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HOUSE BILL NO. 2094

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Appropriations)

(Patron Prior to Substitute—Delegate Maldonado)

House Amendments in [] - February 3, 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 59.1-612, relating to high-risk artificial intelligence; development, deployment, and use; civil penalties.

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 59.1-612, as follows:

CHAPTER 58.

HIGH-RISK ARTIFICIAL INTELLIGENCE DEVELOPER AND DEPLOYER ACT.

§ 59.1-607. Definitions.

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

"Algorithmic discrimination" means the use of an artificial intelligence system that results in an unlawful differential treatment or impact that disfavors an individual or group of individuals on the basis of their actual or perceived age, color, disability, ethnicity, genetic information, limited proficiency in the English language, national origin, race, religion, reproductive health, sex, sexual orientation, veteran status, or other classification protected under state or federal law. "Algorithmic discrimination" does not include (i) the offer, license, or use of a high-risk artificial intelligence system by a developer or deployer for the sole purpose of the developer's or deployer's self-testing to identify, mitigate, or prevent discrimination or otherwise ensure compliance with state and federal law; (ii) the expansion of an applicant, customer, or participant pool to increase diversity or redress historical discrimination; or (iii) an act or omission by or on behalf of a private club or other establishment not in fact open to the public, as set forth in Title II of the Civil Rights Act of 1964, 42 U.S.C. § 2000a(e), as amended from time to time.

"Artificial intelligence system" means any machine learning-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. "Artificial intelligence system" does not include any artificial intelligence system or general purpose artificial intelligence model that is used for development, prototyping, and research activities before such artificial intelligence system or general purpose artificial intelligence model is [released on the market made available to consumers].

"Consequential decision" means any decision that has a material legal, or similarly significant, effect on the provision or denial to any consumer of (i) parole, probation, a pardon, or any other release from incarceration or court supervision; (ii) education enrollment or an education opportunity; (iii) access to employment; (iv) a financial or lending service; (v) access to health care services; (vi) housing; (vii) insurance; (viii) marital status; or (ix) a legal service.

"Consumer" means a natural person who is a resident of the Commonwealth and is acting only in an individual or household context. "Consumer" does not include a natural person acting in a commercial or employment context.

"Deployer" means any person doing business in the Commonwealth that deploys or uses a high-risk artificial intelligence system to make a consequential decision in the Commonwealth.

"Developer" means any person doing business in the Commonwealth that develops or intentionally and substantially modifies a high-risk artificial intelligence system that is offered, sold, leased, given, or otherwise provided to consumers in the Commonwealth.

"General-purpose artificial intelligence model" means a model used by an artificial intelligence system or other 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 model that is used for development, prototyping, and research activities before such artificial intelligence model is released on the market.

"Generative artificial intelligence" means an artificial intelligence system that is capable of producing and used to produce synthetic content, including audio, images, text, and videos.

"Generative artificial intelligence system" means any artificial intelligence 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 substantial 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

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60 task, (ii) improve the result of a previously completed human activity, (iii) detect any decision-making
61 patterns or any deviations from pre-existing decision-making patterns, or (iv) perform a preparatory task to
62 an assessment relevant to a consequential decision. "High-risk artificial intelligence system" does not include
63 any of the following technologies:

64 1. Anti-fraud technology that does not use facial recognition technology;

65 2. Anti-malware technology;

66 3. Anti-virus technology;

67 4. Artificial intelligence-enabled video games;

68 5. Calculators;

69 6. Cybersecurity technology;

70 7. Databases;

71 8. Data storage;

72 9. Firewall technology;

73 10. Internet domain registration;

74 11. Internet website loading;

75 12. Networking;

76 13. Spam and robocall filtering;

77 14. Spell-checking technology;

78 15. Spreadsheets;

79 16. Web caching;

80 17. Web hosting or any similar technology;

81 18. Autonomous vehicle technology; or

82 19. Technology that communicates with consumers in natural language for the purpose of providing users
83 with information, making referrals or recommendations, and answering questions and is subject to an
84 acceptable use policy that prohibits generating content that is discriminatory or unlawful.

