HOUSE BILL NO. 747
Offered January 10, 2024
Prefiled January 9, 2024
A BILL to amend the Code of Virginia by adding in Title 59.1 a chapter numbered 57, consisting of sections numbered 59.1-603 through 59.1-608, relating to Artificial Intelligence Developer Act established; civil penalty.

_____

Patron—Maldonado

_____

Referred to Committee on Technology and Innovation

_____

Be it enacted by the General Assembly of Virginia:
1. That the Code of Virginia is amended by adding in Title 59.1 a chapter numbered 57, consisting of sections numbered 59.1-603 through 59.1-608, as follows:
CHAPTER 57.
ARTIFICIAL INTELLIGENCE DEVELOPER ACT.
§ 59.1-603. Definitions.
As used in this chapter, unless the context requires a different meaning:
"Algorithmic discrimination" means any discrimination that is (i) prohibited under state or federal law and (ii) a reasonably foreseeable consequence of deploying or using a high-risk artificial intelligence system to make a consequential decision.
"Artificial intelligence" means technology that uses data to train statistical models for the purpose of enabling a computer system or service to autonomously perform any task, including visual perception, language processing, and speech recognition, that is normally associated with human intelligence or perception.
"Artificial intelligence system" means any computer system or service that incorporates artificial intelligence.
"Consequential decision" means any decision that has a material legal, or similarly significant, effect on a consumer's access to credit, criminal justice, education, employment, health care, housing, or insurance.
"Deployer" means any person doing business in the Commonwealth that deploys or uses a high-risk artificial intelligence system to make a consequential decision.
"Developer" means any person doing business in the Commonwealth that develops or intentionally and substantially modifies (i) a high-risk artificial intelligence system or (ii) a generative artificial intelligence system that is offered, sold, leased, given, or otherwise provided to consumers in the Commonwealth.
"Foundation model" means a machine learning model that (i) is trained on broad data at scale, (ii) is designed for generality of output, and (iii) can be adapted to a wide range of distinctive tasks.
"Generative artificial intelligence" means any form of artificial intelligence, including a foundation model, that is able to produce synthetic digital content including audio, images, text, and videos.
"Generative artificial intelligence system" means any computer system or service that incorporates generative artificial intelligence.
"High-risk artificial intelligence system" means any artificial intelligence system that is specifically intended to autonomously make, or be a controlling factor in making, a consequential decision. A system or service is not a "high-risk artificial intelligence system" if it is intended to (i) perform a narrow procedural task, (ii) improve the result of a previously completed human activity, (iii) detect decision-making patterns or deviations from prior decision-making patterns and is not meant to replace or influence the previously completed human assessment without proper human review, or (iv) perform a preparatory task to an assessment relevant to a consequential decision.
"Machine learning" means the process by which artificial intelligence is developed using data and algorithms to draw inferences therefrom to automatically adapt or improve its accuracy without explicit programming from a developer.
"Search engine" means any computer system or service that (i) searches for and identifies items in a database that correspond to keywords or characters specified by a user and (ii) is offered to or used by any consumer in the Commonwealth.
"Search engine operator" means any person that owns or controls a search engine.
"Significant update" means any new version, new release, or other update to a high-risk artificial intelligence system that results in significant changes to such high-risk artificial intelligence system's use case, key functionality, or expected outcomes.
"Social media platform" means an electronic medium or service where users may create, share, or view user-generated content, including videos, photographs, blogs, podcasts, messages, emails, or website profiles

