



U.S. SENATE COMMITTEE ON COMMERCE, SCIENCE & TRANSPORTATION

Senator Maria Cantwell, Ranking Member

SUMMARY OF AI MORATORIUM PROVISIONS AND IMPACTS ON STATE LAWS

On May 13, 2025, the House Energy and Commerce (E&C) Committee passed a provision that would broadly preempt state laws regulating artificial intelligence (AI) through a 10-year moratorium on enforcement of state laws or regulations regulating AI models, AI systems, or automated decision systems.

Senate Reconciliation text, released on June 5, 2025, similarly proposes a 10-year moratorium on state AI laws and regulations, as a condition to receiving funds in the Broadband, Equity, Access, and Deployment (BEAD) program, which could impact states' participation in that program.

This enforcement moratorium expressly preempts states from enforcing their laws but would not preempt states from passing laws. However, given this moratorium, it is unlikely that states would adopt new AI laws if they could not enforce them.

The provision would preempt enforcement of numerous enacted and proposed state laws; some examples include:

- Laws that **directly regulate the development and deployment of AI systems.**
- Provisions of **privacy laws addressing automated decision-making.**
- Laws that afford civil remedies for **AI-generated sexually explicit material.**
- Civil laws regulating the use of **deepfakes or AI-generated content in political ads.**
- Laws governing **state procurement or use of AI within state government.**
- Possibly preempt **digital replica** laws protecting performing artists from AI copies.

IMPACT ON STATE LAWS

The moratorium provision would preempt state AI laws by prohibiting their enforcement for 10 years. Some of these laws address AI harms like discrimination. Other laws protect individuals from AI-generated content and deepfakes when used to create sexually explicit material or election advertising. The provision is so broad that it will stop states from enforcing laws and policies governing their own procurement and use of commercially available AI in state government.

Here are some examples of the types of state laws that will be preempted:

- A. Artificial Intelligence Governance Laws.** State laws that directly regulate AI models, AI systems, or automated decision systems would be preempted. Examples:

1. **California AI Training Data Transparency.** On or before Jan. 1, 2026, requires developers of generative AI systems to publicly disclose on their websites specified information regarding the data sets that were used in the development of the generative AI system.
2. **California AI Transparency Act.** Effective Jan. 1, 2026, companies that provide generative AI systems must include provenance disclosures in the content they generate and provide a publicly accessible detection tool so that users can identify AI-generated content.
3. **Colorado Consumer Protections for Artificial Intelligence.** Beginning Feb. 1, 2026, developers and deployers of high-risk AI systems must use reasonable care to protect consumers from any known or reasonably foreseeable risks of algorithmic discrimination in the system. The law presumes reasonable care if the developer or deployer complies with specific provisions of the Act.
4. **Utah Artificial Intelligence Policy Act.** Took effect May 1, 2024. Requires certain businesses to disclose that a consumer is interacting with generative AI systems. The law also creates an office of AI Policy and requires all other businesses to disclose that the company uses generative AI when asked by the consumer.
5. **Laws Prohibiting the Use of Rent-Setting Algorithms.** The State of Colorado and the cities of San Francisco, Philadelphia, and Minneapolis have enacted laws that prohibit the use of AI systems to set rents. These systems are anticompetitive and have allowed landlords to collude to raise rents and drive-up costs for consumers and small businesses. Colorado is the first state to prohibit the practice, and several states are considering such legislation, including Washington. Preempting these laws could make raise prices for consumers and small businesses.

B. Provisions of Privacy Laws. Many states have provisions in their privacy laws that address automated decision-making, like giving consumers the right to opt-out of profiling and requiring risk assessments of their data processing activities. The moratorium is unlikely to preempt state privacy laws in their entirety, but it will preempt the enforcement of provisions that apply to AI systems.

1. **Right to Opt Out of Use of Personal Data for Profiling.** Many state privacy laws give consumers the right to opt out of profiling, which is usually defined as automated processing of personal data to evaluate or predict personal aspects concerning a consumer's economic situation, health, personal preferences, interests, reliability, behavior, location, or movements. **California, Colorado, Connecticut, Delaware, Indiana, Kentucky, Maryland, Minnesota, Montana, Nebraska, New Hampshire, New Jersey, Oregon, Rhode Island, Tennessee, Texas, and Virginia** all allow consumers to opt out of profiling.
2. **Risk Assessments.** Many states require companies to assess their processing activities that present a heightened risk of harm to the consumers, including when the processing is for profiling or other activities that could result in a foreseeable risk of harm; some states require assessments for risk of discrimination. **California, Colorado, Connecticut, Delaware, Indiana, Kentucky, Maryland, Minnesota, Montana, Nebraska, New Hampshire, New Jersey, Oregon, Rhode Island, Tennessee, Texas, and Virginia** all require an impact assessment to some degree that will require an assessment of AI systems.

