

<b>LFC Requester:</b>	<b>Emily Hilla</b>
-----------------------	--------------------

**AGENCY BILL ANALYSIS - 2025 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO**

**[AgencyAnalysis.nmlegis.gov](http://AgencyAnalysis.nmlegis.gov) and email to [billanalysis@dfa.nm.gov](mailto:billanalysis@dfa.nm.gov)**

*(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:** 1/15/25 *Check all that apply:*  
**Bill Number:** HB60 Original  Correction   
 Amendment  Substitute

**Sponsor:** Rep. Christine Chandler  
Artificial Intelligence Act

**Agency Name and Code Number:** HCA 630

**Person Writing Analysis:** Sean Curry and Tim Thackaberry  
 505-946-8926 and 505-309-2127  
 sean.curry@hca.nm.gov and TimP.Thackaberry@hca.nm.gov

**Short Title:** \_\_\_\_\_ **Phone:** \_\_\_\_\_ **Email:** \_\_\_\_\_

**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
\$0	\$0		

(Parenthesis ( ) indicate expenditure decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		
\$0	\$0	\$0		

(Parenthesis ( ) indicate revenue decreases)

**ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

	<b>FY25</b>	<b>FY26</b>	<b>FY27</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>	\$0	\$0	\$0			

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:  
 Duplicates/Relates to Appropriation in the General Appropriation Act

**SECTION III: NARRATIVE**

**BILL SUMMARY**

Synopsis:

HB60 Creates the Artificial Intelligence Act, which requires a developer or deployer (user) of an artificial intelligence (AI) system to take detailed affirmative steps to protect New Mexico residents from the known or foreseeable risks of algorithmic discrimination arising from the use of high-risk AI systems. The measure is directed any condition where use of an AI system results in unlawful differential treatment or impact that disfavors a person based on 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. The Attorney General has rulemaking and enforcement authority over the act.

The act requires developers and deployers to make public disclosures, implement policies, provide public notice and make timely reports about AI system use; governs use of high-risk AI systems to make consequential decisions regarding consumers; and provides for protection of trade secrets and legal privileges. Provides for state Department of Justice (Attorney General) rulemaking and enforcement, and for consumer civil actions in district court. Contains a lengthy list of definitions.

AI SYSTEM DEVELOPER DUTY OF CARE AND DISCLOSURE OF RISK POTENTIAL (Section 3). A developer must use reasonable care to protect consumers from known or foreseeable risks of “algorithmic discrimination” (see definition, which contains a list of protected classes such as age, gender, race, and religion) arising from use of a high-risk AI system. Specifies the documentation a developer must provide to consumers, including what is necessary for a deployer to conduct an impact assessment. Requires a developer to post a statement or public-use case inventory on its website about the management of foreseeable risks from use or modification of the system; and requires that the statement remain accurate and be updated within 90 days of intentional, substantial modification of the system.

DISCLOSURE OF RISK INCIDENTS (Section 4). Within 90 days of occurrence of a risk incident, a developer must disclose to the DOJ and all known recipients of a high-risk AI system the known and foreseeable risks of algorithmic discrimination that may arise from its use.

PROTECTED INFORMATION. A developer may designate that the documentation it has supplied contains proprietary information or a trade secret. To the extent the information includes information subject to attorney-client privilege or work-product protection, such inclusion does not constitute a waiver of the privilege or protection. As part of a disclosure, a developer shall not be required to disclose a trade secret, information protected from disclosure

by state or federal law, or information that would constitute a security risk to the developer. Such disclosure is exempt from the Inspection of Public Records Act.

**DEPLOYER RISK-MANAGEMENT POLICY (Section 5).** A deployer must use reasonable care to protect consumers from known or reasonably foreseeable risks of algorithmic discrimination and must implement a risk management policy that meets standards in DOJ rule.

**DEPLOYER IMPACT ASSESSMENTS (Section 6).** With some exceptions, a deployer must conduct an impact assessment for high-risk systems annually and within 90 days of modification. An assessment conducted of a risk due to modification of the system shall include whether it was used consistent with, or in variance from, the developer’s intended use. Makes provision for an impact assessment that is conducted for purposes of another law to satisfy this requirement. For at least three years after final deployment, the deployer must maintain records of recent assessments; and by March 1, 2027, must review each system it deploys to ensure it is not causing algorithmic discrimination. Creates exceptions for deployers with fewer than 50 employees under specified circumstances.

**DEPLOYER GENERAL NOTICE TO CONSUMERS (Section 7).** Outlines the type of information a deployer must provide to the public about the high-risk AI systems it uses, how risks of algorithmic discrimination are managed, and a detailed explanation of the nature, source and extent of information it collects and uses, updated annually and on deployment of a new system.