59   *or locations, and create a personal account.*
60   *"Social media platform operator" means any person that owns or controls a social media platform.*
61   *"Synthetic digital content" means any digital content, including any audio, image, text, or video, that is*
62   *produced by a generative artificial intelligence system.*
63   *§ 59.1-604. Operating standards for developers.*
64   *A. No developer of a high-risk artificial intelligence system shall offer, sell, lease, give, or otherwise*
65   *provide to a deployer a high-risk artificial intelligence system unless the developer provides to the deployer*
66   *(i) a statement disclosing the intended uses of such high-risk artificial intelligence system and (ii)*
67   *documentation disclosing (a) the known limitations of such high-risk artificial intelligence system, including*
68   *any and all reasonably foreseeable risks of algorithmic discrimination arising from the intended uses of such*
69   *high-risk artificial intelligence system; (b) the purpose of such high-risk artificial intelligence system and the*
70   *intended benefits and uses of such high-risk artificial intelligence system; (c) a summary describing how such*
71   *high-risk artificial intelligence system was evaluated for validity and explainability before such high-risk*
72   *artificial intelligence system was licensed or sold; (d) the measures the developer has taken to mitigate any*
73   *risk of algorithmic discrimination that the developer knows arises from deployment or use of such high-risk*
74   *artificial intelligence system; and (e) how an individual can use such high-risk artificial intelligence system*
75   *to make, or monitor such high-risk artificial intelligence system when such high-risk artificial intelligence*
76   *system is deployed or used to make, a consequential decision.*
77   *B. Each developer that offers, sells, leases, gives, or otherwise provides to a deployer a high-risk artificial*
78   *intelligence system shall provide to the deployer the technical capability to access, or otherwise make*
79   *available to the deployer, all information and documentation in the developer's possession, custody, or*
80   *control that the deployer reasonably requires to complete an impact assessment.*
81   *C. Nothing in this section shall be construed to require a developer to disclose any trade secret.*
82   *§ 59.1-605. Operating standards for developers relating to generative artificial intelligence.*
83   *A. No developer that develops or intentionally and substantially modifies a generative artificial*
84   *intelligence system on or after October 1, 2024, shall offer, sell, lease, give, or otherwise provide such*
85   *generative artificial intelligence system to any consumer in the Commonwealth or any person doing business*
86   *in the Commonwealth unless such generative artificial intelligence system satisfies the requirements*
87   *established in this subsection.*
88   *Each generative artificial intelligence system described in this section shall (i) reduce and mitigate the*
89   *reasonably foreseeable risks described in this section through, for example, the involvement of independent*
90   *experts and documentation of any reasonably foreseeable, but non-mitigable, risks; (ii) exclusively*
91   *incorporate and process datasets that are subject to data governance measures that are appropriate for*
92   *generative artificial intelligence systems, including data governance measures to examine the suitability of*
93   *data sources for possible biases and appropriate mitigation; and (iii) achieve, throughout the life cycle of*
94   *such generative artificial intelligence system, appropriate levels of performance, predictability,*
95   *interpretability, corrigibility, safety, and cybersecurity, as assessed through appropriate methods, including*
96   *model evaluation involving independent experts, documented analysis, and extensive testing, during*
97   *conceptualization, design, and development of such generative artificial intelligence system.*
98   *B. Except as otherwise provided in this subsection, no developer that develops or intentionally and*
99   *substantially modifies a generative artificial intelligence system on or after October 1, 2024, shall offer, sell,*
100   *lease, give, or otherwise provide such generative artificial intelligence system to any consumer in the*
101   *Commonwealth or any person doing business in the Commonwealth unless such developer has completed an*
102   *impact assessment for such generative artificial intelligence system pursuant to this subsection.*
103   *Each impact assessment completed pursuant to this subsection shall include, at a minimum, an evaluation*
104   *of (i) the intended purpose of such generative artificial intelligence system; (ii) the extent to which such*
105   *generative artificial intelligence system has been or is likely to be used; (iii) the extent to which any prior use*
106   *of such generative artificial intelligence system has harmed the health or safety of individuals, adversely*
107   *impacted the fundamental rights of individuals, or given rise to significant concerns relating to the*
108   *materialization of such harm or adverse impact, as demonstrated by reports or documented allegations*
109   *submitted to authorities of competent jurisdiction; (iv) the potential extent to which use of such generative*
110   *artificial intelligence system will harm the health and safety of individuals or adversely impact the*
111   *fundamental rights of individuals, including the intensity of such harm or adverse impact and the number of*
112   *individuals likely to suffer such harm or adverse impact; (v) the extent to which individuals who may be*
113   *harmed or adversely impacted by such generative artificial intelligence system are dependent on the*
114   *outcomes produced by such generative artificial intelligence system because, among other reasons, it is*
115   *reasonably impossible, for legal or practical reasons, for such individuals to opt out of such outcomes; (vi)*
116   *the extent to which individuals who may be harmed or adversely impacted by users of such generative*
117   *artificial intelligence system are comparatively more vulnerable to such users due, among other factors, to an*
118   *imbalance of age, economic or social circumstances, knowledge, or power; and (vii) the extent to which the*
119   *outcomes produced by such generative artificial intelligence system, other than outcomes affecting health*

