

LFC Requester:

Felix Chavez

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Date Prepared: 1/21/2025

Check all that apply:

Bill Number: HB60

Original Correction
Amendment Substitute

Sponsor: Rep. Christine Chandler

Agency Name and Code Number: 305 – New Mexico
Department of Justice

Person Writing

Short Title: ARTIFICIAL
INTELLIGENCE ACT

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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:
 Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.

BILL SUMMARY

Synopsis:

HB60 addresses “high-risk artificial intelligence systems” and the potential of result of “algorithmic discrimination” in a “consequential decision.” “Algorithmic discrimination” is defined as “ any condition in which the use of an artificial intelligence system results in an 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.” A “consequential decision” is defined as “a decision that has a material legal or similarly significant effect on the provision or denial to a consumer of or the cost or terms of: (1) education enrollment or an educational opportunity; (2) employment or an employment opportunity; (3) a financial or lending service; (4) health care service; (5) housing; (6) insurance; or (7) legal service.” The bill establishes responsibilities for “developers” and “deployers” of artificial intelligence (AI) systems. The bill grants rulemaking and enforcement authority to the NMDOJ.

Section 3 pertains to developers of AI systems. It establishes a duty of reasonable care to protect consumers from algorithmic discrimination. This section further establishes documentation and disclosures regarding: the AI systems foreseeable uses, including know harmful and inappropriate uses; the purpose, intended use and output of the systems; information about the data used to train the system; known limitation of the system, including the risk of algorithmic discrimination; disclosure; measures taken to mitigate algorithmic discrimination; information for deployers regarding how the systems should be used and monitored to understand risks of algorithmic discrimination; and information necessary for deployers to conduct system impact assessments.

Section 4 requires disclosures of risk incidents, which are instances when a high-risk artificial intelligence system “has caused or is reasonably likely to have caused algorithmic discrimination.” Disclosures are made to the NMDOJ as well as to recipients of the high-risk AI systems.

Section 5 pertains to deployers of AI systems and establishes a duty of reasonable care to protect consumers from algorithmic discrimination. Further, deployers must establish a risk management policies and programs to mitigate known and foreseeable risks of algorithmic discrimination.

Section 6 requires deployers to conduct annual impact assessments of high-risk AI systems and within 90 days of intentional and substantial modification. Section 6 does not apply if: the deployer employs fewer than 50 employees; does not use its own data to train the system; the deployed system is used for its intended purpose; impact assessments are available to consumers; and the system continues learning on data other than the deployer's data.

Section 7 requires deployers to provide general notice to consumers of the types of high-risk AI systems in use and how their risks are managed, an explanation of the information collected and used.

Section 8 requires direct notices to consumers before a high-risk AI system is used in a consequential decision and after an adverse consequential decision is made using a high-risk AI system. In a notice of an adverse decision, the consumer must be afforded an opportunity to correct personal data that the system processed, an opportunity to appeal the decision, and, if technically feasible, allow for human review.

Section 9 requires disclosure of incidents of algorithmic discrimination to the NMDOJ within 90 days of discovery of the incident. Certain documentation, including proprietary or trade secret submitted to the NMDOJ in response to an inquiry regarding a disclosure of algorithmic discrimination is exempt from disclosure under the Inspection of Public Records Act.

Section 10 requires disclosure to consumer that they are interacting with an AI system when that is not obvious.

Section 11 exempts deployers and developers from disclosing trade secrets or other information protected from disclosure by state or federal law.

Section 12 establishes several restrictions on the application of the bill in specific contexts. The person using an exemption bears the burden of proof that the exemption applies. This section ensures that the bill is not construed to restrict a person's ability to comply with federal, state or municipal laws; comply with inquiries from governmental authorities; cooperate with a law enforcement agency; defend legal claims; protect the life or physical safety of a person; by means other than facial recognition, detect, prevent, protect against identity theft, harassment, or security incidents; preserve the integrity or security of systems; engage in scientific or statistical research; or assist another person with compliance. Section 12 continues to limit the bill's application in the context of a product recall or repair of technical errors or where compliance would violate an evidentiary privilege. Section 12 disclaims that the bill does not limit free speech or freedom of the press under the US or NM constitutions. Section 12 further limits application of the bill when an AI system is authorized by and in compliance with federal law or in used by federal agencies, included HIPAA covered entities. For financial institutions governed by laws in other states or by the federal government are deemed to be in compliance with the bill, so long as the requirements imposed on those institutions are "substantially equivalent to or more stringent than" the requirements of bill, require audits for compliance with state and federal antidiscrimination laws, and mitigate algorithmic discrimination.

Section 13 addresses enforcement and affirmative defenses. This Section authorizes the NMDOJ to enforce the bill, upon the promulgation of rules, and creates a private right of action for declaratory or injunctive relief by consumers. Section 13 further establishes affirmative defenses when developers and deployers have: cured a violation based on external feedback or internal review processes (such as red teaming or adversarial testing); and complied with a risk management framework designated by rule. This Section establishes that a violation of the Act is

a violation of the Unfair Practices Act (UPA) and authorizes enforcement under the UPA.

Section 14 requires the NMDOJ to promulgate rules to implement the Act by January 1, 2027.

Section 15 sets the effective date of the Act to be July 1, 2026.

FISCAL IMPLICATIONS

There is a foreseeable administrative and enforcement workload created by the bill. The bill would require the NMDOJ to promulgate rules to establish a regulatory framework, and then to administer and enforce both the regulatory framework and the act. The bill does not address the financial support for this workload. However, with the effective date of the bill set for July 1, 2026, there would not be any fiscal impact until FY27. The NMDOJ would have sufficient time to evaluate the fiscal impact and include any fiscal requests in its FY27 budget proposal.

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.

SIGNIFICANT ISSUES

None noted.

PERFORMANCE IMPLICATIONS

None noted.

ADMINISTRATIVE IMPLICATIONS

See Fiscal Implications above.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

Subsection B of Section 4 and Subsection E of Section 9 allow developers and deployers, respectively, to designate portions of certain required submissions to the NMDOJ as “proprietary information or a trade secret.” If the intent of these provisions is to exempt this information from disclosure pursuant to the Inspection of Public Records Act (IPRA), then the provisions should either explicitly do so or the term “proprietary information” should be deleted. IPRA expressly protects “trade secrets,” but is silent as to “proprietary information.”

Paragraph 1 of Subsection A of Section 12 states that the Act shall not be construed to restrict a person’s ability to “comply with federal, state, or municipal laws or regulations.” The inclusion of municipal laws or regulations introduces the possibility that a municipality could alter or constrain the application of the Act in their jurisdiction.

OTHER SUBSTANTIVE ISSUES

None noted.

ALTERNATIVES

None noted.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The status quo would persist.

AMENDMENTS

See technical issues above.