

1 Several open letters published in 2023 by academics,
2 advocates, and industry leaders on the risks posed by advanced
3 artificial intelligence have warned that the potential
4 existential risks from artificial intelligence should be a
5 global priority alongside other societal-scale risks, including
6 pandemics and nuclear war. Industry experts have also raised
7 concerns regarding nonexistential risks of artificial
8 intelligence, including systematic bias, misinformation,
9 malicious use, cyber-attacks, and weaponization, which are also
10 important and must be addressed urgently.

11 In addressing the potential risks associated with
12 artificial intelligence technologies, it is crucial that the
13 State adhere to the precautionary principle, which requires the
14 government to take preventive action in the face of uncertainty;
15 shifts the burden of proof to those who want to undertake an
16 innovation to show that it does not cause harm; and holds that
17 regulation is required whenever an activity creates a
18 substantial possible risk to health, safety, or the environment,
19 even if the supporting evidence is speculative. In the context
20 of artificial intelligence and products, it is essential to
21 strike a balance between fostering innovation and safeguarding



1 the well-being of the State's residents by adopting and
2 enforcing proactive and precautionary regulation to prevent
3 potentially severe societal-scale risks and harms, require
4 affirmative proof of safety by artificial intelligence
5 developers, and prioritize public welfare over private gain.

6 The purpose of this chapter is to establish the office of
7 artificial intelligence safety and regulation within the
8 department of commerce and consumer affairs to regulate the
9 development, deployment, and use of artificial intelligence
10 technologies in the State in accordance with the precautionary
11 principle, while encouraging innovation and advancement of
12 artificial intelligence development.

13 § -3 Definitions. As used in this chapter:

14 "Artificial intelligence" has the same meaning as defined
15 in title 15 United States Code section 9401.

16 "Department" means the department of commerce and consumer
17 affairs.

18 "Director" means the director of commerce and consumer
19 affairs.

20 "Executive director" means the executive director of the
21 office of artificial intelligence safety and regulation.



1 "Office" means the office of artificial intelligence safety
2 and regulation.

3 "Precautionary principle" means the principle that:

4 (1) Requires the government to take preventive action in
5 the face of uncertainty;

6 (2) Shifts the burden of proof to those who want to
7 undertake an innovation to show that it does not cause
8 harm; and

9 (3) Holds that regulation is required whenever an activity
10 creates a substantial possible risk to health, safety,
11 or the environment, even if the supporting evidence is
12 speculative.

13 § -4 Deployment of artificial intelligence products;
14 prior written approval required. No person shall deploy
15 artificial intelligence products in the State without submitting
16 to the office affirmative proof establishing the product's
17 safety.

18 PART II. OFFICE OF ARTIFICIAL INTELLIGENCE SAFETY AND
19 REGULATION

20 § -11 Office of artificial intelligence safety and
21 regulation; establishment; executive director; personnel. There



1 is established within the department of commerce and consumer
2 affairs for administrative purposes only, the office of
3 artificial intelligence safety and regulation to regulate the
4 development, deployment, and use of artificial intelligence
5 technologies in the State. The office shall be headed by an
6 executive director who shall be appointed by the governor, with
7 the advice and consent of the senate, to serve for a term of
8 four years. The executive director shall be exempt from chapter
9 76 and may employ staff as may be necessary for the purposes of
10 this chapter without regard to chapter 76.

11 **§ -12 Salary and duties of executive director; benefits.**

12 Notwithstanding section -13, the governor may define the
13 executive director's powers and duties and fix the executive
14 director's compensation. The executive director shall be
15 entitled to participate in any employee benefit plan.

16 **§ -13 General functions, powers, and duties.** The
17 executive director shall have the following functions, powers,
18 and duties, guided by the precautionary principle:

19 (1) Identify and assess existing and potential risks and
20 uncertainties associated with the development,



- 1 deployment, and use of artificial intelligence systems
2 and applications in the State;
- 3 (2) Develop, implement and enforce regulations regarding
4 the responsible development, deployment, and use of
5 artificial intelligence technologies to mitigate risks
6 in the State with particular focus on public safety
7 and protecting the privacy and individual rights of
8 users of artificial intelligence products in the
9 State;
- 10 (3) Establish standards and guidelines for data privacy,
11 security, and transparency in artificial intelligence
12 systems and ensure that developers, deployers, and
13 users of artificial intelligence systems and
14 applications in the State adhere to the provisions of
15 this chapter and rules adopted pursuant to this
16 chapter;
- 17 (4) Conduct periodic risk assessments of artificial
18 intelligence systems and applications to identify
19 existing or potential hazards, vulnerabilities, or
20 adverse effects, and develop and implement measures to
21 mitigate the hazards, vulnerabilities, or adverse



1 effects, taking into account potential adverse effects
2 that may arise from artificial intelligence
3 technologies and requiring affirmative proof of safety
4 by artificial intelligence developers before products
5 are deployed;

6 (5) Provide guidance and education to artificial
7 intelligence developers, deployers, and users of
8 artificial intelligence technologies and the public on
9 the best practices, potential risks, and responsible
10 adoption of artificial intelligence technologies and
11 encourage the application of the precautionary
12 principle in the design and deployment of artificial
13 intelligence products to safeguard the well-being of
14 the communities;

15 (6) Establish and maintain a reporting system for the
16 public to raise concerns, report incidents, and seek
17 information related to artificial intelligence systems
18 and their impact on society. The executive director
19 shall be responsive to the reports, take necessary
20 action to protect public safety, and act in the best
21 interest of the public;



1 (7) Collaborate with relevant public and private agencies,
2 academic institutions, and industry stakeholders, as
3 appropriate, to promote research, innovation, and
4 advancement of artificial intelligence technologies,
5 while integrating precautionary measures to
6 effectively address potential risks;

7 (8) Conduct investigations and audits to ensure compliance
8 with this chapter; and

9 (9) Adopt, amend, or repeal rules in accordance with
10 chapter 91, necessary to carry out the purposes of
11 this chapter.

