ELECTRONIC TRANSACTIONS ASSOCIATION

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January 30, 2025

The Honorable Joanne J. Ferrary
Chair of the House Consumer & Public Affairs
New Mexico Legislature

ETA Concerns With HB 60

Dear Chair Ferrary, Vice Chair Rubio, and Distinguished Members of the Committee,

On behalf of the Electronic Transactions Association (ETA), the leading trade association representing the payments industry, we appreciate the opportunity to share our opposition and broad concerns with HB 60. ETA and its members are supportive of efforts to promote responsible use of artificial intelligence (AI) tools and systems. Our industry has long been at the forefront of developing and implementing safeguards to ensure AI is used responsibly and does not result in unjustified differential treatment. ETA's members and their use of AI occurs within the confines of one of the most highly regulated industries, while adhering to the principles of explainability, privacy, risk management, and fairness within existing legal frameworks, including: the Equal Credit Opportunity Act (ECOA), which governs both traditional and AI-assisted lending practices, and state privacy laws.

Definitions

Removal of Financial Services from a "Consequential decision": Currently, the list of activities in the definition of consequential decisions uses the term "a financial service," which ETA believes is overbroad and is likely to include low risk AI uses that greatly benefit consumers. Therefore, ETA believes that financial services should be removed from the list of consequential decisions. Doing so will enable companies to take a risk-based approach, consistent with multiple sections of this legislation, and avoid burdensome requirements for low-risk AI uses, such as using AI to categorize expenses for tax or other financial planning purposes or connecting people to financial experts. It will also avoid redundancies because our members already adhere to strict state and federal regulations.

- The inclusion of "a financial service" as consequential could include very low risk AI activity. For example:
    - Categorizing expenses for tax or other financial planning/budgeting purposes.
    - Connecting people to financial experts based on the consumers financial/tax needs and the expert's areas of expertise.
    - Reading and extracting data from financial forms so consumers don't have to enter data and minimize manual entry errors.

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- o Recommending financial products like credit cards that may be a good fit for consumers to consider.

- As an alternative, ETA suggests replacing **"a financial service"** with **"a consumer lending decision."**

Focus on Fraud Protection: ETA and its members appreciate the exclusion of "(a) anti-fraud technology that does not use facial recognition technology" from "high-risk artificial intelligence system" (Section 2.J) and further clarification under Section 12.6.

- **Removal of "unless" provision:** The inclusion of "unless the technologies, when deployed, make, or are a contributing factor in making, a consequential decision" would essentially negate the exclusions listed in section 2.J. Therefore, ETA recommends removing this verbiage. Currently, AI is used in a fraud detection capacity, which assists in preventing bad actors from obtaining funds, including through loans, which may be considered a consequential decision.

Impact Assessments: Section 6 (B)(4) Requires companies to disclose the data used to customize a model and disclose the cyber security and (B)(7) post-deployment monitoring protocols. While ETA understands these efforts are crucial to safeguarding AI use, the disclosure of such procedures increases the likelihood of bad actors targeting certain dataset types (e.g., financial information), which could result in a multitude of phishing and social engineering attacks. Additionally, if the reports fall into the wrong hands, it could allow bad actors to develop methods of avoiding the detection and protection systems outlined in the report, thus presenting a serious cyber security risk to the company and the end user.

- **Record Maintenance:** ETA supports retaining records of past reports but proposes striking of the requirement that companies retain "(f)… including all records concerning the assessment and all prior assessments for the system" as this requirement is unduly cumbersome. It is also not clear what the "final deployment" date would be for a variety of models, as their use is ongoing.
- Similarly, ETA recommends striking Section 6B-7.C "disclose the extent to which the high-risk artificial intelligence system was used in a manner that was consistent with, or varied from, the developer's intended uses" as it would be incredibly difficult and burdensome to meet this requirement, and reasonable testing already ensures proper use.
- ETA appreciates the rebuttable presumption included under Section 13-E and requests that this rebuttable presumption also be clarified to include creation of the impact assessments.

