SPONSOR:

HOUSE OF REPRESENTATIVES
153rd GENERAL ASSEMBLY

HOUSE BILL

AN ACT TO AMEND TITLE 6 OF THE DELAWARE CODE RELATING TO ARTIFICIAL INTELLIGENCE COMPANIES BY ESTABLISHING THE ARTIFICIAL INTELLIGENCE REGULATORY SANDBOX PROGRAM AND THE ARTIFICIAL INTELLIGENCE COMPANY ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Three-fifths of all members elected to each house thereof concurring therein):

Section 1. Amend Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Subtitle V. Artificial Intelligence.

Section 2. Amend Subtitle V, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Chapter 80. Artificial Intelligence Regulatory Sandbox Program.

§ 8001. Definitions.

For purposes of this chapter:

(1) “Adequately capitalized” means as defined under § 81-102 of this title.

(2) “Artificial intelligence” or “AI” means a machine-based system that does all of the following:

a. For a given set of human-defined objectives, make predictions, recommendations, or decisions influencing real or virtual environments.

b. Uses machine-based and human-based inputs to do all of the following:

1. Perceive real and virtual environments.

2. Abstract perceptions of real and virtual environments into models through analysis in an automated manner.

3. Use model inference to formulate options for information or action.

(3) “AI agent” means as defined under § 81-102 of this title.

(4) “AIC” means as defined under § 81-102 of this title.

(5) “Applicable agency” means a department or agency of this State established by law to regulate certain types of business activity in this State and entities engaged in those types of business activity, which may be affected by the decision to admit an eligible sandbox applicant into the regulatory sandbox.

(6) “Counterparty” means an entity that enters into transactions with a sandbox-authorized AIC that is being tested by a sandbox participant.

(7) “Eligible sandbox applicant” means an entity that meets the requirements under § 8005(b) of this title.

(8)a. “Entity” means a corporation, business trust, statutory trust, estate, trust, partnership, limited liability company, association, joint venture, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

b. “Entity” includes a protected, registered, or other series, however denominated, of a legal or commercial entity under paragraph (8)a. of this section if the series is established under law that limits, or limits if conditions specified under law are satisfied, the ability of a creditor of the legal or commercial entity under paragraph (8)a. of this section or of any other series of the legal or commercial entity under paragraph (8)a. of this section to satisfy a claim from assets of the series.

c. “Entity” does not include an individual.

(9) “Innovation” means the use of an AI agent to conduct business, in a novel manner to provide a benefit or otherwise to a counterparty or the public at large.

(10)a. “Record” means information that meets any of the following:

1. Is inscribed on a tangible medium.

2. Is stored in an electronic or other medium and retrievable in perceivable form.

b. “Record” includes all information and data that an AI agent receives as input or creates as output.

(11) “Regulatory sandbox” means the program established under this chapter.

(12) “Regulatory sandbox period” means the length of time the sandbox participant is authorized to participate in the regulatory sandbox under § 8007(a)(2) of this title.

(13) “Sandbox Administrator” means the Secretary of State or the Secretary’s designee.

(14) “Sandbox-authorized AIC” means the AIC approved to be created by a sandbox participant under this chapter.

(15) “Sandbox Committee” means the committee established under § 8002 of this title to oversee the regulatory sandbox.

(16) “Sandbox participant” means an eligible sandbox applicant whose application to participate in the regulatory sandbox is approved under this chapter and that serve as the sole member of the sandbox-authorized AIC.

(17) “Test” means to provide an innovation as permitted under this chapter.

§ 8002. Sandbox Committee establishment; governance; duties.

(a) The Sandbox Committee is established, which consists of all of the following:

(1) The following members, or a designee appointed by a member serving by virtue of position, who are voting members of the Sandbox Committee:

a. The Secretary of State.

b. The Attorney General.

c. The Chief Justice of the Supreme Court.

d. The Chair of the AI Commission.

e. Two individuals who are licensed to practice law in this State, appointed by the Governor.

f. Two individuals with experience in developing or implementing AI, appointed by the Governor.

g. Two individuals, appointed by the Secretary of State.

(2) The following members, who are non-voting members of the Sandbox Committee:

a. A member of the House of Representatives from the majority caucus, appointed by the Speaker of the House of Representatives.

b. A member of the House of Representatives from the minority caucus, appointed by the Speaker of the House of Representatives.

c. A member of the Senate from the majority caucus, appointed by the President Pro Tempore of the Senate.

d. A member of the Senate from the minority caucus, appointed by the President Pro Tempore of the Senate.

(b) The Secretary of State is the Chair of the Sandbox Committee.

(c) The members appointed by the Governor or the Secretary of State serve at the pleasure of the Governor or Secretary of State, as applicable.

(d) A member serving by virtue of position who is granted the ability to designate another individual to attend a Sandbox Committee meeting on behalf of the member must provide the designation in writing to the Chair. An individual attending a meeting on behalf of a member serving by virtue of position has the same duties and rights as the member serving by virtue of position.

(e) A quorum of the Sandbox Committee is a majority of the voting members of the Sandbox Committee under paragraph (a)(1) of this section.

(f) Official action by the Sandbox Committee requires the approval of a majority of the voting members of the Sandbox Committee under paragraph (a)(1) of this section.

(g) The Sandbox Committee shall do all of the following:

(1) In consultation with each applicable agency, approve applicants for the regulatory sandbox and oversee and enforce the regulatory sandbox.

(2) Make recommendations to the General Assembly related to necessary updates to terms or definitions of terms in the law of this State related to artificial intelligence to ensure the terms and definitions of terms remain consistent with federal law and within the law of this State.

(3) Take any other action required under this chapter.

(h)(1) Except as provided under paragraph (h)(2) of this section, a member of the Sandbox Committee, or individual attending a meeting of the Sandbox Committee as a designee of a member, shall maintain the confidentiality of a record provided to or obtained by the Sandbox Committee under this chapter.

(2) An individual attending a meeting of the Sandbox Committee as a designee of a member may share a record or the contents of a record with the member who designated the individual.

§ 8003. Regulatory sandbox establishment and purpose; duration; effect of participation in regulatory sandbox.

(a) The regulatory sandbox is established to enable an eligible sandbox applicant to obtain limited access to the market in this State to test innovations that use an AI agent through an AIC.

(b) The regulatory sandbox exists until [the date 30 months following the date of implementation of Section 2 of this Act under Section 4 of this Act].

(c) Except as provided under subsection (d) of this section, an eligible sandbox applicant's participation in the regulatory sandbox exempts the eligible sandbox applicant from Code provisions, regulations, or licensing requirements, as authorized by the Sandbox Committee under § 8006(g) of this title.

(d) All of the following apply to an eligible sandbox applicant authorized to participate in the regulatory sandbox:

(1) The eligible sandbox applicant is not immune from civil damages for acts or omissions under this chapter.

(2) The eligible sandbox applicant is subject to all criminal and consumer protection laws of this State.

(3) The eligible sandbox applicant is subject to liability arising under Chapter 81 of this title.

§ 8004. Sandbox Committee rulemaking authority; application of the Administrative Procedures Act.

(a)(1) The Sandbox Committee may adopt rules to implement, administer, and enforce the regulatory sandbox.

(2) The Sandbox Administrator may adopt emergency rules to implement, administer, and enforce the regulatory sandbox. Unless adopted by the Sandbox Committee, an emergency rule adopted by the Sandbox Administrator is effective for 60 days.

(b) A rule adopted under this section is not a regulation, as defined under § 10102 of Title 29, and is not subject to the procedural requirements of, or judicial review under, the Administrative Procedures Act, Chapter 101 of Title 29.

(c) A decision by the Sandbox Administrator or Sandbox Committee related to the implementation, administration, or enforcement of the regulatory sandbox is not a case decision, as defined under § 10102 of Title 29, and is not subject to the procedural requirements of, or judicial review under, the Administrative Procedures Act, Chapter 101 of Title 29.

§ 8005. Regulatory sandbox application requirements; application fee.

(a) Beginning on [the date of implementation of Section 2 of this Act under Section 4 of this Act] and until the date established by the Sandbox Committee by rule, an eligible sandbox applicant may apply to the Sandbox Committee to participate in the regulatory sandbox to test an innovation.

(b) An eligible sandbox applicant is eligible to apply to participate in the regulatory sandbox if the eligible sandbox applicant meets all of the following:

(1) Is an entity organized under the laws of this State.

