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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in an unlawful differential treatment or impact that disfavors a person on the basis of the person's actual or perceived age, color, disability, ethnicity, gender, genetic information, proficiency in the English language, national origin, race, religion, reproductive health, veteran status or other status protected by state or federal law, but does not include:

(1) the offer, license or use of a high-risk artificial intelligence system by a developer or deployer for the sole purpose of:

(a) the developer's or deployer's self-testing to identify, mitigate or ensure compliance with state and federal law; or

(b) expanding an applicant, customer or participant pool to increase diversity or redress historical discrimination; or

(2) an act or omission by or on behalf of a private club or other entity that is not open to the public pursuant to federal law;

B. "artificial intelligence system" means any machine-based system that for an explicit or implicit objective infers from the inputs the system receives how to generate outputs, including content, decisions, predictions or recommendations, that can influence physical or virtual environments;

C. "consequential decision" means a decision that

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has a material legal or similarly significant effect on the

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

(1) education enrollment or an educational

opportunity;

(2) employment or an employment opportunity;

(3) a financial or lending service;

(4) health care service;

(5) housing;

(6) insurance; or

(7) legal service;

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

E. "deploy" means to use an artificial intelligence

system;

F. "deployer" means a person who deploys an

artificial intelligence system;

G. "developer" means a person who develops or

intentionally and substantially modifies an artificial

intelligence system;

H. "health care services" means treatment, services

or research designed to promote the improved health of a

person, including primary care, prenatal care, dental care,

behavioral health care, alcohol or drug detoxification and

rehabilitation, hospital care, the provision of prescription

drugs, preventive care or health outreach;

I. "high-level summary" means information about the

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data and data sets used to train the high-risk artificial

intelligence system, including:

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

whether the data sets were purchased or licensed by the

developer;

(2) the factors in the data, including

attributes or other information about a consumer, that the

system uses to produce its outputs, scores or recommendations;

(3) the demographic groups represented in the

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

racial group in each dataset;

(4) a description of the types of data points

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

labels, a description of the types of labels used;

(5) whether the data sets include any data

protected by copyright, trademark or patent or whether the data

sets are entirely in the public domain;

(6) whether there was any cleaning, processing

or other modification to the data sets by the developer,

including the intended purpose of those efforts in relation to

the high-risk artificial intelligence system;

(7) the time period during which the data in

the data sets were collected, including a notice when data

collection is ongoing;

(8) the geographical regions or jurisdictions

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

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

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

4   (9)   other information as required by the state

5   department of justice by rule;

6   J.   "high-risk artificial intelligence system" means

7   any artificial intelligence system that when deployed makes or

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

9   does not include:

10   (1)   an artificial intelligence system intended

11   to:

12   (a)   perform a narrow procedural task; or

13   (b)   detect decision-making patterns or

14   deviations from prior decision-making patterns and is not

15   intended to replace or influence a previously completed human

16   assessment without sufficient human review; or

17   (2)   the following technologies, unless the

18   technologies make or are a substantial factor in making a

19   consequential decision when the technologies are deployed:

20   (a)   anti-fraud technology that does not

21   use facial recognition technology;

22   (b)   anti-malware;

23   (c)   antivirus;

24   (d)   artificial-intelligence-enabled

25   video games;

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(e) calculators;

(f) cybersecurity;

(g) databases;

(h) data storage;

(i) firewalls;

(j) internet domain registration;

(k) internet website loading;

(l) networking;

(m) spam and robocall filtering;

(n) spell checking;

(o) spreadsheets;

(p) web caching;

(q) web hosting or similar technology;

or

(r) technology that communicates with consumers in natural language for the purpose of providing users with information, making referrals or recommendations and answering questions and is subject to an accepted use policy that prohibits generating content that is discriminatory or harmful;

K. "intentional and substantial modification" and "intentionally and substantially modifies" means a deliberate change made to an artificial intelligence system that results in a new reasonably foreseeable risk of algorithmic discrimination, but does not include a change made to a high-

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risk artificial intelligence system or the performance of a

high-risk artificial intelligence system when:

