

Colorado AI Act (SB 24-205)

Coalition Letter

★ Signatories from Colorado-Based Organizations

- ACLU of Colorado
- AFT-Colorado
- Colorado AFL-CIO
- Colorado Fiscal Institute
- Teamsters Local 455
- Towards Justice

★ Signatories from National Organizations

- American Association of People with Disabilities
- Center for American Progress
- Center for Democracy & Technology
- Consumer Federation of America
- Consumer Reports
- Electronic Privacy Information Center
- TechEquity Action



Colorado AI Act (SB 24-205)

The things we like

- ★ **Broad definition of covered systems**, making it harder for companies to evade the law;
- ★ **Direct, proactive notice** to consumers subjected to AI-driven decisions about the purpose of the system and the role it plays in the decision process;
- ★ **Impact assessments** that test AI decision systems for discrimination risks and document the AI decision system's purpose, intended uses, data used and produced, performance, and post-deployment monitoring;
- ★ A **right to an explanation** of the principal reasons behind decisions and a **right to appeal** such decisions to a human decision-maker; and
- ★ Giving the **Attorney General authority to issue rules** interpreting and clarifying the law.



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Changes that must be made to ensure the law is sound

- ★ **Building on existing civil rights protections** by prohibiting the sale or use of discriminatory AI decision systems;
- ★ **Expanding the law's transparency provisions** so that consumers understand why companies are using AI decision systems and what these tools measure and how, including requiring explanations to be actionable;
- ★ **Strengthening impact assessment provisions** to require companies to test AI decision systems for validity and the risk that they violate consumer protection, labor, civil rights, and other laws;
- ★ **Eliminating the many loopholes** that exclude numerous consumers, workers, and companies from the law's protections and obligations; and
- ★ **Strengthening enforcement** by giving consumers and local district attorneys the right to seek redress in court when companies fail to comply with the law.



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Definition of covered systems

★ ***Broad definition of covered systems, making it harder for companies to evade the law;***

(a) "Substantial factor" means a factor that:

(I) Assists in making a consequential decision;

(II) Is capable of altering the outcome of a consequential decision; and

(III) Is generated by an artificial intelligence system.

(b) "Substantial factor" includes any use of an artificial intelligence system to generate any content, decision, prediction, or recommendation concerning a consumer that is used as a basis to make a consequential decision concerning the consumer.



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Definition of covered systems

- ★ **Broad definition of covered systems**, making it harder for companies to evade the law;
- ★ Most public interest groups would prefer a broader definition that covers any use of an automated system that influences consequential decisions, such as the definition of “automated decision system” from recently enacted California AB 2885:

*a computational process derived from machine learning, statistical modeling, data analytics, or artificial intelligence that issues simplified output, including a score, classification, or recommendation, that is **used to assist or replace human discretionary decisionmaking** and materially impacts natural persons.*



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Definition of covered systems

★ ***Broad definition of covered systems, making it harder for companies to evade the law;***

★ Or from Rep. Capriglione's bill in Texas:

(6) "Contributing factor" means a factor intended:

(A) to be considered solely or with other criteria;

or

(B) to overrule conclusions from other factors in making a consequential decision or altering the outcome of a consequential decision.

★ So note that if we reopen the definition of AI or covered decisions, we'll be placing these broader proposals on the table



Why “Controlling Factor” (or a narrower definition of “Substantial Factor”) Would Eviscerate the Law

- (1) A fundamental issue for consumer/labor groups is that people often don’t know which companies are using automated decision systems (ADSs), much less how those companies are using them.
- (2) Companies have strong incentives to keep ADS use hidden
 - (a) AI-driven decisions are deeply unpopular with consumers and workers
 - (b) Maintains their information advantage
 - (c) Avoids regulatory scrutiny under civil rights and consumer protection laws
 - (d) If tool is ineffective, to keep the outside world from finding out
- (3) Consequently, companies are likely to take advantage of any narrow definitions or other loopholes in ADS laws that give them discretion to wiggle out of ADS disclosure requirements which would allow companies to ignore such laws.
- (4) The only way to avoid this policy failure is to include ironclad disclosure obligations backed by strong, loophole-free enforcement provisions that prevent ADS developers and deployers from using their information advantage to avoid accountability.