85 "Intentional and substantial modification" means any deliberate change made to (i) an artificial
86 intelligence system that results, at the time when the change is implemented and any time thereafter, in any
87 new material risk of algorithmic discrimination or (ii) a general-purpose artificial intelligence model that
88 affects compliance of the general-purpose artificial intelligence model, materially changes the purpose of the
89 general-purpose artificial intelligence model, or results in any new reasonably foreseeable risk of
90 algorithmic discrimination. "Intentional and substantial modification" does not include (a) any customization
91 made by deployers based on legitimate nondiscriminatory business justifications and within the scope and
92 purpose of the artificial intelligence tool; (b) any change made to a high-risk artificial intelligence system, or
93 the performance of a high-risk artificial intelligence system, if (1) the high-risk artificial intelligence system
94 continues to learn after such high-risk artificial intelligence system is offered, sold, leased, licensed, given, or
95 otherwise made available to a deployer, or deployed, and (2) such change (A) is made to such high-risk
96 artificial intelligence system as a result of any learning described in clause (1) and (B) was predetermined by
97 the deployer or the third party contracted by the deployer and included within the initial impact assessment
98 of such high-risk artificial intelligence system as required in § 59.1-609.

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

101 "Person" includes any individual, corporation, partnership, association, cooperative, limited liability
102 company, trust, joint venture, or any other legal or commercial entity and any successor, representative,
103 agent, agency, or instrumentality thereof. "Person" does not include any government or political subdivision.

104 "Principal basis" means the use of an output of a high-risk artificial intelligence system to make a
105 decision without (i) human review, oversight, involvement, or intervention or (ii) meaningful consideration by
106 a human.

107 "Red-teaming" means adversarial testing to identify the potential adverse behaviors or outcomes of an
108 artificial intelligence system, identify how such behaviors or outcomes occur, and stress test the safeguards
109 against such behaviors or outcomes.

110 "Substantial factor" means a factor that is (i) the principal basis for making a consequential decision, (ii)
111 capable of altering the outcome of a consequential decision, and (iii) generated by an artificial intelligence
112 system. "Substantial factor" includes any use of an artificial intelligence system to generate any content,
113 decision, prediction, or recommendation concerning a consumer that is used as the principal basis to make a
114 consequential decision concerning the consumer.

115 "Synthetic content" means information, such as images, video, audio clips, and text, that has been
116 significantly modified or generated by algorithms, including by artificial intelligence.

117 "Trade secret" means information, including a formula, pattern, compilation, program, device, method,
118 technique, or process, that (i) derives independent economic value, actual or potential, from not being
119 generally known to, and not being readily ascertainable by proper means by, other persons who can obtain
120 economic value from its disclosure or use and (ii) is the subject of efforts that are reasonable under the

121 *circumstances to maintain its secrecy.*

122 **§ 59.1-608. Operating standards for developers of high-risk artificial intelligence systems.**

123 A. Each developer of a high-risk artificial intelligence system shall use a reasonable duty of care to
124 protect consumers from any known or reasonably foreseeable risks of algorithmic discrimination. In any
125 enforcement action brought by the Attorney General pursuant to § 59.1-611, there shall be a rebuttable
126 presumption that a developer of a high-risk artificial intelligence system used a reasonable duty of care as
127 required by this subsection if the developer complied with the requirements of this section.

128 B. No developer of a high-risk artificial intelligence system shall offer, sell, lease, give, or otherwise
129 provide to a deployer or other developer a high-risk artificial intelligence system unless the developer makes
130 available to the deployer or other developer:

131 1. A statement disclosing the intended uses of such high-risk artificial intelligence system;

132 2. Documentation disclosing the following:

133 a. The known or reasonably known limitations of such high-risk artificial intelligence system, including
134 any and all known or reasonably foreseeable risks of algorithmic discrimination arising from the intended
135 uses of such high-risk artificial intelligence system;

136 b. The purpose of such high-risk artificial intelligence system and the intended benefits and uses of such
137 high-risk artificial intelligence system;

138 c. A summary describing how such high-risk artificial intelligence system was evaluated for performance
139 before such high-risk artificial intelligence system was licensed, sold, leased, given, or otherwise made
140 available to a deployer or other developer;

141 d. The measures the developer has taken to mitigate reasonable foreseeable risks of algorithmic
142 discrimination that the developer knows arises from deployment or use of such high-risk artificial
143 intelligence system; and

