January 24, 2025

Senate General Laws and Technology Committee
Attn: Eric Bingham, Committee Clerk
Room 306, General Assembly Building
201 North Ninth Street
Richmond, VA 23219

Re: SB 1161 - "Artificial Intelligence Transparency Act" (Oppose)

Dear Chair Ebbin and Members of the Senate General Laws and Technology Committee:

On behalf of the Computer & Communications Industry Association (CCIA), I write to respectfully oppose [express several concerns about SB 1161.

CCIA is an international, not-for-profit trade association representing a broad cross-section of communications and technology firms.[1] Proposed regulations on the interstate provision of digital services therefore can have a significant impact on CCIA members.

I. SB 1161 definitions should align with comprehensive AI legislation

Legislators of the Commonwealth have put forward a number of artificial intelligence-related legislation, including comprehensive bills like HB 2094. These bills contain definitions that may conflict with or confuse those provided in this bill.

For example, SB 1161 covers “AI-generated content”, while HB 2094 instead references “synthetic digital content.” The definitions of the two also differ, in particular with SB 1161 differentiating between content that is modified by AI and modified content that “materially alters a reasonable person's understanding of the meaning or significance of such content.” In order to minimize definitional conflict and overlap, we suggest instead using “synthetic digital content” and the definition taken from HB 2094. Any desired materiality provision should be contained in the disclosure requirements rather than in the definition of synthetic digital content.

II. SB 1161’s scope is detached from risk or harm to consumers

SB 1161 applies generally to AI-generated content and requires disclosures on anything that materially alters a reasonable person’s understanding of the content. However, many such examples are harmless. Because of the lack of a tie to an estimation of risk, such as that described in the NIST AI Risk Management Framework, or any nexus to consumer harm, the scope of SB 1161 extends far beyond potentially harmful AI content and captures innocuous content.

[1] For more than 50 years, CCIA has promoted open markets, open systems, and open networks. CCIA members employ more than 1.6 million workers, invest more than $100 billion in research and development, and contribute trillions of dollars in productivity to the global economy. A list of CCIA members is available at https://www.ccianet.org/members.

It also presents a possibility of risk to consumers by mandating certain disclosures. In particular, the mandatory inclusion of metadata disclosing the tool used and the date and time of its creation could potentially create risks to the original user by making it easier for others to identify them outside of a controlled circumstance such as a subpoena or court case. These potential harms should be considered prior to enacting SB 1161.

III. SB 1161 imposes unclear obligations on service providers

SB 1161 imposes a potential obligation on AI system operators to investigate the downstream use of their product by requiring them to terminate access to their system if they have "reason to believe that an end user or third-party licensee has removed the required disclosure." Rather than setting the standard at "reason to believe", it should instead require that the service provider have "actual knowledge" of the removal of the required disclosure. This would provide a clearer standard for applying this provision and would help to avoid over-removal by service providers seeking to avoid potential liability.

The termination of access provision is also written in an ambiguous fashion—as written, it appears to contemplate terminating all access, rather than just the access of the end user or licensee in violation. Clarification would be appropriate to ensure that the bill is interpreted in lines with the author's intent.

IV. SB 1161 mandates technology that is not presently available and may never be available

SB 1161 requires AI system developers to provide clear and conspicuous disclosures on AI-generated content. While CCIA members are at the forefront of developing these solutions, they are not yet ready for general use. Until such time as transparency technologies are generally available, mandating use of watermarking disclosures such as those required by SB 1161 is inappropriate.

V. SB 1161's enforcement mechanisms may chill innovative activity within the Commonwealth

SB 1161 provides a broad scope of enforcement, broad enough to be likely to chill innovation in the Commonwealth. This is particularly concerning given that, as described above, transparency and watermarking technologies of the type SB 1161 would mandate are still in their early stages of development.

In addition, given the ability of the Attorney General to enforce SB 1161 without providing an opportunity to cure, the potential liability SB 1161 would create is concerning. CCIA suggests that, by default, an AI developer should always be provided with an opportunity to cure. At the same time, respecting concerns regarding abuse of such a provision, the text should be amended to allow the Attorney General to deny an opportunity to cure if they seek and obtain a court order in advance that permits them to do so based on a specified set of factors. HB 2250 includes a representative list of factors that might be appropriate to adopt in SB 1161.

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While we agree that transparency of AI generated content can be an important tool in ensuring trust in AI systems, we encourage the Committee to decline to advance legislation that is not well-tailored to this objective.

We appreciate the Committee's consideration of these comments and stand ready to provide additional information as the Legislature considers proposals related to technology policy.

Sincerely,

Megan Stokes
State Policy Director
Computer & Communications Industry Association