California State Assembly

PRIVACY AND CONSUMER PROTECTION

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ED CHAU
CHAIR

AGENDA

Tuesday, June 25, 2019
1:30 p.m. -- State Capitol, Room 126

BILLS HEARD IN SIGN IN ORDER

1.	SB 208	Hueso	Consumer Call Protection Act of 2019.
2.	SB 342	Hertzberg	Misleading advertising: ticket websites.
3.	SB 648	Chang	Unmanned aircraft systems: accident notification.

Consent Calendar

4.	SB 180	Chang	Gene therapy kits: advisory notice and labels.
5.	SB 348	Chang**	Department of Technology: Department of Motor Vehicles: artificial intelligence: strategic plans.
6.	SJR 6	Chang	Artificial intelligence.

**with amends

Date of Hearing: June 25, 2019

ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION
Ed Chau, Chair
SB 208 (Hueso) – As Amended April 23, 2019

SENATE VOTE: 32-5

SUBJECT: Consumer Call Protection Act of 2019

SUMMARY: This bill would establish the Consumer Call Protection Act of 2019 and require telecommunications service providers to implement certain protocols to verify and authenticate caller identification (ID) for calls carried over an internet protocol (IP) network, and would additionally authorize the Attorney General of California (AG) and the California Public Utilities Commission (CPUC) to work together to enforce the federal Truth in Caller ID Act (TCIA). Specifically, **this bill would**:

1) Require each telecommunications service provider, by July 1, 2020, to implement Secure Telephony Identity Revisited (STIR) and Secure Handling of Asserted information using toKENs (SHAKEN) protocols or similar standards to verify and authenticate caller ID for calls carried over an IP network.

2) Authorize the CPUC and the AG to take all appropriate actions to enforce the TCIA and any regulation promulgated thereunder, and further authorize to the CPUC to work with the AG in the enforcement of the TCIA.

3) Clarify that this bill does not (1) require a telecommunications service provider to employ call blocking, or (2) limit any right otherwise permitted by law.

4) Provide various findings and declarations, including:

    - It is the policy of the state to encourage the fair treatment of telecommunications consumers and provide a process for the equitable resolution of service problems.

    - Consumers have experienced a rise in deceptive calls initiated by automatic dialing-announcing devices, commonly termed robocalls, aimed at defrauding telecommunications customers, and that the rise of these deceptive practices has negatively impacted Californians' telecommunications services and additional action is needed to identify those engaging in deceptive robocalls and protect Californians, especially vulnerable populations, from imposters using telecommunications to defraud consumers.

EXISTING LAW:

1) Pursuant to the federal Truth in Caller ID Act (TCIA):

    - Makes it unlawful for any person within the United States, in connection with any telecommunications service or IP-enabled voice service, to cause any caller ID service to knowingly transmit misleading or inaccurate caller ID information with the intent to defraud, cause harm, or wrongfully obtain anything of value, unless otherwise exempted.

- Subjects persons in violation of the TCIA to penalties of up to $10,000 for each violation, or three times that amount for each day of a continuing violation up to a total of $1,000,000 for any single act or failure to act.

- Authorizes the chief legal officer of a state to bring a civil action on behalf of the residents of that state for violations of the TCIA and to impose the applicable civil penalties.

- Authorizes the attorney general of a state, or an official or agency designated by a state, to bring a civil action for violations of the TCIA. (47 U.S.C. Sec. 227 et seq.)

2) Provides, pursuant to state law, that the AG is the chief law officer of the State with the duty of uniformly and adequately enforcing the laws of the State. (Cal. Const. art. V sec. 13.)

3) Grants the CPUC the authority to supervise and regulate every public utility in the State and to do all things which are necessary and convenient in the exercise of such power and jurisdiction. (Pub. Util. Code Sec. 701.)

4) Prohibits the CPUC from exercising regulatory jurisdiction or control over Voice over Internet Protocol (VOiP) and IP enabled services except as required or expressly delegated by federal law or expressly directed to do so by statute. (Pub. Util. Code Sec. 710.)

5) Provides that the CPUC must require providers of mobile telephony service to report activities associated with fraud to the CPUC. (Pub. Util. Code Sec. 2892.5.)

FISCAL EFFECT: The Senate Appropriations Committee found, pursuant to Senate Rule 28.8, that any additional state costs are not significant, and do not and will not require the appropriation of additional state funds, and that the bill will cause no significant reduction in revenues.

COMMENTS:

1) **Purpose of the bill**: This bill seeks to curb the illegal practice of caller ID spoofing by requiring telecommunications providers to adopt specific systems for preventing caller ID spoofing by July 1, 2020. This bill is author-sponsored.

2) **Author's statement**: According to the author, "[r]obocalls are the #1 consumer complaint in the nation. Despite attempts by federal agencies and Congress to prohibit illegal robocalls, the volume of illegal robocalls has increased. In 2017, Americans received over 30 billion robocalls, and experts estimate that between 30 and 40 percent of these calls were scams. While the Federal Communications Commission (FCC) has urged telecommunications providers to adopt a system for preventing illegal robocalls, the FCC has not taken action to set a date by which providers must implement these systems. SB 208 is needed to establish a date by which telecommunications providers must implement caller ID authentication systems to ensure that California can effectively enforce consumer protection laws and take steps to limit these fraudulent calls."

3) **Federal law prohibits "spoofing"**: Caller ID spoofing is the act of altering or manipulating caller ID information by providing information about the call origin that does not reflect the actual source of the call. Caller ID services were developed in the 1980s to allow consumers

to identify telephone numbers or names associated with incoming calls before deciding whether to answer the call. As mobile technology has advanced, so has caller ID technology, and now nearly all mobile phones provide this information. Along with these advancements, however, came increasingly sophisticated methods for manipulating this information. Caller ID spoofing became accessible to consumers beyond its origins in law enforcement and intelligence communities with the advent of third-party businesses providing this service, including several web-based and mobile apps that now provide user-friendly caller ID spoofing services.

Spoofing has several legitimate purposes, including maintaining the privacy of vulnerable callers and providing a call-back number that directs to a business rather than its affiliated call center. However, spoofing can also be used maliciously to defraud, mislead, harass, or otherwise harm call recipients. In 2009, Congress passed the Truth in Caller ID Act, which prohibited the use of call spoofing with the intent to defraud, cause harm, or wrongly obtain anything of value from a call recipient. The Truth in Caller ID Act, however, did not prohibit "non-harmful" uses of call spoofing, including spoofing with the intent to deceive or mislead. In the past year alone, the FCC has received over 52,000 consumer complaints about caller ID spoofing. Fraudulent calls are frequently used as instruments for scams to extract money or personal information from recipients under false pretenses.

