

Date of Hearing: July 2, 2024

ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION

Rebecca Bauer-Kahan, Chair

SB 1446 (Smallwood-Cuevas) – As Amended June 11, 2024

AS PROPOSED TO BE AMENDED

SENATE VOTE: 25-12

SUBJECT: Grocery retail store and retail drug establishment employees: self-service checkout and consequential workplace technology

SYNOPSIS

According to the author, “While companies proclaim there has been an increase in retail theft, much of the losses they allege can be traced to self-checkout and the reduction in their workforce. Data shows that self-checkout machines cause 16 times more shrink than checkout via a cashier.”

Toward that end, this bill makes a number of changes related to the adoption of consequential technology in grocery stores and drug stores. In addition, it establishes worker ratios when those stores utilize self-checkout stations. Specifically, the bill requires the following:

- A full-service cashier lane must be open if self-checkout machines are available for customers.*
- One employee per every two open self-checkouts must be dedicated to the self-checkout area and relieved of all other duties.*
- Stores utilizing self-checkout stations must adopt a 15-item limit policy.*
- Expands the categories of items that are prohibited from being purchased through self-checkout to include all items that require ID verification, and any items that are locked or secured with anti-theft protections.*
- Employers must, as part of their Workplace Violence Prevention Plans, address self-checkout machines as a potential workplace hazard.*
- Employers must provide workers, their bargaining representative, and the public with a 60 day notice before implementing technologies that are likely to eliminate, automate or monitor core job functions.*

There are two distinct parts to this bill. The first part, as noted above, establishes staffing requirements for self-checkout stations and item limitations. It is this part, which is under the purview of the Labor and Employment Committee, that the author argues has the ability to curb retail theft. More closely monitoring people utilizing self-checkout, she argues, makes it less likely people will use self-checkout as a way to steal merchandise.

The second part, which is under the purview of this Committee, defines “consequential workplace technology” and requires grocery store and drug store employers to notify employees

and their customers at least 60 days before implementing any new consequential workplace technology.

As currently in print, the definition raised several concerns for the Committee that are addressed in proposed amendments:

- 1. It included as “consequential” any type of technology that might “significantly impact” a worker’s core job function. Arguably, any new technology, including changes to refrigeration systems that do not need to be monitored as often or motorized shopping cart movers that make it less physically demanding for workers to collect and return carts to the stores, could require a 60-day notification before being implemented, despite that fact that they are not likely to reduce the number of workers needed per shift.*

The proposed amendments remove the term “significantly impact” and instead consequential technology is defined as any technology that eliminates, automates or electronically monitors an employee’s core job functions.

- 2. The definition also included “artificial intelligence” and “automated decisionmaking systems” as the types of technology that were of concern. However, including those two terms unnecessarily limited the type of technology that could be consequential. There are many technologies that can be used in stores that can eliminate or automate a core job function that do not fall within the definition of “artificial intelligence” or “automated decisionmaking systems.”*

The proposed amendment removes those two terms, which makes it technology neutral, and simply requires a notification for any technology that is deemed consequential to a worker’s job. Technology encompasses artificial intelligence, automated decisionmaking, and any other technology that currently exists or may exist in the future that has the potential to eliminate jobs or monitor employees.

In addition to updating the definition, the author and sponsors requested several updates to the notification language, which are detailed below.

This bill is co-sponsored by the California Labor Federation and the United Food and Commercial Workers, Western States Council. It is also supported by a number of labor and criminal justice reform organizations. The California Grocers Association, California Retailers Association, and the California Chamber of Commerce are among the groups in opposition. The bill passed the Labor and Employment Committee on a 5-2 vote.

