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February 25, 2025

The Honorable Pam Beidle
Chair
Senate Finance Committee
Maryland Senate
3 East Miller Senate Office Building
11 Bladen Street, Annapolis, MD 21401

RE: SB 936 (Hester) - Consumer Protection - High-Risk Artificial Intelligence - Developer and Deployer Requirements – Unfavorable

Dear Chair Beidle and Members of the Committee,

On behalf of TechNet, I'm writing to share remarks on SB 936 related to high-risk artificial intelligence.

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.

Thank you for allowing TechNet the opportunity to share comments on this bill. We represent a diverse set of members who operate in different AI spaces with different functions. Below are concerns and suggestions we've been made aware of on SB 936 as currently drafted. Additionally, TechNet is supportive of AI workgroups and task forces as they allow for thoughtful deliberation on complex issues. Earlier this month, TechNet was pleased to support enabling legislation in

the Maryland House that would establish a workgroup on artificial intelligence innovation. We believe that a workgroup is the best first step when addressing AI regulation in the states.

Thank you again for the opportunity to comment on SB 936.

Sincerely,

Margaret Durkin

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

TechNet Comments
14-47A-01. – Definitions

"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.**

"Consequential Decision" - We request that the sponsor limit financial services to credit-related services. Suggested language includes striking **"financial or lending services"** and inserting **LOANS FROM A LENDING SERVICE AND DOES NOT INCLUDE FRAUD DETECTION OR FRAUD DETERRENT TECHNOLOGY.** Or, on page 3, line 29, please consider changing **"financial or lending services"** to **a lending decision**. On Page 3, line 28, please strike **"or provision of",** and on page 3, line 30, please strike "**or the provision of"**.

"Developer" – In this definition, TechNet requests the sponsor replaces **"offered, sold, leased, given, or otherwise provided to consumers in the state"** with the language: **MADE AVAILABLE FOR USE IN THE STATE**.

"Intentional and substantial modification" – We're requesting the phrase **AND MATERIAL** after the word **"deliberate".** Additionally, we believe that any intentional and substantial modification should be reflective of new material risks, rather than reasonably foreseeable ones. Further, the current definition

concerningly still includes a reference to AI models despite the focus again being on high-risk AI systems, and it is not clear what the intent is in clause (ii). Specifically, the inclusion of clause (ii) is concerning and technically confusing as changing the purpose of a general purpose AI model would mean it is no longer a general purpose model and outside the scope of this bill. We request the sponsor strike (L)(1)(II) on page 6, lines 19-20.

"Substantial Factor" – On page 7, line 27-28, we request striking **"generated by an artificial intelligence system"**. Also on page 7, at line 30, we request replacing the **or** with an **"and".** On page 8, after line 2, add:

- **and (iii) generated by an artificial intelligence system.**

"Synthetic content" **–** We request the sponsor amend this definition and suggested language is below.

- "Synthetic content" means information, such as images, video, audio, ~~clips,~~ and ~~text,~~ **content** that has been ~~significantly modified~~ ~~or~~ generated by algorithms, including by artificial intelligence.

14-47A-02 – Exemptions

On page 8, line 22, we're requesting the following changes. These edits are intended to avoid duplication of regulatory oversight and inconsistencies

> (2) AN INSURER, ~~OR~~ **AN INSURANCE PRODUCER LICENSED BY THE STATE,** OR A HIGH–RISK ARTIFICIAL INTELLIGENCE SYSTEM DEVELOPED FOR OR DEPLOYED **BY OR ON BEHALF OF** AN INSURER **OR AN INSURANCE PRODUCER** FOR USE IN THE BUSINESS OF INSURANCE, IF THE INSURER OR INSURANCE PRODUCER IS SUBJECT TO THE JURISDICATON OF ~~OR REGULATED AND SUPERVISED BY~~ THE INSURANCE ADMINISTRATION **AND SUBJECT TO**~~AND SUBJECT TO THE PROVISIONS UNDER TITLE 13 OF THIS ARTICLE~~; **EXAMINATION BY SUCH ENTITY UNDER ANY EXISTING STATUTES, RULES, OR REGULATIONS**; OR

On page 9, line 6, after **"services"** we request the addition of **TO OR FOR A HEALTHCARE ENTITY** before "using".

Additionally, we request the following additional exemptions:

(X) A REGULATED ENTITY SUBJECT TO THE SUPERVISION AND REGULATION OF EITHER THE FEDERAL HOUSING FINANCE AGENCY;

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, or 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, or 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.

14-47A-03. – Developers

On page 9, line 12, we request that **material** be added after **"foreseeable".**

At (3) (V), replace "should" with **IS INTENDED TO.**

And add **BASED ON KNOWN HARMFUL OR INAPPROPRIATE APPLICATIONS** after the phrase "**not be used".** This would clarify the reporting and documentation requirement to specify that the developer is responsible for providing documentation describing how a high-risk artificial intelligence system should not be used based on known harmful or inappropriate applications.

