WILLKIE FARR & GALLAGHER LLP

CLIENT ALERT

U.S. State AI Update: Utah Enacts First State Generative AI Transparency Law – California, Colorado and Connecticut Are Close Behind

May 8, 2024

AUTHORS

Daniel K. Alvarez | Laura E. Jehl | Briony Pollard | Susan Rohol
Kari Prochaska | Juan Sebastian Gomez[*]

On May 1, 2024, Utah's Artificial Intelligence (AI) Policy Act (the "AI Policy Act") took effect. The AI Policy Act is the first U.S. state law to impose transparency obligations on companies using generative artificial intelligence ("Gen AI"). Those obligations are particularly critical for any company or individual in a regulated industry, such as medicine or accounting. Penalties are up to $2,500 for each violation, and the law may be enforced by the Utah Division of Consumer Protection or the courts.

Other states, including Colorado, Connecticut and California, currently have transparency-focused AI bills making their way through the respective state legislatures that leverage concepts from the European Union Artificial Intelligence Act. Meanwhile, the Colorado Attorney General has adopted rules focused on the use of personal data in "automated processing," and the California Privacy Protection Agency (the "CPPA") is likewise moving forward with rulemaking related to "automated decision-making." This is in addition to numerous state laws that have created task forces to study government use of AI, as well as various state bills that govern the use of AI in employment decisions and prohibit deep fakes.

---

[*]   Admitted to the Colombian Bar only; practicing under the supervision of members of the New York Bar.

What's in the Utah AI Policy Act?

Utah's AI Policy Act includes the following key provisions:

1)   Gen AI Transparency Disclosures

The AI Policy Act is focused on the use of "generative artificial intelligence," which is defined as "an artificial system that: (i) is trained on data; (ii) interacts with a person using text, audio, or visual communication; and (iii) generates non-scripted outputs similar to outputs created by a human, with limited or no human oversight."[1]

The AI Policy Act requires that certain disclosures be made to individuals regarding their interactions with Gen AI, depending on the status of the entity. Specifically:

- When a business or person uses Gen AI to interact with an individual, the business or person is required to disclose that the individual is interacting with Gen AI only if the individual asks whether the interaction involves Gen AI. [2]

- When Gen AI is utilized in the provision of services of "regulated occupations" (e.g., those that require a license or state certification, from accountants and certain financial advisors, to physicians, dentists, and nurses), a prominent mandatory disclosure must be clearly and conspicuously provided.[3] Regulated occupation professionals must disclose either verbally (at the start of an exchange or conversation) or through an electronic message (before a written exchange) the use of Gen AI. [4]

- Penalties for violations are up to $2,500 for each violation—if each interaction with a consumer is a potential violation, the total liability for a company's non-compliance may be significant. Utah's Division of Consumer Protection may impose administrative fines or bring an action in court. Courts may also impose the fine, issue an injunction, order disgorgement of any money received in violation of the Act, or order payment of disgorged money to an injured person.

2)   AI Learning Lab and Regulatory Mitigation

The AI Policy Act also establishes the Artificial Learning Laboratory Program (the "Program"), which is designed to analyze and research the risk, benefits, impacts, and policy implications of AI technologies.[5] It also introduces the concept of "regulatory mitigation," which allows Program participants to develop and test AI technology while benefiting from limited

---

[1] S.B. 149 *Artificial Intelligence Amendments*, § 13-2-12(1)(a).

[2] Id. § 13-2-12(3).

[3] Id. § 13-2-12(1)(c).

[4] Id. § 13-2-12(5).

[5] Id. § 13-70-301(2).

liability that could arise from participation in the Program (e.g., a cure period before penalties may be assessed and reduced civil fines during the participation term).[6]

- Under the Program, to be eligible for regulatory mitigation, participants must meet certain requirements, including (1) technical expertise to develop the proposed AI technology; (2) sufficient financial resources to meet testing obligations; and (3) an effective plan to monitor identified risks from testing.[7]

- A regulatory mitigation agreement must specify (i) limitations on scope of the use of a participant's AI technology, including the number and type of users and geographic limitations; (ii) the safeguards to be implemented; and (iii) any regulatory mitigation granted to an applicant to the Program.[8]

3) Dedicated Policy Office and Learning Laboratory

The AI Policy Act also mandates the formation of the Office of Artificial Intelligence Policy, which assumes responsibility for (i) the creation and administration of the Program; (ii) consultation with stakeholders and businesses regarding regulatory proposals; and (iii) the establishment of rulemaking for participation, cybersecurity, data use, and consumer disclosures.[9]

What's Coming? A Preview of Other AI Legislation

While the AI Policy Act focuses on Gen AI tools, other states are proposing broader legislation that would potentially implicate all manner of AI use cases. The most prominent examples include AI bills proposed in Colorado and Connecticut, which focus on the use of high-risk AI systems to make decisions that affect individuals, including with respect to potential algorithmic discrimination. The two bills are very similar. Colorado's proposed legislation would require developers of high-risk AI systems to implement a risk management policy, conduct an impact assessment of the system (including how the deployer manages foreseeable risks of algorithmic discrimination), and notify users if the high-risk AI system is used to make a consequential decision about an individual.[10] Connecticut's AI bill primarily regulates high-risk AI systems, requiring developers of such systems to, among other things, use reasonable care to protect individuals from algorithmic discrimination.[11]

---

[6] Id. § 13-70-101(12).

[7] Id. § 13-70-303(1).

[8] Id. § 13-70-302(4).

[9] Id. § 13-70-201(3).

[10] SB 24-205, "*Concerning Consumer Protection in Interactions with Artificial Intelligence Systems*" State of Colorado General Assembly, 2024

[11] Senate Bill 2, "*An Act Concerning Artificial Intelligence*" File No. 188, State of Connecticut General Assembly, February Session, 2024

U.S. State AI Update

In California, there are AI-related efforts on both the legislative and regulatory fronts. For example, several AI bills related to transparency,[12] disclosure requirements for training data sets,[13] synthetic content,[14] and safety and security,[15] are quickly advancing in the state legislature. Likewise, in March 2024, the CPPA voted 3-2 in favor of advancing the eagerly awaited proposed regulations to address automated decision-making technology ("ADMT"). It is expected that the CPPA's formal rulemaking process regarding ADMT will likely begin in July 2024 and is anticipated to be finalized in March 2025.

If you have any questions regarding this client alert, please contact the following attorneys or the Willkie attorney with whom you regularly work.

Daniel K. Alvarez
202 303 1125
dalvarez@willkie.com

Laura E. Jehl
202 303 1056
ljehl@willkie.com

Briony Pollard
+44 203 580 4716
bpollard@willkie.com

Susan Rohol
310 855 3172
srohol@willkie.com

Kari Prochaska
312 728 9080
kprochaska@willkie.com

Juan Sebastian Gomez
212 728 3178
jgomez@willkie.com

[12] SB-942, "*California AI Transparency Act*" California State Senate, 2024

[13] AB-2013, "*Artificial Intelligence: training data transparency*" California State Assembly, 2024

[14] SB-970, "*Artificial Intelligence Technology*" California State Senate, 2024

[15] SB-1047, "*Safe and Secure Innovation for Frontier Artificial Intelligence Models Act*", California State Senate, 2024