**COST DRIVER**

August 13, 2025

TO: Members, Senate Appropriations Committee

**SUBJECT: AB 1018 (BAUER-KAHAN) AUTOMATED DECISION SYSTEMS**
**OPPOSE/COST DRIVER – AS AMENDED JULY 17, 2025**
**SCHEDULED FOR HEARING – AUGUST 18, 2025**

The California Chamber of Commerce and the undersigned are **OPPOSED** to **AB 1018 (Bauer-Kahan)** as amended on July 17, 2025, as a **COST DRIVER** because it fails to focus on the stated objective of requirements on high-risk automated decision systems (ADS) to the detriment of every industry in the state of California, and from small business to large. Instead, the bill broadly targets businesses of all sizes, across every industry, and regulates even lower risk applications of ADS, including those that are already in use, and is based on a skewed understanding of what constitutes discrimination under California law. Such overreach not only exposes smaller businesses to significant – if not devastating – liability even for mere errors that caused no harm to consumers, but it would also hinder many beneficial uses of ADS, including but not limited to: enabling faster approvals and expanded access to credit; enhancing real-time fraud detection; fostering job creation and new industries; improving efficiency to help level the playing field between small and large businesses; addressing major societal challenges such as bias and discrimination, economic inequality, climate change, injustices in the criminal system, disaster relief, and humanitarian aid; and advancing new treatments for previously incurable diseases.

To be clear, whether decisions are being made by humans from start to end, or a biproduct of using or incorporating new technologies in the decision-making process, we take our responsibility to not discriminate with the utmost seriousness. We believe that algorithmic discrimination, or discrimination that results from AI-enabled technologies, is already prohibited under our anti-discrimination laws because laws are rights-based and not technology-specific. We also agree that companies need to take care to reduce bias and discrimination in decisions that have legal impact on the provision or denial of fundamental rights or essential opportunities and services, which is why many businesses already conduct impact assessments.

But it would be incredibly short-sighted for regulation to stifle innovation when alternative (human-decision driven) systems may be equally, if not more, flawed, and when properly developed and deployed ADS can enhance fairness and accountability. While ADS may pose unique challenges in terms of bias, they also pose unique advantages to combatting it as well: for example, ADS decision-making processes can be more transparent and traceable than the exercise of human discretion. The structured nature of these tools offer opportunities for detection and correction that can be more challenging to come by in human decision-making processes where human bias is often more subtle and harder to detect. Unfortunately, we believe

**AB 1018** will have an undesired chilling effect on the development and use of technology and make it that much harder to improve upon the very tools that can help combat bias in decisionmaking.

Even with the recent deletion of the opt out requirements, the remaining notice requirements, the rights to correct and appeal, skewed discrimination standards, and third-party auditor requirements are still onerous, unworkable, unnecessary, and unjustified as a matter of public policy, particularly given the underlying premise and objective of the bill. Unless such issues are all addressed, **AB 1018** will severely limit the effectiveness and adoption of ADS and instead of being an equalizer among businesses and potential solution to human biases, it will not protect anyone against bias and discrimination in doing so.

Instead, the bill creates an excessively onerous and risky regulatory environment that pushes businesses– particularly smaller ones – away from ADS technologies and toward human driven processes which we know will not help eliminate bias and discrimination in any way. We do not believe this to be the intent but there are several ways in which **AB 1018** needs to be scaled back to avoid such outcomes, as outlined below. Above all else, recognizing that this technology can reduce the instances of bias and discrimination in consequential areas where they have the capacity to cause life-altering harm, we urge a measured, targeted, risk-based approach to regulating ADS as we do with all AI legislation to focus on those high-risk use cases. Particularly as the bill has implications for public and private entities and employers alike.

**Minimal changes necessary to avoid the most harm caused by AB 1018**

While the list below is not comprehensive, our core concerns largely center around the following issues and necessary changes, which our letter will further elaborate on below:

- **The sweeping scope of businesses and industries captured, the inclusion of low-risk ADS applications, and establishment of new standards/grounds for discrimination, all have to be addressed to avoid creating a de-facto restraint on technology under the guise of an impact assessment bill**. To start, businesses of 100 employees or less must be exempted. Fundamentally, both the scope and various key terms (in particular, "consequential decisions", and "automated decision systems", and "covered automated decision systems", but also other terms such as "employment-related decisions"), all require additional clarity and/or narrowing. And insofar as the bill alters what constitutes discrimination, instead of ensuring that developers and deployers conduct evaluation and assessments that will promote responsible use of technologies to avoid violation of existing discrimination laws, the proposed change to the Unruh Civil Rights Act and introduction of new codified standards around "disparate impact" and "disparate treatment" should be fully stricken from the bill.

