



Senate Finance Committee

February 27, 2025

Senate Bill 936 – *Consumer Protection – High-Risk Artificial Intelligence – Developer and Deployer Requirements*

### **SUPPORT WITH AMENDMENT**

The Maryland Tech Council (MTC), with over 800 members, is the State’s largest association of technology companies. Our vision is to propel Maryland to be the country's number one innovation economy for life sciences and technology. MTC brings the State’s life sciences and technology communities into a single, united organization that empowers members to achieve their goals through advocacy, networking, and education. On behalf of MTC, we submit this letter of support with amendment for Senate Bill 936.

MTC supports the development of a sensible framework for the regulation of high-risk artificial intelligence. We believe that elected leaders, regulators, and the private sector must work together to ensure that the use of AI is safe, ethical, responsible, and trustworthy and that we must protect against unintended harm, such as bias and disproportionate impact on marginalized communities. In 2024, the MTC developed an “Artificial Intelligence Policy Statement” that contains a set of factors to be considered by policymakers and regulators when deliberating new efforts to govern the use of AI. These factors are the basis for how MTC evaluates AI policies and regulations.

To that end, we appreciate the sponsor’s focus on “high-risk” use cases of AI when used to make a “consequential decision.” Additionally, we appreciate this legislation’s focus on preventing algorithmic discrimination. Numerous MTC member companies have reviewed this legislation and have various suggestions to improve the bill and strike the proper balance between strong consumer protections, practicality of compliance, and proportionate enforcement. MTC members have shared the following feedback on the bill:

#### **14-47A-01 - Definitions**

- “Generative Artificial Intelligence” definition should be changed to clarify that it applies to an “Artificial Intelligence SYSTEM that is capable of...” This is consistent with other state definitions, including the AI bill just passed in Virginia.
- “Intentional and Substantial Modification” should be expanded to include additional clarity around customization by deployers.
- Consider adding definitions of the following terms:
  - "MACHINE LEARNING" MEANS THE DEVELOPMENT OF ALGORITHMS TO BUILD DATA-DERIVED STATISTICAL MODELS THAT ARE CAPABLE OF DRAWING INFERENCES FROM PREVIOUSLY UNSEEN DATA WITHOUT EXPLICIT HUMAN INSTRUCTION.
  - "RED-TEAMING" MEANS ADVERSARIAL TESTING TO IDENTIFY THE POTENTIAL ADVERSE BEHAVIORS OR OUTCOMES OF AN ARTIFICIAL INTELLIGENCE SYSTEM, IDENTIFY HOW SUCH BEHAVIORS OR OUTCOMES OCCUR, AND STRESS TEST THE SAFEGUARDS AGAINST SUCH BEHAVIORS OR OUTCOMES.
  - "TRADE SECRET" HAS THE 15 MEANING STATED IN § 11-1201 OF THIS ARTICLE.
- Under (K)(2)(II), language should be added that a “High-Risk Artificial Intelligence System” includes exempting “Clinical and Pre-Clinical Research and Development.” This would encourage innovation and protect companies that are using AI in R&D activities, which is common in life sciences and Fintech.

#### 14-47A-03 – Developer Obligations

- The Effective Date should be changed so that there are at least 18 months from the passage for implementation; the current implementation deadline of February 1, 2026, is too short and will hinder compliance.
- We are concerned that smaller companies will have difficulty complying with this section (as well as 14-47A-04). We request consideration of exempting small businesses with fewer than 50 employees or \$5 million in revenue from full documentation and assessment requirements or to offer a simplified compliance model. We would also recommend a 2-year grace period for start-up companies. Making such provisions for small businesses will allow small tech firms to grow without overly burdensome compliance overhead.
- In (A)(1) the “reasonable care” standard should be changed to “Industry Standard Means.” This will provide more certainty around compliance.
- The bill should recognize that multiple developers may be involved, so disclosures should be made to other developers as well as deployers, which is inconsistently applied throughout the bill. Further, the addition of this language will fairly distribute obligations.

WHERE MULTIPLE DEVELOPERS DIRECTLY CONTRIBUTE TO THE DEVELOPMENT OF A HIGH-RISK ARTIFICIAL INTELLIGENCE SYSTEM, EACH DEVELOPER SHALL BE SUBJECT TO THE OBLIGATIONS AND OPERATING STANDARDS APPLICABLE TO DEVELOPERS PURSUANT TO THIS SECTION SOLELY WITH RESPECT TO ITS ACTIVITIES CONTRIBUTING TO THE DEVELOPMENT OF THE HIGH-RISK ARTIFICIAL INTELLIGENCE SYSTEM

- More clarity around treatment of synthetic data, especially around marking requirements where certain pieces may not be technologically feasible.