144 e. How an individual can use such high-risk artificial intelligence system and monitor the performance of
145 such high-risk artificial intelligence system for any risk of algorithmic discrimination;

146 3. Documentation including a (i) description of how the high-risk artificial intelligence system was
147 evaluated for performance and for mitigation of algorithmic discrimination before such system was made
148 available to the deployer or other developer; (ii) description of the intended outputs of the high-risk artificial
149 intelligence system; (iii) description of the measures the developer has taken to mitigate known or reasonably
150 foreseeable risks of algorithmic discrimination that may arise from the reasonably foreseeable deployment of
151 the high-risk artificial intelligence system; and (iv) description of how the high-risk artificial intelligence
152 system should be used, not be used, and be monitored by an individual when such system is used to make, or
153 is a substantial factor in making, a consequential decision; and

154 4. Any additional documentation that is reasonably necessary to assist the deployer or other developer in
155 understanding the outputs and monitoring performance of the high-risk artificial intelligence system for risks
156 of algorithmic discrimination.

157 C. Each developer that offers, sells, leases, gives, or otherwise makes available to a deployer or other
158 developer a high-risk artificial intelligence system shall make available to the deployer or other developer to
159 the extent feasible and necessary, information and documentation through artifacts such as system cards or
160 predeployment impact assessments, including any risk management policy designed and implemented and
161 any relevant impact assessment completed, and such documentation and information shall enable the
162 deployer, other developer, or a third party contracted by the deployer to complete an impact assessment as
163 required in § 59.1-609.

164 D. A developer that also serves as a deployer for any high-risk artificial intelligence system shall not be
165 required to generate the documentation required by this section unless such high-risk artificial intelligence
166 system is provided to an unaffiliated entity acting as a deployer or as otherwise required by law.

167 E. Nothing in this section shall be construed to require a developer to disclose any trade secret, as defined
168 in § 59.1-336, information that could create a security risk, or other confidential or proprietary information.

169 F. High-risk artificial intelligence systems that are in conformity with the latest version of the Artificial
170 Intelligence Risk Management Framework published by the National Institute of Standards and Technology,
171 Standard ISO/IEC 42001 of the International Organization for Standardization, or another nationally or
172 internationally recognized risk management framework for artificial intelligence systems, or parts thereof,
173 shall be presumed to be in conformity with related requirements set out in this section and in associated
174 regulations.

175 G. For any disclosure required pursuant to this section, each developer shall, no later than 90 days after
176 the developer performs an intentional and substantial modification to any high-risk artificial intelligence
177 system, update such disclosure as necessary to ensure that such disclosure remains accurate.

178 H. 1. Each developer of a high-risk generative artificial intelligence system that generates or modifies
179 synthetic content shall ensure that the outputs of such high-risk artificial intelligence system (i) are
180 identifiable and detectable in a manner that is accessible by consumers; (ii) comply with any applicable
181 accessibility requirements, as synthetic content; and (iii) such marking must be applied at the time the output

182 is generated;

183 2. If such synthetic content is an audio, image, or video format that forms part of an evidently artistic,
184 creative, satirical, fictional analogous work or program, such requirement for marking outputs of high-risk
185 artificial intelligence systems pursuant to subdivision 1 shall be limited to a manner that does not hinder the
186 display or enjoyment of such work or program.

187 3. The marking of outputs required by subdivision 1 shall not apply to (i) synthetic content that consists
188 exclusively of text, is published to inform the public on any matter of public interest, or is unlikely to mislead
189 a reasonable person consuming such synthetic content or (ii) the outputs of a high-risk artificial intelligence
190 system that performs an assistive function for standard editing, does not substantially alter the input data
191 provided by the developer, or is used to detect, prevent, investigate, or prosecute any crime as authorized by
192 law.

193 1. Where multiple developers directly contribute to the development of a high-risk artificial intelligence
194 system, each developer shall be subject to the obligations and operating standards applicable to developers
195 pursuant to this section solely with respect to its activities contributing to the development of the high-risk
196 artificial intelligence system.

197 **§ 59.1-609. Operating standards for deployers of high-risk artificial intelligence systems.**

198 A. Each deployer of a high-risk artificial intelligence system shall use a reasonable duty of care to protect
199 consumers from any known or reasonably foreseeable risks of algorithmic discrimination. In any
200 enforcement action brought by the Attorney General pursuant to § 59.1-611, there shall be a rebuttable
201 presumption that a deployer of a high-risk artificial intelligence system used a reasonable duty of care as
202 required by this subsection if the deployer complied with the provisions of this section.