- **Untenable notice obligations, including the rights to appeal and correct must be deleted.** While the opt-out obligation has been deleted and the pre-use notice obligation may now be satisfied by way of an "automatic reply mechanism", both the pre-use and post-use notice requirements, including the problematic rights to correct and appeal, remain unworkable and must be deleted in full to make the bill remotely operational. Notably, while issues around the prior notice are improved by allowing automatic reply mechanisms to deliver the notice, that does not resolve the problem with the notices being individualized as was committed to being addressed in Senate Judiciary Committee. It merely changes the delivery mechanism which helps only in some, but not all contexts in which ADS is used.

- **Third-party auditor requirements should be fully deleted, particularly when a third-party AI auditing industry is virtually non-existent and imposes excessive and unnecessary costs on businesses that are fully capable of self-assessments. The mandate guarantees a windfall to a handful of companies, increasing IP risks and operational inefficiencies, without providing any added consumer protection, and forces developers to risk giving competitors, if not foreign adversaries, access to highly sensitive and proprietary information as a pre-condition to developing ADS in California**. Developers are fully competent when it comes to completing these assessments and the bill provides adequate enforcement mechanisms to ensure their compliance. As businesses absorb these unnecessary additional audit costs, they will be forced to raise prices, ultimately burdening consumers, reducing sales, and hindering economic growth in California. Furthermore, this requirement exceeds the scope of other U.S. laws and proposals, making California the most expensive jurisdiction for compliance. While the untenable third-party audit requirements have been *largely* (not completely) removed for deployers, they remain for developers, which include public entities. A five-year delayed implementation does not address these foundational concerns – it kicks them down the road.

- **Statutory penalties are far too heavy handed for a violation that involves no actual harm.** While we still believe a single enforcement entity (the Attorney General) is important to promote consistent interpretation and application of the law across the state, we appreciate recent narrowing to remove local enforcement entities. However, penalties under the bill remain far too heavy handed, vague, and are unjustified. Whereas the penalties in AB 2930 were $25,000 per violation for algorithmic discrimination only, the current penalty structure in the bill could feasibly have devastating impacts on businesses, big and most certainly small. Specifically, it allows for courts to grant plaintiffs a civil penalty of up to $25,000 per violation, without adequate clarity as to what constitutes each violation.

- **Preemption protections are needed, and current regulatory activities must be addressed**. Preemption is needed both to prevent conflict with localities and, similarly, to prevent concerns around state departments and agencies over-regulating this technology and getting ahead of the Legislature and Governor. These issues are too important to Californians across the state and our struggling economy to significantly delegate to unelected officials.

**AB 1018 falsely suggests a tool can have disparate impact even when such impact would not constitute disparate impact under anti-discrimination laws.**

We understand the primary goal of **AB 1018** to be to safeguard against algorithmic discrimination and to prevent disparate impact and disparate treatment in the development and deployment of ADS. Once again, we believe that existing anti-discrimination statutes equally apply to scenarios involving the use of technology. In other words, algorithmic discrimination, or discrimination that results from AI, is discrimination because our statutory protections are rights based and not technology specific. While we do not believe there is any need or justification for changing our statutory discrimination protections for each new change in technology, we have discussed on many occasion our willingness to clarify that algorithmic discrimination is discrimination under existing law and even offered to sponsor legislation to that end last year.

What **AB 1018** does, however, is define "disparate impact" and "disparate treatment" for the first time as a matter of California statutory law but we question their accuracy in codifying the standards developed by courts over decades of case law within these brief and vague singular sentences. We are heavily concerned that **AB 1018** is not sufficiently grounded within existing statutes such as the Fair Employment and Housing Act or the Unruh Civil Rights Act and would confuse, if not alter, what constitutes discrimination under the law, instead of ensuring adherence to existing anti-discrimination laws.

Notably, the broad definitions of "disparate impact" and "disparate treatment" do not mirror present use of those terms in evaluating employment cases. For example, CACI No. 2502 is clear that disparate impact occurs when an employment practice or policy has a "disproportionate adverse effect" on a protected group and harms them.

Disparate treatment has long been recognized as a basis for discrimination claims against business establishments under the Unruh Civil Rights Act as courts have consistently ruled that intentional discrimination is actionable under Unruh. In contrast, courts have generally been reluctant to apply a disparate impact theory under Unruh, unlike FEHA. Meaning, Unruh typically requires intentional discrimination—as such, policies that disproportionately affect a traditionally-protected group do not automatically violate Unruh without proof of intent. (*See Harris v. Capitol Growth Investors XIV* (1991) 52 Cal.3d 1142 holding that disparate impact is not enough to prove an Unruh violation; intentional discrimination is required; *see also* CACI No. 3060 (2025) Unruh Civil Rights Act – Essential Factual Elements (Civ. Code Secs. 51, 52).) The two narrow exceptions to this are disability discrimination claims under the ADA (which also violate Unruh) and if there is a consistent pattern wherein disparate impact implies intentional discrimination (a rare case).

