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FISCAL AND POLICY NOTE
First Reader

Senate Bill 936
Finance

(Senator Hester, *et al.*)

**Consumer Protection - High-Risk Artificial Intelligence - Developer and
Deployer Requirements**

This bill establishes numerous standards and requirements for developers and deployers of “high-risk artificial intelligence” (AI) systems to protect against “algorithmic discrimination,” generally beginning February 1, 2026. The bill’s requirements include, among other things, risk management policies and impact assessments for developers and deployers. Deployers of AI systems must make certain disclosures to the public, including the types of systems they deploy and how they manage any known risks. Moreover, deployers must notify consumers when high-risk AI is used for certain adverse consequential decisions. The bill establishes penalty provisions and authorizes the Office of the Attorney General (OAG) to enforce the bill’s requirements. Specifically, OAG may (1) require that a developer disclose specified information; (2) initiate a civil action against a person that violates the bill; and (3) adopt regulations. The bill also authorizes a consumer to bring a civil action against a deployer if certain requirements are met. The bill contains a severability clause.

Fiscal Summary

State Effect: General fund expenditures increase, at least minimally, for OAG to enforce the bill’s requirements beginning in FY 2026, as discussed below. The bill’s penalty provisions are not anticipated to have a material impact on State revenues.

Local Effect: The bill is not anticipated to materially affect local government finances or operations.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary:

Definitions

The bill defines numerous terms related to high-risk AI.

- “Algorithmic discrimination” means the use of an AI system that results in an unlawful differential treatment or impact that disfavors an individual (or group of individuals) on the basis of specified characteristics – whether actual or perceived (*e.g.*, age, color, disability, ethnicity, etc.).
- “AI system” means a machine learning-based system that for any explicit or implicit objective, infers from the inputs the system receives how to generate outputs, including content, decisions, predictions, or recommendations that can influence physical or virtual environments.
- “Deployer” means a person doing business in the State that deploys or uses a high-risk AI system to make a consequential decision in the State.
- “Developer” means a person doing business in the State that develops – or intentionally and substantially modifies – a high-risk AI system that is offered, sold, leased, given, or otherwise provided to consumers in the State.
- “High-risk AI system” means an AI system that is specifically intended to autonomously make, or be a substantial factor in making, a consequential decision.

Applicability

The bill specifies situations and entities to which its requirements do not apply. For example:

- Except in certain situations related to employment and housing, the bill does not apply to a developer or deployer that uses an AI system acquired by (or for) the federal government or any federal agency or department, as specified.
- An insurer (or a high-risk AI system developed or deployed by an insurer for use in the business of insurance) is exempt if the insurer is regulated and supervised by the Maryland Insurance Administration.
- Certain developers and deployers who are covered entities under the federal Health Insurance Portability and Accountability Act are also exempt, as specified.

Standards for Developers and Deployers

Beginning February 1, 2026, both a developer and a deployer must use reasonable care to protect consumers from any known (or reasonably foreseeable) risks of algorithmic discrimination. In an enforcement action brought by OAG under the bill, there must be a rebuttable presumption that a developer or deployer used reasonable care, as required by the bill, if the developer or deployer complied with applicable provisions.

Developer Requirements: Beginning February 1, 2026, subject to specified requirements, a developer of a high-risk AI system may not offer, sell, lease, give, or otherwise provide to a deployer (or other developer) a high-risk AI system, unless the developer makes available to the deployer or other developer a statement disclosing the intended uses of the high-risk AI, including specified documentation (*e.g.*, the known or reasonably foreseeable limitations of the high-risk AI system, the purpose of the high-risk AI system and intended benefits, etc.). A developer that, on or after February 1, 2026, offers, sells, leases, licenses, gives, or otherwise makes available to a deployer or other developer a high-risk AI system, to the extent practicable, must make available to deployers and other developers the documentation and information necessary for a deployer or third party contracted by a deployer to complete an impact assessment, as specified. Any required disclosure must be updated if a developer performs an intentional and substantial modification to a high-risk AI system.

The bill establishes that a high-risk AI system must be presumed to satisfy applicable requirements if the system is in conformity with specified standards. The bill may not be construed to require a developer to disclose certain information (*e.g.*, a trade secret).

Each developer of a generative AI system that generates or modifies synthetic content must ensure that the output of the high-risk AI system meet specified requirements (*e.g.*, are marked at the time the output is generated and in a manner that is detectable by consumers).

Deployer Requirements: Beginning February 1, 2026, a deployer of a high-risk AI system must design, implement, and maintain a risk management policy and program for the system. Each risk management policy must meet specified requirements. For example, each policy must specify the principles, processes, and personnel that the deployer uses to identify, mitigate, and document any risk of algorithmic discrimination that is a reasonably foreseeable consequence of deploying or using the high-risk AI system.