**USE OF AI SYSTEMS TO MAKE CONSEQUENTIAL DECISIONS FOR CONSUMERS (Section 8).** Requires a deployer to provide specific information directly to consumers before an AI system is used for, or is a significant factor in, making consequential decisions concerning a consumer, particularly in the case of adverse decisions. Deployers must provide opportunities to correct or to appeal from certain adverse decisions. If unable to make disclosure to a consumer directly, the deployer must attempt to do so in a reasonable alternative way.

**DISCLOSURE TO DOJ OF A SYSTEM CAUSING ALGORITHMIC DISCRIMINATION (Section 9).** Within 90 days, a deployer must notify DOJ that an AI system has caused algorithmic discrimination. DOJ may request that deployer provide additional information, and may evaluate risk management policies, impact assessments and the like to determine compliance with the act. Such disclosures are exempt from IPRA and may contain privileged information, which privilege is not waived by the disclosure.

**DISCLOSURE OF AI INTERACTION WITH CONSUMERS (Section 10).** When a developer uses an AI system to interact with consumers, it must inform them that they are interacting with AI. This does not apply “when it would be obvious to a reasonable person” that they are interacting with an AI system.

**EXEMPTION OF TRADE SECRETS AND OTHER LEGALLY PROTECTED INFORMATION (Section 11).** As stated in Section 4, nothing in the act requires a developer or deployer to disclose a trade secret or other information protected by state or federal law. However, the developer or deployer must notify the consumer when it withholds such information and explain why it is being withheld.

**APPLICATION OF EXEMPTIONS (Section 12).** Details how the act shall not abridge a person’s ability to comply with other laws, rules, inquiries, investigations, subpoenas or

summons and other protected individual, legal, research and commercial activities, except in the case of certain uses of facial recognition technology. The act may not be construed to limit the right to freedom of speech or the press. It does not apply to developers and users who modify high-risk AI systems under federal authorization; and specifies how it would apply in a conflict of laws situation with another jurisdiction, with particular reference to regulation of financial institutions.

**ENFORCEMENT (Section 13).** DOJ has authority to enforce the act. A consumer may also bring a civil action in district court against a developer or deployer for declaratory or injunctive relief for a violation of the act. Establishes certain affirmative defenses available to developers and deployers in response to a DOJ enforcement action that do not apply to a consumer's civil enforcement action.

**RULES (Section 14).** DOJ is given rulemaking authority; rules must be posted on its website prior to January 1, 2027.

#### DEFINITIONS

- "algorithmic discrimination" means any condition where use of an AI system results in unlawful differential treatment or impact that disfavors a person based on 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. Does not include:

- (1) the offer, license or use of a high-risk artificial intelligence system by a developer or deployer for the sole purpose of:
  - a. the developer's or deployer's self-testing to identify, mitigate or ensure compliance with state and federal law; or
  - b. expanding an applicant, customer or participant pool to increase diversity or redress historical discrimination; or
- (2) an act or omission by or on behalf of a private club or other entity that is not open to the public pursuant to federal law

- "artificial intelligence system" means any machine-based system that for an explicit or implicit objective infers from the inputs it receives how to generate outputs, including content, decisions, predictions or recommendations that can influence physical or virtual environments.

- "consequential decision" means a decision with material legal or similarly significant effect on providing, denying, or the cost or terms of: education enrollment or opportunity; employment or employment opportunity; a financial or lending service; health care service; housing; insurance; or legal service.

- "consumer" means a New Mexico resident.

- "deploy" means to use an AI system; "deployer" means a person who does so.

- "developer" means a person who develops or intentionally and substantially modifies an AI system.

- "health care services" means treatment, services or research designed to promote improved a person's health, including primary care, prenatal care, dental care, behavioral health care, alcohol or drug detoxification and rehabilitation, hospital care, provision of prescription drugs,

preventive care, or health outreach.

• "high-level summary" means information about data and data sets used to train the high-risk AI system, including:

- (1) sources or owners of data sets and whether they were purchased or licensed by the developer;
- (2) factors in the data, including attributes or other information about a consumer, that the system uses to produce its outputs, scores or recommendations;
- (3) demographic groups represented in the data sets and the proportion of each age, ethnic, gender or racial group in each dataset;
- (4) a description of the types of data points within data sets, including, for those with labels, a description of the types of labels used;
- (5) whether data sets include data protected by copyright or the like or whether they are entirely in the public domain;
- (6) whether there was any cleaning, processing or other modification to data sets by the developer, including the intended purpose of those efforts in relation to the high-risk AI system;
- (7) the time period when the data were collected, including a notice when data collection is ongoing;
- (8) geographical regions or jurisdictions where data sets were collected, including whether solely in New Mexico, solely in other states or in New Mexico along with other states; and
- (9) other information required by the state Department of Justice by rule.