203 B. No deployer shall deploy or use a high-risk artificial intelligence system to make a consequential
204 decision unless the deployer has designed and implemented a risk management policy and program for such
205 high-risk artificial intelligence system. The risk management policy shall specify the principles, processes,
206 and personnel that the deployer shall use in maintaining the risk management program to identify, mitigate,
207 and document any risk of algorithmic discrimination that is a reasonably foreseeable consequence of
208 deploying or using such high-risk artificial intelligence system to make a consequential decision. Each risk
209 management policy and program designed, implemented, and maintained pursuant to this subsection shall be
210 reasonable considering the guidance and standards set forth in the latest version of:

211 1. The Artificial Intelligence Risk Management Framework published by the National Institute of
212 Standards and Technology;

213 2. Standard ISO/IEC 42001 of the International Organization for Standardization;

214 3. A nationally or internationally recognized risk management framework for artificial intelligence
215 systems with requirements that are substantially equivalent to, and at least as stringent as, the requirements
216 set forth in this section; or

217 4. Any risk management framework for artificial intelligence systems that the Attorney General may
218 designate and is substantially equivalent to, and at least as stringent as, the guidance and standards
219 described in subdivision 1.

220 High-risk artificial intelligence systems that are in conformity with the latest version of the Artificial
221 Intelligence Risk Management Framework published by the National Institute of Standards and Technology,
222 Standard ISO/IEC 42001 of the International Organization for Standardization, or another nationally or
223 internationally recognized risk management framework for artificial intelligence systems, or parts thereof,
224 shall be presumed to be in conformity with related requirements set out in this section and in associated
225 regulations.

226 C. Except as provided in this subsection, no deployer shall deploy or use a high-risk artificial intelligence
227 system to make a consequential decision unless the deployer has completed an impact assessment for such
228 high-risk artificial intelligence system. The deployer shall complete an impact assessment for a high-risk
229 artificial intelligence system (i) before the deployer initially deploys such high-risk artificial intelligence
230 system and (ii) before a significant update to such high-risk artificial intelligence system is used to make a
231 consequential decision.

232 Each impact assessment completed pursuant to this subsection shall include, at a minimum:

233 1. A statement by the deployer disclosing (i) the purpose, intended use cases and deployment context of,
234 and benefits afforded by the high-risk artificial intelligence system and (ii) whether the deployment or use of
235 the high-risk artificial intelligence system poses any known or reasonably foreseeable risk of algorithmic
236 discrimination and, if so, (a) the nature of such algorithmic discrimination and (b) the steps that have been
237 taken, to the extent feasible, to mitigate such risk;

238 2. For each post-deployment impact assessment completed pursuant to this subsection, whether the
239 intended use cases of the high-risk artificial intelligence system as updated were consistent with, or varied
240 from, the developer's intended uses of such high-risk artificial intelligence system;

241 3. A description of (i) the categories of data the high-risk artificial intelligence system processes as inputs
242 and (ii) the outputs such high-risk artificial intelligence system produces;

243 4. If the deployer used data to customize the high-risk artificial intelligence system, an overview of the

244 categories of data the deployer used to customize such high-risk artificial intelligence system;
245 5. A list of any metrics used to evaluate the performance and known limitations of the high-risk artificial
246 intelligence system;

247 6. A description of any transparency measures taken concerning the high-risk artificial intelligence
248 system, including any measures taken to disclose to a consumer that such high-risk artificial intelligence
249 system is in use when such high-risk artificial intelligence system is in use;

250 7. A description of any post-deployment monitoring performed and user safeguards provided concerning
251 such high-risk artificial intelligence system, including any oversight process established by the deployer to
252 address issues arising from deployment or use of such high-risk artificial intelligence system as such issues
253 arise; and

254 8. An analysis of such high-risk artificial intelligence system's validity and reliability in accordance with
255 standard industry practices and a description of any metrics used to evaluate the performance and known
256 limitations of such high-risk artificial intelligence system.