120 *and safety, are easily reversible.*
121 *A single impact assessment may address a comparable set of generative artificial intelligence systems*
122 *developed or intentionally and substantially modified by a developer. If a developer completes an impact*
123 *assessment for the purpose of complying with another applicable law or regulation, such impact assessment*
124 *shall be deemed to satisfy the requirements established in this subsection if such impact assessment is*
125 *reasonably similar in scope and effect to the impact assessment that would otherwise be completed pursuant*
126 *to this subsection. A developer that completes an impact assessment pursuant to this subsection shall*
127 *maintain such impact assessment and all records concerning such impact assessment for a reasonable period*
128 *of time.*
129 *C. Each developer that offers, sells, leases, gives, or otherwise provides any generative artificial*
130 *intelligence system described in this section to any search engine operator or social media platform operator*
131 *shall provide to such search engine operator or social media platform operator the technical capability such*
132 *search engine operator or social media platform operator reasonably requires to perform such search engine*
133 *operator's or social media platform operator's duties as described in this chapter.*
134 *D. Nothing in this section shall be construed to require a developer to disclose any trade secret.*
135 *§ 59.1-606. Operating standards for deployers.*
136 *A. Each deployer shall use reasonable care to avoid any risk of algorithmic discrimination that is a*
137 *reasonably foreseeable consequence of deploying or using a high-risk artificial intelligence system to make a*
138 *consequential decision.*
139 *B. No deployer shall deploy or use a high-risk artificial intelligence system to make a consequential*
140 *decision unless the deployer has designed and implemented a risk management policy and program for such*
141 *high-risk artificial intelligence system. The risk management policy shall specify the principles, processes,*
142 *and personnel that the deployer shall use in maintaining the risk management program to identify, mitigate,*
143 *and document any risk of algorithmic discrimination that is a reasonably foreseeable consequence of*
144 *deploying or using such high-risk artificial intelligence system to make a consequential decision. Each risk*
145 *management policy and program designed, implemented, and maintained pursuant to this subsection shall be*
146 *(i) at least as stringent as the latest version of the Artificial Intelligence Risk Management Framework*
147 *published by the National Institute of Standards and Technology or another nationally or internationally*
148 *recognized risk management framework for artificial intelligence systems and (ii) reasonable considering (a)*
149 *the size and complexity of the deployer; (b) the nature and scope of the high-risk artificial intelligence*
150 *systems deployed and used by the deployer, including the intended uses of such high-risk artificial*
151 *intelligence systems; (c) the sensitivity and volume of data processed in connection with the high-risk*
152 *artificial intelligence systems deployed and used by the deployer; and (d) the cost to the deployer to*
153 *implement and maintain such risk management program.*
154 *C. Except as provided in this subsection, no deployer shall deploy or use a high-risk artificial intelligence*
155 *system to make a consequential decision unless the deployer has completed an impact assessment for such*
156 *high-risk artificial intelligence system. The deployer shall complete an impact assessment for a high-risk*
157 *artificial intelligence system (i) before the deployer initially deploys such high-risk artificial intelligence*
158 *system and (ii) not later than 90 days after each significant update to such high-risk artificial intelligence*
159 *system.*
160 *Each impact assessment completed pursuant to this subsection shall include, at a minimum:*
161 *1. A statement by the deployer disclosing (i) the purpose, intended use cases and deployment context of,*
162 *and benefits afforded by the high-risk artificial intelligence system and (ii) whether the deployment or use of*
163 *the high-risk artificial intelligence system poses a reasonably foreseeable risk of algorithmic discrimination*
164 *and, if so, (a) the nature of such algorithmic discrimination and (b) the steps that have been taken, to the*
165 *extent feasible, to mitigate such risk;*
166 *2. For each post-deployment impact assessment completed pursuant to this section, the extent to which the*
167 *high-risk artificial intelligence system was used in a manner that was consistent with, or varied from, the*
168 *developer's intended uses of such high-risk artificial intelligence system;*
169 *3. A description of (i) the data the high-risk artificial intelligence system processes as inputs and (ii) the*
170 *outputs such high-risk artificial intelligence system produces;*
171 *4. If the deployer used data to retrain the high-risk artificial intelligence system, an overview of the type*
172 *of data the deployer used to retrain such high-risk artificial intelligence system;*
173 *5. A description of any transparency measures taken concerning the high-risk artificial intelligence*
174 *system, including any measures taken to disclose to a consumer in the Commonwealth that such high-risk*
175 *artificial intelligence system is in use when such high-risk artificial intelligence system is in use; and*
176 *6. A description of any post-deployment monitoring performed and user safeguards provided concerning*
177 *such high-risk artificial intelligence system, including any oversight process established by the deployer to*
178 *address issues arising from deployment or use of such high-risk artificial intelligence system as such issues*
179 *arise.*
180 *A single impact assessment may address a comparable set of high-risk artificial intelligence systems*