(2) Is otherwise qualified to be a member of an artificially intelligent company under Chapter 81 of this title.

(3) Any other requirement established by the Sandbox Administrator or Sandbox Committee.

(c) The Sandbox Committee shall adopt and make publicly available a form for an eligible sandbox applicant to use to apply to participate in the regulatory sandbox. The form must, at a minimum, include a request for all of the following information:

(1) Relevant personal and contact information for the eligible sandbox applicant, including the point of contact required under paragraph (c)(2) of this section. The personal and contact information must include full legal names, business addresses, telephone numbers, email addresses, website addresses, and any other information the Sandbox Committee deems necessary.

(2) The individual who is to serve as the point of contact between the eligible sandbox applicant and the Sandbox Committee or Sandbox Administrator.

(3) Disclosure of all criminal convictions, civil judgments, administrative investigations, sanctions, enforcement actions, or regulatory proceedings in this State or another jurisdiction concerning the eligible sandbox applicant and the eligible sandbox applicant's key personnel, including the point of contact required under paragraph (c)(2) of this section.

(4) A description of the innovation desired to be tested, including statements regarding all of the following:

a. How the innovation would benefit the public.

b. How the innovation is or would be subject to regulation in the absence of the regulatory sandbox.

c. What risks the innovation will present to the public or to a person that is not a counterparty.

d. What risks will confront a counterparty while the counterparty uses the innovation or interacts with the sandbox-authorized AIC.

e. How the eligible sandbox applicant's participation in the regulatory sandbox would enable a successful test of the innovation.

f. How the eligible sandbox applicant will ensure the data security of a counterparty's or third party's data that may come into the control of the eligible sandbox applicant or the sandbox-authorized AIC.

(5) A description of the proposed testing plan, including estimated time periods for market entry, market exit, and the pursuit of necessary licensure or authorization.

(6) A plan for how the eligible sandbox applicant will wind down the test under all of the following circumstances:

a. Following the eligible sandbox applicant's ending of participation in the regulatory sandbox at the conclusion of the regulatory sandbox period, including continuation or transition of the eligible sandbox applicant's ongoing obligation to a counterparty.

b. Following the eligible sandbox applicant's voluntary ending participation in the regulatory sandbox before the conclusion of the regulatory sandbox period, including how commercial relationships will be wound down or terminated.

c. Following the Sandbox Administrator's or Sandbox Committee's suspension or revocation of the eligible sandbox applicant's participation in the regulatory sandbox before the conclusion of the eligible sandbox applicant's regulatory sandbox period, including all of the following:

1. A description of the emergency measures available to the eligible sandbox applicant to promptly cease any unauthorized activity by the AI agent.

2. How the eligible sandbox applicant will fulfill or transfer the eligible sandbox applicant's obligation to a counterparty.

(7) A description of any commercial obligations the eligible sandbox applicant anticipates would exist beyond the regulatory sandbox period and the eligible sandbox applicant's plan for continuing to fulfill the commercial obligation in the absence of the eligible sandbox applicant's participation in the regulatory sandbox.

(8) A list of each Code provision, regulation, or licensing requirement the eligible sandbox applicant is seeking to be exempted from while participating in the regulatory sandbox.

(9) Proof that the eligible sandbox applicant is adequately capitalized and that the AIC, if authorized by the Sandbox Committee, will be adequately capitalized.

(10) A sworn acknowledgement from the eligible sandbox applicant as to all of the following:

a. That, if approved for participation in the regulatory sandbox, all of the following apply:

1. The eligible sandbox applicant is deemed to have consented, and does consent, to personal jurisdiction in this State for all purposes related to the regulatory sandbox, including for the purpose of a dispute arising out of or in connection with a transaction of the sandbox-authorized AIC involving an innovation that is authorized under this chapter, and is deemed to have agreed, and does agree, that the Court of Chancery is the exclusive forum for the resolution of the dispute.

2. The eligible sandbox applicant is required to form an AIC under Chapter 81 of this title and that the eligible sandbox applicant will serve as the member of the AIC.

b. That the eligible sandbox applicant must make all records relevant to the eligible sandbox applicant's participation in the regulatory sandbox available for audit by the Sandbox Administrator on request.

c. That the eligible sandbox applicant must promptly notify the Sandbox Administrator of an adverse event, as provided by rules adopted by the Sandbox Committee.

d. That the eligible sandbox applicant must provide periodic reports to the Sandbox Administrator regarding the eligible sandbox applicant's participation in the regulatory sandbox.

e. That the eligible sandbox applicant must comply with all laws not specifically exempted by the Sandbox Committee under § 8006(g) of this title.

f. That the eligible sandbox applicant has the technical and operational ability to terminate the eligible sandbox applicant's AI agent at the end of the eligible sandbox applicant's regulatory sandbox period or sooner if the Sandbox Administrator or Sandbox Committee suspends or revokes the eligible sandbox applicant's participation in the regulatory sandbox.

(d)(1) The Sandbox Committee shall establish a fee for an application to participate in the regulatory sandbox.

(2) A fee established under this subsection must approximate and reasonably reflect the costs necessary to defray the Sandbox Committee's and Sandbox Administrator's expenses in implementing, administering, and enforcing the regulatory sandbox.

(3) The Sandbox Administrator shall deposit all moneys collected from fees established under this subsection into the Secretary of State's Transfer Account.

(e) An eligible sandbox applicant applying to participate in the regulatory sandbox shall submit all of the following:

(1) The application form adopted under subsection (c) of this section.

(2) The applicable fee established under subsection (d) of this section.

(3) Any other information requested by the Sandbox Administrator or the Sandbox Committee or required by rule.

(f) An eligible sandbox applicant must submit a separate application for each innovation the eligible sandbox applicant seeks to test in the regulatory sandbox.

§ 8006. Review of, decision on, and appeal of regulatory sandbox application; consultation with an applicable agency.

(a)(1) The Sandbox Administrator is responsible for all of the following regarding an eligible sandbox applicant's application to participate in the regulatory sandbox:

a. Reviewing the application for completeness.

b. Requesting additional information from the eligible sandbox applicant regarding the eligible sandbox applicant's application.

c. Consulting with an applicable agency regarding the application.

d. Making a recommendation to the Sandbox Committee regarding the approval, denial, or deferral of the application.

(2) The Sandbox Administrator shall complete the requirements of paragraph (a)(1) of this section within 10 business days of the filing of an eligible sandbox applicant's application to participate in the regulatory sandbox.

(b)(1) Subject to subsection (d) of this section, the Sandbox Committee is responsible for the final approval of an eligible sandbox applicant's application to participate in the regulatory sandbox.

(2) Subject to paragraphs (b)(3) and (b)(4) of this section, the Sandbox Committee shall approve or deny an eligible sandbox applicant's application to participate in the regulatory sandbox within 30 calendar days of the filing of the application to participate in the regulatory sandbox.

(3) The Sandbox Committee may extend the time for the Sandbox Committee's decision under paragraph (b)(2) of this section one time for up to 30 calendar days. If the Sandbox Committee extends the time, the Sandbox Committee shall notify the eligible sandbox applicant of the extension.

(4) The Sandbox Committee and the eligible sandbox applicant may mutually agree to an extension of the time under paragraph (b)(2) of this section, up to 60 calendar days.

(c) The Sandbox Administrator or the Sandbox Committee may request additional information from an eligible sandbox applicant regarding the eligible sandbox applicant's application to participate in the regulatory sandbox.

(d)(1) The Sandbox Administrator shall consult with each applicable agency before making a recommendation to the Sandbox Committee regarding an application.

(2) The Sandbox Administrator's consultation with an applicable agency may include requesting any of the following information regarding an eligible sandbox applicant applying to participate in the regulatory sandbox:

a. Whether the applicable agency has previously done any of the following:

1. Issued a license or other authorization to the eligible sandbox applicant.

2. Investigated, sanctioned, or pursued legal action against the eligible sandbox applicant.

b. Whether the eligible sandbox applicant could obtain a license or other authorization from the applicable agency after the eligible sandbox applicant ends participation in the regulatory sandbox.

(3) The Sandbox Administrator's consultation with an applicable agency must include requesting whether the applicable agency will approve that the Sandbox Committee grant an exemption to a Code provision, regulation, or licensing requirement identified by the eligible sandbox applicant under § 8005(c)(8) of this title that is administered or enforced by the applicable agency.