12 § -14 Artificial intelligence regulation; precautionary
13 principle; risk-based approach. (a) In regulating the
14 development, deployment, and use of artificial intelligence
15 technologies in the State, the office shall:

16 (1) Adhere to the precautionary principle, emphasizing the
17 proactive identification and management of risks
18 associated with artificial intelligence technologies
19 and the need for artificial intelligence developers to
20 provide affirmative proof of safety of their products
21 before deployment; and



1 (2) Take a risk-based approach considering factors,
2 including the potential for harm, criticality of the
3 application, and level of autonomy.

4 A developer of an artificial intelligence product deemed by the
5 office to have a higher potential risk shall have a higher
6 burden of proof to demonstrate the safety of the product before
7 deployment.

8 (b) As part of the risk-based approach, the office shall:

9 (1) Strategically allocate its resources into its efforts
10 to address high-priority artificial intelligence
11 applications that pose significant risks to human
12 health, safety, or fundamental rights; and

13 (2) Establish, in accordance with the precautionary
14 principle, a framework for assessing and categorizing
15 artificial intelligence systems based on risk levels,
16 which shall enable the office to prioritize regulatory
17 efforts on high-risk artificial intelligence
18 applications and products to prevent and mitigate
19 potential harm to public safety and individual rights.

20 (c) In applying the risk-based approach, the office shall
21 be transparent and cooperate with stakeholders from diverse



1 backgrounds, including experts in artificial intelligence
2 technology, ethicists, business groups, indigenous groups, the
3 nonprofit sector, health care professionals, academics, and
4 members of the public, to ensure that decisions regarding risk
5 assessment and regulation are informed, well-balanced, and
6 considerate of the potential implications on society.

7 (d) The office shall regularly review and update its risk
8 assessment framework to keep pace with evolving artificial
9 intelligence technologies and potential risks and effectively
10 address any emerging challenges through continuous evaluation
11 and improvement.

12 (e) The office shall maintain a balance between innovation
13 of artificial intelligence technologies and public safety by
14 fostering and promoting the responsible innovation and use of
15 artificial intelligence technologies, and cooperating with
16 counties, other state agencies, federal agencies, international
17 regulators, artificial intelligence developers, industry
18 stakeholders, and others, as appropriate, to encourage the
19 adoption of best practices and precautionary measures in
20 artificial intelligence product regulation and development.
21 and rules by bringing civil actions or proceedings.



1 **§ -15 Annual report.** The executive director shall
2 prepare and submit an annual report describing the activities of
3 the office to the director, governor, and legislature, no later
4 than twenty days prior to the convening of each regular session.

5 **PART III. ENFORCEMENT AND PENALTIES**

6 **§ -21 Penalties.** Any person who violates any provision
7 of this chapter or any rule adopted by the office pursuant to
8 this chapter shall be fined not more than \$ for each
9 separate offense. Each day of each violation shall constitute a
10 separate offense. Any action taken to impose or collect the
11 penalty provided for in this section shall be considered a civil
12 action.

13 **§ -22 Enforcement authority.** The attorney general or
14 the executive director of the office of consumer protection is
15 authorized to investigate reported or suspected violations of
16 this chapter and any rules adopted pursuant to this chapter, and
17 to enforce the laws and rules by bringing civil actions or
18 proceedings."

19 SECTION 2. Section 26-9, Hawaii Revised Statutes, is
20 amended by amending subsection (e) to read as follows:



1 "(e) Notwithstanding any provision to the contrary, the
2 employment, appointment, promotion, transfer, demotion,
3 discharge, and job descriptions of all officers and employees
4 under the administrative control of this department shall be
5 determined by the director of commerce and consumer affairs
6 subject only to applicable personnel laws[-]; provided that, to
7 the extent it conflicts with sections -11 and -12, this
8 subsection shall not apply to the officers and employees of the
9 office of artificial intelligence safety and regulation
10 established under section -11."

11 SECTION 3. There is appropriated out of the general
12 revenues of the State of Hawaii the sum of \$ or so
13 much thereof as may be necessary for fiscal year 2024-2025 for
14 the establishment of the office of artificial intelligence
15 safety and regulation.

16 The sum appropriated shall be expended by the department of
17 commerce and consumer affairs for the purposes of this Act.

18 SECTION 4. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.



1 SECTION 5. This Act shall take effect on July 1, 2024.

2

INTRODUCED BY: *Mike Gabbard*



S.B. NO. 2572

Report Title:

DCCA; Office of Artificial Intelligence Safety and Regulation;
Establishment; Appropriation

Description:

Establishes the Office of Artificial Intelligence Safety and Regulation within the Department of Commerce and Consumer Affairs to regulate the development, deployment, and use of artificial intelligence technologies in the State. Prohibits the deployment of artificial intelligence products in the State unless affirmative proof establishing the product's safety is submitted to the Office. Makes an appropriation.

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