119TH CONGRESS
1ST SESSION

S. ____

To establish legal standards for advanced artificial intelligence products.

IN THE SENATE OF THE UNITED STATES

Mr. DURBIN (for himself and Mr. HAWLEY) introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To establish legal standards for advanced artificial
intelligence products.

1   *Be it enacted by the Senate and House of Representa-*

2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4   (a) SHORT TITLE.—This Act may be cited as the

5 "Aligning Incentives for Leadership, Excellence, and Ad-

6 vancement in Development Act" or the "AI LEAD Act".

7   (b) TABLE OF CONTENTS.—The table of contents for

8 this Act is as follows:

SEC. 2. FINDINGS.

Congress finds the following:

(1) Artificial intelligence systems are products that shift decision-making power and responsibility away from humans to software-based systems, often without direct human oversight.

(2) These products, while holding great promise, have caused and will cause harm to businesses and individuals. For example, multiple teenagers have tragically died after being exploited by an artificial intelligence chatbot.

(3) Unpredictable allocations of liability jeopardize public safety and the financial well-being of

1 both individuals and entire industries, particularly

2 the small businesses of the United States, and ad-

3 versely affect the Federal Government and tax-

4 payers.

5   (4) Product liability law can help to address

6 harms caused by artificial intelligence systems that

7 affect interstate commerce by incentivizing safety,

8 providing certainty to artificial intelligence devel-

9 opers and deployers to continue to innovate, and en-

10 suring the competitiveness of the United States.

11   (5) A Federal products liability framework for

12 artificial intelligence systems will remove barriers to

13 interstate commerce and protect individuals' due

14 process rights.

15   (6) This Act establishes Federal legislative

16 guidelines for products liability without implicating

17 expressive speech to ensure more predictable legal

18 outcomes for individuals and industries and pro-

19 motes business innovation.

20 **SEC. 3. DEFINITIONS.**

21 In this Act:

22   (1) ARTIFICIAL INTELLIGENCE SYSTEM.—

23   (A) IN GENERAL.—The term "artificial in-

24   telligence system" means any software, data

25   system, application, tool, or utility—

4

1   (i) that is capable of making or facili-
2   tating predictions, recommendations, ac-
3   tions, or decisions for a given set of
4   human- or machine-defined objectives; and
5   (ii) that uses machine learning algo-
6   rithms, statistical or symbolic models, or
7   other algorithmic or computational meth-
8   ods (whether dynamic or static) that affect
9   or facilitate actions or decision-making in
10   real or virtual environments.
11   (B) INCLUSION.—An artificial intelligence
12   system may be integrated into, or operate in
13   conjunction with, other hardware or software.
14   (2) CLAIMANT.—The term ''claimant'' means
15   any person, including a class of persons, who brings
16   a liability action.
17   (3) COVERED PRODUCT.—The term ''covered
18   product'' means an artificial intelligence system.
19   (4) DEPLOYER.—The term ''deployer'' means a
20   person, including a developer, who uses or operates
21   a covered product for—
22   (A) the person's own personal or commer-
23   cial use; or
24   (B) use by a third party.

1   (5) DESIGN.—The term "design", with respect

2 to a covered product—

3   (A) means the intended or known material

4 characteristics of the covered product; and

5   (B) includes—

6   (i) any intended or known formulation

7 of the covered product and the usual result

8 of the intended development or other proc-

9 esses used to produce the covered product,

10 including unexpected skills or behaviors

11 that appear in the covered product;

12   (ii) the selection of any data used for

13 training a covered product through fitting

14 its learnable parameters; and

15   (iii) training, testing, auditing, and

16 fine-tuning the covered product.

17   (6) DEVELOPER.—The term "developer" means

18 a person who designs, codes, produces, owns, or sub-

19 stantially modifies a covered product for—

20   (A) the person's own personal or commer-

21 cial use; or

22   (B) use by a third party.

23   (7) EXPRESS WARRANTY.—The term "express

24 warranty" means any material, positive statement,

25 affirmation of fact, promise, or description relating

1   to a covered product, including any sample or model

2   of a covered product.

3   (8) HARM.—The term "harm" means, with re-

4   spect to the effect of the use of a covered product—

5   (A) damage to property other than the cov-

6   ered product itself;

7   (B) personal physical injury, illness, or

8   death;

9   (C) financial or reputational injury;

10   (D) mental or psychological anguish, emo-

11   tional distress, or distortion of a person's be-

12   havior that would be highly offensive to a rea-

13   sonable person; or

14   (E) any loss of consortium or services or

15   other loss deriving from any type of harm de-

16   scribed in subparagraph (A), (B), (C), or (D).

