

Date of Hearing: July 2, 2024

ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION

Rebecca Bauer-Kahan, Chair  
SB 896 (Dodd) – As Amended June 4, 2024

AS PROPOSED TO BE AMENDED

**SENATE VOTE:** 38-0

**SUBJECT:** Generative Artificial Intelligence Accountability Act

**SYNOPSIS**

*California’s artificial intelligence (AI) industry is currently experiencing an unprecedented economic boom, driven in large part by the recent development of generative AI (GenAI) systems capable of generating text, images, and other forms of digital media. The Governor’s Executive Order N-12-23 seeks to increase the use of GenAI by the state – it requires risk analyses be performed, procurement blueprints for GenAI systems be created, beneficial uses for GenAI technologies be identified, deployment frameworks be crafted, and employee trainings be organized. The Executive Order also initiates a series of GenAI pilot projects in the Department of Technology.*

*This bill would codify many of the provisions of Executive Order N-12-23, and would additionally require that the state disclose its use of GenAI when communicating. Committee amendments strengthen the bill by involving the California Privacy Protection Agency more directly in many of its provisions, aligning pilot program language with a related Budget item, and clarifying GenAI communication disclosure requirements.*

*This bill is author-sponsored and supported by Oakland Privacy and Secure Justice. It has no opposition. If passed out of this Committee, this bill will next be heard by the Assembly Appropriations Committee.*

**SUMMARY:** Codifies the Governor’s Executive Order N-12-23, related to the procurement and use of GenAI by the state, and requires that the use of GenAI for state communications be disclosed. Specifically, **this bill:**

- 1) Defines “artificial intelligence” to mean “an engineered or machine-based system that varies in its level of autonomy and that can, for explicit or implicit objectives, infer from the input it receives how to generate outputs that can influence physical or virtual environments.
- 2) Defines “generative artificial intelligence” to mean “artificial intelligence that can generate derived synthetic content, including text, images, video, and audio, that emulates the structure and characteristics of the artificial intelligence’s training data.
- 3) Requires the Government Operations Agency, the Department of Technology, the Office of Data and Innovation, and the California Privacy Protection Agency to produce a State of California Benefits and Risk of Generative Artificial Intelligence Report that includes all of the following:

- a) An examination of the most significant, potentially beneficial uses for deployment of GenAI tools by the state.
  - b) An explanation of the potential risks of those uses to individuals, communities, and government workers with a focus on high-risk uses, including the use of GenAI to make a consequential decision affecting access to essential goods and services.
  - c) An explanation of risks from bad actors and insufficiently guarded governmental systems, unintended or emergent effects, and potential risks toward democratic and legal processes, public health and safety, data privacy, and the economy.
- 4) Requires the Government Operations Agency, the Department of Technology, the Office of Data and Innovation, and the California Privacy Protection Agency to update the report as needed to respond to significant developments, as well as to consult with academia, industry experts, and organizations that represent state government employees.
  - 5) Requires the Office of Emergency Services, the California Cybersecurity Integration Center, and the State Threat Assessment Center, to perform and periodically update a joint risk analysis of potential threats posed by the use of GenAI to California's critical energy infrastructure, including those that could lead to mass casualty events and environmental emergencies. Also requires those entities to develop a strategy to assess similar potential threats to other critical infrastructure in consultation with appropriate external experts from academia and industry. Requires this analysis to be provided to the Legislature and the Governor. Requires the named entities to consult with academia, industry experts, and organizations that represent state government employees.
  - 6) Requires the Government Operations Agency, the Department of General Services, the Department of Technology, the California Cybersecurity Integration Center, and the California Privacy Protection Agency to develop, maintain, and periodically evaluate and revise general guidelines for public sector procurement, uses, and required trainings for the use of GenAI. Requires these guidelines to incorporate guidance from a variety of sources, as specified. Requires the named entities to consult with academia, industry experts, and organizations that represent state government employees.
  - 7) Requires the Government Operations Agency, the Department of Technology, the Office of Data and Innovation, and the California Privacy Protection Agency to develop, maintain, and periodically evaluate and revise guidelines for state agencies and departments to analyze the impact that adopting a GenAI tool may have on vulnerable communities, including criteria to evaluate equitable outcomes in deployment and implementation of high-risk uses. Requires the named entities to consult with academia, industry experts, and organizations that represent state government employees.
    - a) These guidelines are required to inform whether and how a state agency or department deploys a particular GenAI tool.
  - 8) Requires the Government Operations Agency, the Department of General Services, and the Department of Technology to update, as needed, the state's project approval, procurement, and contract terms to incorporate analysis and feedback.

