AI Impact Task Force Proposals to Improve SB24-205

Mark Champoux
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For Colorado Technology Association and its partners
TechNet and Colorado Chamber of Commerce

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June Statement from Governor, AG, and Senator Rodriguez

- Refining the definition of artificial intelligence systems to the most high-risk systems in order to align the definition with federal measures and other frameworks established by states with substantial technology sectors;
- Focusing regulation on the developers of these high risk systems rather than those smaller companies that may deploy AI within third-party software that they use in the ordinary course of business;
- Shifting from a proactive disclosure regime to the traditional enforcement regime managed by the Attorney General investigating matters after the fact;
- Making clear that the consumer right of appeal refers to the ability of consumers to appeal to the Colorado Attorney General about matters they believe warrant investigation, related to any discrimination resulting from the use of Artificial Intelligence. Moreover, consumers also have the right to bring a matter to the attention of the Colorado Civil Rights Commission relating to alleged discrimination; and
- Considering other measures the state can take to become the most welcoming environment for technological innovation while preventing discrimination, especially for early-stage companies.

Key Proposals

- Tailor and clarify scope of law through improvements to definitions of "algorithmic discrimination", "high risk AI system", "consequential decision", and "substantial factor"

- Redirect consumer right to appeal into opportunity to report concerns to AG to help determine investigations

- Restore opportunity to cure

- Provide that disclosures to AG are only upon reasonable cause to investigate a violation of the statute

- Remove problematic mandatory self-reporting requirement

Algorithmic Discrimination

(1) (a) "ALGORITHMIC DISCRIMINATION" MEANS ANY ~~CONDITION IN WHICH THE~~ USE OF AN ARTIFICIAL INTELLIGENCE SYSTEM WHICH RESULTS IN ~~AN UNLAWFUL DIFFERENTIAL TREATMENT OR IMPACT THAT DISFAVORS AN INDIVIDUAL OR GROUP OF INDIVIDUALS~~ A VIOLATION OF STATE OR FEDERAL ANTI-DISCRIMINATION LAWS, INCLUDING FEDERAL OR STATE STATUTES PROHIBITING DISCRIMINATION ON THE BASIS OF ~~THEIR ACTUAL OR PERCEIVED AGE~~RACE, COLOR, SEX, DISABILITY, ~~ETHNICITY, GENETIC INFORMATION, LIMITED PROFICIENCY IN THE ENGLISH LANGUAGE,~~ NATIONAL ORIGIN, ~~RACE, RELIGION, REPRODUCTIVE HEALTH, SEX, VETERAN STATUS,~~ CITIZENSHIP STATUS OR OTHER CLASSIFICATION PROTECTED UNDER THE LAWS OF THIS STATE OR FEDERAL LAW.

Consequential Decision

(3) "CONSEQUENTIAL DECISION" MEANS A DECISION THAT HAS A MATERIAL LEGAL OR SIMILARLY SIGNIFICANT EFFECT ON THE PROVISION OR DENIAL TO ANY CONSUMER OF, OR THE COST OR TERMS OF:

(a) ACCESS OR ADMISSION TO, OR ENROLLMENT AT, AN EDUCATIONAL INSTITUTIONEDUCATION ENROLLMENT OR AN EDUCATION OPPORTUNITY;

(b) EMPLOYMENT OR AN EMPLOYMENT OPPORTUNITY, WHERE THE DECISION HAS A MATERIAL LEGAL OR SIMILARLY SIGNIFICANT EFFECT WITH RESPECT TO THE CONSUMER'S HIRING, PROMOTION, TERMINATION, OR PAY;

(c) A FINANCIAL OR LENDING SERVICE;

(d) AN ESSENTIAL GOVERNMENT SERVICE;

(e) HEALTH-CARE SERVICES;

(f) HOUSINGTHE PURCHASE OR RENTING OF A PRIMARY RESIDENCE; OR

(g) INSURANCE; OR

(h) A LEGAL SERVICE

High Risk AI System

(9) (a) "HIGH-RISK ARTIFICIAL INTELLIGENCE SYSTEM" MEANS ANY ARTIFICIAL INTELLIGENCE SYSTEM THAT, WHEN DEPLOYED, MAKES, OR IS A SUBSTANTIAL FACTOR IN MAKING, A CONSEQUENTIAL DECISION.