(1) the high-risk artificial intelligence

system continues to learn after the system is:

(a) offered, sold, leased, licensed,

given or otherwise made available to a deployer; or

(b) deployed;

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

learning after being made available to a deployer or being

deployed;

(3) the change was predetermined by the

deployer or a third party contracted by the deployer when the

deployer or third party completed an impact assessment of the

high-risk artificial intelligence system pursuant to Section 6

of the Artificial Intelligence Act; or

(4) the change is included in technical

documentation for the high-risk artificial intelligence system;

L. "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;

M. "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;

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1   N.   "risk incident" means an incident when a

2   developer discovers or receives a credible report from a

3   deployer that a high-risk artificial intelligence system

4   offered or made available by the developer has caused or is

5   reasonably likely to have caused algorithmic discrimination;

6   O.   "substantial factor" means:

7   (1)   a factor that:

8   (a)   assists in making a consequential

9   decision;

10   (b)   is capable of altering, advising or

11   influencing the outcome of a consequential decision; and

12   (c)   is generated by an artificial

13   intelligence system; or

14   (2)   content, decisions, labels, predictions,

15   recommendations or scores generated by an artificial

16   intelligence system concerning a consumer that are used as a

17   basis, partial basis or recommendation to make a consequential

18   decision concerning the consumer; and

19   P.   "trade secret" means information, including a

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

21   technique or process, that:

22   (1)   derives independent economic value, actual

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

24   readily ascertainable by proper means by other persons who

25   could obtain economic value from the information's disclosure

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or use; and

(2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

SECTION 3. [NEW MATERIAL] DUTY OF CARE--DISCLOSURE OF RISK POTENTIAL--PROVISION OF DOCUMENTATION.--A developer shall:

A. use reasonable care to protect consumers from known or foreseeable risks of algorithmic discrimination arising from intended and contracted uses of a high-risk artificial intelligence system;

B. except for information excluded pursuant to Subsection C of Section 4 of the Artificial Intelligence Act, make the following available to a recipient of the developer's high-risk artificial intelligence system:

(1) a general summary describing the reasonably foreseeable uses and known harmful or inappropriate uses of the system; and

(2) documentation disclosing:

(a) the purpose, intended uses and benefits of the system;

(b) a high-level summary of the type of data used to train the system;

(c) known or reasonable foreseeable limitations of the system, including the risk of algorithmic discrimination arising from the intended use of the system;

(d) how the system was evaluated for

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performance and mitigation of algorithmic discrimination prior
to being offered or made available to the deployer, including:
1) the metrics of performance and bias that were used; 2) how
the metrics were measured; 3) any independent studies carried
out to evaluate the system for performance and risk of
discrimination; and 4) whether the studies are publicly
available or peer-reviewed;

(e) the measures governing the data sets
used to train the system, the suitability of data sources,
possible biases and bias mitigation;

(f) the intended outputs of the system;

(g) the measures the developer has taken
to mitigate known or reasonably foreseeable risks of
algorithmic discrimination that are reasonably foreseeable from
the use of the system;

(h) how the system should be used and
monitored by the deployer;

(i) any additional information that is
reasonably necessary to assist the deployer in understanding
the outputs and monitoring the performance of the system for
risks of algorithmic discrimination; and

(j) any other information necessary to
allow the deployer to comply with the requirements of this
section;

C. except for information excluded pursuant to

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Subsection C of Section 4 of the Artificial Intelligence Act,
to the extent feasible make available to the recipient the
necessary information to conduct an impact assessment as
required pursuant to Section 6 of the Artificial Intelligence
Act. Such information shall include model cards, dataset cards
or previous impact assessments relevant to the system, its
development or use;

D. post on the developer's website in a clear and
readily available manner a statement or public-use case
inventory that summarizes:

(1) the types of high-risk artificial
intelligence systems that the developer has developed or
intentionally and substantially modified and currently offers
or makes available to recipients; and

(2) how the developer manages known or
reasonably foreseeable risks of algorithmic discrimination that
may arise from the use or intentional and substantial
modification of the systems listed on the developer's website
pursuant to this subsection; and

E. ensure that the statement or public-use case
inventory posted pursuant to this section remains accurate and
is updated within ninety days of an intentional and substantial
modification of a high-risk artificial intelligence system
offered or made available by the developer to recipients.

