1   HOUSE BILL NO. 2094
2   AMENDMENT IN THE NATURE OF A SUBSTITUTE
3   (Proposed by the Senate Committee on General Laws and Technology
4   on _____)
5   (Patron Prior to Substitute—Delegate Maldonado)

6   *A BILL to amend the Code of Virginia by adding in Title 59.1 a chapter numbered 58, consisting of sections*

7   *numbered 59.1-607 through 59.1-612, relating to high-risk artificial intelligence; development,*

8   *deployment, and use; civil penalties.*

9   **Be it enacted by the General Assembly of Virginia:**

10 **1. That the Code of Virginia is amended by adding in Title 59.1 a chapter numbered 58, consisting of**

11 **sections numbered 59.1-607 through 59.1-612, as follows:**

12 *CHAPTER 58.*

13 *HIGH-RISK ARTIFICIAL INTELLIGENCE DEVELOPER AND DEPLOYER ACT.*

14 *§ 59.1-607. Definitions.*

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

16 *"Algorithmic discrimination" means the use of an artificial intelligence system that results in an unlawful*

17 *differential treatment or impact that disfavors an individual or group of individuals on the basis of their*

18 *actual or perceived age, color, disability, ethnicity, genetic information, limited proficiency in the English*

19 *language, national origin, race, religion, reproductive health, sex, sexual orientation, veteran status, or other*

20 *classification protected under state or federal law. "Algorithmic discrimination" does not include (i) the*

21 *offer, license, or use of a high-risk artificial intelligence system by a developer or deployer for the sole*

22 *purpose of the developer's or deployer's self-testing to identify, mitigate, or prevent discrimination or*

23 *otherwise ensure compliance with state and federal law; (ii) the expansion of an applicant, customer, or*

24 *participant pool to increase diversity or redress historical discrimination; or (iii) an act or omission by or on*

25 *behalf of a private club or other establishment not in fact open to the public, as set forth in Title II of the Civil*

26 *Rights Act of 1964, 42 U.S.C. § 2000a(e), as amended from time to time.*

27 *"Artificial intelligence system" means any machine learning-based system that, for any explicit or implicit*

28 *objective, infers from the inputs such system receives how to generate outputs, including content, decisions,*

29 *predictions, and recommendations, that can influence physical or virtual environments. "Artificial*

30 *intelligence system" does not include any artificial intelligence system or general purpose artificial*

31   *intelligence model that is used for development, prototyping, and research activities before such artificial*

32   *intelligence system or general purpose artificial intelligence model is made available to deployers or*

33   *consumers.*

34   *"Consequential decision" means any decision that has a material legal, or similarly significant, effect on*

35   *the provision or denial to any consumer of (i) parole, probation, a pardon, or any other release from*

36   *incarceration or court supervision; (ii) education enrollment or an education opportunity; (iii) access to*

37   *employment; (iv) a financial or lending service; (v) access to health care services; (vi) housing; (vii)*

38   *insurance; (viii) marital status; or (ix) a legal service.*

39   *"Consumer" means a natural person who is a resident of the Commonwealth and is acting only in an*

40   *individual or household context. "Consumer" does not include a natural person acting in a commercial or*

41   *employment context.*

42   *"Deployer" means any person doing business in the Commonwealth that deploys or uses a high-risk*

43   *artificial intelligence system to make a consequential decision in the Commonwealth.*

44   *"Developer" means any person doing business in the Commonwealth that develops or intentionally and*

45   *substantially modifies a high-risk artificial intelligence system that is offered, sold, leased, given, or*

46   *otherwise made available to deployers or consumers in the Commonwealth.*

47   *"Facial recognition" means the use of a computer system that, for the purpose of attempting to determine*

48   *the identity of an unknown individual, uses an algorithm to compare the facial biometric data of an unknown*

49   *individual derived from a photograph, video, or image to a database of photographs or images and*

50   *associated facial biometric data in order to identify potential matches to an individual. "Facial recognition"*

51   *does not include facial verification technology, which involves the process of comparing an image or facial*

52   *biometric data of a known individual, where such information is provided by that individual, to an image*

53   *database, or to government documentation containing an image of the known individual, to identify a*

54   *potential match in pursuit of the individual's identity.*

55   *"General-purpose artificial intelligence model" means a model used by an artificial intelligence system or*

56   *other system that (i) displays significant generality, (ii) is capable of competently performing a wide range of*

57   *distinct tasks, and (iii) can be integrated into a variety of downstream applications or systems.*

58   *"General-purpose artificial intelligence model" does not include any artificial intelligence model that is used*

59   *for development, prototyping, and research activities before such artificial intelligence model is made*

60   *available to deployers or consumers.*

61   *"Generative artificial intelligence" means an artificial intelligence system that is capable of producing*