On or after February 1, 2026, before initial deployment of a high-risk AI system or use of a high-risk AI system, a deployer must complete an impact assessment of the high-risk AI system; at least 90 days before a significant update, a deployer must complete a new impact assessment, as specified. Likewise, before a deployer deploys a high-risk AI system, the deployer must notify the consumer that the deployer has deployed a

high-risk AI system to make, or be a substantial factor in making, a consequential decision about the consumer and provide the consumer specified information. Beginning February 1, 2026, a deployer that has deployed a high-risk AI system must, if a consequential decision is adverse to the consumer, provide to the consumer specified information, including, for example, an opportunity to correct any incorrect personal data that the system processed in making (or used as a substantial factor in making) the adverse consequential decision, as well as an opportunity to appeal the adverse decision, allowing for human review, as specified. The information must be provided directly to the consumer and must be in plain language and an accessible format.

Exceptions and Other Exemptions

The bill establishes certain exceptions to its requirements. For example, the bill specifies that its requirements may not be construed to restrict a developer's, a deployer's, or another person's ability to comply with federal, State, or local law, comply with judicial or other regulatory inquiries, cooperate with law enforcement, etc.

Penalties and Enforcement Provisions

A person who violates the bill's requirements is subject to a fine of up to \$1,000. Moreover, a person who *willfully* violates the bill is subject to a fine of at least \$1,000 (\$10,000 maximum). In either case, if applicable, a violator is also subject to reasonable attorney's fees, expenses, and costs, as determined by the court. *Each* violation of the bill is a separate violation subject to the civil penalties established by the bill.

Before bringing an action against a developer or a deployer for a violation of the bill, OAG, in consultation with the developer or deployer, must determine if it is possible to cure the violation. If so, OAG may issue a notice of violation and afford the developer or deployer the opportunity to cure the violation within 45 days after the receipt of the notice of violation. OAG must consider specified factors when determining whether to grant an opportunity to cure a violation, including the number of violations and whether a violation was likely caused by human or technical error. If a developer or deployer fails to cure a violation within 45 days after receipt of a notice of violation, OAG may proceed with the action. In an action brought under this authorization, it is an affirmative defense if (1) a violation of any provision of the bill is discovered through red-teaming, which is adversarial testing conducted for specified purposes and (2) within 45 days after discovering such a violation, the developer or deployer cures the violation and meets other specified requirements.

Civil Actions

A consumer may bring a civil action against a deployer if (1) the consumer initially filed a timely administrative charge or complaint under federal, State, or local law alleging a discriminatory act by the deployer as a result of a consequential decision about the consumer that is made by a high-risk AI system of the deployer; (2) at least 180 days have elapsed since the date of filing of the complaint; and (3) the civil action is filed not more than two years after the occurrence of the alleged discriminatory act.

Current Law:

Artificial Intelligence – Definition

Under § 3.5-801 of the State Finance and Procurement Article, “Artificial Intelligence” means a machine-based system that (1) can, for a given set of human-defined objectives, make predictions, recommendations, or decisions influencing real or virtual environments; (2) uses machine and human-based inputs to perceive real and virtual environments and abstracts those perceptions into models through analysis in an automated manner; and (3) uses model inference to formulate options for information or action.

Artificial Intelligence – State Agencies

Chapter 496 of 2024 expanded the responsibilities of the Secretary of Information Technology as they relate to the procurement and use of AI by State agencies and codified the Governor’s AI Subcabinet that was established by [Executive Order 01.01.2024.02](#). Broadly, among other things, the Act:

- requires the Department of Information Technology (DoIT) to adopt policies and procedures, in consultation with the Governor’s AI Subcabinet, concerning the development, procurement, deployment, use, and ongoing assessment of systems that employ high-risk AI by a unit of State government;
- prohibits units of State government from procuring or deploying a new system that employs AI unless the system complies with the policies and procedures adopted by DoIT;
- requires each unit of State government to conduct a data inventory to identify data that meets criteria established by the Chief Data Officer and that is (1) necessary for the operations of the unit or otherwise required to be collected as a condition to receive federal funds or by federal or State law and (2) in a form prescribed by the Chief Data Officer, including when the data is used in AI; and
- requires each unit of State government to conduct an inventory of systems that employ high-risk AI.

State Fiscal Effect: General fund expenditures likely increase, at least minimally, for OAG to handle enforcement under the bill. OAG advises that it may require as many as 11 additional positions (4 full-time assistant Attorneys General, 4 forensic technologists, 1 investigator, 1 administrative officer, and 1 paralegal), with corresponding general fund expenditures of up to \$1.4 million in fiscal 2026 (accounting for the bill’s October 1, 2025 effective date) and \$1.8 million by fiscal 2030.

However, the Department of Legislative Services advises that the extent of resources potentially needed by OAG is dependent on the number of complaints filed under the bill and the level of effort involved in each case, in addition to the growth of the use of AI in future years. While generally acknowledging that expenditures likely increase at least minimally for enforcement efforts, without experience under the bill, the need for additional staff is unclear. To the extent that additional staffing resources are required, OAG may request them through the annual budget process.

Small Business Effect: The bill establishes a significant regulatory framework related to high-risk AI systems. Thus, to the extent any small businesses in the State qualify as a developer or deployer, they may be meaningfully affected.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

Information Source(s): Department of Information Technology; Office of the Attorney General (Consumer Protection Division); Judiciary (Administrative Office of the Courts); Department of Legislative Services

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