

AMENDED IN SENATE AUGUST 21, 2024

AMENDED IN ASSEMBLY APRIL 18, 2024

AMENDED IN ASSEMBLY APRIL 1, 2024

AMENDED IN ASSEMBLY MARCH 21, 2024

CALIFORNIA LEGISLATURE—2023–24 REGULAR SESSION

ASSEMBLY BILL

No. 2885

Introduced by Assembly Member Bauer-Kahan
(Principal coauthor: Senator Umberg)

February 15, 2024

An act to amend Section 22675 of the Business and Professions Code, to amend Section 75002 of the Education Code, *and* to amend Sections 11546.45.5, 11547.5, and 53083.1 of the Government Code, ~~and to amend Sections 42041, 42051.1, 42051.3, and 42060 of the Public Resources Code~~, relating to artificial intelligence.

LEGISLATIVE COUNSEL'S DIGEST

AB 2885, as amended, Bauer-Kahan. Artificial intelligence.

Existing law establishes the Government Operations Agency, which is governed by the Secretary of Government Operations. Existing law requires the Secretary of Government Operations to develop a coordinated plan to, among other things, evaluate the impact of the proliferation of deepfakes, defined to mean audio or visual content that has been generated or manipulated by artificial intelligence that would falsely appear to be authentic or truthful and that features depictions of people appearing to say or do things they did not say or do without their consent, on state government, California-based businesses, and residents of the state.

Existing law establishes within the Government Operations Agency the Department of Technology, which is supervised by the Director of Technology. Existing law requires the Department of Technology to conduct, in coordination with other interagency bodies as it deems appropriate, a comprehensive inventory of all high-risk automated decision systems that have been proposed for use, development, or procurement by, or are being used, developed, or procured by, any state agency. Existing law defines an “automated decision system” as a computational process derived from machine learning, statistical modeling, data analytics, or artificial intelligence that issues simplified output, including a score, classification, or recommendation, that is used to assist or replace human discretionary decisionmaking and materially impacts natural persons.

Existing law requires each local agency, as defined, to provide specified information to the public before approving an economic development subsidy, as defined, within its jurisdiction, and to, among other things, hold hearings and issue annual reports on those subsidies, as provided. Existing law requires those reports to contain, among other things, information about any net job loss or replacement due to the use of automation, artificial intelligence, or other technologies, if known.

Existing law establishes the California Online Community College, under the administration of the Board of Governors of the California Community Colleges, for purposes of creating an organized system of accessible, flexible, and high-quality online content, courses, and programs focused on providing industry-valued credentials compatible with the vocational and educational needs of Californians who are not currently accessing higher education. Existing law requires the California Online Community College to develop a Research and Development Unit to, among other things, focus on using technology, data science, behavioral science, machine learning, and artificial intelligence to build out student supports, as provided.

~~Existing law, the Plastic Pollution Prevention and Packaging Producer Responsibility Act administered by the Department of Resources Recycling and Recovery, among other things, requires manufacturers of certain single-use packaging and plastic food service ware to ensure that those products achieve specified recycling rates, as provided. Existing law requires the department to prepare one or more needs assessments designed to determine the necessary steps and investment needed for covered material, that includes an evaluation of integrating innovative and advanced technologies throughout a materials recovery~~

facility that utilize artificial intelligence to improve data collection in order to identify, categorize, and track the disposition of covered materials throughout the recycling process.

Existing law requires a social media company, as defined, to submit a terms of service report on a semiannual basis to the Attorney General, as prescribed. Existing law requires the terms of service report to include, for each social medial platform owned or operated by the company, specified information that is disaggregated into categories, including how content was flagged or actioned by company employees or contractors, artificial intelligence software, community moderators, civil society partners, and users.

This bill would define the term "artificial intelligence" for the purposes of the above-described provisions 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.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 22675 of the Business and Professions
- 2 Code is amended to read:
- 3 22675. For purposes of this chapter, the following definitions
- 4 apply:
- 5 (a) "Actioned" means a social media company, due to a
- 6 suspected or confirmed violation of the terms of service, has taken
- 7 some form of action, including, but not limited to, removal,
- 8 demonetization, deprioritization, or banning, against the relevant
- 9 user or relevant item of content.
- 10 (b) "Artificial intelligence" has the same definition as in Section
- 11 11546.45.5 of the Government Code.
- 12 (c) (1) "Content" means statements or comments made by users
- 13 and media that are created, posted, shared, or otherwise interacted
- 14 with by users on an internet-based service or application.
- 15 (2) "Content" does not include media put on a service or
- 16 application exclusively for the purpose of cloud storage,
- 17 transmitting files, or file collaboration.
- 18 (d) "Public or semipublic internet-based service or application"
- 19 excludes a service or application used to facilitate communication

1 within a business or enterprise among employees or affiliates of
2 the business or enterprise, provided that access to the service or
3 application is restricted to employees or affiliates of the business
4 or enterprise using the service or application.

