AN ACT

RELATING TO ARTIFICIAL INTELLIGENCE; ENACTING THE ARTIFICIAL
INTELLIGENCE ACT; REQUIRING NOTICE OF USE, DOCUMENTATION OF
SYSTEMS, DISCLOSURE OF ALGORITHMIC DISCRIMINATION RISK AND RISK
INCIDENTS; REQUIRING RISK MANAGEMENT POLICIES AND IMPACT
ASSESSMENTS; PROVIDING FOR ENFORCEMENT BY THE STATE DEPARTMENT
OF JUSTICE AND FOR CIVIL ACTIONS BY CONSUMERS FOR INJUNCTIVE OR
DECLARATORY RELIEF.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be
cited as the "Artificial Intelligence Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
Artificial Intelligence Act:

A. "algorithmic discrimination" means any condition
in which the use of an artificial intelligence system results

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1   in an unlawful differential treatment or impact that disfavors

2   a person on the basis of the person's actual or perceived age,

3   color, disability, ethnicity, gender, gender identity, genetic

4   information, proficiency in the English language, national

5   origin, race, religion, reproductive health, veteran status or

6   other status protected by the New Mexico Civil Rights Act or

7   federal law, but does not include:

8   (1)   the offer, license or use of a high-risk

9   artificial intelligence system by a developer or deployer for

10   the sole purpose of:

11   (a)   the developer's or deployer's self-

12   testing to identify, mitigate or ensure compliance with state

13   and federal law; or

14   (b)   expanding an applicant, customer or

15   participant pool to increase diversity or redress historical

16   discrimination; or

17   (2)   an act or omission by or on behalf of a

18   private club or other entity that is not open to the public

19   pursuant to federal law;

20   B.   "artificial intelligence system" means a:

21   (1)   machine learning-based system that, for an

22   objective, infers from the inputs the system receives how to

23   generate outputs, including content, decisions, predictions and

24   recommendations, that can influence physical or virtual

25   environments; or

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1   (2)   system that a developer markets or

2   describes in its technical documentation as using artificial

3   intelligence or machine learning;

4   C.   "consequential decision" means a decision that

5   has a material legal or similarly significant effect on the

6   provision or denial to a consumer of or the cost or terms of:

7   (1)   education enrollment;

8   (2)   employment or an employment opportunity;

9   (3)   a financial or lending service;

10   (4)   health care service;

11   (5)   housing;

12   (6)   insurance; or

13   (7)   legal service;

14   D.   "consumer" means a resident of New Mexico;

15   E.   "department" means the state department of

16   justice;

17   F.   "deploy" means to put into effect, host or

18   otherwise commercialize an artificial intelligence system;

19   G.   "deployer" means a person or public entity that

20   deploys or uses a high-risk artificial intelligence system to

21   make a consequential decision affecting a consumer in New

22   Mexico;

23   H.   "developer" means a person or entity doing

24   business in New Mexico that:

25   (1)   makes an artificial intelligence system

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1   publicly available for use in New Mexico;

2   (2)   intentionally and substantially modifies a

3   high-risk artificial intelligence system that is used in New

4   Mexico; or

5   (3)   intentionally and substantially modifies a

6   non-high-risk artificial intelligence system so that it becomes

7   a high-risk artificial intelligence system that is used in New

8   Mexico;

9   I.   "health care services" means treatment or

10   services designed to maintain and promote the improved health

11   of a person, including primary care, prenatal care, dental

12   care, behavioral health care, alcohol or drug detoxification

13   and rehabilitation, enrollment in a clinical trial or similar

14   activity, hospital care, hospice care, the provision of

15   prescription drugs, preventive care or health outreach;

16   J.   "high-level summary" means information about the

17   data and data sets used to train a high-risk artificial

18   intelligence system, including:

19   (1)   the sources or owners of the data sets and

20   whether the data sets were purchased or licensed by the

21   developer;

22   (2)   the factors in the data, including

23   attributes or other information about a consumer, that the

24   system uses to produce its outputs, scores or recommendations;

25   (3)   the demographic groups represented in the

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1 data sets and the proportion of each age, ethnic, gender or

2 racial group in each dataset;

3 (4) a description of the types of data points

4 within the data sets, including, for data sets that include

5 labels, a description of the types of labels used;

