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May 16, 2025

The Honorable John Thune (R-SD)
Majority Leader
U.S. Senate
Washington, DC 20515

The Honorable Charles Schumer (D-NY)
Minority Leader
U.S. Senate
Washington, DC 20515

The Honorable Mike Johnson (R-LA)
Speaker
U.S. House of Representatives
Washington, DC 20515

The Honorable Hakeem Jeffries (D-NY)
Democratic Leader
U.S. House of Representatives
Washington, DC 20515

RE: NASAA Cautions Against Decade-Long Moratorium on Enforcing State Artificial Intelligence Laws or Regulations

Dear Congressional Leaders:

On behalf of the North American Securities Administrators Association, Inc. ("NASAA"),[1] I write to share our concerns with a proposal included as part of the 2025 budget reconciliation process that would impose a decade-long moratorium on enforcing state-level artificial intelligence ("AI") laws or regulations.[2] As an initial matter, it appears that the text violates the U.S. Senate's ("Senate") Byrd Rule, which prohibits the inclusion of extraneous, non-budgetary policy proposals in budget reconciliation bills.[3] Moreover, we respectfully caution against the moratorium as a matter of policy and urge your reconsideration of it. As explained below, this proposal would leave Americans at a greater risk of falling victim to online scams and negatively affect states' ability to foster innovation among other ways by adapting laws and regulations for new and evolving technologies.

[1] Organized in 1919, NASAA is the oldest international organization devoted to investor protection. NASAA's membership consists of the securities administrators in the 50 states, the District of Columbia, Canada, México, Puerto Rico, the U.S. Virgin Islands, and Guam. NASAA is the voice of securities agencies responsible for grassroots investor protection and efficient capital formation.

[2] *See* Committee Print Title IV—Committee on Energy and Commerce, Subtitle C—Communications, reconciliation pursuant to H. Con. Res. 14.

[3] *See* Congressional Research Service, The Budget Reconciliation Process: The Senate's "Byrd Rule" (Sept. 28, 2022). *See also* U.S. House Committee on Energy and Commerce, Full Committee Markup (May 13, 2025) (eliciting testimony confirming the proposal would not qualify under the Senate's Byrd Rule).

I. <u>The Moratorium Is a Non-Budgetary Provision That Would Hamstring State Policymaking for a Decade</u>

The text of the proposal provides that no state or political subdivision thereof may enforce any law or regulation regulating AI models, AI systems, or automated decision systems during the 10-year period following the enactment of the proposal. In turn, and for example, this proposal would or may complicate the ability of state lawmakers and regulators to keep up with evolving uses of AI within the financial services industry.[4]

Notably, the text provides several exceptions to the moratorium, none of which resolve our concerns with the proposal as a measure that would be advanced either through the budget reconciliation process or through a different process. The exceptions in the text are for state AI laws and regulations that:

1. Have the primary purpose of removing legal impediments to, or facilitating the deployment or operation of, an AI model, AI system, or automated decision system;
2. Have the primary purpose of streamlining licensing, permitting, routing, zoning, procurement, or reporting procedures that facilitate the adoption of AI models, AI systems, or automated decision systems;
3. Do not impose any substantive design, performance, data-handling, documentation, civil liability, taxation, fee, or other requirement on AI models, AI systems, or automated decision systems unless such requirement is imposed under federal law or, in the case of a requirement imposed under a generally applicable law, is imposed in the same manner on models and systems other than AI models, AI systems, and automated decision systems that provide comparable functions to those system; or
4. Do not impose a fee or bond unless the fee or bond is reasonable and cost-based and, under such fee or bond, AI models, AI systems, and automated decision systems are treated in the same manner as other models and systems that perform comparable functions.[5]

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[4] The text provides the following definitions: "artificial intelligence" means a machine-based system that can, for a given set of human-defined objectives, make predictions, recommendations or decisions influencing real or virtual environments. Artificial intelligence systems use machine and human-based inputs to: (A) perceive real and virtual environments; (B) abstract such perceptions into models through analysis in an automated manner; and (C) use model inference to formulate options for information or action. *See* 15 U.S.C. § 9401. "Artificial intelligence model" means a software component of an information system that implements artificial intelligence technology and uses computational, statistical, or machine-learning technology to produce outputs from a defined set of inputs. "Artificial intelligence system" means any data system, software, hardware, application, tool, or utility that operates, in whole or in part, using artificial intelligence. "Automated decision system" means any computational process derived from machine learning, statistical modeling, data analytics, or artificial intelligence that issues a simplified output, including a score, classification, or recommendation, to materially influence or replace human decision making. *See* Section 43201(d)(1)-(4) of Committee Print Title IV—Committee on Energy and Commerce, Subtitle C—Communications, reconciliation pursuant to H. Con. Res. 14

[5] *See* Section 43201(c)(2)(A)-(D) of Committee Print Title IV—Committee on Energy and Commerce, Subtitle C—Communications, reconciliation pursuant to H. Con. Res. 14.