SUMMARY: Limits the use of self-service checkout stations in grocery retail stores and retail drug establishments and requires advance notification of the implementation of consequential workplace technology to workers, their representatives, and the public. Specifically, **this bill:**

- 1) Defines “consequential workplace technology” to mean technology that eliminates, automates, or electronically monitors the core job functions agreed upon between an employer and an employee upon hire or following a subsequent change in position or department. Consequential workplace technology includes, but is not limited to, self-checkout robotics, wearable sensors, and scanners.*
- 2) Provides that “grocery retail store” includes either of the following:*

- a) A “grocery establishment,” defined as a retail store in this state that is over 15,000 square feet in size and that sells primarily household foodstuffs for offsite consumption, including the sale of fresh produce, meats, poultry, fish, deli products, dairy products, canned foods, dry foods, beverages, baked foods, or prepared foods. Other household supplies or other products shall be secondary to the primary purpose of food sales.
 - b) A “superstore,” defined as a store in this state that is over 75,000 square feet in size, that generates sales or use tax pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200) of Division 2 of the Revenue and Taxation Code), and that devotes more than 10 percent of sales floor area to the sale of nontaxable merchandise.
- 3) Provides that for the self-service checkout provisions of the bill, “grocery retail store” does not include a discount warehouse or retail store where more than one-half of the items carried by the discount warehouse or retail store are sold in large quantities or in bulk and the discount warehouse or retail store requires shoppers to pay a membership or assessment fee.
 - 4) Defines “manual checkout station” to mean a station that is not a self-service checkout station and at which an employee provides human assistance to a customer scanning, bagging, or accepting payment for the customer’s purchases.
 - 5) Defines “self-service checkout” to mean an automated process that enables customers to scan, bag, and pay for their purchases without human assistance.
 - 6) Prohibits a grocery retail store or retail drug establishment from providing a self-service checkout option for customers unless all of the following conditions are satisfied:
 - a) At least one manual checkout station is staffed by an employee who is available to any given customer at the time that a self-service checkout option is made available to that customer.
 - b) The employer has established a workplace policy that limits self-service checkouts to purchases of no more than 15 items.
 - 7) The establishment shall include signage within the self-service checkout area indicating the number of items that are permitted through the self-service checkout station.
 - a) Customers are prohibited from using self-service checkout to purchase either of the following:
 - i) Items that require customers to provide a form of identification, including, but not limited to, alcohol and tobacco products.
 - ii) Items subject to special theft-deterrent measures, including, but not limited to, locked cabinets and electronic article surveillance tags, that require the intervention of an employee for the customer to access or purchase the item.
 - b) No more than two self-service checkout stations are simultaneously monitored by any one employee of the establishment.

- i) An employee shall be relieved from all other duties when monitoring a self-service checkout station, including, but not limited to, operating a manual checkout station.
- 8) Requires a grocery retail store or retail drug establishment that offers self-service checkout to include self-service checkout in their analysis of potential work hazards for purposes of their injury and illness prevention programs.
- 9) Requires, if a grocery retail store or a retail drug establishment intends to implement consequential workplace technology, the grocery retail store or retail drug establishment to notify workers, their collective bargaining representatives, and the public at least 60 days in advance with a general description of the technology and the intended purpose for the technology.
- 10) Provides that an employer that violates these provisions shall be subject to a civil penalty of one hundred dollars (\$100) for each day the employer is in violation, not to exceed an aggregate penalty of ten thousand dollars (\$10,000).
- 11) Requires, upon the filing of a complaint by an employee, the Department of Labor Standards Enforcement (DLSE) to enforce these provisions, including investigating an alleged violation, and ordering appropriate relief.
- 12) Authorizes, in addition to other remedies as may be provided by the laws of this state or its subdivisions, any public prosecutor, as specified, to institute an action for a violation of the above provisions, including an action seeking injunctive relief.