62   *and used to produce synthetic content, including audio, images, text, and videos.*

63   *"Generative artificial intelligence system" means any artificial intelligence system or service that*

64   *incorporates generative artificial intelligence.*

65   *"High-risk artificial intelligence system" means any artificial intelligence system that is specifically*

66   *intended to autonomously make, or be a substantial factor in making, a consequential decision. A system or*

67   *service is not a "high-risk artificial intelligence system" if it is intended to (i) perform a narrow procedural*

68   *task, (ii) improve the result of a previously completed human activity, (iii) detect any decision-making*

69   *patterns or any deviations from pre-existing decision-making patterns, or (iv) perform a preparatory task to*

70   *an assessment relevant to a consequential decision. "High-risk artificial intelligence system" does not include*

71   *any of the following technologies:*

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

73   *2. Anti-malware technology;*

74   *3. Anti-virus technology;*

75   *4. Artificial intelligence-enabled video games;*

76   *5. Autonomous vehicle technology;*

77   *6. Calculators;*

78   *7. Cybersecurity technology;*

79   *8. Databases;*

80   *9. Data storage;*

81   *10. Firewall technology;*

82   *11. Internet domain registration;*

83   *12. Internet website loading;*

84   *13. Networking;*

85   *14. Spam and robocall filtering;*

86   *15. Spell-checking technology;*

87   *16. Spreadsheets;*

88   *17. Web caching;*

89   *18. Web hosting or any similar technology; or*

90   *19. Technology that communicates with consumers in natural language for the purpose of providing users*

91   *with information, making referrals or recommendations, and answering questions and is subject to an*

92   *acceptable use policy that prohibits generating content that is discriminatory or unlawful.*

93   *"Intentional and substantial modification" means any deliberate change made to (i) an artificial*

94   *intelligence system that results, at the time when the change is implemented and any time thereafter, in any*

95   *new material risk of algorithmic discrimination or (ii) a general-purpose artificial intelligence model that*

96   *affects compliance of the general-purpose artificial intelligence model, materially changes the purpose of the*

97   *general-purpose artificial intelligence model, or results in any new reasonably foreseeable risk of*

98   *algorithmic discrimination. "Intentional and substantial modification" does not include (a) any customization*

99   *made by deployers that (1) is based on legitimate nondiscriminatory business justifications, (2) is within the*

100   *scope and purpose of the artificial intelligence tool, and (3) that does not result in a material change to the*

101   *risks of algorithmic discrimination or (b) any change made to a high-risk artificial intelligence system, or the*

102   *performance of a high-risk artificial intelligence system, if (1) the high-risk artificial intelligence system*

103   *continues to learn after such high-risk artificial intelligence system is offered, sold, leased, licensed, given, or*

104   *otherwise made available to a deployer, or deployed, and (2) such change (A) is made to such high-risk*

105   *artificial intelligence system as a result of any learning described in clause (b) (1) and (B) was*

106   *predetermined by the deployer or the third party contracted by the deployer and included within the initial*

107   *impact assessment of such high-risk artificial intelligence system as required in § 59.1-609.*

108   *"Machine learning" means the development of algorithms to build data-derived statistical models that are*

109   *capable of drawing inferences from previously unseen data without explicit human instruction.*

110   *"Person" includes any individual, corporation, partnership, association, cooperative, limited liability*

111   *company, trust, joint venture, or any other legal or commercial entity and any successor, representative,*

112   *agent, agency, or instrumentality thereof. "Person" does not include any government or political subdivision.*

113   *"Principal basis" means the use of an output of a high-risk artificial intelligence system to make a*

114   *decision without (i) human review, oversight, involvement, or intervention or (ii) meaningful consideration by*

115   *a human.*

116   *"Red-teaming" means adversarial testing to identify the potential adverse behaviors or outcomes of an*

117   *artificial intelligence system, identify how such behaviors or outcomes occur, and stress test the safeguards*

118   *against such behaviors or outcomes.*

119   *"Substantial factor" means a factor that (i) uses the principal basis for making a consequential decision,*

120   *(ii) is capable of altering the outcome of a consequential decision, and (iii) is generated by an artificial*

121   *intelligence system. "Substantial factor" includes any use of an artificial intelligence system to generate any*

122   *content, decision, prediction, or recommendation concerning a consumer that is used as the principal basis*

123   *to make a consequential decision concerning the consumer.*

124   *"Synthetic content" means information, such as images, video, audio clips, and, to the extent practicable,*

125   *text, that has been significantly modified or generated by algorithms, including by artificial intelligence.*

126   *"Trade secret" means information, including a formula, pattern, compilation, program, device, method,*

127   *technique, or process, that (i) derives independent economic value, actual or potential, from not being*