181 *deployed or used by a deployer. If a deployer completes an impact assessment for the purpose of complying*
182 *with another applicable law or regulation, such impact assessment shall be deemed to satisfy the*
183 *requirements established in this subsection if such impact assessment is reasonably similar in scope and*
184 *effect to the impact assessment that would otherwise be completed pursuant to this subsection. A deployer*
185 *that completes an impact assessment pursuant to this subsection shall maintain such impact assessment and*
186 *all records concerning such impact assessment for a reasonable period of time.*
187   *D. Not later than the time that a deployer uses a high-risk artificial intelligence system to make a*
188 *consequential decision concerning an individual, the deployer shall notify the individual that the deployer is*
189 *using a high-risk artificial intelligence system to make such consequential decision concerning such*
190 *individual and provide to the individual a statement disclosing the purpose of such high-risk artificial*
191 *intelligence system.*
192   *E. Each deployer shall make available, in a manner that is clear and readily available, a statement*
193 *summarizing the types of high-risk artificial intelligence systems that are currently deployed or used by a*
194 *deployer and how such deployer manages any reasonably foreseeable risk of algorithmic discrimination that*
195 *may arise from use or deployment of each high-risk artificial intelligence system described in this section.*
196   *§ 59.1-607. Exemptions.*
197   *A. Nothing in this chapter shall be construed to restrict a developer's, deployer's, search engine*
198 *operator's, or social media platform operator's ability to (i) comply with federal, state, or municipal*
199 *ordinances or regulations; (ii) comply with a civil, criminal, or regulatory inquiry, investigation, subpoena,*
200 *or summons by federal, state, municipal, or other governmental authorities; (iii) cooperate with law-*
201 *enforcement agencies concerning conduct or activity that the developer, deployer, search engine operator, or*
202 *social media platform operator reasonably and in good faith believes may violate federal, state, or municipal*
203 *ordinances or regulations; (iv) investigate, establish, exercise, prepare for, or defend legal claims; (v)*
204 *provide a product or service specifically requested by a consumer; (vi) perform under a contract to which a*
205 *consumer is a party, including fulfilling the terms of a written warranty; (vii) take steps at the request of a*
206 *consumer prior to entering into a contract; (viii) take immediate steps to protect an interest that is essential*
207 *for the life or physical safety of the consumer or another individual; (ix) prevent, detect, protect against, or*
208 *respond to security incidents, identity theft, fraud, harassment, malicious or deceptive activities, or any*
209 *illegal activity, preserve the integrity or security of systems, or investigate, report, or prosecute those*
210 *responsible for any such action; (x) engage in public or peer-reviewed scientific or statistical research in the*
211 *public interest that adheres to all other applicable ethics and privacy laws and is approved, monitored, and*
212 *governed by an institutional review board that determines, or similar independent oversight entities that*
213 *determine, (a) that the expected benefits of the research outweigh the risks associated with such research and*
214 *(b) whether the developer, deployer, search engine operator, or social media platform operator has*
215 *implemented reasonable safeguards to mitigate the risks associated with such research; (xi) assist another*
216 *developer, deployer, search engine operator, or social media platform operator with any of the obligations*
217 *imposed by this chapter; or (xii) take any action that is in the public interest in the areas of public health,*
218 *community health, or population health, but solely to the extent that such action is subject to suitable and*
219 *specific measures to safeguard the public.*
220   *B. The obligations imposed on developers, deployers, search engine operators, or social media platform*
221 *operators by this chapter shall not restrict a developer's, deployer's, search engine operator's, or social*
222 *media platform operator's ability to (i) conduct internal research to develop, improve, or repair products,*
223 *services, or technologies; (ii) effectuate a product recall; (iii) identify and repair technical errors that impair*
224 *existing or intended functionality; or (iv) perform internal operations that are reasonably aligned with the*
225 *expectations of the consumer or reasonably anticipated based on the consumer's existing relationship with*
226 *the developer, deployer, search engine operator, or social media platform operator.*
227   *C. The obligations imposed on developers, deployers, search engine operators, or social media platform*
228 *operators by this chapter shall not apply where compliance by the developer, deployer, search engine*
229 *operator, or social media platform operator with such obligations would violate an evidentiary privilege*
230 *under the laws of the Commonwealth.*
231   *D. Nothing this chapter shall be construed to impose any obligation on a developer, deployer, search*
232 *engine operator, or social media platform operator that adversely affects the rights or freedoms of any*
233 *person, including the rights of any person to freedom of speech or freedom of the press guaranteed in the*
234 *First Amendment to the United States Constitution or under the Virginia Human Rights Act (§ 2.2-3900 et*
235 *seq.).*
236   *E. If a developer, deployer, search engine operator, or social media platform operator engages in any*
237 *action pursuant to an exemption set forth in this section, the developer, deployer, search engine operator, or*
238 *social media platform operator bears the burden of demonstrating that such action qualifies for such*
239 *exemption.*
240   *§ 59.1-608. Enforcement; civil penalty.*
241   *A. The Attorney General shall have exclusive authority to enforce the provisions of this chapter.*
242   *B. Whenever the Attorney General has reasonable cause to believe that any person has engaged in, is*

