

## Federal Preemption of AI Regulation: What State Legislation Is at Risk?



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### EXECUTIVE SUMMARY

This paper analyzes the potential scope of impact of the proposed federal moratorium on state AI regulation. The analysis examines case studies of enacted state legislation across five policy areas – (1) consumer protection and algorithmic interaction, (2) government AI adoption and deployment, (3) children’s online safety, (4) developer/deployer transparency and accountability, and (5) generative AI harms – assessing the likelihood that each would be voided under the proposed federal moratorium. The analysis indicates that the proposed moratorium’s broad language could potentially sweep away a wide range of public interest state legislation regulating AI and other algorithmic-based technologies, creating a regulatory vacuum across multiple technology policy domains without offering federal alternatives to replace the eliminated state-level guardrails.

Recently, both chambers of Congress have advanced proposals in their budget reconciliation packages to limit state AI governance efforts.<sup>1</sup> The House of Representatives included a proposal to impose a direct ten-year moratorium on state AI regulation, while the Senate Commerce Committee, in text released on June 5, 2025, opted for a funding-conditional approach that would withhold federal broadband subsidies from states that choose to regulate AI technologies.

Under the House version, states would be directly prohibited from enforcing regulations on AI and automated decision technologies for a period of ten years, with narrow exceptions for pro-innovation measures, federal and generally applicable laws, and provisions establishing criminal liability. The Senate's alternative version is largely similar, except that it removes the exception for provisions establishing criminal liability and would condition states' ability to receive funding from Broadband, Equity, Access and Deployment (BEAD) funds on pausing any AI regulations. While these approaches differ in mechanism, both would effectively discourage state AI regulation and could result in similar practical impacts on existing state legislation. And even if such proposals are ultimately stripped from budget reconciliation for procedural reasons, the notion of limiting state AI regulation has attracted attention from federal lawmakers, with plans to introduce similar measures in standalone legislation.<sup>2</sup>

Federal preemption of AI regulation is not necessarily harmful and in some instances could support the innovation economy.<sup>3</sup> Preemption would help prevent the formation of a fragmented AI regulatory landscape. Startups as well as small and medium-sized enterprises (SMEs) would not be subjected to high regulatory compliance costs. Businesses and consumers would not face legal opacity surrounding AI adoption. American AI firms generally would not be inhibited from competing globally against international competitors. In short, a federal preemption on state AI regulation would in principle help to facilitate consistent rules and streamlined compliance for AI developers nationwide.

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<sup>1</sup> H.R. 1, One Big Beautiful Bill Act, 119th Cong., 1st sess., introduced May 20, 2025, <https://www.congress.gov/bill/119th-congress/house-bill/1>; U.S. Senate Committee on Commerce, Science, and Transportation, "Title I—Committee on Commerce, Science, and Transportation," Budget Reconciliation Text, June 5, 2025, <https://www.commerce.senate.gov/services/files/AD3D04CF-52B4-411F-854B-44C55ABBADDA>.

<sup>2</sup> Travis Hall, "Throw the AI Regulations Ban Out With the Byrd Bath Water," Center for Democracy & Technology, May 20, 2025, <https://cdt.org/insights/throw-the-ai-regulations-ban-out-with-the-byrd-bath-water/>; Anthony Adragna, "Ted Cruz says his AI bill will have a moratorium on state regulations," *Politico Pro*, May 15 2025, <https://subscriber.politicopro.com/article/2025/05/cruz-says-his-ai-bill-will-have-a-moratorium-on-state-regulations-00352569>.

<sup>3</sup> Kevin Frazier and Adam Thierer, "1,000 AI Bills: Time for Congress to Get Serious about Preemption," *Lawfare*, May 9, 2025, <https://www.lawfaremedia.org/article/1-000-ai-bills--time-for-congress-to-get-serious-about-preemption>; Kevin Frazier, "A 10-Year Pause on State AI Laws Is the Smart Move," *Reason*, May 21, 2025, <https://reason.com/2025/05/21/a-10-year-pause-on-state-ai-laws-is-the-smart-move/>.

