



Brief: The Fostering Access, Innovation, and Responsibility in Artificial Intelligence Act

September 2026

Summary:

Senate Bill 365, the Fostering Access, Innovation, and Responsibility in Artificial Intelligence Act, or the FAIR AI Act, aims to establish a set of responsibilities on AI developers (as they are defined in the bill) to protect consumers and enhance transparency while maintaining AI innovation and protecting smaller AI startups. Furthermore, the bill prevents AI misuse by forbidding defendants from using AI to excuse criminal conduct or claiming that harm was caused autonomously by an AI system. It proposes specific facts developers must disclose about AI systems, including the year, country, language, etc. that the model was trained on. These disclosures are intended to allow the user of the model to understand the context behind the information they are receiving from the AI.

The act establishes an AI enforcement fund to “support state agency enforcement of artificial intelligence system misuse, bias, and workforce disruption” at the request of the Attorney General’s Office. These funds are to settle disputes related to the act’s disclosure requirements and liability standards. This fund was created to make agency enforcement of artificial intelligence system misuse, bias, and workforce disruption easier. Finally, liability standards are put in place to prevent AI misuse across the commonwealth. The bill does this by preventing defendants from solely using AI as a liability shield, stating that defendants—both developers and deployers— cannot claim that an AI system autonomously caused harm. This section protects against AI misuse, by creating clear legal barriers towards arguing that AI on its own caused harm.

The House cognate (HB 713) was also introduced and both the Senate and House versions failed to pass.

Policy Landscape - Federal Legislation

The FAIR Act was proposed as a state-level approach to AI accountability, crafted to avoid coming into conflict with the White House Executive Order issued in December 2025. Executive

Order 14365 laid the groundwork for a federal preemption of state regulations deemed onerous to AI developers. The order directed the U.S. Attorney General to create a task force to challenge state regulations against the executive order. If the state was determined to have passed “onerous” AI law, they would be ineligible for BEAD non-deployment funds, which grant states funding to help build broadband infrastructure. Virginia is a recipient of significant BEAD funds, so this penalty would potentially have had a large impact on the Commonwealth. Congress considered implementing a 10-year moratorium on state AI laws as part of the One Big Beautiful Bill in 2025, but this provision did not make it into the final version of the legislation.

Key provisions in the FAIR Act were developed with stakeholder input to provide some transparency and accountability for AI harms without placing undue burdens on developers.

At the writing of this brief, there is no federal legislation on AI, but there are several proposed bills:

- Trump America AI Act (Sponsor: Senator Marsha Blackburn), an act meant to protect children, creators, conservatives, and communities from AI exploitation. It does this by establishing certain design, training, and implementation requirements for AI systems. The bill has not passed as of July 2026. If passed, the legislation would not interfere with the requirements put in place by the FAIR act.
- Strengthening Artificial Intelligence Normalization and Diffusion by Oversight and eXperimentation (SANDBOX) act (Sponsor: Senator Ted Cruz). This act would waive or alter existing federal agency guidance for AI developers, creating a regulatory sandbox program. If passed, this act, which remains in committee as of July 2026, would implement regulations recommended by the Trump Administration’s AI Action Plan. This plan details many of the ideas in above federal legislation, calling for Congress to prevent a patchwork of state regulations, create a regulatory sandbox program, and expand on “U.S. AI dominance in order to promote human flourishing.”
- “AI Foundation Model Transparency Act of 2026” (“AI FMTA”) (Sponsor: Representative Don Beyer) would require developers of certain large AI Models, like ChatGPT or Claude, to publicly disclose key information about how the models are trained.

