Business Software Alliance

March 10, 2026

The Honorable Pamela Beidle
Senate Finance Committee
3 East Miller Senate Office Building
Annapolis, Maryland 21401

Re: Significant Concerns with Liability Regime in SB 827, Consumer Protection and Product Liability – Chatbots

Dear Chair Beidle,

The Business Software Alliance appreciates the opportunity to share insights from the enterprise software sector on artificial intelligence (AI) and SB 827. BSA is the leading advocate for the global software industry.[1] BSA members are at the forefront of developing cutting edge services, and their products are used by businesses of all sizes across every sector of the economy.

AI is changing the way we live and work, and it has real-world benefits. Realizing the potential of AI requires trusting that the technology is developed and deployed responsibly. Crafting AI legislation that promotes responsible uses of AI and protects against misuse is one of the most important technology issues today, and one we already see governments beginning to tackle, including in the European Union and in Colorado. The most effective way to address this issue is through a single, national law. However, just as states took the lead in adopting consumer privacy laws, we recognize states are again leading with AI legislation.

Although we appreciate the intent of SB 827 and share the goal of helping to ensure that AI is developed and used safely and securely, we have significant concerns with SB 827's broad scope and unworkable liability regime.

As you consider how to regulate AI through SB 827, we want to underscore the importance of ensuring any AI legislation creates thoughtful, clear guardrails for companies and protects consumers. To achieve this, we strongly recommend AI legislation:

- Hold companies accountable for risks that are within their control;
- Focus on the uses of AI that have the greatest impact on consumers;

[1] BSA's members include: BSA's members include: Adobe, Alteryx, Amadeus, Asana, Atlassian, Autodesk, Avalara, Bentley Systems, Box, Cisco, Cohere, Cohesity, Dassault Systemes, Databricks, Datadog, Docusign, Dropbox, Elastic, EY, Graphisoft, HubSpot, IBM, Kyndryl, MathWorks, Microsoft, Notion, Okta, OpenAI, Oracle, PagerDuty, Palo Alto Networks, PTC, Rubrik, Salesforce, SAP, ServiceNow, Shopify Inc., Siemens Industry Software Inc., Trend Micro, TriNet, Veeam, Workday, Zendesk, and Zoom Communications Inc.

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- Reflect the different roles and responsibilities of different actors along the AI value chain;
- Ensure strong enforcement; and
- Promote interoperability and incorporate stakeholder feedback.

Our comments apply these recommendations to SB 827. We would welcome the opportunity to further discuss these issues with you or a member of your staff.

I. AI Legislation Should Hold Companies Accountable for Risks Within Their Control

SB 827 would impose strict liability on a broad range of AI systems. That approach creates significant concerns and would have unintended consequences on responsible AI adoption. We strongly recommend policymakers remove the strict liability provisions in SB 827 and focus on alternative frameworks that are workable in practice.

When crafting legislation, several mechanisms are available to policymakers to ensure companies comply with their legal obligations. Not all mechanisms, however, are best suited for AI policy. The most straightforward approach to ensuring that companies develop and use AI responsibly is to place clear obligations on them, based on their role in the AI value chain, and to hold them liable when they fail to comply. This approach creates clarity for businesses in understanding their responsibilities and provides robust protections for consumers.

At the state level, we've seen interest in ensuring companies develop and deploy AI responsibly by assigning them a duty of care. The concept of a "duty of care" is deeply rooted in tort law, which governs civil wrongs and personal injury. Courts frequently impose a duty of care on individuals or organizations that have the power to prevent foreseeable harm to others. For example, drivers must operate their cars safely to avoid injuring pedestrians; a doctor must act as a reasonably competent physician would under similar circumstances; a company must ensure that its products are safe for ordinary use. These duties are not static rules — they evolve with context, technology, and social expectations. The standard is flexible, focusing on whether an actor took reasonable steps to prevent foreseeable harm given their role, expertise, and resources. That flexibility can promote responsible development and the use of fast-changing technologies like AI, especially when paired with a specific list of actions that companies can take to meet the standard.

Policymakers focused on AI issues have occasionally looked to other liability systems, such as products liability or strict liability. This is problematic, as those systems assign liability based on *outcomes* rather than *conduct*.