5 (e) “Social media company” means a person or entity that owns
6 or operates one or more social media platforms.

7 (f) “Social media platform” means a public or semipublic
8 internet-based service or application that has users in California
9 and that meets both of the following criteria:

10 (1) (A) A substantial function of the service or application is
11 to connect users in order to allow users to interact socially with
12 each other within the service or application.

13 (B) A service or application that provides email or direct
14 messaging services shall not be considered to meet this criterion
15 on the basis of that function alone.

16 (2) The service or application allows users to do all of the
17 following:

18 (A) Construct a public or semipublic profile for purposes of
19 signing into and using the service or application.

20 (B) Populate a list of other users with whom an individual shares
21 a social connection within the system.

22 (C) Create or post content viewable by other users, including,
23 but not limited to, on message boards, in chat rooms, or through
24 a landing page or main feed that presents the user with content
25 generated by other users.

26 (g) “Terms of service” means a policy or set of policies adopted
27 by a social media company that specifies, at least, the user behavior
28 and activities that are permitted on the internet-based service owned
29 or operated by the social media company, and the user behavior
30 and activities that may subject the user or an item of content to
31 being actioned.

32 SEC. 2. Section 75002 of the Education Code is amended to
33 read:

34 75002. For purposes of this part, the following terms have the
35 following meanings:

36 (a) “Artificial intelligence” has the same definition as in Section
37 11546.45.5 of the Government Code.

38 (b) “Board of governors” means the Board of Governors of the
39 California Community Colleges.

1 (c) “Chancellor’s office” means the Office of the Chancellor of
2 the California Community Colleges.

3 (d) “College” means the California Online Community College
4 established under this part.

5 (e) “Competency-based education” means systems of instruction,
6 assessment, grading, and academic reporting that are based on
7 students demonstrating that they have learned the knowledge and
8 skills they are expected to learn as they progress through their
9 education.

10 (f) “Guided Pathways Program” means a program that includes
11 the activities and practices established pursuant to Section 88921.

12 (g) “Industry” means trade associations or those firms that
13 produce similar products or provide similar services using
14 somewhat similar business processes.

15 (h) “Stackable credential” means a part of a sequence of
16 credentials that can be accumulated over time and move an
17 individual along a career pathway or up a career ladder.

18 SEC. 3. Section 11546.45.5 of the Government Code is
19 amended to read:

20 11546.45.5. (a) For purposes of this section:

21 (1) “Artificial intelligence” means an engineered or
22 machine-based system that varies in its level of autonomy and that
23 can, for explicit or implicit objectives, infer from the input it
24 receives how to generate outputs that can influence physical or
25 virtual environments.

26 (2) “Automated decision system” means a computational process
27 derived from machine learning, statistical modeling, data analytics,
28 or artificial intelligence that issues simplified output, including a
29 score, classification, or recommendation, that is used to assist or
30 replace human discretionary decisionmaking and materially impacts
31 natural persons. “Automated decision system” does not include a
32 spam email filter, firewall, antivirus software, identity and access
33 management tools, calculator, database, dataset, or other
34 compilation of data.

35 (3) “Board” means any administrative or regulatory board,
36 commission, committee, council, association, or authority
37 consisting of more than one person whose members are appointed
38 by the Governor, the Legislature, or both.

39 (4) “Department” means the Department of Technology.

1 (5) “High-risk automated decision system” means an automated
2 decision system that is used to assist or replace human discretionary
3 decisions that have a legal or similarly significant effect, including
4 decisions that materially impact access to, or approval for, housing
5 or accommodations, education, employment, credit, health care,
6 and criminal justice.

7 (6) (A) “State agency” means any of the following:

8 (i) Any state office, department, division, or bureau.

9 (ii) The California State University.

10 (iii) The Board of Parole Hearings.

11 (iv) Any board or other professional licensing and regulatory
12 body under the administration or oversight of the Department of
13 Consumer Affairs.