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

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DISCLOSURE AND SUBMISSION--EXCEPTIONS.--

A. Within ninety days of a risk incident and in a form and manner prescribed by the state department of justice, a developer shall disclose to the department and all known recipients of the high-risk artificial intelligence system that is the basis of the risk incident the known and foreseeable risks of algorithmic discrimination that may arise from the intended uses of the system.

B. Within ninety days of a request by the state department of justice, a developer shall submit to the department a copy of the summary and documentation the developer has made available to recipients pursuant to Section 3 of the Artificial Intelligence Act. A developer may designate the summary or documentation as including proprietary information or a trade secret. To the extent that information contained in the summary or documentation includes information subject to attorney-client privilege or work-product protection, compliance with this section does not constitute a waiver of the privilege or protection.

C. As part of a disclosure, notice or submission pursuant to the Artificial Intelligence Act, a developer shall not be required to disclose a trade secret, information protected from disclosure by state or federal law or information that would create a security risk to the developer. Such disclosure, notice or submission shall be exempt from

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1   disclosure pursuant to the Inspection of Public Records Act.

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

3   REQUIRED.--

4   A.   A deployer shall use reasonable care to protect

5   consumers from known or reasonably foreseeable risks of

6   algorithmic discrimination.

7   B.   A deployer shall implement a risk management

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

9   high-risk artificial intelligence system. The risk management

10   policy and program shall:

11   (1)   specify and incorporate the principles,

12   processes and personnel that the deployer uses to identify,

13   document and mitigate known or reasonably foreseeable risks of

14   algorithmic discrimination; and

15   (2)   be an iterative process planned,

16   implemented and regularly and systematically updated over the

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

18   include regular systematic review and updates.

19   C.   A risk management policy shall meet standards

20   established by the state department of justice by rule.

21   **SECTION 6.** [NEW MATERIAL] DEPLOYER IMPACT ASSESSMENTS.--

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

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

24   any high-risk artificial intelligence system deployed by the

25   deployer:

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1   (1) annually; and

2   (2) within ninety days of an intentional and

3   substantial modification to the system.

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

5   intelligence system completed pursuant to this section shall

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

7   deployer:

8   (1) a statement of the intended uses,

9   deployment contexts and benefits of the system;

10   (2) an analysis of any known or reasonably

11   foreseeable risks of algorithmic discrimination posed by the

12   system, and when a risk exists, the nature of the algorithmic

13   discrimination and the steps that have been taken to mitigate

14   the risk;

15   (3) a description of the categories of data

16   the system processes as inputs and the outputs the system

17   produces;

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

19   to customize the system;

20   (5) the metrics used to evaluate the

21   performance and known limitations of the system, including:

22   (a) whether the evaluation was carried

23   out using test data;

24   (b) whether the test data sets were

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

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1   New Mexico in combination with other states;

2   (c)   the demographic groups represented

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

4   gender or racial group in each data set; and

5   (d)   any independent studies carried out

6   to evaluate the system for performance and risk of

7   discrimination and whether the studies are publicly available

8   or peer-reviewed;

9   (6)   a description of any transparency measures

10   taken concerning the system, including measures taken to

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

12   (7)   a description of the post-deployment

13   monitoring and user safeguards provided for the system,

14   including oversight, use and learning processes used by the

15   deployer to address issues arising from deployment of the

16   system.

17   C.   An impact assessment conducted due to an

18   intentional and substantial modification of a high-risk

19   artificial intelligence system shall include a disclosure of

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

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

22   system.

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

24   address a set of comparable high-risk artificial intelligence

25   systems.

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1   E.   An impact assessment conducted for the purpose

2 of complying with another applicable law or rule shall satisfy

3 the requirement of this section when the assessment:

4   (1)   meets the requirements of this section;

5 and

6   (2)   is reasonably similar in scope and effect

7 to an assessment that would otherwise be conducted pursuant to

8 this section.