17   (9) LIABILITY ACTION.—The term "liability ac-

18   tion" means a civil action brought under section 301

19   based on any theory for harm caused by a covered

20   product or covered product use.

21   (10) PERSON.—The "person" means any indi-

22   vidual, corporation, company, association, firm, part-

23   nership, society, joint stock company, or other enti-

24   ty, including any government entity or unincor-

25   porated association of persons.

1   (11) SUBSTANTIAL MODIFICATION.—The term

2   "substantial modification", with respect to a covered

3   product—

4   (A) means any deliberate change made to

5   the covered product by a deployer that—

6   (i) was not authorized or reasonably

7   anticipated by the developer when the cov-

8   ered product left the control of the devel-

9   oper; and

10   (ii) changes the purpose, use, func-

11   tion, design, or intended use or manner of

12   use of the covered product from that for

13   which the covered product was originally

14   designed, tested, or intended; and

15   (B) does not include a modification that

16   solely reduces or mitigates a new or additional

17   risk.

18   (12) UNDER A LEGAL DISABILITY.—The term

19   "under a legal disability", with respect to a person,

20   means the person lacks the capacity to understand,

21   make, or communicate decisions regarding the per-

22   son's legal rights—

23   (A) because of a mental illness or intellec-

24   tual disability; or

1   (B) because the person is under the age of

2   18.

TITLE I—ALIGNING INCENTIVES FOR SAFETY, INNOVATION AND UNITED STATES COMPETITIVENESS

SEC. 101. DEVELOPER LIABILITY FOR HARM TO BUSINESS OR CONSUMER.

9   (a) IN GENERAL.—In any liability action, the devel-

10 oper shall be liable to a claimant if the claimant estab-

11 lishes by a preponderance of the evidence—

12   (1) that—

13   (A) the developer failed to exercise reason-

14   able care with respect to the design of the cov-

15   ered product; and

16   (B) the failure to exercise reasonable care

17   was a proximate cause of harm to the claimant;

18   (2) that—

19   (A) the developer failed to exercise reason-

20   able care with respect to providing adequate in-

21   structions or warnings applicable to the covered

22   product that allegedly caused the harm that is

23   the subject of the complaint; and

24   (B) the failure to exercise reasonable care

25   with respect to providing adequate instructions

1   or warnings was a proximate cause of harm to

2   the claimant;

3   (3) that—

4   (A) the developer made an express war-

5   ranty applicable to the covered product that al-

6   legedly caused the harm that is the subject of

7   the complaint;

8   (B) the covered product failed to conform

9   to the warranty; and

10   (C) the failure of the covered product to

11   conform to the warranty was a proximate cause

12   of harm to the claimant; or

13   (4) that—

14   (A) the covered product was, at the time of

15   sale or distribution, in a defective condition un-

16   reasonably dangerous when used or misused in

17   a reasonably foreseeable manner; and

18   (B) the defective condition was a proxi-

19   mate cause of the harm to the claimant.

20   (b) DEFECTIVE DESIGN.—

21   (1) IN GENERAL.—In any liability action

22   against a developer alleging that a covered product

23   is unreasonably dangerous because of a defective de-

24   sign, as described in subsection (a)(1), the claimant

25   shall be required to prove that, at the time of sale

1   or distribution of the covered product by the devel-

2   oper, the foreseeable risks of harm posed by the cov-

3   ered product could have been reduced or avoided by

4   the adoption of a reasonable alternative design by

5   the developer, and the omission of the alternative de-

6   sign renders the covered product not reasonably

7   safe.

8   (2) MANIFESTLY UNREASONABLE DESIGN.—

9   Notwithstanding paragraph (1), in a liability action

10   described in that paragraph, if the design of a cov-

11   ered product is found to be manifestly unreasonable,

12   a claimant shall not be required to prove the exist-

13   ence of a reasonable alternative design.

14   (3) CIRCUMSTANTIAL EVIDENCE SUPPORTING

15   INFERENCE OF COVERED PRODUCT DEFECT.—In a

16   liability action described in subsection (a)(1), it may

17   be inferred that the harm sustained by the claimant

18   was caused by a covered product defect existing at

19   the time of sale or distribution, without proof of a

20   specific defect, when the incident that harmed the

21   claimant—

22   (A) was of a kind that ordinarily occurs as

23   a result of covered product defect; and

24   (B) was not, in the particular case, solely

25   the result of causes other than covered product

11

1   defect existing at the time of sale or distribu-

2   tion.