Furthermore, as drafted, **AB 1018** could be interpreted to expand what constitutes discrimination under the Unruh Civil Rights Act – amending that act (under Section 51 of the Civil Code) to specifically state that in an action alleging an Unruh violation, the extent to which the defendant complied with **AB 1018** is relevant to, but not conclusive of, whether the defendant actually violated Unruh. Meaning, if the defendant did not conduct an assessment, or if they even made so much as an error in conducting an evaluation or assessment, that will be relevant to whether or not they actually committed discrimination—and intentional discrimination. Altering the landscape of discrimination law in California goes far beyond the bounds of a

simple assessment requirement, as this proposal was framed when first introduced in AB 331 in 2023.

While the amendments are helpful in limiting the broader impact of the definitions of "disparate impact" and "disparate treatment" such that they are "intended solely for purposes of internal compliance, risk assessment and documentation by this chapter" and that they "shall not be construed to modify and supersede any standard, burden of proof, or element of a claim under [Unruh, FEHA,] or any other applicable civil rights law", they do not address the core concern. Namely, that the definitions functionally arguably still displace the existing standards by which ADS are being evaluated for bias and discrimination under existing law within the context of these assessments. To the extent that these assessments are utilized to provide actual evaluations for businesses as to whether they will discriminate if they deploy the tools, the terms should reflect what they are understood to mean under case law. **Stated another way, a tool under an assessment could be deemed to have disparate impact under this bill, when it would not constitute disparate impact under anti-discrimination laws. This is misleading and undermines the purpose and efficacy of the assessments.**

**AB 1018's inordinately broad and vague scope captures businesses of all sizes, all industries, low risk tools, and decisions of questionable consequence despite what the terminology would suggest**

As we have stated with AB 331 and AB 2930, a fundamental flaw with AB 1018 is that it captures even lower risk applications of the technology. In casting such an overly broad net with vague, if not impossible, requirements, the bill effectively begins to have the same impact as legislation that places direct restraints on ADS. As noted above, it is crucial that AB 1018 focus on high-risk ADS applications that fully replace human decision-making – where there is no human involvement in the decisionmaking loop to intervene and change or alter the outcome of potential discrimination or nondiscrimination – and that it take on a more limited scope in terms of the size of businesses and types of decision subject to the bill.

As drafted, the definitions of "ADS", "covered ADS" and "consequential decision" are extremely broad and vague, creating significant concerns that the bill reaches beyond high-risk tools, and even beyond truly consequential decisions. Currently, "covered ADS" could effectively capture any tool that simply provides information prior to a consequential decision – decisions that materially impact the cost, terms, quality, or accessibility of certain rights or services from ranging from employment, education, health care, family planning, housing, essential utilities, financial services, criminal justice system, legal services, voting, or access to benefits or services or assignment of penalties.

Specifically, the term captures any computational process that makes, "or facilitates a consequential decision" and that "assists human discretionary decisionmaking[1]". We are concerned that the various elements of these definitions are far too subjective, particularly where they expand to technologies that not only replace final human discretionary decisions that have legal impact, but also those that assist human discretionary decisions that materially impact natural persons. "Facilitates" and "assist" are extremely vague and could capture simple features, such as company pages for job seeker research, job and resume search queries, and recommendations. Such tools do not create risk to workers/end-users, nor do they have the potential to be used to discriminate against candidates in the hiring process.

It is worth noting that any one of the dozen-plus sectors and use cases listed in the bill could easily warrant standalone legislation, given the varying complexities across industries. Most are left undefined, which makes it even more difficult to ascertain the types of decisions or judgments that would fall within the scope of this legislation. Using a one-size fits all approach wherein all industries are treated the same, and qualifying certain use cases as consequential by default, raises concerns of unintended consequences, particularly when the bill is so broad and vague in so many of the standards that it relies upon.

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[1] Apart from spam email filters, firewalls, antivirus software, identity and access management tools, calculators, databases, datasets, or other compilation of data, **AB 1018** captures any "computational process" as ADS more generally, as long as it meets the following elements:

- First, the computational process is derived from machine learning, statistical modeling, data analytics, or AI that issues simplified output, including a score, classification, or recommendation.
- Second, it is designed or used to either *assist* human discretionary decision making or replace human discretionary decision making.
- And third, it *materially* impacts natural persons. [*See* Proposed Sec. 22756(b)(1) and (2), emphasis added.]