• "high-risk artificial intelligence system" means any AI system that when deployed makes or is a substantial factor in making a consequential decision. Does not include:

- (1) an AI system intended to perform a narrow procedural task; detect decision-making patterns or deviations from prior decision-making patterns, but not intended to replace or influence a previously completed human assessment without sufficient human review; or
- (2) the following technologies, unless they make or are a substantial factor in making a consequential decision when deployed: anti-fraud technology that does not use facial recognition technology; anti-malware; antivirus; AI-enabled video games; calculators; cybersecurity; databases; data storage; firewalls; internet domain registration; internet website loading; networking; spam and robocall filtering; spell checking; spreadsheets; web caching; web hosting or similar technology; or 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 use policy that prohibits generating content that is discriminatory or harmful.

• "intentional and substantial modification" and "intentionally and substantially modifies" means a deliberate change to an AI system that creates a new reasonably foreseeable risk of algorithmic discrimination. Does not include a change made to a high-risk AI system or the performance of a high-risk AI system when:

- (1) the high-risk system continues to learn after the system is offered, sold, leased, licensed, given or otherwise made available to a deployer; or deployed;
- (2) the change is a result of system learning after being made available to a deployer or being deployed;
- (3) the change was predetermined by the deployer or a deployer-contracted third party who completed an impact assessment of the high-risk system pursuant to Section 6 of the act; or

(4) the change is included in technical documentation for the high-risk system.

- "offered or made available" includes gift, lease, sale or other conveyance of an AI system to a recipient deployer or developer other than the original one.
- "recipient" means a deployer or developer who has received an AI system from another developer.
- "risk incident" means an incident when a developer discovers or receives a credible report from a deployer that a high-risk AI system offered or made available by the developer has caused or is reasonably likely to have caused algorithmic discrimination.
- "substantial factor" means:
  - (1) a factor that assists in making a consequential decision or is capable of altering, advising or influencing the outcome of a consequential decision; and is generated by an AI system; or
  - (2) content, decisions, labels, predictions, recommendations or scores generated by an AI system concerning a consumer that are used as a basis, partial basis or recommendation to make a consequential decision concerning the consumer.
- "trade secret" means information including a formula, pattern, compilation, program, device, method, technique or process, that:
  - (1) derives independent actual or potential economic value from not being generally known to and not being readily ascertainable by proper means by other persons who could obtain economic value from the information's disclosure or use; and
  - (2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

## **FISCAL IMPLICATIONS**

HB60 requires deployers with more than 50 employees to conduct an impact assessment of their AI components affected by this bill annually and within 90 days of a relevant modification of the system. It is likely that the costs associated with these assessments will result in higher HCA contract costs in the future.

## **SIGNIFICANT ISSUES**

HCA OGC comments:

Section 2 (H) should add "designed to MAINTAIN or promote the improved health. and should add hospice to the services included. Section 2 (I)(3) should include all discrimination areas covered by state and federal statutes. Section 3 (B)(2)(f) seems to beg the question of bias and discrimination with "intended outputs of the system" without further clarification of (human?) intents. Section 3 C needs definition of "model cards" and "dataset cards". Section 4 (B) does not align with later definition of trade secret as it is necessarily widely disclosed. Disclosure of work-product or attorney-client information would make serious inroads in privileges and protections. It might be useful to stress that IPRA exception applies to NM DOJ and not a private deployer or developer. Continued learning in Section 6 needs definition. Section 8(C) should not "allow" but require "human review". Section 8(D)(1) should also include the specific language of the consumer appealing if that language was used previously. Section 9 (E) See Section 4 analysis of trade secret and privilege. Section 10 would apply to HCA AI systems.

## **PERFORMANCE IMPLICATIONS**

### **ADMINISTRATIVE IMPLICATIONS**

While HCA does employ some AI in applications, none currently fall under the definition of “high-risk artificial intelligence systems.” The technology in place today may provide information to assist in decision making, however it does not make decisions. As AI technology continues to evolve and mature, it is likely to include implementation of what the bill defines as “high-risk artificial intelligence systems” in the future. HCA, as the implementer of technology, may be required to post documentation on the public website related to public facing technology that falls within the scope of this bill. The bill would therefore require increased assessment and reporting requirements of HCA IT vendors in the future.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

### **TECHNICAL ISSUES**

#### **OTHER SUBSTANTIVE ISSUES**

HB60 requires that deployers implement a risk management policy and program for high-risk artificial intelligence system and that state department of justice (Attorney General) establish risk management policy standards.

A “risk incident” is defined as: an incident when 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. The criteria for how such an incident would be detected is not defined.

### **ALTERNATIVES**

#### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status quo

### **AMENDMENTS**