3   (4) NONCOMPLIANCE AND COMPLIANCE WITH

4   REQUIRED COVERED PRODUCT SAFETY STATUTES

5   OR REGULATIONS.—

6   (A) NONCOMPLIANCE.—For purposes of a

7   liability action described in subsection (a)(1), if

8   a covered product does not comply with an ap-

9   plicable covered product safety statute or ad-

10   ministrative regulation, the covered product

11   shall be deemed defective with respect to the

12   risks sought to be reduced by the statute or

13   regulation.

14   (B) COMPLIANCE.—For purposes of a li-

15   ability action described in subsection (a)(1), the

16   court may consider a covered product's compli-

17   ance with an applicable covered product safety

18   statute or administrative regulation in deter-

19   mining whether the covered product is defective

20   with respect to the risks sought to be reduced

21   by the statute or regulation, but such compli-

22   ance does not preclude as a matter of law a

23   finding of covered product defect.

24   (c) FAILURE TO WARN.—

1   (1) IN GENERAL.—For purposes of a liability

2   action described in subsection (a)(2), a covered prod-

3   uct shall be considered defective because of inad-

4   equate instructions or warnings if—

5   (A) the foreseeable risks of harm posed by

6   the covered product could have been reduced or

7   avoided by the provision of reasonable instruc-

8   tions or warnings by the developer; and

9   (B) the omission of the instructions or

10   warnings renders the covered product not rea-

11   sonably safe.

12   (2) ADEQUATE INSTRUCTION OR WARNING.—

13   For purposes of paragraph (1), an adequate instruc-

14   tion or warning is one that a reasonably prudent

15   person in the same or similar circumstances would

16   have provided with respect to a reasonably foresee-

17   able risk and that communicates sufficient informa-

18   tion on the reasonably foreseeable risks and safe use

19   of the covered product, taking into account the char-

20   acteristics of, and the ordinary knowledge common

21   to, an ordinary user of the covered product.

22   (3) KNOWLEDGE.—In a liability action de-

23   scribed in subsection (a)(2), the claimant shall be re-

24   quired to prove that, at the time the covered product

25   left the developer's control, the developer knew of or,

1   in light of then-existing scientific and technical

2   knowledge, reasonably should have foreseen, the risk

3   that caused the claimant's harm.

4   (4) OPEN AND OBVIOUS.—

5   (A) IN GENERAL.—In a liability action de-

6   scribed in subsection (a)(2), a developer shall

7   not be liable for failure to instruct or warn

8   about a foreseeable risk that is open and obvi-

9   ous to the user of the covered product, taking

10   into account the characteristics of, and the or-

11   dinary knowledge common to, an ordinary user

12   of the covered product.

13   (B) MINORS.—For purposes of subpara-

14   graph (A), a risk shall be presumed to not be

15   open and obvious to a user of a covered product

16   who is under 18 years old.

17   (5) NONCOMPLIANCE AND COMPLIANCE WITH

18   REQUIRED COVERED PRODUCT SAFETY STATUTES

19   OR REGULATIONS.—

20   (A) NONCOMPLIANCE.—In a liability ac-

21   tion described in subsection (a)(2), if a covered

22   product does not comply with an applicable cov-

23   ered product safety statute or administrative

24   regulation, the covered product shall be deemed

25   defective due to inadequate instructions or

14

1   warnings with respect to the risks sought to be

2   reduced by the statute or regulation.

3   (B) COMPLIANCE.—In a liability action de-

4   scribed in subsection (a)(2), the court may con-

5   sider a covered product's compliance with an

6   applicable covered product safety statute or ad-

7   ministrative regulation in determining whether

8   the covered product is defective due to inad-

9   equate instructions or warnings with respect to

10   the risks sought to be reduced by the statute or

11   regulation, but such compliance does not pre-

12   clude as a matter of law a finding of covered

13   product defect.

14 (d) STRICT LIABILITY OF DEVELOPER FOR UNREA-

15 SONABLY DANGEROUS OR DEFECTIVE COVERED PROD-

16 UCTS.—

17   (1) IN GENERAL.—In a liability action de-

18   scribed in subsection (a)(4), the developer of a cov-

19   ered product shall be strictly liable for harm caused

20   by the defective condition of the covered product,

21   notwithstanding—

22   (A) that the developer exercised all possible

23   care in the design or distribution of the covered

24   product; or

15

1   (B) that the claimant did not purchase the

2   covered product directly from the developer or

3   otherwise enter into a contractual relationship

4   with the developer.

