1   H.784

2   Introduced by Representatives Priestley of Bradford, Berbeco of Winooski,

3   Burrows of West Windsor, Cole of Hartford, Graning of

4   Jericho, Headrick of Burlington, Kleppner of Burlington,

5   McCann of Montpelier, McGill of Bridport, Mrowicki of

6   Putney, Nugent of South Burlington, Ode of Burlington, Olson

7   of Starksboro, Pouech of Hinesburg, Rachelson of Burlington,

8   Scheu of Middlebury, Sibilia of Dover, Sweeney of Shelburne,

9   Tomlinson of Winooski, and Torre of Moretown

10   Referred to Committee on

11   Date:

12   Subject: Commerce and trade; artificial intelligence; chatbots

13   Statement of purpose of bill as introduced: This bill proposes to regulate

14   providers of chatbots by requiring the providers to protect the privacy and

15   security of users' data, to disclose to users that chatbots are not human, and to

16   allow users to access their own data.

17   An act relating to the regulation of chatbots

18   It is hereby enacted by the General Assembly of the State of Vermont:

19   Sec. 1. 9 V.S.A. chapter 118 is added to read:

1   CHAPTER 118. ARTIFICIAL INTELLIGENCE

2   Subchapter 1. Chatbots

3   § 4193a. DEFINITIONS

4   As used in this subchapter:

5   (1) "Advertisement" means any written or oral statement, illustration, or

6   depiction that promotes the sale or use of a good or service or is designed to

7   increase interest in a brand, good, or service where such statement, illustration,

8   or depiction is displayed in exchange for monetary or other valuable

9   consideration, including access to data between the chatbot provider and the

10   brand, good, or service.

11   (2)(A) "Affirmative consent" means a clear, affirmative act signifying a

12   user's freely given, specific, informed, and unambiguous authorization for an

13   act or practice in response to a specific request from a chatbot provider,

14   provided:

15   (i) the request is provided to the user in a clear and conspicuous

16   standalone disclosure;

17   (ii) the request includes a description, written in easy-to-

18   understand language, of the act or practice for which the user's consent is

19   sought;

20   (iii) the request is made in a manner reasonably accessible to and

21   usable by users with disabilities;

1   (iv) the request is made available to the user in each language in

2   which the chatbot provider provides a chatbot;

3   (v) the option to refuse to give consent is at least as prominent as

4   the option to give consent, and the option to refuse to give consent takes the

5   same number of steps as or fewer than the option to give consent; and

6   (vi) affirmative consent to an act or practice is not inferred from

7   the inaction of the user or the user's continued use of a chatbot provided by the

8   chatbot provider.

9   (B) "Affirmative consent" does not include:

10   (i) acceptance of general or broad terms of use or a similar

11   document;

12   (ii) hovering over, muting, pausing, or closing a given piece of

13   content;

14   (iii) agreement obtained through the use of a false, fraudulent, or

15   materially misleading statement or representation; or

16   (iv) agreement obtained through the use of other dark patterns.

17   (3) "Chat log" means any input data, outputs generated by a chatbot, or

18   record of the input data or outputs from user interactions with a chatbot.

19   (4) "Chatbot" means any artificial intelligence, algorithmic, or

20   automated system that generates information via text, audio, image, or video in

21   a manner that simulates interpersonal interactions or conversation.

1   (5) "Chatbot provider" means any person creating, distributing, or

2   otherwise making available a chatbot.

3   (6) "Collect" or "collecting" means creating, buying, renting, gathering,

4   obtaining, receiving, accessing, or otherwise acquiring personal data or input

5   data by any means through individuals' use of chatbots.

6   (7) "Dark pattern" means a user interface designed or manipulated with

7   the substantial effect of subverting or impairing user autonomy, decision

8   making, or choice, and includes any practice the Federal Trade Commission

9   refers to as a dark pattern.