257 A single impact assessment may address a comparable set of high-risk artificial intelligence systems
258 deployed or used by a deployer. High-risk artificial intelligence systems that are in conformity with the latest
259 version of the Artificial Intelligence Risk Management Framework published by the National Institute of
260 Standards and Technology, Standard ISO/IEC 42001 of the International Organization for Standardization,
261 or another nationally or internationally recognized risk management framework for artificial intelligence
262 systems, or parts thereof, shall be presumed to be in conformity with related requirements set out in this
263 section and in associated regulations. If a deployer completes an impact assessment for the purpose of
264 complying with another applicable law or regulation, such impact assessment shall be deemed to satisfy the
265 requirements established in this subsection if such impact assessment is reasonably similar in scope and
266 effect to the impact assessment that would otherwise be completed pursuant to this subsection. A deployer
267 that completes an impact assessment pursuant to this subsection shall maintain such impact assessment and
268 all records concerning such impact assessment for three years.

269 Throughout the period of time that a high-risk artificial intelligence system is deployed and for a period of
270 at least three years following the final deployment of such high-risk artificial intelligence system, the
271 deployer shall retain all records concerning each impact assessment conducted on the high-risk artificial
272 intelligence system, including all raw data used to evaluate the performance and known limitations of such
273 system.

274 D. Not later than the time that a deployer uses a high-risk artificial intelligence system to interact with a
275 consumer, the deployer shall disclose to the consumer that the deployer is interacting with an artificial
276 intelligence system disclosing (i) the purpose of such high-risk artificial intelligence system, (ii) the nature of
277 such system, (iii) the nature of the consequential decision, (iv) the contact information for the deployer, and
278 (v) a description of the artificial intelligence system in plain language of such system, which shall include (a)
279 a description of the personal characteristics or attributes that such system will measure or assess, (b) the
280 method by which the system measures or assesses such attributes or characteristics, (c) how such attributes
281 or characteristics are relevant to the consequential decisions for which the system should be used, (d) any
282 human components of such system, and (e) how any automated components of such system are used to inform
283 such consequential decisions.

284 A deployer that has deployed a high-risk artificial intelligence system to make a consequential decision
285 concerning a consumer shall transmit to the consumer the consequential decision without undue delay. If
286 such consequential decision is adverse to such consumer and based on personal data beyond information that
287 the consumer provided directly to the deployer, the deployer shall provide to the consumer (a) a statement
288 disclosing the principal reason or reasons for the consequential decision, including (1) the degree to which
289 and manner in which the high-risk artificial intelligence system contributed to the consequential decision, (2)
290 the type of data that was processed by such system in making the consequential decision, and (3) the sources
291 of such data; (b) pursuant to subdivision A 2 of § 59.1-577, an opportunity to correct any inaccuracies in the
292 consumer's personal data that the high-risk artificial intelligence system processed in making, or as a
293 substantial factor in making, the consequential decision; and (c) an opportunity to appeal such adverse
294 consequential decision concerning the consumer arising from the deployment of such system. Any such
295 appeal shall allow for human review, if technically reasonable and practicable, unless providing the
296 opportunity for appeal is not in the best interest of the consumer, including instances in which any delay
297 might pose a risk to the life or safety of such consumer.

298 E. Each deployer shall make available, in a manner that is clear and readily available, a statement
299 summarizing how such deployer manages any reasonably foreseeable risk of algorithmic discrimination that
300 may arise from the use or deployment of the high-risk artificial intelligence system.

301 F. For any disclosure required pursuant to this section, each deployer shall, no later than 30 days after
302 the deployer is notified by the developer that the developer has performed an intentional and substantial
303 modification to any high-risk artificial intelligence system, update such disclosure as necessary to ensure that
304 such disclosure remains accurate.

305 G. Any deployer who performs an intentional and substantial modification to any high-risk artificial

306 intelligence system shall comply with the documentation and disclosure requirements for developers pursuant
 307 to subsections B through G of § 59.1-608.

308 H. Nothing in this section shall be construed to require a deployer to disclose any trade secret, as defined
 309 in § 59.1-336, information that could create a security risk, or other confidential or proprietary information.