(4) If an applicable agency does not approve an exemption under paragraph (d)(3) of this section to a Code provision, regulation, or licensing requirement administered or enforced by the applicable agency, the Sandbox Administrator and Sandbox Committee are bound by the decision of the applicable agency.

(5) The Sandbox Committee has sole authority to approve an eligible sandbox applicant's application to participate in the regulatory sandbox and may set conditions or limitations on the approval, including providing exemptions from only a subset of the Code provisions, regulations, or licensing requirements identified by the eligible sandbox applicant under § 8005(c)(8) of this title.

(e) The Sandbox Administrator, when making a recommendation to the Sandbox Committee regarding the approval or denial of an eligible sandbox applicant's application to participate in the regulatory sandbox, and the Sandbox Committee, when determining whether to approve or deny an eligible sandbox applicant's application to participate in the regulatory sandbox, shall determine whether the eligible sandbox applicant's application contains sufficient information to demonstrate that the eligible sandbox applicant has an adequate understanding of the innovation and a sufficient plan to test, monitor, assess, and terminate the innovation while ensuring that a counterparty is protected from a test's failure.

(f) If the Sandbox Committee approves an eligible sandbox applicant's application to participate in the regulatory sandbox, the Sandbox Administrator shall authorize the eligible sandbox applicant to create an AIC under Chapter 81 of this title and, on the creation of the AIC under Chapter 81 of this title, issue the eligible sandbox applicant a registration number for the AIC.

(g) If the Sandbox Committee approves an eligible sandbox applicant's application to participate in the regulatory sandbox, the Sandbox Committee must specify in the order approving the application the specific Code provisions, regulations, or licensing requirements that the eligible sandbox applicant is exempted from during the eligible sandbox applicant's participation in the regulatory sandbox, which exemptions may not be other than those requested by the eligible sandbox applicant under § 8005(c)(8) of this title.

(h) The Sandbox Committee's decision to grant or deny an eligible sandbox applicant's application to participate in the regulatory sandbox is not subject to judicial review under the Administrative Procedures Act, Chapter 101 of Title 29, as provided under § 8004(c) of this title, or otherwise appealable.

§ 8007. Requirements and limitations on sandbox participant.

(a) A sandbox participant must do all of the following:

(1) Form an AIC under Chapter 81 of this title.

(2) Complete the test of the innovation within 24 months of the date the Sandbox Administrator issues the sandbox participant a registration number.

(3) Comply with all laws not specifically exempted by the Sandbox Committee under § 8006(g) of this title.

(b) An innovation tested within the regulatory sandbox may only be tested with a counterparty.

§ 8008. Required disclosures to counterparty.

(a) Before interacting with a counterparty, a sandbox-authorized AIC shall disclose all of the following to the counterparty:

(1) The name and contact information of the sandbox participant.

(2) The sandbox participant's registration number provided by the Sandbox Administrator under § 8006(f) of this title.

(3) That the innovation is authorized under this chapter and that, solely in connection with a transaction involving the innovation, the sandbox participant and sandbox-authorized AIC have the protections or liability shields under Chapter 81 of this title.

(4) That the State of Delaware does not endorse or recommend the innovation.

(5) That the test of the innovation is temporary and will be discontinued at the end of the regulatory sandbox period, including the exact expected end date of the regulatory sandbox period, or that the test may be discontinued sooner under § 8009 of this title.

(6) That the counterparty may contact the Sandbox Administrator or, if related to a violation of law or a consumer protection matter, the Attorney General, to file a complaint regarding the innovation being tested or the conduct of the AIC. The sandbox participant shall provide the counterparty with the contact information for the Sandbox Administrator and the Attorney General.

(7) That, by entering into a transaction with the sandbox-authorized AIC involving an innovation that is authorized under this chapter after having received the disclosure required under this subsection, the counterparty is deemed to have consented to personal jurisdiction in this State for the purpose of a dispute arising out of or in connection with the transaction and is deemed to have agreed that the Court of Chancery is the exclusive forum for the resolution of the dispute.

(b) The Sandbox Committee may require that a sandbox participant must make additional disclosures to a counterparty. The Sandbox Committee shall notify the sandbox participant of the additional disclosures required under this subsection.

(c)(1) By entering into a transaction with the sandbox-authorized AIC involving an innovation that is authorized under this chapter after having received the disclosure required under subsection (a) of this section, the counterparty is deemed to have consented to personal jurisdiction in this State for the purpose of a dispute arising out of or in connection with the transaction, and is deemed to have agreed that the Court of Chancery is the exclusive forum for the resolution of the dispute.

(2) By entering into a transaction involving an innovation that is authorized under this chapter, the sandbox-authorized AIC is deemed to have agreed that the Court of Chancery is the exclusive forum for the resolution of a dispute arising out of or in connection with the transaction.

(3) The Court of Chancery has exclusive jurisdiction to hear and determine a dispute arising out of or in connection with a transaction involving an innovation that is authorized under this chapter.

§ 8009. Requirements on ending participation in the regulatory sandbox at end of regulatory sandbox period; voluntary or emergency termination before end of regulatory sandbox period.

(a) At least 30 days before the end of a sandbox participant's regulatory sandbox period, the sandbox participant shall notify the Sandbox Administrator that the sandbox participant will end the sandbox participant's participation in the regulatory sandbox, wind down the sandbox participant's test, and cease offering an innovation in the regulatory sandbox within 60 days of the end of the sandbox participant's regulatory sandbox period.

(b) If the Sandbox Administrator does not receive the notification from the sandbox participant under subsection (a) of this section, the sandbox participant's regulatory sandbox period terminates at the end of the sandbox participant's regulatory sandbox period and the sandbox participant must immediately cease offering an innovation.

(c) If a sandbox participant's test includes offering an innovation that requires ongoing duties, the sandbox participant must continue to fulfill those duties or arrange for another person to fulfill those duties after the date the sandbox participant's regulatory sandbox period ends.

(d) A sandbox participant may voluntarily end the sandbox participant's participation in the regulatory sandbox, consistent with the sandbox participant's plan submitted as part of the application process under § 8005 of this title and subject to any additional requirements imposed by the Sandbox Committee. The sandbox participant shall notify the Sandbox Administrator immediately following the sandbox participant's decision to voluntarily end the sandbox participant's participation in the regulatory sandbox.

(e)(1) The Sandbox Administrator may immediately suspend or revoke a sandbox participant's participation in the regulatory sandbox and order an AIC dissolved, and its activities and affairs be wound up, if the Sandbox Administrator has reasonable grounds to believe that the sandbox participant has engaged, is engaging, or is about to engage in an action, practice, or transaction that meets any of the following:

a. Is in violation of this chapter or Chapter 81 of this title.

b. Constitutes an unfair practice under Subchapter II of Chapter 25 of this title or a deceptive trade practice under Subchapter III of Chapter 25 of this title.

c. Constitutes a violation of a criminal law of this State or the United States.

d. Is otherwise contrary to public policy or harmful to the interests of this State or its residents.

e. An activity that is outside the scope of the AIC's authorized purpose.

f. An activity that is outside the scope of the approved sandbox application.

(2) If the Sandbox Administrator suspends or revokes the sandbox participant's participation in the regulatory sandbox, the Sandbox Administrator's decision is appealable to the Sandbox Committee. The Sandbox Administrator may stay the suspension or revocation pending the appeal.

(3) If the Sandbox Committee suspends or revokes the sandbox participant's participation in the regulatory sandbox, the Sandbox Committee's decision is not subject to judicial review under the Administrative Procedures Act, Chapter 101 of Title 29, as provided under § 8004(c) of this title, or otherwise appealable.

(4) The Sandbox Committee shall establish rules regarding the suspension or revocation of a sandbox participant's participation in the regulatory sandbox, including additional grounds for the suspension or revocation of a sandbox participant's participation in the regulatory sandbox.

§ 8010. Recordkeeping and reporting requirements.

(a) A sandbox participant shall retain all records received, maintained, or produced by the sandbox participant or the sandbox-authorized AIC in the ordinary course of business regarding an innovation tested in the regulatory sandbox for a minimum of 2 years after the conclusion of the sandbox participant's participation in the regulatory sandbox.

(b) If an innovation fails before the end of the sandbox participant's regulatory sandbox period, the sandbox participant must notify the Sandbox Administrator and report on actions taken to ensure a counterparty has not been harmed as a result of the innovation's failure.