EXISTING LAW:

- 1) Establishes the DLSE within the Department of Industrial Relations, to enforce, among other things, wage and hour law, anti-retaliation provisions, and employer notice requirements. (Lab. Code §79 *et seq.*)
- 2) Authorizes, until January 1, 2029, a public prosecutor to prosecute an action, either civil or criminal, for a violation of certain provisions of the labor code or to enforce those provisions independently. (Lab. Code §181(a) and (e).)
- 3) Establishes certain worker notice and retention requirements for a grocery employer that is merging or being acquired by another grocery store. (Lab. Code §2500 *et. seq.*)

FISCAL EFFECT: As currently in print, this bill is keyed fiscal.

COMMENTS:

1) **Purpose.** The author presents this bill primarily as a retail theft prevention bill. Background provided by the author's office points to data demonstrating that self-checkout machines contribute significantly to retail theft. According to the materials provided to the Committee:

While companies proclaim there has been an increase in retail theft, much of the losses they allege can be traced to self-checkout and the reduction in their workforce. Data shows that self-checkout machines cause 16 times more shrink than checkout via a cashier. In 2022, self-checkout accounted for under 30% of total transactions, yet self-checkout machines have cost food retailers more than \$10 billion in lost profits annually. Nearly 7% of self-checkout

transactions had at least some partial shrink compared to 0.32% with cashiers. On a revenue basis, this suggests a shrink rate of 3.5% for self-checkout machines versus only 0.21% for full-service cashier stations staffed by an employee. Even further, over 20 million Americans have said they have stolen from self-checkout, with another 8.3 million planning to do it again. Recent stories, like one in San Francisco stole over \$60,000 worth of merchandise through self-checkout only further demonstrate the risk for theft these machines create.

This bill intends to address concerns about self-checkout driven retail theft by requiring that one employee be stationed exclusively in the self-checkout area for every two self-checkout stations. In addition, given that retail theft has also increased, according to the author, since self-checkout has reduced the overall number of employees in stores, the bill requires workers, union representatives, and customers to be notified 60 days in advance of consequential technology being installed that is likely to further reduce the number of workers per shift.

2) **Author's statement.** According to the author:

In recent years, as concerns about retail theft have grown, it is crucial we offer solutions that address the root drivers of theft. Over recent years a growing body of evidence has shown that the rapid spread of self-checkout stands has contributed to retail theft in stores across the nation. While these stands create more loss than manual checkout, retailers have used them to cut staff and reduce labor costs. This shift has left lone clerks to serve customers while at the same time watching for shoplifters, and dealing with disruptions, making stores even easier targets for theft and violence. SB 1446 protects workers and the public by ensuring safer staffing levels, deterring theft, and ensuring that workers and the public know the purpose of new technologies that may replace their essential job functions.

3) **What this bill does.** This bill makes a number of changes related to the adoption of consequential technology in grocery stores and drug stores. In addition, it establishes worker ratios when those stores utilize self-checkout stations. Specifically, the bill requires the following:

- A full-service cashier lane must be open if self-checkout machines are available for customers.
- One employee per every two open self-checkouts must be dedicated to the self-checkout area and relieved of all other duties.
- Stores utilizing self-checkout stations must adopt a 15-item limit policy.
- Expands the categories of items that are prohibited from being purchased through self-checkout to include all items that require ID verification, and any items that are locked or secured with anti-theft protections.
- Employers must, as part of their Workplace Violence Prevention Plans, address self-checkout machines as a potential workplace hazard.
- Employers must provide workers, their bargaining representative, and the public with a 60 day notice before implementing technologies that are likely to eliminate, automate or monitor core job functions.

4) **Retail theft.** According to the California Department of Justice’s Open Justice database, reports of shoplifting (one aspect of retail theft) increased significantly between 2021 and 2022, but, as shown in the table below, it remained significantly lower than the years prior to the COVID19 pandemic.

