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LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS
57th Legislature, 1st Session, 2025

Bill Number	<u>HB60</u>	Sponsor	<u>Chandler</u>
Tracking Number	<u>.228797.3</u>	Committee Referrals	<u>HCPAC/HJC</u>
Short Title	<u>Artificial Intelligence Act</u>		
Analyst	<u>Bedeaux</u>	Original Date	<u>1/29/25</u>
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BILL SUMMARY

Synopsis of Bill

House Bill 60 (HB60) would create the Artificial Intelligence Act in state law, enacting measures to protect consumers from algorithmic discrimination, especially when artificial intelligence (AI) is used to make a consequential decision regarding educational opportunity, among other uses.

HB60 defines algorithmic discrimination as “the use of an AI system that results in an unlawful differential treatment or impact that disfavors a person on the basis of 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.”

HB60 defines an AI system as “any machine-based system that for an explicit or implicit objective infers from the inputs the system receives how to generate outputs, including content, decisions, predictions, or recommendations that can influence physical or virtual environments.”

HB60 defines a high-risk AI system as “an AI-system that when deployed makes or is a substantial factor in making a consequential decision.” The bill includes some exceptions to this definition. Under the bill, a consequential decision would include “any decision that impacts the provision or denial of a service, the cost of a service, or the terms of a service, including education enrollment or educational opportunity, employment or an employment opportunity, financial or lending services, health care services, housing, insurance, or legal services.” The bill requires that consequential decisions made by a high-risk AI system be reviewed by a human if technically feasible.

When a high-risk AI system is used to make a consequential decision, “deployers”—defined as any person who uses an AI system (see **Technical Issues**)—would be required to provide notice to consumers that AI will play a role in making the decision. Any person who uses an AI system would also be required to implement and regularly review a risk management policy governing the deployment (use) of high-risk AI systems, publish and regularly update a website listing a

summary of the types of high-risk AI systems used and a detailed explanation of the information collected and used, and conduct impact assessments for high-risk AI systems.

HB60 would require developers that make any AI system available for use by consumers to inform consumers they are interacting with an AI system. Developers would be required to use reasonable care to protect consumers from foreseeable risks of algorithmic discrimination. Developers would be required to make available information for consumers regarding each high-risk AI system, including the purpose of the system, the intended uses and known inappropriate uses of a system, a summary of the types of data used to train the system, the limitations and known risks of algorithmic discrimination arising from use of the system, any actions taken to mitigate algorithmic discrimination, and the intended outputs of the system. Developers would be required to post on their website in a clear and readily available manner a statement that summarizes the types of high-risk AI systems the developer has developed and how the developer manages known or reasonably foreseeable risks of algorithmic discrimination.

Developers would also be required to disclose when a risk incident—defined as an incident when a developer discovers that a high-risk AI system has caused algorithmic discrimination—occurs. Within 90 days of a risk incident, deployers and developers would be required to disclose to the New Mexico Department of Justice (NMDOJ) and all known recipients of the high-risk AI system the risks of algorithmic discrimination that may arise from the intended uses of the system.

HB60 gives NMDOJ authority to enforce the Artificial Intelligence Act. Consumers may bring a civil action against a developer or deployer for declaratory or injunctive relief from a violation of HB60. In addition to other claims and remedies available in existing law, developers and deployers may argue an affirmative defense when they discover and cure a violation of the Artificial Intelligence Act in response to feedback, testing, or “red teaming”—defined as simulated attack scenarios designed to pinpoint weaknesses. In addition, developers and deployers must be in compliance with a risk management framework adopted by NMDOJ in rule.

If enacted, HB60 would be effective June 1, 2026. NMDOJ would be required to adopt rules to implement the Artificial Intelligence Act by January 1, 2027.

This analysis focuses on the bill’s impact on New Mexico public educational institutions.

FISCAL IMPACT

HB60 does not contain an appropriation.