Policy Landscape - Other States

Despite the Executive Order, states have introduced and passed a variety of bills regulating AI. However, no other states have passed bills with the exact combination of disclosure requirements, regulatory funds, and AI-related liability defenses as the FAIR Act. Recent state AI legislation passed after the Executive Order include:

- **Colorado:** Colorado repealed a comprehensive AI act ([SB24-205](#)) before it could take effect, fully replacing it with a less expansive act ([SB26-189](#)) in an effort to accommodate the White House Executive Order. The Automated Decision-Making Technology Act (ADMTA) is focused on increasing transparency over when automated decision making technologies are used to make consequential decisions. It requires companies to disclose when they are using ADMT systems and gives consumers the option to request human review of the decision if it is a decision being made by an ADMT system. The Attorney General of Colorado oversees enforcement, and a violation of the act is deemed a deceptive trade practice.
- **Connecticut:** Connecticut [SB00005](#) requires companies to disclose when AI is used to make crucial employment decisions. It also requires disclosure that citizens are speaking to a chatbot instead of a person. The bill also states that workers cannot be penalized for speaking out against potential harms the AI system may cause, and that companies must publish periodic updates regarding employee concerns.
- **Illinois:** Illinois recently passed [SB0315](#), which requires AI frontier developers to disclose the risk assessment results associated with their AI systems. Developers must also produce a framework for how they mitigate catastrophic risks. In addition, it mandates third party audits to ensure companies comply with their own safety protocols.
- **New York:** New York has passed a variety of AI bills in the past year, including [A06578](#), [A03411](#), [S08828](#), and [S06953](#). A06578 and A03411 both establish disclosure requirements similar to Virginia's proposed SB 365, with the former requiring companies to disclose information about the datasets used to train the generative AI model and the latter requiring a warning stating the model may not be accurate. S08828 establishes transparency requirements for frontier AI models and creates an office for AI model oversight.

In addition to above legislation, states have also passed 16 laws pertaining to AI chatbots (see JCOTS 2026 report AI Chatbots: Companionship & Minors). To date, the Commerce Department has not issued an evaluation of state legislation as required by the Executive Order. Colorado repealed its AI bill targeted in the Executive Order, and Utah lawmakers were reportedly pressured to withdraw an AI transparency bill (HB 286). However, there is little further evidence of federal action on state AI legislation to date.

Key Policy Questions

How can AI legislation protect consumers while promoting innovation?

How can legislation ensure AI regulatory standards are not harmful to small businesses?
How can legislation ensure that AI developers and deployers are accountable for harms caused with/by/through AI?
What information would state government and consumers need in order to assess the risk from AI models?

Policy Considerations

Industry comments/concerns

During the session when the bill was first introduced, industry expressed support of the bill and appreciation for its balance between consumer protection, safeguards, and promotion of innovation. Those opposed to the bill took issue with how the bill held the AI developers liable for harms and believed the disclosure requirements went beyond what was necessary to inform consumers of AI risks.

Additional AI policy approaches and considerations

Transparency

The key issue in the AI ecosystem system is the lack of information available to the public, government, and independent researchers. Transparency requirements attempt to provide these entities with more information, however, they entail tradeoffs — disclosures may require information that is difficult or even impossible to collect creating burdens for developers, create information fatigue for consumers and oversight agencies, or expose industry secrets. Therefore, it is essential that legislators consider whom the requirements are for and how actionable the disclosed information is (who would be empowered to act on the disclosed information?). For more information on training data transparency in particular, please see the 2025 JCOTS brief on training data transparency.

Liability

Liability requirements are controversial because the question of whom to hold liable for AI models isn't always clear. AI systems often act with some levels of autonomy, making it difficult to determine who caused the error. There are several different ways to approach liability for AI harms in research literature and other state legislation. For example, some existing laws may cover cases of AI harm. If an AI system is treated as a product, it could be subject to the product liability law. Some legislation, such as Title I of the Trump America AI act, has proposed a duty of care for AI developers. This would require developers to conduct risk assessments and

protocols in order to prevent foreseeable harm to users. Other proposals for dealing with AI liability include safe harbor provisions, where developers could avoid strict liability if they adhere to established industry standards, and/or demonstrate that they maintain adequate risk assessments, training logs, or safety audits. Some states have included a private right of action for AI harms, allowing individuals to seek damages in addition to civil actions brought by the state Attorney General.