9   F.   For at least three years following the final

10 deployment of a high-risk artificial intelligence system, a

11 deployer shall maintain records of the most recently conducted

12 impact assessment for the system, including all records

13 concerning the assessment and all prior assessments for the

14 system.

15   G.   On or before March 1, 2027, a deployer shall

16 review each high-risk artificial intelligence system that the

17 deployer has deployed to ensure that the system is not causing

18 algorithmic discrimination.

19   H.   This section is not applicable when:

20   (1)   a deployer using a high-risk artificial

21 intelligence system:

22   (a)   employs fewer than fifty full-time

23 employees;

24   (b)   does not use the deployer's own data

25 to train the system;

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1   (c) uses the system solely for the

2   system's intended uses as disclosed by a developer pursuant to

3   the Artificial Intelligence Act; and

4   (d) makes any impact assessment of the

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

6   Artificial Intelligence Act available to consumers; and

7   (2) the system continues learning based on

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

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

10 CONSUMERS.--

11   A. A deployer shall make readily available to its

12 consumers and on its website:

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

14 artificial intelligence systems that the deployer currently

15 deploys and how known or reasonably foreseeable risks of

16 algorithmic discrimination from the deployment of each system

17 are managed; and

18   (2) a detailed explanation of the nature,

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

20 deployer.

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

22 information posted on its website pursuant to this section

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

24 artificial intelligence system.

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

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SYSTEMS WHEN MAKING CONSEQUENTIAL DECISIONS--DIRECT NOTICE TO
AFFECTED CONSUMERS--ADVERSE DECISIONS--OPPORTUNITY FOR
APPEAL.--

A. Except as provided in Subsection E of this
section, before a high-risk artificial intelligence system is
used to make or is a substantial factor in making a
consequential decision concerning a consumer, a deployer shall
provide directly to the consumer:

(1) notice that the system will be used to
make or be a substantial factor in making the decision; and

(2) information describing:

(a) the system and how to access the
deployer's notice required pursuant to Section 7 of the
Artificial Intelligence Act;

(b) the purpose of the system and the
nature of the consequential decision being made; and

(c) the deployer's contact information.

B. Except as provided in Subsection E of this
section, when a high-risk artificial intelligence system has
been used to make or has been a substantial factor in making a
consequential decision concerning a consumer that is adverse to
the consumer, the deployer shall provide directly to the
consumer:

(1) a statement explaining:

(a) the principal reason or reasons for

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the decision;

                    (b)   the degree and manner in which the
system contributed to the decision; and

                    (c)   the source and type of data that was
processed by the system to make or that was a substantial
factor in making the decision;

               (2)   an opportunity to correct any incorrect
personal data that the system processed to make or that was a
substantial factor in making the decision; and

               (3)   an opportunity to appeal the adverse
decision except in instances where an appeal is not in the best
interest of the consumer, such as creating a delay that may
pose a risk of life or safety to the consumer.

          C.   If technically feasible, an appeal of an adverse
decision pursuant to this section shall allow for human review.

          D.   All information, notices and statements to a
consumer as required by this section shall be provided:

               (1)   in plain language and in all languages in
which the deployer in the ordinary course of business provides
contracts, disclaimers, sale announcements and other
information to consumers; and

               (2)   in a format that is accessible to
consumers with disabilities.

          E.   When a deployer is unable to provide
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 STATE

7 DEPARTMENT OF JUSTICE--INSPECTION OF PUBLIC RECORDS ACT

8 EXEMPTION.--

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

10 artificial intelligence system that has been used has caused

11 algorithmic discrimination, the deployer shall as expeditiously

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

13 state department of justice of the discovery. The notice shall

14 be in a form and manner prescribed by the department.

15 B. Upon request by the state department of justice,

16 a deployer shall within ninety days submit to the state

17 department of justice any risk management policy, impact

18 assessment or records conducted, implemented, maintained or

19 received pursuant to the Artificial Intelligence Act. The

20 submission shall be in a form and manner prescribed by the

21 department.