- 9) Requires all state agencies and departments to conduct and submit an inventory of all current high-risk uses of GenAI within the agency or department to the Department of Technology, upon receiving a request from the Government Operations Agency or the Department of Technology.
  - a) Requires a state agency or department to appoint a senior level management personnel who will be responsible for maintaining, conducting, and reporting the results of the inventory.
- 10) Requires any state agency or department to consider procurement and enterprise use opportunities in which GenAI can improve the efficiency, effectiveness, accessibility, and equity of government operations consistent with the Government Operations Agency, the Department of General Services, and the Department of Technology's guidelines.
- 11) Requires the Government Operations Agency to collaborate with the Department of Technology to establish and maintain the infrastructure to conduct pilot projects of GenAI projects, including Department of Technology-approved environments to test those pilot projects.
  - a) Requires an environment to be available to any state agency or department to help evaluate GenAI tools and services, to further safe, ethical, and responsible implementations, and to inform decisions to use GenAI consistent with state guidelines.
  - b) Requires an environment to measure all of the following:
    - i) How GenAI can improve Californians' experience with, and access to, government services.
    - ii) How GenAI can support state employees in the performance of their duties.
    - iii) Any domain-specific impacts to be measured by the state agency or department, including job displacement.
    - iv) How to mitigate risks of harms associated with the use of GenAI.
  - c) Requires any pilot projects conducted pursuant to this subdivision shall be consistent with the requirements of Item 0511-001-0001 of Section 2.00 of the Budget Act of 2024.
- 12) Requires the Government Operations Agency, the Department of General Services, the Department of Technology, the Office of Data and Innovation, the California Cybersecurity Integration Center, and the California Privacy Protection Agency to engage with the Legislature and relevant stakeholders, including historically vulnerable and marginalized communities and organizations that represent state government employees, in the development and revision of any guidelines, criteria, reports, or training required by this bill.
- 13) Requires the Government Operations Agency, the Department of Technology, and the California Privacy Protection Agency to make available trainings for state government worker use of state-approved GenAI tools to achieve equitable outcomes and to identify and mitigate potential output inaccuracies, fabricated text, hallucinations, privacy risks, and biases of GenAI, while enforcing public privacy and applicable state laws and policies.

Requires the named entities to consult with academia, industry experts, and organizations that represent state government employees.

- 14) Requires the Government Operations Agency to consult with appropriate state agencies and organizations that represent state government employees, to establish criteria to evaluate the impact of GenAI on the state government workforce, as well as to provide guidelines on how state agencies and departments can support state government employees to use these tools effectively and respond to these technological advancements.
- 15) Requires legal counsel for any state agency or department to consider any potential impacts of GenAI on regulatory issues under the respective agency's or department's authority and recommend necessary updates to the Government Operations Agency, as appropriate.
- 16) Requires a state agency or department that utilizes generative artificial intelligence to directly communicate with a person to ensure that those communications include both of the following:
  - a) A disclaimer that indicates to the person that the communication was generated by GenAI.
    - i) For written communications involving physical and digital media, including letters, emails, and other occasional messages, the disclaimer shall appear prominently at the start of each communication.
    - ii) For written communications involving continuous online interactions, including interactions with chatbots, the disclaimer shall be prominently displayed throughout the interaction.
    - iii) For audio communications, the disclaimer shall be provided verbally at the start and the end of the interaction.
    - iv) For video communications, the disclaimer shall be prominently displayed throughout the interaction.
  - b) Clear instructions, or a link to an internet website containing clear instructions, describing how the person may contact a human employee of the state agency or department.

**EXISTING LAW:**

- 1) Provides, pursuant to the California Constitution, that all people are by nature free and independent and have inalienable rights. Among these the fundamental right to privacy. (Cal. Const. art. I, § 1.)
- 2) Establishes the Information Practices Act (IPA) of 1977, which generally enumerates the requirements applicable to state agencies that collect, maintain, and disclose personal information from California residents, including limitations on permissible disclosure, the rights of residents to know and access the information, and required accounting of disclosures of the information. (Civ. Code § 1798, et seq.)
- 3) States, in the IPA, that the “right to privacy is a personal and fundamental right protected by Section 1 of Article I of the Constitution of California and by the United States Constitution

and that all individuals have a right of privacy in information pertaining to them.” Further states these findings of the Legislature:

- a. The right to privacy is being threatened by the indiscriminate collection, maintenance, and dissemination of personal information and the lack of effective laws and legal remedies.
  - b. The increasing use of computers and other sophisticated information technology has greatly magnified the potential risk to individual privacy that can occur from the maintenance of personal information.
  - c. In order to protect the privacy of individuals, it is necessary that the maintenance and dissemination of personal information be subject to strict limits. (Civ. Code § 1798.1.)
- 4) Requires that each state agency maintain in its records only personal information that is relevant and necessary to accomplish the purpose of the agency. (Civ. Code § 1798.14.)
  - 5) Requires that each agency collect personal information to the greatest extent practicable directly from the individual who is the subject of the information rather than from another source. (Civ. Code § 1798.15.)
  - 6) Prohibits an individual’s name and address from being distributed for commercial purposes, sold, or rented by an agency unless such action is specifically authorized by law. (Civ. Code § 1798.60.)
  - 7) Defines “personal information,” for purposes of the IPA, as any information that is maintained by an agency that identifies or describes an individual, including, but not limited to, the individual’s name, social security number, physical description, home address, home telephone number, education, financial matters, and medical or employment history. (Civ. Code § 1798.3(a).)
  - 8) Defines “agency”, for the purposes of the IPA, to mean every state office, officer, department, division, bureau, board, commission, or other state agency, except for the California Legislature, agencies within the judicial branch, the State Compensation Insurance Fund, and local agencies, defined to include: counties; cities, whether general law or chartered; cities and counties; school districts; municipal corporations; districts; political subdivisions; or any board, commission, or agency thereof; other local public agencies, or entities that are legislative bodies of a local agency as specified. (Civ. Code § 1798.3(b); Gov. Code § 6252(a).)
  - 9) Requires each agency to keep an accurate accounting of the date, nature, and purpose of each disclosure of a record made pursuant to specified circumstances; and requires each agency to retain that accounting for at least three years after the disclosure, or until the record is destroyed, whichever is shorter. (Civ. Code §§ 1798.25 & 1798.27.)
  - 10) Except as specified, endows each individual with the following rights: to inquire and be notified as to whether the agency maintains a record about them; to inspect all personal information in any record maintained by reference to an identifying particular of the

individual; and to submit a request in writing to amend a record containing personal information pertaining to them maintained by an agency. (Civ. Code § 1798.30, *et seq.*)