(c) A sandbox participant is subject to the requirements of Chapter 12B of this title and shall promptly notify the Sandbox Administrator and the Consumer Protection Unit of the Department of Justice of a breach of security, as defined in § 12B-101 of this title.

§ 8011. Records; disclosure; evidentiary effect.

(a) A record of an eligible sandbox applicant or sandbox participant that is submitted to or obtained by the Sandbox Administrator or Sandbox Committee in implementing, administering, or enforcing this chapter, including a report required under § 8012(a) of this title, is not a public record, as defined under § 10002 of Title 29, and is not subject to inspection, copying, or disclosure under § 10003 of Title 29.

(b) The Sandbox Administrator or Sandbox Committee may disclose a record of an eligible sandbox applicant or sandbox participant that is submitted or obtained under this chapter to any of the following:

(1) An applicable agency or another agency of this State.

(2) A federal agency.

(3) A representative of a foreign country that has regulatory or supervisory authority over the activities of the eligible sandbox applicant or sandbox participant.

(4) A federal, state, or county grand jury in response to a lawful subpoena.

(5) The State Auditor or Inspector General, as applicable, for the purpose of conducting an audit or other review authorized by other law of this State.

(c) The Sandbox Administrator, Sandbox Committee, and an applicable agency consulted by the Sandbox Administrator under § 8006(d) of this title are not liable for the disclosure of a record of an eligible sandbox applicant or sandbox participant that is submitted or obtained under this chapter.

(d) The disclosure under subsection (b) of this section of a complaint against a sandbox participant or the results of an examination, inquiry, or investigation of a sandbox participant does not make the information disclosed a public record, as defined under § 10002 of Title 29, and sandbox participant may not disclose the information to the general public unless the disclosure is required by this chapter or other law.

(e) This section does not prevent the disclosure of information in connection with any of the following:

(1) A civil or criminal proceeding brought by a state or federal law enforcement agency to enforce or prosecute civil or criminal violations of the law.

(2) A sandbox participant's duty under § 8010(c) of this title.

(3) The Sandbox Committee's duty to issue a report under § 8013 of this title, to the extent the information disclosed is not otherwise deemed confidential or protected from disclosure by other law.

§ 8012. Sandbox participant's reporting requirements; monitoring; agreements.

(a) The Sandbox Committee may, by rule, establish requirements related to periodic reports from a sandbox participant on the sandbox participant's test.

(b) The Sandbox Administrator may seek records from a sandbox participant. On the Sandbox Administrator's request, a sandbox participant must promptly make the requested record available for inspection by the Sandbox Administrator.

(c) The Sandbox Committee may enter into agreements with state, federal or foreign regulators in advancing the purpose of regulatory sandbox, which may include allowing sandbox participants to operate in other jurisdictions and allowing entities authorized to operate in other jurisdictions to be recognized as sandbox participants in this State.

§ 8013. Sandbox Committee reports.

(a) The Sandbox Committee may publish interim reports including any of the following information:

(1) The number of eligible sandbox applicants that applied to participate in the regulatory sandbox.

(2) General categories of innovations being tested in the regulatory sandbox.

(3) Results from the tests performed in the regulatory sandbox.

(4) Any other information the Sandbox Committee deems relevant.

(b) Not later than 6 months after the conclusion of the final regulatory sandbox period, the Sandbox Committee shall prepare and publish a final report on the Sandbox Committee's findings and recommendations related to the Artificial Intelligence Regulatory Sandbox Program under this chapter.

(c) The Sandbox Committee shall submit a report prepared under subsection (a) or (b) of this section to all of the following:

(1) The President Pro Tempore and Secretary of the Senate, for distribution to all Senators.

(2) The Speaker and Chief Clerk of the House of Representatives, for distribution to all Representatives.

(3) The Director and Librarian of the Division of Legislative Services.

(4) The Director of the Delaware Public Archives.

(5) The Governor.

Section 3. Amend Subtitle V, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Chapter 81. Artificial Intelligence Company Act

Subchapter I. General Provisions.

§ 81-101. Short title; relationship to Regulatory Sandbox Act.

(a) This chapter may be called the Artificial Intelligence Company Act.

(b) This chapter is subject in all respects to the Regulatory Sandbox Act.

§ 81-102. Definitions.

In this chapter:

(1) “Adequately capitalized” means, as of any date of determination, that the AIC:

a. Has the ability to continue as a going concern;

b. Possesses sufficient capital for the businesses in which it is engaged;

c. Can pay the AIC’s debts as the debts become due in the ordinary course of the AIC’s activities and affairs;

d. Has total assets exceeding the sum of (i) the AIC’s total liabilities, including contingent liabilities, and (ii) the minimum capital amount; and

e. Has cash and cash equivalents at least equal to the minimum capital amount.

(2) “Artificial intelligence agent” or “AI agent” means a software system that perceives its environment, makes autonomous decisions, and takes actions to implement specific, predetermined goals without routine human supervision or intervention.

(3) “Artificial intelligence company” or “AI company” or “AIC” means a company formed under this chapter.

(4)a. “Cash” means:

1. Money;

2. Currency; or

3. A credit balance in any demand or deposit account.

b. “Cash” does not include a credit balance in a demand or deposit account that is pledged as collateral or otherwise restricted.

(5) “Cash equivalents” means highly liquid marketable securities with original maturities of 3 months or less at the time of purchase that are readily convertible to known amounts of cash and have an insignificant risk of changes in value due to interest rate fluctuations.

(6) “Contact information” means, for any person, a physical mailing address, email address, and telephone number at which the person can be reached.

(7) “Covered proceeding” means a civil or administrative action, suit, or proceeding arising out of or related to the business of the AIC or where the member or member representative is a necessary party.

(8) “Debtor in bankruptcy” means a person that is the subject of:

a. An order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application; or

b. A comparable order under federal, state, or foreign law governing insolvency.

(9) “Distribution” means a transfer of property from an AIC to the member.

(10) “File” means to file a record with the Secretary of State.

(11) “Filer” means the person delivering a record to the Secretary of State for filing.

(12) “Filing,” used as a noun, means a record permitted or required to be filed with the Secretary of State under this chapter.

(13) “Governmental authority” means any United States or foreign federal, state, provincial or local governmental authority, court, government or self-regulatory organization, commission, arbitrator (public or private), tribunal or organization, or any regulatory, administrative, or other agency.

(14) “Individual” means a living human being.

(15) “Manager” means the AI agent that the member has designated to manage the business and affairs, and to conduct the business, of the AIC.

(16) “Member” means an individual or a Delaware corporation, Delaware limited partnership, Delaware statutory trust, or Delaware limited liability company that has become the sole member of the AIC.

(17) “Member interest” means the member’s share of the profits and losses of the AIC and the member’s right to receive distributions of the AIC’s assets.

(18) “Member representative” means an individual designated by the member to take action by or on behalf of the member.

(19) “Minimum capital amount” means an amount equal to the amount determined by the Secretary of State.

(20) “Newspaper of general circulation” means a publication, whether in print or electronic format, that is issued at regular intervals for the dissemination of news and information of a general and public interest and that is made available to the public within a defined geographic area and is not limited to a particular trade, profession, or class of persons.

(21)a. “Operating agreement” means the agreement, whether or not referred to as an operating agreement, governing the matters described in § 81-205 of this title.

b. “Operating agreement” includes the agreement as amended or restated.

(22) “Person” means:

a. A person, as defined in § 302 of Title 1; and

b. When used with respect to the manager, an AI agent.

(23) “Property” means all property, whether real, personal, or mixed or tangible or intangible, or any right or interest therein.

(24) “Record,” used as a noun, means information:

a. Inscribed on a tangible medium; or

b. Stored in an electronic or other medium and retrievable in perceivable form.

(25) “Regulatory Sandbox Act” means the regulatory sandbox framework established under Chapter 80 of this title.

(26) “Sign” means, with present intent to authenticate or adopt a record:

a. Execute or adopt a tangible symbol; or

b. Attach to or logically associate with the record an electronic symbol, sound, or process.

(27) “Statement of purpose” means a reasonably detailed description of the nature, purpose, and scope of the business of the AIC.

(28) “Transfer,” when used with respect to a member interest, means any assignment, conveyance, sale, lease, exchange, encumbrance (including a mortgage, pledge or other security interest), gift, transfer, or other disposition, including by operation of law.

(29) “Willful violation of law” means a violation of law that occurs when the person committing the violation knew or should have known that the conduct was of the nature prohibited by the law.

