LFC Requester:	Feliz Chavez

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO
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(Analysis must be uploaded as a PDF)

SECTION I: GENERAL INFORMATION
{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Date Prepared: January 15, 2025   *Check all that apply:*
Bill Number: HB 60   Original ___ x Correction ___
                                                             Amendment ___ Substitute ___

Sponsor: Christina Chandler

Short Title: Artificial Intelligence Act

Agency Name and Code Number: Administrative Office of District Attorneys - #264

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	**FY26**		

(Parenthesis ( ) indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	**FY26**	**FY27**		

(Parenthesis ( ) indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:

n/a
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

This bill is new material that creates the Artificial Intelligence Act.

Section 1 provides that the act may be cited to as the "Artificial Intelligence Act"

Section 2 provides sixteen comprehensive definitions for terms used in the Act. These terms include "algorithmic discrimination", "artificial intelligence system", "consequential decision", and "high-risk artificial intelligence system".

A high-risk artificial intelligence system is defined as one that "when deployed makes or is a substantial factor in making a consequential decision."
A high-risk artificial intelligence system does not include system intended to perform narrow procedural tasks or detect decision-making patterns and is not intended to replace or influence a previously completed human assessment without sufficient human review. Such a high-risk system also does not include a list of technologies such as antivirus, anti-malware, cyerbersecurity, span and robocall filtering, firewalls, and data storage unless these technologies make or are a substantial factor in making a consequential decision when deployed
A "consequential decision" is a decision that has a "material legal or similarly significant effect on the provision or denial to a consumer regarding education enrollment, employment, financial or lending services, health care services, housing, insurance or legal services.
"Algorithmic discrimination" is a condition in which the use of an artificial intelligence system results in "unlawful differential treatment or impact that disfavors a person on the basis of the person's actual or perceived age, color, disability, ethnicity, gender, genetic information, proficiency in the English language, national origin, race, religion, reproductive health, veteran status or other status protected by state or federal law[.]"

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Section 3 is entitled "Duty of Care – Disclosure of Risk Potential – Provision of Documentation."
Subsection A provides that a developer (as defined in Section 2) "shall" "use reasonable care to protect consumers from known or foreseeable risk of algorithmic discrimination arising from intended and contracted uses of a high-risk AI system".
Subsection B provides that except for material excluded in Subsection C of Section 4 (i.e. trade secrets, information protected from disclosure pursuant to state or federal law, or information that would create a security risk to the developer), the developer shall make a wide and comprehensive variety of material available to recipients of the high-risk AI system including all the known risks of the system including any studies or measures taken to evaluate the system.
Subsection C provides that except for material excluded in Subsection C of Section 4 (i.e.

trade secrets, information protected from disclosure pursuant to state or federal law, or information that would create a security risk to the developer), make available to the recipient the necessary information to conduct an impact assessment as required by Section 6 of the Act.

Subsection D provides that the developer shall post on the developer's website a statement that summarizes the types of high-risk AI systems that the developer has developed or modified, and how the developer manages risk of algorithmic discrimination.

Subsection E provides that the developer shall ensure that this statement on the website remains accurate and is updated within 90 days of any intentional and substantial modification of a high-risk AI system offered by the developer.

Section 4 is entitled "Risk Incidents – Required Disclosure and Submission – Exceptions"

As defined in Section 2, a "risk incident" is "an incident where a developer discovers or receives a credible report from a deployer that a high-risk artificial intelligence system offered or made available by the developer has caused or is reasonably likely to have caused algorithmic discrimination."

Subsection A provides that within 90 days of a risk incident, the developer shall disclose to the state department of justice and to all known recipients the known and foreseeable risks of algorithmic discrimination that may arise from the intended use of the system.

Subsection B provides that pursuant to a request from the state department of justice, the developer shall – within 90 days – submit a copy of the summary and documentation that it made available to recipients. The developer may claim some of the documentation as including proprietary information or trade secrets. If the material includes privileged information, compliance with this section does not waive that privilege.

Subsection C provides that the developer does not have to disclose trade secrets, information protected by state or federal law, or information that will create a security risk for the developer.

Section 5 is entitled "Deployer Risk-Management Policy Required"

As defined in Section 2, a deployer is a "person who deploys an artificial intelligence system."

Subsection A provides that a deployer shall use reasonable care to protect consumers from known or reasonably foreseeable risks of algorithmic discrimination.

Subsection B provides that a deployer shall implement a risk management policy and program to govern the deployment of a high-risk system. This policy and program shall specify and incorporate the processes and personnel that the deployer uses to identify, document, and mitigate the risk of algorithmic discrimination which is regularly and systematically updated.