- 11) Requires each state agency, when it provides by contract for the operation or maintenance of records containing personal information to accomplish an agency function, to cause, consistent with its authority, the requirements of the IPA to be applied to those records; and specifies that for purposes of enforcing penalties for violations of the IPA, any contractor and any employee of the contractor, shall be considered to be an employee of an agency. (Civ. Code § 1798.19.)
- 12) Establishes the Department of Technology within the Government Operations Agency, under the supervision of the Director of Technology. (Gov. Code § 11545(a).)
- 13) Requires, upon appropriation by the Legislature, the Secretary of the Government Operations Agency to evaluate the following:
  - a) The impact of the proliferation of deepfakes on state government, California-based businesses, and residents of the state.
  - b) The risks, including privacy risks, associated with the deployment of digital content forgery technologies and deepfakes on state and local government, California-based businesses, and residents of the state.
  - c) Potential privacy impacts of technologies allowing public verification of digital content provenance.
  - d) The impact of digital content forgery technologies and deepfakes on civic engagement, including voters.
  - e) The legal implications associated with the use of digital content forgery technologies, deepfakes, and technologies allowing public verification of digital content provenance.
  - f) The best practices for preventing digital content forgery and deepfake technology to benefit the state, California-based businesses, and California residents, including exploring whether and how the adoption of a digital content provenance standard could assist with reducing the proliferation of digital content forgeries and deepfakes. (Gov. Code § 11547.5(b).)
- 14) Requires the Secretary of the Government Operations Agency to develop a coordinated plan to accomplish all of the following:
  - a) Investigate the feasibility of, and obstacles to, developing standards and technologies for state departments for determining digital content provenance.
  - b) Increase the ability of internet companies, journalists, watchdog organizations, other relevant entities, and members of the public to meaningfully scrutinize and identify digital content forgeries and relay trust and information about digital content provenance to content consumers.
  - c) Develop or identify mechanisms for content creators to cryptographically certify authenticity of original media and nondeceptive manipulations.

- d) Develop or identify mechanisms for content creators to enable the public to validate the authenticity of original media and nondeceptive manipulations to establish digital content provenance without materially compromising personal privacy or civil liberties. (Gov. Code § 11547.5(c).)
- 15) Expresses the intent of the Legislature that policies and procedures developed by the Department of Technology and Department of General Services pertaining to the acquisition of information technology (IT) goods and services provide for all of the following: the expeditious and value-effective acquisition of IT goods and services to satisfy state requirements; the acquisition of IT goods and services within a competitive framework; the delegation of authority by the Department of General Services to each state agency that has demonstrated to the Department of General Services' satisfaction the ability to conduct value-effective IT goods and services acquisitions; and the review and resolution of protests submitted by any bidders with respect to any IT goods and services acquisitions. (Pub. Con. Code § 12101.)
- 16) Requires the Department of Technology, on or before September 1, 2024, to conduct, in coordination with other interagency bodies as it deems appropriate, a comprehensive inventory of all high-risk automated decisionmaking tools that have been proposed for use, development, or procurement by, or are being used, developed, or procured by, any state agency. (Gov. Code § 11546.45.5(b).)
- 17) Requires the Department of Technology, on or before January 1, 2025, and annually thereafter, to submit a report, as specified, of the comprehensive inventory to the Assembly Committee on Privacy and Consumer Protection and the Senate Committee on Governmental Organization. This requirement expires on January 1, 2029. (Gov. Code § 11546.45.5(d).)

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

**COMMENTS:**

1) **AI and GenAI.** The development of GenAI is creating exciting opportunities to grow California's economy and improve the lives of its residents. GenAI can generate compelling text, images and audio in an instant – but with novel technologies come novel safety concerns.

In brief, AI is the mimicking of human intelligence by artificial systems such as computers. AI uses algorithms – sets of rules – to transform inputs into outputs. Inputs and outputs can be anything a computer can process: numbers, text, audio, video, or movement. AI is not fundamentally different from other computer functions; its novelty lies in its application. Unlike normal computer functions, AI is able to accomplish tasks that are normally performed by humans.

AI that are trained on small, specific datasets in order to make recommendations and predictions are sometimes referred to as “predictive AI.” This differentiates them from GenAI, which are trained on massive datasets in order to produce detailed text and images. When Netflix suggests a TV show to a viewer, the recommendation is produced by predictive AI that has been trained on the viewing habits of Netflix users. When ChatGPT generates text in clear, concise paragraphs, it uses GenAI that has been trained on the written contents of the internet.

2) **Haphazard training data.** There is a common saying in computer science: “garbage in, garbage out.” The performance of an AI product is directly impacted by the quality, quantity, and relevance of the data used to train it. Before training, datasets are often categorized to make them easier for AI to work with. Rigorously categorizing the data in a dataset becomes more difficult as the dataset becomes larger, but failing to organize its contents can lead to meaningless, false, or harmful outputs.

The biggest names in AI – OpenAI, Meta, and Google – understand AI’s critical need for data better than anyone else. According to a recent New York Times examination, the race to lead in the AI space has become a desperate hunt for digital data. To obtain that data, these tech companies have cut corners, ignored corporate policies and debated bending the law:

At Meta, which owns Facebook and Instagram, managers, lawyers and engineers last year discussed buying the publishing house Simon & Schuster to procure long works, according to recordings of internal meetings obtained by The Times. They also conferred on gathering copyrighted data from across the internet, even if that meant facing lawsuits. Negotiating licenses with publishers, artists, musicians and the news industry would take too long, they said.

Like OpenAI, Google transcribed YouTube videos to harvest text for its A.I. models, five people with knowledge of the company’s practices said. That potentially violated the copyrights to the videos, which belong to their creators.

