

Introduced by

1 A BILL for an Act to create and enact chapter 51-40, three new sections to chapter 54-59, and a
2 new chapter to title 54 of the North Dakota Century Code, relating to the regulation of artificial
3 intelligence and the creation of a regulatory sandbox program and an artificial intelligence
4 council; to amend and reenact sections 54-59-01 and 54-59-05 of the North Dakota Century
5 Code, relating to the powers and duties of the information technology department; and to
6 provide for a report.

7 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

8 **SECTION 1.** Chapter 51-40 of the North Dakota Century Code is created and enacted as
9 follows:

10 **51-40-01. Definitions.**

11 For purposes of this chapter:

- 12 1. "Artificial intelligence system" means a machine-based system that, for any explicit or
13 implicit objective, infers from the inputs the system receives how to generate outputs,
14 including content, decisions, predictions, or recommendations, which can influence
15 physical or virtual environments.
- 16 2. "Biometric data" means data generated by automatic measurements of an individual's
17 biological characteristics. The term includes a fingerprint, voice print, retina or iris
18 scan, or other unique biological pattern or characteristic used to identify an individual.
19 The term does not include a physical or digital photograph or data generated from a
20 physical or digital photograph, a video or audio recording or data generated from a
21 video or audio recording, or information collected, used, or stored for health care
22 treatment, payment, or operations under the federal Health Insurance Portability and
23 Accountability Act of 1996 [Pub. L. 104-191; 110 Stat. 1936].

- 1 3. "Consumer" means an individual who is a resident of this state acting in an individual
2 or household context. The term does not include an individual acting in a commercial
3 or employment context.
- 4 4. "Deployer" means a person that deploys an artificial intelligence system for use in this
5 state.
- 6 5. "Developer" means a person that develops an artificial intelligence system that is
7 offered, sold, leased, given, or otherwise provided in this state.
- 8 6. "Health care services" means services related to human health, diagnosis, prevention,
9 or treatment of a human disease or impairment provided by an individual licensed,
10 registered, or certified under applicable state or federal law.

11 **51-40-02. Applicability.**

12 This chapter applies to a person that:

- 13 1. Promotes, advertises, or conducts business in this state;
- 14 2. Produces a product or service used by residents of this state; or
- 15 3. Develops or deploys an artificial intelligence system in this state.

16 **51-40-03. Required disclosures.**

- 17 1. A person that makes available an artificial intelligence system intended to interact with
18 consumers shall disclose to each consumer, before or at the time of interaction, that
19 the consumer is interacting with an artificial intelligence system.
- 20 2. A person is required to make the disclosure regardless of whether it would be obvious
21 to a reasonable consumer that the consumer is interacting with an artificial intelligence
22 system.
- 23 3. A disclosure must be clear and conspicuous and written in plain language.
- 24 4. A disclosure may be provided by using a hyperlink to direct a consumer to a separate
25 web page.
- 26 5. If artificial intelligence is used in relation to health care services or treatment, the
27 health care services or treatment provider shall provide a disclosure to the recipient of
28 the health care services or treatment or the recipient's personal representative no later
29 than the date the service or treatment is first provided, except in the case of an
30 emergency, in which case the provider shall provide the required disclosure as soon
31 as reasonably possible.

1 **51-40-04. Prohibitions.**

2 A person may not:

- 3 1. Develop or deploy an artificial intelligence system in a manner that intentionally aims
4 to incite or encourage an individual to:
5 a. Commit physical self-harm, including suicide;
6 b. Harm another individual; or
7 c. Engage in criminal activity.
8 2. Use or deploy an artificial intelligence system that evaluates or classifies an individual
9 or group of individuals based on social behavior or personal characteristics, whether
10 known, inferred, or predicted, with the intent to calculate or assign a social score or
11 similar categorical estimation or valuation of the individual or group of individuals
12 which results or may result in detrimental or unfavorable treatment of an individual or
13 group of individuals:
14 a. In a social context unrelated to the context in which the behavior or
15 characteristics were observed or noted; or
16 b. Which is unjustified or disproportionate to the nature or gravity of the observed or
17 noted behavior or characteristics.
18 3. Develop or deploy an artificial intelligence system for the purpose of uniquely
19 identifying a specific individual using biometric data or the targeted or untargeted
20 gathering of images or other media from the internet or any other publicly available
21 source without the individual's consent.

