



S.1169-A (Gonzalez) / A.8884 (Solages)

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BILL S.1169-A (Gonzalez) / A.8884 (Solages)
SUBJECT The New York AI Act
DATE April 20, 2026
OPPOSE

The Business Council of New York State strongly opposes The New York AI Act (S.1169-A Gonzalez / A.8884 Solages). While The Business Council shares the sponsors' goal of eliminating unlawful discrimination, we respectfully raise concerns with the legislation in its current form. As drafted, the bill creates a punitive enforcement mechanism that will incentivize frivolous litigation and introduces overly vague definitions and burdensome audit and reporting requirements that will jeopardize the state's innovation economy.

Existing State and Federal Anti-Discrimination Laws Apply to AI Systems

While The New York AI Act seeks to address algorithmic bias and discriminatory results in the use of artificial intelligence, it blatantly ignores that existing state and federal anti-discrimination laws already apply to AI systems. The Office of the Attorney General (OAG) agrees with this statement. OAG testified that it is tasked with enforcement of the state's anti-discrimination laws and that it works "tirelessly to enforce laws prohibiting illegal discrimination

and protecting consumers from fraud," and noted that OAG continues to monitor companies' use of large language models for employment, healthcare, housing, and education and is actively "engaging in enforcement where necessary." [1]

The legislation does not seek to fill gaps in current enforcement but rather adds significant burdensome mandates for businesses to comply with on top of existing frameworks.

Private Right of Action and "Guilty Until Proven Innocent" Standard Will Create a Litigation Frenzy

A key feature of The New York AI Act is that it utilizes a private right of action as its key enforcement mechanism and creates a rebuttable presumption for liability, shifting the burden to the defendant to prove they are not at fault through "clear and convincing evidence." This is an extremely high legal standard where defendants would be presumed "guilty until proven innocent," and unprecedented in AI law.

Due to the bill's vague and overly broad definitions and ill-defined third-party audit and reporting requirements, this would incentivize private plaintiff's attorneys to seek out and target **any** business that uses AI in "consequential decision" making and lead to a litigation frenzy. Many small and medium-sized businesses operate on small margins and are often easy targets for predatory litigation because trial lawyers recognize that they cannot afford long, drawn-out trials, and therefore will be forced into a quick settlement. Creating opportunities for predatory litigation creates a legal system with many victims and only one true beneficiary: trial lawyers.

For example, the owners of a Long Island Dairy Queen, sisters Patty DeMint and Michelle Robey, faced a \$6 million lawsuit under a loophole that existed in New York's "Frequency of Pay" law, even though they paid their employees what they were owed. Though the loophole was fixed in the FY26 New York State Budget, the sisters could not wait for the fix and were forced into settlement. As reported by CBS News New York, of the \$450,000 settlement, \$305,000 went to lawyers and fees, while the former workers who were paid bi-weekly each received less than \$200. [2]

The cost of torts and impeding frivolous litigation not only harms well-meaning, law-abiding businesses, but it threatens to exacerbate New York's affordability crisis. New York households pay \$7,027 in "hidden tort costs" annually - almost \$3,000 more than the national average [3]. Businesses will have to account for the additional risk and liability which only increases operational costs. This type of costly litigation could chill legitimate business conduct and drive-up compliance costs, increasing the cost of doing business and costs to consumers.

The Business Council strongly opposes the private right of action and rebuttable presumption for liability standards created in The New York AI Act.

Overly Broad Definitions and Onerous Audit and Reporting Requirement Will Create Massive and Costly Compliance Burdens

The New York AI Act's overly broad definitions will capture many business software systems that are used for every day operational se, which are not used to autonomously decide or make "consequential decisions." Yet, they will trigger the same compliance and reporting meant for AI systems that impact important live chances.

The onerous audit and reporting requirements for both AI developers and AI deployers are concerning for several reasons. The bill requires significant and costly third-party audits to be conducted by both developers and deployers. Deployers include any and all businesses that utilize AI systems which improve their services, operations, marketing and other efficiencies. For deployers, this includes a third-party audit within six months after deployment, a second audit within one year of the submission of the first audit, and one audit everyone two years following the submission of the second audit. Additionally, the bill mandates reporting requirements to the Office of the Attorney General, with similar timing requirements, but also requires a report be filed any time a "substantial change" is made to the AI system.