128   *generally known to, and not being readily ascertainable by proper means by, other persons who can obtain*

129   *economic value from its disclosure or use and (ii) is the subject of efforts that are reasonable under the*

130   *circumstances to maintain its secrecy.*

131   *§ 59.1-608. Operating standards for developers of high-risk artificial intelligence systems.*

132   *A. Each developer of a high-risk artificial intelligence system shall use a reasonable duty of care to*

133   *protect consumers from any known or reasonably foreseeable risks of algorithmic discrimination arising*

134   *from the intended and contracted uses. In any enforcement action brought by the Attorney General pursuant*

135   *to § 59.1-611, there shall be a rebuttable presumption that a developer of a high-risk artificial intelligence*

136   *system used a reasonable duty of care as required by this subsection if the developer complied with the*

137   *requirements of this section.*

138   *B. No developer of a high-risk artificial intelligence system shall offer, sell, lease, give, or otherwise*

139   *provide to a deployer or other developer a high-risk artificial intelligence system unless the developer makes*

140   *available to the deployer or other developer:*

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

142   *2. Documentation disclosing the following:*

143   *a. The known or reasonably known limitations of such high-risk artificial intelligence system, including*

144   *any and all known or reasonably foreseeable risks of algorithmic discrimination arising from the intended*

145   *uses of such high-risk artificial intelligence system;*

146   *b. The purpose of such high-risk artificial intelligence system and the intended benefits and uses of such*

147   *high-risk artificial intelligence system;*

148   *c. A summary describing how such high-risk artificial intelligence system was evaluated for performance*

149   *before such high-risk artificial intelligence system was licensed, sold, leased, given, or otherwise made*

150   *available to a deployer or other developer;*

151   *d. The measures the developer has taken to mitigate reasonable foreseeable risks of algorithmic*

152   *discrimination that the developer knows arises from deployment or use of such high-risk artificial*

153   *intelligence system; and*

154   *e. How an individual can use such high-risk artificial intelligence system and monitor the performance of*

155   *such high-risk artificial intelligence system for any risk of algorithmic discrimination;*

156   *3. Documentation including (i) a description of how the high-risk artificial intelligence system was*

157   *evaluated for performance and for mitigation of algorithmic discrimination before such system was made*

158   *available to the deployer or other developer; (ii) a description of the intended outputs of the high-risk*

159   *artificial intelligence system; (iii) a description of the measures the developer has taken to mitigate known or*

160   *reasonably foreseeable risks of algorithmic discrimination that may arise from the reasonably foreseeable*

161   *deployment of the high-risk artificial intelligence system; and (iv) a description of how the high-risk artificial*

162   *intelligence system should be used, not be used, and be monitored by an individual when such system is used*

163   *to make, or is a substantial factor in making, a consequential decision; and*

164   *4. Any additional documentation that is reasonably necessary to assist the deployer or other developer in*

165   *understanding the outputs and monitoring performance of the high-risk artificial intelligence system for risks*

166   *of algorithmic discrimination.*

167   *C. Each developer that offers, sells, leases, gives, or otherwise makes available to a deployer or other*

168   *developer a high-risk artificial intelligence system shall make available to the deployer or other developer to*

169   *the extent feasible and necessary, information and documentation through artifacts such as system cards or*

170   *predeployment impact assessments, including any risk management policy designed and implemented and*

171   *any relevant impact assessment completed, and such documentation and information shall enable the*

172   *deployer, other developer, or a third party contracted by the deployer to complete an impact assessment as*

173   *required in § 59.1-609.*

174   *D. A developer that also serves as a deployer for any high-risk artificial intelligence system shall not be*

175   *required to generate the documentation required by this section unless such high-risk artificial intelligence*

176   *system is provided to an unaffiliated entity acting as a deployer or as otherwise required by law.*

177   *E. Nothing in this section shall be construed to require a developer to disclose any trade secret,*

178   *information that could create a security risk, or other confidential or proprietary information protected under*

179   *state or federal law.*

180   *F. High-risk artificial intelligence systems that are in conformity with the latest version of the Artificial*

181   *Intelligence Risk Management Framework published by the National Institute of Standards and Technology,*

182   *Standard ISO/IEC 42001 of the International Organization for Standardization, or another nationally or*

183   *internationally recognized risk management framework for artificial intelligence systems, or parts thereof,*

184   *shall be presumed to be in conformity with related requirements set out in this section and in associated*

185   *regulations.*

186   *G. For any disclosure required pursuant to this section, each developer shall, no later than 90 days after*

187   *the developer performs an intentional and substantial modification to any high-risk artificial intelligence*

188   *system, update such disclosure as necessary to ensure that such disclosure remains accurate.*

189   *H. 1. Each developer of a high-risk generative artificial intelligence system that generates or substantially*