22 **51-40-05. Enforcement authority.**

- 23 1. The attorney general has exclusive authority to enforce this chapter, except to the
24 extent a state agency may impose sanctions against a person licensed, registered, or
25 certified by that agency.
26 2. This chapter does not provide a basis for a private right of action for a violation of this
27 chapter or any other law.
28 3. The attorney general shall create and maintain an online mechanism on the attorney
29 general's website through which a consumer may submit a complaint under this
30 chapter to the attorney general.

- 1 4. The attorney general, in enforcing this chapter, has all the powers provided in this
2 chapter or chapter 51-15 and may seek all remedies in this chapter or chapter 51-15.
3 The remedies, duties, prohibitions, and penalties of this chapter are not exclusive and
4 are in addition to all other causes of action, remedies, and penalties in chapter 51-15,
5 or otherwise provided by law.

6 **51-40-06. Notice of violation and ability to cure.**

- 7 1. If the attorney general determines a person has violated or is violating this chapter, the
8 attorney general shall notify the person in writing of the determination and identify the
9 specific provisions the attorney general alleges have been or are being violated.
10 2. The attorney general may not bring an action against a person:
11 a. Before the sixtieth day after the date the attorney general provides the notice; or
12 b. If before the sixtieth day after the attorney general provides notice, the person:
13 (1) Cures the identified violation; and
14 (2) Provides the attorney general with a written statement that the person has:
15 (a) Cured the alleged violation, including supporting documentation
16 showing the manner in which the alleged violation was cured; and
17 (b) Made any necessary changes to internal policies to reasonably
18 prevent further violation of this chapter.

19 **51-40-07. Civil penalty.**

- 20 1. A person that violates this chapter and does not cure the violation under section
21 51-40-06 is subject to a civil penalty of:
22 a. Not less than ten thousand dollars nor more than twelve thousand dollars per
23 violation for each violation the court determines to be curable;
24 b. Not less than eighty thousand dollars nor more than two hundred thousand
25 dollars for each violation the court determines is unable to be cured; and
26 c. Not less than two thousand dollars nor more than forty thousand dollars per day
27 for each day the violation continues.
28 2. The attorney general may bring an action in the name of this state to:
29 a. Collect a civil penalty under this section;
30 b. Seek injunctive relief against further violation of this chapter; and

- 1 c. Recover attorney's fees and reasonable court costs or other investigative
- 2 expenses.
- 3 3. The attorney general may not bring an action to collect a civil penalty under this
- 4 section against a person for an artificial intelligence system that has not been
- 5 deployed.
- 6 4. There is a rebuttable presumption that a person used reasonable care as required
- 7 under this chapter.
- 8 5. A defendant in an action under this section may seek an expedited hearing or other
- 9 process, including a request for declaratory judgment, if the person believes in good
- 10 faith the person has not violated this chapter.
- 11 6. A defendant may not be found liable in an action under this section if:
- 12 a. Another person uses the artificial intelligence system affiliated with the defendant
- 13 in a manner prohibited by this chapter; or
- 14 b. The defendant discovers a violation of this chapter through:
- 15 (1) Feedback from a developer, deployer, or other person that believes a
- 16 violation has occurred;
- 17 (2) Testing, including adversarial testing; or
- 18 (3) Following guidelines set by applicable state agencies.

19 **51-40-08. Enforcement actions by state agencies - Penalty.**

- 20 1. A state agency may impose sanctions against a person licensed, registered, or
- 21 certified by that agency for a violation of section 51-40-03 if:
- 22 a. The person has been subject to a civil penalty under section 51-40-07; and
- 23 b. The attorney general has recommended additional enforcement by the agency.
- 24 2. Sanctions under this section may include:
- 25 a. Suspension, probation, or revocation of a license, registration, certificate, or other
- 26 authorization issued by the agency to engage in an activity; and
- 27 b. A monetary penalty not to exceed one hundred thousand dollars.

28 **51-40-09. Local preemption.**

29 An ordinance enacted or adopted by a county, city, or township, including an ordinance
30 enacted or adopted under a home rule charter, which conflicts with this chapter is void.

