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The Honorable Phil Weiser
Colorado Attorney General
Ralph L. Carr Judicial Building
1300 Broadway, 10th Floor
Denver, Colorado 80203

RE: Comments on Rulemaking for The Automated Decision-Making Technology Act

Dear Attorney General Weiser,

The Consumer Technology Association (CTA®) appreciates the opportunity to comment on the rulemaking process for the Automated Decision-Making Technology Act. As North America's largest technology trade association, representing more than 1200 companies, CTA is the tech sector. Our members are the world's leading innovators – from startups to global brands helping support more than 17 million American jobs. CTA also owns and produces CES® – the most powerful tech event in the world.

The Department's implementation of the Act will help determine whether Colorado attracts the next generation of AI startups, investment, and high-paying jobs. The Department can protect consumers while ensuring the Act remains practical and workable for companies developing and deploying AI in good faith. To achieve that goal, the rules should provide clear definitions, objective compliance standards, practical safe harbors, and liability rules that place responsibility on the party best positioned to manage the relevant risk.

Every two years CTA scores each state on its degree of innovation friendliness. CTA's most recent Innovation Scorecard ranked Colorado as an Innovation Adopter, scoring well in the categories of Telehealth, Entrepreneurial & Small Business Activity, and Skilled Workforce. The 2027 CTA rankings are underway and how each state welcomes AI innovation and protects new market entrants and has clear understandable laws will be part of the innovation friendliness ranking. Given the Colorado ground-breaking legislative action, we look forward to the necessary clarity that your office can provide this new law.

Clear, predictable rules will give startups the confidence to build and hire in Colorado. Vague or subjective standards will do the opposite, creating uncertainty that falls hardest on emerging companies with limited legal and compliance resources. It would also make Colorado a less attractive place to innovate and create jobs.

Provide clear definitions and objective indicators

Wherever rulemaking authority is granted, terms should be clearly defined, objective indicators should be established, and specific illustrative examples should be outlined for meeting compliance thresholds. Providing companies, particularly small businesses that have limited compliance budgets, with a certain path to meeting the law's requirements will help to ensure that the Automated Decision-Making Technology Act does not end up as a costly burden to Colorado startups. Specifically, we ask that you clarify the following definitions.

Materially Influence: Provide clear guidance as to what constitutes "materially influence" in a decision. This guidance should include specific examples of what constitutes a "non-de minimus factor." Such guidance should make clear that if the output of an AI tool is independently reviewed by a human with override authority, that tool will not be defined as materially influencing a decision.

Additionally, AI outputs that are informational, advisory, or otherwise meant to be used as optional reference material for a human decision-maker should not be considered to meet the materially influencing definition. The law's obligations should not be triggered simply by the availability of AI generated supplemental information.

In cases where a human decision-maker exercises independent judgement, such judgement should be considered to break any chain of "material influence" from an AI output. Specific examples of where HR software, applicant systems, and other relevant software meet and do not meet the "materially influencing" threshold will provide needed clarity to business in all sectors of the economy.

Consequential Decision: Provide additional clarity as to the scope of "consequential decision." Any clarifications to the scope of this term must preserve the law's original intent to exclude decisions that are independently made by a human irrespective of receiving feedback or from an automated decision-making technology.

Consistent with the law's focus on decisions impacting the opportunity of a specific individual, and the law's exclusion of routine business processes and operational efficiencies, it should be clarified that group, or population-level, decisions such as corporate or department restructurings fall outside the scope of "consequential decision." This clarification should affirm that aggregate outputs from business tools, such as headcount and other group-level metrics, are not considered to materially influence a consequential decision.

Passive sourcing of job candidates, ranking of non-applicants, and other such processes that do not involve an individual who is actively within a hiring decision process should also be excluded from the scope of "consequential decision."

Exceptions to the definition should be clarified, and specific examples should be provided. For example, the fraud prevention exception would benefit from including the use of technology to detect fraudulent applicants. Similarly, exemptions should be broadened to ensure that the output from any system not operating in a consumer-facing environment, and not intended to inform consequential decisions about individuals, is not inadvertently captured.

Finally, to avoid compliance uncertainty, the Department should confirm that outputs from ordinary retail AI tools like product recommendations, search, retail assistance, and customer service triage remain outside the scope of "consequential decision."