A cautionary tale: NYC's AI Hiring Ordinance

- ★ NYC passed a hiring ADS ordinance that went into effect last year--[but a detailed study by academic and public interest researchers](#) showed that companies have almost totally ignored it
- ★ Problem is that the ordinance applies to only to ADSs that effectively replace human decision-making or otherwise dominate the decision process (combined with weak enforcement)
- ★ The law's standard basically allows companies to decide for themselves whether their ADS use triggers the law's disclosure requirements
 - Employers might say that ADS output is one factor among many and that humans have final say--even if, in reality, the hiring managers are actually just rubber stamping or deferring to ADS "recommendations."
 - Remember: outsiders usually have no way of knowing whether a company is using an ADS unless the company discloses it
- ★ Trade secret exemptions create a similar loophole



Why “Controlling Factor” (or a narrower definition of “Substantial Factor”) Would Eviscerate the Law

★ Failing to pair strong transparency with strong definitions creates a catch-22: Once a company decides that it needn’t disclose an ADS’s existence, the outside world may not even be aware of it. Thus, no one will be able to challenge the company’s behind-closed-doors determination that the ADS is exempt from disclosure.

★ Provisions that give companies discretion in deciding whether and what to disclose is thus tantamount to giving companies the unilateral ability to opt out of complying with ADS laws (same if enforcement provisions aren’t strong enough to compel compliance)



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Improvements needed to ensure the law is sound

- ★ ***Building on existing civil rights protections*** by prohibiting the sale or use of discriminatory AI decision systems;
- ★ The AI Law currently creates only a duty of care
- ★ But the country's – and Colorado's – approach to discrimination is to prohibit it, regardless of whether “care” was taken to prevent it.
 - The Supreme Court said 50 years ago that there is no intent requirement for discrimination
- ★ Having a mere “duty of care” sends a signal that ADSs are somehow going to be held to a laxer standard for discrimination--precisely the wrong message since a single biased AI system could violate the rights of thousands (or millions) of consumers and workers



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Improvements needed to ensure the law is sound

★ ***Building on existing civil rights protections by prohibiting the sale or use of discriminatory AI decision systems;***

- Section 6-1-1703(1) redline (developers):

(1) On and after February 1, 2026, a developer ~~of~~shall not sell, distribute, or otherwise make available to deployers a high-risk artificial intelligence system ~~shall use reasonable care to protect consumers from any known or reasonably foreseeable risks of that results in~~ algorithmic discrimination ~~arising from the intended and contracted uses of the high-risk artificial intelligence system. In any enforcement action brought on or after February 1, 2026, by the attorney general pursuant to section 6-1-1706, there is a rebuttable presumption that a developer used reasonable care as required under this section if the developer complied with this section and any additional requirements or obligations as set forth in rules promulgated by the attorney general pursuant to section 6-1-1707.~~



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★ ***Building on existing civil rights protections*** by prohibiting the sale or use of discriminatory AI decision systems;

- Section 6-1-1704(1) redline (deployers):

(1) On and after February 1, 2026, a deployer of a high-risk artificial intelligence system shall ~~use reasonable care to protect consumers from any known or reasonably foreseeable risks of algorithmic discrimination. In any enforcement action brought on or after February 1, 2026, by the attorney general pursuant to section 6-1-1706, there is a rebuttable presumption that a deployer of not use a high-risk artificial intelligence system used reasonable care as required under this section if the deployer complied with this section and any additional requirements or obligations as set forth in rules promulgated by the attorney general pursuant to section 6-1-1707~~ in a manner that results in algorithmic discrimination.



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- ★ *Fleshing out the law's transparency provisions so that consumers understand why companies are using AI decision systems and what these tools measure and how*
- ★ Right now, the notice that consumers and workers receive is very barebones, and the language leaves lots of room for companies to provide notice that fails to tell consumers how AI systems will make their decisions/recommendations
- ★ Improved upfront notice is especially essential for individuals with disabilities
- ★ **Our proposals only call for information that ADS vendors routinely provide to prospective clients (deployers)**



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★ ***Fleshing out law's transparency provisions*** so that consumers understand why companies are using AI decision systems and what these tools measure and how...

