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THE VOICE OF THE
INNOVATION ECONOMY

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February 28, 2025

The Honorable C.T. Wilson
Chair
House Economic Matters Committee
Maryland House of Delegates
230 Taylor House Office Building
6 Bladen Street, Annapolis, MD 21401

RE: HB 1331 (Qi) - Consumer Protection - Artificial Intelligence – Unfavorable

Dear Chair Wilson and Members of the Committee,

On behalf of TechNet, I'm writing to share our concerns on HB 1331.

TechNet is the national, bipartisan network of technology CEOs and senior executives that promotes the growth of the innovation economy by advocating a targeted policy agenda at the federal and 50-state level. TechNet's diverse membership includes dynamic American businesses ranging from startups to the most iconic companies on the planet and represents over 4.5 million employees and countless customers in the fields of information technology, artificial intelligence, e-commerce, the sharing and gig economies, advanced energy, transportation, cybersecurity, venture capital, and finance. TechNet has offices in Austin, Boston, Chicago, Denver, Harrisburg, Olympia, Sacramento, Silicon Valley, Tallahassee, and Washington, D.C.

Artificial intelligence (AI), machine learning (ML), and the algorithms that often support artificial intelligence have generated policymaker interest. We acknowledge that as technological advances emerge, policymakers' understanding of how these technologies work is vital for responsible policymaking. Our member companies are committed to responsible AI development and use. TechNet will advocate for a federal AI framework that brings uniformity to all Americans regardless of where they live, encourages innovation, and ensures that consumers are protected.

Last month, TechNet was pleased to support HB 956, which established the Workgroup on Artificial Intelligence Implementation. These task forces establish lines of communication, provide industry expertise on AI, and allow for the development of consensus frameworks on reasonable AI regulations. We believe that workgroups and task forces are an important first step for deliberation on this complex issue. As drafted, TechNet is concerned about HB 1331.

Given the nearly infinite range of uses of AI systems, a generic, one-size-fits-all approach to regulation is impractical and could prevent or slow a business, government, or consumer's access to useful technology. Instead, policymakers should ensure that any proposal takes a risk-based approach that targets harms raised by specific applications of AI systems in high-risk use cases. Proposed regulations should focus on specifically defined use cases, rather than a general definition of "high risk", to enable clear legal analysis and an efficient development process.

More specific suggestions can be found after my signature in these written remarks. In summary, we have suggestions for the current definitions in the bill to make it more interoperable with other states' proposed legislation. Additionally, while the bill contains exemptions related to trade secrets, other provisions of the bill are in direct conflict with said exemptions, such as the disclosure requirements. In the same manner, we believe that a summary or categories of requested data throughout the bill would suffice and reduce customer confusion.

Regarding enforcement, TechNet is opposed to a private right of action, as we believe PRAs can lead to frivolous claims. Any enforcement should rest solely with the Attorney General. We would also like to see a guaranteed cure option for any alleged violations. Finally, we oppose the Attorney General adopting regulations as that leads to business uncertainty.

Artificial intelligence is a complex issue that deserves a thoughtful approach that balances consumer protection with business innovation. Thank you for your consideration of our concerns and please let me know if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Margaret Durkin". The script is cursive and fluid, with the first letter of each word being capitalized and prominent.

Margaret Durkin
TechNet Executive Director, Pennsylvania & the Mid-Atlantic

14-5001.

"Algorithmic Discrimination" – We're requesting the sponsor amend this definition to clarify that the bill's obligations tie back to current anti-discrimination laws.

"Unlawful differential treatment or impact" is a vague concept that will be challenging for businesses to comply with, while actions that violate anti-discrimination laws are well understood. This ensures that existing non-discrimination protections can be applied in a manner that is easily understood by all stakeholders and supported by the current body of state and federal anti-discrimination law. We request the following language instead:

- **"Algorithmic discrimination" means the use of an artificial intelligence system that violates state or federal anti-discrimination laws, including federal statutes prohibiting discrimination on the basis of race, color, sex, disability, religion, familial status, national origin, or citizenship status**

"Artificial Intelligence" - We request this definition be amended to read "machine-learning" technology in order to clearly capture emergent, advanced AI technologies, rather than risk an overly broad inclusion of simple processing algorithms that have existed for decades.

"Dataset Card" – We are suggesting the sponsor strike this definition and any reference to dataset cards and instead point to our "System Card" suggested definition.

High Risk AI – We request the following definition of "High Risk Artificial Intelligence System":

- **"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 task, (ii) improve the result of a previously completed human activity, (iii) detect any decision-making patterns or any deviations from pre-existing decision-making patterns, or (iv) perform a preparatory task to an assessment relevant to a consequential decision. "High-risk artificial intelligence system" does not include any of the following technologies:**
 - 1. Anti-fraud technology that does not use facial recognition technology;**
 - 2. Anti-malware technology;**
 - 3. Anti-virus technology;**
 - 4. Artificial intelligence-enabled video games;**
 - 5. Autonomous vehicle technology;**
 - 6. Calculators;**
 - 7. Cybersecurity technology;**
 - 8. Databases;**

9. **Data storage;**
10. **Firewall technology;**
11. **Internet domain registration;**
12. **Internet website loading;**
13. **Networking;**
14. **Spam and robocall filtering;**
15. **Spell-checking technology;**
16. **Spreadsheets;**
17. **Web caching;**
18. **Web hosting or any similar technology; or**
19. **Technology that communicates with consumers in natural language for the purpose of providing users with information, making referrals or recommendations, and answering questions and is subject to an acceptable use policy that prohibits generating content that is discriminatory or unlawful.**

"International and Substantial Modification" – This is not defined in the bill but is used in section 14-5006.

