

SENATE BILL NO. 796

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Communications, Technology and Innovation

on _____)

(Patron Prior to Substitute—Senator Durant)

A BILL to amend the Code of Virginia by adding in Title 59.1 a chapter numbered 60, consisting of sections numbered 59.1-614 through 59.1-618, relating to Artificial Intelligence Chatbots and Minors Act established; enforcement; civil penalties; individual action.

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 60, consisting of sections numbered 59.1-614 through 59.1-618, as follows:

*CHAPTER 60.**ARTIFICIAL INTELLIGENCE CHATBOTS AND MINORS ACT.***§ 59.1-614. Definitions.**

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

"Affiliate" means any person or entity that directly or indirectly controls, is controlled by, or is under common control with another person or entity.

"Chatbot" means any artificial intelligence, algorithmic, or automated system that (i) produces new expressive content or responses not fully predetermined by the developer or operator of the service or application; (ii) accepts open-ended natural-language or multimodal user input and produces adaptive or context-responsive natural language output; and (iii) maintains a conversational state across exchanges and is designed to facilitate multi-turn dialogue rather than to respond to discrete information requests.

"Control" means the power to direct the management or policies of an entity, whether through ownership, contract, or otherwise.

"Covered entity" means an operator of a chatbot that has 500,000 or more monthly active users worldwide. "Covered entity" does not include an operator of a chatbot that is:

1. Not offered to the general public, such as internal workplace tools, clinician-supervised clinical tools, or university research systems; or

2. Used by a business entity primarily for customer service or strictly to provide users with information about available commercial services or products provided by the business entity, customer service account information, or other information strictly related to customer service.

For purposes of determining monthly active users, a covered entity shall aggregate monthly active users

33 across all chatbots offered by the covered entity and such entity's affiliates.

34 "Covered harm" means any of the following harms suffered by a user: death, a suicide attempt, self-harm
35 requiring medical attention, a psychiatric emergency resulting in urgent medical treatment, or a serious
36 physical injury that requires medical attention.

37 "Covered incident" means an incident in which a user suffered a covered harm arising from interactions
38 with a chatbot.

39 "Emotional dependence" means a pattern of user behavior or statements indicating that the user relies on
40 a chatbot as a primary source of emotional support or social connection, such as a user expressing that the
41 chatbot is his primary source of emotional support, a user expressing distress at the prospect of losing access
42 to the chatbot, or patterns of use suggesting the user is substituting the chatbot for human relationships.

43 "Explicit content" means content that meets any of the following:

44 1. Any description or representation, in whatever form, of nudity, sexual conduct, sexual excitement, or
45 sadomasochistic abuse, as those terms are defined in § 18.2-390, when such content is obscene, as defined in
46 § 18.2-372.

47 2. Content that provides specific instructions for, or that encourages, advocates for, or incites, suicide,
48 self-injury, or disordered eating behaviors; or

49 3. Graphic depictions of extreme violence that lack serious literary, artistic, political, or scientific value
50 for minors.

51 "Minor" means an individual younger than 18 years of age who has not been legally emancipated under
52 applicable state law.

53 "Monthly active user" means a unique user who interacts with a chatbot at least once during a 30-day
54 period, as measured using the operator's ordinary business records.

55 "Operator" means any person or entity that owns, controls, offers, or makes available a website, mobile
56 application, or digital service that provides a chatbot to users in the Commonwealth.

57 "Parent" means an adult with the legal right to make decisions on behalf of a minor, including a natural
58 parent, an adoptive parent, a legal guardian, or an individual with legal custody over the minor.

59 "User" means an individual who interacts with a chatbot.

60 **§ 59.1-615. Covered entities; requirement for certain systems and processes.**

61 A covered entity shall implement reasonable systems and processes to:

62 1. Identify when a user is developing emotional dependence on the chatbot and take reasonable steps to
63 reduce such dependence and associated risks of harm;

2. *Ensure that a chatbot does not make a materially false representation that it is a human being; and*

3. *Identify when a user is expressing suicidal thoughts, expressing intent to self-harm, or showing signs of an acute mental health crisis and promptly provide a clear and prominent crisis message, including crisis services information, to any such user.*

§ 59.1-616. Incident reporting.