○ Redline: Add the following to specify contents of the “plain-language description”:

- (i) A description of the personal characteristics or attributes that the system will measure or assess;
- (ii) The method by which the system measures or assesses those attributes or characteristics;
- (iii) How those attributes or characteristics are relevant to the consequential decisions for which the system should be used;
- (iv) Any human components of such system;
- (v) How any automated components of such system are used to inform such consequential decision; and
- (vi) A direct link to a publicly accessible page on the deployer's website that contains a plain-language description of the logic used in the system, including the key parameters that affect the output of the system; the system's outputs; the type(s) and source(s) of data collected from natural persons and processed by the system when it is used to make, or assists in making, a consequential decision; and the results of the most recent impact assessment, or an active link to a webpage where a consumer can review those results



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- ★ ***Fleshing out the law's transparency provisions ...including requiring explanations to be actionable***
- ★ Explanations should be required to be actionable when possible, similar to explanations Minnesota's consumer data privacy law
 - Minnesota's privacy law provides consumers with an explanation for profiling decisions, as well as to "be informed of what actions the consumer might have taken to secure a different decision and the actions that the consumer might take to secure a different decision in the future"
- ★ If the decision *cannot* be explained in this manner, then companies should not be allowed to use the system.



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★ ***Fleshing out the law's transparency provisions ...including requiring explanations to be actionable;***

(A) A specific and accurate explanation that identifies the principal ~~reason~~ or ~~reasons for~~ factors and variables that led to the consequential decision, including:

(iA) The degree to which, and manner in which, the high-risk artificial intelligence system contributed to the consequential decision;

(iiB) The ~~typesource or sources~~ of ~~the~~ data ~~that was~~ processed by the high-risk artificial intelligence system, ~~and~~

(iii) a plain language explanation of how the consumer's personal data informed these principal factors and variables when the high-risk artificial intelligence system made, or was a substantial factor in making, the consequential decision; ~~and~~



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- ★ ***Strengthening impact assessment provisions*** to require companies to test AI decision systems for validity and the risk that they violate consumer protection, labor, civil rights, and other laws.
- ★ AI systems can cause a wide range of harms beyond discrimination
 - Unfair or deceptive trade practices
 - Limitations on accessibility
 - Invasions of privacy
 - Targeting union members or organizers
 - Algorithmic management systems that threaten workers' health and safety
 - Consumers/workers being denied economic opportunities based on erroneous information or flawed inferences
 - This alone was the main motivation for consumer credit disclosure laws



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- ★ **Strengthening impact assessment provisions** to require companies to test AI decision systems for validity and the risk that they violate consumer protection, labor, civil rights, and other laws;
 - Redline of section 6-1-1703(3)(b)(II):

(A) **Algorithmic** discrimination and, if so, the nature of the algorithmic discrimination and the steps that have been taken to mitigate the risks;

(B) **Limits on accessibility for individuals who are pregnant, breastfeeding, or disabled, and, if so, what reasonable accommodations the deployer may provide that would mitigate any such limitations on accessibility;**

(C) **Any unfair trade or deceptive trade practice under section 105 of part 1 of article 1 of title 6;**

(D) **Any violation of state or federal labor laws, including laws pertaining to wages, occupational health and safety, and the right to organize; or**

(E) **Any physical or other intrusion upon the solitude or seclusion, or the private affairs or concerns, of consumers if such intrusion (i) would be offensive to a reasonable person, and (ii) may be redressed under the laws of this state.**



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- ★ ***Eliminating the many loopholes*** that exclude numerous consumers, workers, and companies from the law's protections and obligations.
- ★ We're ok with exemptions that carve out things that truly fall outside the intent and spirit of the law, but not exemptions that companies could exploit to evade the law's requirement for things it is intended to cover
- ★ Many of the exemptions appear to be pulled from the Connecticut SB 2 and the EU Act--both of which sweep cover *far* more applications of AI than SB 24-205 does.
 - Many appear irrelevant to decision-making AI
 - Others are worrying vague or overbroad



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Improvements needed to ensure the law is sound

- ★ *Eliminating the many loopholes that exclude numerous consumers, workers, and companies from the law's protections and obligations.*

