1					H.792

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, Holcombe of Norwich,

5				McCann of Montpelier, McGill of Bridport, Mrowicki of

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

7				of Hinesburg, Rachelson of Burlington, Scheu of Middlebury,

8				Sweeney of Shelburne, Tomlinson of Winooski, and Torre of

9				Moretown

10	Referred to Committee on

11	Date:

12	Subject: Commerce and trade; consumer protection; artificial intelligence;

13		liability standards

14	Statement of purpose of bill as introduced: This bill proposes to set liability

15	standards for developers and deployers of certain artificial intelligence

16	systems.

17		An act relating to liability standards for developers and deployers of
18		artificial intelligence systems

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

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

3   CHAPTER 118. ARTIFICIAL INTELLIGENCE

4   Subchapter 1. Liability Standards

5   § 4193a. LEGISLATIVE INTENT

6   (a) Artificial intelligence systems are products that shift decision-making

7   power and responsibility away from persons to software-based systems, often

8   without direct human oversight. An artificial intelligence system can be

9   inherently dangerous due to its capabilities, potential for misuse or

10   exploitation, and ability to unilaterally evolve.

11   (b) Developers of sophisticated artificial intelligence systems have an

12   obligation to make the systems safe when used in reasonably foreseeable ways.

13   Deployers of these products also have an obligation to ensure that the products

14   are safe and used in a way that does not materially affect an individual's rights.

15   § 4193b. DEFINITIONS

16   As used in this subchapter:

17   (1) "Adequate warning or instruction" means a warning that a

18   reasonably prudent person in the same or similar circumstances would have

19   provided to a consumer with respect to the danger and communicates sufficient

20   information on the dangers and safe use of a product.

1   (2) "Artificial intelligence system" means an engineered or machine-

2   based system that varies in its level of autonomy and that can, for explicit or

3   implicit objectives, infer from the input it receives how to generate outputs that

4   can influence physical or virtual environments.

5   (3) "Consequential decision" means a decision that has either a legal or

6   similarly significant effect on an individual's access to the criminal justice

7   system, housing, employment, credit, education, health care, or insurance.

8   (4)(A) "Deployer" means a person, including a developer, that operates

9   an artificial intelligence system for internal use or for use by a third party.

10   (B) "Deployer" does not include an individual or a small business.

11   For purposes of this definition, a small business is one with fewer than 20

12   employees or that has fewer than 10,000 users of its product.

13   (5) "Design" means the intended or known physical and material

14   characteristics of a product and includes any intended or known formulation or

15   content of the product and the usual result of the intended development or

16   other process used to produce the product, which includes unexpected skills or

17   behaviors that appear in a product.

18   (6) "Developer" means a person who designs, codes, produces, owns, or

19   substantially modifies an artificial intelligence system for internal use or for

20   use by a third party.

1   (7) "Express warranty" means any material, positive statement,

2   affirmation of fact, promise, or description relating to a product, including any

3   sample or model of a product.

4   (8) "Generative artificial intelligence system" means an artificial

5   intelligence system that can generate derived synthetic content, such as text,

6   images, video, and audio, that emulates the structure and characteristics of the

7   artificial intelligence's training data.

8   (9) "Harm" means:

9   (A) damage to property other than the product itself;

10   (B) personal physical, financial, or reputational injury;

11   (C) illness or death;

12   (D) mental or psychological anguish, emotional harm, or distortion of

13   a person's behavior that would be highly offensive to a reasonable person; or

14   (E) any loss of consortium or services or other loss deriving from any

15   type of harm described in this subdivision (9).

16   (10) "High-impact artificial intelligence system" means any artificial

17   intelligence system, regardless of the number of parameters and supervision

18   structure, that:

1	(A) is used, or reasonably foreseeable as being used:

2	(i) as a controlling factor in making a consequential decision;

3	(ii) to categorize groups of persons by protected characteristics,

4	such as race, ethnic origin, or religious belief;

5	(iii) in the direct management or operation of critical

6	infrastructure;

7	(iv) in a vehicle, a medical device, or the safety system of a

8	vehicle or medical device; or

9	(v) to engage in a synthetic relationship; or

10	(B) exhibits, or could be easily modified to exhibit, high levels of

11	performance at tasks that pose a serious risk to economic security, public

12	health or safety, or any combination of those matters.

13	(11) "Intimate visual depiction" has the meaning as in 15 U.S.C. § 6851.