Enforcement

Proposed AI legislation in the Commonwealth typically gives enforcement and oversight authority to the Office of the Attorney General. However, when technical oversight or guidance is required (e.g. to specify what information should be included in company disclosures), this may go beyond the existing expertise of the OAG. Without a designated oversight or regulatory agency to oversee AI, the OAG may need additional resources to bring expertise in-house. The FAIR Act establishes an enforcement fund, but the purpose and long-term funding model is not clearly defined. In addition, legislation could preserve or bolster the OAG's investigative authority to pursue suspected violations of legislative provisions (e.g. through civil investigative demands). OAG enforcement is the most common approach by states, with some notable exceptions in New York and California, which have established policy offices dedicated to AI.

Relevant Literature

- *Guha N et al. AI Regulation Has Its Own Alignment Problem: The Technical and Institutional Feasibility of Disclosure, Registration, Licensing, and Auditing. George Washington Law Review. 2023 ;92(6). <https://www.gwlr.org/ai-regulation-has-its-own-alignment-problem-the-technical-and-institutional-feasibility-of-disclosure-registration-licensing-and-auditing/>*
 - This law review article discusses different ways legislation can regulate AI, including a variety of approaches to AI disclosures.
 - The article discusses two types of AI disclosures: system level disclosures, which target information about a specific AI system, and prediction level disclosures, which encompass the rationale behind a specific prediction the AI system made. SB 365 contains a system level disclosure, which is less costly than a prediction level disclosure.
 - Disclosures are often limited by vague wording with limited enforcement capabilities. They are most effective when they are not filled with excessive jargon and detail and when they are actionable and independently verifiable.

- However, disclosures are much easier to implement than other legislative provisions.
- *The California Report on Frontier AI Policy*
 - This report published in 2025 collects a wide variety of evidence to provide a framework on policy making on frontier AI models for the state of California.
 - The section on transparency explains that disclosure requirements incentivize companies to implement best practices, making deviation from best practices obvious. This means that companies would compete to have the most up-to-date, relevant models for consumers, as consumers would be easily able to verify the data the model was trained on.
 - The report lists many common concerns with transparency standards, such as exposure to trade secrets, decreased privacy, and less innovation. However, the report concludes that transparency is not a costly option for companies, as much of the data corporations would produce is data they have readily available.

Policy suggestions:

- 1) Consider including language specifying how the enforcement fund would be funded (e.g. startup costs and then civil penalties under the bill deposited in the fund) and what specifically the fund would be used for
- 2) Alternatively, consider introducing standalone legislation establishing oversight responsibilities with one or several state agencies for enforcing the bill, including funding to support staffing
- 3) Consult VITA and independent academic experts for additional disclosure requirements for AI developers that would be most useful for consumers and independent researchers to evaluate AI risks.
- 4) Consult the OAG regarding resources and provisions needed to strengthen the accountability and enforcement mechanisms in the bill
- 5) Consider consulting independent experts to develop more actionable disclosure requirements beyond those proposed in the 2026 bill

How The Brief was Developed:

- 1) Listening to the hearing and observing key concerns from stakeholders
- 2) Reaching out to the original drafters of the bill to better understand the purpose
- 3) Using BillTrack50 to find similar bills in different states
- 4) Literature review of academic and grey literature on AI policy

References:

- “AI Legislative Update: August 28, 2026 — Transparency Coalition. Legislation for Transparency in AI Now.” *Transparency Coalition*, <https://www.transparencycoalition.ai/news/ai-legislative-update-august28-2026>. Accessed 1 Sept. 2026.
- “AI Regulation and Federalism: What the Moratorium (That Wasn’t) Debate Revealed | Regulatory Studies Center | Trachtenberg School of Public Policy & Public Administration | Columbian College of Arts & Sciences | The George Washington University.” *Regulatory Studies Center / Trachtenberg School of Public Policy & Public Administration / Columbian College of Arts & Sciences*, <https://regulatorystudies.columbian.gwu.edu/ai-regulation-and-federalism-what-moratorium-wasnt-debate-revealed>. Accessed 1 Sept. 2026.
- “Beyer, Lawler, Jacobs Introduce Bipartisan Legislation to Promote AI Foundation Model Transparency.” *U.S. Representative Don Beyer*, 26 Mar. 2026, <https://beyer.house.gov/news/documentsingle.aspx?DocumentID=9013>.
- Bill Search and Legislative Information / New York State Assembly*. <https://assembly.state.ny.us/leg/?bn=A03411&term=&Summary=Y&Actions=Y&Votes=Y&Memo=Y&Text=Y>. Accessed 1 Sept. 2026.
- Bill Search and Legislative Information / New York State Assembly*. https://nyassembly.gov/leg/?default_fld=&leg_video=&bn=A06453&term=&Summary=Y&Actions=Y&Committee%26nbspVotes=Y&Floor%26nbspVotes=Y&Memo=Y&Text=Y. Accessed 1 Sept. 2026.
- “Blackburn Releases Discussion Draft of National Policy Framework for Artificial Intelligence.” *U.S. Senator Marsha Blackburn of Tennessee*, 18 Mar. 2026, <https://www.blackburn.senate.gov/2026/3/technology/blackburn-releases-discussion-draft-of-national-policy-framework-for-artificial-intelligence/3b3b6458-b6c7-478b-g859-374949586765>.
- Bommasani, Rishi, et al. *The California Report on Frontier AI Policy*. June 2025. *carnegieendowment.org*, <https://carnegieendowment.org/russia-eurasia/research/2025/06/the-california-report-on-frontier-ai-policy>.
- Broadband Equity, Access and Deployment (BEAD) Program / DHCD*. <https://www.dhcd.virginia.gov/bead>. Accessed 1 Sept. 2026.
- Colorado Repeals and Replaces Its AI Act / Skadden, Arps, Slate, Meagher & Flom LLP*. <https://www.skadden.com/insights/publications/2026/06/colorado-repeals-and-replaces-its-ai-act>. Accessed 1 Sept. 2026.

MacKenzie, Chris. “White House Pressures Utah to Drop Kids AI Safety Bill.” *Americans for Responsible Innovation*, 15 Feb. 2026, <https://ari.us/white-house-pressures-utah-to-drop-kids-ai-safety-bill/>.

“New York So8828: Implements Transparency Requireme... | Passed.” *AI Laws by State*, <https://www.ailawsbystate.com/law/NY/so8828-implements-transparency-requirements-for-developers-of-ai-models>. Accessed 1 Sept. 2026.

Orders, Executive. “Ensuring a National Policy Framework for Artificial Intelligence.” *The White House*, 11 Dec. 2025, <https://www.whitehouse.gov/presidential-actions/2025/12/eliminating-state-law-obstruction-of-national-artificial-intelligence-policy/>.

Review, The George Washington Law. *AI Regulation Has Its Own Alignment Problem: The Technical and Institutional Feasibility of Disclosure, Registration, Licensing, and Auditing* -. 22 Dec. 2024, <https://www.gwlr.org/ai-regulation-has-its-own-alignment-problem-the-technical-and-institutional-feasibility-of-disclosure-registration-licensing-and-auditing/>.

“SB 5 in Five: What to Know About Connecticut’s New AI Law.” *Https://Fpf.Org/*, <https://fpf.org/blog/sb-5-in-five-what-to-know-about-connecticuts-new-ai-law/>. Accessed 1 Sept. 2026.

SB24-205 Consumer Protections for Artificial Intelligence / Colorado General Assembly. <https://leg.colorado.gov/bills/sb24-205>. Accessed 1 Sept. 2026.

SB26-189 Automated Decision-Making Technology / Colorado General Assembly. <https://leg.colorado.gov/bills/sb26-189>. Accessed 1 Sept. 2026.

“Sen. Cruz Unveils AI Policy Framework to Strengthen American AI Leadership.” *U.S. Senate Committee on Commerce, Science, & Transportation*, <https://www.commerce.senate.gov/press/rep/release/sen-cruz-unveils-ai-policy-framework-to-strengthen-american-ai-leadership/>. Accessed 1 Sept. 2026.

System, Legislative Information. *Official Government Website of the Illinois General Assembly*. Legislative Information System, 14 June 2024, <https://ilga.gov>.

“US - S2750.” *BillTrack50*, <https://www.billtrack50.com/billdetail/1905604>. Accessed 1 Sept. 2026.