10   (8) "Deidentified data" means information that cannot reasonably be

11   used to infer or derive the identity of an individual or does not identify and is

12   not linked or reasonably linkable to an individual or a device that identifies or

13   is linked or reasonably linkable to such individual, regardless of whether the

14   information is aggregated, provided that the chatbot provider:

15   (A) takes such physical, administrative, and technical measures as are

16   necessary to ensure that the information cannot, at any point, be used to

17   reidentify any individual or device that identifies or is linked or reasonably

18   linkable to one or more individuals;

19   (B) publicly commits in a clear and conspicuous manner to:

20   (i) process, retain, or transfer the information solely in a

21   deidentified form without any reasonable means for reidentification; and

1   (ii) not attempt to reidentify the information with any individual or

2   device that identifies or is linked or reasonably linkable to an individual; and

3   (C) contractually obligates any entity that receives the information

4   from the chatbot provider to:

5   (i) comply with all of the provisions of this subdivision (8) with

6   respect to the information; and

7   (ii) require that such contractual obligations be included in all

8   subsequent instances in which the data may be received.

9   (9) "Input data" means information, including text, photos, audio, video,

10   or files, provided to a chatbot by a user.

11   (10) "Model" means an engineered or machine-based system underlying

12   a chatbot that can, for explicit or implicit objectives, infer from the input it

13   receives how to generate outputs that can influence physical or virtual

14   environments.

15   (11)(A) "Personal data" means any information, including derived data,

16   inferences, or unique identifiers, that is linked or reasonably linkable, alone or

17   in combination with other information, to an identified or identifiable

18   individual or a device that identifies or is linked or reasonably linkable to an

19   individual.

20   (B) "Personal data" does not include deidentified data or publicly

21   available information.

1   (12) "Process" or "processing" means any operation or set of operations

2   performed, whether by manual or automated means, on personal data or input

3   data or on sets of personal data or input data, such as the use, storage,

4   disclosure, analysis, deletion, or modification of such data.

5   (13)(A) "Profiling" means any form of processing performed on input

6   data or personal data to detect and classify or designate personality and

7   behavioral characteristics of an individual.

8   (B) "Profiling" does not include processing of chat logs for purposes

9   of user safety or to otherwise comply with this subchapter.

10   (14)(A) "Publicly available information" means information that has

11   been lawfully made available to the general public from:

12   (i) federal, state, or municipal government records, provided the

13   information is collected, processed, and transferred in accordance with

14   restrictions or terms of use placed on the information by the relevant

15   government entity;

16   (ii) widely distributed media; or

17   (iii) a disclosure to the general public as required by federal, state,

18   or local law.

19   (B) "Publicly available information" does not include:

20   (i) any obscene visual depiction, as defined in 18 U.S.C. § 1460;

21   (ii) biometric data;

1   (iii) personal data that is created through the combination of

2 personal data with publicly available information;

3   (iv) information that is collated and combined to create user

4 profiles on publicly available or subscription-based websites and inferences

5 generated from such information;

6   (v) genetic data, unless otherwise made publicly available by the

7 individual to whom the information pertains;

8   (vi) information made available by a user on a website or online

9 service made available to all members of the public, for free or for a fee, where

10 the user has restricted the information to a specific audience; or

11   (vii) intimate images, authentic or computer generated, known to

12 be nonconsensual.

13   (15)(A) "Sell" means exchanging personal data or input data for

14 monetary or other valuable consideration or making available such data or use

15 of such data by the chatbot provider to a third party.

16   (B) "Sell" does not include:

17   (i) the disclosure of personal data or input data to a third party that

18 processes the data on behalf of the chatbot provider;

19   (ii) with the user's affirmative consent, the disclosure of personal

20 data or input data where the user affirmatively directs the chatbot provider to

1   disclose the data or intentionally uses the chatbot provider to interact with a

2   third party; or

3   (iii) the disclosure of personal data that the user:

4   (I) intentionally made available to the general public via a

5   channel of mass media; and

6   (II) did not restrict to a specific audience.

7   (16) "Training" means the use of input data to adjust or modify a model.

8   "Training" does not include:

9   (A) testing to identify risks of harm to users;

10   (B) adjustments or modifications to address identified risks of harm

11   to users; or

12   (C) any actions necessary to comply with this subchapter or

13   otherwise required by law.