Last year, Google also broadened its terms of service. One motivation for the change, according to members of the company’s privacy team and an internal message viewed by The Times, was to allow Google to be able to tap publicly available Google Docs, restaurant reviews on Google Maps and other online material for more of its A.I. products.<sup>1</sup>

Meta and Google are privy to some of the most sensitive information in the world. In many developing countries, Facebook effectively is the internet. A tremendous number of Californians use Google, or Google Chrome, or Google Drive, or Google Cloud, or Gmail.

In their race to obtain vast quantities of training data, major AI developers have not hesitated to move fast and break things. The Stanford Internet Observatory recently discovered that a common image training dataset known as LAION-5B contains many instances of child sexual abuse materials. Their study identified 3226 dataset entries of suspected child pornography, much of which was later confirmed as such by third parties. This dataset was built by automatically scraping the internet, and images containing child pornography were found to have originated from large, well-known websites such as Reddit, Twitter, Blogspot, and Wordpress, as well as mainstream adult sites such as XHamster and XVideos.<sup>2</sup>

3) **An AI never forgets.** Just as humans cannot intentionally forget information they have learned, it is not currently possible to remove data from a trained AI. Unlike an Excel spreadsheet, which stores data in neat columns, AI stores data in the connections between

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<sup>1</sup> Cade Metz, Cecilia Kang, Sheera Frenkel, Stuart A. Thompson and Nico Grant, “How Tech Giants Cut Corners to Harvest Data for A.I.,” *New York Times*, Apr. 6, 2024, <https://www.nytimes.com/2024/04/06/technology/tech-giants-harvest-data-artificial-intelligence.html>.

<sup>2</sup> David Thiel, “Identifying and Eliminating CSAM in Generative ML Training Data and Models,” *Stanford Internet Observatory*, Dec. 23, 2023.



“neurons” in a “neural network.” Every one of these connections is influenced by every piece of training data, and a large model like ChatGPT-4 is reported to have more than 1.7 trillion connections. It is not possible to specifically alter these connections in order to remove data without fundamentally changing the model; as a result, for data to be removed, the model must be retrained from scratch. ChatGPT-4 is estimated to have taken 4-7 months to train in the first place.

What happens when an AI is trained on extremely sensitive information – for example, an individual’s DNA sequence, or their social security number, or their intimate photos, or their immigration status? The same thing that happens when an AI is trained on any other type of information: the AI digests it, and then retains it forever. AI are fundamentally different from other forms of data storage. They are black holes in the information ecosystem, with “training” as their event horizons. Once data has crossed this threshold it cannot be removed.

4) **Risk management.** The Senate Judiciary Committee’s analysis of SB 1047 summarizes various risk management frameworks related to the use of GenAI:

In January of 2017, AI researchers, economists, legal scholars, ethicists, and philosophers met in Asilomar, California to discuss principles for managing the responsible development of AI. The collaboration resulted in the Asilomar Principles. Aspirational rather than prescriptive, these 23 principles were intended to initiate and frame a dialogue by providing direction and guidance for policymakers, researchers, and developers. Its endorsers include 1,200 leading experts in the field of AI, including DeepMind founder Demis Hassabis and the late Stephen Hawking.<sup>3</sup>

The Legislature subsequently adopted ACR 215 (Kiley, Ch. 206, Stats. 2018), which added the State of California to that list by endorsing the Asilomar Principles as guiding values for the development of artificial intelligence and related public policy. In broad strokes, those principles aim to do the following:

- Research issues: create beneficial AI; direct funding toward beneficial innovation; maintain constructive and healthy exchanges between AI researchers and policymakers; promote a culture of trust, cooperation, and transparency among researchers and developers of AI; and avoid corner-cutting on safety standards.
- Ethics and values: promote safety, failure transparency, judicial transparency, and responsible innovation; align human values with innovation; protect privacy and liberty; ensure that the benefits and prosperity created by AI are broadly shared; maintain human control over AI; develop AI that supports rather than subverts social and civil processes; and avoid an AI arms race.
- Longer-term issues: avoid assumptions regarding the capabilities of AI; give AI its due attention; and recognize that its risks are potentially catastrophic or existential.

As directed by the National AI Initiative Act of 2020, NIST developed the AI Risk

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<sup>3</sup> Future of Life Institute, “Asilomar AI Principles,” Aug. 11, 2017, <https://futureoflife.org/open-letter/ai-principles/>.

Management Framework to assist entities designing, developing, deploying, and using AI systems to help manage the many risks of AI and promote trustworthy and responsible development and use of AI systems. That framework highlights the serious risks at play and the uniquely challenging nature of addressing them in this context:

Artificial intelligence (AI) technologies have significant potential to transform society and people’s lives – from commerce and health to transportation and cybersecurity to the environment and our planet. AI technologies can drive inclusive economic growth and support scientific advancements that improve the conditions of our world. AI technologies, however, also pose risks that can negatively impact individuals, groups, organizations, communities, society, the environment, and the planet. Like risks for other types of technology, AI risks can emerge in a variety of ways and can be characterized as long- or short-term, high or low-probability, systemic or localized, and high- or low-impact.

While there are myriad standards and best practices to help organizations mitigate the risks of traditional software or information-based systems, the risks posed by AI systems are in many ways unique. AI systems, for example, may be trained on data that can change over time, sometimes significantly and unexpectedly, affecting system functionality and trustworthiness in ways that are hard to understand. AI systems and the contexts in which they are deployed are frequently complex, making it difficult to detect and respond to failures when they occur. AI systems are inherently socio-technical in nature, meaning they are influenced by societal dynamics and human behavior. AI risks – and benefits – can emerge from the interplay of technical aspects combined with societal factors related to how a system is used, its interactions with other AI systems, who operates it, and the social context in which it is deployed.