22 C. The state department of justice may evaluate

23 risk management policies, impact assessments or records

24 submitted pursuant to this section for compliance with the

25 Artificial Intelligence Act.

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1   D.   A risk management policy, impact assessment or

2   record submitted to the state department of justice pursuant to

3   this section is exempt from disclosure pursuant to the

4   Inspection of Public Records Act.

5   E.   In a submission pursuant to this section, a

6   deployer may designate a portion of the submission as including

7   proprietary information or a trade secret and to the extent

8   that a submission contains information subject to attorney-

9   client privilege or work-product protection, the submission

10   does not constitute a waiver of the privilege or protection.

11   **SECTION 10.**   [NEW MATERIAL] INTERACTION OF ARTIFICIAL

12   INTELLIGENCE SYSTEM WITH CONSUMERS--REQUIRED DISCLOSURE.--A

13   developer that offers or makes available an artificial

14   intelligence system intended to interact with consumers shall

15   ensure that a consumer is informed that the consumer is

16   interacting with an artificial intelligence system. This

17   section does not apply when it would be obvious to a reasonable

18   person that the consumer is interacting with an artificial

19   intelligence system.

20   **SECTION 11.**   [NEW MATERIAL] EXEMPTION FROM DISCLOSURE--

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

22   CONSUMER.--

23   A.   Nothing in the Artificial Intelligence Act shall

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

25   other information protected from disclosure by state or federal

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law.

B. To the extent that a deployer or developer withholds information pursuant to this section that would otherwise be part of a disclosure pursuant to the Artificial Intelligence Act, the deployer or developer shall notify a consumer and provide a basis for the withholding.

SECTION 12. [NEW MATERIAL] APPLICABILITY EXEMPTIONS-- OTHER LAW--SECURITY AND TESTING--FEDERAL USE--INSURANCE PROVIDERS.--

A. No provision of the Artificial Intelligence Act shall be construed to restrict a person's ability to:

(1) comply with federal, state or municipal laws or regulations;

(2) comply with a civil, criminal or regulatory inquiry, investigation, subpoena or summons by a governmental authority;

(3) cooperate with a law enforcement agency concerning activity that the person reasonably and in good faith believes may violate other laws or regulations;

(4) defend, exercise or investigate legal claims;

(5) act to protect an interest that is essential for the life or physical safety of a person;

(6) by means other than the use of facial recognition technology:

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(a) detect, prevent, protect against or respond to deceptive, illegal or malicious activity, fraud, identity theft, harassment or security incidents; or

(b) investigate, prosecute or report persons responsible for the actions listed in Subparagraph (a) of this paragraph;

(7) preserve the integrity or security of artificial intelligence, computer, electronic or internet connection systems;

(8) engage in public or peer-reviewed scientific or statistical research that adheres to and is conducted in accordance with applicable federal and state law;

(9) engage in pre-market testing other than testing conducted under real-world conditions, including development, research and testing of artificial intelligence systems; or

(10) assist another person with compliance with the Artificial Intelligence Use Act.

B. No provision of the Artificial Intelligence Act shall be construed to restrict:

(1) a product recall; or

(2) identification or repair of technical errors that impair the functionality of an artificial intelligence system.

C. The Artificial Intelligence Act shall not apply

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in circumstances where compliance would violate an evidentiary privilege pursuant to law.

D. No provision of the Artificial Intelligence Act shall be construed so as to limit a person's rights to free speech or freedom of the press pursuant to the first amendment to the United States constitution or Article 2, Section 17 of the constitution of New Mexico.