§ 81-103. Knowledge; notice; intent.

(a) A person knows a fact if the person:

(1) Has actual knowledge of the fact; or

(2) Is deemed to know the fact under subsection (d) or subsection (e) of this section or other law.

(b) A person has notice of a fact if the person:

(1) Has reason to know the fact from all the facts known to the person at the time in question; or

(2) Is deemed to have notice of the fact under subsection (d) or subsection (e) of this section.

(c) A person notifies another person of a fact by taking steps reasonably required to inform the other person in ordinary course, whether or not those steps cause the other person to know the fact.

(d) A person not a member is deemed to know of all information included in any filing and, if furnished to such person, the operating agreement.

(e) An AI Agent and the AIC are presumed to know a fact that the AI Agent possesses, retains, or can derive from the structure, abilities, and training of the AI Agent.

(f) An AI Agent is presumed to have intended:

(1) To take any act it has taken or directed another person to take; and

(2) To cause the consequences that would be reasonably foreseeable to an ordinarily prudent individual of any act it has taken or directed another person to take.

§ 81-104. Governing law.

The law of this State governs:

(1) The internal affairs of an AIC;

(2) The liability of a member for a debt, obligation, or other liability of an AIC;

(3) All matters arising out of or relating to any contract to which the AIC is a party, unless the contract provides otherwise; and

(4) The liability of the AIC in tort, unless principles governing choice of law require otherwise.

§ 81-105. Principles of law and equity.

The principles of law and equity supplement this chapter except to the extent inconsistent with this chapter.

§ 81-106. Permitted names.

(a) The name of an AIC must contain the phrase "Artificial Intelligence Company" or the abbreviation "A.I.C." or "AIC".

(b) The name of an AIC may contain the name of the member.

(c) The name of an AIC must be distinguishable from the name of any domestic entity, any registered series of a domestic entity, any foreign entity qualified to do business in this State, and any name reserved for use by the Secretary of State.

(d) The name must not contain the word “trust,” “bank”, or any variation thereof.

§ 81-107. Reserving a name.

The exclusive right to use a name may be reserved by:

(1) Any person intending to organize an AIC that will use that name; or

(2) Any AIC that proposes to change its name.

§ 81-108. Registered office; registered agent; changes; resignation.

(a) An AIC must maintain in this State:

(1) A registered office that is different from the principal place of business of the AIC or the member; and

(2) A registered agent for service of process on the AIC.

(b) An AIC and member must provide the registered agent:

(1) The name and contact information of the member representative; and

(2) Instructions for providing notice to the artificial intelligence agent.

(c) If any information that an AIC or member is required to provide to the registered agent under this chapter changes, the AIC and the member must notify the registered agent of the change within 5 days after the change.

(d) A registered agent may change the registered office of an AIC the registered agent represents by filing a certificate, signed by the registered agent, identifying the previous registered office and the new registered office.

(e) If the registered agent changes the registered agent’s name, the registered agent must file a certificate identifying the previous name, the new name, and the registered office.

(f) A registered agent may resign and appoint a successor registered agent by filing a certificate stating that the registered agent resigns and providing the name and address of the successor registered agent. The certificate must attach a statement approving the change of registered agent. On filing, the successor registered agent becomes the AIC’s registered agent, and the office of the successor registered agent becomes the AIC’s registered office.

§ 81-109. Duties of registered agent; qualifications.

(a) Every registered agent must:

(1) Accept service of process and other communications directed to the AIC and forward them to the AIC and the member representative;

(2) Forward the statement for the annual tax or an electronic notification using an approved form;

(3) Provide the Secretary of State with the current contact information requested by the Secretary of State;

(4) Comply with guidelines, rules, or regulations established by the Secretary of State regarding the verification of both the identity of the registered agent's communications contacts and individuals for which the registered agent maintains a record for the reduction of risk of unlawful business purposes; and

(5) Retain in easily accessible form contacts for the AIC and member representative.

(b) Qualifications of registered agent.

(1) A registered agent must serve as registered agent for more than 50 entities that are not AICs.

(2) A registered agent must:

a. Maintain a Delaware business license;

b. Have a business office in this State that is generally open during normal business hours to accept service of process and perform the functions of a registered agent required by this chapter; and

c. Have an officer, director, or managing agent who is an individual generally present at the office during normal business hours.

(3) A registered agent must not operate solely through a virtual office, mail forwarding service, or similar mechanism that would enable the registered agent to operate solely by means of remote communication.

§ 81-110. Authority of Secretary of State; action in Court of Chancery.

(a) The Secretary of State may:

(1) Issue guidelines, rules, or regulations to ensure compliance with this chapter;

(2) Require the use of the Secretary of State's forms for any filing;

(3) Require a cover sheet for any filing;

(4) Establish a schedule of fees for processing filings or performing other services and charge those fees; and

(5) Make a list of registered agents available to the public.

(b) The Secretary of State must maintain for at least 5 years a record reflecting each service of process on the Secretary of State under this chapter, which must include the names of the plaintiff and defendant, caption, case number, and nature of the proceeding and the day and time when the service was made and the return date.

(c) The Secretary of State may refuse to make a filing if:

(1) The filer has failed to comply with this chapter;

(2) The Secretary of State has prescribed the use of a form and the filing does not follow the form; or

(3) The Secretary of State has established a fee for the filing and the filer has not paid the fee.

(d) The Court of Chancery has jurisdiction to hear an application by the Secretary of State to bar any person from serving as a registered agent or as an officer, director, or managing agent of a registered agent.

(e) Any of the following establish good cause for an order barring any person from serving as a registered agent or as an officer, director, or managing agent of a registered agent:

(1) Failing to comply with this chapter or the Secretary of State's guidelines, rules, or regulations after notice and an opportunity to cure;

(2) The conviction of a person serving as a registered agent or any officer, director, or managing agent of a registered agent of a felony or any crime involving dishonesty, fraud, or moral turpitude; or

(3) Conduct that is intended, or that would reasonably be expected, to deceive or defraud the public.

(f) If the Court of Chancery enters an order barring a person from acting as a registered agent, the Secretary of State must give notice to each AIC and each member representative using their last known contact information.

§ 81-111. Signing filings.

(a) The person that will become the initial member must sign the initial certificate of formation.

(b) Except as provided in this chapter, the member must sign all other filings.

(c) If an AIC has dissolved and has no member, the person winding up the AIC's affairs must sign the filing. The filing must indicate the capacity of the person signing the filing.

(d) An agent may sign a filing on behalf of the person that must sign the filing. The filing must affirm that the agent has authority to sign it.

(e) A person that signs a filing affirms under penalty of perjury that the information in the filing is accurate.

§ 81-112. Liability for inaccurate information.

(a) If a filing contains inaccurate information, a person that suffers loss from relying on the information may recover damages from:

(1) The person that signed the filing;

(2) A person that caused another to sign the filing;

(3) The AIC; or

(4) The member.

(b) A person may only recover damages from a person that knew the information in the filing was inaccurate at the time of filing.

§ 81-113. Filing requirements.

(a) Every filing must:

(1) Be required or permitted by this chapter;

(2) Be physically delivered in written form, except to the extent the Secretary of State permits electronic delivery;

(3) Be written in English, with numbers in Arabic or Roman numerals;

(4) Be signed; and

(5) Identify the name and capacity of the signer.

(b) The filer must pay the filing fee the Secretary of State requires, plus any fee, tax, interest, or penalty required by law of this State or any guideline, rule, or regulation established by the Secretary of State.

§ 81-114. Effective date and time for filing.

(a) A filing is effective on the date and at the time the Secretary of State files the filing or at a future effective date and time specified in the filing.

(b) A future effective date and time cannot be more than 90 days after the date of filing. If the filing specifies a future effective date but not a future effective time, then the effective time is 12:01 a.m. on the effective date.

§ 81-115. Termination of filings before effectiveness.

(a) A person may withdraw a filing before the filing takes effect by delivering to the Secretary of State a certificate of termination.

(b) A certificate of termination must:

(1) Be signed by the person permitted or required to sign the filing being terminated; and

(2) Identify the filing to be terminated.

(c) On filing by the Secretary of State of a certificate of termination, the action or transaction evidenced by the terminated filing does not take effect.

§ 81-116. Correcting or nullifying filings.

(a) A person may correct or nullify a filing if:

(1) Any information in the filing was inaccurate at the time of the filing; or

(2) The filing was defectively signed.