C. Laws Affording Rights to Victims of Sexually Explicit AI-Generated Images. The preemption provision **will not** preempt state laws that impose criminal penalties on dissemination of AI-generated deepfakes. However, it would preempt state laws that provide a private right of action for victims who have been depicted in AI-generated sexually explicit deepfakes. Examples:

1. **Washington’s Fabricated Intimate or Sexually Explicit Images Law.** This law will provide a private right of action to a person who has been harmed by the disclosure or threatened disclosure of a digitized intimate image identifying that person. It is possible this law could be considered content-neutral and not be preempted.
2. **California’s Law Requiring Social Media Platforms to Remove Sexually Explicit Deepfakes.** California requires social media platforms to provide a mechanism for individuals to report sexually explicit deepfakes and remove them if they meet the law’s criteria for removal.

D. Laws Regulating the Use of AI in Political Ads. State laws that regulate the use of AI-generated content in the elections context that do not impose criminal penalties could not be enforced. Examples include:

1. **Washington State Law Creating Civil Liability for Election Deepfakes.** In 2023, Washington passed a law that gives candidates a private right of action for injunctive relief or damages if the candidate’s appearance, speech, or conduct has been altered by AI and if the sponsor of the content did not include a disclosure that the content has been manipulated.
2. **Montana Law Granting Civil Remedies Election Deepfakes.** Montana passed a law that grants a candidate, or political party, may sue to enjoin the distribution of, and obtain damages for, an election deepfake distributed within 60 days of an election that does not include a disclosure that the media “has been significantly edited by artificial intelligence and depicts speech or conduct that falsely appears to be authentic or truthful.” The law also authorizes the elections regulator to issue civil penalties for a violation.
3. **Arizona Civil Penalty for Election Deepfakes.** This law imposes a civil penalty against creating and distributing a deceptive and fraudulent deepfake of a political candidate within 90 days before an election without including a disclosure that the media includes content generated by AI.

E. Laws Governing Use of AI By Government Agencies. States have enacted laws that govern how the state itself will use AI and automated decision-making tools. Some of these laws regulate whether and how state and local law enforcement can use facial recognition technology. It does not appear that the preemption provision would stop states from enforcing laws governing their own development of AI, but would preempt laws that govern how states procure and use commercially available AI models, AI systems, and automated decision systems. Examples include:

1. **Maryland Artificial Intelligence Governance Act of 2024.** This law requires state agencies to conduct impact assessments for high-risk AI and prohibits state agencies from procuring an AI system unless the system complies with the requirements of the law, including requirements that use of the system is governed by adequate guardrails to protect individuals and communities.
2. **New Hampshire Law Relating to the Use of AI By State Agencies.** In 2024, New Hampshire passed a law that prohibits state agencies from using AI to classify individuals based on behavior, socio-economic status, or personal characteristics that result in discrimination; using real-time and biometric identification systems for surveillance in public spaces without a warrant; and using deepfakes for any deceptive or malicious purpose. The law also establishes permissible uses of AI by state agencies.
3. **New York Automated Decision-Making in State Government Law.** In Feb. 2025, New York passed a law that requires state agencies to disclose the automated decision-making tools they use

when making employment decisions; and provides that the use of AI systems shall not result in the displacement of state employees or alter certain employee rights or benefits.

F. Digital Replica and Right to Publicity Laws. Some states have passed laws regulating digital replicas to protect an individual's right to publicity or identity. Because these laws specifically call out AI, they could be preempted. Examples include:

- 1. Tennessee's ELVIS Act.** In 2024, Tennessee passed the ELVIS Act, which extends the state's right to publicity law to cover an individual's voice, regardless of whether the sound contains the person's actual voice or a simulation of the person's voice.
- 2. Illinois' Digital Replica Law.** In 2024, Illinois followed Tennessee by updating its right to publicity law to create a cause of action against parties that create an unauthorized digital replica of individuals by using generative-AI.
- 3. Utah's Abuse of Personal Identity Act.** Effective May 7, 2025, Utah regulates the use of an individual's personal identity for commercial purposes without the person's consent and specifically includes any simulation, reproduction, or artificial recreation of an individual's personal identity through generative-AI, digital manipulation, or any other technological means.