Ohio House Technology and Innovation
Committee 1 Capitol Sq, Columbus, OH 43215

Chair Claggett, Vice Chair Workman, Ranking Member Mohamed, and members of the Committee, thank you for the opportunity to testify today regarding House Bill 628 and the politically contentious task of balancing risk and innovation in the intelligence era.

My name is Logan Kolas. I am the Director of Technology Policy at the American Consumer Institute, an independent research and educational institution, whose mission is to promote consumer welfare by improving the public's understanding of how policies and regulations affect them in a free market. I am also an Ohio native that lives here in Columbus.

Many states have tried to balance innovation and risk, often by creating new statutory laws that create more problems than they solve. House Bill 628 balances the tradeoff between risk and innovation better than most by proposing a soft law approach to AI governance—but Ohio policymakers should take more steps to guard against government abuses of the statute, both now and in the future.

Lessons from Ohio's Soft Law Experiences

The line between voluntary best-practices and mandatory law is blurring as governments increasingly embed traditionally voluntary "soft-law" legal structures into mandatory "hard law" legal regimes. Ohio has long been a leader in finding the appropriate balance in this space; it makes the state unique and better positioned than other states to consider this kind of approach. That is because the state legislature has long-preferred iterative and voluntary approaches—encouraged by market incentives—to mandatory requirements proliferating in other states.[1]

In 2018, Ohio became the first state to establish an affirmative defense in data breach cases for companies that complied with certain prescribed standards.[2] The approach was so successful that Connecticut and Utah followed Ohio's lead in 2021 by importing those same defenses.[3] Building on those successes, Ohio pioneered a first-of-its kind affirmative defense approach to data privacy in 2022 when it included the provision as a part of the "Ohio Personal Privacy Act" (HB 376).[4]

[1] For information on check-the-box proposals, see Lauren Wilson, Testimony to the Ohio Technology and Innovation Committee on House Bill 628, Fathom, March 10, 2026, https://www.legislature.ohio.gov/legislation/136/hb628/committee.
[2] Ohio Rev. Code Ann. § 1354.02, effective date November 2, 2018 https://codes.ohio.gov/ohio-revised-code/section-1354.02; and Molly McGinnis Stine and Hannah Oswald, "Safe Harbor" Ports in a Cybersecurity Litigation Storm, Locke Lord, Fall 2021, https://www.troutman.com/insights/safe-harbor-ports-in-a-cybersecurity-litigation-storm-10-04-2021/.
[3] Molly McGinnis Stine and Hannah Oswald, "Safe Harbor" Ports in a Cybersecurity Litigation Storm, Locke Lord, Fall 2021, https://www.troutman.com/insights/safe-harbor-ports-in-a-cybersecurity-litigation-storm-10-04-2021/.
[4] "Enact the Ohio Personal Privacy Act," House Bill 376, The Ohio Legislature, Last visited March 15, 2026, https://www.legislature.ohio.gov/legislation/134/hb376/status.

Unfortunately, those policies were never enacted, allowing Tennessee to fill the void by enacting the first data privacy regime with an affirmative defense for NIST compliance.[5]

Sadly, the entire legal landscape fractured when Colorado imported the affirmative defense structure into its highly controversial Consumer Protections for Artificial Intelligence Act, which has been a disaster. In a recent American Consumer Institute report co-authored with the R Street Institute, Colorado highlights our list as the most destructive state AI law so far enacted—and the idea is spreading.[6] The law imported from Europe into Colorado a precautionary approach to AI regulation, filled with open-ended and ambiguous terminology to crack down on companies whose AI models lead to "algorithmic discrimination"—defined to include "disparate impact" in "high-risk" use-cases.[7] The law effectively creates a paperwork leviathan cloaked in a thinly veiled appeal to a soft-law regime. Despite that legislative shield, the law has not been enacted. Instead, Colorado has repeatedly delayed its implementation, kicking the can down the road and buying time to consider amendments and reforms.

Affirmative defenses and rebuttable presumptions are different legal concepts, but both are cases studies into how mixing soft law with hard law can create both properly aligned incentives for good-faith companies and/or unanticipated problems when those legal mechanisms paper over deeper flaws. The soft law benefits are countered by America's fragmented approach to AI policy, which allows other states with different views and motivations on AI regulation to reshape the idea into their own legislative frameworks. For this reason, Ohio policymakers must recognize that soft law is only as good as the underlying structure that it protects. And they must also anticipate how these regulations could be derailed—and then establish reasonable safeguards to protect against those risks.

Risk 1: Jawboning and Regulation by Raised Eyebrow

For its many benefits, HB 628 also gives the Attorney General's office a hammer to wield against AI companies without clear statutory limitations on executive power. Companies that decide not to pursue the voluntary certification framework could face undue government pressure to process their innovations through the AI licensing organizations that the Attorney General oversees. Although policymakers may think that tort liability will come from aggrieved individuals in private markets that suffer AI harms directly from companies, Attorney Generals could also foreseeably retaliate through the courts against companies that do not seek a voluntary certification. So could "ambulance chaser" type lawyers looking for big paydays. Since companies not obtaining a voluntary certification would not benefit from the rebuttable presumption, they could become potentially ripe targets for lawsuits.