Compounding each of these problems is the fact that **AB 1018** applies not only to public and private entities, but it also applies to businesses that employ anywhere from one employee and up. It even applies to businesses without employees. It applies to ordinary usages of technology that create business efficiencies, technologies that can have life or societal altering impacts, as well as life-saving technologies.

Consider if a business uses a technology that can evaluate whether the business is ready to expand or needs additional employees to be hired. That presumably would constitute the use of ADS to make a consequential decision. Or consider if a business relies on their calendars or appointment calendaring technology to determine if they can provide an appointment, service, or interview to an individual needing that service or job by a date certain. Have they then used ADS to make a consequential decision? What of technologies that can help route callers to the right departments within a medical center to make an appointment with a doctor? Or an ADS that helps ensure proper randomization in patient trial assignments? How about a technology that improves climate modeling and suggests policies for reducing emissions? All of these are *computational processes* that *assist* human discretionary decisionmaking that have *material* impacts on one of the consequential areas listed in **AB 1018**. In contrast, they would not be considered technologies that replace final human decisions that have legal impact.

As a result, they would now be subject to **AB 1018** and subject to potentially severe fines and litigation costs in actions brought by the AG or other public prosecutors – fines and costs that can be crushing to all businesses, but particularly to small businesses – and also grounds for an Unruh violation moving forward.

Again, the bill must focus on high-risk use cases and decisions – ADS that make (not simply facilitate) consequential decisions that have *legal or similarly significant impacts* on consumers, such as on the provision or denial of "employment-related decisions", instead of *material* impacts on the accessibility of "employment-related decisions".

**Notice provisions are plainly unworkable**

**AB 1018** requires deployers to provide specific post-decision notices to subjects affected by a consequential decision. In terms of *prior* notice, the bill requires deployers using ADS to notify subjects of ADS, prior to an ADS making a consequential decision, that ADS is being used in making such decision, along with other information including: the purpose of the ADS, contact information for the deployer, and highly technical information related to the ADS, and more. *After* a consequential decision is finalized, the deployer must provide every subject of the ADS with a detailed statement of the basis for decision, including right to correct personal information and appeal and timeframe for exercising rights. The person receiving notice must also be provide a "reasonable opportunity" to opt-out of the use of ADS.

In terms of the prior notice, the author recently agreed to amendments that would "rework the pre-use notice provision to only require a generalized notice, not one personalized for each subject." [See Senate Judiciary Analysis, page 19.] As amended, however, the amendments merely state that "*[t]he disclosure made pursuant to this subdivision may be made using an automatic reply mechanism."* This does not make the requirements generalized. It merely changes the delivery mechanism. While this is an improvement, **the committee amendments have not been adhered to** and an automatic reply mechanism will not work in every context, such as where an ADS is a camera that has the capability to detect if a worker is wearing the correct safety gear before being allowed entry into a work zone.

In the hiring context, for example, this requirement could require employers to send disclosures to every job seeker who might have been considered for a position regardless of experience or interest—even those who never applied or are uninterested in the job. In doing so, the employer would thus have to still divulge "the personal characteristics or attributes of the subject that the covered ADS measures or assesses to make or facilitate the consequential decision," among other things. [*See* Proposed Section 22756.2(a)(1)(D)(i)]. This would be an unworkable and impractical obligation in employment, or credit and lending decision contexts, just to name a few.

Consider how such requirements would work with staffing agencies, which recruit job candidates in three basic ways: searching their existing candidate pools, advertising through job boards or their own websites, or searching the internet. In the first scenario, AI tools are used to select from the database resumes or candidates that match the job description using key words or synonyms in the resume. Such searches can

produce hundreds or even thousands of resumes which are sometimes further refined using additional keywords. A staffing agency recruiter will then review and compare those to the open job assignment requirements and client requests to determine the best candidates for the role. In the second scenario of job advertisements, staffing agencies also may post job titles and descriptions to job boards like Monster, LinkedIn, Indeed, and others—or to their own websites. Once potential candidates are identified, the job board may display them in ranked fashion, sometimes with a numerical score. In the last scenario, they may search the internet for so-called "passive candidates". These are individuals who are not looking for the job, but who might be interested. In each case, AI tools facilitate identifying and quickly placing the best candidates into a variety of quality jobs.

