



AI Regulation

Look to the states instead of the federal government

by: Greg Goldberg, BTA General Counsel

Last month, Stramaglio Consulting hosted the Executive Connection Summit 2025 in Scottsdale, Arizona. This year's conference brought together marquee dealers, OEMs and keynote speakers for three days of inspiring and provocative content about what lies ahead for the dealer channel and what the future holds



for information technology. Topics ranged from conquering the boardroom, to managing product distribution, to diversifying revenues through expanded service offerings. Without a doubt, the subject that generated the most buzz was artificial intelligence (AI). This month, Legal Perspective takes a look at some of the regulatory questions developing around AI as we forge ahead into uncharted territory in 2025.

AI regulations may come in several different forms. Most broadly — though perhaps least likely — the federal government could enact comprehensive AI legislation, requiring passage by both houses of Congress, followed by a signature from the president. However, given the legislative paralysis in Washington, D.C., it is difficult to imagine a consensus developing around a discreet set of policy priorities that could be codified into a single law. Besides, even if Congress passed a wide-ranging AI law or delegated broad AI rulemaking authority to federal agencies, a single federal court judge could stymie those efforts by issuing a nationwide injunction.

Instead of seeing a new federal law on the books, what seems far more probable is that AI rules and regulations will emerge piecemeal through trial and error in the individual states. In a now famous dissenting opinion from 1932, Supreme Court Justice Louis Brandeis ingeniously referred to the separate states as laboratories of democracy — in other words, proving grounds for laws that one day might apply to the country as a whole. History has proved Justice Brandeis's concept. As of this writing, at least 31 states have enacted some form of AI legislation.

There are two distinct schools of thought regarding AI regulations at the state level: some states will pass new laws to address AI; other states will reinterpret existing laws and apply them to issues arising from AI. In the former category is Colorado, which last year passed a first-in-the-nation comprehensive AI law that will take effect in February 2026. Colorado's AI law creates an affirmative duty for developers and deployers of AI technology to use reasonable care to protect consumers from "algorithmic discrimination" arising from "high-risk AI systems." "Algorithmic discrimination" refers to inherent biases

written into AI programs. "High-risk AI systems" are AI programs that make "consequential decisions" in the areas of education, employment, finance and lending, government services, health care, housing, insurance and legal services.

For example, in Colorado, if a school uses AI to make admissions decisions, if an employer

uses AI to identify job candidates, or if a bank uses AI to evaluate loan applications, the entity employing the AI technology must prevent it from generating outputs that discriminate based on protected class status, such as race, ethnicity, gender or religion. Colorado's AI law also requires developers and deployers of AI to conduct impact assessments, comply with consumer transparency requirements and report incidents of discrimination. Because Colorado's law is narrowly tailored to AI, it should, in theory, be easier for courts to apply and interpret.

In the latter category is Oregon. Even though Oregon has not enacted a specific AI law, as one of her final official acts, the outgoing state attorney general, Ellen Rosenblum, issued guidance for deploying AI technology consistent with existing Oregon laws. Similar to the issues addressed under Colorado's AI law, Rosenblum's guidance raises concerns about the seeming randomness of certain AI outputs, explaining that AI outputs may be unfair, unaccountable or untrue. As a result, AI outputs in Oregon may violate the Unlawful Trade Practices Act, Consumer Privacy Act or Equality Act.

To avoid violating Oregon statutes, entities utilizing AI technology must maintain adequate controls. First, AI outputs cannot include misrepresentations that mislead consumers. For example, AI outputs claiming fictitious product accolades (such as celebrity endorsements) or utilizing deep-fake technology to create phony audio or video, are impermissible. Second, purveyors of AI technology must disclose whether AI programs are trained using consumers' personal data. If so, express consent from those consumers should be obtained and personal information must be protected. Third, like in Colorado, AI cannot discriminate based on class status.

How AI will be regulated in the U.S. remains an open question. Stay informed by watching this space and what happens in the states. ■

Greg Goldberg, partner at Barta | Goldberg, is general counsel for the Business Technology Association. He can be reached at ggoldberg@bartagoldberg.com or (847) 922-0945.