1 **SECTION 2. AMENDMENT.** Section 54-59-01 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **54-59-01. Definitions.**

4 As used in this chapter and section 7 of this Act:

- 5 1. "Agency" or "entity" does not include any agricultural commodity promotion group or
6 any occupational or professional board.
- 7 2. "Applicable agency" means an agency established by law to regulate certain types of
8 business activity in this state and the persons engaging in that business, which the
9 department determines would regulate a program participant if the person was not
10 operating under this chapter.
- 11 3. "Artificial intelligence system" means a machine-based system that, for any explicit or
12 implicit objective, infers from the inputs the system receives how to generate outputs,
13 including content, decisions, predictions, or recommendations, which can influence
14 physical or virtual environments.
- 15 4. "Council" means the artificial intelligence council.
- 16 5. "Cybersecurity" means processes or capabilities, wherein, systems, communications,
17 and information are protected and defended against damage, unauthorized use or
18 modification, and exploitation.
- 19 ~~3.6.~~ "Cybersecurity strategy" means a vision, plan of action, or guiding principles. Unless
20 otherwise defined in this chapter, the term does not mean an associated operational
21 plan.
- 22 ~~4.7.~~ "Department" means the information technology department.
- 23 ~~5.8.~~ "Information technology" means the use of hardware, software, services, and
24 supporting infrastructure to manage and deliver information using voice, data, and
25 video.
- 26 ~~6.9.~~ "Major information technology project" means a project that meets one or more of the
27 following criteria, as determined by the chief information officer:
 - 28 a. An estimated total cost, as defined by the department, of five million dollars or
29 more;
 - 30 b. Requires one year or longer to reach operational status; or

- c. Requires oversight due to its potential benefits, risks, public impact, visibility, or other significant reason.

~~7.10.~~ "Network services" means the equipment, software, and services necessary to transmit voice, data, or video.

11. "Program participant" means a person for which an application to participate in the regulatory sandbox program under section 5 of this Act is approved and which may test an artificial intelligence system under this chapter.

SECTION 3. AMENDMENT. Section 54-59-05 of the North Dakota Century Code is amended and reenacted as follows:

54-59-05. Powers and duties of department.

The department:

1. Shall provide, supervise, and regulate information technology of all executive branch state entities, excluding the institutions under the control of the state board of higher education.
2. Shall provide network services in a way that ensures the network requirements of a single entity do not adversely affect the functionality of the whole network, facilitates open communications with the citizens of the state, minimizes the state's investment in human resources, accommodates an ever-increasing amount of traffic, supports rapid detection and resolution of problems, protects the network infrastructure from damage and security breaches, provides for the aggregation of data, voice, video, and multimedia into a statewide transport mechanism or backbone, and provides for the network support for the entity to carry out its mission.
3. May review and approve additional network services that are not provided by the department.
4. May purchase, finance the purchase, or lease equipment, software, or implementation services or replace, including by trade or resale, equipment or software as may be necessary to carry out this chapter. An agreement to finance the purchase of software, equipment, or implementation services may not exceed a period of five years. The department shall submit any intended financing proposal for the purchase of software, equipment, or implementation services under this subsection, which is in excess of one million dollars, to the legislative assembly or the budget section if the legislative

1 assembly is not in session before executing a financing agreement. Any request
2 considered by the budget section must comply with section 54-35-02.9. If the
3 legislative assembly or the budget section does not approve the execution of a
4 financing agreement, the department may not proceed with the proposed financing
5 arrangement. The department may finance the purchase of software, equipment, or
6 implementation services only to the extent the purchase amount does not exceed
7 seven and one-half percent of the amount appropriated to the department during that
8 biennium.

9 5. Shall review requests for lease, purchase, or other contractual acquisition of
10 information technology as required by this subsection. Each executive branch agency
11 or institution, excluding the institutions under the control of the board of higher
12 education, shall submit to the department, in accordance with guidelines established
13 by the department, a written request for the lease, purchase, or other contractual
14 acquisition of information technology. The department shall review requests for
15 conformance with the requesting entity's information technology plan and compliance
16 with statewide policies and standards. If the request is not in conformance or
17 compliance, the department may disapprove the request or require justification for the
18 departure from the plan or statewide policy or standard.

