



Virginia Lawmakers Pass AI Discrimination Law, But Will the Governor Approve? What Employers Need to Know

Insights

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Virginia lawmakers just passed a groundbreaking AI anti-discrimination bill, setting the stage for new workplace compliance obligations – but that’s only if Gov. Glenn Youngkin signs it into law. Following the lead of Colorado’s first-in-the-country state AI discrimination law, Virginia’s version, while more industry-friendly, would still require employers to prepare for significant oversight of AI-driven decision-making starting July 1, 2026. But there’s a significant chance that the Republican governor will veto this Democratic bill. Here’s what you need to know about this potential new law, whether you have operations in Virginia or not.

What Happened?

The Virginia Senate passed [HB 2094](#) on February 19, a week after the state House did the same. Both votes were narrow and along party lines, with the slim Democratic majority in both chambers edging out the Republican opposition (21-19 in the Senate, 51-47 in the House).

It now heads to Gov. Youngkin for final action. He is considered a moderate Republican and doesn’t always strictly follow party lines, but often supports the business community. Because of his business-friendly leanings and aversion to regulation, many government watchers expect him to veto this legislation. We’ll monitor the situation and provide updates as necessary.

What Are the Key Components of the Bill?

If enacted, the new law would introduce five key elements to state law when it comes to AI in the workplace starting July 1, 2026.

- **AI Accountability:** Businesses using AI in hiring, finance, healthcare, and other high-stakes decisions would need to exercise **reasonable care** to prevent algorithmic bias.
- **Narrow Scope:** Virginia’s law would only apply when AI is the **principal basis** for such decisions, whereas Colorado regulates AI as long as it is a substantial factor in an outcome.
- **Focus on High-Risk AI:** The law targets AI systems **specifically designed** to make consequential decisions autonomously, excluding lower-risk AI tools.
- **Transparency and Compliance:** Employers would need to conduct **risk assessments, disclose AI usage** to individuals affected, and **allow appeals** of AI-driven adverse decisions.

- **No Private Right of Action:** Unlike some workplace discrimination laws, only the **Virginia Attorney General** would be able to enforce violations – there would be no avenue for disgruntled applicants or employees to file lawsuits in court.

Who's Covered?

Employers and businesses in Virginia deploying high-risk AI systems to make “consequential decisions” would be on the hook. That includes AI-powered tools that influence:

- Employment decisions (hiring, promotions, terminations, etc.)
- Lending and financial services
- Healthcare access
- Housing eligibility
- Insurance determinations

If your AI tools assist your operations rather than autonomously decide on their own, or if they're designed for procedural support (like resume sorting), they may not qualify as “high-risk.”

3 Key Employer Compliance Obligations

If signed into law, Virginia employers would face three key compliance obligations.

AI Risk Management and Impact Assessments

Before deploying AI, employers would need to assess potential bias risks and document how AI makes decisions. They would also need to follow national standards such as NIST's AI Risk Management Framework, while monitoring ongoing AI performance to detect discriminatory patterns.

Transparency and Notice Requirements

When AI makes a consequential decision, employers would need to inform affected individuals (such as applicants or employees) that AI was used and disclose the key factors influencing the decision. They would also need to offer an appeals process (with human review where feasible).


Taking Advantage of Cure Opportunities

Violations would lead to civil penalties up to \$10,000 per willful offense. As noted above, the Virginia Attorney General would be the sole enforcer, meaning there would be no private right of action – at least for now. Even if targeted by the AG's office, employers would get 45 days to cure violations before facing enforcement action.

How Virginia's Potential Law Compares to Colorado's AI Law

This bill has been compared to Colorado's first-in-the-nation AI law, [which you read about here](#). How do the two square up against each other?

How Virginia's Potential Law Compares to Colorado's AI Law		
Feature	Virginia (HB 2094)	Colorado (SB 169)
Scope	Principal basis for decisions	Substantial factor in decisions
AI Risk Assessments	Required	Required
Transparency Notices	Required	Required
Appeals Process	Required	Required
Enforcement	Attorney General only	Attorney General + potential private lawsuits
Grace Period	45-day cure period	No explicit cure period



What Virginia Employers Should Do Now

While it is still an open question as to whether this law will go into effect in 2026, you can take some basic steps to up your AI governance game and introduce best practices regardless:

- ✓ **Audit AI Usage:** Identify any AI-driven decision-making in hiring, finance, healthcare, and other regulated areas.
- ✓ **Conduct Bias Testing:** Ensure your AI tools undergo rigorous testing to prevent disparate impact.
- ✓ **Update Policies:** Implement AI governance frameworks that align with risk management best practices. Follow [our 10-step guide](#) to setting up your own AI governance system.
- ✓ **Prepare Disclosure Processes:** If the law takes effect, work with counsel to develop clear notice and appeal mechanisms to comply with the law.

Conclusion

We will continue to monitor developments and provide updates as warranted, so make sure you subscribe to [Fisher Phillips' Insight System](#) to gather the most up-to-date information on AI and the workplace. Should you have any questions on the implications of these developments and how they may impact your operations, contact your Fisher Phillips attorney, the author of this Insight, any attorney in [our Washington, D.C. office](#), or any attorney in our [AI, Data, and Analytics Practice Group](#).

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