6 (5) whether the data sets include any data

7 protected by copyright, trademark or patent or whether the data

8 sets are entirely in the public domain;

9 (6) whether there was any cleaning, processing

10 or other modification to the data sets by the developer,

11 including the intended purpose of those efforts in relation to

12 the high-risk artificial intelligence system;

13 (7) the time period during which the data in

14 the data sets were collected, including a notice when data

15 collection is ongoing;

16 (8) the geographical regions or jurisdictions

17 in which the data sets were collected, including whether the

18 data sets were collected solely in New Mexico, solely in other

19 states or in New Mexico in combination with other states; and

20 (9) other information as required by the

21 department by rule;

22 K. "high-risk artificial intelligence system" means

23 any artificial intelligence system that when deployed makes or

24 is a substantial factor in making a consequential decision, but

25 does not include:

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1   (1)   anti-fraud technology;

2   (2)   anti-malware technology;

3   (3)   antivirus technology;

4   (4)   cybersecurity technology;

5   (5)   databases;

6   (6)   database, spreadsheet or other technology

7   that does no more than organize data already in possession of a

8   deployer;

9   (7)   data storage;

10   (8)   firewall technology;

11   (9)   internet domain registration;

12   (10)   internet website loading;

13   (11)   networking;

14   (12)   spam and robocall filtering;

15   (13)   spell checking technology;

16   (14)   transcription and transition technology;

17   (15)   web caching;

18   (16)   web hosting or similar technology; or

19   (17)   technology that communicates with

20   consumers solely in spoken or written natural language for the

21   purpose of providing consumers with information, making

22   referrals or recommendations and answering questions:

23   (a)   subject to the deployer's accepted

24   use policy as explicitly accepted by the consumer that may

25   prohibit generation of specific content by the technology; and

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1   (b)   that is not used to take any

2   autonomous action without consumer intervention;

3   L.   "intentional and substantial modification" and

4   "intentionally and substantially modifies" means a deliberate

5   and material change made to an artificial intelligence system

6   that results in a new reasonably foreseeable risk of

7   algorithmic discrimination, but does not include a change made

8   to a high-risk artificial intelligence system or the

9   performance of a high-risk artificial intelligence system when:

10   (1)   the high-risk artificial intelligence

11   system continues to learn after the system is:

12   (a)   offered, sold, leased, licensed,

13   given or otherwise made available to a deployer; or

14   (b)   deployed;

15   (2)   the change is made as a result of system

16   learning after being made available to a deployer or being

17   deployed;

18   (3)   the change was predetermined by the

19   deployer or a third party contracted by the deployer when the

20   deployer or third party completed an impact assessment of the

21   high-risk artificial intelligence system pursuant to Section 6

22   of the Artificial Intelligence Act; or

23   (4)   the change is included in technical

24   documentation for the high-risk artificial intelligence system;

25   M.   "machine learning" means the development and

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incorporation of algorithms to build data-derived statistical

models that are capable of drawing inferences from previously

unseen data without explicit human instruction;

N.   "offered or made available" includes a gift,

lease, sale or other conveyance of an artificial intelligence

system to a recipient deployer or a developer other than the

original system developer;

O.   "recipient" means a deployer who has received an

artificial intelligence system from a developer or a developer

who has received an artificial intelligence system from another

developer;

P.   "risk incident" means an incident when a

developer discovers or receives a credible report from a

deployer that a high-risk artificial intelligence system

offered or made available by the developer has caused or is

reasonably likely to have caused algorithmic discrimination;

Q.   "substantial factor" means a decision, score,

label, prediction or recommendation generated by an artificial

intelligence system that is used as a basis or partial basis to

make a consequential decision; and

R.   "trade secret" means information, including a

formula, pattern, compilation, program, device, method,

technique or process, that:

(1)   derives independent economic value, actual

or potential, from not being generally known to and not being

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1   readily ascertainable by proper means by other persons who

2   could obtain economic value from the information's disclosure

3   or use; and

4   (2)   is the subject of efforts that are

5   reasonable under the circumstances to maintain its secrecy.