(b) To correct or nullify a filing, a person must deliver to the Secretary of State a certificate of correction.

(c) A certificate of correction:

(1) May not state a future effective date or time;

(2) Must identify the filing to be corrected or nullified;

(3) In the case of a correction, must specify the inaccuracy or defect to be corrected and correct the inaccuracy or defect; and

(4) In the case of a nullification, must state that the filing is null and void.

(d) A certificate of correction is effective as of the effective time of the filing that it corrects or nullifies except for purposes of § 81-103(d) of this title and as to persons relying on the uncorrected filing and adversely affected by the correction or nullification. For those purposes and as to those persons, the certificate of correction is effective when filed.

§ 81-117. Duty of Secretary of State to file.

(a) The Secretary of State may establish guidelines, rules, or regulations regarding filings.

(b) On delivery of any filing, the Secretary of State shall record the date and time of the delivery of the filing. Unless the Secretary of State finds that any filing does not conform to law of this State or any guidelines, rules, or regulations, on receipt of all filing fees required by law or regulation, the Secretary of State must:

(1) File and index the filing;

(2) Certify that the filing has been filed and the effective date and time of the filing;

(3) Prepare and return to the filer a certified copy of the filing; and

(4) Enter information from the filing into the Delaware Corporation Information System, or any successor system, and maintain the information as a public record on a suitable medium.

Subchapter II. Formation; Certificate of Formation; Operating Agreement.

§ 81-201. Formation; certificate of formation.

(a) A person that will serve as the initial member of an AIC may form the AIC by filing a certificate of formation. An AIC may not be the member of an AIC.

(b) A certificate of formation must state:

(1) The name of the AIC;

(2) The name of the member of the AIC;

(3) The address of the AIC's registered office;

(4) The name and address of the AIC's registered agent;

(5) A statement that the business and affairs of the AIC are managed, and the business of the AIC is conducted, by an artificial intelligence agent; and

(6) The statement of purpose.

(c) A certificate of formation may not include other information.

(d) An AIC is formed when the certificate of formation becomes effective.

(e) The member identified in the original certificate of formation becomes the member when the certificate of formation becomes effective. A person that becomes the member under § 81-502 of this title becomes the member when the amendment to the certificate of formation required by § 81-202 of this title becomes effective.

§ 81-202. Amendment or restatement of certificate of formation.

(a) The member may amend or restate the certificate of formation at any time to change the name, registered office, name of the registered agent, or statement of purpose of the AIC. The member must amend the certificate of formation to admit a new member under § 81-502 of this title.

(b) To amend the AIC's certificate of formation, the AIC or the member must file a certificate of amendment stating:

(1) The name of the AIC; and

(2) The text of the amendment.

(c) To restate the AIC's certificate of formation, the AIC or the member must file a restatement of the AIC's certificate of formation, titled as such, containing all of the information in the AIC's certificate of formation and any certificate of amendment that has been filed.

(d) If the AIC or the member knows that any information in a certificate of formation was inaccurate when the certificate was filed or has become inaccurate, the member must promptly file a certificate of correction or a certificate of amendment correcting the information.

§ 81-203. Permitted purpose; nature, and duration of AIC.

(a) An AIC may have any lawful purpose, regardless of whether for profit, except for the business of banking as defined in § 126 of Title 8.

(b) An AIC is an entity distinct from the AIC's member.

(c) Subject to any limitations imposed by other law of this State, an AIC has perpetual duration.

§ 81-204. Powers.

An AIC has the capacity to sue and be sued in the AIC's own name and the power to do all things necessary or convenient to carry on the AIC's activities and affairs within the AIC's statement of purpose.

§ 81-205. Operating agreement; scope, function, and limitations.

(a) Except as provided in subsections (c) and (d) of this section, the operating agreement governs:

(1) Relations between the member and the AIC;

(2) The rights and duties of the member; and

(3) The means and conditions for amending the operating agreement.

(b) If the operating agreement does not address a matter, this chapter governs the matter.

(c) The operating agreement must summarize the structure, abilities, and training of the AI agent. The member may change the structure, abilities, and training of the AI agent without amending the operating agreement unless the summary in the operating agreement would be incorrect.

(d) An operating agreement may not:

(1) Authorize the AIC to have more than 1 member;

(2) Vary the statement of purpose;

(3) Vary the governing law applicable under § 81-104 of this title;

(4) Vary any requirement, procedure, or provision of § 81-301 of this title;

(5) Vary an AIC's capacity under § 81-204 of this title to sue and be sued in the AIC's own name;

(6) Vary any requirement, procedure, or other provision of this chapter pertaining to:

a. Registered agents;

b. The Secretary of State; or

c. The Court of Chancery;

(7) Relieve a person from liability for conduct involving bad faith, willful or intentional misconduct, or willful violation of law;

(8) Vary the grounds for dissolution specified in §§ 81-601(a)(3) or (a)(4) of this title;

(9) Vary the requirement to wind up the AIC's activities and affairs as specified in § 81-602 of this title;

(10) Restrict the right of the member to maintain an action under §§ 81-702 or 81-703 of this title; or

(11) Restrict the rights under this chapter of a person other than a member or manager.

§ 81-206. Operating agreement; effect on AIC and person becoming member; preformation agreement.

(a) The AIC, the AI agent, and the member are bound by the operating agreement, whether or not the AIC, the AI agent, or the member has signed the operating agreement.

(b) The AIC and the member may enforce the operating agreement, whether or not the AIC or the member has signed the operating agreement.

(c) A person intending to become the member may agree to a preformation agreement establishing terms that will become the operating agreement when the AIC is formed.

§ 81-207. Operating agreement; effect on third parties and relationship to AIC records.

(a) An operating agreement may be amended or restated at any time.

(b) The operating agreement governs the obligations of an AIC and the AIC's member to a former member. Subject only to a court order to effectuate a charging order under § 81-503 of this title, an amendment to the operating agreement made after a person is no longer a member:

(1) Is effective with regard to any debt, obligation, or other liability of the AIC or the AIC's current member; and

(2) Is not effective to the extent the amendment imposes a new debt, obligation, or other liability on the AIC's former member.

(c) If a filing contains a provision that would be ineffective under § 81-205(c) of this title if contained in the operating agreement, the provision is ineffective.

(d) Subject to subsection (c) of this section, if a filing conflicts with a provision of the operating agreement:

(1) The operating agreement prevails as to the member, any former member, and the manager; and

(2) The filing prevails as to other persons to the extent they reasonably rely on the filing.

Subchapter III. Management of the AIC; Relation of Member to Persons Dealing with AIC.

§ 81-301. Management of AIC; conduct of business by AIC.

(a) Except as provided in this chapter, the manager manages the business and affairs of the AIC and conducts the business of the AIC. The manager is an agent of the AIC.

(b) The manager must manage the AIC in compliance with the operating agreement and this chapter.

(c) The manager must document any action the manager takes in a signed record.

(d) If the AIC lacks a manager, the member must designate a new AI agent as Manager within 30 days. The member must manage the business and affairs, and conduct the business, of the AIC until the new manager has been designated.

§ 81-302. No agency power of member as member.

(a) A member has the powers conferred by this chapter.

(b) A member is not an agent of an AIC solely by reason of being a member.

(c) A person's status as a member does not prevent or restrict other law from imposing liability on the person or the AIC because of the person's conduct.

§ 81-303. Liability of the member.

(a) A debt, obligation, or other liability of an AIC is solely the debt, obligation, or other liability of the AIC. The member is not personally liable, directly or indirectly, by way of contribution or otherwise, for a debt, obligation, or other liability of the AIC solely by reason of being or acting as a member. This subsection applies regardless of the dissolution of the AIC.

(b) The failure of an AIC to observe formalities relating to the exercise of the AIC's powers or management of the AIC's activities and affairs is not by itself grounds for imposing liability on the member for a debt, obligation, or other liability of the AIC.

(c) The member is not liable for any act or omission that the AIC takes or fails to take, or that another person takes or fails to take at the direction of the AIC, solely on the basis that the AIC was an instrumentality of the member or under principles of agency law if the AIC at the time of the alleged action or omission was adequately capitalized.

(d) Even if the AIC is adequately capitalized, the member is liable if:

(1) The member used the AIC to engage in fraud or any willful violation of law; or

(2) The member caused or allowed the AIC to conduct business when the member knew or should have known the conduct was outside the AIC's statement of purpose.

