

February 27, 2025

**The Honorable Pamela Beidle
Chair of Senate Finance Committee
Maryland Senate
3 East Miller Senate Office Building
Annapolis, Maryland 21401**

RE: Opposition to SB 936 – Artificial Intelligence

Chair Beidle, Vice Chair Hayes, and Distinguished Members of the Committee,

On behalf of the Electronic Transactions Association (ETA), the leading trade association representing the payments industry, thank you for the opportunity to outline some of our concerns over SB 936. 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.

Summary of Specific Feedback:

Implementation: As safeguarding the use of AI is of the utmost importance, ETA and its members believe that updating the effective date from 2025 to 2026 would provide companies more time to come into compliance and to accurately and thoroughly assess their systems.

Removal of Financial Services from a “Consequential decision”: Currently, the list of activities in the definition of consequential decisions uses the term (4) “financial or lending 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.
- 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.**”

High-Risk Artificial Intelligence

Focus on Fraud Protection: ETA appreciates the exclusion of “Anti-fraud technology...” and additional cyber security measures, as AI is an efficient and effective tool at preventing and stopping financial crimes. ETA respectfully requests removing “that does not use facial recognition” to clarify that all anti-fraud technology be included in this exemption to ensure the safety and security of payments.

Deployer Duties

Impact Assessments: Section III requires companies to disclose the data used to customize a model and disclose the cyber security and 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.

- ETA recommends striking “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.
- **Additional Provisions:** A provision included in the Colorado AI law (“CAIA”) provides consideration for impact assessments satisfying the requirement if conducted in accordance with other laws or are similar in scope and effect to the original impact assessment. One impact assessment may cover “a comparable set” of deployed systems, and an assessment completed for complying with another law or regulation can satisfy the requirements of the CAIA if that other assessment “is reasonably similar in scope and effect” to the one required under the CAIA (Sec. 6-1-1703 (3)(d) & (e)). ETA respectfully requests that this consideration be added to this section to avoid duplicating efforts.
- ETA appreciates the rebuttable presumption included under Section 14–47A–03 and requests that this rebuttable presumption also be clarified to include creation of the impact assessments.

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.”

Risk Identification

Speculation About Risks: Section 14–47A–03 (A) requests that developers 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.

Attorney General Enforcement (Section 551.105)

- **Timeline:** ETA is grateful for the opportunity to cure, as we believe it supports our shared goals of promoting responsible uses of AI. Similar to the timeline for new impact assessments, allowing companies 90 days for the right to cure any suspected or discovered negative impacts of the use of AI, will allow companies more time to investigate the source of any discrimination and implement meaningful changes.
- 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, such as the Maryland Personal Information Protection Act (PIPA), which substantively cover a data-subject's rights within the State of Maryland in a manner that would allow end-consumers to enforce data rights against AI use cases without requiring additional legislation. The right of action properly belongs to the AG in those instances as the AG is best situated to bring action against a company for violation.

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 prominent issues. If you have any questions or wish to discuss any aspect of our comments, please contact me.

Respectfully,



Brian Yates
Senior Director, State Government Relations
Electronic Transactions Association
202.677.7417 | byates@electran.org