As noted, the text, in our view, is a violation of the Senate's Byrd Rule. Under the Senate's Byrd Rule, which governs the budget reconciliation process, provisions deemed "extraneous" are prohibited. This restriction includes measures that do not primarily affect federal spending or revenue, or whose budgetary effects are merely incidental to broader policy goals. A provision broadly preempting state AI laws would violate the Byrd Rule, as its principal purpose is to limit state legislative authority rather than to achieve substantive budgetary outcomes.

II. <u>The Moratorium Would Expose Americans to AI-Powered Scams</u>

In addition to hamstringing state policymaking generally, this moratorium would place Americans at an increased risk of falling victim to online scams, including online investment scams. There is myriad data indicating that AI can be used, and is actively used, to facilitate scams. A 2024 report from the Stop Scams Alliance warned that AI can "turbocharge" fraud by facilitating phishing attacks and deepfakes.[6] Similarly, in 2024, the Federal Bureau of Investigation ("FBI") Internet Crime Complaint Center issued a public service announcement that criminals are using AI-generated text, images, audio, and video to perpetrate financial fraud, contributing to the $50.5 billion lost to online scams over the past five (5) years.[7]

As state securities regulators, we are actively monitoring and raising awareness of the threats that AI will or may present to investors and other capital markets participants. In 2025, we highlighted AI as a top threat to retail investors. With the proliferation of new AI tools, we expect an uptick in 2025 of bad actors using AI to generate professional graphics, videos, and content that create a sense of legitimacy and to use deepfake images, videos, and voices of celebrities and persons known to the intended victims.[8] Last year, we worked with the U.S. Securities and Exchange Commission and the Financial Industry Regulatory Authority to publish an investor alert, warning that bad actors are using the growing popularity and complexity of AI to lure victims into scams.[9]

Given this growing threat to investors and other capital markets participants, we believe it is unwise to disarm states of the ability to craft and enforce new policy that we believe would help protect industry members and investors. Conversely, leaving states with the ability to pursue new AI regulations ensures that regulators can react quickly and decisively to emerging threats to investors, which is a win for all Americans.

III. <u>The Moratorium Would Make It More Difficult for the States to Adapt to Innovations in Financial Services</u>

We believe that this moratorium would undermine states' value as laboratories of innovation. Historically, states have served as testing grounds for regulatory innovation,

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[6] *See* Stop Scams Alliance, As Scams by Foreign Organized Crime Soar, Here's How America Must Respond (Dec. 2024)

[7] *See* FBI Internet Crime Complaint Center, Criminals Use Generative Artificial Intelligence to Facilitate Financial Fraud (Dec. 3, 2024). *See also* FBI Internet Crime Complaint Center, 2024 Internet Crime Report (Apr. 2025).

[8] *See* NASAA, NASAA Highlights Top Investor Threats of 2025 (Mar. 6, 2025).

[9] *See* NASAA, NASAA Investor Alert: Artificial Intelligence (AI) and Investment Fraud (Jan. 25, 2024).

particularly in rapidly evolving technological landscapes. A decade-long prohibition on state-level enforcement in the AI space would remove the impetus for crafting new policy, preventing states from experimenting with and learning from novel approaches to policymaking. Additionally, this moratorium could delay the development of best practices and deprive federal policymakers of valuable insights derived from state-level experimentation.

Similarly, we are concerned that this moratorium would create tension between state securities regulators and the industry members we serve. As an illustrative example, we are aware that securities intermediaries, including state-registered investment advisers and broker-dealers, are interested in new uses of AI to provide services to investors. Should state lawmakers or regulators decide it is necessary to adapt securities laws and regulations to these new uses, this moratorium essentially would pause or nullify such changes until the moratorium ends. Considering the rapidly evolving nature of AI and the growing adoption of technology by industry, we caution against pursuing legislation that assumes no changes to the state securities laws with respect to AI will be necessary.

IV. Conclusion

Thank you for your time and consideration. Should you have questions or wish to engage, please do not hesitate to contact me or Kristen Hutchens, NASAA's Director of Policy and Government Affairs, and Policy Counsel, at khutchens@nasaa.org.

Sincerely,

Leslie M. Van Buskirk

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