Providing temporary job candidates with prior notice of ADS use in such a scenario is practically impossible. In each of the three search methods described above, staffing agencies already have used ADS to conduct the initial search, whether the resumes come from a job board, their own website or candidate pool, or from an internet search. In each case, it is not possible to provide advance notice because the ADS has already been used. To provide notice of ADS use in the initial stages of any search, agencies would have to provide notice *to the entire universe of potential applicants*—a literal impossibility. Even if such an effort were possible, it would create confusion for the public, many of whom may not be actively looking for new jobs.

There is also no feasible way for any but the smallest employer to comply with the post-consequential decision requirement. As currently drafted, every individual in a staffing agency's candidate pool, or who posted their information on a job board, or somewhere on the internet, to receive a detailed, personalized, notice every time an ADS was used to make a selection that did not include them, including the right to appeal the decision based on the candidate's perception that the decision was based on incorrect data.

In the entire history of employment, no employer has ever been required to provide personalized post-decision-making notices and explanations to the vast majority of applicants who are not selected for a position. This would require thousands of notices to applicants, and potential appeals every day, and it would create confusion for those candidates that were unaware they were in a pool of candidates for a role. In instances where a candidate might not be a match for one job (perhaps they indicated they can't work early shifts) but could be a match for another job (with late shifts), they would assume they were not eligible for any placements with the staffing agency, leaving valuable jobs unfilled.

Most temporary positions must be filled quickly – for instance, the need for a last-minute substitute teacher or emergency room nurse to cover for sick employees. Applicants that opt out of ADS usage may miss out on the opportunity to fill quality, last-minute jobs as agency recruiters will not have time to review individual applications and resumes. Granting candidates mandatory opt out rights after every ADS use presumes that ADS systems are fundamentally flawed. Such a presumption is unwarranted given the requirement that all ADS tools must undergo comprehensive impact assessments prior to deployment and on a regular and continuing basis thereafter.

In the health care space, other than in life threatening emergencies, such requirements would require health care entities to inform patients before using an ADS to facilitate or aid in health care decision-making or treatment and provide an opportunity to opt out. Health care entities would also have to provide patients and insureds the right to appeal decisions made using an ADS. This would be incredibly disruptive and is simply not workable in health care. Take, for example, algorithms built into MRI machines or algorithms used in laboratory testing such as estimating GFR kidney function from a blood test. Many times, there is not a viable clinical alternative, and this could result in patients or members deferring or refusing care Furthermore, health insurers are already required to provide members with the right to appeal adverse coverage decisions.

Generally speaking, the pre- and post-use notice provisions, including the ability to appeal, should simply be removed from this legislation, particularly given that they are not necessary to conduct evaluation/assessments. We note also that existing data privacy laws, particularly the California Consumer Privacy Act, provide significant notices to consumers about the ways in which their data is collected and used, rendering some of the disclosure obligation and consumer rights relative to personal information redundant and unnecessary as well. Furthermore, other measures can be put in place to provide reasonable avenues for consumers to seek appropriate information tailored to a particular tool, as opposed to enforcing a one size fits all approach that has is unrelated to conducting evaluations/assessments to avoid discrimination in the development or deployment of these tools. Many transparency goals can also

be achieved with generalized notices (such as pop-up notices in the employment section of a staffing agency's website, or a general notice requirement) as opposed to onerous individualized notices, where such mass individualized notices (regardless of whether an individual requested it) will almost certainly undermine the utility of these tools and the purpose for which businesses employ them in the first place.

**Third-party auditor provision are costly, unreasonable and unnecessary**

Under this bill, developers must conduct an impact assessment (called a "performance evaluation") that meets certain requirements. For example, they must describe the purpose of the covered ADS, list and describe all developer-approved uses of the covered ADS, and for each approved use they must evaluate the expected performance and document specified metrics such as the expected accuracy and reliability of the covered ADS, whether any disparate treatment is intended to occur, and whether any measures have been taken to mitigate the risk of unanticipated disparate impacts resulting from the use of the ADS.

Beginning January 1, 2030, developers are also, however, required to contract with independent third-party auditors to assess the developer's compliance with the bill's performance evaluation requirements—which even the bill recognizes requires that the developer give the auditor all the necessary information to comprehensively assess their compliance.[2] Effectively, this requires the developer to do the work twice over, making the assessments disproportionately costly, especially given the scope of the systems that might be considered a covered ADS. **To be clear, the auditor is not conducting the assessment. They are checking that the developer complied with the law—something for which there are already three enforcement entities in the bill.**

While recent amendments deleted the express third-party audit requirement for deployers, deployers still must assume the responsibilities of developers upon making or facilitating consequential decisions that directly impact more than 6,000 people in any given 3-year period in certain circumstances. In other words, in those cases, the third-party audit requirements would still apply to them. In many cases, this force small businesses if not smaller public entities to contract with costly third-party auditors in order to use ADS. (*See* Proposed Section 22756.2(f).)