Analysis from NMDOJ indicates the department would incur a significant but indeterminate fiscal impact to implement the Artificial Intelligence Act. Given that the bill would not be effective until July 1, 2026, NMDOJ estimates that it would be able to evaluate the bill’s full fiscal impact and include a request for additional FTE and other necessary resources in the department’s FY27 budget request.

Depending on whether they use AI to make consequential decisions, some schools, school districts, or institutions of higher education may incur some costs associated with reporting and disclosure required for users of high-risk AI systems. The exact fiscal impact for public schools is indeterminate.

SUBSTANTIVE ISSUES

HB60 would require any school, school district, or institution of higher education to comply with the provisions of the Artificial Intelligence Act if they use an AI system to make decisions regarding students' education enrollment or educational opportunity, including the costs or terms of enrollment or opportunity.

The term “educational opportunity” is not defined in HB60, creating some uncertainty about whether schools' current and future uses of AI may contribute to consequential decisions. The definition of educational opportunity has been [intensely debated](#) since the passage of the Civil Rights Act. A working definition proposed by the [Stanford Encyclopedia of Philosophy](#) states “educational opportunities are those opportunities that aim to enable individuals to acquire knowledge and certain skills, and to cultivate certain capacities.”

Schools currently use AI systems in a variety of ways that may affect students' opportunities to acquire knowledge and skills. While it is unclear exactly how AI is comprehensively being used across New Mexico public schools, the following use cases may constitute a consequential decision:

- **Career Counseling and Next Step Plans.** Public schools may use AI systems to help students build career pathways or provide insight on students' Next Step Plans, which may determine their eligibility for certain future classes, dual credit courses, career and technical education programs, or other educational opportunities.
- **Approving or Denying Enrollment.** It is unlikely that public schools currently use AI systems to deny enrollment to students, but the systems may play a role in some college and university admissions processes.
- **Awarding Scholarships.** Public schools, nonprofit organizations, or institutions of higher education may use AI to evaluate applications for scholarships.
- **Evaluating School Budgets.** If an AI system is used to allocate school resources or determine whether schools need additional support, it may affect the educational opportunities available within the school.
- **Conducting Strategic Planning.** Each year, schools engage in a strategic planning process to set long-term goals; if those goals affect the types of programs and opportunities available to students, strategic planning may be considered a “consequential decision.”

Any public educational institution that uses an AI system to make consequential decisions would be required to implement and regularly review a risk management policy, publish and regularly update a website listing a summary of the types of high-risk AI systems used, and conduct impact assessments. Public education institutions would also be required to disclose to consumers when an AI system was used to make a consequential decision (See **Other Significant Issues – Required Disclosure for Deployers**).

HB60 may also apply to the provision of grant programs overseen by the Public Education Department (PED) if the department chooses to use an AI system to determine schools' eligibility for funds. If PED uses AI as a substantial factor in awarding funds to schools or school districts, the department would be required to meet notification and disclosure requirements specified throughout the bill.

ADMINISTRATIVE IMPLICATIONS

NMDOJ would be required to accomplish the following:

- Specify the form which disclosures of risk incidents should use;
- Promulgate rules listing standards for developer and deployer risk management policies;
- Review deployers' risk management policies, impact assessments, or records maintained pursuant to the Artificial Intelligence Act; and
- Promulgate rules to enforce the Artificial Intelligence Act.

NMDOJ should consider establishing definitions in rule for terms that are unclear in the bill, including “educational opportunity.” Providing a stronger definition for the use of AI to determine students' educational opportunities would clarify practices that constitute high-risk for school districts.

Any state agency that uses a high-risk AI system to make consequential decisions would be required to meet the reporting and disclosure requirements contained in HB60. Analysis from the Department of Information Technology (DoIT) notes many state agencies are contemplating deploying public-facing AI systems, which may make the agencies either developers or deployers in the future. Analysis from the New Mexico Health Care Authority (HCA) notes the authority does not currently use systems that meet the definition of “high-risk AI systems,” but as the technology evolves, the department may do so in the future.