Subsection C provides that the state department of justice shall establish a rule for standards for such a policy.

Section 6 is entitled "Deployer Impact Assessments"

Subsection A provides that except as provided by Subsections D, E, and H, a deployer shall conduct an impact assessment for any high-risk artificial intelligence system deployed by the deployer on an annual basis and within 90 days if there is an intentional and substantial modification to the system.

Subsection B details seven categories of information that this assessment shall include. These include any independent studies taken to evaluate the system, ay transparency measures taken, and the metrics used to evaluate the performance and known limitations of the system.

Subsection C provides that if an impact assessment is conducted due to an intentional or

substantial modification of the system, the assessment shall include disclosure as to the extent that the system was used in a manner consistent with, or if it varied from, the developer's intended uses.

Subsection D provides that a deployer may use a single impact assessment to address a set of comparable high-risk systems.

Subsection E provides that if an impact assessment is conducted for the purpose of another applicable law or rule, shall satisfy this section when it meets the requirements of this section and is reasonably similar in scope and effect to an assessment conducted pursuant to this section.

Subsection F provides that for at least three years following the final deployment of a high-risk system, the deployer shall maintain records of the most recently conducted impact assessment.

Subsection G provides that on or before March 1, 2027, a deployer shall review each high-risk system to ensure that it is not causing algorithmic discrimination.

Subsection H provides that this section is not applicable to a deployer employing fewer than 50 full-time employees, does not use the deployer's own data to train the system, uses the system solely for its intended use as disclosed by a developer, and makes any impact assessment available to consumers.

Section 7 is entitled "Deployer General Notice to Consumers"

Subsection A provides that a deployer shall make readily available to consumers and on its website (1) a summary of types of high-risk AI system that the deployer currently deploys and how the reasonably foreseeable risks of algorithmic discrimination are managed and (20 a detailed explanation of the nature, source, and extent of the information collected and used by the deployer.

Subsection B provides that this information shall be updated annually and when the deployer deploys a new high-risk system.

Section 8 is entitled "Use of Artificial Intelligence Systems When Making Consequential Decisions – Direct Notice to Affected Consumers – Adverse Decisions – Opportunity for Appeal"

Subsection A provides that a deployer will directly provide notice and information to consumers about the system before it is used to make or is a substantial factor in making a consequential decision. This information for consumers is to include the deployer's contact information, the purpose of the system and the nature of the consequential decision being made.

Subsection B provides that when a high-risk system has been used to make or has been a substantial factor in making a consequential decision that is adverse to a consumer, the deployer shall provide information directly to the consumer explaining the reason for the decision, an opportunity to correct any personal data that the system processed, and an opportunity to appeal the adverse decision except in situations in which an appeal could create a delay that would ham the consumer's health or life.

Subsection C provides that "if technically feasible", an appeal of an adverse decision under this section shall allow for human review.

Subsection D provides that all notices and information to consumers in this section shall be provided in plain language and in a format accessible to consumers with disabilities.

Subsection E provides that if a deployer is unable to provide notice or information directly to a consumer, the deployer will do so in a manner reasonably calculated to ensure the consumer receives the information.

Section 9 is entitled "Use of High-Risk Artificial Intelligence System – Notice and Disclosure to the State Department of Justice – Inspection of Public Records Act Exemption"
Subsection A provides that when a deployer discovers that a high-risk system has caused algorithmic discrimination, the deployer shall notify the state department of justice within 90 days.
Subsection B provides that upon request from the state department of justice, the deployer shall within 90 days provides any risk management policy, impact assessments, or records maintained or received pursuant to the Act.
Subsection C provides that the state department of justice may evaluate risk management policies, impact assessments, or other records submitted pursuant to this section.
Subsection D provides that risk management policies, impact assessments, or other records submitted pursuant to this section are exempt from disclosure under the Inspection of Public Records Act.
Subsection E provides that a deployer may designate some of the information provided as a trade secret and any privileged material disclosed does not waive the deployer's privilege or protection.

Section 10 is entitled "Interaction of Artificial Intelligence System with Consumers – Required Disclosure"
This section provides that a developer that offers a system designed to interact with consumers shall ensure the consumer is aware that the consumer is interacting with an AI system.

Section 11 is entitled "Exemption from Disclosure – Trade Secrets and Other Information Protected by Law – Notice to Consumers"
Subsection A provides that nothing in the Act shall require a deployer or developer to disclose a trade secret or other information protected from disclosure by state or federal law.
Subsection B provides that to the extent a developer or deployer withholds such information, the deployer or developer shall notify the consumer and provide a basis for the withholding.

