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H.B. 628 136th General Assembly	Bill Analysis

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Primary Sponsor: Rep. T. Mathews

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SUMMARY

- Creates a license for Independent Verification Organizations (IVOs) to verify the safety and risk mitigation of Artificial Intelligence (AI) models and applications.

- Requires IVOs, in order to be licensed, to have a plan for risk mitigation verification for AI models and applications.

- Creates the Artificial Intelligence Safety Advisory Council within the Attorney General's office to exercise duties granted by the Attorney General, including licensing of IVOs.

- Requires IVOs to submit annual reports regarding risk mitigation verification functions and related data to the General Assembly, the Attorney General, and the State Auditor.

- Authorizes the Attorney General to revoke IVO licenses and to review and deny material changes to IVO risk mitigation verification plans.

- Establishes a rebuttable presumption against liability in civil litigation regarding personal injury or property damage caused by a verified AI model or system and provides for how the presumption may be rebutted.

- Requires the Attorney General to adopt rules under the Administrative Procedure Act (R.C. Chapter 119) to implement and administer the provisions of the bill.

DETAILED ANALYSIS

Overview

The bill creates a regulatory framework designed to mitigate the risks associated with artificial intelligence (AI). Under the framework, the bill establishes a system for licensing, through the Attorney General, Independent Verification Organizations (IVOs), which entities may verify AI models' or AI applications' ongoing mitigation of risks. The bill also establishes requirements for the regulation of IVOs, including the creation of the Artificial Intelligence Safety

Advisory Council (Advisory Council) to assist, or exercise delegated authority of, the Attorney General regarding IVOs.[1]

Although the bill creates the IVO licensing and regulatory framework, there is no requirement that any entity obtain licensure as an IVO[2] and no requirement that AI models or applications seek IVO verification.[3]

An "IVO" is defined by the bill as an entity licensed as provided under the bill to assess AI models' or applications' adherence to standards reflecting best practices for the prevention of personal injury and property damage. An "AI application" is a software program or system that uses AI models to perform tasks that typically require human intelligence. An "AI model" means an engineered or machine-based system that can, for explicit or implicit objectives, infer from the input it receives how to generate outputs that can influence physical or virtual environments.[4]

IVO license

Although the bill does not require IVO licensure, an entity seeking an IVO license must file an application with the Attorney General.

Application

The application must contain (1) information, materials, and forms specified under Attorney General rules (see "**Rulemaking**," below) and (2) a plan for conducting verification duties.

Plan requirements

The bill requires the plan to include all of the following information:

- Risk or risks with respect to which the applicant intends to verify that AI models or applications achieve acceptable levels of mitigation, with the acceptable levels of mitigation defined, and including measurable outcome metrics, baselines and targets for outcome metrics, identified data sources, measurement methods, and a description of the evaluation and reporting protocol;

- Proposed technical and operational requirements for developers or deployers, including procedures for both pre-development and post-development, to ensure that an AI model or AI application achieves acceptable levels of risk mitigation, including requirements for ongoing risk monitoring and assessment of mitigation measures. (Under the bill, a "developer" develops an AI model or system deployed in Ohio, and a "deployer" implements, integrates, or makes operational or available to others within Ohio.)

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[1] R.C. 3755.01 to 3755.12.

[2] See, R.C. 3755.01 to 3755.12.

[3] R.C. 3755.07(B).

[4] R.C. 3755.01(A), (B), and (E).

- Methodologies and sources to be used to evaluate the applicant's technical and operational requirements' efficacy for ensuring acceptable risk mitigation and for updating those requirements to address identified gaps or deficiencies;

- Benchmarks, technologies, and audit methodologies the applicant will use to verify developers' and deployers' adherence to its technical and operational requirements;

- Approach to ensure a verified entity's continual good standing, including by reviewing and assessing the developer's or deployer's maintenance of AI governance plans and policies, processes for risk monitoring and mitigation, whistleblower protections, and training for employees and third parties;

- Proposed requirements for developers or deployers to disclose to the applicant detected risks, incident reports, or material changes to the risk profile of the AI model or application;

- Proposed procedures for prescribing and verifying corrective action to remedy failure by a developer or deployer to achieve acceptable risk mitigation, comply with applicant requirements, and comply with the developer's or deployer's AI governance plans and policy;

- Proposed standards and procedures for revoking AI model or application verification for noncompliance with applicant requirements, failure to achieve acceptable levels of risk mitigation, or noncompliance with the developer's or deployer's AI governance plans and policies;

- Whether the applicant proposes providing verification for one or more particular actual or potential AI industry market segments and, if so, how the elements of the applicant's plans are tailored to any unique attributes of that market segment;

- Plan for interfacing and coordinating effectively with federal and state authorities

- Applicant personnel and personnel qualifications;

- Whether the applicant's proposed risk mitigation requirements will involve the use of a security vendor (which, under the bill, is a third-party entity that evaluates the safety or security of AI models or applications, using processes such as red teaming, risk detection, and risk mitigation);

- Governance policies, sources of funding, and policies to ensure its independence in carrying out its responsibilities under the bill;

- Any other information the Attorney General requires.[5]

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[5] R.C. 3755.01(C), (D), and (F) and 3755.02.

