BRIEFLY NOTED

The States Remain the AI Regulatory Leader

BY THOMAS A. HEMPHILL

Last summer, the Republican-controlled Congress failed to include in its "One Big Beautiful Bill" a major provision addressing national artificial intelligence (AI) regulation. The House inserted language into its version of the budget reconciliation bill that would have banned state-level AI regulation for 10 years, but it ran afoul of Senate rules prohibiting "extraneous matters" in the legislation. Though Sen. Ted Cruz (R–TX) tried to find a work-around for the problem and soften the measure to gain his colleagues' support, the Senate voted 99–1 (Cruz being the 1) in support of a motion by Sen. Martha Blackburn (R–TN) to remove the AI provision.

"This provision could allow Big Tech to continue to exploit kids, creators, and conservatives," claimed Blackburn. "Until Congress passes federally preemptive legislation like the Kids Online Safety Act and an online privacy framework, we can't block states from making laws that protect their children." Moreover, she is quoted as saying, "What we know is this: This body [Congress] has proven that they cannot legislate on emerging technology."

With no federal legislation regulating AI technologies, state legislatures are making their own efforts to advance data privacy and security in AI tools. I summarized some earlier efforts in an article last year in *Regulation*. Here is an update.

Model legislation / Before looking at individual state efforts, I note that several of them appear to be influenced by model AI legislation offered by the American Legislative Exchange Council (ALEC). The "Model State Artificial Intelligence Act," finalized in August 2024, encourages AI technology innovators to work together with state governments to develop applications and inform on "best practice" regulatory approaches through partnerships that mitigate regulatory safety risks.

The model legislation would allow technology innovators to apply for "regulatory mitigation agreements" to reduce state regulatory burdens for a specified duration, scope, and quantity of users. This so-called "regulatory sandbox" would assist technology innovators by reducing regulatory risk for experiments and help state governments determine which AI regulations are and are not necessary. To this end, the Federalist Society's Regulatory Transparency Project has cited the ALEC model legislation as "the best option for states to ensure life-saving AI innovations can come about" and to show leadership on emerging AI technology policy.

ALEC is a conservative organization; its blue-leaning competitor, the National Conference of State Legislature (NCSL), is likewise becoming active in this policy area. It has formed a working group to coordinate approaches to regulating AI technologies and inform state legislatures on potential actions that balance AI governance with innovation.

Recent legislation / The year 2025 saw several different regulatory approaches enacted at the state level. Over 1,000 AI-focused bills were introduced in state legislatures in 2025, which is more than twice the number in 2024, according to Chelsea Canada, program principal in the NCSL's Financial Services, Technology and Communication Program. In the 2025 legislative session, all 50 states, Puerto Rico, the Virgin Islands, and Washington, DC, considered AI-focused legislation. Some 38 states adopted or enacted approximately 100 legislative measures this year. In addition, 34 states introduced over 250 healthcare-related AI bills, with them generally falling into four categories: disclosure requirements, consumer protection, insurers' use of AI, and clinicians' use of AI.

One interesting aspect of AI state legislation in 2025 is that bills included separate "guardrails" for multiple AI technologies within different provisions of a single bill, rather than offering a uniform set of requirements across AI technology systems. Also, some state AI governance bills had provisions for AI risk management programs and/or AI risk or impact assessments that offer some form of a "safe harbor"—that is, a presumption against liability—for companies that *voluntarily* adopt these measures.

Examples of 2025 enacted AI legislation include:

- ***Arkansas*** passed legislation that clarifies who the owner of AI-generated content is, including the person who provides data or input to train a generative AI model or an employer, the latter if the content is generated as a component of employment duties. This legislation also specifies that the generated content should not infringe on existing copyrights.
- ***Montana*** passed a "Right to Compute" law establishing safety requirements for critical infrastructure controlled by an AI system. The deployer must develop a risk management policy that considers guidance from a list of specified standards, such as the latest version

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of the AI Risk Management Framework from the National Institute of Standards and Technology (NIST).

- ***New Jersey*** adopted a resolution urging generative AI companies to make voluntary commitments regarding employee whistleblower protections.
- ***New York*** enacted a law requiring state agencies to publish detailed information about their automated decision-making tools on their public websites through an inventory created and maintained by the state's Office of Information Technology. The law also amends the state's civil service law, requiring that an AI system cannot affect the existing rights of employees pursuant to an existing collective bargaining agreement and requires that an AI system does not result in displacement or loss of a position.
- ***North Dakota*** passed an AI law prohibiting individuals from using an AI-powered robot to stalk or harass another individual, expanding current harassment and stalking laws.
- ***Oregon*** enacted a law that specifies that a non-human entity, including an agent powered by AI, cannot use specific licensed and certified medical professionals' titles such as a registered nurse or certified medication aide.
- ***Texas*** passed the Texas Responsible Artificial Intelligence Act, which includes a "safe harbor" provision whereby an entity will not be prosecuted if it discovers a violation of the law based on an internal review process. But this is conditional if the entity demonstrates a risk management program that "substantially complies" with NIST's AI Risk Management Framework, Generative Artificial Profile, or another nationally or internationally recognized AI risk management framework. Texas joins Utah in establishing an AI "regulatory sandbox" in the United States, although the two programs have significant structural differences.