As written in the current reconciliation packages, however, whatever advantages might accrue from either the House’s direct moratorium or the Senate’s funding-conditional approach are counterbalanced by important state legislation both proposals risk effectively impacting. In many cases, state lawmakers have positively responded to the advent of powerful AI technologies across a range of policy areas. Absent Congress implementing a nationwide AI regulatory framework with similar public interest upshots, critical enacted state legislation could potentially be jeopardized by such proposed federal interventions. In that sense, the reconciliation moratorium proposals present a fork in the road between broadly deregulating AI technologies on the one hand and preserving a growing body of public interest AI legislation on the other.<sup>4</sup>

Both the House and Senate proposals would curb comprehensive legislation imposing design, documentation, or performance requirements on leading-edge frontier AI, such as last year’s vetoed California SB 1047 or New York’s recently introduced Responsible AI Safety and Education (RAISE) Act.<sup>5</sup> Yet both approaches would potentially also have sweeping impacts on the regulation of AI and algorithmic-based technologies more broadly.<sup>6</sup>

This paper highlights five policy areas that the federal proposals (‘reconciliation moratorium proposals’) would risk impacting: (1) consumer protection and algorithmic interaction, (2) government AI adoption and deployment, (3) children’s online safety, (4) developer/deployer transparency and accountability, and (5) generative AI harms. In each policy area, the paper analyzes a sample of enacted state legislation and assesses the likelihood of impact under a federal moratorium—whether through direct prohibition or funding pressure. The analysis suggests that both proposals’ shared broad language would to varying degrees risk impacting legislation not only regulating contemporary AI technologies, but also social media algorithms and data privacy protections. If our analysis is correct, it demonstrates that in addition to voiding or deterring the enforcement of public interest state AI legislation specifically, the reconciliation moratorium proposals are also overbroad in scope – reaching beyond contemporary AI technologies to eliminate public interest state legislation across multiple technology policy domains more broadly.

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<sup>4</sup> MD State Senator Katie Fry Hester and Gary Marcus, “When it Comes to AI Policy, Congress Shouldn’t Cut States off at the Knees,” *Marcus on AI*, May 14, 2025, <https://garymarcus.substack.com/p/when-it-comes-to-ai-policy-congress>.

<sup>5</sup> California Senate Bill 1047, “Safe and Secure Innovation for Frontier Artificial Intelligence Models Act,” 2023–2024 Legislative Session, CalMatters Digital Democracy, accessed May 30, 2025, [https://calmatters.digitaldemocracy.org/bills/ca\\_202320240sb1047/](https://calmatters.digitaldemocracy.org/bills/ca_202320240sb1047/); New York Assembly Bill A6453A, amendment A, “Responsible AI Safety and Education Act,” 2025–2026 Legislative Session, New York State Senate, accessed May 30, 2025, <https://www.nysenate.gov/legislation/bills/2025/A6453/amendment/A>.

<sup>6</sup> Justin Hendrix, “Expert Perspectives on 10-Year Moratorium on Enforcement of US State AI Laws,” TechPolicy Press, May 23, 2025, <https://www.techpolicy.press/expert-perspectives-on-10-year-moratorium-on-enforcement-of-us-state-ai-laws/>.

## OVERVIEW: THE RECONCILIATION MORATORIUM PROPOSALS

In proposing a prohibition on state AI regulation, the reconciliation moratorium proposals specifically forbid or deter states or political subdivisions thereof from enforcing “any law or regulation [...] limiting, restricting, or otherwise regulating artificial intelligence models, artificial intelligence systems, or automated decision systems entered into interstate commerce” during the 10-year period beginning on the date of either proposal’s enactment. The proposals both broadly include a few carve-outs. The first concerns state legislation the primary purpose of which is to facilitate AI adoption and deployment, including those streamlining licensing, permitting, or procurement processes. The second preserves state authority to pass or enforce federal legislation or legislation of general applicability that may cover AI among other technologies. The third, specific to the House proposal, excludes any provision of a law or regulation that imposes criminal liability for violating the provision.