Under products liability, for instance, a manufacturer can be held liable for harm even if it took all reasonable precautions. That approach is a poor fit for AI systems, where outcomes depend heavily on how an AI tool is deployed. For example, a developer may create an AI system that is well-suited to specific uses, but a deployer might then create significant risks if they use it in other settings. Each business should be held responsible for what it can control — and not for outcomes that result from others' actions.

In contrast, a straightforward approach to assigning responsibilities to different companies and holding each company accountable for their obligations emphasizes responsible behavior — encouraging both developers and deployers to identify and address risks, conduct robust testing, and act promptly when problems emerge.

II. AI Legislation Should Incorporate a Risk-Based Approach

Beyond its concerning liability regime, we are also concerned that SB 827 would broadly regulate nearly all generative AI systems, regardless of the deployment context. SB 827's broad scope is particularly concerning since it would create onerous and unworkable obligations, including requiring affirmative consent to use input data for AI training and monthly "safety testing"—even for low-risk AI systems that meet the broad definition of "chatbot." We strongly recommend SB 827 be amended to incorporate a risk-based approach.

AI legislation should focus on the uses of AI that have the most impact on consumers' lives and avoid broadly regulating a particular type of technology, since risks will vary greatly across different uses of AI systems. Many everyday uses of AI present few risks to individuals and create significant benefits, like helping organize digital files, auto-populate common forms for later human review, improve a company's ability to forecast supply chain issues, and detect, prevent, and respond to cybersecurity threats. Requiring monthly safety testing for a broad range of low-risk AI systems—and consent to use data to train and improve them—creates a range of onerous new obligations with few benefits to consumers.

We suggest a different approach. One way to ensure AI legislation is risk-based is to focus on the AI systems that are used to decide whether consumers are granted or denied important benefits and services, like housing, healthcare, and employment opportunities, companies should be accountable for developing and deploying those systems responsibly. These systems have the potential to affect important life opportunities — and are a key area for policymakers to address.

III. AI Legislation Should Distinguish Between Different Entities in the AI Ecosystem

SB 827 also creates a concerning set of overlapping definitions of "developer" and "operator." The bill fails to distinguish between AI developers, who create AI systems, and AI deployers, who use AI systems, which will create confusion and practical concerns when companies seek to implement their obligations under the legislation. We strongly recommend that SB 827 be amended to reflect the distinct roles and responsibilities of different actors in the AI value chain.

The AI supply chain is evolving, and AI legislation should not create one-size-fits-all requirements when companies have very different roles.

All companies that develop and use AI systems have responsibilities to manage AI risks, but those obligations must reflect the role of each type of company, since each will know different information about an AI system and will be able to take different actions to identify and mitigate risks. Legislation must reflect these differences to create obligations that work in practice to safeguard consumers.

Distinguishing between different entities based on their role in the AI ecosystem can ensure companies are better able to fulfill their obligations and better protect consumers. For example, a developer would be able to describe the features of data used to train an AI system, but it generally would not have insight into how the AI system is used after another company has purchased and implemented the AI system. Instead, the deployer using the system is generally best positioned to understand how the AI system is being used, including whether that use aligns with its intended use, any human oversight, any complaints received, and real-world factors affecting the system's performance.

IV. AI Legislation Should Ensure Strong Enforcement

SB 827 also raises significant concerns by creating a private right of action. We strongly recommend against this approach. Instead, AI legislation should grant exclusive enforcement authority to the Attorney General.

Strong enforcement is needed in any AI legislation. Granting the Attorney General exclusive enforcement authority helps that office establish clear guidance and a consistent approach to enforcing the bill's requirements. Exclusive governmental enforcement by a single regulator ensures companies know how to implement the legislation's obligations — and avoids the conflicting interpretations and confusion likely to arise if courts reach different conclusions about how companies are to apply a bill's obligations.

V. AI Legislation Should Promote Interoperability and Incorporate Stakeholder Feedback

Maryland is home to global companies, and your legislation will be most effective when it is interoperable with other approaches to AI regulation. Global companies can better serve their customers when they build strong compliance programs that work across markets. We also encourage you to continue working with stakeholders as you develop your legislation, to understand how your AI law will work in practice, across a range of different industries and uses.

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Thank you for allowing us to provide the enterprise software sector's perspective on SB 827. We welcome the opportunity to further engage with you or a member of your staff on these important issues.

Sincerely,

Meghan Pensyl
Director, Policy

CC:
The Honorable Antonio Hayes, Vice Chair
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