6   SECTION 3.   [NEW MATERIAL] DUTY OF CARE--DISCLOSURE OF

7   RISK POTENTIAL--PROVISION OF DOCUMENTATION.--A developer shall:

8   A.   use reasonable care to protect consumers from

9   known or foreseeable risks of algorithmic discrimination

10   arising from intended and contracted uses of a high-risk

11   artificial intelligence system;

12   B.   except for information excluded pursuant to

13   Subsection C of Section 4 of the Artificial Intelligence Act,

14   make the following available to a recipient of the developer's

15   high-risk artificial intelligence system:

16   (1)   a general summary describing the

17   reasonably foreseeable uses and known harmful or inappropriate

18   uses of the system; and

19   (2)   documentation disclosing:

20   (a)   the purpose, intended uses and

21   benefits of the system;

22   (b)   a high-level summary of the types of

23   data used to train the system;

24   (c)   known or reasonable foreseeable

25   limitations of the system, including the risk of algorithmic

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1   discrimination arising from the intended use of the system;

2   (d)   how the system was evaluated for

3   performance and mitigation of algorithmic discrimination prior

4   to being offered or made available to the deployer, including:

5   1) the metrics of performance and bias that were used; 2) how

6   the metrics were measured; 3) any independent studies carried

7   out to evaluate the system for performance and risk of

8   discrimination; and 4) whether the studies are publicly

9   available or peer-reviewed;

10   (e)   the data governance measures used to

11   cover the training datasets and the measures used to examine

12   the suitability of data sources, possible biases and bias

13   mitigation;

14   (f)   the intended outputs of the system;

15   (g)   the measures the developer has taken

16   to mitigate known or reasonably foreseeable risks of

17   algorithmic discrimination that are reasonably foreseeable from

18   the use of the system;

19   (h)   how the system should be used and

20   monitored by the deployer;

21   (i)   any additional information that is

22   reasonably necessary to assist the deployer in understanding

23   the outputs and monitoring the performance of the system for

24   risks of algorithmic discrimination; and

25   (j)   any other information necessary to

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1   allow the deployer to comply with the requirements of the

2   Artificial Intelligence Act;

3   C.   except for information excluded pursuant to

4   Subsection C of Section 4 of the Artificial Intelligence Act,

5   to the extent feasible, make available to the deployer the

6   necessary information to conduct an impact assessment as

7   required pursuant to Section 6 of the Artificial Intelligence

8   Act. The information shall include comprehensive information

9   about the high-risk artificial intelligence system, including:

10   (1)   the name, version and a brief description

11   of the system;

12   (2)   the intended use of the system;

13   (3)   information about the data set used to

14   train the system, including all model input data and training

15   data, demographic composition, data collection methods, data

16   sources, preprocessing steps, potential biases and known

17   limitations;

18   (4)   limitations or risks associated with the

19   system's use; and

20   (5)   previous impact assessments relevant to

21   the system, its development or use;

22   D.   post on the developer's website in a clear and

23   readily available manner a statement or public-use case

24   inventory that summarizes:

25   (1)   the types of high-risk artificial

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1   intelligence systems that the developer has developed or

2   intentionally and substantially modified and currently offers

3   or makes available to recipients; and

4   (2)   how the developer manages known or

5   reasonably foreseeable risks of algorithmic discrimination that

6   may arise from the use or intentional and substantial

7   modification of the systems listed on the developer's website

8   pursuant to this subsection; and

9   E.   ensure that the statement or public-use case

10   inventory posted pursuant to this section remains accurate and

11   is updated within ninety days of an intentional and substantial

12   modification of a high-risk artificial intelligence system

13   offered or made available by the developer to recipients.

14   **SECTION 4.**   [NEW MATERIAL] RISK INCIDENTS--REQUIRED

15   DISCLOSURE AND SUBMISSION--EXCEPTIONS.--

16   A.   Within ninety days of a risk incident and in a

17   form and manner prescribed by the department, a developer shall

18   disclose to the department and all known recipients of the

19   high-risk artificial intelligence system that is the basis of

20   the risk incident the known and foreseeable risks of

21   algorithmic discrimination that may arise from the intended

22   uses of the system.