14	(12) "Material fact" means any specific characteristic or quality of the

15	product, but does not include a general opinion about, or praise of, the product

16	or its quality.

17	(13)(A) "Product" means a high-impact artificial intelligence system or

18	a generative artificial intelligence system.

19	(B) "Product" does not include a product used strictly for peer-

20	reviewed scientific research.

1   (14) "Synthetic relationship" means a series of interactions between an

2   individual and an artificial intelligence system that mimics human interaction

3   and emotional responses.

4   § 4193c. DEVELOPER LIABILITY

5   (a) Limited liability. In a products liability action pursuant to this

6   subchapter, a developer shall be liable to a plaintiff only if the plaintiff

7   establishes that the developer failed to exercise reasonable care with respect to:

8   (1) the design of the product, and that the defective design was a

9   proximate cause of harm to the plaintiff;

10   (2) providing adequate instructions or warnings applicable to the

11   product that caused the harm that is the subject of the complaint, and that the

12   failure to provide adequate instructions or warnings was a proximate cause of

13   harm to the plaintiff; or

14   (3) providing an express warranty applicable to the product that caused

15   the harm that is the subject of the complaint, and that the product failed to

16   conform to the warranty, which caused harm to the plaintiff.

17   (b) Design defect.

18   (1) In an action alleging that a product is unreasonably dangerous

19   because of a defective design, the plaintiff shall prove by a preponderance of

20   the evidence that, at the time the product left the developer's control:

1   (A) the developer knew or, considering then-existing scientific and

2   technical knowledge, reasonably should have known of the danger that caused

3   the plaintiff's harm;

4   (B) the developer accounted for both intended uses and reasonably

5   foreseeable unintended uses of the developer's systems; and

6   (C) there existed a technologically feasible and practical alternative

7   design, including a consideration of the product release and method of

8   development, that would have reduced or avoided a foreseeable risk of harm

9   without significantly impairing the usefulness of the product to the group of

10   persons who are the intended and legitimate users of the product.

11   (2) For purposes of subdivision (1)(C) of this subsection:

12   (A) "Method of development" means the selection of training data

13   used for the product and includes training, testing, auditing, and fine-tuning of

14   the product.

15   (B) "Product release" means the specific way in which a product is

16   integrated and made accessible within a production environment, including

17   how it interacts with data sources, delivers predictions or results, and is

18   accessed by users

19   (c) Failure to warn. The following applies in an action against a developer

20   in which the claim alleges that the developer failed to provide an adequate

21   instruction or warning:

1   (1) The plaintiff shall prove by a preponderance of the evidence that, at

2   the time the product left the developer's control, the developer knew or,

3   considering then-existing scientific and technical knowledge, reasonably

4   should have known of the danger that caused the plaintiff's harm.

5   (2)(A) The developer shall not be liable for failure to provide adequate

6   instruction or warning about a danger that is known or open and obvious to the

7   user or consumer of the product or should have been known or open and

8   obvious to the user or consumer of the product, considering the characteristics

9   of, and the ordinary knowledge common to, the persons who ordinarily use or

10   consume the product.

11   (B) A danger is presumed to not be open and obvious to a user or

12   consumer of the product who is under 18 years of age.

13   (d) Express warranty. A product may be unreasonably dangerous because

14   it did not conform to an express warranty only if the plaintiff proves by a

15   preponderance of the evidence that:

16   (1) the plaintiff reasonably relied on an express warranty made by the

17   developer about a material fact concerning the safety of the product;

18   (2) this express warranty proved to be untrue; and

19   (3) had the representation been true, the plaintiff would not have been

20   harmed.

1   (e) Safe harbor for developers. In a products liability action brought

2   against a developer pursuant to this subchapter, a court shall recognize a

3   rebuttable presumption that a product is not defective if, and only if, that

4   developer has:

5   (1) conducted a documented testing, evaluation, verification, validation,

6   and auditing of that system consistent with industry best practices;

7   (2) mitigated foreseeable risks to the extent possible and has considered

8   alternatives;

9   (3) disclosed foreseeable risks and mitigation tactics directly to

10   deployers and consumers using the product;

11   (4) maintained and made available upon request by the Attorney

12   General an artificial intelligence data sheet that includes, at a minimum, the

13   following information:

14   (A) information on the intended contexts and uses of the artificial

15   intelligence system in accordance with industry best practices;

