ENROLLED

HB2324ER

1   **VIRGINIA ACTS OF ASSEMBLY — CHAPTER**

2 *An Act to amend the Code of Virginia by adding a section numbered 2.2-2012.1, relating to major*
3 *information technology project procurement; terms and conditions; limitation of liability provisions.*

4   [H 2324]
5   Approved

6   **Be it enacted by the General Assembly of Virginia:**
7 **1. That the Code of Virginia is amended by adding a section numbered 2.2-2012.1 as follows:**
8   *§ 2.2-2012.1. Major information technology project procurement; terms and conditions.*
9   *A. For purposes of this section, "supplier" means an offeror with whom the Commonwealth has*
10 *entered into a contract for a major information technology project.*
11   *B. Except as provided in subsection C, in any contract for a major information technology project,*
12 *terms and conditions relating to the indemnification obligations and liability of a supplier shall be*
13 *reasonable and shall not exceed in aggregate twice the value of the contract. There shall be no*
14 *limitation on the liability of a supplier for (i) the intentional or willful misconduct, fraud, or*
15 *recklessness of a supplier or any employee of a supplier or (ii) claims for bodily injury, including death,*
16 *and damage to real property or tangible personal property resulting from the negligence of a supplier*
17 *or any employee of a supplier.*
18   *C. If the CIO believes that a major information technology project presents an exceptional risk to the*
19 *Commonwealth, he shall conduct a risk assessment prior to the issuance of a Request for Proposal.*
20 *Such risk assessment shall include consideration of the nature, processing, and use of sensitive or*
21 *personally identifiable information. If the risk assessment concludes that the project presents an*
22 *exceptional risk to the Commonwealth and the limitation of liability amount provided in subsection B is*
23 *not reasonably adequate to protect the interest of the Commonwealth, the CIO may recommend and*
24 *request approval by the Secretary of Administration to increase the limitation of liability amount.*
25   *The CIO shall make such recommendation in writing setting forth the reasons that the limitations in*
26 *subsection B are not adequate to protect the Commonwealth's interests. The recommendation shall*
27 *describe the risks presented to the Commonwealth and how those risks are not sufficiently mitigated by*
28 *the expected terms and conditions associated with the Request for Proposal. The CIO shall recommend*
29 *a reasonable maximum alternative limitation of liability amount that is a multiple of the contract value,*
30 *with the same exceptions to the limitation as provided in subsection B.*
31   *The Secretary of Administration shall review and may approve any recommended maximum*
32 *alternative limitation of liability amount to be included in any Request for Proposal issued for the*
33 *project. The CIO shall annually publish a list of all approvals granted under this subsection pertaining*
34 *to any Request for Proposal issued in the previous 12-month period.*
35   *D. Notwithstanding the provisions of this section, the Commonwealth may agree to a lower limitation*
36 *for any contract subject to subsection B or C.*