23   B.   Within ninety days of a request by the

24   department, a developer shall submit to the department a copy

25   of the summary and documentation the developer has made

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1   available to recipients pursuant to Section 3 of the Artificial

2   Intelligence Act. A developer may designate the summary or

3   documentation as including a trade secret. To the extent that

4   information contained in the summary or documentation includes

5   information subject to attorney-client privilege or work-

6   product protection, compliance with this section does not

7   constitute a waiver of the privilege or protection.

8   C.   As part of a disclosure, notice or submission

9   pursuant to the Artificial Intelligence Act, a developer shall

10   not be required to disclose a trade secret, information

11   protected from disclosure by state or federal law or

12   information that would create a security risk to the developer.

13   Such disclosure, notice or submission shall be exempt from

14   disclosure pursuant to the Inspection of Public Records Act.

15   SECTION 5.   [NEW MATERIAL] DEPLOYER RISK-MANAGEMENT POLICY

16   REQUIRED.--

17   A.   A deployer shall use reasonable care to protect

18   consumers from known or reasonably foreseeable risks of

19   algorithmic discrimination.

20   B.   A deployer shall implement a risk management

21   policy and program to govern the deployer's deployment of a

22   high-risk artificial intelligence system. The risk management

23   policy and program shall:

24   (1)   specify and incorporate the principles,

25   processes and personnel that the deployer uses to identify,

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1   document and mitigate known or reasonably foreseeable risks of

2   algorithmic discrimination; and

3   (2)   be an iterative process planned,

4   implemented and regularly and systematically updated over the

5   life cycle of a high-risk artificial intelligence system and

6   include regular systematic review and updates.

7   C.   A risk management policy shall meet standards

8   established by the department by rule.

9   SECTION 6.   [NEW MATERIAL] DEPLOYER IMPACT ASSESSMENTS.--

10   A.   Except as provided in Subsections D, E and H of

11   this section, a deployer shall conduct an impact assessment for

12   any high-risk artificial intelligence system deployed by the

13   deployer:

14   (1)   annually; and

15   (2)   within ninety days of an intentional and

16   substantial modification to the system.

17   B.   An impact assessment of a high-risk artificial

18   intelligence system completed pursuant to this section shall

19   include, to the extent reasonably known by or available to the

20   deployer:

21   (1)   a statement of the intended uses,

22   deployment contexts and benefits of the system;

23   (2)   an analysis of any known or reasonably

24   foreseeable risks of algorithmic discrimination posed by the

25   system and when:

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1   (a)   a risk exists, the nature of the

2   algorithmic discrimination and the steps that have been taken

3   to mitigate the risk;

4   (b)   the impact assessment is dependent

5   on developer information outside of the deployer's control,

6   include a statement detailing that dependence; and

7   (c)   the deployer has cause to believe

8   algorithmic discrimination exists, the deployer shall use

9   reasonable efforts to mitigate the impacts of such

10   discrimination;

11   (3)   a description of the categories of data

12   the system processes as inputs and the outputs the system

13   produces;

14   (4)   a summary of categories of any data used

15   to customize the system;

16   (5)   the metrics used to evaluate the

17   performance and known limitations of the system, including:

18   (a)   whether the evaluation was carried

19   out using test data;

20   (b)   whether the test data sets were

21   collected solely in New Mexico, solely in other states or in

22   New Mexico in combination with other states;

23   (c)   the demographic groups represented

24   in the test data sets and the proportion of each age, ethnic,

25   gender or racial group in each data set; and

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1   (d)   any independent studies carried out

2   to evaluate the system for performance and risk of

3   discrimination and whether the studies are publicly available

4   or peer-reviewed;

5   (6)   a description of any transparency measures

6   taken concerning the system, including measures taken to

7   disclose to a consumer when the system is in use; and

8   (7)   a description of the post-deployment

9   monitoring and user safeguards provided for the system,

10   including oversight, use and learning processes used by the

11   deployer to address issues arising from deployment of the

12   system.

13   C.   An impact assessment conducted following an

14   intentional and substantial modification of a high-risk

15   artificial intelligence system shall include a disclosure of

16   the extent to which the system was used in a manner consistent

17   with, or that varied from, the developer's intended uses of the

18   system.

19   D.   A deployer may use a single impact assessment to

20   address a set of comparable high-risk artificial intelligence

21   systems.