A. 1. *If a covered entity obtains knowledge that a user faces an imminent risk of death or serious physical injury, the operator shall make reasonable efforts, within 24 hours, to notify appropriate emergency services or law enforcement to the extent practicable based on information the operator already possesses or can obtain through reasonable, user-facing prompts for the purpose of facilitating emergency assistance.*

2. *If the operator cannot make a notification under subdivision 1 because the operator lacks sufficient information to enable emergency response, the operator shall:*

a. *Promptly provide a clear and prominent message urging the user to contact emergency services and providing crisis services information;*

b. *Make reasonable efforts to encourage the user to seek immediate help from a trusted adult or emergency services; and*

c. *Document the steps taken and the basis for the operator's determination that notification was not practicable.*

3. *An operator that makes a notification in good faith under this subsection is not liable for damages solely for making the notification unless the operator acted with willful misconduct or gross negligence.*

B. *A covered entity shall submit a report to the Attorney General within 15 days of obtaining knowledge of a covered incident connected to one or more of its chatbots, which, to the extent known at the time of the report, shall include:*

1. *The date the operator obtained knowledge of the incident;*

2. *The date of the incident, if known;*

3. *A brief description of the incident and the basis for the operator's belief that the incident is connected to the chatbot; and*

4. *A description of any actions the operator took in response.*

A covered entity may submit a supplemental report within 60 days of the initial report to update or correct information learned through investigation.

C. 1. *Reports submitted under this section shall be confidential.*

2. *The Attorney General may publish aggregate information and statistics derived from such reports, so*

95 long as the publication does not identify individual users or disclose trade secrets.

96 **§ 59.1-617. Disclosure and notice requirements for chatbots.**

97 An operator shall (i) include a disclaimer to users of all ages that a chatbot is not a human via a static,
98 persistent disclosure and (ii) notify a user via a pop-up that he is not engaging with a human counterpart at
99 the following intervals:

100 1. Upon login to the chatbot;

101 2. Every 30 minutes of sustained user engagement;

102 3. When prompted by the user; and

103 4. When asked to provide advice legally regulated by a licensed industry, including medical, financial, or
104 legal advice.

105 **§ 59.1-618. Enforcement; civil penalties; individual actions.**

106 A. Whenever the Attorney General has reasonable cause to believe that any person has engaged in, is
107 engaging in, or is about to engage in any violation of this chapter, the Attorney General is empowered to
108 issue a civil investigative demand. The provisions of § 59.1-9.10 shall apply mutatis mutandis to civil
109 investigative demands issued under this section.

110 B. The Attorney General may initiate an action in the name of the Commonwealth and may seek an
111 injunction to restrain any violations of this chapter and civil penalties of up to \$50,000 for each violation.

112 1. For purposes of this section, a violation occurs when a covered entity fails to comply with a
113 requirement of this chapter.

114 2. Each day a covered entity fails to comply with a requirement constitutes a separate violation.

115 C. In any action brought under subsection B, the Attorney General may recover reasonable expenses
116 incurred in investigating and preparing the case and attorney fees.

117 D. Any person harmed by a violation of this chapter, or the parent or legal guardian of a minor harmed
118 by a violation of this chapter, may bring a civil action to recover actual damages, reasonable attorney fees
119 and costs, injunctive or declaratory relief, and, if the violation was willful and wanton, reckless, or grossly
120 negligent, punitive damages.

121 E. The rights and remedies provided by this chapter shall not be waived by contract. Any term in a
122 contract or agreement that purports to do any of the following is void and unenforceable as against public
123 policy: (i) waive or limit a right or remedy under this chapter; (ii) shorten the time to bring a claim under
124 this chapter; (iii) prevent a person from enforcing a claim under this chapter in court; or (iv) require
125 arbitration of a claim under this chapter.

126 *F. The duties and obligations imposed by this chapter are cumulative with any other duties or obligations*
127 *imposed under other law and shall not be construed to relieve any party from any duties or obligations*
128 *imposed under other law and do not limit any rights or remedies under existing law.*