The Next State to Regulate AI Will Be…Texas? What You Need to Know About The Newest State AI Law

Insights

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We bet most of you didn't have "Texas will beat California to the punch to regulate AI in the workplace" on your 2025 bingo card – but that's what just happened. State lawmakers just overwhelmingly passed the Texas Responsible Artificial Intelligence Governance Act (TRAIGA) on Sunday, a state law that could soon establish guardrails on AI use but without adding significant new burdens for employers. TRAIGA was sent to Governor Abbott yesterday, and if he approves the bill as expected, Texas will join Colorado, Illinois, and other states in regulating the use of AI starting January 1, 2026. What do businesses, employers, and AI developers need to know about this surprising development?

Quick Background on the AI "Texas Two-Step"

- Things took a surprising turn in the AI regulation race late last year when State Rep. Giovanni Capriglione (R) introduced a groundbreaking bill that aimed to force Texas employers to comply with what would have been the nation's most comprehensive state-level AI standard. But <u>HB 1709</u> died a fairly quiet death when it failed to even make it out of committee. <u>You can read all about this first version here</u>.

- Instead, Rep. Capriglione introduced a heavily watered-down version of his original bill in March, one that walked back the original vision of TRAIGA and instead offered a soft-touch regulatory approach. That's the version of the law that just passed in Austin.

7 Biggest Things New Texas AI Law Will Do

Here are the seven biggest developments that will come online if Governor Abbott approves <u>HB 149</u>.

1. Clarifies AI Discrimination Rules

It will be against the law to develop or deploy an AI systems with the intent to unlawfully discriminate against protected classes under state law (such as race, color, sex, religion, disability, etc.).

- While this seems like a step toward regulation, existing state law already prohibits intentional discrimination. The law simply clarifies that AI cannot be used to carry out purposeful discrimination, which was effectively already the case.

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- The law further says that "disparate impact" alone – the legal theory that prohibits actions that don't purposefully set out to discriminate but end up doing so anyway – isn't sufficient to prove a violation. This is in line with the Trump administration's recent Executive Order directing federal agencies to narrow the use of disparate impact theories.

2. Bans Harmful and Manipulative AI Uses

- The new Texas law will ban AI **human behavior manipulation tools** designed to incite self-harm, violence, or criminal behavior.

- It also bans using AI to carry out "**social scoring**," classifying people based on behavior or characteristics and assigning them a social score or estimation.

- Finally, it prohibits AI systems from censoring or limiting access to **political content** or infringing on freedom of expression or association.

3. Requires Government Transparency – But Not For Private Businesses

Under the new law, state government agencies must disclose to consumers when they are interacting with an AI system, regardless of whether it seems obvious they are doing so. This requirement, however, does not apply to private businesses interacting with customers or employees.

4. Adds Biometric Guardrails – With Major Loopholes

The new law includes provisions related to biometric data – such as facial and voice recognition – though they don't create sweeping reform. Rather, the law says that making images or audio clips available to the public doesn't count as "consent" for the purposes of allowing others to use biometric identifiers under the law, meaning companies can't argue that someone being online gives them a free pass to harvest their data. The law, however, creates big carveouts:

- If a business uses biometric data only to train an AI system – not to identify individuals – it's exempt from the restrictions.

- Financial institutions and their affiliates are largely off the hook for voiceprint data collection.

- AI used for security, fraud prevention, or complying with legal obligations also gets a free pass.

5. Creates AI Sandbox Program

The law allows businesses to test innovative AI systems in a controlled environment without full regulatory compliance for up to 36 months, so long as they submit quarterly reports on performance, risk mitigation, and stakeholder feedback.

6. Establishes Texas Artificial Intelligence Council

The new law will create a 10-member advisory body within the Department of Information Resources. Its job will be to monitor AI use across state government, flag harmful practices, recommend legislative updates, and identify rules impacting innovation.

7. Stops Short of Private Right of Action

Under the law's provisions, the state Attorney General has the authority to enforce AI regulations, regardless of where the AI system is based. Only the state Attorney General, however, can pursue civil penalties for violations; there is no private right of action for consumers or workers.

What Happens Next?

We'll find out in fairly short order whether this low-touch AI regulatory law will take effect. The Governor has three choices before June 22:

 Sign the Bill: TRAIGA will become law on January 1, 2026.

 Veto the Bill: HB 149 would not become law unless lawmakers override the veto with a two-thirds majority in both chambers. However, since the session has adjourned, such an override is practically not possible.

 Take No Action: TRAIGA would still become law on January 1, 2026, without the Governor's signature.

But Wait...

There is a chance that Congress could approve a sweeping proposal to impose a decade-long moratorium on state-level laws regulating AI – a move that would wipe this Texas law and other state laws off the books. The House passed the 10-year ban that would halt new or existing state laws targeting AI systems, models, and automated decision-making tools on May 22, and the law is now awaiting Senate action (and procedural approval by the House Parliamentarian). <u>You can read more about the proposal here</u>, and we'll stand by to see whether it overcomes obstacles to take effect.

Want to Learn More About AI Regulation?

Join us for our third-annual AI Conference in Washington, D.C., July 23 to 25, where we'll be unpacking this development and many other cutting-edge compliance issues.

 <u>Register here</u>

Conclusion

We'll continue to monitor developments and provide the most up-to-date information directly to your inbox, so make sure you are subscribed to Fisher Phillips' Insight System. If you have questions, contact your Fisher Phillips attorney, the authors of this Insight, any attorney in our Texas offices, or any attorney in our AI, Data, and Analytics Practice Group.

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