AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

According to the House Select Committee on Artificial Intelligence & Emerging Technologies, the state has an opportunity to set standards that ensure the responsible use of artificial intelligence (AI) as it is rapidly evolving and becoming more integrated into society and, while AI offers tremendous opportunities for growth and advancement, it also presents significant risks. Individuals who provided testimony to the select committee and to the House Committee on Delivery of Government Efficiency brought to the committees' attention issues with unchecked AI systems, which may inadvertently compromise data privacy, perpetuate bias, or make erroneous decisions that adversely affect consumers.

H.B. 149 seeks to protect public safety, individual rights, and privacy while encouraging the safe advancement of AI technology in Texas by establishing the Texas Responsible Artificial Intelligence Governance Act, which sets out provisions providing for certain consumer protections and enforcement mechanisms, a regulatory sandbox program for testing innovative AI systems, and the creation of the Artificial Intelligence Council to support innovation and oversee compliance.

(Original Author's/Sponsor's Statement of Intent)

C.S.H.B. 149 amends current law relating to regulation of the use of artificial intelligence systems in this state and provides civil penalties.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Department of Information Resources in SECTION 4 (Section 553.052, Business & Commerce Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Authorizes this Act to be cited as the Texas Responsible Artificial Intelligence Governance Act.

SECTION 2. Amends Section 503.001, Business & Commerce Code, by amending Subsections (a) and (e) and adding Subsections (b-1) and (f), as follows:

(a) Defines "artificial intelligence system" and makes a nonsubstantive change.

(b-1) Provides that, for purposes of Subsection (b) (relating to prohibiting a person from capturing a biometric identifier of an individual for a commercial purpose unless certain criteria are met), an individual has not been informed of and has not provided consent for the capture or storage of a biometric identifier of an individual for a commercial purpose based solely on the existence of an image or other media containing one or more biometric identifiers of the individual on the Internet or other publicly available source unless the image or other media was made publicly available by the individual to whom the biometric identifies relate.

(e) Provides that Section 503.001 (Capture or Use of Biometric Identifier) does not apply to certain data or actions, including the training, processing, or storage of biometric

identifiers involved in developing, training, evaluating, disseminating, or otherwise offering artificial intelligence models or systems, unless a system is used or deployed for the purpose of uniquely identifying a specific individual or the development or deployment of an artificial intelligence model or system for certain purposes.

(f) Provides that, if a biometric identifier captured for the purpose of training an artificial intelligence system is subsequently used for a commercial purpose not described by Subsection (e), the person possessing the biometric identifier is subject to this section's provisions for the possession and destruction of a biometric identifier and the penalties associated with a violation of this section.

SECTION 3. Amends Section 541.104(a), Business & Commerce Code, as follows:

(a) Requires a processor of consumer data to adhere to the instructions of a controller of consumer data and assist the controller in meeting or complying with the controller's duties or requirements under Chapter 541 (Consumer Data Protection), including assisting the controller with regard to complying with requirements, rather than the requirement, relating to the security of processing personal data, and if applicable, the personal data collected, stored, and processed by an artificial intelligence system, as that term is defined by Section 551.001, and to the notification of a breach of security of the processor's system under Chapter 521 (Unauthorized Use of Identifying Information), taking into account the nature of processing and the information available to the processor.

SECTION 4. Amends Title 11, Business & Commerce Code, by adding Subtitle D, as follows:

SUBTITLE D. ARTIFICIAL INTELLIGENCE PROTECTION

CHAPTER 551. GENERAL PROVISIONS

Sec. 551.001. DEFINITIONS. Defines "artificial intelligence system," "consumer," and "council."

Sec. 551.002. APPLICABILITY OF SUBTITLE. Provides that this subtitle applies only to a person who promotes, advertises, or conducts business in this state; produces a product or service used by residents of this state; or develops or deploys an artificial intelligence system in this state.

Sec. 551.003. CONSTRUCTION AND APPLICATION OF SUBTITLE. Requires that this subtitle be broadly construed and applied to promote its underlying purposes, which are to facilitate and advance the responsible development and use of artificial intelligence systems, protect individuals and groups of individuals from known and reasonably foreseeable risks associated with artificial intelligence systems, provide transparency regarding risks in the development, deployment, and use of artificial intelligence systems, and provide reasonable notice regarding the use or contemplated use of artificial intelligence systems by state agencies.

