COST DRIVER

DATE: June 15, 2026

TO: Members, Assembly Privacy and Consumer Protection Committee

SUBJECT: SB 947 (McNerney): Employment Automated Decision Systems
OPPOSE/ COST DRIVER - AS AMENDED JUNE 4, 2026

The California Chamber of Commerce respectfully **OPPOSES SB 947 (McNerney)**. The bill broadly targets businesses of all sizes, across every industry, and regulates even low-risk applications of automated decision systems (ADS). Significantly, we are disappointed that the bill undoes many amendments taken in SB 7, its predecessor bill from 2025 that was vetoed, marking a step backwards in progress on this issue. **SB 947** will drive up costs for consumers and employers because it would impose significant compliance burdens and any misstep would lead to costly litigation for even the smallest of employers. While we appreciate concerns over employees being unfairly disciplined or terminated solely based on automated tools, **SB 947** is not tailored to those scenarios and does not consider the benefits of ADS technology. Unfortunately, we believe **SB 947** will have an undesired chilling effect on technology and make it that much harder to develop the very tools that can help combat bias in decision making.

<u>SB 947 Walks Back Amendments Taken to SB 7 Last Year Regarding the Scope of the Bill</u>

In several key respects, **SB 947** is broader than the bill that was vetoed last year, SB 7. Most significant are the provisions governing when an employer may or may not use ADS related to a discipline, termination, or deactivation[1] decision. For example, **SB 947** introduces a new and troubling provision this year in Section 1522(c) of the bill. If an employer cannot corroborate an ADS output, then the disciplinary, termination, or deactivation decision cannot be carried out. Consider that there are many scenarios in which

[1] "Deactivation" is clearly included in the bill in reference to independent contractors, which we strongly believe should not be covered in **SB 947**. That is explained further below.

ADS is used for safety purposes. For example, some tools can detect when an employee is not utilizing proper PPE or is operating machinery unsafely and reports that information internally. If the same employee is repeatedly flagged for unsafe behavior, under **SB 947** an employer would never be allowed to discipline that employee for their actions unless they can independently corroborate the violations via human supervision, which may be impossible or highly impractical. It is unclear what benefits restriction would pose that justify undermining workplace safety.

Similarly, many employers rely on ADS for productivity tracking or performance monitoring in environments where supervisors cannot directly observe every worker at all times. In those circumstances, **SB 947** would effectively bar the use of these tools for personnel purposes because they could never be relied upon unless every single output is independently corroborated. In practice, this would undermine the very technologies that help employers manage operations, maintain safety, and ensure accountability.

Other amendments that were walked back include adding back a private right of action (discussed below), adding back a complete ban on predictive behavioral analysis regardless of the purpose (discussed below), adding back in a vague provision related to compensation (discussed below) and changing significant language regarding when the bill's human review and post-use notice requirements are triggered.[2]

SB 947 Post-Use Notice Requirements Are Overly Broad and Require Disclosure of Confidential Information

The requirements set forth in the post-use notice call for the employer to produce the corroborating evidence relied on for the decision. This requirement risks undermining the integrity of workplace investigations, which may involve confidential communications, communications with other workers, HR or legal counsel involvement, or sensitive personnel information. Compelling disclosure of this material could erode longstanding protections for privileged and confidential information and discourage thorough investigations.

SB 947's Right to Access Raises Concerns

SB 947 requires employers to provide workers with access to data and related information when ADS is primarily relied on for a disciplinary, termination, or deactivation decision. While providing a worker with an explanation for a decision is reasonable, **SB 947** goes much further by requiring disclosure of raw "specific worker input data" and "specific worker output produced" by proprietary systems.

We are particularly concerned about the requirement to provide corroborating information used to make the decision, for the same reasons discussed above: it can compromise investigative integrity and risk disclosure of confidential or privileged materials. Additionally, **SB 947** requires employers to provide the exact name of the ADS vendor and product and a copy of any completed impact assessments. It is unclear why a worker needs to know the precise model and developer, and requiring disclosure of impact assessments raises serious confidentiality concerns. These documents may contain sensitive or proprietary information about system design, risk mitigation strategies, and internal processes that could be misused if widely disclosed.

From a policy perspective, this approach is counterproductive. Companies should be encouraged to rigorously assess their systems for risks and bias. If those assessments must be turned over in every disciplinary or termination context, employers may become less willing to undertake robust assessments or to document them candidly—undermining the very goal of improving fairness and accountability in ADS.