19 6. Shall provide information technology, including assistance and advisory service, to the
20 executive, legislative, and judicial branches. If the department is unable to fulfill a
21 request for service from the legislative or judicial branch, the information technology
22 may be procured by the legislative or judicial branch within the limits of legislative
23 appropriations.

24 7. Shall request and review information, including project startup information
25 summarizing the project description, project objectives, business need or problem,
26 cost-benefit analysis, and project risks and a project closeout information summarizing
27 the project objectives achieved, project budget and schedule variances, and lessons
28 learned, regarding any major information technology project of an executive branch
29 agency. The department shall present the information to the information technology
30 committee on request of the committee.

- 1 8. May request and review information regarding any information technology project of
2 an executive branch agency with a total cost of between one hundred thousand and
3 five million dollars as determined necessary by the department. The department shall
4 present the information to the information technology committee on request of the
5 committee.
- 6 9. Shall study emerging technology and evaluate its impact on the state's system of
7 information technology.
- 8 10. Shall develop guidelines for reports to be provided by each agency of the executive,
9 legislative, and judicial branches, excluding the institutions under the control of the
10 board of higher education, on information technology in those entities.
- 11 11. Shall collaborate with the state board of higher education on guidelines for reports to
12 be provided by institutions under control of the state board of higher education on
13 information technology in those entities.
- 14 12. Shall perform all other duties necessary to carry out this chapter.
- 15 13. May provide wide area network services to a state agency, city, county, school district,
16 or other political subdivision of this state. The information technology department may
17 not provide wide area network service to any private, charitable, or nonprofit entity
18 except the information technology department may continue to provide the wide area
19 network service the department provided to the private, charitable, and nonprofit
20 entities receiving services from the department on January 1, 2003.
- 21 14. Shall assure proper measures for security, firewalls, and internet protocol addressing
22 at the state's interface with other facilities.
- 23 15. Notwithstanding subsection 13, may provide wide area network services for a period
24 not to exceed four years to an occupant of a technology park associated with an
25 institution of higher education or to a business located in a business incubator
26 associated with an institution of higher education.
- 27 16. Shall advise and oversee cybersecurity strategy for all executive branch state
28 agencies, including institutions under the control of the state board of higher
29 education, counties, cities, school districts, or other political subdivisions. For
30 purposes of this subsection, the department shall consult with the attorney general on
31 cybersecurity strategy.

- 1 17. Shall advise and consult with the legislative and judicial branches regarding
2 cybersecurity strategy.
- 3 18. Notwithstanding chapter 54-40.2, may enter a memorandum of understanding with
4 other state, local, tribal, or territorial governments of the United States for purposes of
5 ensuring the confidentiality, availability, and integrity of state, local, and tribal
6 information systems and data, including consulting, developing cybersecurity strategy,
7 prevention of cybersecurity incidents, and response strategies to cybersecurity
8 incidents. The department may charge an amount equal to the cost of the services
9 rendered by the department to all agencies that receive and expend moneys from
10 other than the general fund.
- 11 19. Notwithstanding chapter 54-40.2, may enter a mutual aid agreement with other state,
12 local, tribal, or territorial governments of the United States agreeing to the reciprocal
13 exchange of resources and services for mutual benefit of the parties related to
14 cybersecurity efforts for the purposes of responding to or mitigating active
15 cybersecurity incidents. The department may receive in-kind benefits that reduce
16 cybersecurity risks to information technology or shall charge an amount equal to the
17 cost of the services rendered by the department to all agencies that receive and
18 expend moneys from other than the general fund.
- 19 20. May provide information technology and cybersecurity services to any administrative,
20 elementary education, secondary education, and higher education institution under the
21 control of a tribal government of this state. The services provided and the cost of
22 services must be equal to those provided to state agencies. An agreement for services
23 entered under this section is not subject to the provisions of chapter 54-40.2.
- 24 21. Shall provide an assessment of an agency's use of artificial intelligence systems in the
25 agency's operations and the agency's oversight of the use of artificial intelligence
26 systems by persons under the agency's jurisdiction, and any related impact on the
27 agency's ability to achieve its mission, goals, and objectives, made using information
28 available to the department and from the attorney general or any other agency.
- 29 22. The department shall collect from each executive branch agency information on the
30 status and condition of the agency's information technology infrastructure, including an
31 evaluation of the use or considered use of artificial intelligence by each agency.