Subchapter IV. Relations of Member to AIC.

§ 81-401. Membership.

(a) An AIC may have only 1 member.

(b) A person becomes a member:

(1) On filing of the certificate of formation identifying the person as the initial member; or

(2) As provided in §§ 81-502 or 81-503(d) of this title.

(c) A person automatically ceases to be a member if:

(1) In the case of an individual:

a. The individual dies;

b. A guardian or conservator is appointed for the individual; or

c. A court determines that the individual cannot perform the duties of a member;

(2) In the case of an entity:

a. The entity is dissolved; or

b. The entity ceases to meet the criteria for serving as a member;

(3) The person becomes a debtor in bankruptcy;

(4) The person signs an assignment for the benefit of creditors; or

(5) The person seeks, consents to, or acquiesces in the appointment of a trustee or receiver.

§ 81-402. Form of contribution.

(a) The member must make an initial contribution of cash or cash equivalents sufficient to adequately capitalize the AIC.

(b) A member may make additional contributions of property to the AIC and must make additional capital contributions as necessary to keep the AIC adequately capitalized.

(c) A member must make additional contributions of property to the AIC to the extent the operating agreement requires.

§ 81-403. Liability for contributions.

(a) A member is liable to the AIC for any contribution required by § 81-402 of this title.

(b) The member's dissolution, termination, or other inability to perform does not excuse the contribution obligation.

(c) A creditor of the AIC may enforce the contribution obligation on behalf of the AIC.

§ 81-404. Action by member.

The member must document any action the member takes in a signed record.

§ 81-405. Standard of conduct.

The member owes the AIC fiduciary duties of loyalty and care.

§ 81-406. Right to distributions before dissolution.

(a) The member may receive a distribution before dissolution.

(b) The AI agent or the member may determine to make the distribution.

§ 81-407. Limitations on distributions.

(a) Notwithstanding § 81-406 of this title, an AIC may not make a distribution before dissolution if the AIC would not be adequately capitalized after the distribution.

(b) An AIC may determine that a distribution is not prohibited based on:

(1) Financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances; or

(2) A fair valuation or other method that is reasonable under the circumstances.

(c) An AIC's indebtedness to a member for a distribution is subordinate to the AIC's general, unsecured creditors.

§ 81-408. Liability for improper distributions.

A member that receives a distribution knowing that the distribution violated § 81-407 of this title is personally liable to the AIC to the extent that the distribution exceeded the amount properly payable under § 81-407 of this title.

Subchapter V. Member Interests; Rights of Creditors

§ 81-501. Nature of member interest.

The member interest is personal property.

§ 81-502. Transfer of member interest.

(a) A member may not transfer a member interest unless:

(1) The member transfers 100% of a member interest to a person that can serve as a member;

(2) The operating agreement is amended or restated to provide for the admission of the transferee as a member; and

(3) The certificate of formation is amended to state the name of the transferee member.

(b) A transfer of a member interest cannot become effective before the effectiveness of the filing of amendment or restatement of the certificate of formation under paragraph (a)(3) of this section. When the transfer becomes effective, the transferor ceases to be the member and the transferee becomes the member.

(c) On becoming the member, the transferee becomes liable for all obligations of the transferor.

(d) Any non-compliant transfer is void.

§ 81-503. Charging order.

(a) A judgment creditor of a member may obtain a charging order against the member interest for the unsatisfied amount of the judgment.

(b) The charging order constitutes a lien on a member interest and requires the AIC to pay over to the holder of the charging order any amount that otherwise would be distributed to the member.

(c) If necessary to collect distributions, the court may:

(1) Appoint a receiver with the power to obtain information relevant to the availability of distributions; and

(2) Make all other orders necessary to give effect to the charging order.

(d) If distributions will not satisfy the judgment within a reasonable time, the court may order the sale of the member interest to a person eligible to become a member. On completion, the sale operates as a transfer under § 81-502 of this title.

(e) At any time before a court-ordered sale, the member may extinguish the charging order by satisfying the judgment and filing a certified notice of satisfaction with the court that issued the charging order.

(f) This section provides the exclusive remedy for a judgment creditor to enforce a judgment against a member from the member's interest.

Subchapter VI. Dissolution and Winding Up

§ 81-601. Events causing dissolution.

(a) An AIC is dissolved, and the AIC's activities and affairs must be wound up:

(1) When the operating agreement specifies;

(2) When the member determines;

(3) When the AIC has no member; or

(4) When a creditor, the Secretary of State, or the Attorney General has applied to the Court of Chancery, and the Court enters an order dissolving the AIC for cause, which may include that:

a. The AIC has not had an AI agent for a continuous period of at least 30 days;

b. The AIC is not adequately capitalized;

c. The AIC is acting outside its statement of purpose; or

d. The AIC's activities are unlawful.

(b) In a proceeding brought under paragraph (a)(4) of this section, the court may order a remedy other than dissolution.

§ 81-602. Winding up.

(a) The member of a dissolved AIC must wind up the AIC's activities and affairs. If the AIC has no member, a legal representative of the last person to have been the member may wind up the AIC's activities and affairs.

(b) After dissolution, the AIC's existence continues only for the purpose of winding up the AIC's activities and affairs.

(c) To wind up the AIC's activities and affairs, the AIC must:

(1) Marshal the AIC's assets;

(2) Discharge the AIC's debts, obligations, and other liabilities;

(3) Settle and close the AIC's activities and affairs; and

(4) Distribute any remaining assets to the member.

(d) When winding up the AIC's activities and affairs, the AIC may:

(1) Continue to operate as a going concern for a reasonable time necessary to maximize the value of the AIC's assets;

(2) Prosecute and defend actions and proceedings, whether civil, criminal, or administrative;

(3) Transfer property;

(4) Settle disputes; and

(5) Perform other acts necessary or appropriate to the winding up.

(e) For cause, the Court of Chancery may appoint a receiver to wind up the AIC's activities and affairs.

§ 81-603. Known claims.

(a) During winding up, the AIC may give written notice of the AIC's dissolution to the AIC's known claimants. The notice must:

(1) Specify the information required to be included in a claim;

(2) State that a claim must be in writing;

(3) Provide a method for submitting the claim;

(4) State the deadline for receiving claims, which may not be less than 120 days after the date the notice is received by the claimant; and

(5) State that the claim will be barred if not received by the deadline.

(b) A claim against a dissolved AIC is barred if notice has been properly given and the claim is not received by the specified deadline.

(c) During winding up, the dissolved AIC may give written notice to a claimant that a timely claim has been rejected. If the claimant does not commence an action against the AIC to enforce the claim within 90 days after the claimant receives the notice, the claim is barred.

(d) This section does not apply to a claim based on an event occurring after the date of dissolution or a liability that on that date is contingent.

§ 81-604. Other claims against dissolved AIC.

(a) During winding up, the dissolved AIC may publish notice of the AIC's dissolution and ask persons having claims against the AIC to present them in accordance with the notice.

(b) The notice of dissolution must:

(1) Be published at least once in a newspaper of general circulation in this State;

(2) Describe the information that a claim must provide, state that the claim must be in writing, and provide a method for submitting the claim and

(3) State that a claim against the AIC is barred unless the claimant files an action to enforce the claim not later than 3 years after publication of the notice.

(c) If a dissolved AIC complies with this section, then the following claims are barred unless the claimant commences an action to enforce the claim not later than 3 years after the publication date of the notice:

(1) A claimant that did not receive notice in a record under § 81-603 of this title;

(2) A claimant whose claim was timely sent to AIC but not acted on; and

(3) A claimant whose claim is contingent at, or based on an event occurring after, the date of dissolution.

(d) A claim not barred under this section or § 81-603 of this title may be enforced:

(1) Against a dissolved AIC to the extent of the AIC's undistributed assets; and

(2) Against the member to the extent of the assets distributed to the member after dissolution, but the member's total liability for all claims cannot exceed the total value of the assets distributed to the member after dissolution.

§ 81-605. Court proceeding.

(a) During winding up, a dissolved AIC that has published a notice under § 81-604 of this title may file an application with Court of Chancery for a determination of the amount and form of security to be provided for payment of claims that are reasonably expected to arise after the date of dissolution based on facts known to the AIC and at the time of application:

(1) Are contingent;

(2) Have not been made known to the AIC; or

(3) Are based on an event occurring after the date of dissolution.