The reconciliation moratorium proposals use three main classifications for AI technologies – (i) artificial intelligence models, (ii) artificial intelligence systems, and (iii) automated decision systems – and adopts the National AI Initiative Act of 2020’s definition of AI:

- ◆ **AI def. (National AI Initiative Act of 2020):** “a machine-based system that can, for a given set of human-defined objectives, make predictions, recommendations or decisions influencing real or virtual environments. Artificial intelligence systems use machine and human-based inputs to—
  - perceive real and virtual environments;
  - abstract such perceptions into models through analysis in an automated manner; and
  - use model inference to formulate options for information or action.”<sup>7</sup>
- ◆ **AI Model def. (Senate Commerce Committee/One Big Beautiful Bill Act):** “a software component of an information system that implements artificial intelligence technology and uses computational, statistical, or machine-learning techniques to produce outputs from a defined set of inputs.”<sup>8</sup>

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<sup>7</sup> 5 U.S.C. § 9401 (Prelim. ed. 2024), accessed May 30, 2025, [https://uscode.house.gov/view.xhtml?req=\(title:15%20section:9401%20edition:prelim\)](https://uscode.house.gov/view.xhtml?req=(title:15%20section:9401%20edition:prelim)).

<sup>8</sup> U.S. Senate Committee on Commerce, Science, and Transportation, “Title I—Committee on Commerce, Science, and Transportation,” <https://www.commerce.senate.gov/services/files/AD3D04CF-52B4-411F-854B-44C55ABBADDA>; H.R. 1, One Big Beautiful Bill Act, <https://www.congress.gov/bill/119th-congress/house-bill/1>.

- ◆ **AI System def. (Senate Commerce Committee):** “any data system, software, hardware, application, tool, or utility that operates, in whole or in part, using artificial intelligence.”<sup>9</sup>
- ◆ **Automated Decision System def. (Senate Commerce Committee/One Big Beautiful Bill Act):** “any computational process derived from machine learning, statistical modeling, data analytics, or artificial intelligence that issues a simplified output, including a score, classification, or recommendation, to materially influence or replace human decision making.”<sup>10</sup>

Assuming the reconciliation moratorium proposals aim to broadly curb the surge of state-level AI regulations, prohibiting states from enforcing laws or regulations “limiting, restricting, or otherwise regulating artificial intelligence models, artificial intelligence systems, or automated decision systems entered into interstate commerce” could be interpreted expansively. In this expansive interpretation, the proposed moratorium might cover not only legislation explicitly targeting AI technologies directly, but also laws and regulations regulating AI technologies’ developers, applications, and outputs. In a similar vein, the proposals’ scoping definitions of covered technologies – AI models, AI systems, and automated decision systems – are very broadly constructed. In that way, the scoping definitions could potentially encompass not only contemporary AI technologies, but also certain other algorithmic-based technologies such as social media systems.<sup>11</sup>

Given the potentially broad nature of the reconciliation moratorium proposals as currently drafted, the following five policy areas are highlighted, each with case studies of enacted state legislation which to varying degrees could risk being voided by the proposals. This provides a snapshot of the breadth and impact the proposals could have on existing state-level public interest laws and regulations.

## CONSUMER PROTECTION & ALGORITHMIC INTERACTION

Consumer protection and algorithmic interaction concern such areas as safeguards against algorithmic discrimination and profiling, data privacy, and automated decision-making in employment, housing,

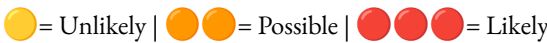



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<sup>9</sup> U.S. Senate Committee on Commerce, Science, and Transportation, “Title I—Committee on Commerce, Science, and Transportation,” <https://www.commerce.senate.gov/services/files/AD3D04CF-52B4-411F-854B-44C55ABBADDA>.