4) **Bill requires adoption of specific industry standards by telecommunications service providers, consistent with the demands of the FCC**: SHAKEN/STIR stands for "Signature-based Handling of Asserted Information Using toKENs" (SHAKEN) and the "Secure Telephone Identity Revisited" (STIR) standards and is an industry-developed framework of interconnected standards. This standard ensures that calls traveling through interconnected phone networks can have their caller ID "signed" as legitimate by originating carriers and validated by other carriers before reaching consumers. Importantly, SHAKEN/STIR provides the foundation for the development of a real-time authentication of a telephone number which can prevent illegal spoofing and robocalling by identifying any number that cannot be sufficiently attested.

   On July 14, 2017, the FCC issued a Notice of Inquiry seeking public comment on the FCC's role in promoting SHAKEN/STIR protocols and operational procedures designed to authenticate telephone calls and mitigate spoofing and illegal robocalling within the industry. Subsequently, in November of 2018, FCC Chairman Ajit Pai demanded that the phone industry adopt a robust call authentication system to combat illegal caller ID spoofing and launch that system no later than the next year. Chairman Pai additionally sent letters to voice providers that had not yet established concrete plans to protect their customers using the SHAKEN/ STIR standards to do so without delay.

   Despite these actions on the federal level, at the time of this writing, no mandatory timeline has been established for implementing SHAKEN/STIR. Instead, the FCC has established a voluntary deadline of the end of 2019. The FCC has stated that it remains optimistic that through their voluntary efforts, major telecommunications service providers will be able to deploy SHAKEN/STIR by the end of the year, but should they be unable to, the FCC will be in position to adopt an order and final rules to mandate action should voluntary adoption be delayed.

Consistent with the requests the FCC has made of industry, this bill establishes a timeline in state law for the adoption of SHAKEN/STIR by requiring each telecommunications provider to implement SHAKEN/STIR or similar standards to verify and authentic caller ID for calls by July 1, 2020. CTIA, the trade association for the wireless communications industry, and their coalition partners, argue in opposition to this bill that the wireless industry is working with the FCC, wireless customers, and other stakeholders to curb unwanted robocalls with blocking features and tools that can identify likely spam, and is also working to implement SHAKEN/STIR. Despite these ongoing efforts, CTIA opposes this bill arguing that:

> SB 208 would create a patchwork of state laws and enforcement on a matter that is a quintessential federal issue. Wireless carriers should be permitted to continue to focus on the important task at hand – implementing STIR/SHAKEN. Neither the California Public Utilities Commission nor the Attorney General is equipped to enforce laws dealing with robocalls. SB 208 will not hasten the process of implementing appropriate and necessary authentication technology. It will only divert attention and focus from that task and add a layer of CPUC regulation that is often obtuse and whose processes are lengthy and, certainly in this case, unnecessary.

Similarly, Frontier Communications argues in opposition that this bill is not necessary because "independent of Legislation, Frontier has acted voluntarily to identify, develop and implement programs that inform our customers about how to protect themselves from unwanted scam calls." Frontier also notes that it is also committed to implementing SHAKEN/STIR for internet protocol calls by the end of 2019.

Countering these opposition arguments, and in support of the bill, Media Alliance writes:

> Opposition to Senate Bill 208 from industry (CTIA, AT&T, Verizon, T-Mobile, et al) seems quixotic, given the statement by the three largest wireless companies to the FCC that they fully intend to be compliant with the proposed requirements in Senate Bill 208 on or before the 2020 deadline. We attribute it to two industry concerns, neither of which, in our view, has significant merit.
>
> Firstly, an industry preference for a vague threat of future regulatory action from an FCC which has been notorious for the embrace of a deregulatory approach towards telecommunications and the Internet. California rightfully rejected the idea that the state should not implement consumer protections when the FCC fails to do so on several occasions last year, most notably with Senate Bill 822 to re-establish network neutrality and the California Consumer Privacy Act (CCPA). We suggest the same approach is appropriate here, as the FCC has failed to take decisive action while the robocall problem reached critical mass.
>
> Secondly, industry opposition focuses on jurisdictional issues for the California Public Utilities Commission. Since the CPUC's jurisdiction over wireless services is established by statute, we assume the objection revolves around Voice-Over-Internet telephone services. While a larger discussion of the authority issue presented by Senate Bill 1161 and its possible continuation via this year's AB 1366 will have to wait until that bill comes before this committee, we want to point to the basic logical fallacy which manifests specifically with regard to robocalls.

> For consumers, it makes absolutely no difference whatsoever if the scam robocall they receive on their home or mobile telephone traveled to them via a copper-based landline, a fiber-optic line or wirelessly through the air nor whether it is classified as a utility or an information service by the government. The impact on the recipient of the call is identical. [...] We will continue to advocate to the legislature (for 7 years and counting) that a phone call is always a phone call and that consumers do not benefit from regulatory category-shuffling to avoid oversight.

5) **Bill specifies enforcement authority in the CPUC and AG**: Existing federal law, the TCIA, provides that whenever the AG of a state or an official or agency designated by a state has reason to believe that any person has engaged or is engaging in a pattern or practice of telephone calls or other transmissions to residents in violation of the TCIA, the state may bring a civil action on behalf of its residents. (*See* 47 U.S.C. Sec. 227(g).)

State law additionally grants the CPUC with the authority to supervise and regulate every public utility in the state and to do all things which are necessary and convenient in the exercise of such power and jurisdiction. (Pub. Util. Code Sec. 701.) The CPUC, however, is prohibited from exercising regulatory jurisdiction or control over Voice over Internet Protocol and IP enabled services except as required or expressly delegated by federal law or expressly directed to do so by statute. (Pub. Util. Code Sec. 710.)

This bill would provide that the AG and the CPUC may, as granted by the TCIA, take all appropriate actions to enforce the TCIA, and would authorize the CPUC to work with the AG for the purposes of enforcing the TCIA. The California Cable and Telecommunications Association (CCTA) notes two primary concerns with SB 208 and opposes the bill unless amended to: 1) provide protection for communication service providers for liabilities arising from the implementation of SHAKEN/STIR; and 2) remove the CPUC enforcement provisions from the measure. CCTA writes:

> SHAKEN/STIR or a similar protocol will enable blocking illegal calls, but adequate testing and safeguards are necessary to ensure that the technology does not block automated calls that are beneficial, such as, public safety messages, medical prescription reminders, or school notices. Thus, if SB 208 moves forward with a mandate that providers implement it is essential that the bill provide corresponding protection from any liability that arises as a result of that implementation.
>
> CCTA also is concerned that SB 208 gives the CPUC broad authority for enforcement activities clearly within the jurisdiction of the State Attorney General. Federal law already grants this authority to the AG, who is actively exercising this authority and working with a bipartisan group of attorneys general from 40 states and the communications industry to develop effective enforcement strategies against these bad actors who mostly operate overseas and across state lines. The CPUC has no track record to warrant this grant of authority, and, by admission of CPUC President Michael Picker in testimony before the Senate Energy, Utilities and Communications Committee, is ill-equipped to keep pace with rapidly changing technologies, let alone overseas operators.

