall have the following

4   meanings unless the context clearly requires otherwise:

5   "Algorithm", a specific procedure, set of rules, or order of operations designed to solve a

6   problem or make a calculation, classification, or recommendation.

7   "Artificial intelligence", computerized methods and tools, including but not limited to

8   machine learning and natural language processing, that act in a way that resembles human

9   cognitive abilities when it comes to solving problems or performing certain tasks.

10   "Automated decision system", any computer program, method, statistical model, or

11   process that aims to aid or replace human decision-making using algorithms or artificial

12   intelligence. These systems can include analyzing complex datasets about human populations

13   and government services or other activities to generate scores, predictions, classifications, or

14   recommendations used by agencies to make decisions that impact human welfare.

15   "Commonwealth of Massachusetts or "Massachusetts office", any agency, constitutional

16   office, department, board, commission, bureau, division or authority of the commonwealth, or of

17   any political subdivision thereof, or of any authority established by the general court to serve a

18   public purpose.

19   "Identified group characteristic", age, race, creed, color, religion, national origin, gender,

20   disability, sexual orientation, marital status, veteran status, receipt of public assistance, economic

21   status, location of residence, or citizenship status.

22   "Source code", the structure of a computer program that can be read and understood by

23   people.

24   "Training data", the data used to inform the development of an automated decision

25   system and the decisions or recommendations it generates.

26   (b) There shall be a commission within the executive office of technology services and

27   security for the purpose of studying and making recommendations relative to the use by the

28   commonwealth of automated decision systems that may affect human welfare, including but not

29   limited to the legal rights and privileges of individuals. The commission shall evaluate

30   government use of automated decision systems in the commonwealth and make

31   recommendations to the legislature regarding appropriate regulations, limits, standards and

32   safeguards. The commission shall:

33   (i) undertake a complete and specific survey of all uses of automated decision systems by

34   the commonwealth of Massachusetts and the purposes for which such systems are used,

35   including but not limited to:

36   (a) the principles, policies, and guidelines adopted by specific Massachusetts offices to

37   inform the procurement, evaluation, and use of automated decision systems, and the procedures

38   by which such principles, policies, and guidelines are adopted;

39   (b) the training specific Massachusetts offices provide to individuals using automated

40   decision systems, and the procedures for enforcing the principles, policies, and guidelines

41   regarding their use;

42   (c) the manner by which Massachusetts offices validate and test the automated decision

43   systems they use, and the manner by which they evaluate those systems on an ongoing basis,

44   specifying the training data, input data, systems analysis, studies, vendor or community

45   engagement, third-parties, or other methods used in such validation, testing, and evaluation;

46   (d) matters related to the transparency, explicability, auditability, and accountability of

47   automated decision systems in use in Massachusetts offices, including information about their

48   structure; the processes guiding their procurement, implementation and review; whether they can

49   be audited externally and independently; and the people who operate such systems and the

50   training they receive;

51   (e) the manner and extent to which Massachusetts offices make the automated decision

52   systems they use available to external review, and any existing policies, laws, procedures, or

53   guidelines that may limit external access to data or technical information that is necessary for

54   audits, evaluation, or validation of such systems; and

55   (f) procedures and policies in place to protect the due process rights of individuals

56   directly affected by Massachusetts offices' use of automated decision systems, including but not

57   limited to public disclosure and transparency procedures;

58   (ii) consult with experts in the fields of machine learning, algorithmic bias, algorithmic

59   auditing, and civil and human rights;

60   (iii) examine research related to the use of automated decision systems that directly or

61   indirectly result in disparate outcomes for individuals or communities based on an identified

62   group characteristic;

63   (iv) conduct a survey of technical, legal, or policy controls to improve the just and

64   equitable use of automated decision systems and mitigate any disparate impacts deriving from

65   their use, including best practices, policy tools, laws, and regulations developed through research

66   and academia or proposed or implemented in other states and jurisdictions;

67   (v) examine matters related to data sources, data sharing agreements, data security

68   provisions, compliance with data protection laws and regulations, and all other issues related to

69   how data is protected, used, and shared by agencies using automated decision systems, in

70   Massachusetts and in other jurisdictions;

71   (vi) examine matters related to automated decision systems and intellectual property,

72   such as the existence of non-disclosure agreements, trade secrets claims, and other proprietary

73   interests, and the impacts of intellectual property considerations on transparency, explicability,

74   auditability, accountability, and due process; and

75   (vii) examine any other opportunities and risks associated with the use of automated

76   decision systems by Massachusetts offices.

