Business Software Alliance

May 5, 2026

The Honorable Jessie Danielson
200 E Colfax Ave.
Denver, CO 80203

Re: Significant Concerns with Liability Regime and Definitions in SB 189

Dear Chair Danielson,

The Business Software Alliance appreciates the opportunity to share insights from the enterprise software sector on artificial intelligence (AI) and SB 189. BSA is the leading advocate for the global software industry.[1] BSA members are at the forefront of developing cutting edge services, and their products are used by businesses of all sizes across every sector of the economy.

AI is changing the way we live and work, and it has real-world benefits. Realizing the potential of AI requires trusting that the technology is developed and deployed responsibly. Crafting AI legislation that promotes responsible uses of AI and protects against misuse is one of the most important technology issues today, and one we already see governments beginning to tackle. The most effective way to address this issue is through a single, national law. However, just as states took the lead in adopting consumer privacy laws, we recognize states are again leading with AI legislation.

Although we appreciate the notable improvements made in SB 189, including the removal of the disclosure requirements to the Attorney General and the streamlined developer disclosure requirements, we have significant concerns with the bill's unworkable liability regime and broad definitions. We are concerned not only about the effect those provisions will have on responsible AI adoption in the state but also the precedent those provisions will set across the country.

Below we discuss our concerns in more detail. We would welcome the opportunity to further discuss these issues with you or a member of your staff.

[1] BSA's members include: BSA's members include: Adobe, Alteryx, Amadeus, Asana, Atlassian, Autodesk, Avalara, Bentley Systems, Box, Cisco, Cohere, Cohesity, Dassault Systemes, Databricks, Datadog, Docusign, Dropbox, Elastic, EY, Graphisoft, HubSpot, IBM, Kyndryl, MathWorks, Microsoft, Notion, Okta, OpenAI, Oracle, PagerDuty, Palo Alto Networks, PTC, Rubrik, Salesforce, SAP, ServiceNow, Shopify Inc., Siemens Industry Software Inc., Trend Micro, TriNet, Veeam, Workday, Zendesk, and Zoom Communications Inc.

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I. AI Legislation Should Hold Companies Accountable for Risks Within Their Control

The bill opens the door for AI developers to be held liable under the state's anti-discrimination law. That approach creates significant concerns and could have significant negative consequences on the responsible adoption of everyday AI tools. We strongly recommend policymakers avoid new and untested liability regimes and focus instead on alternative accountability frameworks that are workable in practice.

When crafting legislation, several mechanisms are available to policymakers to ensure companies comply with their legal obligations. Not all mechanisms, however, are best suited for AI policy. The most straightforward approach to ensuring that companies develop and use AI responsibly is to place clear obligations on them, based on their role in the AI value chain, and to hold them liable when they fail to comply. This approach creates clarity for businesses in understanding their responsibilities and provides robust protections for consumers.

At the state level, we've seen interest in ensuring companies develop and deploy AI responsibly by assigning them a duty of care. The concept of a "duty of care" is deeply rooted in tort law, which governs civil wrongs and personal injury. Courts frequently impose a duty of care on individuals or organizations that have the power to prevent foreseeable harm to others. For example, drivers must operate their cars safely to avoid injuring pedestrians; a doctor must act as a reasonably competent physician would under similar circumstances; a company must ensure that its products are safe for ordinary use. These duties are not static rules — they evolve with context, technology, and social expectations. The standard is flexible, focusing on whether an actor took reasonable steps to prevent foreseeable harm given their role, expertise, and resources. As a result, that flexibility can promote responsible development and the use of fast-changing technologies like AI, especially when paired with a specific list of actions that companies can take to meet the standard.

The approach to liability taken in the bill confuses the roles of developers and deployers and risks holding developers liable for decisions they have no insight into or control over. Particularly in the enterprise context, AI developers often do not have the necessary information to know how their customer made a consequential decision and are not in a position to mitigate risks of discrimination when their customer makes those decisions.

All companies that develop and use AI systems have responsibilities to manage AI risks, but those obligations must reflect the role of each type of company, since each will know different information about an AI system and will be able to take different actions to identify

and mitigate risks. Legislation must reflect these differences to create obligations that work in practice to safeguard consumers.

Distinguishing between different entities based on their role in the AI ecosystem can ensure companies are better able to fulfill their obligations and better protect consumers. For example, a developer would be able to describe the features of data used to train an AI system, but it generally would not have insight into how the AI system is used after another company has purchased and deployed the AI system. Instead, the deployer using the system is generally best positioned to understand how the AI system is being used, including whether that use aligns with its intended use, any human oversight, any complaints received, and real-world factors affecting the system's performance.

The bill's liability regime is novel and risks making Colorado an outlier in its approach to AI regulation. In contrast to the bill's approach to liability, a straightforward approach to assigning responsibilities to different companies and holding each company accountable for their obligations emphasizes responsible behavior — encouraging both developers and deployers to identify and address risks, conduct robust testing, and act promptly when problems emerge.

II. AI Legislation Should Focus on AI Systems That Decide Consumers' Important Life Opportunities

While we appreciate that the bill includes a focus on ADMTs intended or contracted to make consequential decisions, we are concerned that several of the bill's definitions are broadly construed and undercut that focus. We strongly recommend the bill be amended to tailor its scope. We specifically recommend revising the definitions of ADMT, covered ADMT, consequential decision, materially influences, deployer, and developer.

These definitions are critical to ensuring that AI legislation focuses on the uses of AI that have the most impact on consumers' lives and avoid broadly regulating a particular type of technology, since risks will vary greatly across different uses of AI systems. Many everyday uses of AI present few risks to individuals and create significant benefits, like helping organize digital files, auto-populate common forms for later human review, improve a company's ability to forecast supply chain issues, and detect, prevent, and respond to cybersecurity threats. AI legislation should avoid a one-size-fits-all approach, since the risks associated with AI tools are use-case dependent.

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Thank you for allowing us to provide the enterprise software sector's perspective on the bill. We welcome the opportunity to further engage with you or a member of your staff on these important issues.

Sincerely,

Meghan Pensyl
Director, Policy

Cc: Vice Chair Hinrichsen; Members of the Senate Business, Labor, & Technology Committee

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