Such a third-party auditor requirement imposes such excessive and unnecessary costs on businesses without providing any added consumer protection, particularly as there are very few (and potentially only one) companies that provide the services required under **AB 1018**. In fact, it will have the opposite effect by driving up costs for consumers. With a limited number of auditors available, a legal mandate would create a surge in demand, allowing existing auditors to charge inflated fees without competition.

Even with the five-year delayed implementation for auditing, the 1-year timeframe to conduct evaluations/assessments for existing ADS is logistically impossible, and to have a limited number of auditors conduct audits of every single ADS annually equally so, particularly given the breadth of the definition of ADS and the lack of qualified, let alone trusted, auditors.

Developers are not only fully competent when it comes to completing these assessments ("performance evaluations") but they are also best positioned to do these assessments with the most accuracy. No one knows their systems better and no level of confidentiality requirements will provide them the assurance necessary to hand over the IP necessary to potential competitors if not foreign adversaries to complete the audit of whether they adequately performed their assessment. As noted above, to the extent there is concern that the performance evaluations will not be done correctly, the bill allows for three separate enforcement entities – the Attorney General, Civil Rights Department and Labor Commissioner – and the potential for significant penalties (of up to $25,000 per violation) to be assessed by the courts.

As businesses absorb these new compliance costs, they will be forced to raise prices, ultimately burdening consumers, reducing sales, and hindering economic growth in California. Notably, this requirement exceeds the scope of other U.S. laws and proposals, making California the most expensive jurisdiction for compliance. Given these impacts, we strongly recommend removing the third-party auditor requirement for both developers and deployers

[2] (B) (i) Except pursuant to clause (ii), a developer that contracts with an auditor pursuant to this paragraph shall provide the auditor with any available information that is reasonably necessary for the auditor to comprehensively assess developer compliance.

In the end, both the establishment of specific penalties and state and federal discrimination statutes act as a proper deterrent for bad actors, or incentive for good actors, to take appropriate measures to run thorough assessments to avoid violations of state and federal discrimination laws, given that algorithmic discrimination is still discrimination.

Also, the notion that a third-party auditor could be required in order to comply with the obligations of this bill, but that there that there are no standards that the third-party auditor must meet to provide those services, or liability that they must shoulder for failure to meet them, is confounding at best. Forcing the developers and deployers to use these services but also accept liability for the auditor's failure to meet the requirements of the bill assumes that the deployers and developers have the capability to comply with the bill themselves. Therefore, developers and deployers should be permitted to either conduct the assessment themselves, or they should not be forced to incur the liability of the auditor's negligence. As a matter of public policy, under such circumstances, self-assessments should be allowed.

**Impact assessments and other public policy implications of AB 1018**

There are a host of other concerns identified with **AB 1018**, including in relation to its impact assessments:

- **AB 1018** not only requires impact assessments of the new ADS developed or deployed on or after the effective date of the bill, but it applies to all technologies already in existence. Developers and deployers will have one year to get evaluation/assessments completed which will be impossible.

- **AB 1018** also requires a new evaluation or assessment not only upon initial deployment, but also annually thereafter, regardless of how often they are modified or finely tuned. This discourages regular updating of these tools, making them more vulnerable to cybersecurity risks and less effective.

- **AB 1018** raises questions about the allocation of responsibilities and liabilities between developers and deployers. To be fair, determining where the responsibilities and liabilities of the developer or deployer should begin and end will undoubtedly yield opposing viewpoints. For example, from a deployer's perspective, determining whether there is risk of discrimination, whether such risks were foreseeable, and whether the employer had developed adequate safeguards to address the risks are fraught with subjectivity, technical complexity, and enforcement uncertainty, all of which would expose them to serious potential liability for matters that they might argue are more within the responsibility of the ADS developers. Developers in turn might argue that they should not be held liable if they are acting at the direction of, or on behalf of a deployer, and have a reasonable belief that the deployer's directions are in compliance with the law. Furthermore, they might create a system that later gets substantially amended or deployed in ways they did not envision or intend, and they also may not feel it is their obligation to explain to deployers the deployers' responsibilities under the law.

- **AB 1018's** 10-year record keeping requirement reasonably conflicts with data minimization principles in California and other US jurisdictions. The California Consumer Privacy Act, as amended by voters in Proposition 24 (the California Privacy Rights Act or CPRA) specifies that businesses cannot retain personal information for longer than necessary to fulfill the stated purpose for which it was collected. Ten years is much longer than standard data retention periods and obligates employers to act in conflict with their obligations under CPRA. It is longer than most statutes of limitations for lawsuits as well, raising a question as to the purpose of maintaining the records for that long. This retention requirement unnecessarily creates additional cybersecurity vulnerabilities, which is also a questionable public policy choice in a state that has made a concerted effort to strengthen its cybersecurity posture over the last 12 to 15 years. We propose reducing this record keeping requirement to 1 year.