TECHNICAL ISSUES

Under the definition of high-risk AI system, large-language models created for general use such as OpenAI's ChatGPT or Anthropic's Claude may be considered high-risk AI systems if they are used to make consequential decisions. Developers of the AI systems are not aware of the activities of every single user of their system; given the definitions in the bill, if a single person uses ChatGPT to make a consequential decision, it appears the system would be immediately categorized as a high-risk AI system, creating new required actions for both OpenAI and for any person or entity using ChatGPT (See **Other Significant Issues – Required Actions by AI System Users**).

HB60 defines “deployer” as a person who deploys an artificial intelligence system and defines “deploy” as the use of an artificial intelligence system. As a result, it appears HB60 could be construed to apply to any person who uses an AI system, including end-users like New Mexico students and educators.

If the provisions of the bill are enforced as written, any person who uses a high-risk AI system would be required to implement a risk-management policy governing their use of high-risk AI systems, publish a website documenting the types of high-risk AI systems used, conduct risk assessments, provide direct notice to affected consumers about the use of high-risk AI systems, and disclose to NMDOJ when algorithmic bias has been discovered. In addition, NMDOJ would have authority to bring civil action against any New Mexico student or educator found in violation of the Artificial Intelligence Act.

This is likely an unintended consequence of the vague definitions in the bill, rather than an attempt to regulate individual use of AI systems. The Legislature should strongly consider establishing a more specific definition of “deploy,” such as “to host or otherwise make an AI system available

for use by an individual or individuals.” Alternatively, a [similar measure enacted in Colorado](#) defines “deployer” as “a person doing business in this state that deploys a high-risk artificial intelligence system.” This definition would appear to exclude public entities like state agencies and public schools from being categorized as deployers.

OTHER SIGNIFICANT ISSUES

Colorado Consumer Protections for AI Bill. In 2024, the Colorado General Assembly enacted [Senate Bill 24-205, Consumer Protections for Artificial Intelligence](#). HB60 is substantively similar to the legislation enacted in Colorado with a few key differences. As an example, the Colorado legislation applies only to “persons doing business in this state,” apparently excluding state agencies.

Required Actions by AI System Users. Under the current definition of “deployer” in HB60, the bill would require any person who uses an AI system to meet the following requirements:

- Use reasonable care to protect consumers from known or foreseeable risks of algorithmic discrimination;
- Implement and regularly review a risk management policy and program to govern the deployment (use) of a high-risk AI system, including steps to identify, document, and mitigate algorithmic discrimination;
- Publish and regularly update a website listing a summary of the types of high-risk AI systems used and a detailed explanation of the nature, source, and extent of the information collected and used; and
- Conduct an impact assessment for high-risk AI systems annually and within 90 days of an intentional and substantial system modification, including the following:
 - The intended uses, contexts, and benefits of the system;
 - Analysis of risks of algorithmic discrimination and steps taken to mitigate discrimination;
 - A description of the categories of data system processes as inputs and outputs;
 - A summary of categories of any data used to customize a system;
 - The metrics used to evaluate the performance and known limitations of the system, including whether the system was tested, the locations where test data were collected, the demographic groups represented in the test data in terms of age, ethnic group, gender, or race, and any independent studies carried out to evaluate the system for algorithmic discrimination; and
 - A disclosure of whether a system was used in a manner consistent with the developers’ intent.

Risk assessments are not required when all of the following are true:

- The deployer employs fewer than 50 full-time employees;
- The deployer does not use the deployer’s own data to train the system;
- The deployer uses the system solely for its intended uses;
- The deployer makes an impact assessment provided by the developer available to consumers; and
- The system continues learning based on data derived from sources other than the deployer’s data.