<sup>10</sup> U.S. Senate Committee on Commerce, Science, and Transportation, “Title I—Committee on Commerce, Science, and Transportation,” <https://www.commerce.senate.gov/services/files/AD3D04CF-52B4-411F-854B-44C55ABBADDA>; H.R. 1, One Big Beautiful Bill Act, <https://www.congress.gov/bill/119th-congress/house-bill/1>.

<sup>11</sup> David Brody, “The Big Beautiful Bill Could Decimate Legal Accountability for Tech and Anything Tech Touches,” TechPolicy Press, May 27, 2025, <https://www.techpolicy.press/the-big-beautiful-bill-could-decimate-legal-accountability-for-tech-and-anything-tech-touches/>.

finance, and other consequential sectors. While traditional consumer protection laws address many forms of marketplace harm, AI technologies can present novel challenges that may require targeted regulatory responses – for example clarifying liability for AI harms. Legislation in this area can help to ensure that the benefits of AI technologies are broadly shared while protecting consumers from algorithmic risks and harms.

Case Studies: Consumer Protection & Algorithmic Interaction Legislation		
Scale: likelihood of being voided by the reconciliation moratorium proposals 		
Legislation	Description	Analysis
<p><a href="#">HB 3773</a>: “Regulating AI in Employment” (Illinois)  <b>Lead Sponsor:</b> State Rep. Jaime M. Andrade, Jr. (D)  <b>Enacted</b> Aug. 9, 2024  </p>	<p>Amends the Illinois Human Rights Act to prohibit employers from using AI in employment decisions if it causes discrimination against protected classes or uses zip codes as a proxy for such classes, and requires employers to notify employees when AI is used for these purposes.</p>	<p>HB 3773 would <b>likely</b> be voided by the reconciliation moratorium proposals since HB 3773 regulates AI technologies by way of (a) restricting their use in employment under certain conditions and (b) requiring disclosures from employers when AI is used in employment decisions.</p>
<p><a href="#">SB 149</a>: “Artificial Intelligence Policy Act” (Utah)  <b>Lead Sponsor:</b> State Sen. Kirk Cullimore (R)  <b>Enacted</b> Mar. 13, 2024  </p>	<p>Among other things, requires disclosures under certain circumstances when Utah consumers interact with generative AI or AI-generated materials, and establishes civil liability for AI-related consumer protection violations.</p>	<p>SB 149 would <b>likely</b> be voided by the reconciliation moratorium proposals since SB 149 regulates AI technologies by way of (a) requiring certain disclosures and (b) establishing civil liability for AI-related consumer protection violations.<sup>12</sup></p>
<p><a href="#">HB 4</a>: “Texas Data Privacy and Security Act” (Texas)  <b>Lead Sponsor:</b> State Rep. Giovanni Capriglione (R)  <b>Enacted:</b> Jun. 18, 2023  </p>	<p>Establishes comprehensive consumer rights over personal data – granting Texans the ability to access, correct, delete, and opt out of the processing of their personal information – while imposing data governance obligations on certain business entities that collect, process, or sell that data.</p>	<p>HB 4 would <b>possibly</b> be voided by the reconciliation moratorium proposals since HB 4 appears to regulate covered AI technologies by way of creating consumer rights to opt out of profiling, defined as “solely automated processing performed on personal data to evaluate, analyze, or predict personal aspects,” where such profiling is used “in furtherance of a decision that produces legal or similarly significant effects.” If the mandated opt-out provisions are interpreted to regulate AI or automated decision</p>



<sup>12</sup> Civil liability is explicitly mentioned among other regulatory impositions that the reconciliation moratorium proposals aims to preempt: “[the proposed moratorium] may not be construed to prohibit the enforcement of [...] any law or regulation that [...] does not impose any substantive design, performance, data-handling, documentation, civil liability, taxation, fee, or other requirement on [AI technologies] unless such requirement [...] [is imposed under federal law or else under a generally applicable law covering AI among other technologies].” See U.S. Senate Committee on Commerce, Science, and Transportation, “Title I—Committee on Commerce, Science, and Transportation,” <https://www.commerce.senate.gov/services/files/AD3D04CF-52B4-411F-854B-44C55ABBADDA>; H.R. 1, One Big Beautiful Bill Act, <https://www.congress.gov/bill/119th-congress/house-bill/1/>.