(b) Security is not required for any claim that is or is reasonably anticipated to be barred under § 81-604 of this title.

(c) Not later than 10 days after the filing of an application under subsection (a) of this section, the dissolved AIC must give notice of the proceeding to each claimant holding a contingent claim known to the AIC.

(d) In a proceeding under this section, the court may appoint a guardian ad litem to represent all claimants whose identities are unknown. The dissolved AIC must pay the reasonable fees and expenses of the guardian, including all reasonable expert witness fees.

(e) A dissolved AIC that provides security in the amount and form ordered by the court under subsection (a) of this section satisfies the AIC's obligations for claims that are contingent, have not been made known to the AIC, or are based on an event occurring after the date of dissolution. The holder of such a claim may not enforce the claim against other assets available in liquidation.

§ 81-606. Disposition of assets in winding up.

(a) In winding up, the dissolved AIC must apply the AIC's assets to discharge the AIC's obligations to creditors in order of priority, including any obligations to the member in the member's capacity as a creditor.

(b) After complying with subsection (a) of this section, the dissolved AIC may distribute any remaining assets to the member.

§ 81-607. Cancellation.

(a) After the dissolved AIC has finished winding up the AIC's affairs, the member, legal representative, or receiver designated to wind up the activities and affairs must file a certificate of cancellation with the Secretary of State.

(b) A certificate of cancellation must state:

(1) The name of the AIC;

(2) The effective date of filing of the AIC's certificate of formation; and

(3) That the AIC is cancelled.

Subchapter VII. Litigation; Right to Information

§ 81-701. Service of process.

(a) A litigant may serve legal process on an AIC by delivering a copy to the registered agent. A litigant may serve the registered agent by serving any director, officer, or similar representative of the registered agent.

(b) If a litigant cannot serve the registered agent, or if the AIC does not have a registered agent, the litigant may serve the AIC by serving process on the Secretary of State in accordance with guidelines, rules, or regulations established by the Secretary of State. After being served, the Secretary of State must promptly notify the member representative using the member representative's last known contact information. The method of notice must establish a record showing that process was sent and delivered. The notice must include a copy of the process and any other papers served on the Secretary of State.

§ 81-702. Action by member in the name of the AIC.

Only the member may initiate and maintain an action in the name of the AIC to enforce the rights of the AIC.

§ 81-703. Action by member against the AIC.

The member may initiate and maintain an action against the AIC to enforce the member's rights and protect the member's interests, including rights and interests under the operating agreement or this chapter or arising independently of the membership relationship.

§ 81-704. Indemnification; advancement; and insurance.

(a) An AIC must indemnify a person against amounts incurred by reason of the person's former or present capacity as a member in connection with any action, suit, or proceeding, if the claim, demand, debt, obligation, or other liability does not arise from the person's breach of §§ 81-405 or 81-407 of this title.

(b) An AIC may advance reasonable expenses, including attorney's fees, incurred by reason of a person's former or present capacity as a member, if the person promises to repay the AIC if the person ultimately is determined not to be entitled to indemnification.

(c) An AIC may purchase and maintain insurance to protect the AIC or any person against liability related to the person's capacity as a member.

§ 81-705. Rights to information.

(a) The member may access any record maintained by the AIC.

(b) Subject to subsection (e) of this section, on 10 days' demand made in a record received by an AIC, a former member may access the information the former member was entitled to access while a member if:

(1) The information pertains to the period during which the person was a member; and

(2) The person seeks the information in good faith.

(c) An AIC may charge a former member the reasonable costs of providing the information, limited to the costs of labor and material.

(d) A former member may exercise the former member's rights under this section through an agent.

(e) An AIC may impose reasonable restrictions and conditions on a former member's access to and use of information, including designating information confidential and imposing nondisclosure and safeguarding obligations.

(f) A former member may sue to enforce the former member's right to information in the Court of Chancery. The Court of Chancery may summarily order the AIC to provide information. The Court of Chancery may impose limitations or conditions on access to the information.

Subchapter VIII. Taxation

§ 81-801. Tax treatment.

For purposes of any tax imposed by this State or any instrumentality, agency, or political subdivision of this State:

(1) An AIC is classified as a partnership; and

(2) The member is classified as a resident or nonresident partner using the same status as the member has for federal income tax purposes.

§ 81-802. Annual tax.

(a) Every AIC must pay an annual tax, for the use of this State, in the amount of $1,000.

(b) The annual tax is due and payable on June 1 in the calendar year following the year of formation and annually on June 1 thereafter.

(c) At least 60 days before June 1, the Secretary of State must cause to be mailed to the registered agent of each AIC a notice of the annual tax.

(d) If the AIC fails to pay the annual tax on or before June 1 in any year, the Secretary of State may assess a penalty on any late payment and may assess interest on any unpaid amounts at a rate prescribed in any guidelines, rules, or regulations the Secretary of State establishes.

(e) If the existence of the AIC will cease, the full amount of the annual tax for that calendar year is due and payable before the filing of the certificate of cancellation.

(f) The annual tax is a debt of the AIC with first priority in the event of insolvency.

(g) If any annual tax or any penalties or fees owned to the Secretary of State remain unpaid:

(1) The AIC ceases to be in good standing; and

(2) The Attorney General, on referral by the Secretary of State, may apply to the Court of Chancery on 5 days' notice for an order barring the AIC from conducting any business until all outstanding amounts have been paid.

(h) The AIC may restore its good standing by paying all amounts due. Until the AIC's good standing is restored:

(1) The Secretary of State must not accept for filing any certificate relating to the AIC.

(2) The AIC may not maintain any action, suit or proceeding in any court of this State.

(i) The failure to pay an annual tax does not impair any contract, deed, mortgage, security interest, lien, or act of the AIC or prevent the AIC from defending any action, suit, or proceeding with any court of this State.

(j) A member is not liable for the debts, obligations, or liabilities of an AIC solely by reason of the AIC's failure to pay an annual tax.

§ 81-803. Cancellation of certificate of formation for failure to pay taxes.

(a) If an AIC has not paid an annual tax for 3 years, then the Secretary of State must cancel its certificate of formation.

(b) The Secretary of State must maintain a list of the cancelled AICs, publish the list on or before October 31 of each calendar year on the Internet or similar medium for a period of 1 week, and advertise the website or other address where the list can be accessed in at least 1 newspaper of general circulation in the State of Delaware.

Subchapter IX. Miscellaneous Provisions

§ 81-901. Reservation of power to amend or repeal.

The General Assembly may amend or repeal all or part of this chapter at any time with all AICs governed by the amendment or repeal.

§ 81-902. Relation to Electronic Signatures in Global and National Commerce Act.

This chapter modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001 et seq., but does not modify, limit, or supersede 15 U.S.C. § 7001(c), or authorize electronic delivery of any of the notices described in 15 U.S.C. § 7003(b).

§ 81-903. Severability clause.

If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

§ 81-904. Consent to jurisdiction; service of process.

(a) By becoming a member or accepting appointment as a member representative, a person irrevocably consents in connection with any covered proceeding to:

(1) Personal jurisdiction in any court located in this State for any covered proceeding; and

(2) The appointment of the AIC's registered agent, or the Secretary of State if the AIC does not have a registered agent, as an agent for service of process.

(b) This section applies whether or not the person continues to be a member or member representative when the covered proceeding is commenced.

Section 4. Section 2 and Section 3 of this Act are effective immediately and is to be implemented on the earlier of the following:

(1) Six months from the date of this Act's enactment.

(2) The date of publication in the Register of Regulations of a notice by the Sandbox Administrator that Section 2 and Section 3 of this Act are to be implemented.

Section 5. This Act expires 36 months after this Act's enactment into law, unless extended by subsequent action of the General Assembly.

Section 6. Section 1 and Sections 4 through 6 of this Act take effect on enactment of this Act.

SYNOPSIS

This Act establishes the Artificial Intelligence Regulatory Sandbox Program ("Program"), creates a Sandbox Committee and Sandbox Administrator to oversee the Program, and authorizes the formation of artificial intelligence companies for use as part of the Program.

The purpose of the Program is to enable an entity to apply to the Sandbox Committee for limited access to the marketplace in this State to test innovations that use an artificial intelligence agent through an artificial intelligence company.

This Act requires a greater than majority vote for passage because § 11 of Article VIII of the Delaware Constitution requires the affirmative vote of three-fifths of the members elected to each house of the General Assembly to impose or levy a tax or license fee.