By 2025, nearly every state has adopted privacy and data security legislation that—to different degrees—affects AI systems.

White House effects on state legislation

/ Despite the failure of Congress to pass AI legislation, there was activity on the federal level in 2025. In January, President Trump signed Executive Order 14179, "Removing Barriers to American Leadership in Artificial Intelligence," which included the development of an "AI Action Plan." Then, in July, it unveiled "Winning the Race: America's AI Action Plan," which has three pillars:

- Accelerate AI innovation
- Build American infrastructure
- Lead in international AI diplomacy and security

Pillar I's components promote development and distribution of new AI technologies across every field and industry faster—and more comprehensively—than America's competitors. It also proposes to remove unnecessary regulatory barriers that hinder private-sector AI implementation. Pillar II focuses on the nation's need to build and maintain vast AI infrastructure and the energy sources to power it by easing environmental hurdles and eliminating bureaucratic red tape. Pillar III reflects policy initiatives that will establish American AI, from advanced semiconductors to AI application models, as the "gold standard" for global AI.

From the perspective of the development and implementation of state-level AI legislation, Pillar I states, "The Federal government should not allow AI-related federal funding to be directed toward states with burdensome AI regulations that waste these funds but should also not interfere with states' rights to pass prudent laws that are not unduly restrictive to innovation." Since the Cruz provision of preempting state-level AI system regulation was not included in the "One Big Beautiful Bill," this policy statement now takes on greater importance in influencing state-level AI legislation.

To avoid state-by-state requirements, the tech industry remains resolute in its efforts to get stand-alone federal AI data privacy and security regulation.

Will the Cruz AI provision failure prevent Big Tech from lobbying for passage of federal AI legislation? Certainly not. To eliminate the fragmented approach of state-by-state AI regulatory requirements, the tech industry remains resolute in its efforts to get stand-alone federal AI data privacy and security legislation in 2026. In addition, US tech firms must contend with the European Union's "Artificial Intelligence Act," which took effect in 2025. Darren Kimura, CEO and president of the AI platform AI Squared, succinctly stated in the *Wall Street Journal*, "[A] federal AI framework is essential" (Loten, 2025). Such consistent federal standards will help promote "secure, fair development of AI," according to an Amazon.com spokesperson quoted in the article.

As midterm election efforts ramp up, the federal legislative "window" for passage of AI legislation is narrow. Further complicating matters, it requires a tenuous balancing of states' rights and the economic benefits of a national standardization program of AI systems. R

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BRIEFLY NOTED

Trumpian Chaos as an Attempt at Central Planning

BY PIERRE LEMIEUX

Nearly eight decades ago, Friedrich Hayek, a future Nobel economics laureate, explained how only a market economy can use information efficiently and why efficient government planning (and socialism) is therefore impossible. This idea is highly relevant to America today.

Of course, there is government planning and there is *government planning*. It was much more expansive, detailed, and detrimental under Stalin, Mao, and Mussolini than under Joe Biden or Donald Trump. But the difference between them economically is a matter of degree, and disorderly planning attempts can get us closer to stifling central planning, which is what so many people on both America's Red and Blue teams today seem to want.

Impossibility of efficient planning / Attempts at planning the economy are of course possible, but efficient planning is not. By "efficiency," economists refer to the best use of resources for the satisfaction of individual preferences. Because individuals are not identical, satisfying their different preferences requires coordination of their actions to maximize the production of the goods and services they want.

In "The Use of Knowledge in Society" (1947), Hayek explained that such coordination requires information ("knowledge" in his terminology) that is dispersed across the minds of all individuals. Nobody—and no central planner or AI—has or can obtain any significant part of this information. It lies in the individuals' subjective preferences as well as in circumstances of time and place of each individual. As each individual uses the information available in his environment in pursuing his own interest, all the information gets incorporated in the supply, demand, and prices of goods and services, as well as remunerations. Prices transmit this imbedded information to all participants in the economy and thus serve to coordinate their actions.

For example, says Hakek, suppose that the world supply of tin becomes scarcer for some reason. Its price will increase, transmitting to consumers the signal to economize on tin-made goods, and to producers the signal to produce more tin. It does not matter whether the cause of the increased scarcity of tin is that its supply has decreased or its demand has increased, where that happened, or what are the underlying reasons. Through trade, price signals are transmitted to all consumers and producers.

If prices are falsified by, say, unequal or erratic taxes (like President Trump's tariffs), unexpected distortions and consequences happen. Examples are not difficult to find, but an interesting one was reported recently by the *Financial Times:* The new customs duties on copper announced by Trump in July handicapped New York's Commodity Exchange (COMEX) in its competition with the London Metal Exchange (LME). Both companies trade copper futures, but COMEX stores copper on a duty-paid basis, whereas the LME's global warehouse network operates on a duty-unpaid basis. After Trump announced the upcoming tariff on copper, many American buyers paid a contract premium to store their copper in COMEX warehouses before the tariff hit. But then (surprise!), Trump changed his sovereign mind and imposed his tariff on semi-finished and derivate products instead. "The result," explains the *Financial Times*, "has been a big shift in business to London" to avoid the risk of erratic tariffs being baked into metal contract prices.