~~(1) An artificial intelligence system if the artificial intelligence system is intended to:~~

~~(A) Perform a narrow procedural task; or~~

~~(B) Detect decision-making patterns or deviations from prior decision-making patterns and is not intended to replace or influence a previously completed human assessment without sufficient human review; or~~

~~(4) Nothing in this part 17 imposes any obligation on a developer, a deployer, or other person that adversely affects the rights or freedoms of a person, including the rights of a person to freedom of speech or freedom of the press that are guaranteed in:~~

~~(a) The first amendment to the United States constitution; or~~

~~(b) Section 10 of article II of the state constitution.~~



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- ★ ***Eliminating the many loopholes*** that exclude numerous consumers, workers, and companies from the law's protections and obligations.
- ★ The small business exemption also sweeps too broadly
 - Far higher threshold (50 employees) than the exemptions for other civil rights, labor, and consumer protection laws
 - Should also not apply if they use AI decision systems on a large number of consumers
- ★ Right to appeal has an exemption for when not providing an opportunity to appeal is “not in the best interest of the consumer”
 - Vague--but more importantly, it's not clear why the company rather than the consumer would be better-placed to determine what's in the consumer's own best interest
- ★ Right to cure is also too broad--should apply only to inadvertent violations affecting few consumer/workers



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- ★ ***Strengthening enforcement*** by giving consumers and local district attorneys the right to seek redress in court when companies fail to comply with the law.
- ★ Too many laws have failed because of weak enforcement
 - Already, we are seeing that privacy laws across the country are woefully underenforced. There's no need to make this mistake again
- ★ Private right of action is needed
 - Current law makes violations of the act an “unfair trade practice,” but it strips away the most effective enforcement mechanisms under those laws by taking away consumers’ right to bring a civil action



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- ★ ***Strengthening enforcement*** by giving consumers and local district attorneys the right to seek redress in court when companies fail to comply with the law.
- ★ We are proposing:
 - Eliminating the language saying that the AG has “exclusive” enforcement authority
 - Revising current 6-1-1706(2) to read: “a violation of the requirements established in this part 17 constitutes an unfair trade practice pursuant to section 6-1-105 (1)(hhhh) **and are enforceable through the provisions of part 1 of this article relating to unfair or deceptive trade practices.**”
 - Narrowing the right to cure to cases where the company demonstrates that “the violation was inadvertent, affected fewer than 100 consumers, and could not have been discovered through reasonable diligence”
 - Eliminating the language saying that the law provides no basis for a private right of action



Some final things to bear in mind

- ★ Labor and consumer groups opposed the original version of the bill--both here in Colorado and related bills in other states
 - Many of the provisions industry groups are seeking to eliminate or change are actually compromises that labor/consumer groups aren't thrilled with either
 - If those provisions are re-opened, labor and consumer groups will be pushing for changes in the other direction--because the bill still didn't land where we think it needs to be



Some final things to bear in mind



Example: Trade secret exemption

- Original version allowed companies to withhold disclosure of anything they deem a “trade secret” or information that they otherwise consider “confidential or proprietary”
- This was a red line for public interest groups--we don't think the bill calls for public disclosure or agency filing of anything that could plausibly be considered a trade secret, and companies routinely claim ordinary business info is a “trade secret”
- “Confidential or proprietary” was even worse--vague and would allow companies to withhold anything they subjectively decide to designate as confidential
- **Compromise: Exemption for trade secrets only, and companies have to alert consumers when they withhold info on that basis**
- If that provision is revisited, we'll be pushing to eliminate it completely, since we still think it's unnecessary



Some final things to bear in mind

- ★ We should try not to get bogged down on things that we don't like in isolation, but that don't substantively affect the bill
- ★ Example: “Artificial intelligence system” by itself (as opposed to “high-risk artificial intelligence system”) only appears once in the law: telling consumers when they are interacting with an AI system if it wouldn't otherwise be obvious
 - Unless the objection is to *that* requirement, makes little sense to haggle over this definition
 - The important definition is “high-risk AI system”--and most public interest groups would prefer that be replaced with the phrase “automated decision system” anyway because that more accurately describes what we think should be covered

