Alert | Data Privacy & Cybersecurity/ Innovation & Artificial Intelligence
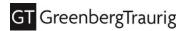

GENERATIVE AI

Virginia Poised to Become Second State to Enact Comprehensive AI Legislation

Go-To Guide
• Virginia's HB 2094 applies to high-risk AI system developers and deployers and focuses on consumer protection.
• The bill covers AI systems that autonomously make or significantly influence consequential decisions without meaningful human oversight.
• Developers must document system limits, ensure transparency, and manage risks, while deployers must disclose AI usage and conduct impact assessments.
• Generative AI outputs must be identifiable, with limited exceptions.
• The attorney general would oversee enforcement, with penalties up to $10,000 per violation and a discretionary 45-day cure period.
• HB 2094 is narrower than the Colorado AI Act (CAIA, with clearer transparency obligations and trade secret protections, and differs from the EU AI Act, which imposes stricter, risk-based compliance rules.

On Feb. 20, 2024, the Virginia General Assembly passed the High-Risk Artificial Intelligence (AI) Developer and Deployer Act (HB 2094). If signed by Gov. Glenn Youngkin, Virginia would become the

second U.S. state to implement a broad framework regulating AI use, particularly in high-risk applications.[1] The bill is closely modeled on the CAIA and would take effect on July 1, 2026.

This GT Alert covers to whom the bill applies, important definitions, key differences with the CAIA, and potential future implications.

To Whom Does HB 2094 Apply?

HB 2094 applies to any person doing business in Virginia that develops or deploys a high-risk AI system. "Developers" refer to organizations that offer, sell, lease, give, or otherwise make high-risk AI systems available to deployers in Virginia. The requirements HB 2094 imposes on developers would also apply to a person who intentionally and substantially modifies an existing high-risk AI system. "Deployers" refer to organizations that deploy or use high-risk AI systems to make consequential decisions about Virginians.

How Does HB 2094 Work?

Key Definitions

HB 2094 aims to protect Virginia residents acting in their individual capacities. It would not apply to Virginia residents who act in a commercial or employment context. Furthermore, HB 2094 defines "generative artificial intelligence systems" as AI systems that incorporate generative AI, which includes the capability of "*producing and [being] used to produce* synthetic content, including audio, images, text, and videos."

HB 2094's definition of "high-risk AI" would apply only to machine-learning-based systems that (i) serve as the principal basis for consequential decisions, meaning they operate without human oversight and (ii) that are explicitly intended to autonomously make or substantially influence such decisions.

High-risk applications include parole, probation, pardons, other forms of release from incarceration or court supervision, and determinations related to marital status. As the bill would not apply to government entities, it is not yet clear which private sector decisions might be in scope of these high-risk applications.

Requirements

HB 2094 places obligations on AI developers and deployers to mitigate risks associated with algorithmic discrimination and ensure transparency. It establishes a duty of care, disclosure, and risk management requirements for high-risk AI system developers, along with consumer disclosure obligations and impact assessments for deployers. Developers must document known or reasonably known limitations in AI systems. Generated or substantially modified synthetic content from generative AI high-risk systems must be made identifiable and detectable using industry-standard tools, comply with applicable accessibility requirements where feasible, and ensure the synthetic content is identified at the time of generation, with exceptions for low-risk or creative applications such that it "does not hinder the display or enjoyment of such work or program." The bill references established AI risk frameworks such as NIST AI RMF and ISO/IEC 42001.

---

[1] See also GT's blog post on the Colorado AI Act. Other states have regulated specific uses of AI or associated technologies, such as California and Utah, which, respectively, regulate interaction with bots and Generative AI.

Exemptions

Certain exclusions apply under HB 2094, including AI use in response to a consumer request or to provide a requested service or product under a contract. There are also limited exceptions for financial services and broader exemptions for healthcare and insurance sectors.

Enforcement

The bill grants enforcement authority to the attorney general and establishes penalties for noncompliance. Violations may result in fines up to $1,000 per occurrence, with attorney fee shifting, while willful violations may carry fines up to $10,000 per occurrence. Each violation would be considered separately for penalty assessment. The attorney general must issue a civil investigative demand before initiating enforcement action, and a discretionary 45-day right to cure period is available to address violations. There is no private right of action under HB 2094.

Key Differences With the CAIA

While HB 2094 is closely modeled on the CAIA, it introduces notable differences. HB 2094 limits its definition of consumers to individual and household contexts, and explicitly excludes commercial and employment contexts. It defines "high-risk AI" more narrowly, focusing only on systems that operate without meaningful human oversight and serve as the principal basis for consequential decisions, while adding a couple new use cases to the scope of "high-risk" uses. It also provides clearer guidelines on when a developer becomes a deployer, imposes more specific documentation and transparency obligations, and enhances trade secret protections. Unlike CAIA, HB 2094 does not require reporting algorithmic discrimination to the attorney general and allows a discretionary 45-day right to cure violations. Additionally, it expands the list of high-risk uses to include decisions related to parole, probation, pardons, and marital status.

While HB 2094 aligns with aspects of the CAIA, it differs from the broader and more stringent EU AI Act, which imposes risk-based AI classifications, stricter compliance obligations, and significant penalties for violations. HB 2094 also does not contain direct incident reporting requirements, public disclosure requirements, or a small business exception. Finally, HB 2094 upholds a higher threshold than CAIA for consumer rights when a high-risk AI makes a negative decision relating to a consumer, requiring that the AI system must have processed personal data beyond what the consumer directly provided.

Conclusion

If signed into law, HB 2094 would make Virginia the second U.S. state to implement comprehensive AI regulations, setting guidelines for high-risk AI systems while seeking to address concerns about transparency and algorithmic discrimination. With enforcement potentially beginning in 2026, businesses developing or deploying AI in Virginia should proactively assess their compliance obligations and prepare for the new regulatory framework, including where the organization is also subject to obligations under the CAIA.

Authors

This GT Alert was prepared by:

- Reena Bajowala | +1 312.456.1018 | Reena.Bajowala@gtlaw.com

- **Wouter van Wengen** | +31 20 301 7445 | Wouter.vanWengen@gtlaw.com

Albany. Amsterdam. Atlanta. Austin. Berlin¬. Boston. Charlotte. Chicago. Dallas. Delaware. Denver. Fort Lauderdale. Houston. Kingdom of Saudi Arabia«. Las Vegas. London*. Long Island. Los Angeles. Mexico City+. Miami. Milan». Minneapolis. Munich¬. New Jersey. New York. Northern Virginia. Orange County. Orlando. Philadelphia. Phoenix. Portland. Sacramento. Salt Lake City. San Diego. San Francisco. São Paulo›. Seoul∞. Shanghai. Silicon Valley. Singapore⁻. Tallahassee. Tampa. Tel Aviv^. Tokyo¤. United Arab Emirates‹. Warsaw~. Washington, D.C. West Palm Beach. Westchester County.