190   *modifies synthetic content shall ensure that the outputs of such high-risk artificial intelligence system (i) are*

191   *identifiable and detectable in a manner that is accessible by consumers using industry-standard tools or tools*

192   *provided by the developer; (ii) comply with any applicable accessibility requirements, as synthetic content, to*

193   *the extent reasonably feasible; and (iii) apply such identification at the time the output is generated;*

194   *2. If such synthetic content is an audio, image, or video format that forms part of an evidently artistic,*

195   *creative, satirical, fictional analogous work or program, such requirement for identifying outputs of high-risk*

196   *artificial intelligence systems pursuant to subdivision 1 shall be limited to a manner that does not hinder the*

197   *display or enjoyment of such work or program.*

198   *3. The identification of outputs required by subdivision 1 shall not apply to (i) synthetic content that*

199   *consists exclusively of text, is published to inform the public on any matter of public interest, or is unlikely to*

200   *mislead a reasonable person consuming such synthetic content or (ii) the outputs of a high-risk artificial*

201   *intelligence system that performs an assistive function for standard editing, does not substantially alter the*

202   *input data provided by the developer, or is used to detect, prevent, investigate, or prosecute any crime as*

203   *authorized by law.*

204   *I. Where multiple developers directly contribute to the development of a high-risk artificial intelligence*

205 *system, each developer shall be subject to the obligations and operating standards applicable to developers*

206 *pursuant to this section solely with respect to its activities contributing to the development of the high-risk*

207 *artificial intelligence system.*

208 *§ 59.1-609. Operating standards for deployers of high-risk artificial intelligence systems.*

209 *A. Each deployer of a high-risk artificial intelligence system shall use a reasonable duty of care to protect*

210 *consumers from any known or reasonably foreseeable risks of algorithmic discrimination. In any*

211 *enforcement action brought by the Attorney General pursuant to § 59.1-611, there shall be a rebuttable*

212 *presumption that a deployer of a high-risk artificial intelligence system used a reasonable duty of care as*

213 *required by this subsection if the deployer complied with the provisions of this section.*

214 *B. No deployer shall deploy or use a high-risk artificial intelligence system to make a consequential*

215 *decision unless the deployer has designed and implemented a risk management policy and program for such*

216 *high-risk artificial intelligence system. The risk management policy shall specify the principles, processes,*

217 *and personnel that the deployer shall use in maintaining the risk management program to identify, mitigate,*

218 *and document any risk of algorithmic discrimination that is a reasonably foreseeable consequence of*

219 *deploying or using such high-risk artificial intelligence system to make a consequential decision. Each risk*

220 *management policy and program designed, implemented, and maintained pursuant to this subsection shall be*

221 *reasonable considering the guidance and standards set forth in the latest version of:*

222 *1. The Artificial Intelligence Risk Management Framework published by the National Institute of*

223 *Standards and Technology;*

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

225 *3. A nationally or internationally recognized risk management framework for artificial intelligence*

226 *systems with requirements that are substantially equivalent to, and at least as stringent as, the requirements*

227 *set forth in this section; or*

228 *4. Any risk management framework for artificial intelligence systems that the Attorney General may*

229 *designate and is substantially equivalent to, and at least as stringent as, the guidance and standards*

230 *described in subdivision 1.*

231 *High-risk artificial intelligence systems that are in conformity with the latest version of the Artificial*

232 *Intelligence Risk Management Framework published by the National Institute of Standards and Technology,*

233 *Standard ISO/IEC 42001 of the International Organization for Standardization, or another nationally or*

234 *internationally recognized risk management framework for artificial intelligence systems, or parts thereof,*

235 *shall be presumed to be in conformity with related requirements set out in this section and in associated*

236 *regulations.*

237 *C. Except as provided in this subsection, no deployer shall deploy or use a high-risk artificial intelligence*

238 *system to make a consequential decision unless the deployer has completed an impact assessment for such*

239 *high-risk artificial intelligence system. The deployer shall complete an impact assessment for a high-risk*

240 *artificial intelligence system (i) before the deployer initially deploys such high-risk artificial intelligence*

241 *system and (ii) before a significant update to such high-risk artificial intelligence system is used to make a*

242 *consequential decision.*

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

244 *1. A statement by the deployer disclosing (i) the purpose, intended use cases and deployment context of,*

245 *and benefits afforded by the high-risk artificial intelligence system and (ii) whether the deployment or use of*

246 *the high-risk artificial intelligence system poses any known or reasonably foreseeable risk of algorithmic*

247 *discrimination and, if so, (a) the nature of such algorithmic discrimination and (b) the steps that have been*

248 *taken, to the extent feasible, to mitigate such risk;*

249 *2. For each post-deployment impact assessment completed pursuant to this subsection, whether the*

