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Guidance from Attorney General Ellen Rosenblum

What you should know about how Oregon's laws may affect your company's use of Artificial Intelligence

Key takeaway: If you think the emerging world of Artificial Intelligence ("AI") is completely unregulated under the laws of Oregon, think again! There may not be laws with the heading "AI," but our state's Unlawful Trade Practices Act, Consumer Privacy Act, and Equality Act, among others, all have roles to play. What follows is a brief discussion of how these laws can affect your company's implementation of AI.[1]

Please note: This document does <u>not</u> cover every possible obligation under Oregon law. It is also possible the Oregon Legislature will consider bills pertaining to AI in the 2025 Session.

Background

Before the adoption of Artificial Intelligence, computing was what theorists called "deterministic." That is, for a given input, only one output could be expected. With the arrival of so-called "machine learning"—the core of Artificial Intelligence—the output from a computer is less certain. This is what theorists call "probabilistic." That is, programs like OpenAI's ChatGPT, Anthropic's Claude, Microsoft's Copilot, and others can produce unanticipated results. To continue the comparison: For a given input, now many possible outcomes are to be expected.

Looked at broadly, this shift in computer performance introduces both opportunities and risks: While AI can uncover patterns and solutions traditional computing could not, its unpredictability also raises concerns of fairness, accountability, and trustworthiness.

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[1] For purposes of this guidance, "artificial intelligence" is not precisely defined, but is used to capture a variety of new products that pass the Turing Test, a test of a machine's ability to exhibit behavior equivalent to, or indistinguishable from, that of a human. *See* A.M. Turing, *Computing Machinery and Intelligence*, 59 MIND 433 (1950).

On the one hand, these advances hold promise for Oregon's economy. In particular, AI can streamline repetitive tasks, deliver personalized services for users, and even make decisions through data analysis. A healthcare system, for example, might use AI to analyze patient records to make diagnostic recommendations. Or a rental management company could screen lease applications using AI. And a small business might use AI to review cover letters and resumes for job openings. Application of AI programs is certain to expand quickly.

On the other hand, these advances also bring significant risks to consumers, touching on core concerns like privacy, discrimination, and accountability. AI systems often rely on the collection and storage of vast amounts of personal data, raising the potential for data breaches, unauthorized use of consumer information, and even pervasive surveillance.

Bias and discrimination are also serious concerns. AI systems are trained on datasets that include human biases and prejudices. Such bias can lead to the unfair treatment of demographic groups when AI systems are deployed, perpetuating social inequalities. This is especially troubling in areas like lending and hiring, where AI-driven decisions could deepen existing divides. On a systemic level, AI can reinforce and amplify social biases, creating feedback loops that entrench discrimination and limit the ability to correct errors.

Transparency—or the lack thereof—adds another layer of complexity. AI systems can make decisions that consumers do not understand and cannot easily challenge. When even the companies that made the AI tool cannot explain exactly how their systems arrive at a specific answer, accountability becomes limited, leaving consumers without a clear way to challenge unfair or erroneous outcomes. AI's complexity makes it hard for the average consumer to grasp how decisions affecting their lives are being made.

Application of Oregon's Laws to Artificial Intelligence

The following are some of the existing Oregon laws that may apply in the AI context. This guidance is not meant to be comprehensive; instead, it highlights certain Oregon laws that may be applicable and serves as a reminder that existing state laws continue to apply as technological advances occur.

Unlawful Trade Practices Act

Oregon's Unlawful Trade Practices Act (the "UTPA"), ORS 646.605 to 646.656, is a comprehensive set of laws that protect consumers. When enacting the UTPA, the legislature intended to prohibit misrepresentations in consumer transactions. Representations subject to the act include any assertions by words or conduct, including (but not limited to) a failure to disclose facts. ORS 646.608(2).

The novelty or complexity of AI systems does not exempt their marketing, sale, or use from the reach of Oregon's UTPA. Companies developing, selling or deploying AI technology, including AI technology like chatbots to communicate with consumers, should ensure that those tools provide accurate information to consumers and may be liable if they do

not. Misrepresentations may be actionable even when they are not made directly to the consumer. Thus, under certain circumstances, an AI developer or deployer may be liable to downstream consumers for the harm its products cause and should take care to ensure transparency and accuracy in their products.

Among other circumstances, a business advertising, offering, or selling an AI product or service, or employing AI in the advertising, offering, or sale of other goods or services, may violate the UTPA if the business:

- Fails to disclose any known material defect or material nonconformity, concurrent with tender or delivery of an AI product. ORS 646.608(1)(t). This imposes an affirmative duty of disclosure. An AI developer or deployer may violate the UTPA if it knows or has reason to know that its product regularly generates false or misleading information and fails to disclose these limitations to purchasers and users.

- Misrepresents that an AI product has—or uses AI to misrepresent that real estate, goods or services have—characteristics, uses, benefits or qualities that they do not have. ORS 646.608(1)(e). Examples of potential violations include a developer or deployer misrepresenting that an AI system has functionality that it does not possess or employing a chatbot while falsely representing that it is human.

- Uses AI to misrepresent that real estate, goods or services have sponsorship, approval, affiliation or a connection that they do not have. ORS 646.608(1)(e). For example, a business may violate the UTPA if it publishes fake product reviews generated by AI or uses AI-generated video to make it appear that a celebrity endorses a product that the celebrity does not endorse.

