



August 25, 2026

The Honorable Jerry McNerney
Senator, State of California
1021 O St, Suite 6640
Sacramento CA 95814

Re: SB 947 (McNerney) Employment: automated decision systems. – OPPOSED

Dear Senator McNerney:

The Business Software Alliance appreciates the opportunity to share insights from the enterprise software sector on SB 947. 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 trust that the technology is developed and deployed responsibly. BSA supports strong, risk-based AI governance that protects consumers while providing companies with clear and workable obligations.

We appreciate the recent amendments to SB 947, which address several concerns with earlier versions of the bill, including removing the private right of action. However, we remain concerned regarding the bill's:

- Overlap with existing regulations; and
- Broad scope.

I. SB 947 Risks Creating Multiple, Overlapping Frameworks for the Use of Automated Systems in Employment

SB 947 would create a new statutory framework governing the use of automated systems in employment decisions, even though California has already adopted two sets of regulations specifically addressing automated technologies in the workplace—and the Legislature is simultaneously considering another comprehensive automated decision systems bill that expressly covers employment decisions.

¹ 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., TrendAI, TriNet, Veeam, Workday, Zendesk, and Zoom Communications Inc.

- CPPA Regulations. First, the California Privacy Protection agency (CPPA) has already adopted detailed regulations governing automated decisionmaking technology (ADMT). Importantly, those regulations define ADMT as “any technology that processes personal information and uses computation to replace human decisionmaking or substantially replace human decisionmaking.” The regulations further define what it means to “substantially replace human decisionmaking”: a business uses the technology’s output to make a decision without human involvement. To constitute “human involvement,” the reviewer must know how to interpret and use the technology’s output, review and analyze both the output and other information relevant to making or changing the decision, and have authority to make or change the decision based on that analysis.

The CPPA regulations therefore already establish a detailed standard for distinguishing automated decisionmaking from decisionmaking involving meaningful human review. The regulations apply when a business uses ADMT to make a “significant decision,” which expressly includes decisions concerning hiring, allocation or assignment of work and compensation, promotion, demotion, suspension, and termination. Businesses using ADMT to make these decisions must comply with the regulations beginning January 1, 2027.

The CPPA regulations also establish specific protections for individuals subject to these decisions. A business must provide a pre-use notice explaining the specific purpose for which ADMT will be used and, among other information, how the ADMT’s output will be used in the decisionmaking process. The regulations generally give an individual the ability to opt out of the use of ADMT to make a significant decision. Alternatively, a business may rely on a human-appeal exception, but only if a human reviewer analyzes the ADMT output and other relevant information, considers information submitted by the individual, knows how to interpret and use the ADMT output, and has authority to change the decision.

- CRD Regulations. Second, the California Civil Rights Council has already adopted regulations, administered by the California Civil Rights Department (CRD), governing the use of automated-decision systems (ADSs) under the state’s employment discrimination laws. Those regulations took effect on October 1, 2025, and define an ADS as a computational process that “makes a decision or facilitates human decision making regarding an employment benefit.” An “employment benefit” is defined broadly to include hiring, employment, promotion, selection for training programs leading to employment or promotion, freedom from discharge, compensation, a discrimination-free workplace, and any other favorable term, condition, or privilege of employment.

The CRD regulations make clear that it is unlawful for an employer or other covered entity to use an ADS or other selection criteria that discriminates against an applicant or employee on a basis protected by the Fair Employment and Housing Act. They also require employers to preserve automated-decision system data and other relevant employment records for four years and expressly identify anti-bias testing and similar proactive efforts to prevent unlawful discrimination as potentially relevant evidence in evaluating a discrimination claim or defense.

- AB 1018. Third, the Legislature is now considering AB 1018, which would establish another broad statutory framework for covered ADSs and expressly includes employment-related decisions within the consequential decisions it regulates. AB 1018 defines employment-related decisions broadly to include decisions affecting wages, benefits, compensation, work schedules, performance evaluations, hiring, discipline, promotion, termination, job responsibilities, assignment of work, training opportunities, productivity requirements, and other terms or conditions of employment.

For those decisions, AB 1018 would impose additional obligations on developers and deployers of covered ADSs. Before finalizing a consequential decision, a deployer generally would be required to disclose that a covered ADS will be used and provide information regarding the system's use. When a covered ADS facilitates a consequential decision resulting in an adverse outcome, AB 1018 would require additional disclosures regarding, among other things, the information assessed by the ADS, its outputs, the role the ADS played in the decision, and whether human judgment was involved. AB 1018 would also provide an opportunity to correct inaccurate personal information and appeal an adverse decision. The bill expressly provides that CCPA-covered businesses remain subject to the CCPA's ADMT regulations in addition to AB 1018's requirements.

Against this existing and proposed regulatory landscape, SB 947 would establish yet another framework governing automated employment decisions. The bill prohibits sole reliance on an ADS for disciplinary or termination decisions and imposes additional requirements when an employer "primarily relies upon" an ADS, including human corroboration and post-use notice requirements. An employee also may request a description of the employee's data primarily used by the ADS in the disciplinary or termination decision.