With regard to these concerns, staff notes immunities from liability are generally disfavored as a matter of public policy because by their very nature they prevent an injured party from seeking recovery for damages caused by the wrongful acts of another. They also dis-

incentivize careful behavior by parties who, because of their immunity, cannot be held liable for their wrongful acts. On this same point, the Consumer Attorneys of California (CAOC) argue that a law is only as good as its enforcement and that limiting enforcement of this bill to the CPUC and AG is a major limitation for victims. CAOC writes that they would support this bill if amended to include a private right of action. Arguably, limiting enforcement to public entities strikes a middle ground between these opposing arguments while still avoiding the public policy concerns associated with immunity from liability.

Regarding the second concern raised by CCTA, staff notes that federal law (the TCIA) clearly authorizes the state to designate a state agency or official to enforce the provisions of the TCIA by statute, which this bill would do. Additionally, this designation is consistent with the authority already exercised by the CPUC in its obligation to supervise and regulate every public utility in the state and do all things necessary and convenient in the exercise of such power and jurisdiction. (Pub. Util. Code Sec. 701.)

6) **Related legislation**: AB 1132 (Gabriel) would prohibits an individual from using false government information in a caller ID system with the intent to mislead, cause harm, deceive, or defraud the recipient of a call, and imposes a civil penalty of up to $10,000 for each violation. This bill is scheduled to be heard in the Senate Judiciary Committee on July 2, 2019.

7) **Prior legislation**: SB 1161 (Padilla, Ch. 733, Stats. 2012) restricted the CPUC from exercising regulatory jurisdiction over VOiP and IP enabled services except as required or expressly delegated by federal law or expressly directed to do so by statute.

8) **Double-referral**: This bill was double-referred to the Communications and Conveyance Committee where it was heard on June 19, 2019 and passed on a 10-2 vote.

REGISTERED SUPPORT / OPPOSITION:

Support

Area Agency on Aging Advisory Council
California Alliance for Retired Americans
Calsmallbiz
California Association of Competitive Telecommunications Companies (Caltel) (if amended)
Consumer Attorneys of California (if amended)
Consumer Federation of California
Greenlining Institute
Imperial Irrigation District
Media Alliance
Public Advocates Office
The Utility Reform Network

Opposition

AT&T Inc.
California Cable & Telecommunications Association (unless amended)
California Chamber of Commerce
Consolidated Communications Services Co.

CTIA-The Wireless Association
Frontier Communications Corporation
Sprint Corp.
TechNet
T-Mobile USA, Inc.
Tracfone Wireless, Inc.
Verizon Communications, Inc.

Analysis Prepared by: Nichole Rapier / P. & C.P. / (916) 319-2200

Date of Hearing: June 25, 2019

ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION
Ed Chau, Chair
SB 342 (Hertzberg) – As Amended May 17, 2019

SENATE VOTE: 38-0

SUBJECT: Misleading advertising: ticket websites

SUMMARY: This bill would provide a private right of action against a ticket website operator whose website's uniform resource locator (URL) contains a name or trademark of certain entities or events, if the operator has not obtained consent to use the name or trademark. Specifically, **this bill would**:

1) Prohibit a ticket website operator from using, in a false, deceptive, or misleading manner, a subdomain or domain name in that ticket website's URL that contains a name or trademark (or substantially similar name or trademark) of a specific event, performance or exhibition, as specified, or a professional or collegiate sports team or league, theme or amusement park, or venue where concerts, sports, or other live entertainment events are held.

2) Provide that these prohibitions do not apply if the ticket website operator acts with consent of an authorized agent of the team, league, park, venue, or event.

3) Authorize a party that is directly harmed by a violation of the above provisions to bring an action against a violator seeking actual, consequential, and punitive damages.

4) Require that reasonable attorney fees be awarded to a party if the action is resolved in that party's favor.

5) Define various terms for the purposes of the above provisions, including "ticket website," "ticket website operator," and "URL."

EXISTING LAW:

1) Federal law, the Lanham Act, governs the registration and use of trademarks, including by prohibiting infringement of registered trademarks and providing specified defenses to accusations of trademark infringement. (15 U.S.C. Sec. 1051 et seq.)

2) Establishes, as a matter of state law, the Unfair Competition Law (UCL), which provides a statutory cause of action for any unlawful, unfair, or fraudulent business act or practice and unfair, deceptive, untrue, or misleading advertising, including over the internet, as specified. (Bus. & Prof. Code Sec. 17200 et seq.)

3) Establishes the False Advertising Law (FAL), which proscribes making or disseminating any statement that is known or should be known to be untrue or misleading with intent to directly or indirectly dispose of real or personal property. (Bus. & Prof. Code Sec. 17500 et seq.) Pursuant to the FAL, provides that it is unlawful for a person, with bad faith intent, to register, traffic in, or use a domain name that is confusingly similar to the personal name of another person. (Bus. & Prof. Code Sec. 17525.)

4) Provides remedies for individuals who have suffered damages as a result of fraud or deceit, including situations involving fraudulent misrepresentations. (Civil Code Secs. 1709-1710; 1572-1573.)

5) Establishes the Consumer Legal Remedies Act, which prohibits unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer. (Civ. Code Sec. 1770(a).)

FISCAL EFFECT: None. This bill has been keyed nonfiscal by the Legislative Counsel.

COMMENTS:

1) **Purpose of the bill**: This bill seeks to protect consumers by creating a private right of action for individuals who have been directly harmed by online ticket sellers that use artist, event, or venue names or trademarks in false, deceptive, or misleading ways. This bill is author-sponsored.

2) **Author's statement**: According to the author:

> Some dishonest marketing companies are manipulating internet searches using the venue or artist name to "bait" consumers into believing they are purchasing the lowest-priced tickets directly from a venue. Instead, they are paying an advertiser a fee that is sometimes more than three times the price of the ticket. The consumer has over paid, and neither the venue nor the artist receives the benefit of the mark-up. Excessively high prices with no connection to increased attendance may actually reduce attendance and reduce pricing capacity for talent. [...]
>
> SB 342 would prohibit, as a violation of the Unfair Competition Law, a ticket website operator from using, the name of a specific team, league, or venue where live entertainment events are held, in the URL of a ticket website. This bill would also prohibit a ticket website from using a trademark that it does not own. Under SB 342, the prohibitions would not apply to a person who acts on behalf of, and with the consent of, the venue, event, artist, or sports team for which the ticket website is created.