310 **§ 59.1-610. Exemptions.**

311 A. Nothing in this chapter shall be construed to restrict a developer's or deployer's ability to (i) comply
 312 with federal, state, or municipal ordinances or regulations; (ii) comply with a civil, criminal, or regulatory
 313 inquiry, investigation, subpoena, or summons by federal, state, local, or other governmental authorities; (iii)
 314 cooperate with law-enforcement agencies concerning conduct or activity that the developer or deployer
 315 reasonably and in good faith believes may violate federal, state, or local law, ordinances, or regulations; (iv)
 316 investigate, establish, exercise, prepare for, or defend legal claims; (v) provide a product or service
 317 specifically requested by a consumer; (vi) perform under a contract to which a consumer is a party, including
 318 fulfilling the terms of a written warranty; (vii) take steps at the request of a consumer prior to entering into a
 319 contract; (viii) take immediate steps to protect an interest that is essential for the life or physical safety of the
 320 consumer or another individual; (ix) prevent, detect, protect against, or respond to security incidents, identity
 321 theft, fraud, harassment, or malicious or deceptive activities; (x) take actions to prevent, detect, protect
 322 against, report, or respond to the production, generation, incorporation, or synthesization of child sex abuse
 323 material, or any illegal activity, preserve the integrity or security of systems, or investigate, report, or
 324 prosecute those responsible for any such action; (xi) engage in public or peer-reviewed scientific or
 325 statistical research in the public interest that adheres to all other applicable ethics and privacy laws and is
 326 approved, monitored, and governed by an institutional review board that determines, or similar independent
 327 oversight entities that determine, (a) that the expected benefits of the research outweigh the risks associated
 328 with such research and (b) whether the developer or deployer has implemented reasonable safeguards to
 329 mitigate the risks associated with such research; (xii) assist another developer or deployer with any of the
 330 obligations imposed by this chapter; or (xiii) take any action that is in the public interest in the areas of
 331 public health, community health, or population health, but solely to the extent that such action is subject to
 332 suitable and specific measures to safeguard the public.

333 B. The obligations imposed on developers or deployers by this chapter shall not restrict a developer's or
 334 deployer's ability to (i) conduct internal research to develop, improve, or repair products, services, or
 335 technologies; (ii) effectuate a product recall; (iii) identify and repair technical errors that impair existing or
 336 intended functionality; or (iv) perform internal operations that are reasonably aligned with the expectations
 337 of the consumer or reasonably anticipated based on the consumer's existing relationship with the developer
 338 or deployer.

339 C. Nothing in this chapter shall be construed to impose any obligation on a developer or deployer to
 340 disclose trade secrets or information protected from disclosure by state or federal law.

341 D. The obligations imposed on developers or deployers by this chapter shall not apply where compliance
 342 by the developer or deployer with such obligations would violate an evidentiary privilege under federal law
 343 or the laws of the Commonwealth.

344 E. Nothing in this chapter shall be construed to impose any obligation on a developer or deployer that
 345 adversely affects the legally protected rights or freedoms of any person, including the rights of any person to
 346 freedom of speech or freedom of the press guaranteed in the First Amendment to the Constitution of the
 347 United States or under the Virginia Human Rights Act (§ 2.2-3900 et seq.).

348 F. The obligations imposed on developers or deployers by this chapter shall not apply to any artificial
 349 intelligence system that is acquired by or for the federal government or any federal agency or department,
 350 including the U.S. Department of Commerce, the U.S. Department of Defense, and the National Aeronautics
 351 and Space Administration, unless such artificial intelligence system is a high-risk artificial intelligence
 352 system that is used to make, or is a substantial factor in making, a decision concerning employment or
 353 housing.

354 G. For the purposes of this subsection:

355 "Affiliate" means the same as that term is defined in § 6.2-899.

356 "Bank" means the same as that term is defined in § 6.2-800.

357 "Credit union" means the same as that term is defined in § 6.2-1300.

358 "Federal credit union" means a credit union duly organized under federal law.

359 "Mortgage lender" means the same as that term is defined in § 6.2-1600.

360 "Out-of-state bank" means the same as that term is defined in § 6.2-836.

361 "Out-of-state credit union" means a credit union organized and doing business in another state.

362 "Savings institution" means the same as that term is defined in § 6.2-1100.

363 "Subsidiary" means the same as that term is defined in § 6.2-700.