- **AB 1018's** protections in the bill for confidentiality and trade secrets, including the Public Records Act exemption are appreciated but require additional strengthening. As introduced, developers must share performance evaluations with deployers and provide documentation on outputs. And although trade secrets are protected, government agencies and auditors will have access to proprietary ADS (and auditors, once again, have no standards of care, or potential liability let alone obligation to protect this information). There is great risk of IP leakage if competitors or regulators gain insight into a company's machine learning models or if an auditor uses nonpublic information that they gain access to via these evaluations. Accordingly, the bill needs additional, strict confidentiality of ADS performance evaluations

shared with regulators and the auditor provision must be stricken from the bill, as noted above.

**AB 1018 raises significant concerns around vague and punitive fines, with no opportunity to cure**

We appreciate the absence of a private right of action. As you know, because compliance is not easy to achieve in areas where massive changes in public policy are sought and where the state of law and technology are not only complicated but constantly evolving, a private right of action would have been highly problematic and chilling of innovation. That being said, businesses are still subject to civil enforcement by not only the Attorney General (AG) but also the Civil Rights Department (CRD) and the Labor Commissioner with respect to employment-related decisions. We feel it critical that the law be subject to a single enforcer. While we generally feel enforcement should be limited to a single enforcer, at the very least, civil enforcement should be limited to the Attorney General, particularly given the subjectivity and vagueness involved in many aspects of this bill. Otherwise, businesses can fall subject to different interpretations of the law and be found noncompliant for the same actions in one jurisdiction that would be compliant in another jurisdiction.

We also have concerns about the punitive nature of the fines imposed by **AB 1018** for each violation, and the lack of clarity around what constitutes a single "violation" for these purposes. Currently, penalties include $25,000 per violation, although it is unclear what exactly is considered a single violation beyond violations for each day that an evaluation/assessment is overdue to the AG[3]. In contrast, we note that AB 2930 was limited to $25,000 violations for cases involving algorithmic discrimination only. Compare this, for example, to California's landmark data privacy law, which includes fines of not more than $2,500 or, in the case of an intentional violation, not more than $7,500.

**AB 1018**'s $25,000 fines are available even without evidence of any actual harm to the consumer. Furthermore, the fines would become even more punitive, depending on what is considered a single violation, as opposed to multiple violations. As currently drafted, an argument could be made that a violation constitutes not only a failure to complete an impact assessment altogether but also any single deficiency within that impact assessment. Even then, it is unknown whether the number of violations is based on that single error, or by any single error multiplied by the number of individuals who were *potentially* impacted by the use of a particular type of ADS for which an assessment was required or who received inadequate notice.

We are concerned that as drafted, the liability provisions effectively create strict liability for disparate impact, even if the ADS is designed with fairness safeguards. Consider such a scenario where a health care provider could be fined $25,000 per violation if their tool is found to produce statistically different outcomes for protected classes, even in a situation where they clearly did not have discriminatory intent and in fact took steps to place safeguards. This would have a chilling effect and discourage providers and systems from using tools to enhance efficiencies and improve clinical outcomes, especially for smaller and less resourced clinics and providers.

Lastly, we note that **AB 1018** does not have any right to cure provisions unlike prior bills. We encourage the inclusion of language giving businesses at least 60 days to cure alleged violations before receiving penalties.

**AB 1018 requires preemption language to avoid significant implementation problems and disparate protections depending on the city or county a person lives in.**

Unlike the earlier iteration of AB 331, **AB 1018** does not include any preemption language ensuring that no city or county can adopt, maintain, enforce, or continue in effect any law, regulation, rule, requirement, or standard related to the performance of an impact assessment or governance program, or the equivalent thereof of an impact assessment.

California has 482 municipalities spread across 58 different counties. When a law is a matter of statewide concern it is critical to include preemption. (*See e.g.* Civ. Code Section 1798.180). AI, including issues

[3] See Proposed Sec. 22756.4(c) which states: *Each day a covered ADS is used for which a performance evaluation or impact assessment has not been submitted to the Attorney General pursuant to this section is an additional violation of this section."*

But the bill clearly suggests an action may be brought violations of the entire bill, not just for that particular provision under Proposed Sec. 22756.5:

*(a) Any of the following public entities may bring a civil action against a developer or deployer who violates this chapter: […]*

*(b) A court may award a prevailing plaintiff who brings an action pursuant to subdivision (a) all of the following […]*

*(4) A civil penalty of up to twenty-five thousand dollars ($25,000) per violation."*

around bias and ADS, are decisions that should be made if not at the federal level, at a state one. Imagine if even a quarter of these localities have differing rules for impact assessments. Imagine that the conflicts are so significant that businesses must conduct multiple assessments, in addition to the ones they must conduct pursuant to state laws and even international ones. Worse yet, what if those impact assessments preclude the development or deployment of certain ADS in one city, but not the next? And what if that impacts the quality of, or even access to, services from one city to the next?