SB 947's Ban on Certain ADS Uses Will Have Unintended Consequences

SB 947 undoes an amendment made to SB 7 in the Assembly Appropriations Committee by reinstating a complete ban of the use of ADS to predict behaviors in Section 1522(a)(3). Our concerns from last year remain the same, which is that this would ban legitimate and beneficial uses of ADS. For example, financial

[2] It took until the second policy committee for proponents to agree to change this language back to what they had agreed to last year in SB 7.

institutions sometimes use ADS for predictive purposes for assessing risk of fraud or other unlawful activities. Those tools would also catch any improper conduct from employees. We should be bolstering tools to detect fraudulent activity, not banning them. Proposed Section 1522(a)(5) regarding compensation is also vague, and it is unclear which practices it seeks to prohibit. We want to ensure the provision does not inadvertently bar legitimate practices such as rewarding top performers based on productivity metrics. To the extent the concern is paying workers less based on ADS outputs unrelated to job performance, California law already provides robust protections against discriminatory compensation practices, including FEHA and the Equal Pay Act.

The ban on using customer ratings as the "primary" input data to make an employment decision does not always make sense. Customer feedback can be an important indicator of performance, especially in roles where supervisors are not always present. An employee who consistently receives serious customer complaints is likely to face discipline, while one who consistently receives strong positive reviews may be considered for raises or promotions. "Primarily" relying on such data does not necessarily mean there is no human review; managers still evaluate context and exercise judgment. **SB 947** fails to address the veto message from SB 7 on this topic: "Moreover, this measure proposes overly broad restrictions on how employers may use ADS tools. For example, prohibiting an employer from using customer ratings as the primary input data for an ADS takes away a potentially valuable tool for rewarding high-performing employees. To the extent that customer reviews are unfairly or inappropriately used to make decisions about a worker, legislation should address those specific scenarios rather than ban this practice altogether."

<u>Independent Contractors Should Not Be Included in The Definition of "Worker"</u>

The bill's definition of "worker" includes independent contractors, which should be removed from the bill. Contractors are often limited-term workers who are performing a specific job for a company. By definition they are very different from an employee.[3] Their contract will dictate the terms of that job and any job-specific requirements. This trend of treating them the same as employees in every new bill is at odds with prior legislation and court decisions. Further, their inclusion in such a broad bill compounds the bill's administrative burden on businesses and state and local governments.

Specific to this bill, the inclusion of contractors is especially problematic in several respects. For example, it is not uncommon in certain B2B interactions (which is a contractor relationship) or in other industries for an ADS to flag inappropriate behavior, potential fraud, or other issues and to then have the company need to immediately terminate the relationship or terminate while there is an investigation that occurs. *That would be prohibited under **SB 947**, even if that termination is necessary for employee or consumer safety, to stop a seller from selling counterfeit goods or defrauding customers, and more.*

<u>SB 947 Creates a Private Right of Action and Creates a Vague Venue Standard</u>

Any misstep in interpreting or implementing **SB 947**'s broad requirements would subject a business of any size to a private right of action, including penalties. Again, this provision was removed last year due to concerns from legislators, but was placed back into **SB 947**.

Further, Section 1526.1(d) describes where a civil action under the bill may be brought. It includes a provision that states the civil action may be filed "wherein the person resides or transacts business." That subdivision appears to be broader than existing California Code of Civil Procedure Section 395 regarding proper venue. We want to ensure that this provision does not broaden the scope of where civil actions can be filed beyond existing venue rules so as not to encourage forum shopping. The proponents of **SB 947** have already agreed to take out the "transacts business" language in two other bills this year, AB 1898 and AB 1883.

[3] This concern is amplified in this bill by the fact that the bill is clearly targeting app-based platforms with its "deactivation" terminology. Proposition 22 established a voter approved framework that governs drivers' working relationship with the platform. By including independent contractors in the entirety of SB 947 and specifically creating rules around deactivation, **SB 947** is at odds with the voters' intent.

SB 947 Should Preempt Local Ordinances

It is common for localities to create their own ordinances in the labor and employment space. Unfortunately, these varying requirements across different cities and counties are often a compliance nightmare. Employees or independent contractors who perform work in different geographic regions are subject to different rules and companies with multiple locations have to create different systems and processes for different locations. If certain restrictions on technologies or notice requirements are implemented, there should be a statewide rule.

SB 947 Increases Litigation Exposure

SB 947 will significantly increase litigation exposure and civil penalty liability for businesses by expanding the circumstances under which employers may be subject to enforcement actions. By creating new compliance obligations and record-keeping requirements, **SB 947** effectively establishes additional bases for technical violations that could trigger costly lawsuits, civil penalties of $500 per violation, and enforcement proceedings. Even minor or inadvertent administrative errors could expose employers to substantial statutory penalties, attorney's fees, and prolonged litigation. Given the already high cost of defending employment claims in California, this expanded liability framework would further incentivize litigation and create substantial financial risk for employers. This in turn would divert resources away from business operations, employee wages, and job creation.

For these, and other reasons, we respectfully oppose **SB 947.**

Sincerely,

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