14 (B) “State agency” does not include the University of California,
15 the Legislature, the judicial branch, or any board, except as
16 provided in subparagraph (A).

17 (b) On or before September 1, 2024, the Department of
18 Technology shall conduct, in coordination with other interagency
19 bodies as it deems appropriate, a comprehensive inventory of all
20 high-risk automated decision systems that have been proposed for
21 use, development, or procurement by, or are being used, developed,
22 or procured by, any state agency.

23 (c) The comprehensive inventory described by subdivision (b)
24 shall include a description of all of the following:

25 (1) (A) Any decision the automated decision system can make
26 or support and the intended benefits of that use.

27 (B) The alternatives to any use described in subparagraph (A).

28 (2) The results of any research assessing the efficacy and relative
29 benefits of the uses and alternatives of the automated decision
30 system described by paragraph (1).

31 (3) The categories of data and personal information the
32 automated decision system uses to make its decisions.

33 (4) (A) The measures in place, if any, to mitigate the risks,
34 including cybersecurity risk and the risk of inaccurate, unfairly
35 discriminatory, or biased decisions, of the automated decision
36 system.

37 (B) Measures described by this paragraph may include, but are
38 not limited to, any of the following:

39 (i) Performance metrics to gauge the accuracy of the system.

40 (ii) Cybersecurity controls.

- 1 (iii) Privacy controls.
- 2 (iv) Risk assessments or audits for potential risks.
- 3 (v) Measures or processes in place to contest an automated
- 4 decision.

5 (d) (1) On or before January 1, 2025, and annually thereafter,
6 the department shall submit a report of the comprehensive
7 inventory described in subdivision (b) to the Assembly Committee
8 on Privacy and Consumer Protection and the Senate Committee
9 on Governmental Organization.

10 (2) The requirement for submitting a report imposed under
11 paragraph (1) is inoperative on January 1, 2029, pursuant to Section
12 10231.5.

13 (3) A report to be submitted pursuant to paragraph (1) shall be
14 submitted in compliance with Section 9795.

15 SEC. 4. Section 11547.5 of the Government Code is amended
16 to read:

17 11547.5. (a) For the purpose of this section:

18 (1) “Artificial intelligence” has the same definition as in Section
19 11546.45.5 of the Government Code.

20 (2) “Deepfake” means audio or visual content that has been
21 generated or manipulated by artificial intelligence which would
22 falsely appear to be authentic or truthful and which features
23 depictions of people appearing to say or do things they did not say
24 or do without their consent.

25 (3) “Digital content forgery” means the use of technologies,
26 including artificial intelligence and machine learning techniques,
27 to fabricate or manipulate audio, visual, or text content with the
28 intent to mislead.

29 (4) “Digital content provenance” means the verifiable
30 chronology of the original piece of digital content, such as an
31 image, video, audio recording, or electronic document.

32 (5) “Secretary” means the Secretary of Government Operations.

33 (b) For purposes of informing the coordinated plan, as described
34 in subdivision (c), and upon appropriation by the Legislature, the
35 Secretary of Government Operations shall evaluate all of the
36 following:

37 (1) The impact of the proliferation of deepfakes on state
38 government, California-based businesses, and residents of the
39 state.

1 (2) The risks, including privacy risks, associated with the
2 deployment of digital content forgery technologies and deepfakes
3 on state and local government, California-based businesses, and
4 residents of the state.

5 (3) Potential privacy impacts of technologies allowing public
6 verification of digital content provenance.

7 (4) The impact of digital content forgery technologies and
8 deepfakes on civic engagement, including voters.

9 (5) The legal implications associated with the use of digital
10 content forgery technologies, deepfakes, and technologies allowing
11 public verification of digital content provenance.

12 (6) The best practices for preventing digital content forgery and
13 deepfake technology to benefit the state, California-based
14 businesses, and California residents, including exploring whether
15 and how the adoption of a digital content provenance standard
16 could assist with reducing the proliferation of digital content
17 forgeries and deepfakes.

18 (c) The secretary shall develop a coordinated plan to accomplish
19 all of the following:

20 (1) Investigate the feasibility of, and obstacles to, developing
21 standards and technologies for state departments for determining
22 digital content provenance.

23 (2) Increase the ability of internet companies, journalists,
24 watchdog organizations, other relevant entities, and members of
25 the public to meaningfully scrutinize and identify digital content
26 forgeries and relay trust and information about digital content
27 provenance to content consumers.