250 *intended use cases of the high-risk artificial intelligence system as updated were consistent with, or varied*

251 *from, the developer's intended uses of such high-risk artificial intelligence system;*

252 *3. A description of (i) the categories of data the high-risk artificial intelligence system processes as inputs*

253 *and (ii) the outputs such high-risk artificial intelligence system produces;*

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

255 *categories of data the deployer used to customize such high-risk artificial intelligence system;*

256 *5. A list of any metrics used to evaluate the performance and known limitations of the high-risk artificial*

257 *intelligence system;*

258 *6. A description of any transparency measures taken concerning the high-risk artificial intelligence*

259 *system, including any measures taken to disclose to a consumer that such high-risk artificial intelligence*

260 *system is in use when such high-risk artificial intelligence system is in use;*

261 *7. A description of any post-deployment monitoring performed and user safeguards provided concerning*

262 *such high-risk artificial intelligence system, including any oversight process established by the deployer to*

263 *address issues arising from deployment or use of such high-risk artificial intelligence system as such issues*

264 *arise; and*

265 *8. An analysis of such high-risk artificial intelligence system's validity and reliability in accordance with*

266 *standard industry practices and a description of any metrics used to evaluate the performance and known*

267 *limitations of such high-risk artificial intelligence system.*

268 *A single impact assessment may address a comparable set of high-risk artificial intelligence systems*

269 *deployed or used by a deployer. High-risk artificial intelligence systems that are in conformity with the latest*

270 *version of the Artificial Intelligence Risk Management Framework published by the National Institute of*

271 *Standards and Technology, Standard ISO/IEC 42001 of the International Organization for Standardization,*

272 *or another nationally or internationally recognized risk management framework for artificial intelligence*

273 *systems, or parts thereof, shall be presumed to be in conformity with related requirements set out in this*

274 *section and in associated regulations. If a deployer completes an impact assessment for the purpose of*

275 *complying with another applicable law or regulation, such impact assessment shall be deemed to satisfy the*

276 *requirements established in this subsection if such impact assessment is reasonably similar in scope and*

277 *effect to the impact assessment that would otherwise be completed pursuant to this subsection. A deployer*

278 *that completes an impact assessment pursuant to this subsection shall maintain such impact assessment and*

279 *all records concerning such impact assessment for three years.*

280 *Throughout the period of time that a high-risk artificial intelligence system is deployed and for a period of*

281 *at least three years following the final deployment of such high-risk artificial intelligence system, the*

282 *deployer shall retain all records concerning each impact assessment conducted on the high-risk artificial*

283 *intelligence system, including all raw data used to evaluate the performance and known limitations of such*

284 *system.*

285 *D. Not later than the time that a deployer uses a high-risk artificial intelligence system to interact with a*

286 *consumer, the deployer shall disclose to the consumer that the deployer is interacting with an artificial*

287 *intelligence system disclosing (i) the purpose of such high-risk artificial intelligence system, (ii) the nature of*

288 *such system, (iii) the nature of the consequential decision, (iv) the contact information for the deployer, and*

289 *(v) a description of the artificial intelligence system in plain language of such system, which shall include (a)*

290 *a description of the personal characteristics or attributes that such system will measure or assess, (b) the*

291 *method by which the system measures or assesses such attributes or characteristics, (c) how such attributes*

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292   *or characteristics are relevant to the consequential decisions for which the system should be used, (d) any*

293   *human components of such system, and (e) how any automated components of such system are used to inform*

294   *such consequential decisions.*

295   *A deployer that has deployed a high-risk artificial intelligence system to make a consequential decision*

296   *concerning a consumer shall transmit to the consumer the consequential decision without undue delay. If*

297   *such consequential decision is adverse to such consumer and based on personal data beyond information that*

298   *the consumer provided directly to the deployer, the deployer shall provide to the consumer (a) a statement*

299   *disclosing the principal reason or reasons for the consequential decision, including (1) the degree to which*

300   *and manner in which the high-risk artificial intelligence system contributed to the consequential decision, (2)*

301   *the type of data that was processed by such system in making the consequential decision, and (3) the sources*

302   *of such data; (b) pursuant to the provisions of the Consumer Data Protection Act (§ 59.1-575 et seq.), an*

303   *opportunity to correct any inaccuracies in the consumer's personal data that the high-risk artificial*

304   *intelligence system processed in making, or as a substantial factor in making, the consequential decision; and*

305   *(c) an opportunity to appeal such adverse consequential decision concerning the consumer arising from the*

306   *deployment of such system. Any such appeal shall allow for human review, if technically reasonable and*

307   *practicable, unless providing the opportunity for appeal is not in the best interest of the consumer, including*

308   *instances in which any delay might pose a risk to the life or safety of such consumer.*