CHAPTER 552. ARTIFICIAL INTELLIGENCE PROTECTION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 552.001. DEFINITIONS. Defines "deployer" and "developer."

Sec. 552.002. CONSTRUCTION OF CHAPTER. Prohibits this chapter from being construed to impose a requirement on a person that adversely affects the rights or freedoms of any person, including the right of free speech, or to authorize any department or agency other than the Department of Insurance to regulate or oversee the business of insurance.

Sec. 552.003. LOCAL PREEMPTION. Provides that this chapter supersedes and preempts any ordinance, resolution, rule, or other regulation adopted by a political subdivision regarding the use of artificial intelligence systems.

SUBCHAPTER B. DUTIES AND PROHIBITIONS ON USE OF ARTIFICIAL INTELLIGENCE

Sec. 552.051. DISCLOSURE TO CONSUMERS. (a) Defines "health care services."

(b) Requires a governmental agency that makes available an artificial intelligence system intended to interact with consumers to disclose to each consumer, before or at the time of interaction, that the consumer is interacting with an artificial intelligence system.

(c) Provides that a person is required to make the disclosure under Subsection (b) regardless of whether it would be obvious to a reasonable consumer that the consumer is interacting with an artificial intelligence system.

(d) Provides that a disclosure under Subsection (b) is required to be clear and conspicuous, required to be written in plain language, and prohibited from using a dark pattern, as that term is defined by Section 541.001 (Definitions).

(e) Authorizes a disclosure under Subsection (b) to be provided by using a hyperlink to direct a consumer to a separate Internet web page.

(f) Provides that the provider of service or treatment, if an artificial intelligence system is used in relation to health care service or treatment, is required to provide the disclosure under Subsection (b) to the recipient of the service or treatment or the recipient's personal representative not later than the date the service or treatment is first provided, except in the case of emergency, in which case the provider is required to provide the required disclosure as soon as reasonably possible.

Sec. 552.052. MANIPULATION OF HUMAN BEHAVIOR. Prohibits a person from developing or deploying an artificial intelligence system in a manner that intentionally aims to incite or encourage a person to commit physical self-harm, including suicide, harm another person, or engage in criminal activity.

Sec. 552.053. SOCIAL SCORING. Prohibits a governmental entity from using or deploying an artificial intelligence system that evaluates or classifies a natural person or group of natural persons based on social behavior or personal characteristics, whether known, inferred, or predicted, with the intent to calculate or assign a social score or similar categorical estimation or valuation of the person or group of persons that results or may result in detrimental or unfavorable treatment of a person or group of persons in a social context unrelated to the context in which the behavior or characteristics were observed or noted, detrimental or unfavorable treatment of a person or group of persons that is unjustified or disproportionate to the nature or gravity of the observed or noted behavior or characteristics, or the infringement of any right guaranteed under the United States Constitution, the Texas Constitution, or state or federal law.

Sec. 552.054. CAPTURE OF BIOMETRIC DATA. (a) Defines "biometric data."

(b) Prohibits a governmental entity from developing or deploying an artificial intelligence system for the purpose of uniquely identifying a specific individual using biometric data or the targeted or untargeted gathering of images or other media from the Internet or any other publicly available source without the individual's consent, if the gathering would infringe on any right of the individual under the United States Constitution, the Texas Constitution, or state or federal law.

(c) Provides that a violation of Section 503.001 is a violation of this section.

Sec. 552.055. CONSTITUTIONAL PROTECTION. Prohibits a person from developing or deploying an artificial intelligence system with the sole intent for the artificial intelligence system to infringe, restrict, or otherwise impair an individual's rights guaranteed under the United States Constitution.

Sec. 552.056. UNLAWFUL DISCRIMINATION. (a) Defines "financial institution," "insurance entity," and "protected class."

(b) Prohibits a person from developing or deploying an artificial intelligence system with the intent to unlawfully discriminate against a protected class in violation of state or federal law.

(c) Provides that, for purposes of this section, a disparate impact is not sufficient by itself to demonstrate an intent to discriminate.

(d) Provides that this section does not apply to an insurance entity for purposes of providing insurance services if the entity is subject to applicable statutes regulating unfair discrimination, unfair methods of competition, or unfair or deceptive acts or practices related to the business of insurance.