3) **Past efforts to protect consumers from certain practices by secondary ticket sellers**: Efforts to curb anti-competitive, misleading, fraudulent, or otherwise anti-consumer practices in the marketplace for event tickets have been of interest to the federal government, state governments, and private industry for some time. Just this month, Federal Trade Commissioner (FTC) Rebecca Kelly Slaughter noted the federal government's long-held interest in curbing such practices in her opening remarks at an online event tickets workshop:

> In the United States, our love of live entertainment burns brightly, despite the digital age, or perhaps because of it. A research firm estimates that consumers will spend about $10 billion this year for online tickets to music concerts, sporting events, live theater, and other exciting, in the-moment events. At the FTC, we understand the thrill of the chance to see a favorite artist or to be in the stands for that important rivalry game. But for many consumers the experience can be tainted by disappointment and frustration: not getting a ticket despite going online the very moment sales open; sticker shock at the total price

after fees are added; finding out that you paid more than you had to; or getting your heart crushed if you never get a promised ticket.

Let me share a personal anecdote to set the stage. Recently, [...] I wanted to go see a comedian's set downtown. I looked up the tickets, coordinated times with my husband and others, identified a babysitter, made sure we could budget for the expense, and went through the online booking process. When I got to the final purchase screen, I did a double take—the all-in price was almost a third more than the listed price for the tickets I had selected. At that point, I was committed, so I grudgingly clicked purchase. Then, two weeks before the event, with no explanation, my tickets were unceremoniously canceled. [...]

Some of the problems experienced by consumers in connection with the online event ticket market reflect traditional consumer protection concerns, while others raise issues unique to online tickets. For all of these problems, improving and protecting consumer confidence in the online event ticket marketplace is not only about laws and law enforcement but also about the industry's commitment to ensure that ordinary consumers have reasonable access to tickets, as well as clear, complete, and truthful information about what they are buying.

The FTC's interest in promoting a competitively functional and consumer-friendly marketplace for event tickets is shared by many: by Congress, which in 2016 enacted the BOTS Act to restrict the use of bots in buying up tickets in the marketplace; by numerous state legislatures that have put in place, or are considering, new or revised legislation to address the online event tickets market in some fashion; by state attorneys general who have taken action against unlawful practices in the tickets marketplace; by a diverse array of industry members— who have given staff a lot to think about in the weeks leading up to today's workshop; and, finally, by consumers themselves. (Rebecca Kelly Slaughter, *That's the Ticket: An FTC Workshop about Online Ticket Sales,* FTC (Jun. 11, 2019) <https://www.ftc.gov/system/files/documents/public_statements/1527238/slaughter_-_prepared_remarks_ftc_tickets_workshop_6-11-19.pdf> [as of Jun. 15, 2019].)

Leading the way in seeking to protect consumers purchasing tickets for live events, California specifically prohibited the use of "bots" (*i.e.,* software able to execute the purchasing process without human involvement) to purchase tickets to entertainment events two years prior to the federal government in 2014. (AB 1832 (Calderon, Ch. 158, Stats. 2014).) AB 1832 was intended to prevent ticket resellers (commonly known as "scalpers") from simply purchasing many, if not all, of the tickets to an event before event attendees had the opportunity, thus forcing the event attendees to pay ticket resellers amounts significantly above the ticket's face value. One year earlier, AB 329 made it a misdemeanor to intentionally use or sell software to circumvent a security measure, access control system or other control or measure on a ticket seller's website that is used to ensure an equitable ticket buying process. As early as 2006, the California Legislature was considering bills that attempted to curb ticket scalping via use of automated computer purchases of event tickets. (*See e.g.*, SB 1602 (Battin, 2006).)

The author indicates that some private industry has followed as well. According to the author, "[o]ne prominent search engine had banned the use of venue, artist and team names in the URL for advertisements. While the ban helped to protect consumers against exploitive

advertisers, it was an elective policy by one search engine and does not constitute a uniform standard." In support of this bill Sports Fans Coalition of California writes:

> Deceptive URLs are so prevalent they amount to about two-thirds of traffic for companies that engage in this practice. According to our findings, sites that use deceptive URLs rely on search results for more than 80% of their traffic. [...]
>
> Sports Fans Coalition believed that the use of deceptive white label URLs should be banned. Fans should not be misled into thinking that they are dealing with a licensed or official vendor, or forced to spend significantly more money through inflated fees. Although the FTC has tried to curb the practice with a consent decree in 2014, the practice has proliferated. As California's sports fans start the new baseball season, Sports Fans Coalition calls on the Assembly to protect the state's fans from being deceived by white label ticket sites.

The author also notes that in 2017 and 2018, several states passed legislation to prohibit the use of deceptive URLs by ticket websites, including: New York, New Jersey, Maryland, Nevada, and Tennessee. This bill similarly seeks to protect consumers by amending this state's Unfair Competition and False Advertising laws.

4) **Bill expands limited remedies under existing law**: Under California's Unfair Competition Law (UCL), consumers are protected from "unlawful, unfair or fraudulent business act[s] or practice[s]." (Bus. & Prof. Code Sec. 17200 et seq.) The law permits courts to award injunctive relief, restitution, and, in certain cases, to assess civil penalties against the violator. (Bus. & Prof. Code Secs. 17203, 17206.) Pursuant to Proposition 64 (2004), the UCL provides that a person may bring an action for an injunction or restitution if the person "has suffered injury in fact and has lost money or property as a result of the unfair competition." (Bus. & Prof. Code Sec. 17204.)

   California's False Advertising Law (FAL) similarly prohibits making or disseminating any statement that is known or should be known to be untrue or misleading with intent to directly or indirectly dispose of real or personal property. (Bus. & Prof. Code Sec. 17500 et seq.) The FAL provides that it is unlawful for a person, with bad faith intent, to register, traffic in, or use a domain name that is confusingly similar to the name of another person. (Bus. & Prof. Code Sec. 17525.) Like the UCL, the FAL provides that a person may bring an action for an injunction or restitution if the person has suffered injury in fact and has lost money or property as a result of a violation of the FAL. (Bus. & Prof. Code Sec. 17535.)