	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
Shoplifting	93,532	97,301	108,659	98,589	91,553	89,378	90,309	64,105	64,027	81,955

In 2022, the National Retail Federation (NRF) claimed that “nearly half” of the shopping industry’s \$94.5 billion in losses due to “shrink” in 2021 were caused by “organized retail theft.”¹ This claim was reported widely and cited in connection with stories about retail theft incidents. Store owners said that the prevalence of retail theft led them to raise prices.² Large companies like Walmart, Home Depot, and CVS agreed that the rate of retail theft was increasing.³ Media outlets carried regular stories about the huge numbers of people who were walking into stores and walking out with armloads of merchandise. Retailers large and small were ringing alarm bells about increases in retail theft. In May of 2023, CNN reported that Target was bracing to lose half a billion dollars because of rising theft. Nordstrom, Whole Foods and some other big chains said they were abandoning San Francisco because of changing economic conditions or employee safety. Many other retailers have blamed crime for closing stores.⁴ Despite the panicked reports about increases in shoplifting, the data did not bear that out, particularly in San Francisco.⁵

In 2023, the NRF walked back its claim about the epidemic of organized theft because they lacked evidence to support it.⁶ In the last few months, retailers have been more neutral about the threat of retail theft.⁷ According to retailers, the reduced threat is due to some changed behavior on their part—such as cutting back on self-checkout and locking up certain merchandise—as well as state and federal legislation targeted at retail theft.⁸

5) **Analysis.** As described previously, there are two distinct parts to this bill. The first part establishes staffing requirements for self-checkout stations and item limitations. It is this part, which is under the purview of the Labor and Employment Committee, that the author argues has the ability to curb retail theft. More closely monitoring people utilizing self-checkout, she argues, makes it less likely people will use self-checkout as a way to steal merchandise.

¹ Helmore, *US retail group retracts claim that half of \$94.5bn inventory loss was from theft* (Dec. 11, 2023), The Guardian, <https://www.theguardian.com/business/2023/dec/07/retail-theft-losses-inventory-nrf>. All links in this analysis are current as of March 29, 2024.

² Stark, *Are you spending more because of retail theft? Can California workers chase shoplifters?*, Sacramento Bee (Nov. 9, 2023), available at <https://www.sacbee.com/news/california/article281619043.html>.

³ Fonroque, et al., *America’s biggest companies say retail crime is an epidemic, but just how big is it?*, CNBC (Mar. 18, 2023; updated Mar. 20, 2023), <https://www.cnbc.com/2023/03/18/organized-retail-crime-debate.html>.

⁴ Parija Kavilanz, *Why retail theft is soaring: inflation, the economy – and opportunity*, CNN (May 23, 2023), <https://www.cnn.com/2023/05/23/business/retail-crime-economy/index.html>.

⁵ Nicole Lewis, *What the Panic Over Shoplifting Reveals About American Crime Policy*, the Marshall Project (Feb. 27, 2023), <https://www.themarshallproject.org/2023/02/27/shoplifting-retail-theft-lawmakers-response>.

⁶ E.g., Helmore, *supra*.

⁷ Sulyukh, *supra*.

⁸ *Ibid.*

The second part, which is under the purview of this Committee, defines “consequential workplace technology” and requires grocery store and drug store employers to notify employees and their customers 60 days before implementing new consequential workplace technology.

As currently in print, the definition raised several concerns for the Committee:

1. It included as “consequential” any type of technology that might “significantly impact” a worker’s core job function. Arguably, any new technology, including changes to refrigeration systems that do not need to be monitored as often or motorized shopping cart movers that make it less physically demanding for workers to collect and return carts to the stores, could require a 60-day notification before being implemented, despite that fact that they are not likely to reduce the number of workers needed per shift.

The proposed amendments remove the term “significantly impact” and instead consequential technology is defined as any technology that eliminates, automates or electronically monitors an employee’s core job functions.

2. The definition included “artificial intelligence” and “automated decisionmaking systems” as the types of technology that were of concern. However, including those two terms unnecessarily limited the type of technology that could be consequential. There are many technologies that can be used in stores that can eliminate or automate a core job function that do not fall within the definition of “artificial intelligence” or “automated decisionmaking systems.”