28 (3) Develop or identify mechanisms for content creators to
29 cryptographically certify authenticity of original media and
30 nondeceptive manipulations.

31 (4) Develop or identify mechanisms for content creators to
32 enable the public to validate the authenticity of original media and
33 nondeceptive manipulations to establish digital content provenance
34 without materially compromising personal privacy or civil liberties.

35 (d) On or before October 1, 2024, the secretary shall report to
36 the Legislature on the potential uses and risks of deepfake
37 technology to the state government and California-based
38 businesses.

39 (1) The secretary's report shall include the coordinated plan
40 required by subdivision (c), including recommendations for

1 modifications to the definitions of digital content forgery and
2 deepfakes.

3 (2) A report submitted pursuant to this subdivision shall be
4 submitted in compliance with Section 9795.

5 (e) This section shall remain in effect only until January 1, 2025,
6 and as of that date is repealed, unless a later enacted statute, that
7 is enacted before January 1, 2025, deletes or extends that date.

8 SEC. 5. Section 53083.1 of the Government Code is amended
9 to read:

10 53083.1. (a) On and after January 1, 2020, each local agency
11 shall, before approving any economic development subsidy for a
12 warehouse distribution center within its jurisdiction, and instead
13 of complying with Section 53083, provide all of the following
14 information in written form available to the public, and through
15 its internet website, if applicable:

16 (1) The name and address of all corporations, including members
17 of a commonly controlled group or members of a combined
18 reporting group of which the corporation is a member, or any other
19 business entities, except for sole proprietorships, that are the
20 beneficiary of the economic development subsidy.

21 (2) The name and address of all warehouse distribution centers
22 that are the beneficiary of the economic development subsidy.

23 (3) The start and end dates and schedule, if applicable, for the
24 economic development subsidy.

25 (4) A description of the economic development subsidy,
26 including the estimated total amount of the expenditure of public
27 funds by, or of revenue lost to, the local agency as a result of the
28 economic development subsidy.

29 (5) A statement of the public purposes for the economic
30 development subsidy.

31 (6) The projected tax revenue to the local agency as a result of
32 the economic development subsidy.

33 (7) The estimated number of jobs created by the economic
34 development subsidy, including wage scale, broken down by
35 full-time, part-time, and temporary positions.

36 (8) The estimated number of workers employed through
37 temporary agencies.

38 (9) Whether any benefit package is offered, including health
39 benefits, fringe benefits, and defined benefit pensions.

1 (10) Both of the following regarding each warehouse distribution
2 center that is the beneficiary of the economic development subsidy:

3 (A) A description of the outreach, training, and hiring plans,
4 including plans to hire disadvantaged workers.

5 (B) A description and total value of any state or federal subsidies
6 in the process of being applied for, or received by, the warehouse
7 distribution center.

8 (11) A description of any accountability measures, including,
9 but not limited to, clawbacks of subsidies, provided in the contract
10 if the warehouse distribution center does not meet the goal outlined
11 in the contract for subsidies.

12 (b) Before granting an economic development subsidy to a
13 warehouse distribution center, each local agency shall provide
14 public notice and conduct a hearing regarding the economic
15 development subsidy. A public hearing and notice under this
16 subdivision is not required if a hearing and notice regarding the
17 economic development subsidy is otherwise required by law.

18 (c) The information required to be provided in subdivision (a)
19 shall remain available and easily accessible to the public under
20 existing state and federal law and shall be posted on the local
21 agency's internet website, if applicable, for the entire term of the
22 economic development subsidy.

23 (d) The local agency, after the action granting an economic
24 development subsidy for a warehouse distribution center on or
25 after January 1, 2020, shall issue an annual report during the term
26 of the economic development subsidy for each economic
27 development subsidy. The local agency shall make the report
28 available to the public and through its internet website, if
29 applicable. The report shall contain the information described in
30 subdivision (a). The report shall also contain the following
31 information, if applicable:

32 (1) The net tax revenue accruing to the local agency as a result
33 of the economic development subsidy.

34 (2) The net number of jobs created by the economic development
35 subsidy, including wage scales, broken down by full-time,
36 part-time, and temporary positions.

37 (3) The number of workers employed through temporary
38 agencies.

39 (4) Whether any benefit package is offered, including health
40 benefits, fringe benefits, and defined benefit pensions.