   This bill would add a new section to the FAL and explicitly prohibit a ticket website operator, unless acting with consent from specified actors, from including in a manner that is false, deceptive, or misleading the name or trademark of a specific professional or collegiate team, professional or collegiate league, theme or amusement park, or venue where live entertainment events are held, in the URL of a ticket website, as defined. The bill would additionally provide that a trademark or name that is substantially similar to a name or trademark protected by the bill (including a misspelling), would also be covered under the bill, thereby ensuring that a slight difference in the spelling of name or venue would not insulate a ticket website operator from liability, so long as the other elements specified in the bill were met. A person directly harmed by a violation of these provisions would be entitled

to bring a private right of action to seek actual, consequential, and punitive damages, as well as reasonable attorney's fees.

While remedies under the FAL are generally limited to restitution and injunction, certain violations of the law create additional types of available relief for plaintiffs. For example, failure to reveal to a prospective buyer contacted at home or by telephone solicitation that the purpose of the contact is to effect a sale, as specified, can result in damages of two times the amount of the sale price or up to $250, whichever is greater. (Bus. & Prof. Code Sec. 17500.3.) Additionally, unlawfully using any seal, emblem, insignia, trade or brand name, or any other term, symbol, or content that reasonably could be interpreted or construed as implying any federal, state, or local government, as specified, in connection to the solicitation of any product or service, entitles a person harmed by a violation of the prohibition to damages in an amount equal to three times the amount solicited. (Bus. & Prof. Code Sec. 17533.6.) This bill would similarly expand the relief available to persons who have been harmed by false, misleading, or deceptive event ticket sales beyond mere restitution or injunctive relief.

That being said, staff notes that the availability of punitive damages under the FAL (and the UCL more generally) appear to be limited to violations of specific provisions related to educational travel organizations. (*See* Bus. & Prof. Code Sec. 17556.) Similarly, consequential damages are not specifically authorized in these laws and are expressly prohibited with respect to the Travel Consumer Restitution Plan. (*See* Bus. & Prof. Code Sec. 1755.36 et seq.) Staff notes that this bill is double-referred to the Assembly Judiciary Committee, where it will be sent if passed by this Committee, and that the Judiciary Committee has typically had jurisdiction over issues related to damages.

5) **Combatting deceptive URLs**: Describing the need for this bill, Consumer Action writes, "['w]hite-label' ticket vendors are typically out-of-state companies that fraudulently imply an affiliation with local box offices or performers, often by incorporating the names of local venues within their domain names, even though the sellers themselves have no relationship with the venue or artist. Consumers who purchase tickets through these duplicitous sites pay a huge markup—often exceeding 100%—compared to the cost of an equivalent ticket bought through a legitimate venue's platform."

Also in support of this bill, StubHub, a seller of tickets in the secondary market, writes:

> Unfortunately, there is a trend in the ticket resale market where websites are using deceptive URLs to gain customers. This practice is not only bad for customers, but it perpetuates a negative image for the secondary ticket market. [...]
>
> These deceptive sites typically source their functionality – such as ticket inventories, seat maps, payment processing, and customer service – from an affiliated ticket resale site. These deceptive websites offer no added value to the customer. However, they regularly charge much higher service fees than their "source" site.
>
> StubHub does not engage in this practice and believes it should be prohibited. URLs should not be used to deceive customers into thinking they are purchasing a ticket directly from the box office when they are not.

> While significant steps have been taken by major search engines to curtail this practice, StubHub believes legislation is required to ensure protections for California consumers and provide remedies when harm has occurred.

Arguably, given the proliferation of white-label sellers, the prohibitions and remedies under existing law are not acting as a sufficient deterrent to curb this sort of behavior. Accordingly, to better protect consumers, this bill would allow individuals to seek additional types of relief. In support, Consumer Action writes "[b]usinesses that deceive consumers by claiming bogus affiliations with venues, teams, or artists are engaged in false advertising in its clearest form. California consumers deserve protection from dishonest actors that distort the ticketing marketplace and prey on consumer trust."

6) **Related legislation**: AB 1032 (Quirk) would clarify that the existing prohibitions under the Ticket Sellers Act are to benefit "event attendees," as defined, and would expand prohibited conduct to include the use or sale of services to circumvent security measures, access control systems or other control or measures, as specified. This bill is currently in the Senate Appropriations Committee.

   AB 1477 (Gloria) would increase the civil penalty under the UCL. This bill is currently in the Senate Judiciary Committee.

7) **Prior legislation**: AB 1832 (Calderon, Ch. 158, Stats. 2014) made it unlawful for a person to intentionally use or sell software to circumvent a security measure, access control system, or other control or measure that is used to ensure an equitable ticket buying process.

   AB 329 (Pan, Ch. 325, Stats. 2013) made it a misdemeanor to intentionally use or sell software to circumvent a security measure, access control system or other control or measure on a ticket seller's website that is used to ensure an equitable ticket buying process.

   SB 1602 (Battin, 2006), would have expanded the definition of scalping under the Penal Code, to extend the prohibition against selling event tickets purchased for resale above market value on the event premises, to any purchase of tickets for resale in an amount over the limitation on the maximum number of tickets allowed by the original ticket seller and for any amount of profit. The bill also would have criminalized the use of automated computer purchases of event tickets in order to accomplish the purchase above the seller's limit, by defining the practice as "criminal interference" with the seller's website. The bill was placed in the inactive file on the Senate Floor.

8) **Double-referral**: This bill is double-referred to the Assembly Judiciary Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Consumer Action
Fan Freedom
NetChoice
Sports Fans Coalition
StubHub

Opposition

None on file

Analysis Prepared by: Nichole Rapier / P. & C.P. / (916) 319-2200

Date of Hearing: June 25, 2019

ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION
Ed Chau, Chair
SB 648 (Chang) – As Amended April 23, 2019

SENATE VOTE: 38-0

SUBJECT: Unmanned aircraft systems: accident notification

SUMMARY: This bill would require the operator of an unmanned aircraft system (UAS) involved in an accident to immediately land the UAS and provide certain information to the injured individual or property owner. Specifically, **this bill would**:

1) Require the operator of a UAS involved in an accident resulting in injury to an individual or damage to property to immediately land the UAS to the nearest location that will not jeopardize the safety of others and do one of the following:

   - Provide their valid identification, name, current residence address, phone number, and email address to the injured individual.

   - Locate and notify the owner or person in charge of that property of the name and address of the operator of the UAS involved and, upon locating the owner or person in charge of the damaged property and being requested to do so, present their valid identification, as provided above.

   - Leave in a conspicuous place on the damaged property a written notice giving the name, address, phone number, and email address of the UAS operator.

2) Provide that if the operator is a commercial operator, the operator shall also provide the name and address of the employer or place of business.

3) Provide that a violation of this requirement is an infraction punishable by a fine of not more than $250.

4) Define various terms for these purposes, including "unmanned aircraft," "unmanned aircraft system," and "valid identification."