Ignoring basic economics / To know what they're doing, government policymakers need at least an elementary knowledge of economic theory and history, or they need advisers who do. Instead of attempting to plan or redirect the whole economy, they will want to limit their interventions to special problems that cannot be solved by decentralized markets. They will not be pretentious enough to think they can create an alternative reality.

As an illustration of basic economic ignorance, consider Trump's infamous 2018 declaration that "trade wars are good, and easy to win." His first term's tariffs typically fell on American consumers—including through businesses' tariffed inputs—as many economic studies have shown. In line with the law of one price (i.e., there can be only one market price for a given good, not considering transportation costs), the tariffs also pushed up the price of domestic substitutes. A Cincinnati steelmaker explained why he had increased his prices after Trump's steel tariffs: "Demand came on so fast that we had to raise our prices or we would not have had one pound of steel for anybody. We raised prices to the point where the market said it is enough." Not surprisingly (for a student of economics), protecting American industries against foreign competition did not make them more productive and competitive. Moreover, some foreign states retaliated, which caused reductions in the markets of many American producers.

Nevertheless, very early in his second term Trump launched an intensified trade war. Over his first term he roughly

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doubled the average (trade-weighted) American tariff on imported goods. By October 30 of 2025, he had multiplied it more than seven-fold, bringing tariffs to levels comparable to the mid-1930s following the Smoot–Hawley Act. On that date, the average tariff on goods imported in America was estimated at 17 percent, which includes some 45 percent on Chinese goods.

Again not surprisingly, an arbitrary government incentivizes more lobbying to ask for special privileges, permissions, and exemptions. According to a *Washington Post* compilation of official data in late October, lobbying expenditures were up 21 percent compared with the same period in 2024.

What about China? / From all we know about economic theory and history, it is an illusion to think that a planned economy can be more efficient than free markets. But what about China? Hasn't its government planning led it to be the second largest economy in the world?

It is easy to exaggerate the strength of the Chinese economy. Its gross domestic product per capita was only 32 percent of the US level in 2024 (World Bank data, in purchasing power parity). The country is "rich" in the sense that its GDP aggregates the output and incomes of a very large number of relatively poor people. The Chinese state's military power may be worrisome, but it is probably more so if trade wars reduce Chinese incomes, generating popular discontent and political instability dangerous for world peace. Many analysts think that economic growth is exaggerated in official Chinese figures. And the country's economy has shown many weaknesses, especially over the past few years.

If one looks at American individuals instead of their supposed collective, they gain more profitable opportunities by trading with rich rather than poor neighbors, whether in the next village or across the globe. This is the individualist and liberal way to look at exchange.

It is true that Chinese state-owned, state-backed, and state-planned corporations have gained a very large share of the world markets in rare-earth elements and the related advanced magnets: from 70 percent in rare-earth mining to 93 percent in the magnets. Through export controls, the Chinese government has been using this dominant position as leverage in the current trade war. This, however, does not mean that an American planning state is a good response to the Chinese planning state.

In many if not most industries, despite its government planning and subsidies, the Chinese economy remains far from American performance. The resources the Chinese central planner pushed into rare-earth activities were diverted from other industries. In the United States, on the contrary, regulations on mining and processing rare earths have most likely impeded their production. If, over the past couple of decades, private capitalists did not correctly appreciate the future potential of rare earths, that is partly because, given the then-available information—the prices charged by Chinese firms (and the subsidies of the hapless Chinese taxpayer)—it was more efficient to import these materials. And it is not the Chinese government that started the trade war.

The fact that governments in the West were not themselves more clairvoyant is consistent with the idea that governments cannot use, and act on, available information better than decentralized markets.

Free enterprise / Since the Biden administration, the US government has been heavily subsidizing the rare-earth and magnet industries. Trump's Department of Defense announced in July that it is even taking an equity stake in MT Materials, an American rare-earth miner that is starting to produce magnets. The federal government would thus be the company's largest shareholder. In early November, the administration took equity stakes in two more private companies involved in rare earths and magnets, start-ups Vulcan Elements and ReElements. This is the planning path, not the free enterprise route. Which other companies will the feds decide to partly or totally own? Could the Democratic Socialists do better in industrial policy?

Interestingly, US automaker General Motors did not wait for rare-earth Big Brother to address its needs. In 2021, the company decided to pay the higher cost of a long-term contract for rare-earth magnets from a German manufacturer, which built a plant in America. At the same time, GM also secured most of MT Materials' first commercial output of magnets, which is now imminent. Other automakers have since followed GM's example. This illustrates the benefits of decentralized decisions and experimentation in a free enterprise system.

In general, it is a good idea to remember basic economic principles and not jump into collectivist misadventures. Attempts at central planning, whether by Team Red or Team Blue, are blind alleys if not chaotic zigzags, and do not provide a path to liberty and prosperity. *R*

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