Required Disclosures for Deployers. HB60 would require any person who uses an AI system to make a consequential decision to provide the following information to consumers:

- Notice that the system will be used or will be a substantial factor in making the decision;
- Information describing the system, the purpose of the system, and the nature of the decision being made;
- The deployer’s contact information; and
- If the decision is adverse to a consumer, additional information including the following:
 - A statement including the principal reason for the decision;
 - The degree and manner in which the system contributed to the decision;
 - The source and type of data that was processed by the system to make the decision;
 - An opportunity to correct any incorrect personal data the system processed to make its decision; and
 - An opportunity to appeal the decision, provided that such appeal does not pose a risk of life or safety to the consumer.

If the person using the AI system is unable to directly provide the information listed above to a consumer, they would instead be required to make the information available in a manner reasonably calculated to ensure the consumer receives the information. NMDOJ may request deployers to provide risk management policies, impact assessments, or any other records maintained pursuant to the Artificial Intelligence Act.

Exceptions and Exemptions from the Artificial Intelligence Act. HB60 includes several exemptions from its provisions. First, HB60 specifies that nothing in the bill shall require a deployer or developer to disclose a trade secret or other information protected from disclosure by state or federal law. When such information is withheld from an otherwise required disclosure, deployers and developers would be required to notify consumers and provide a basis for the withholding.

HB60 specifies that its provisions may not be construed as to restrict a person’s ability to:

- Comply with federal, state, or municipal laws or regulations;
- Comply with a civil, criminal, or regulatory investigation;
- Cooperate with a law enforcement agency that is acting in good faith;
- Defend, exercise, or investigate legal claims;
- Act to protect an interest that is essential to a person’s life or physical safety;
- Detect, prevent, or prosecute illegal or malicious activity;
- Preserve the integrity or security of an AI system;
- Engage in scientific or statistical research conducted in accordance with applicable laws;
- Engage in pre-market testing of an AI system; or
- Assist another person with compliance with the Artificial Intelligence Act.

The Artificial Intelligence Act does not preclude product recalls, identification of technical errors in an AI system, the rules of evidentiary privilege pursuant to law, or a person’s right to free speech under the First Amendment of the U.S. Constitution.

HB60 would not apply to the following developers or deployers:

- Those who use or substantially modify AI systems authorized by a federal agency in accordance with federal law that maintain compliance with federal standards that are substantially equivalent or more stringent than the requirements of the Artificial Intelligence Act;
- Those who conduct research to support an application for certification or review by a federal agency pursuant to federal law;
- Federal employees or contractors, unless the system makes consequential decisions about employment or housing; and
- Financial institutions, or affiliates or subsidiaries thereof, that are subject to regulation by another state or by the federal government when the applicable laws are equivalent or more stringent than the Artificial Intelligence Act and require the financial institution to regularly audit the use of high-risk AI systems and mitigate algorithmic discrimination.

ALTERNATIVES

Analysis from the DoIT suggests many of the potential unforeseen consequences of regulating the use of AI by state agencies and public educational institutions may be prevented by establishing an exemption for state agencies. According to the [National Conference of State Legislatures \(NCSL\)](#), many other states have begun to regulate government use of AI separate from private use of AI. This may be achieved by defining “person” in the bill to exclude government entities and political subdivisions of the state.

POSSIBLE QUESTIONS

- Is the bill attempting to regulate the use of AI by state agencies and public schools?
- What should qualify as a consequential decision regarding “educational opportunity?”
- What is a “deployer?”
- Are general use AI systems like ChatGPT considered “high-risk AI systems” for all users if one person uses the system to make a consequential decision?

RELATED BILLS

Related to HM2, LESC Artificial Intelligence Work Group, which asks LESC to convene a working group to study educational data governance and artificial intelligence and to make recommendations to the Legislature regarding formal policies governing artificial intelligence by October 31, 2025.

SOURCES OF INFORMATION

- LESC Files
- Higher Education Department (HED)
- New Mexico Department of Justice (NMDOJ)
- Department of Information Technology (DoIT)
- New Mexico Healthcare Authority (HCA)
- Office of Broadband Access and Expansion (OBAE)
- Administrative Office of District Attorneys (NMDAA)