EXISTING LAW:

1) Requires, under the FAA Modernization and Reform Act of 2012, the FAA to integrate UAS into the national airspace system by September 30, 2015, and to develop and implement certification requirements for the operation of UAS in the national airspace system by December 31, 2015. (Pub. Law No. 112-095.)

2) Requires registration of an aircraft in order to operate it within the United States. (49 U.S.C. Sec. 40101.)

3) Requires a UAS operator to submit registration to the Administrator of the FAA or to anyone with delegated authority to enforce the Administration's regulations. (14 C.F.R. Sec. 107.7.)

4) Defines an "unmanned aircraft" as an aircraft that is operated without the possibility of direct human intervention from within or on the aircraft. (Gov. Code Sec. 853.5(a).)

5) Defines an "unmanned aircraft system" as an unmanned aircraft and associated elements, including, but not limited to, communication links and the components that control the unmanned aircraft that are required for the pilot in command to operate safely and efficiently in the national airspace system. (Gov. Code Sec. 853.5(b).)

6) Makes it a misdemeanor to use an unmanned aircraft to impede the duties of emergency personnel at the scene of an emergency. (Pen. Code Sec. 402(a)(1)-(2).)

FISCAL EFFECT: None. This bill has been keyed nonfiscal by the Legislative Counsel.

COMMENTS:

1) **Purpose of this bill**: This bill seeks to prevent "hit and run" drone accidents by requiring the operator of a UAS that has been involved in an accident to immediately land the UAS and provide identifying information to the injured individual or property owner. This bill is author-sponsored.

2) **Author's statement**: According to the author:

> Drones, or Unmanned Aircraft Systems (UAS), have become more prevalent for a variety of purposes. The Federal Aviation Administration projects that there will be an increase of recreational drones from an estimated 1.1 million in 2017 to 2.4 million by 2022 and an increase of commercial, small drones from 110,604 in 2017 to 451,800 in 2022. Under California law, motor vehicle drivers are required to stop and provide identification and contact information if they are involved in a car accident that causes injury and/or property damage.
>
> SB 648 applies the same principles to drones by promoting owner responsibility and protecting public safety. Drone operators who are involved in an accident that results in personal injury or property damage, would be required to immediately land the drone at the nearest location and to provide valid identification and their name, current residence address, phone number and email address to the injured individual or the owner of the damaged property.

3) **Federal regulation over airspace**: The FAA defines a drone as an unmanned aircraft and all of the associated support equipment, control stations, data links, telemetry, and communications and navigation equipment necessary to operate the unmanned aircraft. A UAS is flown either by a pilot via a ground control system or autonomously through use of an on-board computer. (*See,* FAA Order 8130.34C, *Airworthiness Certification of Unmanned Aircraft Systems and Optionally Piloted Aircraft.*)

Recreational drone use is on the rise. According to the author, the FAA claims that there will be an increase of recreational drones from an estimated 1.1 million in 2017 to 2.4 million by 2022. Commercial applications for UAS are growing exponentially as well. UAS gives the news media economical and environmentally-friendly access to aerial views of traffic, storms, and other events when compared to the current use of helicopters and other manned

aircraft. UAS is used in the agricultural industry to observe and measure crops while conserving resources and avoiding the use of heavy equipment. UAS may also be the future delivery system for mail order and internet companies. Amazon, the largest internet-based retailer in the United States, plans to seek FAA approval for "PrimeAir" – a new delivery system that uses small UAS to deliver packages instead of using mail trucks. According to the Amazon website, the company has UAS delivery development and testing centers in the United States, the United Kingdom, and Israel.

In 2012, Congress passed the FAA Modernization and Reform Act of 2012 (Act). The Act required the FAA to establish a framework for accelerating the safe integration of UAS into the national airspace no later than September 30, 2015 and authorized the FAA to establish interim requirements for the commercial operation of UAS. On Oct. 5, 2018, the FAA Reauthorization Act of 2018 (Reauthorization) was signed into law (Public Law 115-254), to do the following, among other things:

- Direct the FAA to authorize drone deliveries by October 2019.
- Apply greater oversight over recreational drone operators.
- Prioritize rulemaking on expanded operations of small UAS.

With this Reauthorization, the U.S. arguably follows other countries that have taken measured steps toward integrating drones into their economies. Iceland, for example, has already authorized the use of drones for a food delivery service that uses GPS coordinates to find routes clear of human and natural obstacles. Similarly, Canada recently has approved numerous test flights for delivering medical and food supplies to isolated rural communities.

Recognizing the growing popularity of UAS, this bill seeks to ensure that victims of UAS accidents who have suffered property damage or personal injury are not forced to incur the entirety of any costs or expenses related to those accidents, by requiring UAS operators to provide their contact information to individuals who are injured or whose property has been damaged.

4) **Prior attempts to apply "hit and run" prohibitions to UAS operators**: This bill is substantially similar to AB 1662 (Chau, 2016) which would have required UAS operators to remain at the scene of an accident and provide their name and address along with valid identification to the victim and the police. That bill was ultimately vetoed by Governor Brown who wrote:

> This bill requires hobbyist drone operators to provide, at the scene of an accident caused by their drone, their name and home address along with valid identification.
>
> Rather than creating a new misdemeanor crime, I believe it would be fairer and more effective to explore a more comprehensive approach that takes into account federal regulations on this subject. Piecemeal is not the way to go.

Since the veto of AB 1662, the FAA has issued and begun enforcing new regulations which regulate recreational drone use more thoroughly than before. UAS operators, even recreational operators, now must register their aircraft and are required to take an aeronautical knowledge and safety test. Despite these new regulations, BAPS Swaminarayan

Sanstha argues that this bill is necessary as evidenced by ongoing UAS damage to a Hindu place of worship in southern California:

> With 97 *mandirs* across the United States, including seven places of worship here in California, BAPS is the largest Hindu organization in the country. These temples include magnificent stone carved temples, including the BAPS *mandir* in Chino Hills, California. Carved from pink sandstone and white marble, the BAPS *mandir* in Chino Hills is an architectural phenomenon that combines ancient construction and modern engineering. As such, the Chino Hills *mandir* strives to promote spiritual, peaceful and serene atmosphere for worship.
>
> Over the past two years, UAS have crashed into the *mandir* directly or crash landed into our gardens, water features and trees. These incidents have resulted in minor damage being caused to the *mandir* and our water feature, but thankfully have not resulted in significant damage. The organization is deeply concerned with the use of UAS over the *mandir* because the exterior stone carvings are hand-carved and placed together by specialized artisans one piece at a time. If a single piece of stone is damaged, it would require a significant undertaking, both financially and physically, to either repair or replace it. Moreover, owners and operators of UAS have refused to accept responsibility for causing the damage and refuse to provide any contact information.
>
> SB 648 promotes the responsible operation of drones and unmanned aircraft systems in public spaces by applying the same hit and run principles involving motor vehicles. Because drones have the potential to cause personal injury or property damage, it is very important to identify the responsible party who caused the accident.