		<p>technologies as defined in the reconciliation moratorium proposals, HB 4 would presumably be voided.</p> <p><b>Caveat:</b> Legislation such as HB 4 seems to fall into a gray area, not necessarily explicitly targeting AI but nonetheless appearing to regulate AI in effect. The reconciliation moratorium proposals do not aim to prohibit state-level data privacy legislation. A court might narrowly construe “limiting, restricting, or otherwise regulating” to apply only when a bill’s title or primary focus is AI, rather than when AI regulation is merely incidental. But that reading conflicts with the plain meaning of the reconciliation moratorium proposals.</p>
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## GOVERNMENT ADOPTION & DEPLOYMENT

Government AI adoption and deployment encompass the frameworks, standards, and restrictions that govern how government entities obtain, implement, and utilize AI technologies in their operations. This policy area addresses responsible government use of AI technologies, such as by establishing procurement guidelines, mandating transparency and accountability measures, and setting boundaries on potentially harmful applications. Unlike regulations targeting private AI development or deployment, this area focuses on government as a direct user and deployer of AI technologies. Legislative measures often establish procedural safeguards, require public disclosure of AI use, and prohibit applications that could infringe on civil liberties or erode public trust.

<b>Case Studies: Government Adoption &amp; Deployment Legislation</b>		
Scale: likelihood of being voided by the reconciliation moratorium proposals		
● = Unlikely   ●● = Possible   ●●● = Likely		
<b>Legislation</b>	<b>Description</b>	<b>Analysis</b>
<p><a href="#">SB 896</a>: “Generative Artificial Intelligence Accountability Act” (California)  <b>Lead Sponsor:</b> State Sen. William Dodd (D)  <b>Enacted:</b> Sep. 29, 2024</p> <p>●</p>	<p>Establishes governance processes for generative AI use within California’s state agencies and departments, mandating proactive responsible practices such as annual risk analyses of generative AI threats to California’s critical infrastructure.</p>	<p>SB 896 would be <b>unlikely</b> to be voided by the reconciliation moratorium proposals since SB 896 does not appear to regulate AI technologies in connection with interstate commerce.</p>

<p><a href="#">HB 1688</a>: “Relative to the use of artificial intelligence by state agencies” (New Hampshire) <b>Lead Sponsor:</b> State Rep. Thomas Cormen (D) <b>Enacted:</b> Jul. 22, 2024 </p>	<p>Prohibits New Hampshire’s state agencies from deploying AI technologies to manipulate, discriminate, or surveil members of the public.</p>	<p>HB 1688 would be <b>unlikely</b> to be voided by the reconciliation moratorium proposals since HB 1688 does not appear to regulate AI technologies in connection with interstate commerce.</p>
<p><a href="#">LD 1585</a>: “An Act To Increase Privacy and Security by Regulating the Use of Facial Surveillance Systems by Departments, Public Employees and Public Officials” (Maine) <b>Lead Sponsor:</b> State Rep. Grayson Lookner (D) <b>Enacted:</b> Jun. 17, 2021 </p>	<p>Establishes statewide restrictions barring departments, public employees, and public officials from obtaining, retaining, or using facial surveillance systems or information derived therefrom, prohibits entering into third-party agreements for such purposes, and provides enforcement mechanisms and narrowly defined exceptions.</p>	<p>LD 1585 would <b>possibly</b> be voided by the reconciliation moratorium proposals. LD 1585’s prohibition against third-party agreements would potentially constitute regulating AI technologies in connection with interstate commerce. Moreover, facial recognition technologies might strongly overlap with AI such that LD 1585 in effect exclusively regulates AI technologies.  <b>Caveat:</b> courts may interpret LD 1585 as regulating facial recognition technologies in general, including but not limited to AI-based facial recognition technologies, opening up a carve-out – generally applicable laws – from the proposed moratorium.</p>