For any business to comply, they will be forced to hire an outside, independent auditor - and they will be at the mercy of whatever these costs may be. Small and medium-sized businesses will be most severely impacted by these substantial increased compliance costs. ***During a Senate Hearing held on January 15, 2026, a representative from Schellman, a CPA firm that focus on IT Compliance and Cybersecurity, stated that an initial audit would cost any business between \$20,000 = \$50,000, with subsequent audit years being on the "lower range" of that estimate [4]; this is not a "reasonable cost" for businesses to bear, especially small and medium-sized businesses.***

This will lead to fewer jobs and increased costs of goods and services for consumers, and likely, fewer small and medium-sized businesses. Not only will it increase the cost of doing business and exacerbate the affordability crisis that all businesses and consumers struggle with, but it increases the amount of regulations by which businesses they must comply. Any mistake or good faith error could result in frivolous litigation by trial lawyers.

One of the most concerning requirements is that no accredited firms or ecosystem of qualified third-party "independent auditors" or guidelines currently exist that appropriately identify or outline "best practices," ultimately setting up developers and deployers to shoulder the heavy burden of liability without a clear pathway to ensure compliance. If objective standards do no exist, how is a company, faced with massive liability, supposed to comply?

Further, the bill places a strict prohibition on commissioning auditor if they have "already been commissioned to provide any auditing or non-auditing services, including but not limited to financial auditing, cybersecurity auditing, or consulting services of any type, to the commissioning company in the past twelve months." [5] This provision will drastically limit the pool of potential qualified auditors. Another concern is that audit mandates could create de facto licensing regimes, which could unfairly allow third parties to control which products are allowed to launch, creating regulatory capture and antitrust concerns.

The cost of compliance without clear guidelines or definitions will be enormous, and in many cases, too costly for small and medium sized businesses who utilize AI systems to streamline business operations, which allow them to grow jobs, increase services, and expand in our local communities. These compliance burdens will further strangle New York's businesses who already operate in a difficult environment and could cause them to relocate to other more business-friendly states.

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The Business Council believes there is no place for unlawful discrimination, and that strong state and federal laws exist to protect New Yorkers and provide enforcement of bad actors. The New York AI Act introduces broad definitions and obligations, costly and burdensome audit requirements, and litigation risks that will chill innovation and growth of our economy in all sectors. For these reasons, The Business Council strongly opposes adoption of S.1169-A (Gonzalez) / A.8884 (Solages) and urges the Legislature to reject adoptions.

[1] *Public Hearing: To discuss risks, solutions, and best practices with respect to the use of artificial intelligence in consequential or high-risk contexts, and related issues, such as classification of the types of and risk levels of AI uses*, New York State Senate (January 15, 2026)(Office of the Attorney General)

<https://www.nysenate.gov/sites/default/files/admin/structure/media/manage/filefile/a/2026-01/testimony-nys-oag-senate-hearing-on-ai-01.15.26-final.pdf>

[2] Carolyn Gusoff, "Long Island business owners slapped with \$6 million lawsuit over law they didn't know they were breaking," CBS News New York, October 6, 2025,

<https://www.cbsnews.com/newyork/news/long-island-dairy-queen-biweekly-paychecks-lawsuit/>.

[3] "Tort Costs in America: An Empirical Analysis of Costs and Compensation of the U.S. Tort System - Third Edition," U.S. Chamber of Commerce Institute for Legal Reform, November 2024.

<https://instituteforlegalreform.com/research/tort-costs-in-america-an-empirical-analysis-of-costs-and-compensation-in-the-u-s-tort-system-third-edition/>

[4] *Public Hearing: To discuss risks, solutions, and best practices with respect to the use of artificial intelligence in consequential or high-risk contexts, and related issues, such as classification of the types of and risk levels of AI uses*, New York State Senate (January 15,

2026)(Danny Manimbo, Schellman) <https://www.nysenate.gov/calendar/public-hearings/january-15-2026/public-hearing-discuss-risks-solutions-and-best-practices>

(Estimated video time 3:24:00 - 3:26:00)

[5] S.1169-A/A.8884, (§87(7)(b)(i))