Adverse Outcome: Given the attachment of an "adverse outcome" to a "consequential decision," any clarifications or guidance associated with the "adverse outcome" definition should be consistent with the recommendations made with the "consequential decision" definition.

Knowing and Repeated Violations: In the context of violations of the law, the terms "knowing" and "repeated" should be defined. The Department should also make clear that, in advance of a rulemaking, a business' good faith interpretation of any ambiguous statutory term does not constitute a "knowing" violation. It should be further clarified that "knowing" and "repeated" violations refer to systemic and uncorrected non-compliance, not isolated errors in otherwise compliant high-volume processes. The cure period should be explicitly protected for companies acting in good faith, and it should not be diminished in any way by the rulemaking process.

Consumer: The Department should clarify that the definition of "consumer" in the Automated Decision-Making Technology Act only applies to Colorado residents. As currently written, the definition of "consumer" would create significant legal ambiguity for any company that operates nationally. Making this clarification ensures that the scope of the definition remains consistent with the Colorado Privacy Act.

Multi-jurisdictional safe harbor

To minimize compliance costs and uncertainty about enforcement, particularly for small companies and startups, the Department should clarify that any company complying with substantially equivalent regulation in another jurisdiction will be considered to have met the compliance requirements in the Automated Decision-Making Technology Act.

Fair developer and deployer liability

CTA represents members in every part of the AI value chain, and we recognize that clear liability structures create the most workable compliance environment for both developers and deployers. Throughout the Department's rulemaking we ask that you establish, to the greatest extent possible, clear guidelines for developer and deployer obligations. Any rulemaking should place reasonable liability on the appropriate party and should not specifically favor any one piece of the AI value chain.

Reasonable post-adverse decision disclosures

Post-adverse decision disclosures should be standardized in such a way that companies of all sizes can easily fulfill their obligations under the law. This can be done by confirming that disclosures can be made through a reasonably accessible online or aggregate disclosure mechanism, and that an individualized mailing or transmission to each consumer is not required. In addition, the Department should establish that post-adverse decision disclosures do not need to include “types” and “sources” of personal data. This would create consistency with the Colorado Privacy Act, which has an established framework for the use of “categories” of data in consumer-facing disclosures. Expanding the scope of consumer-facing disclosures to include “types” and “sources” of personal data would create an unreasonable burden for businesses, particularly small companies that may not have adequate resources to compile this information. It would also create a real risk of disclosure of confidential or proprietary information.

Workable recordkeeping and compliance documentation

Recordkeeping and compliance documentation requirements should be clarified, and structured, so that both high-volume and small businesses can meet the requirements of the law. This can be most reasonably achieved by clarifying that aggregate or system-level records are sufficient to meet compliance requirements. It should not be required to maintain per-decision documentation for each individual outcome. The Department should clarify that any statutorily required compliance documentation is inadmissible for the purpose of proving liability, except in the case of an alleged willful violation of the law.

Fair consumer rights

It should be confirmed that consumers have a right to contest and correct underlying data on which a decision is based, but not a right to force a specific decision to be reversed. Rules should be free of any implication that a business would need to suspend, delay, or overturn a decision pending a dispute from a consumer. Requiring such action from businesses would, in many cases, be operationally impossible. The timing and scope of any post-decision consumer rights should be specific and unambiguous to provide all parties with the greatest amount of certainty.

Sector-specific clarifications

The Department should issue guidance and examples regarding the categories of “covered domains.” This includes guidance on the treatment of Health Insurance Portability and Accountability Act (HIPAA) covered entities and U.S. Food and Drug Administration (FDA) medical devices. Clarity regarding the treatment of cloud-based health-care providers in the context of "operating from a location within Colorado" would also be beneficial.

Maintain intended scope of the law

The Automated Decision-Making Act reflects extensive compromise between large companies, startups, consumer groups, and many other stakeholders. The Department should ensure that any rulemaking focuses on clarifying the existing scope of the law, and does not serve to expand the law beyond its intended parameters. No aspect of the Department's rules should imply the need for an impact assessment or similar requirement. The rulemaking process also should not expand, or create new ambiguity around recordkeeping, disclosure, correction, and human-review requirements.

Expedite rulemaking process

To the extent possible, the Department should seek to expedite the rulemaking process for the Automated Decision-Making Technology Act to give businesses adequate time to build, test, and implement compliance systems.

Thank you for your consideration. CTA looks forward to working with you to make Colorado a global destination to start, and grow, innovative companies.

Sincerely,

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