E. The Artificial Intelligence Act shall not apply to a developer, deployer or other person who:

(1) uses or intentionally and substantially modifies a high-risk artificial intelligence system that:

(a) has been authorized by a federal agency in accordance with federal law; and

(b) is in compliance with standards established by a federal agency in accordance with federal law when such standards are substantially equivalent or more stringent than the requirements of the Artificial Intelligence Act;

(2) conducts research to support an application for certification or review by a federal agency pursuant to federal law;

(3) performs work under or in connection with a contract with a federal agency, unless the work is on a high-risk artificial intelligence system used to make or as a substantial factor in making a decision concerning employment

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or housing; or

(4)   is a covered entity pursuant to federal health insurance law and is providing health care recommendations:

(a)   generated by an artificial intelligence system;

(b)   that require a health care provider to take action to implement the recommendations; and

(c)   that are not considered to be high risk.

F.   The Artificial Intelligence Act shall not apply to an artificial intelligence system acquired by the federal government, except for a high-risk artificial intelligence system used to make or as a substantial factor in making a decision concerning employment or housing.

G.   A financial institution or affiliate or subsidiary of a financial institution that is subject to prudential regulation by another state or by the federal government pursuant to laws that apply to the use of high-risk artificial intelligence systems shall be deemed to be in compliance with the Artificial Intelligence Act when the applicable laws:

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

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1   (2)   at a minimum, require the financial

2   institution to:

3   (a)   regularly audit the institution's

4   use of high-risk artificial intelligence systems for compliance

5   with state and federal antidiscrimination laws; and

6   (b)   mitigate any algorithmic

7   discrimination caused by the use of a high-risk artificial

8   intelligence system.

9   H.   As used in this section, "financial institution"

10   means an insured state or national bank, a state or federal

11   savings and loan association or savings bank, a state or

12   federal credit union or authorized branches of each of the

13   foregoing.

14   I.   A developer, deployer or other person who

15   engages in an action pursuant to an exemption set forth in this

16   section shall bear the burden of demonstrating that the action

17   qualifies for the exemption.

18   **SECTION 13.**   [NEW MATERIAL] ENFORCEMENT--STATE DEPARTMENT

19   OF JUSTICE--CONSUMER CIVIL ACTIONS.--

20   A.   Upon the promulgation of rules pursuant to

21   Section 14 of the Artificial Intelligence Act:

22   (1)   the state department of justice shall have

23   authority to enforce that act; and

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

25   district court against a developer or deployer for declaratory

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underscored material = new
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or injunctive relief and attorney fees for a violation of that act.

B. In an action by the state department of justice to enforce the Artificial Intelligence Act, it is an affirmative defense when:

(1) the developer, deployer or other person discovers and cures a violation of the Artificial Intelligence Act as a result of:

(a) feedback that the developer, deployer or other person encourages the deployer or users to provide; or

(b) adversarial testing, red teaming or an internal review process; and

(2) the developer, deployer or other person is in compliance with a risk management framework for artificial intelligence systems designated by the state department of justice by rule.

C. In an action by the state department of justice to enforce the Artificial Intelligence Act, the developer, deployer or other person who is the subject of the enforcement shall bear the burden of demonstrating that the requirements for an affirmative defense pursuant to this section have been met.

D. Nothing within the Artificial Intelligence Act, including the enforcement authority granted to the state

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1   department of justice pursuant to this section, preempts or

2   otherwise affects any right, claim, remedy, presumption or

3   defense available in law or equity.

4   E.   An affirmative defense or rebuttable

5   presumption established by the Artificial Intelligence Act

6   applies only to an enforcement action by the state department

7   of justice and does not apply to any right, claim, remedy,

8   presumption or defense available in law or equity.

9   F.   A violation of the Artificial Intelligence Act

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

11   Unfair Practices Act.

12   G.   As used in this section:

13   (1)   "adversarial testing" means to proactively

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

15   likely to elicit problematic output, or as defined by the state

16   department of justice by rule; and

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

18   simulating attack scenarios on an artificial intelligence

19   application to pinpoint weaknesses and plan preventive measures

20   or as defined by the state department of justice by rule.

21   SECTION 14.   [NEW MATERIAL] RULEMAKING.--On or before

22   January 1, 2027, the state department of justice shall

23   promulgate rules to implement the Artificial Intelligence Act

24   and shall post them prominently on the state department of

25   justice's website.

.228797.3

underscored material = new
[bracketed material] = delete

SECTION 15. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2026.

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