These risks make AI a uniquely challenging technology to deploy and utilize both for organizations and within society. [. . .]

AI risk management is a key component of responsible development and use of AI systems. Responsible AI practices can help align the decisions about AI system design, development, and uses with intended aim and values. Core concepts in responsible AI emphasize human centricity, social responsibility, and sustainability. AI risk management can drive responsible uses and practices by prompting organizations and their internal teams who design, develop, and deploy AI to think more critically about context and potential or unexpected negative and positive impacts. Understanding and managing the risks of AI systems will help to enhance trustworthiness, and in turn, cultivate public trust.<sup>4</sup>

More recently the Biden Administration has published its Blueprint for an AI Bill of Rights, which is a set of five principles and associated practices to help guide the design, use, and deployment of AI to protect the rights of the American public:

- **Safe and Effective Systems:** You should be protected from unsafe or ineffective systems. Automated systems should be developed with consultation from diverse communities,

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<sup>4</sup> National Institute of Standards and Technology, “Artificial Intelligence Risk Management Framework,” Jan. 2023, <https://doi.org/10.6028/NIST.AI.100-1>.

stakeholders, and domain experts to identify concerns, risks, and potential impacts of the system.

- **Algorithmic Discrimination Protections:** Designers, developers, and deployers of automated systems should take proactive and continuous measures to protect individuals and communities from algorithmic discrimination and to use and design systems in an equitable way. This protection should include proactive equity assessments as part of the system design, use of representative data and protection against proxies for demographic features, ensuring accessibility for people with disabilities in design and development, pre-deployment and ongoing disparity testing and mitigation, and clear organizational oversight.
- **Data Privacy:** You should be protected from abusive data practices via built-in protections and you should have agency over how data about you is used. You should be protected from violations of privacy through design choices that ensure such protections are included by default, including ensuring that data collection conforms to reasonable expectations and that only data strictly necessary for the specific context is collected. Designers, developers, and deployers of automated systems should seek your permission and respect your decisions regarding collection, use, access, transfer, and deletion of your data in appropriate ways and to the greatest extent possible; where not possible, alternative privacy by design safeguards should be used. Systems should not employ user experience and design decisions that obfuscate user choice or burden users with defaults that are privacy invasive. Consent should only be used to justify collection of data in cases where it can be appropriately and meaningfully given. Any consent requests should be brief, be understandable in plain language, and give you agency over data collection and the specific context of use; current hard-to-understand notice-and-choice practices for broad uses of data should be changed. Enhanced protections and restrictions for data and inferences related to sensitive domains, including health, work, education, criminal justice, and finance, and for data pertaining to youth should put you first. In sensitive domains, your data and related inferences should only be used for necessary functions, and you should be protected by ethical review and use prohibitions. You and your communities should be free from unchecked surveillance; surveillance technologies should be subject to heightened oversight that includes at least pre-deployment assessment of their potential harms and scope limits to protect privacy and civil liberties. Continuous surveillance and monitoring should not be used in education, work, housing, or in other contexts where the use of such surveillance technologies is likely to limit rights, opportunities, or access. Whenever possible, you should have access to reporting that confirms your data decisions have been respected and provides an assessment of the potential impact of surveillance technologies on your rights, opportunities, or access.
- **Notice and Explanation:** You should know that an automated system is being used and understand how and why it contributes to outcomes that impact you. Designers, developers, and deployers of automated systems should provide generally accessible plain language documentation including clear descriptions of the overall system functioning and the role automation plays, notice that such systems are in use, the individual or organization responsible for the system, and explanations of outcomes that are clear, timely, and accessible. Such notice should be kept up-to-date and people impacted by the system should be notified of significant use case or key functionality changes. You should know how and why an outcome impacting you was determined by

an automated system, including when the automated system is not the sole input determining the outcome.

- **Human Alternatives, Consideration, and Fallback:** You should be able to opt out from automated systems in favor of a human alternative, where appropriate. Appropriateness should be determined based on reasonable expectations in a given context and with a focus on ensuring broad accessibility and protecting the public from especially harmful impacts.<sup>5</sup>

TechEquity, an organization committed to ensuring technology’s evolution benefits everyone equitably, has also laid out their straightforward AI Policy Principles:

- People who are impacted by AI must have agency to shape the technology that dictates their access to critical needs like employment, housing, and healthcare.
- The burden of proof must lie with developers, vendors, and deployers to demonstrate that their tools do not create harm—and regulators, as well as private [individuals], should be empowered to hold them accountable.
- Concentrated power and information asymmetries must be addressed in order to effectively regulate the technology.<sup>6</sup>

**5) Governor Gavin Newsom’s GenAI Executive Order.** In September of 2023, Governor Gavin Newsom signed Executive Order N-12-23 with the stated goals of “deploy[ing] GenAI ethically and responsibly throughout state government, protect[ing] and prepar[ing] for potential harms, and remain[ing] the world’s AI leader.”<sup>7</sup> The executive order lists a number of provisions:

- **Risk-Analysis Report:** Direct state agencies and departments to perform a joint risk-analysis of potential threats to and vulnerabilities of California’s critical energy infrastructure by the use of GenAI.
- **Procurement Blueprint:** To support a safe, ethical, and responsible innovation ecosystem inside state government, agencies will issue general guidelines for public sector procurement, uses, and required training for application of GenAI – building on the White House’s Blueprint for an AI Bill of Rights and the National Institute for Science and Technology’s AI Risk Management Framework. State agencies and departments will consider procurement and enterprise use opportunities where GenAI can improve the efficiency, effectiveness, accessibility, and equity of government operations.
- **Beneficial Uses of GenAI Report:** Direct state agencies and departments to develop a report examining the most significant and beneficial uses of GenAI in the state. The

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<sup>5</sup> The White House, “Blueprint for an AI Bill of Rights,” Oct. 2023, <https://www.whitehouse.gov/wp-content/uploads/2022/10/Blueprint-for-an-AI-Bill-of-Rights.pdf>.