(b) "HIGH-RISK ARTIFICIAL INTELLIGENCE SYSTEM" DOES NOT INCLUDE:

(I) AN ARTIFICIAL INTELLIGENCE SYSTEM IF THE ARTIFICIAL INTELLIGENCE SYSTEM IS INTENDED TO:

(A) PERFORM A NARROW PROCEDURAL TASK; ~~OR~~

(B) IMPROVE THE RESULT OF A PREVIOUSLY COMPLETED HUMAN ACTIVITY;

(~~B~~C) PERFORM A PREPARATORY TASK TO AN ASSESSMENT THAT IS RELEVANT TO A CONSEQUENTIAL DECISION; OR

(D) DETECT DECISION-MAKING PATTERNS OR DEVIATIONS FROM ~~PRIOR~~PREEXISTING DECISION-MAKING PATTERNS AND IS NOT INTENDED TO REPLACE OR INFLUENCE A PREVIOUSLY COMPLETED HUMAN ASSESSMENT WITHOUT SUFFICIENT HUMAN REVIEW; OR

(II) THE FOLLOWING TECHNOLOGIES, ~~UNLESS THE TECHNOLOGIES, WHEN DEPLOYED, MAKE, OR ARE A SUBSTANTIAL FACTOR IN MAKING, A CONSEQUENTIAL DECISION~~:

(A) ANTI-FRAUD TECHNOLOGY ~~THAT DOES NOT USE FACIALRECOGNITION TECHNOLOGY~~;

. . .

(R) TECHNOLOGY THAT COMMUNICATES WITH CONSUMERS IN NATURAL LANGUAGE FOR THE PURPOSE OF PROVIDING USERS WITH INFORMATION, MAKING REFERRALS OR RECOMMENDATIONS, AND ANSWERING QUESTIONS AND IS SUBJECT TO AN ~~ACCEPTED~~ACCEPTABLE USE POLICY THAT PROHIBITS GENERATING CONTENT THAT IS ~~DISCRIMINATORY~~UNLAWFUL OR HARMFUL~~;~~.

(S) DATA SECURITY SYSTEMS;

(T) SYSTEMS OR INFRASTRUCTURE OPTIMIZATION TOOLS; OR

(U) OTHER INTERNAL BUSINESS OPERATIONS TOOLS.

Redirect Consumer Right to Appeal

(b) ON AND AFTER FEBRUARY 1, 2026, A DEPLOYER THAT HAS DEPLOYED A HIGH-RISK ARTIFICIAL INTELLIGENCE SYSTEM TO MAKE, OR BE A SUBSTANTIAL FACTOR IN MAKING, A CONSEQUENTIAL DECISION CONCERNING A CONSUMER SHALL, IF THE CONSEQUENTIAL DECISION IS ADVERSE TO THE CONSUMER, PROVIDE TO THE CONSUMER:

(I) A STATEMENT DISCLOSING THAT AN ARTIFICIAL INTELLIGENCE SYSTEM WAS A SUBSTANTIAL FACTOR IN THE DECISION~~THE PRINCIPAL REASON OR REASONS FOR THE CONSEQUENTIAL DECISION, INCLUDING:~~ AND IDENTIFYING SUCH ARTIFICIAL INTELLIGENCE SYSTEM OR SYSTEMS; AND

(II) A STATEMENT INFORMING THE CONSUMER OF THEIR OPPORTUNITY TO REPORT TO THE ATTORNEY GENERAL CONCERNS ABOUT AN ADVERSE CONSEQUENTIAL DECISION, AS FURTHER DESCRIBED IN SECTION 6-1-1706(7).

~~(A) THE DEGREE TO WHICH, AND MANNER IN WHICH, THE HIGH-RISK ARTIFICIAL INTELLIGENCE SYSTEM CONTRIBUTED TO THE CONSEQUENTIAL DECISION;~~

~~(B) THE TYPE OF DATA THAT WAS PROCESSED BY THE HIGH-RISK ARTIFICIAL INTELLIGENCE SYSTEM IN MAKING THE CONSEQUENTIAL DECISION; AND~~

~~(C) THE SOURCE OR SOURCES OF THE DATA DESCRIBED IN SUBSECTION (4)(b)(I)(B) OF THIS SECTION;~~

~~(II) AN OPPORTUNITY TO CORRECT ANY INCORRECT PERSONAL DATA THAT THE HIGH-RISK ARTIFICIAL INTELLIGENCE SYSTEM PROCESSED IN MAKING, OR AS A SUBSTANTIAL FACTOR IN MAKING, THE CONSEQUENTIAL DECISION; AND~~

~~(III) AN OPPORTUNITY TO APPEAL AN ADVERSE CONSEQUENTIAL DECISION CONCERNING THE CONSUMER ARISING FROM THE DEPLOYMENT OF A HIGH-RISK ARTIFICIAL INTELLIGENCE SYSTEM, WHICH APPEAL MUST, IF TECHNICALLY FEASIBLE, ALLOW FOR HUMAN REVIEW UNLESS PROVIDING THE OPPORTUNITY FOR APPEAL IS NOT IN THE BEST INTEREST OF THE CONSUMER, INCLUDING IN INSTANCES IN WHICH ANY DELAY MIGHT POSE A RISK TO THE LIFE OR SAFETY OF SUCH CONSUMER.~~