Regarding documentation requirements, we believe that these requirements are broad and loop in AI models and "dataset card files". This provision needs to be narrowed to only require relevant impact assessments. We propose that the sponsor strike lines 16-23 on page 11 and insert for new (I) "**the artifacts including system cards or predeployment impact assessments, including any risk management policy designed and implemented and any relevant impact assessment completed".**

On page 12, line 13, we request striking **"and at least as stringent as".** This is very subjective standard that will be difficult for compliance purposes. "Substantially equivalent to" is enough to ensure they are aligned with the listed frameworks.

Our members remain concerned about the obligations to mark synthetic content as they believe it's technically infeasible at this time. As written, the bill applies the synthetic marking requirements to all generative AI systems; however, it seems this may be a drafting error as the provision also references high-risk AI systems. The bill is otherwise tailored to high-risk AI applications and this provision should take the same approach. Tailored changes are needed to clarify the scope of the synthetic marking requirements. We suggest the following changes in (G)(1):

- On page 12, line 24, add **high-risk** before **"generative"** and strike **"or modifies**" on line 25.

14-47A-04. – Deployers

In (A)(1), we're requesting the sponsor align that language with the language in the developer section. Specifically, by adding in language **of a high-risk artificial intelligence system**. Additionally, we request the word **material** be added after **"foreseeable"** on page 13, line 25.

On the risk management section, on page 14, line 3, please strike **"and maintain".** Also, on page 14 at line 6, strike **"and maintained".** In addition, please strike lines 13-14. On line 15, strike **"and in consideration of"** and add "**considering"** after **"reasonable".** Like in the developer section, we request the sponsor strike the phrase **"and at least as stringent as"** on lines 29-30 on page 14. And again, on page 15, lines 10-11.

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. The timeline for such assessments may prove impractical, particularly as the risk of discrimination may not be apparent on its face. We request the following language on page 15, starting at line 18:

- (II) ~~**AT LEAST**~~ **WITHIN** 90 DAYS ~~BEFORE~~ **OF BEING NOTIFIED BY THE DEVELOPER THAT** A SIGNIFICANT UPDATE TO A HIGH–RISK ARTIFICIAL INTELLIGENCE SYSTEM IS ~~**MADE**~~ AVAILABLE, A DEPLOYER SHALL COMPLETE AN IMPACT ASSESSMENT OF THE HIGH–RISK ARTIFICIAL INTELLIGENCE SYSTEM IF THE UPDATE PRODUCES A NEW VERSION OR RELEASE ~~**OR SIMILAR CHANGE**~~ TO THE HIGH–RISK ARTIFICIAL INTELLIGENCE SYSTEM THAT:

On page 15, line 23, strike **"significant"** and replace it with **"material".**
On page 16, at line 1 and at line 10, strike the phrase **"An analysis of".** On page 17, line 3, strike "**contemporary social science standards"** and replace with **"standard industry practices".** Also on page 17, line 28, strike **"will"** and replace with **"is intended to**". Add **"if any"** after "assess" on line 28, and strike "**and the method by which the system measures or assesses personal characteristics or attributes".** Without this strike, this provision would require the disclosure of information otherwise protected as s or confidential or proprietary information.

Regarding consumer disclosures, SB 936 goes far beyond the intent to provide an individual notice when a consumer is interacting with an AI system. Such a broad and prescriptive requirement is not risk-based and creates serious concerns about privacy risks. Furthermore, the opt-out provision on page 17 includes a novel requirement. We urge this provision be narrowed to what is required under the Colorado AI Act and strike the reference to an opt-out. We suggest the following language:

- **Disclosures are not required under circumstances in which it would be obvious to a reasonable person that the person is interacting with an artificial intelligence system.**

On page 18, line 3, add **",if any"** after **"system."**

On page 18, strike lines 9-18, and on page 19, strike lines 1-9. 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 the entire subsection.

On adverse decisions, this bill doesn't include **"technically reasonable and practicable"** language for allowing human review, and it provides an overly prescriptive requirement for how such information should be provided to users. We urge the inclusion of this needed flexibility for compliance. We request the sponsor strike 14-47A-04(F).

To align with the Developer section, please add the following trade secret language:

(X) THAT IS A TRADE SECRET, AS DEFINED IN § 11–1201 OF THIS ARTICLE, OR OTHERWISE PROTECTED FROM DISCLOSURE UNDER STATE OR FEDERAL LAW; OR
(X) THE DISCLOSURE OF WHICH WOULD:
(X) PRESENT A SECURITY RISK TO THE DEPLOYER; OR
(XX) REQUIRE THE DEPLOYER TO DISCLOSE CONFIDENTIAL OR PROPRIETARY INFORMATION.

Cure Period
We appreciate the sponsor including the right to cure provisions in this bill; however, we prefer that a cure option is always included, rather than be at the discretion of the Attorney General. Additionally, we're requesting that any cure period be 90 days. We are also concerned by the inclusion of "any harm" as part of this obligation. This is far too broad and could apply to any potential harm, no matter how minor or unlikely. We recommend that this be tied to "known harms of algorithmic discrimination" to align within the intent of the bill.

Enforcement
We request the sponsor remove language granting the Attorney General the ability to adopt regulations. Additionally, we request amendments to the affirmative defense requirements to allow for other methods than only red-teaming. 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.