<sup>6</sup> TechEquity, “AI Policy Principles,” Mar. 2024, [https://techequitycollaborative.org/wp-content/uploads/2024/03/AI\\_Policy\\_Principles.pdf](https://techequitycollaborative.org/wp-content/uploads/2024/03/AI_Policy_Principles.pdf).

<sup>7</sup> Governor Gavin Newsom, Executive Order N-12-23, <https://www.gov.ca.gov/2023/09/06/governor-newsom-signs-executive-order-to-prepare-california-for-the-progress-of-artificial-intelligence/>.

report will also explain the potential harms and risks for communities, government, and state government workers.

- **Deployment and Analysis Framework:** Develop guidelines for agencies and departments to analyze the impact that adopting GenAI tools may have on vulnerable communities. The state will establish the infrastructure needed to conduct pilots of GenAI projects, including California Department of Technology approved environments or “sandboxes” to test such projects.
- **State Employee Training:** To support California’s state government workforce and prepare for the next generation of skills needed to thrive in the GenAI economy, agencies will provide trainings for state government workers to use state-approved GenAI to achieve equitable outcomes, and will establish criteria to evaluate the impact of GenAI to the state government workforce.
- **GenAI Partnership and Symposium:** Establish a formal partnership with the University of California, Berkeley and Stanford University to consider and evaluate the impacts of GenAI on California and what efforts the state should undertake to advance its leadership in this industry. The state and the institutions will develop and host a joint summit in 2024 to engage in meaningful discussions about the impacts of GenAI on California and its workforce.
- **Legislative Engagement:** Engage with Legislative partners and key stakeholders in a formal process to develop policy recommendations for responsible use of AI, including any guidelines, criteria, reports, and/or training.
- **Evaluate Impacts of AI on an Ongoing Basis:** Periodically evaluate for potential impact of GenAI on regulatory issues under the respective agency, department, or board’s authority and recommend necessary updates as a result of this evolving technology.

6) **Item 0511-001-0001 of Section 2.00 of the Budget Act of 2024.** This budget item contains several provisions related to the use of GenAI by the state:

- Requires the Government Operations Agency to establish monthly GenAI meetings with designated legislative staff of the Assembly and Senate to discuss the agency’s ongoing efforts regarding the implementation of Executive Order N-12-23.
- Requires that personal information that is collected, maintained, or used under the GenAI pilot projects be treated as the term is defined in Section 1798.3 of the Civil Code (see **EXISTING LAW** section.)
- Requires that the Government Operations Agency only use publicly available data for GenAI pilot projects, and that if such data includes personal information, the Agency shall only use the information of persons aged 18 and older.
- Requires that the Government Operations Agency require departments participating in GenAI pilot projects to comply with procurement-related trainings.
- Requires that if the Government Operations agency collects personal information while implementing GenAI pilot projects, the agency may allow departments to use de-

identified data to conduct research when justifying requests for resources should the department seek approval to expand the scope of the pilot program.

- Requires that the above provisions are only applicable for the 2024-2025 fiscal year.

7) **What this bill would do.** This bill would effectively codify the Governor’s Executive Order N-12-23, related to the procurement and use of GenAI by the state. It would additionally require that the use of GenAI for communications be disclosed to the recipient of those communications.

8) **Author’s statement:**

California must commit to harnessing the transformative power of AI and GenAI to enhance the lives of Californians and improve the efficiency and efficacy of our state government operations. At a time when technological advancements are rapidly redefining the boundaries of possibility, it is important that we approach the integration of these powerful tools with an eye towards fairness, transparency, privacy, and accountability, while balancing the need to remain a world leader in innovation – both in the private and public sector. This bill is a first step towards ensuring that as we embrace the future, we do so in a way that upholds our key values.

9) **Committee amendments.** A number of proposed Committee amendments would clarify and strengthen the provisions of this bill. The first requires the California Privacy Protection Agency to be involved in several of the bill’s goals, in order to ensure that Californians’ privacy is being considered as the state develops trainings and adopts GenAI tools:

- The creation of the California Benefits and Risk of Generative Artificial Intelligence Report.
- The development of guidelines for procurement, use, and trainings for the use of GenAI.
- The development of guidelines for state agencies and departments to analyze the impact that adopting GenAI tools may have on vulnerable communities.
- Engagement with the Legislature and relevant stakeholders, including historically vulnerable and marginalized communities and organizations that represent state government employees.

The second Committee amendment would align the pilot projects required by this bill with related language in Item 0511-001-0001 of Section 2.00 of the Budget Act of 2024, and would additionally require environments created to test pilot projects to additionally measure how to mitigate risks of harms associated with the use of GenAI.

The third Committee amendment would clarify how disclosing the use of GenAI to communicate should be performed for various communication modalities, including written communications, audio communications, and video communications. The introduced language aligns closely with the language of AB 3030 (Calderon, 2024).

10) **Full text of bill as proposed to be amended:**

11549.64. As used in this chapter:

(a) “Artificial intelligence” means an engineered or machine-based system that **varies in its level of autonomy and that can**, for explicit or implicit objectives, infer, from the input it receives, how to generate outputs that can influence physical or virtual environments ~~and that may operate with varying levels of autonomy.~~

(b) **“Generative artificial intelligence” or “GenAI” means artificial intelligence that can generate derived synthetic content, including text, images, video, and audio, that emulates the structure and characteristics of the artificial intelligence’s training data.** ~~“Generative artificial intelligence” means—the class of artificial intelligence models that emulate the structure and characteristics of input data in order to generate derived synthetic content, including images, videos, audio, text, and other digital content.~~

(c) “Person” means a natural person.