309   *E. Each deployer shall make available, in a manner that is clear and readily available, a statement*

310   *summarizing how such deployer manages any reasonably foreseeable risk of algorithmic discrimination that*

311   *may arise from the use or deployment of the high-risk artificial intelligence system.*

312   *F. For any disclosure required pursuant to this section, each deployer shall, no later than 30 days after*

313   *the deployer is notified by the developer that the developer has performed an intentional and substantial*

314   *modification to any high-risk artificial intelligence system, update such disclosure as necessary to ensure that*

315   *such disclosure remains accurate.*

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

317   *intelligence system shall comply with the documentation and disclosure requirements for developers pursuant*

318   *to subsections B through G of § 59.1-608.*

319   *H. Nothing in this section shall be construed to require a deployer to disclose any trade secret,*

320   *information that could create a security risk, or other confidential or proprietary information protected under*

321   *state or federal law.*

322   *§ 59.1-610. Exemptions.*

323   *A. Nothing in this chapter shall be construed to restrict a developer's or deployer's ability to (i) comply*

324   *with federal, state, or municipal ordinances or regulations; (ii) comply with a civil, criminal, or regulatory*

325   *inquiry, investigation, subpoena, or summons by federal, state, local, or other governmental authorities; (iii)*

326   *cooperate with law-enforcement agencies concerning conduct or activity that the developer or deployer*

327   *reasonably and in good faith believes may violate federal, state, or local law, ordinances, or regulations; (iv)*

328   *investigate, establish, exercise, prepare for, or defend legal claims; (v) provide a product or service*

329   *specifically requested by a consumer; (vi) perform under a contract to which a consumer is a party, including*

330   *fulfilling the terms of a written warranty; (vii) take steps at the request of a consumer prior to entering into a*

331   *contract; (viii) take immediate steps to protect an interest that is essential for the life or physical safety of the*

332   *consumer or another individual; (ix) prevent, detect, protect against, or respond to security incidents, identity*

333   *theft, fraud, harassment, or malicious or deceptive activities; (x) take actions to prevent, detect, protect*

334   *against, report, or respond to the production, generation, incorporation, or synthesization of child sex abuse*

335   *material, or any illegal activity, preserve the integrity or security of systems, or investigate, report, or*

336   *prosecute those responsible for any such action; (xi) engage in public or peer-reviewed scientific or*

337   *statistical research in the public interest that adheres to all other applicable ethics and privacy laws and is*

338   *approved, monitored, and governed by an institutional review board that determines, or similar independent*

339   *oversight entities that determine, (a) that the expected benefits of the research outweigh the risks associated*

340   *with such research and (b) whether the developer or deployer has implemented reasonable safeguards to*

341   *mitigate the risks associated with such research; (xii) assist another developer or deployer with any of the*

342   *obligations imposed by this chapter; or (xiii) take any action that is in the public interest in the areas of*

343   *public health, community health, or population health, but solely to the extent that such action is subject to*

344   *suitable and specific measures to safeguard the public.*

345   *B. The obligations imposed on developers or deployers by this chapter shall not restrict a developer's or*

346   *deployer's ability to (i) conduct internal research to develop, improve, or repair products, services, or*

347   *technologies; (ii) effectuate a product recall; (iii) identify and repair technical errors that impair existing or*

348   *intended functionality; or (iv) perform internal operations that are reasonably aligned with the expectations*

349   *of the consumer or reasonably anticipated based on the consumer's existing relationship with the developer*

350   *or deployer.*

351   *C. Nothing in this chapter shall be construed to impose any obligation on a developer or deployer to*

352   *disclose trade secrets or information protected from disclosure by state or federal law.*

353   *D. The obligations imposed on developers or deployers by this chapter shall not apply where compliance*

354   *by the developer or deployer with such obligations would violate an evidentiary privilege under federal law*

355   *or the laws of the Commonwealth.*

356   *E. Nothing in this chapter shall be construed to impose any obligation on a developer or deployer that*

357   *adversely affects the legally protected rights or freedoms of any person, including the rights of any person to*

358   *freedom of speech or freedom of the press guaranteed in the First Amendment to the Constitution of the*

359   *United States or under the Virginia Human Rights Act (§ 2.2-3900 et seq.).*

360   *F. The obligations imposed on developers or deployers by this chapter shall not apply to any artificial*

361   *intelligence system that is acquired by or for the federal government or any federal agency or department,*

362   *including the U.S. Department of Commerce, the U.S. Department of Defense, and the National Aeronautics*

363   *and Space Administration, unless such artificial intelligence system is a high-risk artificial intelligence*

364   *system that is used to make, or is a substantial factor in making, a decision concerning employment or*