[5] Logan Kolas, "A Federalism Opportunity in a Congressional Failure," The Buckeye Institute Policy Brief, August 10, 2023, https://www.buckeyeinstitute.org/library/docLib/2023-08-10-A-Federalism-Opportunity-in-A-Congressional-Failure-How-States-Can-Fix-the-Data-Privacy-Patchwork-policy-brief.pdf; and House Bill 1181, Tennessee General Assembly, Last visited March 15, 2023, https://legiscan.com/TN/bill/HB1181/2023.

[6] Adam Thierer and Logan Kolas, "The AI Terrible Ten: The Worst State AI Policies and Four Better Models to Balance Safety and Innovation," American Consumer Institute and R Street Institute, March 3, 2026, https://www.theamericanconsumer.org/2026/03/report-the-ai-terrible-ten-the-worst-state-ai-policies-and-four-better-models-to-balance-safety-and-innovation/.

[7] Senate Bill 24-205, "Consumer Protections for Artificial Intelligence," Colorado General Assembly, Last visited March 15, 2023, https://leg.colorado.gov/bills/sb24-205.

Ohio should consider some additional guardrails against that abuse of power before other states consider adopting Ohio's framework. One option would be to explicitly spell out that not having a certification cannot, on its own, be used as evidence of misbehavior in court.

Risk 2: Incentives to Make the Law Mandatory in the Future

Members of the committee must remain alert to the possibility that this novel approach to AI governance proves successful, creating a unique leverage point to turn a voluntary framework that is working into a mandatory one that will not. If AI companies eventually find that the stronger legal protection from certification outweighs the hassle of meeting its requirements, then policymakers—potentially pressured by industry or politicians—will have a strong incentive to turn a voluntary framework mandatory. That scenario must be avoided. Soft law has value precisely because it is voluntary, iterative, flexible, and adaptable to multi-stakeholder processes that guide behavior and structure accountability through norms and best-practices.[8] Mandating those norms not only assumes all businesses in the AI industry are equally positioned in the AI race, but it also erodes the many benefits of voluntary compliance. Compliance must be voluntary now and in the future.

One-of-One or One-of-Two? Getting Innovation Right in the Intelligence Era

Ohio cannot afford to take an all-of-the-above approach to AI regulation. States introduced more than 600 AI bills in 2024, more than 1,200 in 2025, and more than 1,500 less than three months into 2026.[9] A regulatory briar of new rules and regulations threatens America's lead in the AI race against China—but so does a tort system that makes developing and deploying that technology uncertain and expensive. For all the unintended consequences HB 628 raises, it also restores legal certainty to AI deployment in a way that uniquely and thoughtfully balances tradeoffs and guardrails. Companies willing to trade voluntary private market compliance for a stronger defense in court should be able to do so. The most important objective must be making sure that decision remains voluntary, not mandatory, and that companies do not feel undue government pressure when making that decision. To guard against that risk, Ohio should consider how the idea would play with already existing policy proposals under consideration in the committee, such as Ohio Right to Compute. The two ideas synergize well. By ensuring that any new AI law meets the standard of a "compelling government interest," Ohio ensures all AI regulations—including HB 628—satisfy the basic requirement that any AI law worth doing is worth doing well.

[8] Rea S. Hederman Jr. and Logan Kolas, "A Healthcare World Reimagined," The Buckeye Institute, April 1, 2024, https://www.buckeyeinstitute.org/library/docLib/2024-04-01-A-Healthcare-World-Reimagined-How-Big-Government-Threatens-Healthcare-AI-and-What-to-Do-About-It-policy-report.pdf.
[9] "Artificial Intelligence (AI) Legislation Tracker 2026: All 50 States (Updated 2026)," Multistate, Last visited March 16, 2026, https://www.multistate.ai/artificial-intelligence-ai-legislation.

Conclusion

HB 628 is thoughtful because it is humble. The law is voluntary—and it must stay that way. It does not try to force companies into top-down licensing regimes with no compensating benefit to consumers or companies acting in good-faith. It recognizes that tort liability is open-ended, and that it has a long history of slowing technological progress. It understands that torts are uniquely positioned to undercut American leadership in cutting-edge technologies like artificial intelligence. It also implicitly recognizes that artificial intelligence is already far more regulated than many think, a lesson Ohio should apply in future AI regulation debates. In the end, HB 628 offers Ohio one of the better, more unique frameworks for the future of AI governance. Pairing the regulation with safeguards against mission creep—both now and in the future—will help keep it that way.

Respectfully submitted,

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[8] Rea S. Hederman Jr. and Logan Kolas, "A Healthcare World Reimagined," The Buckeye Institute, April 1, 2024, https://www.buckeyeinstitute.org/library/docLib/2024-04-01-A-Healthcare-World-Reimagined-How-Big-Government-Threatens-Healthcare-AI-and-What-to-Do-About-It-policy-report.pdf.
[9] "Artificial Intelligence (AI) Legislation Tracker 2026: All 50 States (Updated 2026)," Multistate, Last visited March 16, 2026, https://www.multistate.ai/artificial-intelligence-ai-legislation.