1 **SECTION 4.** A new section to chapter 54-59 of the North Dakota Century Code is created
2 and enacted as follows:

3 **Regulatory sandbox program - Creation.**

- 4 1. The department, in consultation with the council, shall create a regulatory sandbox
5 program that enables a person to obtain legal protection and limited access to the
6 market in this state to test innovative artificial intelligence systems for a limited amount
7 of time without obtaining a license, registration, or other regulatory authorization.
- 8 2. The regulatory sandbox program must:
- 9 a. Promote the safe and innovative use of artificial intelligence systems across
10 various sectors including healthcare, finance, education, and public services;
- 11 b. Encourage responsible deployment of artificial intelligence systems while
12 balancing the need for consumer protection, privacy, and public safety;
- 13 c. Provide clear guidelines for a person that develops an artificial intelligence
14 system to test systems while certain laws and regulations related to the testing
15 are waived or suspended; and
- 16 d. Allow a person to engage in research, training, testing, or other predeployment
17 activities to develop an artificial intelligence system.
- 18 3. The attorney general may not file or pursue charges against a program participant for
19 a violation of a law or regulation waived under the regulatory sandbox program which
20 occurs during the testing period.
- 21 4. An agency may not file or pursue punitive action against a program participant,
22 including the imposition of a fine or the suspension or revocation of a license,
23 registration, or other authorization, for a violation of a law or regulation waived under
24 the regulatory sandbox program which occurs during the testing period.
- 25 5. Notwithstanding subsections 3 and 4, the requirements of section 51-40-03 may not
26 be waived, and the attorney general or a state agency may file or pursue charges or
27 an action against a program participant that violates that section.

28 **SECTION 5.** A new section to chapter 54-59 of the North Dakota Century Code is created
29 and enacted as follows:

Regulatory sandbox program - Participation.

1. A person shall obtain approval from the department and applicable agency before testing an artificial intelligence system under the regulatory sandbox program.
2. The department by rule shall prescribe the form and content of an application to participate in the regulatory sandbox program, which must require the applicant to:
 - a. Provide a detailed description of the artificial intelligence system the applicant desires to test under the regulatory sandbox program, and its intended use;
 - b. Include a benefit assessment that addresses potential impacts on consumers, privacy, and public safety;
 - c. Describe the applicant's plan for mitigating adverse consequences that may occur during testing; and
 - d. Provide proof of compliance with applicable federal artificial intelligence laws and regulations.
3. A program participant approved by the department and each applicable agency may test and deploy an artificial intelligence system under the regulatory sandbox program for a period of not more than thirty-six months.
4. The department may extend a testing period under the regulatory sandbox program if the department finds good cause for the testing period to continue.
5. The department shall coordinate with all applicable agencies to oversee the operations of a program participant.
6. The council or an agency may recommend to the department that a program participant be removed from the regulatory sandbox program if the council or agency finds that the artificial intelligence system the program participant is testing:
 - a. Poses an undue risk to public safety or welfare;
 - b. Violates a federal law or regulation; or
 - c. Violates a state law or regulation not waived under the regulatory sandbox program.

SECTION 6. A new section to chapter 54-59 of the North Dakota Century Code is created and enacted as follows:

1 **Regulatory sandbox program - Reports.**

- 2 1. A program participant shall provide a quarterly report to the department which must
3 include:
- 4 a. Metrics for the performance of the artificial intelligence system being tested under
5 the regulatory sandbox program;
- 6 b. Updates on how the artificial intelligence system mitigates risks associated with
7 its operation; and
- 8 c. Feedback from consumers and affected stakeholders that are using the artificial
9 intelligence system tested under the regulatory sandbox program.
- 10 2. The department shall maintain confidentiality regarding the intellectual property, trade
11 secrets, and other sensitive information it obtains through the regulatory sandbox
12 program.
- 13 3. The department shall submit a report to the legislative management by July first of
14 each year which includes:
- 15 a. The number of program participants testing an artificial intelligence system in the
16 regulatory sandbox program;
- 17 b. The overall performance and impact of artificial intelligence systems tested in the
18 regulatory sandbox program; and
- 19 c. Recommendations on changes to laws for future legislative consideration.

