Protecting Consumers from AI Harms

What's Happening

The National Fair Housing Alliance® (NFHA™) urges policy makers to remove from the budget reconciliation bill Section 43201(c), which would ban states from protecting their residents from harms caused by artificial intelligence (AI) and automated systems. While we strongly support responsible innovation, corporations should not be allowed to experiment on a state's consumers with impunity. If enacted, the provision would create a 10-year ban on states' ability to enforce <u>any state law</u> that regulates AI or any automated system.

Why It Matters

This harmful provision goes far beyond the purported intent of encouraging innovation and instead raises well-placed fears that a state's consumers would become merely the raw materials to feed AI training models, would be the victims of unfettered AI experimentation, and would be subjected to harm with no recourse. This provision:

- **Infringes on States' Rights**. The provision represents a broad overreach of federal power by completely robbing a state of its ability to "enforce any law or regulation of that State or political subdivision thereof…regulating artificial intelligence models, artificial intelligence systems, or automated decision systems entered into interstate commerce."
- **Is Overbroad, Vague, and Impractical**. The overly broad and vague language seems to include generally applicable laws that only incidentally "regulate" AI. Also, the term "automated decision systems" seems to include any process that uses a computer; it is broadly defined as "any computational process that is derived from…data analytics…that issues a simplified output… to materially influence…human decision making." For example, this provision would prevent a state from taking action under its anti-discrimination laws if a lender uses AI or any computerized system to provide better mortgage pricing for single women than married couples. This provision would also prevent a state from using its state laws to stop a company from using an algorithmic model that inaccurately denies veterans employment opportunities.
- **Causes Irreparable Harm**. This provision would allow irreparable injuries to accumulate over a decade, leaving states and their residents defenseless. For example, a state could not use its fair housing and fair lending laws to stop a company from using a tenant screening system that denies housing to families with children (a prohibited basis under most state fair housing laws). And because Congress has failed to pass a comprehensive AI bill and the administration has gutted fair housing and consumer protection enforcement by the DOJ, the CFPB, HUD, and local fair housing groups (by gutting HUD's fair housing grants), consumers would be left without any fair housing or other protections against biased or harmful AI systems.
- **Violates the Byrd Rule**. The provision clearly violates the "Byrd rule," which limits reconciliation bill provisions to those that have a budgetary effect. In this case, the provision is clearly extraneous to the federal budget and solely meant to rob states of the ability to protect their residents while boosting the profits of Big Tech.

Call to Action

NFHA urges federal policymakers to remove Section 43201(c) from the budget reconciliation bill. States must be allowed to protect the people and communities within their borders.