Section 12 is entitled "Applicability Exemptions – Other Law – Security and Testing – Federal Use – Insurance Providers"
Subsection A provides that no provision of the Act shall be construed to restrict a person's ability to engage in ten specified activities including complying with any law and defending a legal claim or cooperating with law enforcement.
Subsection B provides that no provision of the Act shall be construed to restrict a product recall or restrict the identification or repair of technical errors in the system.
Subsection C provides that the Act shall not apply in circumstances where compliance would violate a legal evidentiary privilege.
Subsection D provides that the Act shall not be construed to limit a person's right to free speech or freedom of the press under the federal and New Mexico constitution.
Subsection E provides that the Act shall not apply to developers, deployers, or others who use or substantially modify a high-risk system or conduct research or work that has been authorized by federal law. The Act will also not apply to covered entities pursuant to federal health insurance law who are providing health care recommendations that require a health care provider to implement the recommendation and that are not considered to be high risk.
Subsection F provides that the Act shall not apply to an AI system acquired by the federal government, except for a high-risk system that is used to make or is a substantial factor in making a decision regarding employment or housing.
Subsection G provides that financial institutions that are otherwise subject to federal

regulation or regulation from another state under laws that apply to high-risk AI systems, will be deemed to be in compliance with the Act as long as certain conditions are met.

Subsection H defines financial institution as used in this section.

Subsection I provides that any person claiming an exemption under this section bears the burden of demonstrating that the action qualifies for the exemption.

Section 13 is entitled "Enforcement – State Department of Justice – Consumer Civil Actions"

Subsection A provides that upon the promulgation of rules pursuant to Section 14 of the Act, the state department of justice shall authority to enforce the act and a consumer may bring a civil action in district court against a deployer or developer for declaratory or injunctive relief for a violation of the Act.

Subsection B details specific affirmative defenses for developers and deployers if the state department of justice brings an action to enforce the Act.

Subsection C provides that the developer and deployer bears the burden of demonstrating the requirements for an affirmative defense have been met.

Subsection D provides that nothing in the Act affects or preempts any other right or claim in law or equity.

Subsection E provides that an affirmative defense or rebuttable presumption established by the Act only applies to actions brought by the state department of justice.

Subsection F provides that a violation of the Act is an unfair practice and may be enforced pursuant to the Unfair Practices Act.

Subsection G provides definitions for terms used within the section.

Section 14 is entitled "Rulemaking"

This section provides that on or before January 1, 2027, the state department of justice shall promulgate rules to implement the Act and post them prominently on the department's website.

Section 15 provides that the effective date of the Act is July 1, 2026.

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

None for this agency.

The state department of justice is tasked with enforcing the Act and will require more personnel and equipment to comply with the tasks set out in this bill. The department is tasked with determining the form and manner of disclosure for a high-risk incident for developers and deployers, developing a rule for standards for a risk management policy for deployers, evaluating risk management policies and impact assessments, promulgating rules to implement the Act, and enforcing the Act through civil actions.

SIGNIFICANT ISSUES

This Act is a comprehensive act designed to regulate deployers and developers of high-risk AI systems and to ensure that consumers are protected and informed about their uses and risks. The

focus is on algorithmic discrimination to protect consumers from being discriminated against for any number of protected statuses.

The federal government has passed legislation that governs AI and addresses concerns about algorithmic discrimination. Some of these include:
15 UCSC § 278h-1 Standards for artificial intelligence outlines the mission of the National Institute of Standards and Technology (NIST) to advance collaborative frameworks, standards, and guidelines for AI, including the development of risk-mitigation frameworks and technical standards to test for bias in AI training data and applications
42 USCS § 18937 mandates the Director to support the development of AI and data science, including the creation of frameworks for managing risks associated with AI systems and the development of technical standards to promote safe and trustworthy AI systems.
15 USCS § 9451 Artificial intelligence research and education emphasizes the importance of incorporating ethical, social, safety, and security considerations into AI research, with a specific focus on mitigating potential harms and promoting best practices for governance of research in emerging technologies.

In October of 2022, the White House introduced an AI Bill of Rights. It is not law but is a framework created by the Office of Science and Technology (OTSP) to guide the development, deployment, and use of AI to prioritize fairness and respect for civil rights.

PERFORMANCE IMPLICATIONS

n/a

ADMINISTRATIVE IMPLICATIONS

The state department of justice is tasked with administering the Act.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None.

TECHNICAL ISSUES

None noted.

OTHER SUBSTANTIVE ISSUES

None.

ALTERNATIVES

None.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

None.