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HOUSE BILL NO. 2121

Offered January 8, 2025

Prefiled January 7, 2025

A BILL to amend the Code of Virginia by adding in Title 59.1 a chapter numbered 58, consisting of sections numbered 59.1-607 through 59.1-610, relating to Digital Content Authenticity and Transparency Act established; civil penalty.

Patron—Maldonado

Committee Referral Pending

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 58, consisting of sections numbered 59.1-607 through 59.1-610, as follows:

CHAPTER 58.

DIGITAL CONTENT AUTHENTICITY AND TRANSPARENCY ACT.

§ 59.1-607. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Artificial intelligence" means a set of technologies that enables machines to perform tasks under varying and unpredictable circumstances that typically require human oversight or intelligence, or that can learn from experience and improve performance when exposed to data sets.

"Artificial intelligence system" means any machine-based system that, for any explicit or implicit objective, infers from the inputs such system receives how to generate outputs, including content, decisions, predictions, and recommendations, that can influence physical or virtual environments.

"Capture device" means a device that can take digital photographs or digitally record audio or visual content, including digital videography and photography cameras, mobile phones, and digital voice recorders.

"Capture device" does not include film cameras or phonographs.

"Controller" means the same as that term is defined in § 59.1-575.

"Developer" means any person doing business in the Commonwealth that develops or significantly updates a generative artificial intelligence system or service that is offered, sold, leased, given, or otherwise provided to consumers in the Commonwealth.

"Digital content" means any content in digital form, including any audio, image, text, or video content.

"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.

"General-purpose artificial intelligence model" means any form of artificial intelligence system that (i) displays significant generality, (ii) is capable of competently performing a wide range of distinct tasks, and (iii) can be integrated into a variety of downstream applications or systems. "General-purpose artificial intelligence model" does not include any artificial intelligence system that is used for development, prototyping, and research activities before such artificial intelligence system is released on the market.

"Generative artificial intelligence" means artificial intelligence based on a foundation model that is capable of and used to produce synthetic digital content, including audio, images, text, and videos.

"Generative artificial intelligence system or service" means any artificial intelligence system or service that incorporates generative artificial intelligence.

"Machine learning" means the development of algorithms to build data-derived statistical models that are capable of drawing inferences from previously unseen data without explicit human instruction.

"Online service, product, or feature" means the same as that term is defined in § 59.1-575.

"Provenance application tool" means an online service, product, or feature that enables a user to apply provenance data, either directly or through the use of third-party technologies, to synthetic digital content.

"Provenance data" means information, such as the origin of a piece of digital content and the history of modifications to the digital content, that is in a format which is compliant with widely adopted guidelines or specifications promulgated by an established standard-setting body, and which includes (i) whether some or all of the digital content is synthetic digital content and (ii) when there is synthetic digital content, the name of the developer whose generative artificial intelligence system or service generated the synthetic digital content.

"Provenance reader" means an online service, product, or feature that enables a user to view the provenance data, if any, of synthetic digital content.

"Significant update" means any new version, new release, or other update to a generative artificial intelligence system or service that results in significant changes to such system's or service's use case or key functionality.

59 "Synthetic digital content" means any digital content, including any audio, image, or video, that is
 60 produced or manipulated by a generative artificial intelligence system or service.

61 "User" means a person who uses an online service, product, or feature, including a generative artificial
 62 intelligence system or service, or who uses a capture device.

63 **§ 59.1-608. Duties of developers.**

64 A. A developer of a generative artificial intelligence system or service shall apply provenance data, either
 65 directly or through the use of third-party technologies, to synthetic digital content that is wholly generated by
 66 such developer's generative artificial intelligence system or service.

67 B. A developer of a generative artificial intelligence system or service shall make available to the public:

68 1. A provenance application tool; and

69 2. A provenance reader.

70 **§ 59.1-609. Requirements; provenance data.**

71 A. A controller of an online service, product, or feature shall retain any available provenance data in the
 72 digital content provided to such service, product, or feature and shall make available to a user either (i) the
 73 provenance data of the digital content, (ii) a conspicuous indicator of whether provenance data is or is not
 74 available for the digital content, or (iii) both clauses (i) and (ii).

75 B. A capture device shall include a provenance application tool that is made known and available to the
 76 user and that the user may use to apply provenance data to the digital content captured with such device. A
 77 provenance application tool shall be enabled on a capture device unless the user disables such tool.

78 **§ 59.1-610. Enforcement; civil penalty.**

79 A. The Attorney General shall have the exclusive authority to enforce the provisions of this chapter.

80 B. Whenever the Attorney General has reasonable cause to believe that any person has engaged in or is
 81 engaging in any violation of this chapter, the Attorney General is empowered to issue a civil investigative
 82 demand. The provisions of § 59.1-9.10 shall apply mutatis mutandis to civil investigative demands issued
 83 pursuant to this section.

84 C. Notwithstanding any contrary provision of law, the Attorney General may bring an action in the
 85 appropriate circuit court in the name of the Commonwealth to enjoin any violation of this chapter. The
 86 circuit court having jurisdiction may enjoin such violation notwithstanding the existence of an adequate
 87 alternative remedy at law. In any action brought pursuant to this chapter, it shall not be necessary that
 88 damages be proved.

89 D. Any person who violates the provisions of this chapter shall be subject to a civil penalty in an amount
 90 not to exceed \$1,000 plus reasonable attorney fees, expenses, and costs, as determined by the court. Any
 91 person who willfully violates the provisions of this chapter shall be subject to a civil penalty in an amount of
 92 not less than \$1,000 and not more than \$10,000 plus reasonable attorney fees, expenses, and costs, as
 93 determined by the court. Such civil penalties shall be paid into the Literary Fund.

94 E. Each violation of this chapter shall constitute a separate violation and shall be subject to any civil
 95 penalties imposed under this section.

96 F. Prior to causing an action against a developer, a controller, or any other person for a violation of this
 97 chapter pursuant to subsection C, the Attorney General shall determine if it is possible to cure the violation.
 98 If it is possible to cure such violation, the Attorney General may issue a notice of violation to a developer, a
 99 controller, or any other person and afford such developer, controller, or person the opportunity to cure such
 100 violation within 30 days of the receipt of such notice of violation. In determining whether to grant such
 101 opportunity to cure such violation, the Attorney General shall consider (i) the number of prior violations; (ii)
 102 the size and complexity of the developer, controller, or person; (iii) the nature and extent of the developer,
 103 controller, or person's business; (iv) the substantial likelihood of injury to the public; (v) the safety of persons
 104 or property; and (vi) whether such violation was likely caused by human or technical error. If the developer,
 105 controller, or person fails to cure such violation within 30 days of the receipt of such notice or violation, the
 106 Attorney General may proceed with such action.

107 **2. That the provisions of this act shall become effective on July 1, 2026.**