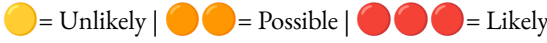



## CHILDREN’S ONLINE SAFETY

Children’s online safety focuses on protections against AI and other algorithmic-based technologies that risk harming minors, such as addictive social media feeds, manipulative design features, or automated content curation that can harm children’s development. Children may require enhanced protections beyond general consumer safeguards because they may be particularly susceptible to algorithmic manipulation and may lack the cognitive development to reliably self-regulate when engaging with AI and other algorithmic-based technologies. Legislation in this area can involve establishing age-appropriate design standards and algorithmic accountability measures tailored to protect minors in digital environments.

<b>Case Studies: Children’s Online Safety Legislation</b> Scale: likelihood of being voided by the reconciliation moratorium proposals ● = Unlikely   ●● = Possible   ●●● = Likely		
Legislation	Description	Analysis
<p><a href="#">SB 7694A</a>: “Stop Addictive Feeds Exploitation For Kids Act” (New York)  <b>Lead Sponsor:</b> State Sen. Andrew Gounardes (D)  <b>Enacted:</b> Jun. 20, 2024                      ●●</p>	<p>Among other things, establishes statewide restrictions on providing addictive algorithmic feeds to minors, requires social media platforms to obtain verifiable parental consent and implement age-estimation and time-control measures, and prohibits nighttime notifications without consent.</p>	<p>SB 7694A would <b>possibly</b> be voided by the reconciliation moratorium proposals since the algorithmic feeds SB 7694A regulates would appear to fall within the proposal’s broad scoping definitions of AI technologies.</p> <p><b>Caveat:</b> Legislation such as SB 7694A does not appear to be the intended target of the reconciliation moratorium proposals, yet barring substantive revisions, the plain meaning of the proposal could potentially be argued to cover such legislation.</p>
<p><a href="#">SB 3</a>: “An Act Concerning Online Privacy, Data and Safety Protections” (Connecticut)  <b>Lead Sponsor:</b> State Sen. Martin Looney (D)  <b>Enacted:</b> Jun. 26, 2023                      ●●</p>	<p>Among other things, grants Connecticut minors rights to control access to or delete social media accounts and restricts the processing of their personal data for targeted advertising, profiling, and precise geolocation.</p>	<p>SB 3 would <b>possibly</b> be voided by the reconciliation moratorium proposals since SB 3 restricts certain social media system design features and automated targeted advertising, and these would potentially fall within the proposal’s broad scoping definitions of AI technologies.</p> <p><b>Caveat:</b> Legislation such as SB 3 does not appear to be the intended target of the reconciliation moratorium proposals, yet barring substantive revisions, the plain meaning of the proposal could potentially be argued to cover such legislation.</p>
<p><a href="#">SB 194</a>: “Utah Minor Protection in Social Media Act (Utah)  <b>Lead Sponsor:</b> State Sen. Michael K. McKell (R)  <b>Enacted:</b> Mar. 13, 2024                      ●●</p>	<p>Among other things, restricts social media algorithms and system design by banning certain addictive features – such as autoplay, infinite scroll, and push notifications – for Utah minors, and by mandating limits on algorithmic content recommendations to curb excessive use.</p>	<p>SB 194 would <b>possibly</b> be voided by the reconciliation moratorium proposals since SB 194 restricts certain social media system design features that would potentially fall within the proposal’s broad scoping definitions of AI technologies.</p> <p><b>Caveat:</b> Legislation such as SB 194 does not appear to be the intended target of the reconciliation moratorium proposals, yet barring substantive revisions, the plain meaning of the proposals could potentially be argued to cover such legislation.</p>




## DEVELOPER/DEPLOYER TRANSPARENCY & ACCOUNTABILITY


Developer/deployer transparency and accountability concentrate on regulatory measures such as those imposing disclosure, documentation, and liability obligations on developers or deployers of AI technologies. Among other things, this policy area aims to help address the opacity problem inherent in many AI technologies, where complex algorithmic design choices and development processes remain ambiguous to the public. While traditional product liability and disclosure regimes may provide some foundation, AI technologies might require additional targeted transparency measures such as accessible documentation of system capabilities and evaluations. Legislation in this domain can involve establishing both proactive transparency requirements and reactive accountability mechanisms.