Restore Opportunity to Cure

(3) EXCEPT AS PROVIDED IN SUBSECTION (5) OF THIS SECTION, THE ATTORNEY GENERAL SHALL, PRIOR TO INITIATING ANY ACTION FOR A VIOLATION OF ANY PROVISION OF SECTIONS [ABOVE], ISSUE A NOTICE OF VIOLATION TO THE DEVELOPER, DEPLOYER OR OTHER PERSON DESCRIBING WITH SPECIFICITY THE ALLEGED VIOLATION AND THE ACTIONS THAT MUST BE TAKEN BY THE RECIPIENT OF THE NOTICE TO CURE THE VIOLATION. IF THE DEVELOPER, DEPLOYER OR OTHER PERSON FAILS TO CURE SUCH VIOLATION NOT LATER THAN NINETY DAYS AFTER RECEIPT OF THE NOTICE OF VIOLATION, THE ATTORNEY GENERAL MAY BRING AN ACTION PURSUANT TO THIS SECTION.

Disclosures to AG Based on Reasonable Cause

(7) ON AND AFTER FEBRUARY 1,2026, WHEN THE ATTORNEY GENERAL HAS REASONABLE CAUSE TO BELIEVE THAT A DEVELOPER HAS VIOLATED ANY OF THE REQUIREMENTS OF THIS SECTION 6-1-1702, THE ATTORNEY GENERAL MAY REQUIRE THAT A DEVELOPER DISCLOSE TO THE ATTORNEY GENERAL, NO LATER THAN NINETY DAYS AFTER THE REQUEST AND IN A FORM AND MANNER PRESCRIBED BY THE ATTORNEY GENERAL, THE STATEMENT OR DOCUMENTATION DESCRIBED IN SUBSECTION (2) OF THIS SECTION. THE ATTORNEY GENERAL MAY EVALUATE SUCH

(9) ON AND AFTER FEBRUARY 1, 2026, WHEN THE ATTORNEY GENERAL HAS REASONABLE CAUSE TO BELIEVE THAT A DEPLOYER HAS VIOLATED ANY OF THE REQUIREMENTS OF THIS SECTION 6-1-1703, THE ATTORNEY GENERAL MAY REQUIRE THAT A DEPLOYER, OR A THIRD PARTY CONTRACTED BY THE DEPLOYER, DISCLOSE TO THE ATTORNEY GENERAL, NO LATER THAN NINETY DAYS AFTER THE REQUEST AND IN A FORM AND MANNER PRESCRIBED BY THE ATTORNEY GENERAL, THE RISK MANAGEMENT POLICY IMPLEMENTED PURSUANT TO SUBSECTION (2) OF THIS SECTION, THE IMPACT ASSESSMENT COMPLETED PURSUANT TO SUBSECTION (3) OF THIS SECTION, OR THE RECORDS MAINTAINED PURSUANT TO SUBSECTION (3)(f) OF THIS SECTION. THE ATTORNEY GENERAL MAY EVALUATE THE

Remove Requirement to Self-Report

~~(7) IF A DEPLOYER DEPLOYS A HIGH-RISK ARTIFICIAL INTELLIGENCE SYSTEM ON OR AFTER FEBRUARY 1, 2026, AND SUBSEQUENTLY DISCOVERS THAT THE HIGH-RISK ARTIFICIAL INTELLIGENCE SYSTEM HAS CAUSED ALGORITHMIC DISCRIMINATION, THE DEPLOYER, WITHOUT UNREASONABLE DELAY, BUT NO LATER THAN NINETY DAYS AFTER THE DATE OF THE DISCOVERY, SHALL SEND TO THE ATTORNEY GENERAL, IN A FORM AND MANNER PRESCRIBED BY THE ATTORNEY GENERAL, A NOTICE DISCLOSING THE DISCOVERY.~~

Proposals Subject to Further Review

- Substantial Factor

- Small business exceptions

- Scope of Developer disclosures to Deployers that go beyond intended or contracted uses of an AI system

Other Proposals

- Push effective date out to 2027

- Clarify/limit AG rule-making authority

- Clarify definition of "intentional and substantial modification"

- Clarify certain documentation and disclosure requirements

- Improve trade secrets protections

- Clarify that broadly recognized risk management frameworks, when implemented, satisfy risk management program requirements

Clarifications to Duty of Care

6-1-1702. Developer duty to avoid algorithmic discrimination -required documentation. (1) ON AND AFTER FEBRUARY 1, 2026, A DEVELOPER OF A HIGH-RISK ARTIFICIAL INTELLIGENCE SYSTEM SHALL USE REASONABLE CARE TO PROTECT CONSUMERS FROM ANY KNOWN ~~OR REASONABLY FORESEEABLE~~ RISKS OF 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 <u>SHALL BE DEEMED TO HAVE</u> 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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