5   (2) SUBSTANTIAL MODIFICATION.—A developer

6   shall not be liable under subsection (a)(4) for harm

7   solely caused by a substantial modification.

8 **SEC. 102. DEPLOYER LIABILITY FOR HARM TO BUSINESS**

9   **OR CONSUMER.**

10   (a) IN GENERAL.—A deployer shall be deemed to be

11 liable as a developer under section 101 for harm caused

12 by a covered product if—

13   (1) the deployer makes a substantial modifica-

14   tion to the covered product; or

15   (2) the deployer intentionally misuses the cov-

16   ered product contrary to its intended use and that

17   misuse is the proximate cause of harm to the claim-

18   ant.

19   (b) USE INTENDED BY DEVELOPER IS NOT MODI-

20 FICATION OR MISUSE.—

21   (1) IN GENERAL.—For purposes of subsection

22   (a), a use of a covered product that is intended by

23   the developer of the covered product does not con-

24   stitute a substantial modification to or misuse of the

25   covered product.

16

1   (2) INFERENCE OF INTENDED USE.—For pur-

2   poses of paragraph (1), if a developer does not speci-

3   fy an intended use for a covered product, intended

4   use shall be inferred by the targeted market and

5   manner of distribution.

6   (c) LICENSING.—Subject to section 302, any deployer

7 licensing a covered product shall not be liable to a claim-

8 ant for a violation of section 101 solely by reason of own-

9 ership or use of the covered product.

TITLE II—UNCONSCIONABLE
LIABILITY LIMITATIONS

12 **SEC. 201. UNCONSCIONABLE LIABILITY LIMITATIONS.**

13   (a) CONTRACT WITH DEPLOYER.—

14   (1) PROHIBITION.—A developer may not in-

15   clude language in a contract with a deployer that

16   waives any right, proscribes any forum or procedure,

17   or unreasonably limits liability under this Act or ap-

18   plicable State law related to harm caused by the cov-

19   ered product under section 101.

20   (2) UNENFORCEABLE.—Language in a contract

21   that violates paragraph (1) shall be unenforceable.

22   (b) TERMS AND CONDITIONS.—

23   (1) PROHIBITION.—A developer or a deployer

24   may not include language in terms and conditions

25   relevant to a covered product that waives any right,

17

1   proscribes any forum or procedure, or unreasonably

2   limits liability under this Act or applicable State law

3   related to harm caused by the covered product under

4   section 101 or 102.

5   (2) UNENFORCEABLE.—Language in terms and

6   conditions that violates paragraph (1) shall be unen-

7   forceable.

TITLE III—ENFORCEMENT

SEC. 301. FEDERAL CAUSE OF ACTION.

10   The Attorney General, any attorney general of a

11   State, an individual or the legal representative of such an

12   individual, or a class of individuals may bring a civil action

13   in a district court of the United States against a developer

14   or deployer for a violation of section 101, 102, or 201 to

15   obtain—

16   (1) injunctive relief;

17   (2) in a case brought by the Attorney General,

18   civil penalties;

19   (3) damages, restitution, or other compensation

20   on behalf of individuals;

21   (4) reasonable attorney fees and other litigation

22   costs reasonably incurred; or

23   (5) in a case brought by the Attorney General

24   or a State attorney general, such other relief as the

1   Attorney General or State attorney general may con-

2   sider to be appropriate.

3   **SEC. 302. SPECIAL RULE FOR DEPLOYERS.**

4   (a) STANDING IN FOR THE DEVELOPER.—If the de-

5   veloper is not a party to a liability action because the de-

6   veloper is not subject to the court's jurisdiction, is insol-

7   vent, or cannot otherwise be made to answer for the harm,

8   the deployer may be held liable to the same extent that

9   the developer would have been liable under section 101.

10   (b) DISMISSAL OF DEPLOYER.—A court shall dismiss

11   the deployer from a liability action, upon motion, if—

12   (1) the developer—

13   (A) is a party to the action; and

14   (B) is subject to the court's jurisdiction;

15   (2) the developer is not insolvent or otherwise

16   unable to satisfy any likely judgment; and

17   (3) the deployer is not otherwise liable under

18   section 102.

19   (c) JOINT FAULT.—

20   (1) IN GENERAL.—If both the developer and

21   the deployer contributed to the harm under sections

22   101 and 102, each person may be held jointly and

23   severally liable for the portion of harm caused by

24   that person's conduct.