Case Studies: Developer/Deployer Transparency & Accountability Legislation		
Scale: likelihood of being voided by the reconciliation moratorium proposals 		
Legislation	Description	Analysis
<p><a href="#">SB 24-205</a>: “Colorado AI Act” (Colorado)  <b>Lead Sponsor:</b> State Sen. Robert Rodriguez (D)  <b>Enacted:</b> May 17, 2024  </p>	<p>Among other things, establishes a duty of reasonable care for developers and deployers of high-risk AI systems to prevent algorithmic discrimination, requiring impact assessments and risk management policies.</p>	<p>SB 24-205 would <b>likely</b> be voided by the reconciliation moratorium proposals since SB 24-205 regulates AI technologies by way of establishing a civil liability scheme for developers of high-risk AI systems.</p>
<p><a href="#">HB 2557</a>: “Video Interview Act” (Illinois)  <b>Lead Sponsor:</b> State Rep. Jaime M. Andrade, Jr. (D)  <b>Enacted:</b> Aug. 9, 2019  </p>	<p>Regulates employers’ use of AI in job interviews, requiring them to notify applicants about AI usage, disclose AI evaluation methods, and obtain consent before AI evaluation, among other things.</p>	<p>HB 2557 would <b>likely</b> be voided by the reconciliation moratorium proposals since HB 2557 regulates AI technologies by way of limiting and controlling its use by employers in video interviews.</p>
<p><a href="#">SB 942</a>: “California Artificial Intelligence Transparency Act” (California)  <b>Lead Sponsor:</b> State Sen. Josh Becker (D)  <b>Enacted:</b> Sep. 19, 2024  </p>	<p>Requires certain providers of generative AI systems in California to provide both conspicuous and embedded disclosures for AI-generated audiovisual content, offer free detection tools for consumers to identify such content, and establishes civil penalties for non-compliance.</p>	<p>SB 942 would <b>likely</b> be voided by the reconciliation moratorium proposals since SB 942 regulates AI technologies by way of requiring disclosures within and around AI-generated content produced by certain generative AI systems.</p>

## GENERATIVE AI HARMES

Generative AI harms cover several kinds of potential damage arising from AI systems capable of creating synthetic content, including deepfakes, manipulated media, and unauthorized digital replicas of individuals’ likenesses. This policy area addresses the challenges posed by increasingly sophisticated generative AI technologies that can produce convincing but fabricated content, potentially facilitating harms such as fraud, defamation, non-consensual intimate imagery, election interference, and erosion of public trust in authentic media. Legislation in this area can involve such things as establishing disclosure requirements for AI-generated content, imposing liability schemes for malicious use of generative AI technologies, and protecting individuals’ rights to control digital representations of themselves.