77   (c) The commission shall consist of the secretary of technology services and security or

78   the secretary's designee, who shall serve as chair; 1 member of the Senate, designated by the

79   Senate president; 1 member of the house of representatives, designated by the speaker of the

80   house of representatives; the house and senate chairs of the joint committee on state

81   administration and regulatory oversight; the chief justice of the supreme judicial court or a

82   designee; the attorney general or a designee; the state auditor or a designee; the inspector general

83   or a designee; the secretaries of the Executive Office of Public Safety and Security, and

84   Executive Office of Health and Human Services, or their designees; the Commissioner of the

85   Department of Children and Families, or their designee; the chief counsel of the committee for

86   public counsel services or a designee; the chief legal counsel of the Massachusetts Bar

87   Association or a designee; the executive director of the American Civil Liberties Union of

88   Massachusetts or a designee; 6 representatives from academic institutions in the Commonwealth

89   who shall be experts in (i) artificial intelligence and machine learning, (ii) data science and

90   information policy, (iii) social implications of artificial intelligence and technology; or (iv)

91   technology and the law, 3 to be appointed by the House Chair and 3 to be appointed by the

92   Senate Chair of the joint committee on advanced information technology and cybersecurity; the

93   executive director of the Massachusetts Law Reform Institute or a designee; 1 representative

94   from the National Association of Social Workers; 1 representative from the NAACP; 5

95   representatives from the Massachusetts Technology Collaborative; and 1 representative from the

96   Massachusetts High Technology Council.

97   (d) Members of the commission shall be appointed within 45 days of the effective date of

98   this act. The commission shall meet at the call of the chair based on the commission's workload

99   but not fewer than 10 times per calendar year. The commission shall hold at least one public

100 hearing to solicit feedback from Massachusetts residents and other interested parties. The

101 commission's meetings shall be broadcast over the internet.

102   (e) The commission shall submit an annual report by December 31 to the governor, the

103 clerks of the house of representatives and the senate, and the joint committee on advanced

104 information technology and cybersecurity. The report will be a public record and it shall include,

105 but not be limited to:

106   (i) a description of the commission's activities and any community engagement

107 undertaken by the commission;

108   (ii) the commission's findings, including but not limited to the publication of a list of all

109 automated decision systems in use in Massachusetts offices, the policies, procedures, and

110 training guidelines in place to govern their use, and any contracts with third parties pertaining to

111 the acquisition or deployment of such systems; and

112   (iii) any recommendations for regulatory or legislative action, including but not limited to

113   the following:

114   (a) recommendations about areas where Massachusetts offices ought not to use

115   automated decision systems;

116   (b) recommendations about whether and how existing state laws, regulations, programs,

117   policies, and practices related to the use of automated decision systems should be amended to

118   promote racial and economic justice, equity, fairness, accountability, and transparency;

119   (c) recommendations for the development and implementation of policies and procedures

120   that may be used by the state for the following purposes:

121   (i) to allow a person affected by a rule, policy, or action made by, or with the assistance

122   of, an automated decision system, to request and receive an explanation of such rule, policy, or

123   action and the basis therefor;

124   (ii) to determine whether an automated decision system disproportionately or unfairly

125   impacts a person or group based on an identified group characteristic;

126   (iii) to determine prior to or during the procurement or acquisition process whether a

127   proposed agency automated decision system is likely to disproportionately or unfairly impact a

128   person or group based on an identified group characteristic;

129   (iv) to address instances in which a person or group is harmed by an agency automated

130   decision system if any such system is found to disproportionately impact a person or group on

131   the basis of an identified group characteristic; and

132   (v) to make information publicly available that, for each automated decision system, will

133   allow the public to meaningfully assess how such system functions and is used by the state,

134   including making technical information about such system publicly available.