Sec. 552.057. CERTAIN SEXUALLY EXPLICIT CONTENT AND CHILD PORNOGRAPHY. Prohibits a person from:

(1) developing or distributing an artificial intelligence system with the sole intent of producing, assisting or aiding in producing, or distributing visual material in violation of Section 43.26 (Possession or Promotion of Child Pornography), Penal Code, or deep fake videos or images in violation of Section 21.165 (Unlawful Production or Distribution of Certain Sexually Explicit Videos), Penal Code; or

(2) intentionally developing or distributing an artificial intelligence system capable of engaging in text-based conversation that simulates or describes sexual conduct, as that term is defined by Section 43.25 (Sexual Performance by a Child), Penal Code, while impersonating or imitating a child younger than 18 years of age.

SUBCHAPTER C. ENFORCEMENT

Sec. 552.101. ENFORCEMENT AUTHORITY. (a) Provides that the attorney general has exclusive authority to enforce this chapter, except to the extent provided by Section 552.106.

(b) Provides that this chapter does not provide a basis for, and is not subject to, a private right of action for a violation of this chapter or any other law.

Sec. 552.102. INFORMATION AND COMPLAINTS. Requires the attorney general to create and maintain an online mechanism on the attorney general's Internet website through which a consumer is authorized to submit a complaint under this chapter to the attorney general.

Sec. 552.103. INVESTIGATIVE AUTHORITY. (a) Authorizes the attorney general, if the attorney general receives a complaint through the online mechanism under Section 552.102 alleging a violation of this chapter, to issue a civil investigative demand to determine if a violation has occurred. Requires the attorney general to issue demands in accordance with and under the procedures established under Section 15.10 (Civil Investigative Demands).

(b) Authorizes the attorney general to request from the person reported through the online mechanism, pursuant to a civil investigative demand issued under

Subsection (a), certain information and documentation relating to an artificial intelligence system.

Sec. 552.104. NOTICE OF VIOLATION; OPPORTUNITY TO CURE. (a) Requires the attorney general, if the attorney general determines that a person has violated or is violating this chapter, to notify the person in writing of the determination, identifying the specific provisions of this chapter the attorney general alleges have been or are being violated.

(b) Prohibits the attorney general from bringing an action against the person:

(1) before the 60th day after the date the attorney general provides the notice under Subsection (a); or

(2) if, before the 60th day after the date the attorney general provides the notice under Subsection (a), the person cures the identified violation, and provides the attorney general with a written statement that the person has cured the alleged violation, provided supporting documentation to show the manner in which the person cured the violation, and made any necessary changes to internal policies to reasonably prevent further violation of this chapter.

Sec. 552.105. CIVIL PENALTY; INJUNCTION. (a) Provides that a person who violates this chapter and does not cure the violation under Section 552.104 is liable to this state for a civil penalty in an amount of:

(1) for each violation the court determines to be curable or a breach of a statement submitted to the attorney general under Section 552.104(b)(2), not less than $10,000 and not more than $12,000;

(2) for each violation the court determines to be uncurable, not less than $80,000 and not more than $200,000; and

(3) for a continued violation, not less than $2,000 and not more than $40,000 for each day the violation continues.

(b) Authorizes the attorney general to bring an action in the name of this state to collect a civil penalty under this section, seek injunctive relief against further violation of this chapter, and recover attorney's fees and reasonable court costs or other investigative expenses.

(c) Provides that there is a rebuttable presumption that a person used reasonable care as required under this chapter.

(d) Authorizes a defendant in an action under this section to seek an expedited hearing or other process, including a request for declaratory judgment, if the person believes in good faith that the person has not violated this chapter.

(e) Prohibits a defendant in an action under this section from being found liable if another person uses the artificial intelligence system affiliated with the defendant in a manner prohibited by this chapter or the defendant discovers a violation of this chapter in certain manners.

(f) Prohibits the attorney general from bringing an action to collect a civil penalty under this section against a person for an artificial intelligence system that has not been deployed.

Sec. 552.106. ENFORCEMENT ACTIONS BY STATE AGENCIES. (a) Authorizes a state agency to impose sanctions against a person licensed, registered, or certified by that agency for a violation of Subchapter B if the person has been found in violation of this

chapter under Section 552.105 and the attorney general has recommended additional enforcement by the applicable agency.