(d) “Report” means the State of California Benefits and Risk of Generative Artificial Intelligence Report required by Section 11549.65.

11549.65. (a) (1) The Government Operations Agency, the Department of Technology, ~~and~~ the Office of Data and Innovation, **and the California Privacy Protection Agency** shall produce a State of California Benefits and Risk of Generative Artificial Intelligence Report that includes all of the following:

(A) An examination of the most significant, potentially beneficial uses for deployment of ~~generative artificial intelligence~~ **GenAI** tools by the state.

(B) An explanation of the potential risks of the uses described in subparagraph (A) to individuals, communities, and government workers with a focus on high-risk uses, including the use of ~~generative artificial intelligence~~ **GenAI** to make a consequential decision affecting access to essential goods and services.

(C) An explanation of risks from bad actors and insufficiently guarded governmental systems, unintended or emergent effects, and potential risks toward democratic and legal processes, public health and safety, **data privacy**, and the economy.

(2) The Government Operations Agency, the Department of Technology, ~~and~~ the Office of Data and Innovation, **and the California Privacy Protection Agency** shall update the report, as needed, to respond to significant developments and shall, as appropriate, consult with academia, industry experts, and organizations that represent state government employees.

(b) (1) (A) ~~As often as is deemed appropriate by the Director of~~ **The Office of** Emergency Services, the California Cybersecurity Integration Center, and the State Threat Assessment Center, ~~those entities shall perform, and periodically update,~~ a joint risk analysis of potential threats posed by the use of ~~generative artificial intelligence~~ **GenAI** to California’s critical energy infrastructure, including those that could lead to mass casualty events and environmental emergencies.

(B) The entities described in subparagraph (A) shall develop, in consultation with appropriate external experts from academia and industry, a strategy to assess similar potential threats to other critical infrastructure.

(2) The analysis required by paragraph (1) shall be provided to the **Legislature and the Governor**, and, if appropriate, ~~public recommendations shall be made~~ **include recommendations** reflecting changes to artificial intelligence technology, its applications, and risk management, including further private actions, administrative actions, and collaboration with the Legislature to guard against potential threats and vulnerabilities.

(c) (1) (A) The Government Operations Agency, the Department of General Services, the Department of Technology, ~~and the California Cybersecurity Integration Center,~~ **and the California Privacy Protection Agency** shall develop, maintain, and periodically evaluate and revise general guidelines for public sector procurement, uses, and required trainings for the use of ~~generative artificial intelligence~~ **GenAI**, including for high-risk scenarios, and including for consequential decisions affecting access to essential goods and services.

(B) The guidelines required by this paragraph shall ~~build on~~ **incorporate** guidance from the White House publication titled Blueprint for an AI Bill of Rights and the National Institute of Standards and Technology's AI Risk Management Framework, or succeeding document, and shall address safety, algorithmic discrimination, data privacy, and notice of when materials are generated by ~~generative artificial intelligence~~ **GenAI**.

(C) The Government Operations Agency shall engage and consult with organizations that represent state government employees and industry experts, including, but not limited to, trust and safety experts, academic researchers, and research institutions in developing the guidelines required by this paragraph.

(2) For purposes of the periodic evaluation and revision required by paragraph (1), the Government Operations Agency, the Department of General Services, the Department of Technology, ~~and the California Cybersecurity Integration Center,~~ **and the California Privacy Protection Agency** shall ~~periodically evaluate any need to revise the guidelines and establish a consultative process by which to do so~~ **consult** with academia, industry experts, and organizations that represent state government employees.

(d) (1) (A) The Government Operations Agency, the Department of Technology, ~~and the Office of Data and Innovation,~~ **and the California Privacy Protection Agency** shall develop, maintain, and periodically evaluate and revise guidelines for state agencies and departments to analyze the impact that adopting a ~~generative artificial intelligence~~ **GenAI** tool may have on vulnerable communities, including criteria to evaluate equitable outcomes in deployment and implementation of high-risk uses.

(B) The guidelines required by this paragraph shall inform whether and how a state agency or department deploys a particular ~~generative artificial intelligence~~ **GenAI** tool.



(C) The Government Operations Agency shall engage and consult with organizations that represent state government employees and industry experts, including, but not limited to, trust and safety experts, academic researchers, and research institutions in developing the guidelines required by this paragraph.

~~(2) For purposes of the periodic evaluation and revision required by paragraph (1), the Government Operations Agency, the Department of General Services, the Department of Technology, and the California Cybersecurity Integration Center shall periodically evaluate any need to revise the guidelines and establish a consultative process by which to do so with academia, industry experts, and organizations that represent state government employees.~~

**(2) For purposes of the periodic evaluation and revision required by paragraph (1), the Government Operations Agency, the Department of General Services, the Department of Technology, and the California Cybersecurity Integration Center shall consult with academia, industry experts, and organizations that represent state government employees.**

(e) The Government Operations Agency, the Department of General Services, and the Department of Technology shall update, as needed, the state's project approval, procurement, and contract terms to incorporate analysis and feedback obtained pursuant to subdivisions (c) and (d).

(f) (1) To assist the Government Operations Agency and the Department of Technology in their efforts to perform any periodic review and update under this section, all state agencies and departments shall, as requested by the Government Operations Agency or the Department of Technology, conduct and submit an inventory of all current high-risk uses of ~~generative artificial intelligence~~ **GenAI** within the agency or department to the Department of Technology, which shall administer the inventory.