243 *engaging in, or is about to engage in any violation of this chapter, the Attorney General is empowered to*
244 *issue a civil investigative demand. The provisions of § 59.1-9.10 shall apply mutatis mutandis to civil*
245 *investigative demands issued pursuant to this section.*
246   *C. Notwithstanding any contrary provision of law, the Attorney General may cause an action to be*
247 *brought in the appropriate circuit court in the name of the Commonwealth to enjoin any violation of this*
248 *chapter. The circuit court having jurisdiction may enjoin such violation notwithstanding the existence of an*
249 *adequate remedy at law. In any action brought pursuant to this section, it shall not be necessary that*
250 *damages be proved.*
251   *D. Any person who violates the provisions of this chapter shall be subject to a civil penalty in an amount*
252 *not to exceed $1,000 plus reasonable attorney fees, expenses, and court costs, as determined by the court.*
253 *Any person who willfully violates the provisions of this chapter shall be subject to a civil penalty in amount*
254 *not less than $1,000 and not more than $10,000 plus reasonable attorney fees, expenses, and court costs, as*
255 *determined by the court. Such civil penalties shall be paid into the Literary Fund.*
256   *E. Each violation of this chapter shall constitute a separate violation and shall be subject to any civil*
257 *penalties imposed under this section.*
258   *F. The Attorney General may require that a developer disclose to the Attorney General any statement or*
259 *documentation described in this chapter if such statement or documentation is relevant to an investigation*
260 *conducted by the Attorney General. The Attorney General may also require that a deployer disclose to the*
261 *Attorney General any risk management policy designed and implemented, impact assessment completed, or*
262 *record maintained pursuant to this chapter if such risk management policy, impact assessment, or record is*
263 *relevant to an investigation conducted by the Attorney General.*
264 **2. That the provisions of § 59.1-606 of the Code of Virginia, as created by this act, shall become**
265 **effective on July 1, 2026.**