The distinction between an automated output that replaces or substantially replaces human decision-making, as in the CCPA regulations, and an automated output that a human substantially relies on in making a decision, as in SB 947, is not an inadvertent gap in the CCPA regulations. The agency specifically considered a broader definition during its

extensive rulemaking process. Earlier versions of the regulations defined ADMT to include technology that “substantially facilitate[d] human decisionmaking,” which the agency defined as using the technology’s output as a “key factor” in a human decision.

The CPPA ultimately chose a different approach. In its final rulemaking record, the agency explained that it revised the definition to focus on a higher-risk use of ADMT—use without human involvement—and that the change balanced protections for consumers with simpler implementation for businesses. The agency also specifically considered comments arguing that limiting the definition based on human involvement would create loopholes for employers that rely heavily on automated systems but retain nominal human review. The CPPA declined to broaden the definition in its final rules.²

The final regulations also make clear that “human involvement” requires more than a rubber stamp. A reviewer must understand how to interpret and use the technology’s output, analyze other information relevant to the decision, and possess authority to make or change the decision. The CPPA therefore made a substantive and recent policy judgment about the level of automation that warrants additional requirements set forth in its regulations.

SB 947 would effectively revisit that judgment before the state has had an opportunity to evaluate it. Indeed, its “primarily relies upon” standard resembles the type of reliance-based framework considered during the CPPA rulemaking, but without defining how an employer should determine when reliance on an automated output becomes “primary.” Additionally, AI systems falling outside of the scope of the CPPA regulations do not exist in a regulatory vacuum. The CRD regulations expressly apply to ADSs that merely “facilitate” human decisionmaking concerning employment benefits and prohibit discriminatory employment practices involving those systems. The CPPA’s risk-assessment rules separately reach certain automated workplace processing beyond the CPPA’s regulations on ADMTs. And, if enacted, AB 1018 would regulate covered ADSs used to make or facilitate employment-related decisions, including discipline and termination, and would establish significant disclosure, correction, appeal, and recordkeeping requirements.

A single ADS-assisted termination therefore could implicate the CRD regulations, the CPPA’s ADMT and risk-assessment regulations, AB 1018, and SB 947. Yet these frameworks use different definitions of covered technology, different triggers for coverage, different standards regarding human involvement, and different substantive obligations.

² See California Privacy Protection agency, Final Statement of Reasons, Appendix A, *available at* https://cppa.ca.gov/regulations/pdf/ccpa_updates_cyber_risk_admt_fsor_appen_a.pdf. The agency stated that it revised the ADMT definition to focus on human involvement and higher-risk uses, balancing consumer protections with simpler implementation, and specifically rejected calls to broaden the definition in response to concerns about automated workplace decisionmaking.

The timing makes this proliferation especially concerning. The CRD regulations have been effective only since October 2025. The CPPA regulations became effective January 1, 2026, and businesses using ADMT to make significant decisions must comply with the CPPA's regulations beginning January 1, 2027. SB 947 would become operative only six months later, on July 1, 2027. California would therefore impose a new statutory standard specifically intended to extend beyond the CPPA's carefully drawn scope before policymakers have had a meaningful opportunity to evaluate how the CPPA framework operates in practice.

Governor Newsom identified this concern when he vetoed SB 7 last year. In discussing ADS-assisted disciplinary and termination decisions, the Governor noted that those situations would be partially covered by the CPPA regulations and concluded that California should "assess the efficacy of these regulations" before enacting additional legislation in this area.³

The case for coordination is even stronger today. California has an operative civil-rights framework that expressly addresses ADS-assisted employment decisions; it has adopted a detailed privacy framework governing ADMT and other automated workplace processing; and the Legislature is simultaneously considering AB 1018, which would impose another broad set of requirements on automated employment decisions. The myriad regulatory regimes underscore the need to evaluate and harmonize California's existing frameworks before creating another definition, trigger for obligations, and human-review standard for employment decisions.

II. The Scope of SB 947 Remains Overly Broad

We also continue to recommend narrowing SB 947's definition of an ADS.

The bill defines an ADS as any computational process derived from machine learning, statistical modeling, data analytics, or artificial intelligence that issues a simplified output, including a score, classification, or recommendation, that is used to "assist or replace" human discretionary decisionmaking and "materially impacts" natural persons.

While we recognize the bill's definition mirrors existing California law, it is overly broad and risks capturing a wide range of conventional analytics and software tools that provide information to a human decisionmaker. The term "materially impacts" is also undefined, creating additional uncertainty regarding the threshold for coverage.

³ See Governor Gavin Newsom, Veto Message for SB 7 (Oct. 13, 2025), *available at* <https://www.gov.ca.gov/wp-content/uploads/2025/10/SB-7-Veto.pdf>.

Although the recent amendments more narrowly focus several substantive requirements on disciplinary and termination decisions, other provisions of the bill apply to any ADS meeting this broad definition. AI legislation should focus on uses of technology that create significant risks to individuals rather than broadly regulating technologies based on the techniques they use.

We therefore recommend further tailoring the definition to ensure that the bill is focused on systems used in genuinely consequential employment decisions and establishing a clear threshold for when a system materially affects such a decision.

For these reasons, BSA is opposed to SB 947.

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Thank you for allowing us to provide the enterprise software sector's perspective on SB 947. We welcome the opportunity to further engage with you or a member of your staff on these important issues.

Sincerely,

Meghan Pensyl
Director, Policy