Arguing that federal regulations already cover reporting requirements, the Association for Unmanned Vehicle Systems International (AUVSI) and the Computing Technology Industry Association (CompTIA) oppose this bill unless amended to exempt remote pilots licensed under Part 107 of the FAA regulations and commercial operators flying under other federal regulations. AUVSI argues that requiring these operators to report accidents at both the federal and state level would be duplicative and burdensome, and not necessarily promote safety.

To address these concerns, the author offers the following amendment that would exempt commercial UAS operators from the requirements of the bill. Staff further notes that given the apparent training commercial UAS operators must undergo, they should have the experience and expertise to avoid causing injury or damage in all but the most extreme of circumstances, thereby arguably making them outside the intended scope of this bill.

Author's amendments:

On page 3, after line 35 add: *(e) This section does not apply to a person operating an unmanned aircraft system pursuant to and in conformance with Part 107 of the Federal Aviation Administration's (FAA) regulations (14 C.F.R. part 107) or FAA-issued waiver thereof, a current exemption, certificate of waiver, or authorization issued pursuant to 49 U.S.C. § 44807 or Section 333 or 334 of the FAA Modernization and Reform Act of 2012 (Public Law 112-95 (Feb. 14, 2012) 126 Stat. 11, 75-76), or any equivalent or successor provision. In addition, this section does not apply to a person operating an unmanned*

aircraft system for commercial purposes pursuant to any other FAA regulation or FAA authorization.

The City of Chino Hills writes in support of this bill:

> UAS have become more prevalent in the City of Chino Hills for a variety of reasons, either for personal or commercial use. The FAA projects that there will be an increase of recreational drones from an estimated 1.1 million in 2017 to 2.4 million by 2022. Although the increase in drone ownership and usage can be beneficial to the national economy, drones that are irresponsibly operated can cause property damage or personal injury. Owners and operators of drones or UAS have repeatedly caused property damaged to the BAPS Swaminarayan Sanstha mandir and surrounding facilities in Chino Hills, and have refused to accept responsibility. Because drones have the potential to cause personal injury or property damage, it is very important to identify the responsible party who caused the accident.

5) **Prior legislation**: AB 1662 (Chau, 2016) *See* Comment 4.

   AB 1680 (Rodriguez, Ch. 817, Stats. 2016) made it a misdemeanor to operate a UAS in a way that interferes with first responders.

   SB 868 (Jackson) proposes the State Remote Piloted Aircraft Act containing numerous UAS regulations. SB 868 is pending before the Senate Transportation and Housing Committee (and thereafter the Senate Public Safety Committee).

   AB 856 (Calderon, Ch. 521, Stats. 2015) made a person liable for physical invasion of privacy when the person knowingly enters "into the airspace" above the land of another person without permission.

   AB 2306 (Chau, Ch. 858, Stats. 2014) expanded a person's liability for constructive invasion of privacy by removing the limitation that the person use a visual or auditory enhancing device, and instead made the person liable when using any device to engage in the specified unlawful activity.

6) **Double-referral**: This bill has been double-referred to the Assembly Transportation Committee, where it will be heard if it passes this Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

BAPS Swaminarayan Sanstha
City of Chino Hills

Opposition

Association of Unmanned Vehicle Systems International (AUVSI)
Computing Technology Industry Association (CompTIA)

Analysis Prepared by: Nichole Rapier / P. & C.P. / (916) 319-2200

Date of Hearing: June 25, 2019

ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION
Ed Chau, Chair
SB 180 (Chang) –As Amended May 2, 2019

SUBJECT: Gene therapy kits: advisory notice and labels

SUMMARY: This bill would require a seller of gene therapy kits to place a notice on their website and on the packaging of the kit stating that the kit is not for self-administration.
Specifically, this bill would:

1) Prohibit, except as otherwise permitted by federal law, a person from selling a gene therapy kit in this state unless the seller includes a notice on the seller's internet website in a conspicuous location that is displayed to the consumer prior to the point of sale, and on a label on the package containing the gene therapy kit in plain view and readily legibile, stating that the kit is not for self-administration.

2) Define "gene therapy" to mean the administration of genetic material to modify or manipulate the expression of a gene product, or to alter the biological properties of living cells, for therapeutic use.

3) Define "gene therapy kit" to mean a product that is sold as a collection of materials for the purpose of facilitating gene therapy experiments, including, but not limited to, a system for the targeted cutting of DNA molecules, such as type II clustered regularly interspaced short palindromic repeats (CRISPR), associated proteins (CRISPR-Cas) systems, including CRISPR-Cas9, as described in *Regents of University of California v. Broad Institute, Inc.* (2018) 903 F.3d 1286.

4) Provide various legislative findings and declarations expressing the intent of the Legislature to ensure the safety of the consumer and the public without stifling innovation, including:

   - CRISPR is a new gene editing technology that is a substantial improvement over other gene editing technologies in the ease of use, efficacy, and, in particular, cost. CRISPR is an acronym for "clustered regularly interspaced short palindromic repeats," which are unique DNA sequences found in some bacteria and other microorganisms. The most-studied CRISPR system is associated with the Cas9 protein and is known as CRISPR-Cas9. During 2012 and 2013, researchers modified CRISPR-Cas9 to serve as an effective and efficient technology for editing the genomes of plants, animals, and microorganisms. Many in the scientific community believe CRISPR-Cas9 has revolutionized gene editing with its simplicity, low cost relative to other methods of gene editing, and creation of new research opportunities.

   - CRISPR has the potential to offer revolutionary advancements in the investigation, prevention, and treatment of diseases, especially those with limited or no effective treatments. There has been significant research using CRISPR to treat diabetes, malaria, and sickle cell disease, among others.

- However, there are concerns within the science community on the amateur use of this innovative technology. Currently, there are materials with the capabilities of experimenting with CRISPR technology available for purchase by the public. These "CRISPR kits" have been marketed for self-administration. The affordability and accessibility of these products have benefited educational institutions, but concerns remain about the impact on consumer safety and public health.

- Concerns have also been raised as to what can be created through the amateur use of CRISPR technology. There are instances in which research teams have recreated extinct strains of viral diseases from scratch. The use of CRISPR technology has been subjected to regulations in the European Union. The United States Food and Drug Administration has stated that the sale of gene therapy products with the intent of self-administration is against the law, and cites concerns about safety risks.

