

Generative AI Has State Legislatures Rushing to Take Action

By Korey Clark, Managing Editor, *State Net Capitol Journal*™

Not too long ago the social conversation about generative artificial intelligence (AI) tools—which utilize algorithms to generate seemingly original content including text, images and audio—was a curious science fiction discussion. Suddenly, it is very real and is stirring up emotions that range from excitement to fear.

The revolutionary technology that has driven this national conversation into our living rooms overnight is ChatGPT, an AI “chatbot” that was [launched](#) as a prototype in November 2022. Anyone who has given it a test drive has quickly discovered that ChatGPT is capable of engaging in remarkably human-like conversations, as well as carrying out a variety of complex tasks that we previously believed to be reserved for human creativity.

But for every corporation that has embraced these generative AI tools as vehicles for achieving greater efficiency, there is a school district that has banned them out of fear that AI-generated content will soon be mistaken for authentic and original content. These concerns about runaway AI have created a flurry of activity in the halls of legislative buildings and among government regulators.

Congress Debating, States Acting

Rep. Ted Lieu, a Congressman from California with a degree in computer science, introduced a [resolution](#) in January 2023, calling on Congress to establish a nonpartisan commission to make recommendations about how to regulate AI. And Sen. Chuck Schumer has begun taking steps toward legislation in the U.S. Senate to regulate AI, [according to](#) Axios.

But while Congress is debating, state legislatures are rushing into the regulatory gap, introducing and enacting measures addressing the development and use of AI, as the *State Net Capitol Journal*™ [reported](#).

“State lawmakers are considering AI’s benefits and challenges,” [according to](#) the National Conference of State Legislators (NCSL). “A growing number of measures are being introduced to study the impact of AI or algorithms and the potential roles for policymakers.”

Most of the measures introduced to date involve the creation of task forces or government agencies to oversee how AI technologies are deployed in their states. One interesting bill in [Massachusetts](#) takes direct aim at ChatGPT and similar generative AI models with a number of proposed guardrails to restrain the technology as it develops. A [California](#) measure would require the deployers of AI products to perform annual impact assessments on any AI tools they build or use.

As the volume of enacted and proposed state laws begins to accelerate, there are specific themes to those measures that are taking shape.

Themes Emerging from State Legislation

More than half of the states have now considered or enacted measures related to AI since the start of 2023, according to [LexisNexis® State Net®](#) legislative and regulatory tracking database.

Here are some of the emerging topics these bills are targeting, based on analysis by NCSL:

Government Use and Oversight

An [Arizona](#) bill would establish an automated law enforcement crime victim notification system that leverages conversational AI technology. A [California](#) proposal would require an interagency review and inventory of all high-risk automated decision systems that utilize AI. A [Pennsylvania](#) bill would establish a registry of businesses operating AI systems in the state and vest regulators with oversight of the industry.

Employment

A [Massachusetts](#) proposal has the goal of “preventing a dystopian work environment” by regulating the use of AI in the workplace. A [Maryland](#) bill would establish a technology grant program to provide financial aid to small and medium-sized manufacturing companies seeking to leverage AI technologies. A proposal in [North Carolina](#) seeks to document the impact of AI and automation on the state’s workforce.

Health Services

A bill in [Maine](#) addresses healthcare facility staffing by prohibiting the use of AI for monitoring patients. A [Georgia](#) proposal seeks to regulate the use of AI devices and equipment in vision care. A [Massachusetts](#) bill proposes to regulate the use of AI in the provision of mental health services; a similar bill has been introduced in [Texas](#). This is an important area to monitor as state regulators strive to ensure that patients’ privacy rights and treatment protocols are protected amid the expansion of AI-driven mental health care.

Explicit Content

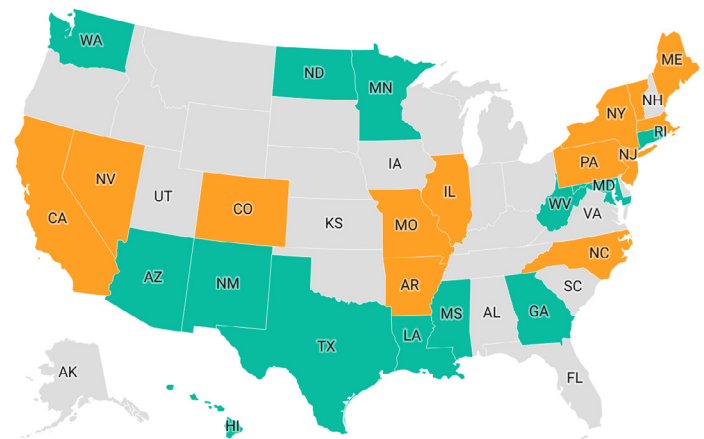
Proposed legislation in [Texas](#) targets the use of AI in the creation of “intimate visual material” that depicts another person. A bill in [Minnesota](#) would make it a crime to disseminate “deep fake” sexual images without the consent of the depicted person and establish a cause of action for aggrieved individuals.

Transparency

A number of measures have been introduced that would require the disclosure of AI use in content such as: publicly displayed images/videos ([Illinois](#)); advertising ([New York](#)); social media ([Illinois](#)); and political campaigns ([Washington](#)).

Flood of AI Legislation at State Level in 2023

Considered legislation dealing with AI in 2023 Enacted legislation dealing with AI in 2023



Map: State Net • Source: National Conference of State Legislatures • Created with Datawrapper

Compliance Challenges Ahead for Businesses

“For the time being at least, the regulation of AI governance and AI ethics appears as though it’s going to be handled piecemeal at the state level, which will make compliance all the more tricky and complicated for developers of this revolutionary technology,” [reports](#) the State Net Capitol Journal.

Legal experts advise that the most immediate corporate compliance issue likely pertains to intellectual property rights. There are a number of practical issues to consider when creating and using AI for commercial purposes—especially with respect to infringement claims—according to Jeremy Goldman, partner in the litigation group of Frankfurt Kurnit Klein + Selz PC., a recent guest on the [Practical Guidance Podcast](#). These considerations might apply to AI-generated text, music, visual arts or other content.

Another corporate compliance challenge that is likely ahead relates to privacy and data security issues. An AI system generally relies heavily on large volumes of data that is processed to reach conclusions, improve business practices and predict future patterns—but much of

the data being exploited includes customer and user personal information, including sensitive personal data. Extra precautions will need to be taken to make sure this information is protected from unauthorized use and disclosure.

A third key compliance area to monitor is employee recruiting and hiring. AI is being used on a regular basis to sort, rank and disqualify potential candidates without significant human supervision (e.g., reviewing social media accounts and public databases). However, the recruiting and hiring process remains subject to all applicable employment and anti-discrimination laws, which prohibit the use of certain personal information during an interview or job application. AI tools bring inherent risks in this area that must be mitigated by employers to ensure compliance.

Key takeaway: Generative AI tools have the potential to be the most transformational tech breakthrough of this generation, but they also come with serious public policy challenges. State legislatures are not waiting for Congress to act, they are moving swiftly on a number of fronts to exercise oversight of AI. Businesses must be proactive in addressing these legislative challenges to ensure their use of AI tools is in compliance with applicable state regulations.



State Net can help businesses monitor emerging AI developments by providing access to a robust database of legislative and regulatory activity at multiple levels of government, as well as in-depth analysis that helps you better understand and prepare for the potential impact of new AI-related legislation.

[Please visit our web page](#) to speak with a State Net representative and learn how the State Net legislative and regulatory tracking solution can help you monitor the bills mentioned in this article.

LexisNexis.com/**StateNet**
800-726-4566