The proposed amendment removes those two terms, which makes it technology neutral and simply requires a notification for any technology that is deemed consequential to a worker. This definition would include artificial intelligence, automated decisionmaking, and any other technology that currently exists or may exist in the future that has the potential to eliminate jobs or monitor employees.

In addition to updating the definition, the author and sponsors requested several updates to the notification language, which are detailed in the following section.

6) **Suggested Committee amendments.** The Committee amendments clarify the type of technology and provide additional details about the required notification.

Amendment#1:

2530. For purposes of this part, the following definitions shall apply:

(a) “Consequential workplace technology” means ~~artificial intelligence or automated decisionmaking systems~~ *technology* that ~~significantly impacts,~~ eliminates, ~~or~~ automates, *or electronically monitors* the core job functions agreed-upon between an employer and an employee upon hire or following a subsequent change in position or department. Consequential-workplace technology includes, but is not limited to, self-checkout-robotics, wearable sensors, *and* scanners. ~~and electronic monitoring.~~

Amendment #2:

2532. (a) If a grocery retail store or a retail drug establishment intends to implement consequential workplace technology, the grocery retail store or retail drug establishment shall notify workers, their collective bargaining representatives, and the public *at least* 60 days in advance *of implementation of the consequential workplace technology* with a general description of the technology and the intended purpose ~~for~~ *of* the technology. *An employer that implements the consequential workplace technology for purposes other than those specified in the notice shall provide the workers, their collective bargaining representatives, and the public with additional notice of any other purpose or purposes.*

(b) The notice shall be provided to workers potentially affected by the consequential workplace technology and their collective bargaining representative in writing by means usually used to communicate. The notice shall be provided to the public by posting a copy of the notice in a location accessible to its employees and customers.

7) **Related legislation.** AB 183 (Ma; Ch. 726, Stat. of 2011) prohibited the sale of alcohol at any customer-operated checkout stand.

ARGUMENTS IN SUPPORT: According to a coalition supporting the bill that includes United Food and Commercial Workers, Western States Council (UFCW), Smart Justice California, and Courage California:

In 2011, California passed into law AB 183 (Ma) which banned the sale of alcohol via self-checkout machines. This was in response to "evidence of inadequate staffing, inconsistent monitoring, and technological failures" at self-checkout that increased illegal purchases of alcohol and harmed public health.

Since then, self-checkout has rapidly spread in retail grocery and drug stores, with some stores that do not sell alcohol having eliminated human workers from checkout entirely. Retailers have increasingly implemented automated checkout to drastically cut staffing and reduce labor costs. Self-checkout and the reduction in front-line grocery workers have created a range of problems for retailers, workers, and the public.

While companies proclaim there has been an increase in retail theft, much of the losses they allege can actually be traced to self-checkout and the reduction in their workforce. Data shows that self-checkout machines cause 16 times more shrink than checkout via a cashier. In 2022, self-checkout accounted for under 30% of total transactions, yet self-checkout machines have cost food retailers more than \$10 billion in lost profits annually. Nearly 7% of self-checkout transactions had at least some partial shrink compared to 0.32% with cashiers. On a revenue basis, this suggests a shrink rate of 3.5% for self-checkout machines versus only 0.21% for full-service cashier stations staffed by an employee.

The elimination of workers' jobs due to self-checkout is especially harmful. The reduction in frontline checkers has caused a crisis with chronic understaffing and an overworked workforce. Self-checkout machines are notoriously glitchy, which creates more work for the reduced workforce and workers are expected to monitor anywhere from four to ten machines on their own.