22   E.   An impact assessment conducted for the purpose

23   of complying with another applicable law or rule shall satisfy

24   the requirement of this section when the assessment:

25   (1)   meets the requirements of this section;

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and

(2)   is reasonably similar in scope and effect
to an assessment that would otherwise be conducted pursuant to
this section.

F.   For at least three years following the final
deployment of a high-risk artificial intelligence system, a
deployer shall maintain records of the most recently conducted
impact assessment for the system, including all records
concerning the assessment and all prior assessments for the
system.

G.   One hundred twenty days after the department has
promulgated rules pursuant to Section 14 of the Artificial
Intelligence Act, a deployer shall review each high-risk
artificial intelligence system that the deployer has deployed
to ensure that the system is not causing algorithmic
discrimination.

H.   This section is not applicable when:

(1)   a deployer using a high-risk artificial
intelligence system:

(a)   impacts fewer than fifty consumers;

(b)   does not use the deployer's own data
to train the system;

(c)   uses the system solely for the
system's intended uses as disclosed by a developer pursuant to
the Artificial Intelligence Act; and

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1   (d)   makes any impact assessment of the

2   system that has been provided by the developer pursuant to the

3   Artificial Intelligence Act available to consumers; and

4   (2)   the system continues learning based on

5   data derived from sources other than the deployer's own data.

6   I.   A deployer may supply documentation provided by

7   a developer to complete the requirements for an item pursuant

8   to Subsection B of this section; provided that the deployer has

9   not modified the item.

10   SECTION 7.   [NEW MATERIAL] DEPLOYER GENERAL NOTICE TO

11   CONSUMERS.--

12   A.   A deployer shall make readily available to its

13   consumers and on its website:

14   (1)   a summary of the types of high-risk

15   artificial intelligence systems that the deployer currently

16   deploys and how known or reasonably foreseeable risks of

17   algorithmic discrimination from the deployment of each system

18   are managed; and

19   (2)   a detailed explanation of the nature,

20   source and extent of the information collected and used by the

21   deployer.

22   B.   At a minimum, a deployer shall update the

23   information posted on its website pursuant to this section

24   annually and when the deployer deploys a new high-risk

25   artificial intelligence system.

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1   SECTION 8.   [NEW MATERIAL] USE OF ARTIFICIAL INTELLIGENCE

2   SYSTEMS WHEN MAKING CONSEQUENTIAL DECISIONS--DIRECT NOTICE TO

3   AFFECTED CONSUMERS--ADVERSE DECISIONS--OPPORTUNITY FOR

4   APPEAL.--

5   A.   Except as provided in Subsection E of this

6   section, before a high-risk artificial intelligence system is

7   used to make or is a substantial factor in making a

8   consequential decision concerning a consumer, a deployer shall

9   provide directly to the consumer:

10   (1)   notice that the system will be used to

11   make or be a substantial factor in making the decision; and

12   (2)   information describing:

13   (a)   the system and how to access the

14   deployer's notice required pursuant to Section 7 of the

15   Artificial Intelligence Act;

16   (b)   the purpose of the system and the

17   nature of the consequential decision being made; and

18   (c)   the deployer's contact information.

19   B.   Except as provided in Subsection E of this

20   section, when a high-risk artificial intelligence system has

21   been used to make or has been a substantial factor in making a

22   consequential decision concerning a consumer that is adverse to

23   the consumer, the deployer shall provide directly to the

24   consumer:

25   (1)   a statement explaining:

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1   (a)   the principal reason or reasons for

2   the decision;

3   (b)   the degree and manner in which the

4   system contributed to the decision; and

5   (c)   the source and type of data that was

6   processed by the system to make or that was a substantial

7   factor in making the decision;

8   (2)   an opportunity to correct any incorrect

9   personal data that the system processed to make or that was a

10 substantial factor in making the decision; and

11   (3)   an opportunity to appeal the adverse

12 decision except in instances where an appeal may pose a risk of

13 life or safety to the consumer.

14   C.   If technically feasible, an appeal of an adverse

15 decision pursuant to this section shall allow for human review.

16   D.   All information, notices and statements to a

17 consumer as required by this section shall be provided:

18   (1)   in plain language and in all languages in

19 which the deployer in the ordinary course of business provides

20 contracts, disclaimers, sale announcements and other

21 information to consumers; and

22   (2)   in a format that is accessible to

23 consumers with disabilities.