Concerns Regarding Disclosures Section 8

Narrowing Customer Notification: Companies should also not be required to comply with notification to consumers at or before the time AI is being used to detect or prevent

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scams or frauds, as the notification may alert bad actors to attempt to manipulate these prevention systems.

Disclosure of Data: Section 2-I and Section 3-B require disclosure of multiple data categories, including "high-level summary." Specifically (2) and (4) ask for the consumer attributes, labels of the data, and the measures governing the data sets used to train the system. Even aggregate or high-level disclosures could inadvertently expose vulnerabilities giving criminals information they need. If fraudsters know the weight AI assigns to certain behaviors for example they can adjust their behaviors to game the fraud detection system's detection. ETA has concerns that these disclosure and transparency requirements may contribute to security concerns and impair companies' ability to fight financial crime along with law enforcement.

Duty of Care (Section 3)

Speculation About Risks: Section 3 (B)(1) requests that deployers develop a risk management plan for "known or reasonably foreseeable risks of algorithmic discrimination." Although ETA supports efforts to mitigate the most significant risks of AI, this section presents considerable challenges, including:

- Creating a heavy burden on companies that use AI tools to make long-term predictions about their models' capabilities before models are trained or built.
- It introduces a vague concept of "reasonableness," which, while potentially empowering developers to assess whether a model qualifies for an exemption, also carries the risk of ambiguity, and may prove challenging to adhere to without additional insights from industry experts.
- **Liability:** ETA believes that risk and liability should flow with the actor and user in question, rather than remaining with the developer. Therefore, we encourage the use of additional protections for developers in this space to avoid placing regulatory and liability burdens on AI startups.

As ETA and its members operate in highly regulated industries, ETA respectfully requests adding the following exemption, which was included in Colorado Law:

- "The obligations imposed on developers or deployers by this chapter shall be deemed satisfied for any bank, out-of-state bank, credit union, federal credit union, out-of-state credit union, or any affiliate or subsidiary thereof if such bank, out-of-state bank, credit union, federal credit union, out-of-state credit union, or affiliate or subsidiary is subject to examination by any state or federal prudential regulator under any published guidance or regulations that apply to the use of high-risk artificial intelligence systems."

Enforcement - State Department of Justice – Consumer Civil Actions

- **Right to Cure:** ETA is grateful for the opportunity to cure, in Section 13 (B)(1) as we believe it supports our shared goals of promoting responsible uses of AI.

- Additionally, ETA requests clarification on metrics or parameters outlined in the violation letter to ensure proper curative steps are taken and/or clear showing of thresholds for how the fine amount is to be determined.

Consumer Rights and Remedies

Right of Action: ETA and its members strictly adhere to existing legal and regulatory frameworks, which allow end-consumers to enforce data rights against AI use cases without requiring additional legislation. Enforcement should live with the state as they are best situated to handle such cases due to the collective/aggregated nature of the data in question and an individual would be overly burdened by trying to parse their individual data's impact within an AI ecosystem. It is also notable that Colorado law and a similar Texas bill does not include a right of action.

Privacy & Data: ETA respectfully submits that this legislation could align this section to existing rights and remedies, continuing to allow the state privacy enforcement to bring cases, as they are best equipped to handle cases of this nature due to the sensitivity of the data and information. Consumers have an existing right to correct their personal data under privacy laws, which does not need to be duplicated here.

Customer Appeal: With the alteration of "a financial service" to "a consumer lending decision" within "consequential decision," consumers already have the right to appeal decisions, with clear and established procedures and courses of action. In general, the ability to appeal could be abused by fraudsters attempting to circumvent or manipulate AI models. An appeal through a human is also not a practical alternative for payments companies, as it undermines the ability to provide credit offers, and humans cannot replace certain tasks, such as determining a credit score.

We appreciate you taking the time to consider these important issues. If you have any questions or wish to discuss any aspect of our comments, please contact me or ETA Executive Vice President, Scott Talbott at Stalbott@electran.org.

Respectfully,

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