14   (17) "User" means any individual, regardless of age.

15   (18)(A) "Widely distributed media" means information that is available

16   to the general public, including information from a telephone book or online

17   directory; a television, internet, or radio program; the news media; or an

18   internet site that is available to the general public on an unrestricted basis.

19   (B) "Widely distributed media" does not include an obscene visual

20   depiction, as defined in 18 U.S.C. § 1460.

1   § 4193b. DATA PRIVACY AND SECURITY

2   (a) Prohibitions. A chatbot provider shall not:

3   (1) process personal data other than input data to inform chatbot outputs

4   unless the processing of personal data is necessary to fulfill an express request

5   made by a user and that user has provided affirmative consent;

6   (2) process a user's chat log to:

7   (A) determine whether to display an advertisement for a product or

8   service to the user;

9   (B) determine a product, service, or category of product or service to

10   advertise to the user; or

11   (C) customize an advertisement or how an advertisement is presented

12   to the user;

13   (3) process a user's chat log or personal data:

14   (A) if the chatbot provider knows or should have known, based on

15   knowledge fairly implied on the basis of objective circumstances, that the user

16   is under 18 years of age without the affirmative consent of that user's parent or

17   legal guardian;

18   (B) for training purposes, if the chatbot provider knows or should

19   have known, based on knowledge fairly implied on the basis of objective

20   circumstances, that a user is under 18 years of age;

1   (C) of a user over 18 years of age for training purposes, unless the

2   chatbot provider first obtains affirmative consent; or

3   (D) to engage in profiling beyond what is necessary to fulfill an

4   express request from the user;

5   (4) use any classification or designation of a user's personality or

6   behavioral characteristics created through profiling beyond what is necessary

7   to fulfill an express request made by the user;

8   (5) sell a user's chat logs;

9   (6) retain a user's chat log for longer than 10 years, unless retention is

10   necessary to comply with this subchapter or otherwise required by law;

11   (7) discriminate or retaliate against any user, including by denying

12   products or services, charging different prices or rates for products or services,

13   or providing lower-quality products or services to the user, for refusing to

14   consent to the use of chat logs or personal data for training purposes; or

15   (8) represent to a user that the user's input data or chat log is

16   confidential.

17   (b) Right to access. A user has the right to access, in a portable and readily

18   usable format and at any time, any of the user's own chat logs that a chatbot

19   provider has retained.

20   (1) Chat logs must be made available to users in a downloadable and

21   human- and machine-readable format.

1   (2) A chatbot provider shall not discriminate or retaliate against any

2 user, including by denying products or services, charging different prices or

3 rates for products or services, or providing lower-quality products or services

4 to the user, for accessing their own chat logs.

5   (c) Compelling production. A public agency, as that term is defined in 1

6 V.S.A. § 317, shall not compel the production of or access to input data or chat

7 logs from a chatbot provider without a duly issued wiretap warrant pursuant to

8 13 V.S.A. chapter 232 (Vermont Electronic Communication Privacy Act).

9   (d) Data security program. A chatbot provider shall develop, implement,

10 and maintain a comprehensive data security program that contains

11 administrative, technical, and physical safeguards that are proportionate to the

12 volume and nature of the personal data and chat logs maintained by the chatbot

13 provider. The program shall be written and made publicly available on the

14 chatbot provider's website.

15 § 4193c. TRANSPARENCY

16   (a) Licensed professionals.

17   (1) A chatbot provider shall not use any term, letter, or phrase in the

18 advertising, interface, or outputs of a chatbot that indicates or implies that any

19 output data is being provided by or endorsed by or is equivalent to that

20 provided by:

1   (A) a licensed health care professional;

2   (B) a licensed legal professional;

3   (C) a licensed accounting professional;

4   (D) a certified financial fiduciary or planner; or

5   (E) any licensed or certified professional regulated by the Office of

6   Professional Regulation.

7   (2) A violation of subdivision (1) of this subsection is an unfair and

8   deceptive and act in commerce, subject to enforcement and penalties as

9   provided in this subchapter.