Other active legislative and regulatory efforts on related topics similarly open the door for vast confusion and increase the likelihood of conflicting rules and regulations. **AB 1018,** while specifically focused on ADS, is not the only measure on this topic. There are at least two regulatory bodies that are actively working on or that have approved ADS or ADMT (automated decisionmaking tool) regulations already: the Civil Rights Council (CRC) and the California Privacy Protection Agency (CPPA or Privacy Agency).

We are especially concerned about agencies and departments getting ahead of the Legislature and Governor on matters of such statewide importance. The clearest example of this lies with the Privacy Agency. Proposition 24 of 2020 required the CPPA to issue regulations "governing access and opt-out rights related to businesses' use of automated decision-making technology, including profiling and requiring businesses' response to access requirements to include meaningful information about the logic involved in these decisionmaking processes, as well as a description of the likely outcome of the process with respect to the consumer." (Civ. Code Sec. 1798.185.) Last November, the CPPA Board issued a public notice commencing formal rulemaking including regulations on automated decision-making tools. As we have testified numerous times at their Board meetings, the draft regulations go beyond the authority granted by the voters and in fact veer into broader AI regulation in general, which should be addressed by this Legislature and Governor – not that Agency. As of August 8, 2025, the Privacy Agency submitted its still overly broad regulations to the Office of Administrative Law for approval. These could take effect as early as October 1 if approved by August 31, or January 1 if approved between September 1 and November 30.

In addition to all of this, the CRC within the Civil Rights Department (formerly, the Department of Fair Employment and Housing) has also been working on regulating the use of AI and machine learning in connection with employment decision-making. They recently finalized employment regulations regarding "automated decision systems" in their effort to incorporate such technology into existing rules regulating California employment and hiring practices. Those regulations take effect October 1, 2025.

With all these moving parts, it is difficult to foresee how such laws and regulations will layer on top of one another and whether there will be conflicting public policy around the use of such tools and technologies. While we are confident that the Legislature will review legislation for such conflicts, that does nothing to address the situation of agencies and departments doing their own rules—even ones that are arguably not supported in statutory authority. Understandably, our members are alarmed by the likelihood of conflict and confusion at the conclusion of these efforts that are being run in parallel to each other, without sufficient coordination or consideration of the other efforts underway. If **AB 1018** is passed, we hope it will include some protection against agencies and departments stepping on the Legislature and Governor's authority.

That said, because this bill in print fails to focus on high-risk ADS that are making final decisions that have legal impact, without human involvement, judgment, oversight, intervention, or review, contains numerous unworkable provision, and would devastate businesses of every size, across every industry that does business in this state, we must unfortunately **OPPOSE AB 1018 (Bauer-Kahan) as a COST DRIVER**.

Sincerely,

Ronak Daylami
Policy Advocate
on behalf of

American Property Casualty Insurance Association, Laura Curtis
American Staffing Association, Toby Malara
Associated General Contractors, California, Matt Easley
Association of California Life and Health Insurance Companies, Matt Powers

Association of National Advertisers, Christopher Oswald
California Chamber of Commerce, Ronak Daylami
California Fuels + Convenience Alliance, Jack Yanos
California Staffing Professionals, Jay Ramos
Civil Justice Association of California, Kyla Powell
College Board, Ben Williams
Computer & Communications Industry Association (CCIA), Aodhan Downey
Consumer Data Industry Association (CDIA), Kris Quigley
CTIA -The Wireless Association, Jake Lestock
Family Business Association of California, Bob Rivinius
Internet Works, Peter Chandler
National Association of Mutual Insurance Companies, Christian Rataj
Personal Insurance Federation of California, Allison Adey
Public Risk Innovation, Solutions and Management (PRISM), Michael Pott
Security Industry Association, Jake Parker
Society for Human Resource Management (SHRM), Emily Dickens
Software Information Industry Association, Abigail Wilson
TechCA, Courtney Jensen
TechNet, Robert Boykin

cc: Legislative Affairs, Office of the Governor
Estefani Avila, Office of Assemblymember Bauer-Kahan
Consultant, Senate Appropriations Committee
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RD:ldl