- Uses AI to make false or misleading representations of fact concerning the reasons for, existence of, or amounts of price reductions. ORS 646.608(1)(j). For example, companies may not use AI-generated "limited time" or "flash sale" advertisements or emails when the same or substantially similar discount is offered year-round.

- Uses AI to set an unconscionably excessive price during an emergency in violation of Oregon's anti-price gouging law. ORS 646.607(3). The fact that a business uses AI to automatically set prices based on market demand does not change the fact that a business may not sell essential consumer goods or services (such as lodging, for example) for an unconscionably excessive price during a declared emergency.

- Uses an AI-generated voice as part of a robocall campaign to misrepresent or falsify certain information, including the caller's identity and the purpose for which the caller is calling. ORS 646.608(1)(ff).

- Uses AI to employ any unconscionable tactic in connection with selling, renting or disposing of real estate, goods or services, or collecting or enforcing an obligation. ORS 646.607(1). Using AI to knowingly take advantage of a consumer's

ignorance or to knowingly permit a customer to enter into a transaction with no material benefit to the consumer likely are prohibited, as are other tactics that are unfair, unjust or shocking to the conscience.

Importantly, this is not an exhaustive list of potential violations. Instead, the examples above are meant to illustrate the many circumstances in which the UTPA protects consumers in Oregon in the context of AI.

Oregon Consumer Privacy Act

Developers, suppliers, and users of AI may be subject to the Oregon Consumer Privacy Act ("OCPA"). The OCPA protects consumers by giving them control over their personal data. The act gives consumers the right to know if a company is collecting or processing their data. They can also ask for access to their data, ask for corrections if it is inaccurate, and even have it deleted. The OCPA implicates generative AI, as these systems have ingested billions of words, images and other content as training data, which often consists of consumers' personal data.

Developers that use personal data to train AI systems must clearly disclose this in an accessible and clear privacy notice. ORS 646A.578. If personal data includes any categories of sensitive data specified in the OCPA, entities must first obtain explicit consent from consumers before using that data to develop or train AI models. ORS 646A.578(2)(b). If a developer purchases or uses another company's data set for model training, the developer may be considered a "controller" under the OCPA. As such, they must comply with the same standards as the company that originally collected the data.

Similarly, data suppliers and developers cannot legitimize the use of previously collected personal data to train AI models by retroactively or passively altering privacy notices or terms of use. Instead, they must obtain affirmative consent for any new or secondary uses of that data. ORS 646A.578(2)(a). Developers and users must provide a mechanism for consumers to withdraw previously given consent. When consent is revoked, the entity must stop processing the data within 15 days of receiving the revocation. ORS 646A.578(1)(d).

Oregon's consumer privacy law also requires that consumers be given the opportunity to opt-out of the use of AI models for profiling in decisions that have legal or similarly significant impacts like housing, education, or lending. ORS 646A.574(1)(d)(C); ORS 646A.570(10). Consumers have the right to request the deletion of their personal data, and entities covered by the OCPA must consider how to respect those rights when using AI models. *See* ORS 646A.574.

Finally, entities are also required to conduct Data Protection Assessments before processing personal data for purposes of profiling or any activity that presents a heightened risk of harm to consumers, including the processing of sensitive data. ORS 646A.586. Given the complexity of generative AI models and proprietary data and algorithms, entities should be aware that feeding consumer data into AI models and processing it in connection with these

models likely poses heightened risks to consumers. Even entities not directly covered by the OCPA may still violate consumer protection laws if their actions contradict their publicly stated policies or commitments regarding how they collect, use, or disclose consumer data. In other words, misleading consumers about data practices, even when using AI, can still be considered deceptive under the law. ORS 646.607(12).

Oregon Consumer Information Protection Act

AI developers—and their data suppliers and users—that own, license, maintain, store, manage, collect, process, acquire, or otherwise possess personal information must also comply with the Oregon Consumer Information Protection Act, including by safeguarding that information. ORS 646A.622. If there is a security breach, they may be required to notify consumers and the Oregon Attorney General. Violations of the Act are enforceable under Oregon's UTPA. ORS 646.607(9).

Oregon Equality Act

The Oregon Equality Act, codified in ORS chapter 659A, strengthened existing protections against discrimination in Oregon. Under the act, it is unlawful to discriminate based on race, color, religion, sex, sexual orientation, gender identity, national origin, marital status, age, or disability. The Oregon Equality Act extends these protections to housing and public accommodations, ensuring equal access for all. For example, if a rental management company uses an AI mortgage approval system that consistently denies loans to qualified applicants from certain neighborhoods or ethnic backgrounds because the AI system was trained on historically biased data, that company may violate the act.

Conclusion

This guidance is intended to clarify that Oregon's existing consumer protection, data privacy, and anti-discrimination laws fully apply to AI models. AI developers and users alike are subject to Oregon's Unlawful Trade Practices Act, which prohibits unfair or deceptive practices like false advertising. AI systems must also adhere to Oregon's Consumer Privacy Act by ensuring personal data security and must comply with the Oregon Consumer Information Protection Act as well. AI systems that utilize discriminatory inputs or produce biased outcomes that harm individuals based on protected characteristics may trigger Oregon's anti-discrimination laws. AI development and its use must prioritize consumer protection, privacy, and fairness.

This guidance was prepared by the legal staff at the Oregon Department of Justice. It is not intended to be legal advice specific to any situation, but, rather, helpful guidance to Oregon businesses that are implementing AI in their operations.