



# THE NEW FRONTIER OF CONSUMER PROTECTION LAW

## UTAH TARGETS THE USE OF GENERATIVE AI



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### OVERVIEW

On March 13, 2024, Utah passed a groundbreaking law—the *Utah Artificial Intelligence Policy Act* (“UAIP<sup>1</sup>”)—that imposes new disclosure obligations on businesses utilizing generative AI. This includes mandatory disclosures when interacting with customers, but that’s not the most demanding new rule. Under the UAIP, covered businesses cannot blame AI for any consumer protection breaches that result from the use of AI tools to enhance their own products and services.

### WHAT YOU NEED TO KNOW:

- 1. Effective Date:** Compliance starts May 1, 2024.
- 2. Applies to Generative AI Only:** The UAIP applies to a wide range of AI systems, including chatbots and other AI-powered content generation tools, which generate forms of communication and content that mimic that of real human beings (“**Generative AI Platforms**”). More specifically, a Generative AI Platform is defined in the statute as “an artificial system that is (a) trained on data, (b) interacts with a person using text, audio or visual communication, and (c) generates non-scripted outputs similar to outputs created by a human, with limited or no human oversight.”
- 3. Disclosure Requirements:**
  - a. Regulated Occupations:** If a business is a “regulated occupation” – i.e., those occupations which require a practitioner to get a license or a certification to lawfully practice – must disclose the use of generative AI right at the start of any communication. Oral exchanges cannot begin before a business discloses the use of Generative AI Platform verbally, and written exchanges must similarly begin with a written disclosure of how AI is being used.

1 - See <https://le.utah.gov/~2024/bills/static/SB0149.html>



- b. General Business:** For businesses that are not regulated occupations, the UAIP requires a “clear” and “conspicuous” disclosure of the use of generative AI if a consumer or potential consumer asks about the role AI plays in the products and services the business offers. Unfortunately, the new law does not prescribe how disclosure should take place or what “clear and conspicuous” disclosure actually means.

## **CORPORATE ACCOUNTABILITY:**

Under the UAIP, companies can’t pass the buck to AI. Any breach of Utah’s consumer protection laws undertaken by a Generative AI Platform will be treated as if committed by the company itself. As a consequence, businesses will have to put policies and procedures in place to ensure that AI-generated text and audiovisual content are vetted for compliance with applicable consumer protection laws.

## **PENALTIES:**


- 1. Administrative fines:** The Utah Division of Consumer Protection (“UDCP”) can impose administrative fines of up to \$2,500 per violation.
- 2. Enforcement Actions:** When the UDCP brings actions in court to enforce the UAIP, courts can not only grant such fines, they can also enjoin the unlawful activity and issue disgorgement orders to recovery money received by a business in the course of violating the UAIP. It is worth noting that disgorgement payments can be recovered by the UDCP, or, alternatively, the court can order that such payments be remitted to the party that was harmed.
- 3. Additional Civil Penalties:** If an administrative fine is not honored or a court order is violated, the Utah Attorney General can recover a civil penalty of \$5,000 per violation.

## **ENCOURAGING INNOVATION:**

The law isn’t all about prohibitions and restrictions; it also aims to promote innovation in the AI space. To that end, a new Office of Artificial Intelligence Policy will manage an *AI Learning Laboratory Program*, offering a limited reprieve from regulatory compliance to foster development with benefits including (1) reduced fines and (2) extended compliance periods. This reprieve can be granted for up to twelve (12) months (the “**Reprieve Term**”), with one additional extension of the Reprieve Term available.

## **IMMEDIATE ACTIONS FOR IMPACTED BUSINESSES:**

- **Implementing a Disclosure System - Regulated Field:** If you’re in a regulated field (such as medicine or law), prepare to integrate prominent AI disclosures before engaging customers. This will require doing



a thorough review of how your customers engage with all of your company's platforms and applications across web and mobile. For each of these platforms and applications, your customers must be made aware that they will be engaging with generative AI technologies before such engagement begins.

- **Implementing a Disclosure System - Non-regulated Field:** If you are operating in a non-regulated field, the key next is to implement a system to detect whether a user has asked if he or she is using or benefiting from the output of Generative AI Platforms. If your products and services are exclusively powered by AI, you will need to take steps to ensure that users are given clear, accurate responses to their questions about the role of AI in your product and service ecosystem. In addition, your employees should be trained to effectively communicate how AI is used by your organization whenever customers make inquiries.
- **Vigilance Beyond Utah:** While there is currently no federal legislation focusing on the impact of AI on consumer protection issues, other states might follow Utah's lead – thereby complicating the compliance efforts of companies with a national presence across the United States. To stay ahead of the curve, we recommend the open adoption of AI disclosure policies that place a wealth of information in your customers' hands so that any gaps between your current practices and the demands of new legislation can be efficiently addressed.

For a smooth transition or if unsure about your status under the UAIP, don't hesitate to contact us. We're here to help you navigate these new waters effectively.

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