#### 14-47A-04 – Deployer Obligations

- Clarity should be added for deployer obligations that they apply to using a high-risk artificial intelligence system to make a consequential decision – in both the case of risk management policies and for completing impact assessments.
- Include the same provisions for small businesses as referenced in bullet #2 in 14-47A-03 above.
- Recognition of compliance with risk management frameworks already in place.

- HIGH-RISK ARTIFICIAL INTELLIGENCE SYSTEMS THAT ARE IN CONFORMITY WITH THE LATEST VERSION OF THE ARTIFICIAL INTELLIGENCE RISK MANAGEMENT FRAMEWORK PUBLISHED BY THE NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY, STANDARD ISO/IEC 42001 OF THE INTERNATIONAL ORGANIZATION FOR STANDARDIZATION, OR ANOTHER NATIONALLY OR INTERNATIONALLY RECOGNIZED RISK MANAGEMENT FRAMEWORK FOR ARTIFICIAL INTELLIGENCE SYSTEMS, OR PARTS THEREOF, SHALL BE PRESUMED TO BE IN CONFORMITY WITH RELATED REQUIREMENTS SET OUT IN THIS SECTION AND IN ASSOCIATED REGULATIONS. IF A DEPLOYER COMPLETES AN IMPACT ASSESSMENT FOR THE PURPOSE OF COMPLYING WITH ANOTHER APPLICABLE LAW OR REGULATION, SUCH IMPACT ASSESSMENT SHALL BE DEEMED TO SATISFY THE REQUIREMENTS ESTABLISHED IN THIS SUBSECTION IF SUCH IMPACT ASSESSMENT IS REASONABLY SIMILAR IN SCOPE AND EFFECT TO THE IMPACT ASSESSMENT THAT WOULD OTHERWISE BE COMPLETED PURSUANT TO THIS SUBSECTION.

- Further clarity on what information is both helpful and reasonable for consumers to receive in direct disclosures or while using an interactive artificial intelligence system should occur.

#### 14-47A-07 - Enforcement

- Under (A), clarify that “This Act shall be exclusively enforced by the Attorney General.”
- Language should be added that Attorney General requests for information should be subject to an investigative demand.

- Protections should be added for information provided to the Attorney General by including the following language:

IN RENDERING AND FURNISHING ANY INFORMATION REQUESTED PURSUANT TO A CIVIL INVESTIGATIVE DEMAND ISSUED PURSUANT TO THIS SECTION, A DEVELOPER OR DEPLOYER MAY REDACT OR OMIT ANY TRADE SECRETS OR INFORMATION PROTECTED FROM DISCLOSURE BY STATE OR FEDERAL LAW. IF A DEVELOPER OR DEPLOYER REFUSES TO DISCLOSE, REDACTS, OR OMITS INFORMATION BASED ON THE EXEMPTION FROM DISCLOSURE OF TRADE SECRETS, SUCH DEVELOPER OR DEPLOYER SHALL AFFIRMATIVELY STATE TO THE ATTORNEY GENERAL THAT THE BASIS FOR NONDISCLOSURE, REDACTION, OR OMISSION IS BECAUSE SUCH INFORMATION IS A TRADE SECRET. TO THE EXTENT THAT ANY INFORMATION REQUESTED PURSUANT TO A CIVIL INVESTIGATIVE DEMAND ISSUED PURSUANT TO THIS SECTION IS SUBJECT TO ATTORNEY-CLIENT

PRIVILEGE OR WORK-PRODUCT PROTECTION, DISCLOSURE OF SUCH INFORMATION PURSUANT TO THE CIVIL INVESTIGATIVE DEMAND SHALL NOT CONSTITUTE A WAIVER OF SUCH PRIVILEGE OR PROTECTION. ANY INFORMATION, STATEMENT, OR DOCUMENTATION PROVIDED TO THE ATTORNEY GENERAL PURSUANT TO THIS SECTION SHALL BE EXEMPT FROM DISCLOSURE UNDER THE MARYLAND PUBLIC INFORMATION ACT.

#### **14-47A-08 – Civil Action**

- The Civil Action created under this subtitle should be eliminated and replaced with language that “NOTHING IN THIS ACT SHALL BE CONSTRUED AS PROVIDING THE BASIS FOR, OR BE SUBJECT TO, A PRIVATE RIGHT OF ACTION FOR VIOLATIONS OF THIS OR ANY OTHER LAW.”

#### **For more information call:**

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