20 **SECTION 7.** A new chapter to title 54 of the North Dakota Century Code is created and
21 enacted as follows:

22 **Artificial intelligence council - Creation - Staffing.**

- 23 1. The artificial intelligence council is created to ensure artificial intelligence development
24 is ethical and in the public's best interest.
- 25 2. The information technology department shall provide staffing and administrative
26 services to the council as provided in this section.
- 27 3. The department and the council shall enter a memorandum of understanding detailing
28 the administrative support the council requires from the department to fulfill the
29 council's purposes and other provisions necessary to ensure the efficient operation of
30 the council.

1 **Membership.**

2 1. The council is composed of seven members as follows:

3 a. Three members of the public appointed by the governor;

4 b. Two members of the public appointed by the lieutenant governor; and

5 c. Two members of the public appointed by the speaker of the house of
6 representatives.

7 2. Members of the council serve staggered four-year terms, with the terms of three or
8 four members expiring every two years.

9 3. The governor shall appoint a chair from among the members, and the council shall
10 elect a vice chair from its membership.

11 4. The council may establish an advisory board composed of individuals from the public
12 who possess expertise directly related to the council's functions, including expertise in
13 technical, ethical, regulatory, and other relevant areas.

14 5. Members of the council must be residents of this state and have knowledge or
15 expertise in one or more of the following areas:

16 a. Artificial intelligence systems.

17 b. Data privacy and security.

18 c. Ethics in technology or law.

19 d. Public policy and regulation.

20 e. Risk management related to artificial intelligence systems.

21 f. Improving the efficiency and effectiveness of governmental operations.

22 g. Anticompetitive practices and market fairness.

23 6. A member of the task force who is not a state employee is entitled to reimbursement
24 for mileage and expenses as provided by law for state officers and employees, to be
25 paid by the information technology department.

26 **Duties - Report.**

27 1. The council shall:

28 a. Ensure artificial intelligence systems in this state are ethical and developed in the
29 public's best interest;

30 b. Ensure artificial intelligence systems in this state do not harm public safety or
31 undermine individual freedoms;

- 1 c. Identify existing laws and rules that impede innovation in the development of
- 2 artificial intelligence systems and recommend appropriate reforms;
- 3 d. Analyze opportunities to improve the efficiency and effectiveness of state
- 4 government operations through the use of artificial intelligence systems;
- 5 e. Make recommendations to state agencies regarding the use of artificial
- 6 intelligence systems to improve an agency's efficiency and effectiveness;
- 7 f. Evaluate potential instances of regulatory capture, including undue influence by
- 8 technology companies or disproportionate burdens on smaller innovators caused
- 9 by the use of artificial intelligence systems;
- 10 g. Evaluate the influence of technology companies on other companies and
- 11 determine the existence or use of tools or processes designed to censor
- 12 competitors or users through the use of artificial intelligence systems;
- 13 h. Review the regulatory environment for artificial intelligence systems; and
- 14 i. Receive periodic reports from the information technology department on the use
- 15 of artificial intelligence systems by agencies.

16 2. The council may issue reports on:

- 17 a. The compliance of artificial intelligence systems in this state with the laws of this
- 18 state;
- 19 b. The ethical implications of deploying artificial intelligence systems in this state;
- 20 c. Data privacy and security concerns related to artificial intelligence systems in this
- 21 state; and
- 22 d. Potential liability from legal risks associated with the use of artificial intelligence
- 23 systems in this state.

24 3. The council shall conduct training programs for agencies and local governments on

25 the use of artificial intelligence systems.

26 4. The council shall provide a report to the legislative management by July first of even-

27 numbered years regarding the findings and recommendations of the council.

28 **Prohibitions.**

29 The council may not:

- 30 1. Adopt rules or promulgate guidance that is binding on an agency;
- 31 2. Interfere with or override the operations of an agency; or

- 1 3. Perform a duty or exercise a power not granted by this chapter.