License issuance

The bill permits the Attorney General to license an applicant as an IVO if (1) the applicant demonstrated its independence from the AI industry, and (2) Every element of the applicant's plan required by the bill adequately ensures that AI models and applications will mitigate to an acceptable level one or more risks for which the applicant proposes conducting verification. If an applicant proposes conducting verification for a particular AI market segment, the Attorney General must, in determining the plan's adequacy, account for the characteristics of the relevant market segment. If the Attorney General finds an applicant's plan adequately mitigates some, but not all, of the proposed risks, the applicant may be licensed to verify only those risks for which the plan is adequate.

The Attorney General, when issuing an IVO license, must expressly and specifically identify the risks the IVO is licensed to verify. If the IVO proposes conducting verification for one or more specific market segments, the Attorney General must expressly and specifically identify the market segments IVO is licensed to verify.[6]

Revocation

The Attorney General must revoke an IVO license for the following reasons:

- The IVO's plan is materially misleading or inaccurate;

- The IVO fails to adhere to its plan such that its ability to fulfill its responsibilities is materially impaired;

- A material change compromises the IVO's independence from the AI industry;

- Evolution of technology renders the IVO's methods obsolete for ensuring acceptable levels of the risk the IVO is licensed to verify;

- An AI model or application verified by the IVO causes a material harm of the type the IVO is licensed to prevent.[7]

"Right to Cure"

The bill provides that if the public interest so requires, the Attorney General may provide an IVO an opportunity to cure the basis for revocation before licensure.[8]

License Fees

The Attorney General is required to establish reasonable application fees and annual renewal fees for IVOs sufficient to offset the costs of administering the bill's requirements. All fees assessed are to be made payable to the Attorney General and can be used only to pay for

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[6] R.C. 3755.03.

[7] R.C. 3755.04.

[8] R.C. 3755.041.

(1) processing IVO license applications, (2) auditing IVOs, (3) paying council members, and (4) other costs of administering the bill's requirements.[9]

IVO functions

Plan implementation

The bill requires an IVO to implement its verification plan regarding ongoing mitigation of risks for AI models or applications.[10]

Verification revocation

The bill provides that a licensed IVO must revoke an AI model's or application's verification if the developer or deployer fails to do any of the following:

- Meet the requirements prescribed by the IVO;

- Cooperate with the IVO's ongoing monitoring;

- Adhere to its AI governing policies or plans;

- Implement corrective actions prescribed by the IVO.[11]

Material changes to the plan

The bill provides that an IVO may (1) update or modify technical and operational requirements, evaluation benchmarks, audit methodologies, governance plans; and any other element of its plan to take advantage of improved technology, (2) address issues previously discovered, and (3) otherwise enhance the efficacy of its verification activities.

The bill also requires an IVO to provide written notice to the Attorney General of any material plan changes. The IVO must describe the proposed changes, their rationale, and an explanation of how they will better enable the IVO to ensure acceptable mitigation of the relevant risks. An IVO may implement the proposed plan changes upon delivery of the written notice to the Attorney General.[12]

Attorney General consideration of material changes

The Attorney General may, within six months after receiving notice of an IVO's proposed plan changes, request additional information from the IVO regarding the changes or may issue a written notice denying the changes in whole or in part, if the Attorney General determines the changes are inadequate to ensure acceptable mitigation of the relevant risks or are otherwise inconsistent with the bill's goals. If the Attorney General rejects the changes, the IVO has 30 days

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[9] R.C. 3755.05.

[10] R.C. 3755.07(A).

[11] R.C. 3755.08

[12] R.C. 3755.09.

to modify its plan to comply with the determination and to assess whether AI models or applications assessed under the previous plan must be reassessed.[13]

Annual report

The bill requires each IVO to submit a verified annual report to the General Assembly, Attorney General, and the State Auditor. The report must be filed at the time and in the form prescribed by the Attorney General, be duly verified, and must cover the yearly period fixed by the Attorney General.

Report requirements

The annual report must include all of the following:

- Aggregated information on the capabilities of the AI models and applications evaluated by the IVO and the observed and potential societal risks and benefits associated with those capabilities;

- The adequacy of existing evaluation resources and mitigation measures to address observed and potential risks;

- Aggregated results of verification assessments;

- Remedial measures prescribed by the IVO and whether the developer or deployer complied with those measures;

- Anonymized descriptions of additional risks beyond those the IVO is licensed to verify and the adequacy of existing mitigation measures to address those risks;

- A list of all AI models or applications verified by the IVO;

- A description of the IVO's methods, technologies, and administrative procedures for evaluating risk mitigation by AI models and applications;

- A description of any changes to the IVO's governance policies, sources of funding, or any other changes that would call into question its independence in carrying out its responsibilities under the bill.