19

1   (2) RULE OF CONSTRUCTION.—Nothing in this

2   subsection shall limit the right of a claimant to

3   maintain a liability action against the developer, the

4   deployer, or both, if the claimant can establish that

5   each person contributed to the harm under sections

6   101 and 102.

7   (d) INDEMNIFICATION AND ATTORNEY FEES.—

8   (1) RIGHT TO SEEK INDEMNIFICATION.—A

9   deployer that is held liable for harm caused by the

10   developer under subsection (a) may pursue indem-

11   nification, including the recovery of attorney fees

12   and litigation costs, from the developer.

13   (2) LIMITATION.—If the deployer is determined

14   to be at fault for a portion of the harm under sub-

15   section (c), indemnification under paragraph (1) of

16   this subsection shall be limited to the portion of

17   damages, fees, or costs attributable to the conduct

18   of the developer.

19   (e) PRESERVATION OF CLAIMANT'S RIGHTS.—Noth-

20   ing in this subsection shall limit the right of the claimant

21   to maintain a liability action against the developer, the

22   deployer, or both persons, if the claimant can establish

23   that each person contributed to the harm under sections

24   101 and 102.

20

1 **SEC. 303. PERIOD OF LIMITATIONS.**

2   (a) IN GENERAL.—Except as provided in subsection

3 (b), a liability action may be filed not later than 4 years

4 after the date on which the claimant discovered or, in the

5 exercise of reasonable care, should have discovered—

6   (1) the harm that is the subject of the action;

7   and

8   (2) the cause of the harm.

9   (b) LEGAL DISABILITY.—In the case of a person who

10 is under a legal disability, the period of limitations under

11 subsection (a) for a liability action brought by that person

12 shall be tolled until the person ceases to be under a legal

13 disability.

14   (c) TOLLING.—The period of limitations under sub-

15 section (a) shall be tolled from the date of the filing of

16 a complaint against a developer or deployer to the date

17 that a court enters a final judgment in the case.

18 **SEC. 304. PREEMPTION.**

19   (a) IN GENERAL.—This Act supersedes State law

20 only where State law conflicts with the provisions of this

21 Act.

22   (b) MINIMUM PROTECTIONS.—Nothing in this Act

23 shall prevent a State from enacting or enforcing protec-

24 tions that align with the principles of harm prevention,

25 accountability, and transparency for a covered product

26 that are stronger than such protections under this Act.

1 **SEC. 305. SEVERABILITY.**

2   If any provision of this Act, or an amendment made

3 by this Act, is determined to be unenforceable or invalid,

4 the remaining provisions of this Act and amendments

5 made by this Act shall not be affected.

6 # TITLE IV—REGISTRATION OF

7 # FOREIGN ARTIFICIAL INTEL-

8 # LIGENCE SYSTEM DEVEL-

9 # OPERS

10 **SEC. 401. FOREIGN AGENT REGISTRATION REQUIREMENT.**

11   (a) DESIGNATION REQUIRED.—Before making a cov-

12 ered product available in the United States, a foreign de-

13 veloper shall designate an agent for service of process.

14   (b) REQUIREMENTS.—The designation of an agent

15 under subsection (a) shall—

16   (1) be in writing and submitted to the Attorney

17   General;

18   (2) include a written acceptance by the agent;

19   and

20   (3) specify the full legal name and address of

21   both the foreign developer and the agent.

22   (c) AGENT QUALIFICATIONS.—A designated agent

23 under subsection (a) shall be a permanent resident of the

24 United States.

25   (d) UPDATES.—A foreign developer of a covered

26 product shall notify the Attorney General of any change

1 to the designated agent under subsection (a) or the con-

2 tact information thereof not later than 15 days after the

3 change.

SEC. 402. ENFORCEMENT.

5   (a) PROHIBITION.—A foreign developer of a covered

6 product that fails to designate an agent in accordance with

7 section 401 may not deploy any covered product in the

8 United States.

9   (b) ENFORCEMENT.—The Attorney General may

10 seek injunctive relief to prevent a violation of subsection

11 (a).

SEC. 403. PUBLIC REGISTRY.

13   The Attorney General shall maintain a publicly acces-

14 sible registry of designated agents of foreign developers

15 of covered products.

TITLE V—EFFECTIVE DATE

SEC. 501. EFFECTIVE DATE.

18   This Act shall apply with respect to any liability ac-

19 tion commenced on or after the date of enactment of this

20 Act without regard to whether the harm that is the subject

21 of the liability action or the conduct that caused the harm

22 occurred before that date of enactment.