364 The obligations imposed on developers or deployers by this chapter shall be deemed satisfied for any
 365 bank, out-of-state bank, credit union, federal credit union, mortgage lender, out-of-state credit union, savings
 366 institution, or any affiliate [~~or~~ ,] subsidiary [, or service provider] thereof if such bank, out-of-state bank,

367 credit union, federal credit union, mortgage lender, out-of-state credit union, savings institution, or affiliate [
 368 ~~or~~], subsidiary [, or service provider] is subject to the jurisdiction of any state or federal regulator under
 369 any published guidance or regulations that apply to the use of high-risk artificial intelligence systems and
 370 such guidance or regulations.

371 H. For purposes of this subsection, "insurer" means the same as that term is defined in § 38.2-100.

372 The provisions of this chapter shall not apply to any insurer, or any high-risk artificial intelligence system
 373 developed by or for or deployed by an insurer for use in the business of insurance, if such insurer is regulated
 374 and supervised by the State Corporation Commission or a comparable federal regulating body and subject to
 375 examination by such entity under any existing statutes, rules, or regulations pertaining to unfair trade
 376 practices and unfair discrimination prohibited under Chapter 5 (§ 38.2-500 et seq.) of Title 38.2, or
 377 published guidance or regulations that apply to the use of high-risk artificial intelligence systems and such
 378 guidance or regulations aid in the prevention and mitigation of algorithmic discrimination caused by the use
 379 of a high-risk artificial intelligence system or any risk of algorithmic discrimination that is reasonably
 380 foreseeable as a result of the use of a high-risk artificial intelligence system. Nothing in this chapter shall be
 381 construed to delegate existing regulatory oversight of the business of insurance to any department or agency
 382 other than the Bureau of Insurance of the Virginia State Corporation Commission.

383 I. The provisions of this chapter shall not apply to the development of an artificial intelligence system that
 384 is used exclusively for research, training, testing, or other pre-deployment activities performed by active
 385 participants of any sandbox software or sandbox environment established and subject to oversight by a
 386 designated agency or other government entity and that is in compliance with the provisions of this chapter.

387 J. The provisions of this chapter shall not apply to a developer or deployer, or other person who develops,
 388 deploys, puts into service, or intentionally modifies, as applicable, a high-risk artificial intelligence system
 389 that (i) has been approved, authorized, certified, cleared, developed, or granted by a federal agency acting
 390 within the scope of the federal agency's authority, or by a regulated entity subject to the supervision and
 391 regulation of the Federal Housing Finance Agency or (ii) is in compliance with standards established by a
 392 federal agency or by a regulated entity subject to the supervision and regulation of the Federal Housing F
 393 inance Agency, if the standards are substantially equivalent or more stringent than the requirements of this
 394 chapter.

395 K. The provisions of this chapter shall not apply to a developer or deployer, or other person that (i)
 396 facilitates or engages in the provision of telehealth services, as defined in § 32.1-122.03:1, or (ii) is a
 397 covered entity within the meaning of the federal Health Insurance Portability and Accountability Act of 1996
 398 (42 U.S.C. § 1320d et seq.) and the regulations promulgated under such federal act, as both may be amended
 399 from time to time, and is providing (a) health care recommendations that (1) are generated by an artificial
 400 intelligence system and (2) require a health care provider, as defined in § 8.01-581.1, to take action to
 401 implement the recommendations or (b) services utilizing an artificial intelligence system for an
 402 administrative, quality measurement, security, or internal cost or performance improvement function.

403 L. If a developer or deployer engages in any action authorized by an exemption set forth in this section,
 404 the developer or deployer bears the burden of demonstrating that such action qualifies for such exemption.

405 M. If a developer or deployer withholds information pursuant to an exemption set forth in this chapter for
 406 which disclosure would otherwise be required by this chapter, including the exemption from disclosure of
 407 trade secrets, the developer or deployer shall notify the subject of disclosure and provide a basis for
 408 withholding the information. If a developer or deployer redacts any information pursuant to an exemption
 409 from disclosure, the developer or deployer shall notify the subject of disclosure that the developer or
 410 deployer is redacting such information and provide the basis for such decision to redact.

