Trends in U.S. State AI Legislation

A Look at How U.S. State Policymakers Are Approaching Artificial Intelligence Regulation

Preview of Future of Privacy Forum Legislative Report

A New Class Of Legislation Seeks To Establish Obligations And Individual Rights To Promote The Safe, Fair, And Transparent Use Of Artificial Intelligence (AI) In Significant Decisionmaking Processes.

This Preview highlights key findings from FPF's forthcoming report "*U.S. State AI Legislation: A Look at How U.S. State Policymakers Are Approaching Artificial Intelligence Regulation*," which delves into the trends of these legislative efforts, examines core questions and issues, and offers key considerations for policymakers as they navigate the complexities of AI policy.

The Risk-Based Approach To Regulating AI Systems Is Most Prevalent Across State Legislative Proposals, Focusing on AI Systems Used in Consequential Decisions that Impact Individuals.

Regulatory Focus:	**Developers** and **Deployers** of AI systems or tools used in **high-risk** decision-making contexts that **significantly impact** individuals' livelihood and life opportunities.
Definitional Framework	"**High-risk artificial intelligence system**" or "**automated decisionmaking tool**," defined generally as AI used in "**consequential decisions**," which typically includes the provision or denial of: • Education enrollment or an education opportunity; • Employment or an employment opportunity; • Housing; • A financial or lending service; • An essential government service; • Healthcare services; • Insurance; and • Legal services The decision must have a **legal or similarly significant effect**. Depending on the approach, the AI must play *some* factor in the decisionmaking process, ranging from **facilitating** the decisionmaking process, being a **substantial factor** in the decision, or being a **controlling factor** in the decision.

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Most Frameworks Have Provisions Regarding Algorithmic Discrimination and Create Role-Specific Obligations For Developers And Deployers.

Most Risk-Based Approaches Utilize One Of The Following Provisions Regarding Algorithmic Discrimination.

(1) Prohibition Against Algorithmic Discrimination: California AB 2930 would prohibit deployers from using an automated decision tool that results in algorithmic discrimination, and prohibits developers from making available an automated decision tool if an impact assessment "identifies a reasonable risk of algorithmic discrimination."

(2) Duty of Care: Under the Colorado AI Act, both developers and deployers are subject to a duty to use "reasonable care" to protect consumers from "any known or reasonably foreseeable risks of algorithmic discrimination from the intended and contracted uses" of the high-risk AI system. Under this framework, developers and deployers maintain a rebuttable presumption of using reasonable care under this provision if they satisfy the obligations of the relevant statute.

There are Typically Role-Specific Responsibilities That Reflect The Distinct Roles And Capabilities Held By Developers And Deployers.

Developers	Deployers
Generally, the persons or entities that are developing, or creating, an AI system.	**Generally, the persons or entities that are deploying or using an AI system.**
- Determine the purpose and scope of the AI system; - Gather and preprocess data to train the model; - Choose or design the appropriate algorithm or model architecture; - Train the model; - Conduct necessary evaluation and optimization.	- Integrate the AI system into the existing infrastructure; - Monitor the system for any issues or necessary updates; - Manage the deployment pipeline, including version control and rollbacks. - Interface with consumers or users subject to AI decisions

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Common Developer and Deployers Obligations	
Transparency	**Notice to Public:** Requires developers and deployers to provide publicly available information about AI systems developed and used. **Notice To Individuals:** Requires deployers to provide certain information to people subject to automated decision-making technology or consumers interacting with AI products, such as what the system is used for and how it works.
Assessments and Documentation	**Risk/Impact Assessment:** Requires a developer and/or a deployer to conduct an assessment regarding a system's purpose, limitations, and safeguards, and document whether and to what extent an AI system poses a risk of harm to individuals. **Documentation Between Parties:** Requires developers to share information with deployers about an AI tool, such as the purpose and limitations, how it was created, testing conducted, and risk mitigation measures. Developers may be required to also assist deployers in their obligations. Deployers may also be required to report instances of algorithmic discrimination identified.
AI Governance Programs	**AI Governance Programs:** Requires developers and/or deployers to create a structured or semi-structured framework of policies, procedures, and controls designed to oversee and manage the development, deployment, and use of AI within an organization.

Common Consumer Rights Include Rights Of Notice And Explanation, Correction, And To Appeal Or Opt-Out Of Automated Decisions.

Right to Notice and Explanation	Adverse Decision Notice
Most risk-based approaches acknowledge the need for individuals to **know that an automated system** is being used before it is used on them, how and why it is being used, and/or when an	**If an adverse decision is made by an AI system**, some proposals and sector-specific laws require additional information to be disclosed to the individual that explains the decision.

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adverse decision was rendered by the automated system.

Right of Correction

Because automated decisionmaking systems can make errors or rely on incorrect or outdated data, some proposals require deployers to provide individuals an opportunity to correct any incorrect personal data processed in an automated decision system, if an adverse decision was rendered.

Right to Opt-Out	Right to Appeal
Proposals with opt-out rights allow individuals to request not to be subject to a covered decision made by an automated system before the system is deployed against them.	Proposals with a right to appeal allow individuals, after an adverse decision is reached, to request that the adverse result rendered by an automated system be reviewed by a human.

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Additional Considerations Discussed in the Report

- **Unique Regulatory Challenges for Civil Rights Law and the First Amendment;**
- **Promoting Interoperability;**
- **Investigation and Enforcement Trends;**
- **Small Business and Public Interest Exceptions;**
- **Specific Approaches to Generative AI, General-Purpose AI, Foundation Models;**
- **Incorporation of AI Governance in New or Updated Data Privacy Laws;**
- **And More…**

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The forthcoming Report will be debuted Fall 2024. If anyone would like an email alert for the Report's publication and launch event, or discuss the Report's findings, please contact **Tatiana Rice** (trice@fpf.org).