ARGUMENTS IN OPPOSITION: A coalition that includes the California Chamber of Commerce, TechNet, and the California Grocers Association, among a number of others, argues in opposition of the bill:

Limiting the number and type of items that can be purchased at self-checkout will be difficult to enforce and will only frustrate customers. Grocers and pharmacies currently staff and operate self-checkout lanes in a manner that reflects the clientele of that location. There's no one-size-fits-all approach. Setting a specific ratio of employees to self-checkout lanes undermines the flexibility that stores need to address the needs of their customers and employees. Further, this bill's restrictions regarding which items can go through self-checkout will vary store to store, increasing customer frustration and subjecting stores to thousands of dollars in penalties under the June 11, 2024 amendments. This bill would codify one of the worst situations our employees saw during the pandemic – when they were required to police their customers and enforce the law around masking and social distancing. It did not work then, and it will not work now.

[. . .]

Most concerning is that the June 6, 2024 amendments swapped out an overreaching “assessment” for an ambiguous notice requirement. The bill requires covered entities to provide notice to all workers, their bargaining representatives, and the public 60 days before implementing “consequential workplace technology”. “Consequential workplace technology” is a term created by SB 1446 that covers a whole host of things, including not only self-checkout, but all AI or automated decision-making systems that “impact” a core job function of an employee.

This is a significant requirement that reaches far beyond the stated goal of the bill. Its unintended consequences are problematic. For example, “electronic monitoring” is undefined. That could include security mechanisms, data storage, or routine systems like email or phone usage. Has an employer engaged electronic monitoring by maintaining a phone log? Does a covered employer need to tell the public every time it implements a new AI tool into its internal email system? Or if it is updating a function related to security? There is also concern about the unintended consequences to any internal investigations or safety. Arguably, everything could “impact” a core job function and the June 11, 2024 amendments add in a penalty structure that could amount to \$10,000 in penalties for any error. Providing over-disclosures of every such activity will be of little value to the public or employees as it will not only lend to notice fatigue but will also overshadow important notices.

REGISTERED SUPPORT / OPPOSITION:

Support

California Labor Federation, Afl-cio (co-sponsor)

UFCW - Western States Council (co-sponsor)

California Coalition for Worker Power

California Democratic Party

California Federation of Teachers

California Professional Firefighters

California School Employees Association

California State Legislative Board of The Sheet Metal, Air, Rail and Transportation Workers -

Transportation Division (SMART-TD)
California United for A Responsible Budget (CURB)
Californians for Safety and Justice
CFT- a Union of Educators & Classified Professionals, Aft, Afl-cio
Consumer Attorneys of California
Courage California
Ella Baker Center for Human Right
Fund Her
Initiate Justice
Initiate Justice Action
Legal Services for Prisoners With Children
SEIU California
Smart Justice California
Tech Equity
Techequity Collaborative
United Food and Commercial Workers, Western States Council
Vera California
Voices for Progress
Western Center on Law & Poverty, INC.
Young Women's Freedom Center

Oppose

CalAsian Chamber of Commerce
California African American Chamber of Commerce
California Black Chamber of Commerce
California Chamber of Commerce
California Grocers Association
California Hispanic Chamber of Commerce
California Retailers Association
Central City Association of Los Angeles
Civil Justice Association of California
Consumer Technology Association
El Dorado County Chamber of Commerce
El Dorado Hills Chamber of Commerce
Elk Grove Chamber of Commerce
Family Business Association of California
Folsom Chamber of Commerce
Fresno Chamber of Commerce
Inland Empire Economic Partnership
Lincoln Area Chamber of Commerce
Los Angeles Area Chamber of Commerce
Rancho Cordova Area Chamber of Commerce
Rocklin Area Chamber of Commerce
Roseville Area Chamber of Commerce
San Diego Regional Chamber of Commerce
San Francisco Chamber of Commerce
Shingle Springs/Cameron Park Chamber of Commerce
TechNet

Tri County Chamber Alliance
United Chamber Advocacy Network (UCAN)
Valley Industry and Commerce Association (VICA)
Yuba Sutter Chamber of Commerce

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