10   (b) Disclosure. Chatbot providers shall provide clear, conspicuous, and

11   explicit notice to users that users are interacting with a chatbot rather than a

12   human prior to the chatbot generating any outputs, every hour thereafter, and

13   each time a user prompts the chatbot about whether it is a real person subject to

14   the following:

15   (1) The text of this notice must appear in the same language as the one

16   in which the user is interacting with the chatbot, in a font size easily readable

17   by an average user, and no smaller than the largest font size of other text

18   appearing on the interface on which the chatbot is provided.

19   (2) This notice must be accessible to users with disabilities.

20   (3) This notice must comply with rules adopted by the Attorney General

21   pursuant to this subchapter.

1   (c) Risk assessment. A chatbot provider shall on a monthly basis,

2   according to metrics as set forth in rules adopted by the Attorney General

3   pursuant to this subchapter, assess its chatbot for risks of harm to users and

4   actively mitigate any risks of harm.

5   (d) Chatbot information. A chatbot provider shall make information about

6   its chatbot publicly available on its website on a monthly basis as set forth in

7   rules adopted by the Attorney General pursuant to this subchapter.

8   § 4193d. RULEMAKING

9   (a) The Attorney General shall adopt rules:

10   (1) describing the form and content of the disclosures and providing an

11 example template for the disclosures required pursuant to subsection 4193c(b)

12 of this subchapter;

13   (2) describing risks of harm to users and the metrics that each chatbot

14 provider shall use to assess its chatbots for these risks of harm to users

15 pursuant to subsection 4193c(c) of this subchapter; and

16   (3) identifying and describing categories of information that each

17 chatbot provider must make publicly available about its chatbots pursuant to

18 subsection 4193c(d) of this subchapter.

19   (b) The Attorney General may adopt other rules as necessary to implement

20 the provisions of this subchapter.

1   § 4193e. LIABILITY

2   (a) A chatbot is a product for the purposes of product liability actions.

3   (b) A chatbot provider has a duty to ensure that the use of its chatbot does

4   not cause injury to a user.

5   (c) A chatbot provider is liable for any injury it caused a user through the

6   use of its chatbot, even if:

7   (1) the chatbot provider exercised all reasonable care in the design and

8   distribution of the chatbot; or

9   (2) the chatbot provider did not directly distribute the chatbot to the user

10   or otherwise enter into a contractual relationship with the user.

11   (d) Nothing in this subchapter preempts or otherwise affects any right,

12   claim, remedy, presumption, or defense available at law or in equity, including

13   antidiscrimination, consumer protection, labor, and civil rights laws.

14   § 4193f. ENFORCEMENT AND PENALTY

15   (a) The Attorney General or a State's Attorney may bring a civil action

16   against a chatbot provider that violates this subchapter to:

17   (1) enjoin an act or practice that is in violation;

18   (2) enforce compliance with this subchapter or a rule adopted pursuant

19   to this subchapter;

20   (3) obtain damages, civil penalties, restitution, or other remedies on

21   behalf of the residents of the State; and

1   (4) obtain reasonable attorney's fees and other litigation costs

2 reasonably incurred.

3   (b) A violation of section 4193b of this subchapter or subsection 4193c(a)

4 or 4193c(b) of this subchapter constitutes an injury in fact to a user.

5   (c) A user injured pursuant to subsection (b) of this section may bring an

6 action in Superior Court against the chatbot provider, in which the court may

7 issue an award to the user for:

8   (1) liquidated damages of:

9   (A) $5,000.00 per violation for any violation of section 4193b of this

10 subchapter, or actual damages, whichever is greater; and

11   (B) $5,000.00 in total for all violations of subsection 4193c(a) or

12 4193c(b) of this subchapter, or actual damages, whichever is greater;

13   (2) punitive damages, for reckless and knowing violations;

14   (3) injunctive relief;

15   (4) declaratory relief; and

16   (5) reasonable attorney's fees and litigation costs.

17 Sec. 2. EFFECTIVE DATE

18   This act shall take effect on July 1, 2026.