

epic.org

ELECTRONIC  
PRIVACY  
INFORMATION  
CENTER



February 16, 2025

Virginia Senators  
General Assembly Building  
201 North 9th Street  
Richmond, VA 23219

**RE: H.B. 2094, Virginia High-Risk Artificial Intelligence Developer and Deployer Act —  
oppose unless amended**

Dear Virginia Senators:

We, as consumer privacy advocates, write to you today to share our significant concerns with a bill that is moving quickly through the Virginia Legislature, H.B. 2094. This bill seeks to protect Virginians by regulating the development and use of AI systems used in consequential decisions—a goal all of our groups wholeheartedly support. **Unfortunately, H.B. 2094 in its current form falls far short of that goal.**

Enacting H.B. 2094 without substantial improvements would leave Virginia residents without meaningful protections from the opaque systems that contribute to life-altering decisions about their access to necessities like housing, employment, health care, and government services. This bill contains numerous loopholes that undermine the goal of providing transparency and autonomy to Virginians who are subject to these high-risk AI systems. This bill's narrow scope of coverage, overbroad exemptions, liability shields for companies, unnecessary limits on consumer rights, and weak enforcement mechanisms would incentivize noncompliance and allow biased and unproven high-risk AI systems to continue perpetuating harm on Virginians.

For H.B. 2094 to achieve its goal of protecting your constituents, we recommend the following:

- Recognize algorithmic discrimination as equally harmful as other means of discrimination by prohibiting the development and deployment of AI tools that discriminate.

- Remove rebuttable presumptions allowing companies to avoid liability for using AI systems to discriminate.
- Fix loopholes in the definitions of “high-risk AI system” and “substantial factor” to ensure that companies cannot easily avoid compliance.
- Remove the “commercial or employment context” exclusion from the definition of “consumer” to ensure the bill also protects workers.
- Eliminate an exception that allows companies to deny consumers their right to appeal a decision if the company thinks allowing an appeal would not be in their “best interest.”
- Narrow exemptions to avoid exempting entire entities from the bill’s coverage.
- Tighten exemptions that would allow companies to withhold—even from the Attorney General, the law’s sole enforcer—information they deem a trade secret or “confidential or proprietary” as well as anything they believe could create a “security risk.”
- Provide consumers harmed by a violation of this law with the right to sue the company responsible, as is a traditional remedy for violations of consumer protection laws.

Without these significant changes, we respectfully **oppose** H.B. 2094 and urge you to vote against this legislation.

Sincerely,

Kara Williams  
Law Fellow  
Electronic Privacy Information Center (EPIC)

Ben Winters  
Director of AI and Privacy  
Consumer Federation of America (CFA)