24   E.   When a deployer is unable to provide

25 information, notice or a statement required pursuant to this

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1   section directly to a consumer, the deployer shall make such

2   information, notices or statements available in a manner that

3   is reasonably calculated to ensure that the consumer receives

4   the information, notice or statement.

5   SECTION 9. [NEW MATERIAL] USE OF HIGH-RISK ARTIFICIAL

6   INTELLIGENCE SYSTEM--NOTICE AND DISCLOSURE TO THE

7   DEPARTMENT--INSPECTION OF PUBLIC RECORDS ACT EXEMPTION.--

8   A.   When a deployer discovers that a high-risk

9   artificial intelligence system that has been used has caused

10   algorithmic discrimination, the deployer shall as expeditiously

11   as possible but at a maximum within ninety days notify the

12   department of the discovery. The notice shall be in a form and

13   manner prescribed by the department.

14   B.   Upon request by the department, a deployer shall

15   within ninety days submit to the department any risk management

16   policy, impact assessment or records conducted, implemented,

17   maintained or received pursuant to the Artificial Intelligence

18   Act. The submission shall be in a form and manner prescribed

19   by the department.

20   C.   The department may evaluate risk management

21   policies, impact assessments or records submitted pursuant to

22   this section for compliance with the Artificial Intelligence

23   Act.

24   D.   As part of a disclosure, notice or submission

25   pursuant to the Artificial Intelligence Act, a deployer shall

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1   not be required to disclose a trade secret, information

2   protected from disclosure by state or federal law or

3   information that would create a security risk to the deployer.

4   Such a disclosure, notice or submission shall be exempt from

5   disclosure pursuant to the Inspection of Public Records Act.

6   E.   Within ninety days of a request by the

7   department, a developer shall submit to the department a copy

8   of the summary and documentation the developer has made

9   available to recipients pursuant to Section 3 of the Artificial

10   Intelligence Act. A developer may designate the summary or

11   documentation as including a trade secret. To the extent that

12   information contained in the summary or documentation includes

13   information subject to attorney-client privilege or

14   work-product protection, compliance with this section does not

15   constitute a waiver of the privilege or protection.

16   SECTION 10. [NEW MATERIAL] INTERACTION OF ARTIFICIAL

17   INTELLIGENCE SYSTEM WITH CONSUMERS--REQUIRED DISCLOSURE.--

18   A.   A developer or a deployer that offers or makes

19   available an artificial intelligence system intended to

20   interact with consumers shall ensure that a consumer is

21   informed that the consumer is interacting with an artificial

22   intelligence system.

23   B.   Prior to deploying a high-risk artificial

24   intelligence system to make, or be a substantial factor in

25   making, a consequential decision concerning a consumer, a

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1   deployer shall notify the consumer that the high-risk

2   artificial intelligence system is being deployed and of the

3   system's role in making the consequential decision.

4   SECTION 11. [NEW MATERIAL] EXEMPTION FROM DISCLOSURE--

5   TRADE SECRETS AND OTHER INFORMATION PROTECTED BY LAW--NOTICE TO

6   CONSUMER.--

7   A.   Nothing in the Artificial Intelligence Act shall

8   require a deployer or developer to disclose a trade secret or

9   other information protected from disclosure by state or federal

10   law.

11   B.   To the extent that a deployer or developer

12   withholds information pursuant to this section that would

13   otherwise be part of a disclosure pursuant to the Artificial

14   Intelligence Act, the deployer or developer shall notify all

15   affected consumers, provide a basis for the withholding and

16   include all information not protected as a trade secret

17   pursuant to the Uniform Trade Secrets Act or other state or

18   federal law.