"Model card" – We suggest striking the current definition and related terms and instead using the term "System Card". Suggested language below:

- "System Card" means documentation that developer makes available to deployers, and other developers of high-risk AI systems which includes information for deployer, or third party contracted by a deployer, necessary to assist in completion of an impact assessment.

14-5002.

On page 3, line 29, we request that **material** be added after "**foreseeable**".
On page 4, line 21, we request that **material** be added after "**foreseeable**".
On page 5, line 27, we request that **material** be added after "**foreseeable**".

14-5003.

On page 6, line 28, we request that **material** be added after "**foreseeable**".
On page 7, line 6, we request that **material** be added after "**foreseeable**".

On page 7, line 26, please strike "**at least as stringent as**". This is very subjective standard that will be difficult for compliance purposes.

On page 7, lines 27-28, strike the proposed attorney general framework. We caution against state-by-state legal frameworks that increase complexity and cost for compliance.

14-5004.

On page 9, line 2, we request that **material** be added after "**foreseeable**".

On page 8, strike lines 19-30, and on page 9, strike lines 1-11. TechNet requests this extensive amendment because these disclosure requirements will result in companies providing extensive information that is likely to be confusing and difficult to understand by consumers. More importantly, the language in the current draft would require the disclosure of confidential and proprietary information, as well as trade secrets that are otherwise protected in the bill. Further, given the current competitive environment, such extensive disclosures run the risk of providing foreign adversaries with detailed information about American-developed AI systems that can be used to advance their position in the global marketplace, harming American interests. As such, we request deleting these provisions.

14-5005.

We are concerned with some of the requirements under the standardized disclosure section. For example, we are opposed to disclosing the data that the high-risk artificial intelligence system used in making or contributing to a decision and its source. We believe that a summary or categories of data would suffice.

Furthermore, we would replace **“contribute to”** in all places where it occurs with the defined term **“is a substantial factor in”** to clearly identify the scope of decisions necessitating disclosure to the consumer.

14-5006.

Regarding the 90-day disclosure update requirement, we believe that the clock should start when a deployer is notified and given information as required by this act. We suggest adding **“of being notified by the developer that”** after **90 days**.

On page 11, line 13, strike **“an analysis of”**. Add **“material”** after **foreseeable** in the same line. Again, in this section, our members are concerned about the specificity this bill requires, such as descriptions of inputs, outputs, data used, and metrics. We believe that this contradicts any trade secret exemption listed in the bill. In particular, on lines 19-22, we recommend adding “summary” before the word “description” in order to avoid requiring disclosure of proprietary or legally protected information.

On page 11, line 17, we request that **material** be added after **“foreseeable”**.

14-5007.

We request the sponsor remove language granting the Attorney General the ability to adopt regulations. We are concerned that there is wide latitude in this bill given to the AG. Specifically, the provision on page 13 which would allow the AG to require a developer or deployer to provide disclosures otherwise for purposes of evaluation. We also request that a notice and ability to cure, along with a reasonable timeline for compliance, be added to encourage deployers of high risk artificial intelligence technology to proactively fix any ongoing harm or discrimination.

Finally, we are requesting the private right of action (PRA) be removed from this legislation. It's our belief that PRAs lead to frivolous lawsuits that don't derive real value for consumers, and that enforcement should rest solely with the Attorney General.

Exemptions

We believe the bill could benefit from exemptions found in other states' legislation.

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

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

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

D. Nothing in this chapter shall be construed to impose any obligation on a developer or deployer that adversely affects the legally protected rights or freedoms of any person, including the rights of any person to freedom of speech or freedom of the press guaranteed in the First Amendment to the Constitution of the United States.

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

F. The obligations imposed on developers or deployers by this chapter shall be deemed satisfied for any bank, out-of-state bank, credit union, federal credit union, mortgage lender, out-of-state credit union, savings institution, or any affiliate, subsidiary, or service provider thereof if such bank, out-of-state bank, credit union, federal credit union, mortgage lender, out-of-state credit union, savings institution, or affiliate, subsidiary, or service provider is subject to the jurisdiction of any state or federal regulator under any published guidance or regulations that apply to the use of high-risk artificial intelligence systems and such guidance or regulations.

G. The provisions of this chapter shall not apply to any insurer, or any high-risk artificial intelligence system developed by or for or deployed by an insurer for use in the business of insurance, if such insurer is regulated and supervised by the Maryland Insurance Administration or a comparable federal regulating body and subject to examination by such entity under any existing statutes, rules, or regulations pertaining to unfair trade practices and unfair discrimination prohibited under XXXX of XXXX, or published guidance or regulations that apply to the use of high-risk artificial intelligence systems and such guidance or regulations aid in the prevention and mitigation of algorithmic discrimination caused by the use of a high-risk artificial intelligence system or any risk of algorithmic discrimination that is reasonably foreseeable as a result of the use of a high-risk artificial intelligence system. Nothing in this chapter shall be construed to delegate existing regulatory oversight of the business of insurance to any department or agency other than the Maryland Insurance Administration.

H. The provisions of this chapter shall not apply to the development of an artificial intelligence system that is used exclusively for research, training, testing, or other pre-deployment activities performed by active participants of any sandbox software

or sandbox environment established and subject to oversight by a designated agency or other government entity and that is in compliance with the provisions of this chapter.

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

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

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

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