16   (B) information regarding the datasets upon which the artificial

17   intelligence system was trained, including sources, volume, whether the dataset

18   is proprietary, and how the datasets further the intended purpose of the

19   product;

20   (C) accounting of foreseeable risks identified and steps taken to

21   manage them consistent with industry best practices; and

1   (D) results of red-teaming testing and steps taken to mitigate

2   identified risks, consistent with industry best practices;

3   (5) if the product is designed for or is reasonably likely to be used by

4   individuals under 18 years of age:

5   (A) documented assessments of use of the product's impact on

6   cognitive and emotional development;

7   (B) implemented age-gating or content restrictions for a product that

8   poses foreseeable risks; and

9   (C) provided to deployers and direct consumers and their guardians

10   clear, accessible disclosures about potential risks; and

11   (6) prominently included in the terms and conditions of a product the

12   information included in the artificial intelligence data sheet maintained

13   pursuant to subdivision (4) of this subsection, which deployers of such product

14   may rely upon when making fit-for-use and deployment decisions.

15   § 4193d. DEPLOYER LIABILITY

16   (a) Liability as developer. A deployer shall be deemed to be liable as a

17   developer pursuant to section 4193c of this subchapter, subject to subsections

18   (b) and (c) of this section, for harm caused by a product if the deployer:

1   (1) makes a material and substantial change to the product; or

2   (2) intentionally misuses the product contrary to an express warranty

3 provided by the developer of the product and that misuse was a proximate

4 cause of harm to the plaintiff.

5   (b) Intended use. Use of the product by a deployer that was an intended

6 use by the developer of the product is not misuse or alteration nor does it

7 constitute a material or substantial change of the product. If a developer does

8 not specify an intended use for the product, intended use shall be inferred by

9 the targeted market and manner of distribution.

10   (c) Licensing. A deployer licensing a product shall not be liable to a

11 plaintiff for a violation of subsection 4193c(a) of this subchapter solely due to

12 the deployer's ownership or use of the product.

13   (d) Safe harbor for deployers. In a products liability action brought

14 pursuant to this subchapter against a deployer, a court shall recognize a

15 rebuttable presumption that a product is not defective if, and only if, the

16 deployer has designed and implemented a risk management policy that:

17   (1) specifies the principles, processes, and personnel that the deployer

18 shall use in maintaining the risk management policy to identify, mitigate, and

19 document any risk, especially those impacting individuals under 18 years of

20 age, that is a reasonably foreseeable consequence of deploying or using such a

21 system;

1   (2) is consistent with industry best practices;

2   (3) is reasonable considering the:

3   (A) size and complexity of the deployer;

4   (B) nature and scope of the system, including the intended uses and

5   unintended uses and the modifications made to the system by the deployer; and

6   (C) data that the system, once deployed, processes as inputs; and

7   (4) is electronically available to employees of the deployer and to the

8   Attorney General upon request.

9   § 4193e. APPLICABILITY

10   (a) Supplemental. This subchapter shall supplement any existing common

11   law tort liability and State product liability laws and shall not prohibit any

12   product liability cause of action involving a generative artificial intelligence

13   system or a high-impact artificial intelligence system brought under a different

14   claim pursuant to product liability common law or statute.

15   (b) Joint fault. In a liability action brought under this subchapter:

16   (1) the court shall apply a comparative negligence standard, whereby a

17   plaintiff's recovery shall be diminished in proportion to the percentage of fault

18   attributable to the plaintiff, and developers and deployers may be held jointly

19   and severally liable for the portion of harm that contributed to the plaintiff's

20   injury; and

1   (2) the damages for which a deployer is otherwise liable shall be

2   reduced by the percentage of responsibility for the plaintiff's harm attributable

3   to a violation of section 4193c of this subchapter by another person if the

4   deployer establishes that such percentage of the plaintiff's harm was

5   proximately caused by a violation of section 4193c of this subchapter.

6   § 4193f. ENFORCEMENT

7   (a) A developer or deployer that violates this subchapter or rules adopted

8   pursuant to this subchapter commits an unfair and deceptive act in commerce

9   in violation of section 2453 of this title.

10   (b) The Attorney General shall have the same authority under this

11   subchapter to make rules, conduct civil investigations, bring civil actions, and

12   enter into assurances of discontinuance as provided under chapter 63 of this

13   title.

14   Sec. 2. EFFECTIVE DATE

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