19   SECTION 12. [NEW MATERIAL] APPLICABILITY EXEMPTIONS--

20   OTHER LAW--SECURITY AND TESTING--FEDERAL USE--INSURANCE

21   PROVIDERS.--

22   A.   No provision of the Artificial Intelligence Act

23   shall be construed to restrict a person's ability to:

24   (1)   comply with federal, state or municipal

25   laws or regulations;

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1   (2)   comply with a civil, criminal or

2   regulatory inquiry, investigation, subpoena or summons by a

3   governmental authority;

4   (3)   cooperate with a law enforcement agency

5   concerning activity that the person reasonably and in good

6   faith believes may violate other laws or regulations;

7   (4)   defend, exercise or investigate legal

8   claims;

9   (5)   act to protect an interest that is

10   essential for the life or physical safety of a person;

11   (6)   by any means:

12   (a)   detect, prevent, protect against or

13   respond to deceptive, illegal or malicious activity, fraud,

14   identity theft, harassment or security incidents; or

15   (b)   investigate, prosecute or report

16   persons responsible for the actions listed in Subparagraph (a)

17   of this paragraph;

18   (7)   preserve the integrity or security of

19   artificial intelligence, computer, electronic or internet

20   connection systems;

21   (8)   engage in public or peer-reviewed

22   scientific or statistical research, including clinical trials,

23   that adheres to and is conducted in accordance with applicable

24   federal and state law;

25   (9)   engage in pre-market testing other than

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1 testing conducted under real-world conditions, including

2 development, research and testing of artificial intelligence

3 systems; or

4   (10) assist another person with compliance

5 with the Artificial Intelligence Act.

6   B. No provision of the Artificial Intelligence Act

7 shall be construed to restrict:

8   (1) a product recall; or

9   (2) identification or repair of technical

10 errors that impair the functionality of the artificial

11 intelligence system.

12   C. The Artificial Intelligence Act does not apply

13 in circumstances in which compliance would violate an

14 evidentiary privilege pursuant to law.

15   D. No provision of the Artificial Intelligence Act

16 shall be construed so as to limit the rights of a person,

17 including the rights to free speech or freedom of the press

18 pursuant to the first amendment to the United States

19 constitution or Article 2, Section 17 of the constitution of

20 New Mexico.

21   E. The Artificial Intelligence Act does not apply

22 to a developer, deployer or other person who:

23   (1) uses or intentionally and substantially

24 modifies a high-risk artificial intelligence system that:

25   (a) has been authorized by a federal

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1   agency in accordance with federal law; and

2   (b)   is in compliance with standards

3   established by a federal agency in accordance with federal law

4   when such standards are substantially equivalent or more

5   stringent than the requirements of the Artificial Intelligence

6   Act;

7   (2)   conducts research to support an

8   application for approval, certification or review by a federal

9   agency pursuant to federal law; or

10   (3)   performs work under or in connection with

11   a contract with a federal agency, unless the work is on a high-

12   risk artificial intelligence system used to make or as a

13   substantial factor in making a decision concerning employment

14   or housing.

15   F.   The Artificial Intelligence Act does not apply

16   to an artificial intelligence system to the extent the system

17   is used by the federal government, except for a high-risk

18   artificial intelligence system used to make or as a substantial

19   factor in making a decision concerning employment or housing.

20   G.   A financial institution, an affiliate or a

21   subsidiary of a financial institution or a service provider

22   that is subject to prudential regulation by another state or by

23   the federal government pursuant to laws that apply to the use

24   of high-risk artificial intelligence systems shall be deemed to

25   be in compliance with the Artificial Intelligence Act when the

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applicable laws:

(1)   impose requirements that are substantially equivalent to or more stringent than the requirements imposed by the Artificial Intelligence Act; and

(2)   at a minimum, require the financial institution, affiliate or service provider to:

(a)   notify consumers subject to the high-risk artificial intelligence system of the system's use and its role in consequential decisions;

(b)   regularly audit the institution's use of high-risk artificial intelligence systems for compliance with state and federal antidiscrimination laws; and

(c)   mitigate any algorithmic discrimination caused by the use of a high-risk artificial intelligence system.

H.   A developer, deployer or other person who engages in an action pursuant to an exemption set forth in this section shall bear the burden of demonstrating that the action qualifies for the exemption.

I.   As used in this section, "financial institution" means an insured state or national bank, a state or federal savings and loan association or savings bank, a state or federal credit union or authorized branches of each of the foregoing.