1 (5) The number of disadvantaged workers employed, if known.

2 (6) Any net job loss or replacement due to the use of automation,
3 artificial intelligence, or other technologies, if known.

4 (7) For each warehouse distribution center that is the beneficiary
5 of the economic development subsidy, the retention rate of
6 employees broken down by full-time and part-time positions, and
7 whether the turnover rate of employees exceeds 20 percent.

8 (e) The local agency, after an action granting an economic
9 development subsidy for a warehouse distribution center on or
10 after January 1, 2020, shall hold an annual public hearing during
11 the term of the economic development subsidy to consider any
12 written or oral comments on the information contained in the report
13 prepared pursuant to subdivision (d).

14 (f) Each public hearing required by this section shall be
15 consolidated with a local agency's regularly scheduled hearing.

16 (g) (1) The local agency shall submit the reports required in
17 subdivisions (a) and (d) to the Governor's Office of Business and
18 Economic Development.

19 (2) The Governor's Office of Business and Economic
20 Development shall make each report submitted under paragraph
21 (1) available to the public, and available through its internet
22 website.

23 (h) A local agency shall not sign a nondisclosure agreement
24 regarding a warehouse distribution center within its jurisdiction
25 as part of negotiations or in the contract for any economic
26 development subsidy.

27 (i) A warehouse distribution center shall provide a local agency
28 any information necessary to comply with this section.

29 (j) As used in this section:

30 (1) "Artificial intelligence" has the same definition as in Section
31 11546.45.5 of the Government Code.

32 (2) "Disadvantaged worker" means an employee of the
33 warehouse distribution center who satisfies any of the following:

34 (A) Was unemployed for the 6 months immediately preceding
35 employment with the warehouse distribution center. In the case
36 of an employee that completed a program of study at a college,
37 university, or other postsecondary educational institution, received
38 a baccalaureate, postgraduate, or professional degree, and was
39 unemployed for the 6 months immediately preceding employment
40 with the warehouse distribution center, that employee must have

1 completed that program of study at least 12 months before the
2 individual's commencement of employment with the warehouse
3 distribution center.

4 (B) Is a veteran who separated from service in the Armed Forces
5 of the United States within the 12 months preceding
6 commencement of employment with the warehouse distribution
7 center.

8 (C) Was a recipient of the credit allowed under Section 32 of
9 the Internal Revenue Code, relating to earned income, as applicable
10 for federal purposes, for the previous taxable year.

11 (D) Is an ex-offender previously convicted of a felony.

12 (E) Is a recipient of either CalWORKs, in accordance with
13 Article 2 (commencing with Section 11250) of Chapter 2 of Part
14 3 of Division 9 of the Welfare and Institutions Code, or general
15 assistance, in accordance with Section 17000.5 of the Welfare and
16 Institutions Code.

17 (3) "Economic development subsidy" means any expenditure
18 of public funds or loss of revenue to a local agency in the amount
19 of one hundred thousand dollars (\$100,000) or more, for the
20 purpose of stimulating economic development within the
21 jurisdiction of a local agency, including, but not limited to, bonds,
22 grants, loans, loan guarantees, fee waivers, land price subsidies,
23 matching funds, tax abatements, tax exemptions, and tax credits.
24 "Economic development subsidy" shall not include expenditures
25 of public funds by, or loss of revenue to, the local agency for the
26 purpose of providing housing affordable to persons and families
27 of low or moderate income, as defined in Section 50093 of the
28 Health and Safety Code.

29 (4) "Local agency" means a city, including a charter city, county,
30 or city and county.

31 (5) "Members of a combined reporting group" has the same
32 meaning as that term is defined in paragraph (3) of subdivision (b)
33 of Section 25106.5 of Title 18 of the California Code of
34 Regulations, as that section read on January 1, 2019.

35 (6) "Members of a commonly controlled group" has the same
36 meaning as that term is defined in Section 25105 of the Revenue
37 and Taxation Code.

38 (7) "Warehouse distribution center" means an establishment as
39 defined by any of the following North American Industry
40 Classification System (NAICS) Codes:

- 1 (A) 493110 for General Warehousing and Storage.
- 2 (B) 423 for Merchant Wholesalers, Durable Goods.
- 3 (C) 424 for Merchant Wholesalers, Nondurable Goods.

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**All matter omitted in this version of the bill
appears in the bill as amended in the
Assembly, April 18, 2024. (JR11)**