Redaction

The bill provides that the annual report provisions cannot be construed to prohibit an IVO from redacting any material that it determines, in good faith, would risk revealing any of the following: (1) trade secrets, (2) competitively sensitive information, (3) personal identifying information, and (4) information that otherwise presents a risk to the security of an AI model or application if publicly disclosed.

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[13] R.C. 3755.10.

Document retention

An IVO is required by the bill to retain all documentation used for the preparation of the annual report for ten years following the submission of the report.[14]

Advisory Council

Established

The bill establishes the Artificial Intelligence Safety Advisory Council (Advisory Council) in the Attorney General's Office, in conjunction with the State Auditor. After consulting with the Auditor, the Attorney General must determine the appropriate size of the Advisory Council and appoint all members.

Powers and duties

The Attorney General may convey powers and duties provided to the Attorney General under the bill to the Advisory Council, including licensing IVOs.

Members; limits to service; removal; compensation

The Advisory Council must include at least one member representing the interests of civil society, including nongovernmental organizations, educational and research institutions, public policy institutes, or consumer and business advocacy organizations.

No member may serve for more than two consecutive terms. Members may be removed by the Attorney General for inefficiency, neglect of duty, or malfeasance of office.

Each member is to receive the member's actual and necessary expenses incurred in the discharge of the member's duties. Each member may also receive a salary for carrying out their duties under the bill's requirements.

Member limitations

All members of the Advisory Council must do all of the following:

- Remain free from undue influence and from taking any action that could compromise their ability to carry out their responsibilities or otherwise cast doubt on their ability to independently assess AI models or applications;

- Refrain from any action or occupation, whether gainful or not, incompatible with their duties, including employment by a developer or deployer of an AI model or application;

- Refrain from owning or acquiring any equity or other interest, directly or indirectly, in any company whose business consists in significant part of developing or deploying AI models or applications (equity acquired via a mutual fund or an exchange traded fund is exempt from this requirement);

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[14] R.C. 3755.10.

- Be precluded from accepting employment from an entity licensed or seeking licensure as an IVO, or from an AI model or application developer or deployer, for a period of one year after leaving the Advisory Council;

- Have the required qualifications, experience, and skills to perform their duties, including evaluating whether the plan provided by an IVO applicant ensures acceptable risk mitigation, and determining standards for evaluating the plans of applicants.

Quorum

A majority of the members of the Advisory Council constitute a quorum, and a concurrence of a majority of a quorum is sufficient for its determination.

Records

The Advisory Council is required to keep a record of its proceedings, including all considerations relating to the issuance, refusal, renewal, and revocation of IVO licensure. The Advisory Council also must publish redacted versions of reports issued by IVOs on the Attorney General's website.[15]

AI civil liability rebuttable presumption

The bill provides that in a civil action asserting claims for personal injury or property damage caused by an AI model or application, there is a rebuttable presumption against liability if all of the following apply:

- The AI model or application was verified by an IVO at the time of the plaintiff's alleged injuries;

- The plaintiff's alleged injury arose from a risk that the IVO was licensed to verify and for which the IVO did verify the AI model or application;

- The AI model or application fell within the specified market segment, if any, for which the IVO was licensed to conduct verification.

The rebuttable presumption may be rebutted upon showing, by clear and convincing evidence, both of the following:

- The defendant did any of the following:

  □ Engaged in intentional, willful, or reckless misconduct;

  □ Induced the IVO to verify based on material misrepresentations or omissions about the AI model or application or the risks such AI model or application poses;

  □ Failed to adhere to representations made to the IVO;

  □ Failed to satisfy a condition upon which the verification was expressly based;

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[15] R.C. 3755.06.

     □ Failed to disclose to the IVO newly identified risks, known shortcomings of existing mitigation measures, material changes to the risk profile of the verified AI model or application, or any other information required to be disclosed to the IVO under the IVO's verification requirements;

     □ Failed to implement corrective action prescribed by the IVO to address identified risks.

- The conduct described above was a proximate cause of the plaintiff's alleged injuries.[16]

Rulemaking

The bill requires the Attorney General to adopt rules under the Administrative Procedure Act (Chapter 119 of the Revised Code) to implement and administer the bill's provisions. The rules must do at least all of the following:

- Establish conflict of interest rules for IVOs, including reporting requirements regarding IVO funding sources, revenue generation and self-audit requirements regarding the IVO's board composition, to ensure adequate independence from the AI industry;

- Identify any additional elements required for an applicant's IVO plan to ensure acceptable mitigation of risk from any IVO-verified AI models or applications;

- Specify the circumstances in which corrective action, including loss of licensure, is mandated, such as the failure to adhere to representations made to the IVO to obtain licensure;

- Establish the composition of the Advisory Council, including the procedure for appointing additional members, and the term length of members;

- Establish the per diem salary of Advisory Council members;

- Provide the information, materials, and forms required to apply to be an IVO.

The Attorney General must consider input received from stakeholders in adopting the rules described above.[17]

HISTORY

Action	Date
Introduced	12-11-25

ANHB0628IN-136/ar

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[16] R.C. 3755.11.

[17] R.C. 3755.12.