(2) A state agency or department shall appoint a senior level management personnel who will be responsible for maintaining, conducting, and reporting the results of the inventory described by paragraph (1) to the Department of Technology within 60 days of issuance of a request for an inventory pursuant to paragraph (1).

(g) Any state agency or department shall consider procurement and enterprise use opportunities in which ~~generative artificial intelligence~~ **GenAI** can improve the efficiency, effectiveness, accessibility, and equity of government operations consistent with the Government Operations Agency, the Department of General Services, and the Department of Technology's guidelines for public sector ~~generative artificial intelligence~~ **GenAI** procurement.

(h) (1) The **Government Operations Agency shall collaborate with the** Department of Technology ~~shall to~~ establish and maintain the infrastructure to conduct pilot projects of ~~generative artificial intelligence~~ **GenAI** projects, including Department of Technology-approved environments to test those pilot projects.

(2) An environment created pursuant to this subdivision shall be available to any state agency or department to help evaluate ~~generative artificial intelligence~~ **GenAI** tools

and services, to further safe, ethical, and responsible implementations, and to inform decisions to use ~~generative artificial intelligence~~ **GenAI** consistent with state guidelines.

(3) An environment created pursuant to this subdivision shall measure ~~both~~ **all** of the following:

(A) How ~~generative artificial intelligence~~ **GenAI** can improve Californians' experience with, and access to, government services.

(B) How ~~generative artificial intelligence~~ **GenAI** can support state employees in the performance of their duties. ~~in addition to~~

(C) ~~any~~ **Any** domain-specific impacts to be measured by the state agency or department, **including job displacement**.

**(D) How to mitigate risks of harms associated with the use of GenAI.**

**(4) Any pilot projects conducted pursuant to this subdivision shall be consistent with the requirements of Item 0511-001-0001 of Section 2.00 of the Budget Act of 2024.**

(i) The Government Operations Agency, the Department of General Services, the Department of Technology, the Office of Data and Innovation, ~~and the California Cybersecurity Integration Center,~~ **and the California Privacy Protection Agency** shall engage with the Legislature and relevant stakeholders, including historically vulnerable and marginalized communities and organizations that represent state government employees, in the development and revision of any guidelines, criteria, reports, or training pursuant to this section.

(j) A state agency or department shall support the state government workforce and prepare for the next generation of skills needed to thrive in the ~~generative artificial intelligence~~ **GenAI** economy by complying with both of the following:

(1) The Government Operations Agency, the Department of Technology, **and the California Privacy Protection Agency**, ~~and any other agencies deemed necessary~~ shall make available trainings for state government worker use of state-approved ~~generative artificial intelligence~~ **GenAI** tools to achieve equitable outcomes and to identify and mitigate potential output inaccuracies, fabricated text, hallucinations, **privacy risks**, and biases of ~~generative artificial intelligence~~ **GenAI**, while enforcing ~~public privacy and~~ applicable state laws and policies. If appropriate, the **Government Operations Agency, the Department of Technology, and the California Privacy Protection Agency** ~~and any other agency or department deemed necessary~~ shall collaborate with organizations that represent state government employees and industry experts on developing and providing training.

(2) The Government Operations Agency, in consultation with appropriate state agencies and organizations that represent state government employees, shall establish criteria to evaluate the impact of ~~generative artificial intelligence~~ **GenAI** on the state government workforce and provide guidelines on how state agencies and departments

can support state government employees to use these tools effectively and respond to these technological advancements.

(k) Legal counsel for any state agency or department shall consider any potential impact of ~~generative artificial intelligence~~ **GenAI** on regulatory issues under the respective agency's or department's authority and recommend necessary updates **to the Government Operations Agency**, if as appropriate, as a result of this evolving technology.

11549.66. (a) A state agency or department that utilizes ~~generative artificial intelligence~~ **GenAI** to directly communicate with a person, either through an online interface or telephonically, shall **ensure that those communications include both of the following:**

**(1) A disclaimer that indicates to the person that the communication was generated by GenAI.**

~~clearly and in a conspicuous manner identify to that person that the person's interaction with the state agency or department is being communicated through artificial intelligence.~~ **(A) For written communications involving physical and digital media, including letters, emails, and other occasional messages, the disclaimer shall appear prominently at the start of each communication.**

**(B) For written communications involving continuous online interactions, including interactions with chatbots, the disclaimer shall be prominently displayed throughout the interaction.**

**(C) For audio communications, the disclaimer shall be provided verbally at the start and the end of the interaction.**

**(D) For video communications, the disclaimer shall be prominently displayed throughout the interaction.**

**(b2) Clear instructions, or a link to an internet website containing clear instructions, describing how the person may contact a human employee of the A** state agency or department ~~that utilizes generative artificial intelligence to directly communicate with a person shall provide on the state agency's or department's internet website clear instructions, or a link to a web page with clear instructions, informing the person how to directly communicate with a person from the state agency or department.~~

11) **Related legislation.** SB 892 (Padilla, 2024) would require the Department of Technology to create standards for the procurement of automated decision systems by the state. This bill is currently pending in this Committee.

SB 893 (Padilla, 2024) would create the California Artificial Intelligence Research Hub in the Government Operations Agency to increase lawful access to government data. This bill is currently pending in this Committee.

SB 1047 (Wiener, 2024) would create the Division of Frontier Models in the Government Operations Agency to oversee the development of the largest, most advanced artificial intelligence systems. This bill is currently pending in Assembly Judiciary Committee.

***ARGUMENTS IN SUPPORT:*** Secure Justice writes:

In this era of disinformation and distrust in our civic institutions, we believe such efforts like SB 896 will guide agencies working to address concerns arising from the use of AI.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

Oakland Privacy  
Secure Justice

**Opposition**

None on file.

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