(b) Authorizes sanctions under this section to include suspension, probation, or revocation of a license, registration, certificate, or other authorization to engage in an activity and a monetary penalty not to exceed $100,000.

CHAPTER 553. ARTIFICIAL INTELLIGENCE REGULATORY SANDBOX PROGRAM

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 553.001. DEFINITIONS. Defines "applicable agency," "department," "program," and "program participant."

SUBCHAPTER B. SANDBOX PROGRAM FRAMEWORK

Sec. 553.051. ESTABLISHMENT OF SANDBOX PROGRAM. (a) Requires the Texas Department of Information Resources (DIR), in consultation with the Texas Artificial Intelligence Council (council), to create a regulatory sandbox program (program) that enables a person to obtain legal protection and limited access to the market in this state to test innovative artificial intelligence systems without obtaining a license, registration, or other regulatory authorization.

(b) Provides that the program is designed to:

(1) promote the safe and innovative use of artificial intelligence systems across various sectors including healthcare, finance, education, and public services;

(2) encourage responsible deployment of artificial intelligence systems while balancing the need for consumer protection, privacy, and public safety;

(3) provide clear guidelines for a person who develops an artificial intelligence system to test systems while certain laws and regulations related to the testing are waived or suspended; and

(4) allow a person to engage in research, training, testing, or other pre-deployment activities to develop an artificial intelligence system.

(c) Prohibits the attorney general from filing or pursuing charges against a program participant for violation of a law or regulation waived under this chapter that occurs during the testing period.

(d) Prohibits a state agency from filing or pursuing punitive action against a program participant, including the imposition of a fine or the suspension or revocation of a license, registration, or other authorization, for violation of a law or regulation waived under this chapter that occurs during the testing period.

(e) Prohibits the requirements of Subchapter B, Chapter 552, from being waived, notwithstanding Subsections (c) and (d), and authorizes the attorney general or a state agency to file or pursue charges or action against a program participant who violates that subchapter.

Sec. 553.052. APPLICATION FOR PROGRAM PARTICIPATION. (a) Requires a person to obtain approval from DIR and any applicable agency before testing an artificial intelligence system under the program.

(b) Requires DIR by rule to prescribe the application form. Requires that the form require the applicant to provide a detailed description of the artificial intelligence

system the applicant desires to test in the program, and its intended use; include a benefit assessment that addresses potential impacts on consumers, privacy, and public safety; describe the applicant's plan for mitigating any adverse consequences that may occur during the test; and provide proof of compliance with any applicable federal artificial intelligence laws and regulations.

Sec. 553.053. DURATION AND SCOPE OF PARTICIPATION. (a) Authorizes a program participant approved by DIR and each applicable agency to test and deploy an artificial intelligence system under the program for a period of not more than 36 months.

(b) Authorizes DIR to extend a test under this chapter if DIR finds good cause for the test to continue.

Sec. 553.054. EFFICIENT USE OF RESOURCES. Requires DIR to coordinate the activities under this subchapter and any other law relating to artificial intelligence systems to ensure efficient system implementation and to streamline the use of DIR resources, including information sharing and personnel.

SUBCHAPTER C. OVERSIGHT AND COMPLIANCE

Sec. 553.101. COORDINATION WITH APPLICABLE AGENCY. (a) Requires DIR to coordinate with all applicable agencies to oversee the operation of a program participant.

(b) Authorizes the council or an applicable agency to recommend to DIR that a program participant be removed from the program if the council or applicable agency finds that the program participant's artificial intelligence system poses an undue risk to public safety or welfare, violates any federal law or regulation, or violates any state law or regulation not waived under the program.

Sec. 553.102. PERIODIC REPORT BY PROGRAM PARTICIPANT. (a) Requires a program participant to provide a quarterly report to DIR.

(b) Requires that the report include metrics for the artificial intelligence system's performance, updates on how the artificial intelligence system mitigates any risks associated with its operation, and feedback from consumers and affected stakeholders that are using an artificial intelligence system tested under this chapter.

(c) Requires DIR to maintain confidentiality regarding the intellectual property, trade secrets, and other sensitive information it obtains through the program.