Case Studies: Generative AI Harms Legislation		
Scale: likelihood of being voided by the reconciliation moratorium proposals 		
Legislation	Description	Analysis
<p><a href="#">AB 664</a>: “Attribution of political contributions, disbursements and communications; synthetic media” (Wisconsin)  <b>Lead Sponsor:</b> State Sen. Adam Neylon (R)  <b>Enacted:</b> Mar. 21, 2024  </p>	<p>Requires that any paid political audio or video communication statewide employing synthetic media include a conspicuous disclosure about AI-generated content, and imposes civil liability for failure to comply.</p>	<p>AB 664 would <b>possibly</b> be voided by the reconciliation moratorium proposals since AB 664 regulates AI technologies by way of requiring disclosures surrounding AI-generated content in political campaign audiovisual materials in Wisconsin.</p> <p><b>Caveat:</b> Legislation such as AB 664 ultimately might not fall within the purview of the reconciliation moratorium proposals since this and other similar bills might be interpreted to regulate outputs of AI technologies rather than AI technologies themselves, a distinction which could prove salient to the proposals’ scope of application.</p>
<p><a href="#">HB 2124</a>: “The Synthetic Digital Content Act” (Virginia)  <b>Lead Sponsor:</b> State Delegate Michelle Lopes Maldonado (D)  <b>Enacted:</b> Mar. 24, 2025  </p>	<p>Among other things, establishes that using synthetic digital content (including deepfakes) for fraud or defamatory purposes constitutes a criminal action, and grants individuals depicted in such content a civil cause of action to recover damages and attorney’s fees.</p>	<p>While HB 2124’s provision imposing criminal liability would be exempted from the House version of the reconciliation moratorium proposal, other components of HB 2124 such as its civil liability scheme would <b>possibly</b> be voided by the both the House and Senate proposals, depending on whether synthetic digital content creation technologies generally fall under the reconciliation moratorium proposals’ scoping definitions of AI technologies.</p>

<p><a href="#">SB 2096</a>: “Ensuring Likeness, Voice and Image Security (ELVIS) Act” (Tennessee) <b>Lead Sponsor:</b> State Sen. Jack Johnson (R) <b>Enacted:</b> Mar. 26, 2024</p> 	<p>Expands Tennessee’s right of publicity to prohibit the unauthorized use of an individual’s name, likeness, voice, or image in AI-generated content.</p>	<p>SB 2096 would <b>possibly</b> be voided by the reconciliation moratorium proposals since SB 2096 regulates AI technologies by way of imposing certain restrictions on the use of generative AI technologies involving the emulation of an individual’s “persona.”</p> <p><b>Caveat:</b> Whether legislation such as SB 2096 would be affected by the reconciliation moratorium proposals will depend on whether the analysis of how the state law specifically burdens AI considers only the recently enacted law (which pertains specifically to AI) or the state intellectual property statute as a whole, as amended by the new law. States may make the argument that the new AI-specific laws only close a loophole within their existing IP statutes. This would most likely be litigated, and it is unclear how courts would view this argument.</p>
<p><a href="#">AB 2013</a>: “Generative artificial intelligence: training data transparency” (California) <b>Lead Sponsor:</b> State Assemblymember Jacqui Irwin (D) <b>Enacted:</b> Sep. 28, 2024</p> 	<p>Establishes transparency obligations for developers of generative AI technologies in California to publicly disclose high-level details – such as data sources, data types, copyright and licensing status, and use of synthetic data – about datasets used to train certain of their AI models or systems.</p>	<p>AB 2013 would <b>likely</b> be voided by the reconciliation moratorium proposals since AB 2013 regulates AI technologies by way of imposing on developers certain disclosure requirements surrounding training data for generative AI technologies.</p>

## CONCLUSION

Our analysis indicates that, as currently drafted, the reconciliation moratorium proposals from both chambers of Congress would not only risk sweeping away a wide range of public interest state AI legislation, but also state legislation regulating other kinds of algorithmic-based technologies as well. Across the five policy areas examined – (1) consumer protection and algorithmic interaction, (2) government AI adoption and deployment, (3) children’s online safety, (4) developer/deployer transparency and accountability, and (5) generative AI harms – the proposals’ broadly worded prohibition on state enforcement and expansive definitions of AI technologies create substantial risk for an array of existing laws and regulations. While legislation targeting contemporary AI technologies generally faces the likelihood of preemption, the proposals’ plain language could also potentially capture laws addressing social media systems, data privacy protections, and other algorithmic-based technologies. The upshot is that the reconciliation moratorium proposals represent a significant policy

overreach – creating a regulatory vacuum across multiple technology policy domains under the guise of preventing a ‘patchwork’ of AI regulation while offering no comprehensive federal safeguards to replace what would be lost.

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## References

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