411 **§ 59.1-611. Enforcement; civil penalties.**

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

413 B. Whenever the Attorney General has reasonable cause to believe that any person has engaged in or is
 414 engaging in any violation of this chapter, the Attorney General is empowered to issue a civil investigative
 415 demand. The provisions of § 59.1-9.10 shall apply mutatis mutandis to civil investigative demands issued
 416 pursuant to this section. In rendering and furnishing any information requested pursuant to a civil
 417 investigative demand issued pursuant to this section, a developer or deployer may redact or omit any trade
 418 secrets or information protected from disclosure by state or federal law. If a developer or deployer refuses to
 419 disclose, redacts, or omits information based on the exemption from disclosure of trade secrets, such
 420 developer or deployer shall affirmatively state to the Attorney General that the basis for nondisclosure,
 421 redaction, or omission is because such information is a trade secret. To the extent that any information
 422 requested pursuant to a civil investigative demand issued pursuant to this section is subject to attorney-client
 423 privilege or work-product protection, disclosure of such information pursuant to the civil investigative
 424 demand shall not constitute a waiver of such privilege or protection. Any information, statement, or
 425 documentation provided to the Attorney General pursuant to this section shall be exempt from disclosure
 426 under the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

427 C. Notwithstanding any contrary provision of law, the Attorney General may cause an action to be

428 brought in the appropriate circuit court in the name of the Commonwealth to enjoin any violation of this
429 chapter. The circuit court having jurisdiction may enjoin such violation notwithstanding the existence of an
430 adequate alternative remedy at law.

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

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

438 F. The Attorney General may require that a developer disclose to the Attorney General any statement or
439 documentation described in this chapter if such statement or documentation is relevant to an investigation
440 conducted by the Attorney General. The Attorney General may also require that a deployer disclose to the
441 Attorney General any risk management policy designed and implemented, impact assessment completed, or
442 record maintained pursuant to this chapter if such risk management policy, impact assessment, or record is
443 relevant to an investigation conducted by the Attorney General.

444 G. In an action brought by the Attorney General pursuant to this section, it shall be an affirmative defense
445 that the developer or deployer (i) discovers a violation of any provision of this chapter through red-teaming
446 or other method; (ii) no later than 45 days after discovering such violation (a) cures such violation and (b)
447 provides notice to the Attorney General in a form and manner as prescribed by the Attorney General that
448 such violation has been cured and evidence that any harm caused by such violation has been mitigated; and
449 (iii) is otherwise in compliance with the requirements of this chapter.

450 H. Prior to causing an action against a developer or deployer for a violation of this chapter pursuant to
451 subsection C, the Attorney General shall determine, in consultation with the developer or deployer, if it is
452 possible to cure the violation. If it is possible to cure such violation, the Attorney General may issue a notice
453 of violation to the developer or deployer and afford the developer or deployer the opportunity to cure such
454 violation within 45 days of the receipt of such notice of violation. In determining whether to grant such
455 opportunity to cure such violation, the Attorney General shall consider (i) the number of violations; (ii) the
456 size and complexity of the developer or deployer; (iii) the nature and extent of the developer's or deployer's
457 business; (iv) the substantial likelihood of injury to the public; (v) the safety of persons or property; and (vi)
458 whether such violation was likely caused by human or technical error. If the developer or deployer fails to
459 cure such violation within 45 days of the receipt of such notice of violation, the Attorney General may
460 proceed with such action.

461 I. Nothing in this chapter shall create a private cause of action in favor of any person aggrieved by a
462 violation of this chapter.

463 **§ 59.1-612. Construction of chapter.**

464 A. This chapter is declared to be remedial, with the purposes of protecting consumers and ensuring
465 consumers receive information about consequential decisions affecting them. The provisions of this chapter
466 granting rights or protections to consumers shall be construed broadly and exemptions construed narrowly.

467 B. If any provision of this chapter or its application to any person or circumstance is held invalid, the
468 invalidity shall not affect other provisions or applications of this chapter that can be given effect without the
469 invalid provision or application, and to this end all the provisions of this chapter are hereby expressly
470 declared to be severable.

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

472 **3. That compliance with the provisions of Chapter 58 (§ 59.1-607 et seq.) of Title 59.1 of the Code of**
473 **Virginia, as created by this act, shall not (i) relieve a person from liability for any causes of action that**
474 **existed at common law or by statute prior to July 1, 2026, or (ii) be construed to modify or otherwise**
475 **affect, preempt, limit, or displace any causes of action that existed at common law or by statute prior to**
476 **July 1, 2026.**