365   *housing.*

366   *G. For the purposes of this subsection:*

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

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

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

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

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

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

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

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

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

376   *The obligations imposed on developers or deployers by this chapter shall be deemed satisfied for any*

377   *bank, out-of-state bank, credit union, federal credit union, mortgage lender, out-of-state credit union, savings*

378   *institution, or any affiliate, subsidiary, or service provider thereof if such bank, out-of-state bank, credit*

379   *union, federal credit union, mortgage lender, out-of-state credit union, savings institution, or affiliate,*

380   *subsidiary, or service provider is subject to the jurisdiction of any state or federal regulator under any*

381   *published guidance or regulations that apply to the use of high-risk artificial intelligence systems and such*

382   *guidance or regulations.*

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

384   *The provisions of this chapter shall not apply to any insurer, or any high-risk artificial intelligence system*

385   *developed by or for or deployed by an insurer for use in the business of insurance, if such insurer is regulated*

386   *and supervised by the State Corporation Commission or a comparable federal regulating body and subject to*

387   *examination by such entity under any existing statutes, rules, or regulations pertaining to unfair trade*

388   *practices and unfair discrimination prohibited under Chapter 5 (§ 38.2-500 et seq.) of Title 38.2, or*

389   *published guidance or regulations that apply to the use of high-risk artificial intelligence systems and such*

390   *guidance or regulations aid in the prevention and mitigation of algorithmic discrimination caused by the use*

391   *of a high-risk artificial intelligence system or any risk of algorithmic discrimination that is reasonably*

392   *foreseeable as a result of the use of a high-risk artificial intelligence system. Nothing in this chapter shall be*

393   *construed to delegate existing regulatory oversight of the business of insurance to any department or agency*

394   *other than the Bureau of Insurance of the Virginia State Corporation Commission.*

395   *I. The provisions of this chapter shall not apply to the development of an artificial intelligence system that*

396   *is used exclusively for research, training, testing, or other pre-deployment activities performed by active*

397   *participants of any sandbox software or sandbox environment established and subject to oversight by a*

398   *designated agency or other government entity and that is in compliance with the provisions of this chapter.*

399   *J. The provisions of this chapter shall not apply to a developer or deployer, or other person who develops,*

400   *deploys, puts into service, or intentionally modifies, as applicable, a high-risk artificial intelligence system*

401   *that (i) has been approved, authorized, certified, cleared, developed, or granted by a federal agency acting*

402   *within the scope of the federal agency's authority, or by a regulated entity subject to the supervision and*

403   *regulation of the Federal Housing Finance Agency or (ii) is in compliance with standards established by a*

404   *federal agency or by a regulated entity subject to the supervision and regulation of the Federal Housing F*

405   *inance Agency, if the standards are substantially equivalent or more stringent than the requirements of this*

406   *chapter.*

407   *K. The provisions of this chapter shall not apply to a developer or deployer, or other person that (i)*

408   *facilitates or engages in the provision of telehealth services, as defined in § 32.1-122.03:1, or (ii) is a*

409   *covered entity within the meaning of the federal Health Insurance Portability and Accountability Act of 1996*

410   *(42 U.S.C. § 1320d et seq.) and the regulations promulgated under such federal act, as both may be amended*

411   *from time to time, and is providing (a) health care recommendations that (1) are generated by an artificial*

412   *intelligence system and (2) require a health care provider, as defined in § 8.01-581.1, to take action to*

413   *implement the recommendations or (b) services utilizing an artificial intelligence system for an*

414   *administrative, quality measurement, security, or internal cost or performance improvement function.*

415   *L. If a developer or deployer engages in any action authorized by an exemption set forth in this section,*

416   *the developer or deployer bears the burden of demonstrating that such action qualifies for such exemption.*

417   *M. If a developer or deployer withholds information pursuant to an exemption set forth in this chapter for*

418   *which disclosure would otherwise be required by this chapter, including the exemption from disclosure of*

419   *trade secrets, the developer or deployer shall notify the subject of disclosure and provide a basis for*

420   *withholding the information. If a developer or deployer redacts any information pursuant to an exemption*

421   *from disclosure, the developer or deployer shall notify the subject of disclosure that the developer or*

422   *deployer is redacting such information and provide the basis for such decision to redact.*

423   *§ 59.1-611. Enforcement; civil penalties.*

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

425   *B. Whenever the Attorney General has reasonable cause to believe that any person has engaged in or is*

426   *engaging in any violation of this chapter, the Attorney General is empowered to issue a civil investigative*

427   *demand. The provisions of § 59.1-9.10 shall apply mutatis mutandis to civil investigative demands issued*

428   *pursuant to this section. In rendering and furnishing any information requested pursuant to a civil*

429   *investigative demand issued pursuant to this section, a developer or deployer may redact or omit any trade*