Sec. 553.103. ANNUAL REPORT BY DEPARTMENT. (a) Requires DIR to submit an annual report to the legislature.

(b) Requires that the report include the number of program participants testing an artificial intelligence system in the program, the overall performance and impact of artificial intelligence systems tested in the program, and recommendations on changes to laws or regulations for future legislative consideration.

CHAPTER 554. TEXAS ARTIFICIAL INTELLIGENCE COUNCIL

SUBCHAPTER A. CREATION AND ORGANIZATION OF COUNCIL

Sec. 554.001. CREATION OF COUNCIL. (a) Provides that the council is created to serve certain purposes.

(b) Provides that the council is administratively attached to DIR, and DIR is required to provide administrative support to the council as provided by this section.

(c) Requires DIR and the council to enter into a memorandum of understanding detailing the administrative support the council requires from DIR to fulfill the council's purposes, the reimbursement of administrative expenses to DIR, and any other provisions necessary to ensure the efficient operation of the council.

Sec. 554.002. COUNCIL MEMBERSHIP. (a) Provides that the council is composed of seven members appointed by certain persons.

(b) Provides that members of the council serve staggered four-year terms, with the terms of three or four members expiring every two years.

(c) Requires the governor to appoint a chair from among the members, and the council to elect a vice chair from its membership.

(d) Authorizes the council to establish an advisory board composed of individuals from the public who possess expertise directly related to the council's functions, including technical, ethical, regulatory, and other relevant areas.

Sec. 554.003. QUALIFICATIONS. Requires members of the council to be Texas residents and have knowledge or expertise in one or more of certain areas.

Sec. 554.004. STAFF AND ADMINISTRATION. Authorizes the council to hire an executive director and other personnel as necessary to perform its duties.

SUBCHAPTER B. POWERS AND DUTIES OF COUNCIL

Sec. 554.101. ISSUANCE OF REPORTS. (a) Authorizes the council to issue reports to the legislature regarding the use of artificial intelligence systems in this state.

(b) Authorizes the council to issue reports on the compliance of artificial intelligence systems in this state with the laws of this state, the ethical implications of deploying artificial intelligence systems in this state, data privacy and security concerns related to artificial intelligence systems in this state, or potential liability or legal risks associated with the use of artificial intelligence systems in this state.

Sec. 554.102. TRAINING AND EDUCATIONAL OUTREACH. Requires the council to conduct training programs for state agencies and local governments on the use of artificial intelligence systems.

Sec. 554.103. LIMITATION OF AUTHORITY. Prohibits the council from adopting rules or promulgating guidance that is binding for any entity, interfering with or overriding the operation of a state agency, or performing a duty or exercise a power not granted by this chapter.

SECTION 5. Amends Section 325.011, Government Code, as follows:

Sec. 325.011. CRITERIA FOR REVIEW. Requires the Sunset Advisory Commission and its staff to consider certain criteria in determining whether a public need exists for the continuation of a state agency or its advisory committees or for the performance of the functions of the agency or its advisory committees, including an assessment of the agency's use of artificial intelligence systems, as that term is defined by Section 551.001, Business & Commerce Code, in its operations and its oversight of the use of artificial intelligence systems by persons under the agency's jurisdiction, and any related impact on the agency's ability to achieve its mission, goals, and objectives, made using information available from DIR, the attorney general, or any other appropriate state agency. Makes nonsubstantive changes.

SECTION 6. Amends Section 2054.068(b), Government Code, as follows:

(b) Requires DIR to collect from each state agency certain information on the status and condition of the agency's information technology infrastructure, including information regarding an evaluation of the use or considered use of artificial intelligence systems, as defined by Section 551.001, Business & Commerce Code, by each state agency. Makes nonsubstantive changes.

SECTION 7. Amends Section 2054.0965(b), Government Code, as follows:

(b) Requires that the review of the operational aspects of a state agency's information resources deployment, except as otherwise modified by rules adopted by DIR, include an inventory of the agency's major databases, artificial intelligence systems, as defined by Section 551.001, Business & Commerce Code, and applications.

SECTION 8. Requires the attorney general, not later than September 1, 2026, to post on the attorney general's Internet website the information and online mechanism required by Section 552.102, Business & Commerce Code, as added by this Act.

SECTION 9. Effective date: January 1, 2026.