SECTION 13.   [NEW MATERIAL] ENFORCEMENT--DEPARTMENT--

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1   OPPORTUNITY TO CURE--CONSUMER CIVIL ACTIONS.--

2   A.   Upon the promulgation of rules pursuant to

3   Section 14 of the Artificial Intelligence Act:

4   (1)   the department shall have authority to

5   enforce that act; and

6   (2)   a consumer may bring a civil action in

7   district court against a developer or deployer for declaratory

8   or injunctive relief and attorney fees for a violation of that

9   act.

10   B.   Prior to the promulgation of rules by the

11   department pursuant to Section 14 of the Artificial

12   Intelligence Act, the department shall issue a notice to a

13   prospective defendant prior to initiating an action for

14   violation of the act. The notice shall include a detailed

15   description of the alleged violation and the actions required

16   to cure the violation. The prospective defendant shall have

17   ninety days from the receipt of the notice to submit evidence

18   satisfactory to the department that the violation has been

19   cured. Ninety-one days after the prospective defendant has

20   received the notice, if the department has not received

21   satisfactory evidence that the violation has been cured, the

22   department may file an action in district court for the

23   violation.

24   C.   For one calendar year from the date the

25   department promulgates rules pursuant to Section 14 of the

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1   Artificial Intelligence Act, it shall be an affirmative defense

2   in an action brought by the department to enforce the

3   Artificial Intelligence Act when:

4   (1)   the developer, deployer or other person

5   discovers a violation of the Artificial Intelligence Act as a

6   result of adversarial testing, red teaming or an internal

7   review process;

8   (2)   the developer, deployer or other person

9   reports the violation to the department and cures the violation

10   within seven days of the violation;

11   (3)   the developer, deployer or other person is

12   in compliance with a risk management framework for artificial

13   intelligence systems designated by the department by rule;

14   (4)   the deployer is dependent on documentation

15   from the developer to cure or otherwise resolve a violation and

16   the deployer complies with the requirements in Paragraph (2) of

17   Subsection B of Section 6 of the Artificial Intelligence Act;

18   and

19   (5)   the developer, deployer or other person

20   demonstrates that the violation was inadvertent, affected fewer

21   than one hundred consumers and could not have been discovered

22   through reasonable diligence.

23   D.   After one calendar year from the date the

24   department promulgates rules pursuant to Section 14 of the

25   Artificial Intelligence Act, a deployer, developer or other

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1   person subject to enforcement for a violation of that act shall

2   have no right to cure the violation or an affirmative defense

3   pursuant to this section.

4   E.   In an action by the department to enforce the

5   Artificial Intelligence Act, the developer, deployer or other

6   person who is the subject of the enforcement shall bear the

7   burden of demonstrating that the requirements for an

8   affirmative defense pursuant to this section have been met.

9   F.   Nothing in the Artificial Intelligence Act,

10   including the enforcement authority granted to the department

11   pursuant to this section, preempts or otherwise affects any

12   right, claim, remedy, presumption or defense available in law

13   or equity.

14   G.   An affirmative defense presumption established

15   by the Artificial Intelligence Act applies only to an

16   enforcement action by the department and does not apply to any

17   right, claim, remedy, presumption or defense available in law

18   or equity.

19   H.   A violation of the Artificial Intelligence Act

20   is an unfair practice and may be enforced pursuant to the

21   Unfair Practices Act.

22   I.   As used in this section:

23   (1)   "adversarial testing" means to proactively

24   try to break an application by providing it with data most

25   likely to elicit problematic output, or as defined by the

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1   department by rule; and

2   (2)   "red teaming" means the practice of

3   simulating attack scenarios on an artificial intelligence

4   application to pinpoint weaknesses and plan preventive measures

5   or as defined by the department by rule.

6   **SECTION 14.**   [<u>NEW MATERIAL</u>] RULEMAKING.--

7   A.   On or before January 1, 2027, the department

8   shall promulgate rules to implement the Artificial Intelligence

9   Act and shall post them prominently on the department's

10   website.

11   B.   The department shall consult artificial

12   intelligence experts, academic researchers, civil rights

13   organizations, deployers, developers, labor unions and

14   organizations representing the interests of consumers when

15   developing the rules to be promulgated pursuant to the

16   Artificial Intelligence Act.

17   **SECTION 15.**   EFFECTIVE DATE.--The effective date of the

18   provisions of this act is July 1, 2026.

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