430   *secrets or information protected from disclosure by state or federal law. If a developer or deployer refuses to*

431   *disclose, redacts, or omits information based on the exemption from disclosure of trade secrets, such*

432   *developer or deployer shall affirmatively state to the Attorney General that the basis for nondisclosure,*

433   *redaction, or omission is because such information is a trade secret. To the extent that any information*

434   *requested pursuant to a civil investigative demand issued pursuant to this section is subject to attorney-client*

435   *privilege or work-product protection, disclosure of such information pursuant to the civil investigative*

436   *demand shall not constitute a waiver of such privilege or protection. Any information, statement, or*

437   *documentation provided to the Attorney General pursuant to this section shall be exempt from disclosure*

438   *under the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).*

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

440   *brought in the appropriate circuit court in the name of the Commonwealth to enjoin any violation of this*

441   *chapter. The circuit court having jurisdiction may enjoin such violation notwithstanding the existence of an*

442   *adequate alternative remedy at law.*

443   *D. Any person who violates the provisions of this chapter shall be subject to a civil penalty in an amount*

444   *not to exceed $1,000 plus reasonable attorney fees, expenses, and costs, as determined by the court. Any*

445   *person who willfully violates the provisions of this chapter shall be subject to a civil penalty in an amount not*

446   *less than $1,000 and not more than $10,000 plus reasonable attorney fees, expenses, and costs, as*

447   *determined by the court. Such civil penalties shall be paid into the Literary Fund.*

448   *E. Each violation of this chapter shall constitute a separate violation and shall be subject to any civil*

449   *penalties imposed under this section.*

450   *F. The Attorney General may require that a developer disclose to the Attorney General any statement or*

451   *documentation described in this chapter if such statement or documentation is relevant to an investigation*

452   *conducted by the Attorney General. The Attorney General may also require that a deployer disclose to the*

453   *Attorney General any risk management policy designed and implemented, impact assessment completed, or*

454   *record maintained pursuant to this chapter if such risk management policy, impact assessment, or record is*

455   *relevant to an investigation conducted by the Attorney General.*

456   *G. In an action brought by the Attorney General pursuant to this section, it shall be an affirmative defense*

457   *that the developer or deployer (i) discovers a violation of any provision of this chapter through red-teaming*

458   *or other method; (ii) no later than 45 days after discovering such violation (a) cures such violation and (b)*

459   *provides notice to the Attorney General in a form and manner as prescribed by the Attorney General that*

460   *such violation has been cured and evidence that any harm caused by such violation has been mitigated; and*

461   *(iii) is otherwise in compliance with the requirements of this chapter.*

462   *H. Prior to causing an action against a developer or deployer for a violation of this chapter pursuant to*

463   *subsection C, the Attorney General shall determine, in consultation with the developer or deployer, if it is*

464   *possible to cure the violation. If it is possible to cure such violation, the Attorney General may issue a notice*

465   *of violation to the developer or deployer and afford the developer or deployer the opportunity to cure such*

466   *violation within 45 days of the receipt of such notice of violation. In determining whether to grant such*

467   *opportunity to cure such violation, the Attorney General shall consider (i) the number of violations; (ii) the*

468   *size and complexity of the developer or deployer; (iii) the nature and extent of the developer's or deployer's*

469   *business; (iv) the substantial likelihood of injury to the public; (v) the safety of persons or property; and (vi)*

470   *whether such violation was likely caused by human or technical error. If the developer or deployer fails to*

471   *cure such violation within 45 days of the receipt of such notice of violation, the Attorney General may*

472   *proceed with such action.*

473   *I. Nothing in this chapter shall create a private cause of action in favor of any person aggrieved by a*

474   *violation of this chapter.*

475   *§ 59.1-612. Construction of chapter.*

476   *A. This chapter is declared to be remedial, with the purposes of protecting consumers and ensuring*

477   *consumers receive information about consequential decisions affecting them. The provisions of this chapter*

478   *granting rights or protections to consumers shall be construed broadly and exemptions construed narrowly.*

479   *B. If any provision of this chapter or its application to any person or circumstance is held invalid, the*

480   *invalidity shall not affect other provisions or applications of this chapter that can be given effect without the*

481   *invalid provision or application, and to this end all the provisions of this chapter are hereby expressly*

482   *declared to be severable.*

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

484   **3. That compliance with the provisions of Chapter 58 (§ 59.1-607 et seq.) of Title 59.1 of the Code of**

485   **Virginia, as created by this act, shall not (i) relieve a person from liability for any causes of action that**

486   **existed at common law or by statute prior to July 1, 2026, or (ii) be construed to modify or otherwise**

487   **affect, preempt, limit, or displace any causes of action that existed at common law or by statute prior to**

488   **July 1, 2026.**