EXISTING LAW:

1) Establishes the Food and Drug Administration (FDA) in the Department of Health and Human Services. (21 U.S.C. Sec. 393.)

2) Tasks the FDA with the mission of promoting the public health by promptly and efficiently reviewing clinical research and taking appropriate action on the marketing of regulated products in a timely manner. Pursuant to this mission, the FDA is directed to ensure human drugs are safe and effective. (21 U.S.C. Sec. 393.)

3) Establishes the Federal Food, Drug, and Cosmetic Act to prohibit the movement in interstate commerce of adulterated and misbranded food, drugs, devices, and cosmetics, and for other purposes. (21 U.S.C. Sec. 301 et seq.)

4) Governs the regulation of biological products. (42 U.S.C. Sec. 262.)

FISCAL EFFECT: None. This bill has been keyed nonfiscal by the Legislative Counsel.

COMMENTS:

1) **Purpose of the bill**: This bill seeks to increase consumer protection by ensuring that consumers are informed that gene-therapy kits are not for self-administration. This bill is author-sponsored.

2) **Author's Statement**: According to the author:

> CRISPR-Cas9 technology (CRISPR) has revolutionized gene editing with its simplicity and low cost relative to other methods of gene editing, and creation of new research opportunities. It is anticipated that the global market for gene editing will reach $8.1 billion by 2025. The potential of CRISPR is further exemplified in the rapid increase in CRISPR-related federal research funding and scientific publications. Funding from the National Institutes of Health grew from $5,100,000 in 2011 to $603,000,000 in 2016.
>
> However, there are concerns within the science community [with] the amateur use of this innovative technology. Currently, there are materials with the capabilities of experimenting

with CRISPR technology available for purchase by the public. These "DIY CRISPR kits" have been marketed for self-administration. The affordability and accessibility of these products have benefited educational institutions, but concerns remain about the impact on consumer safety and public health. There have been instances caught on video of individuals injecting themselves with CRISPR Cas-9 edited materials.

To ensure consumer protection when purchasing these "DIY CRISPR Kits", SB 180 requires that all sellers provide a notice on their website that is displayed for the consumer prior to the point of sale, as well as a label on the package containing the CRISPR kit, stating that these kits are not intended for self-administration.

3) **What is CRISPER-Cas9?** CRISPER stands for "clustered regularly interspaced short palindromic repeats" and Cas9 specifies the complementary protein that is used to add, remove, or alter genetic material at specific locations in the genome. As the author points out, this method of genetic editing has the potential to revolutionize gene editing and to potentially make it practical to edit genes on a large scale. This technology has the potential to cure or mitigate genetic disease (*e.g.,* sickle cell anemia and inherited blindness) and offer new avenues for fighting infectious diseases such as human immunodeficiency virus, or HIV.

CRISPER-Cas9 is not itself genetic material. Instead, it is the catalyst for the removal or replacement of existing genetic material and therefore, must be combined with genetic material to complete gene therapy. Understandably, because of the invasiveness of this therapy and the ability to alter an individual's cellular makeup, it raises numerous ethical and safety-related questions. One of the questions most often debated is the distinction between editing somatic cells and editing germline cells:

> Scientists who work in genetics draw a huge distinction between editing somatic cells and editing germline cells. Somatic cells are those in the body that have already differentiated—lung cells or blood cells or liver cells, for example. Editing the germline, on the other hand, involves altering a sperm, egg, or fertilized embryo. As the embryo develops, any change that was made will be propagated through every cell in the body, including sperm and eggs that are passed on to the next generation. Put simply, it's altering the function of a body part versus altering you, your children, and your children's children. (Detwiler, *Legal vs. Illegal Gene Editing: Here's What's Banned, and Why* (Dec. 4, 2018) Popular Mechanics, <https://www.popularmechanics. com/science/health/amp25385071/gene-editing-crispr-cas9-legal/> [as of Jun. 20, 2019].)

Despite the ethical and safety concerns raised by this process, gene therapy kits can be useful for small-scale demonstrations and non-human experimentation in classrooms and other educational settings. Accordingly, this bill does not seek to ban the sale of these kits in this state, but instead seeks to ensure that they are used safely by informing consumers, prior to the point of sale and again upon receipt of the kit itself, that gene therapy kits are not for self-administration.

4) **Self-administration of gene therapy**: In 2017, a few companies began selling and advocating for the use of CRISPER-Cas9 kits by "bio hackers," or individuals willing to manipulate their bodies for science to hasten the testing and development of gene therapy treatments. Advocates argued that by democratizing the process of testing gene therapies, the promised advancements could be realized more quickly and more economically than by following the typical FDA

testing and approval process. The movement seemingly reached a crescendo in 2018 with several high-profile instances of individual bio hackers self-administering gene therapy treatments on live video or at live events. The FDA quickly issued a response to these events stating:

> Gene therapy is the administration of genetic material to modify or manipulate the expression of a gene product or to alter the biological properties of living cells for therapeutic use. Gene therapies offer the potential to treat diseases or conditions for which no or few treatments exist. They are being studied to treat cancer as well as genetic, infectious, and other diseases. FDA considers any use of CRISPR/Cas9 gene editing in humans to be gene therapy.
>
> Gene therapy products are regulated by the FDA's Center for Biologics Evaluation and Research (CBER). Clinical studies of gene therapy in humans require the submission of an investigational new drug application (IND) prior to their initiation in the United States, and marketing of a gene therapy product requires submission and approval of a biologics license application (BLA). [...] FDA has also approved certain gene therapy products.
>
> FDA is aware that gene therapy products intended for self-administration and "do it yourself" kits to produce gene therapies for self-administration are being made available to the public. The sale of these products is against the law. FDA is concerned about the safety risks involved.
>
> Consumers are cautioned to make sure that any gene therapy they are considering has either been approved by FDA or is being studied under appropriate regulatory oversight. *Information About Self-Administration of Gene Therapy* (Nov. 21, 2017) FDA, <https://www.fda.gov/biologicsbloodvaccines/cellulargenetherapy products/ucm586343.htm.> [as of Jun. 20,2019].)

Consistent with these FDA warnings, this bill would prohibit a person from selling a gene therapy kit unless the person includes a conspicuous notice on their internet website that is displayed to the consumer prior to the point of sale, and on a readily legible label on the package containing the gene therapy kit, stating that the kit is not for self-administration. These notices are designed to help inform consumers about the proper uses of these products may even help alert them to the potential dangers associated with the self-administration of gene therapy.

Staff notes that given federal jurisdiction over biologics and gene therapies and the declaration that the FDA considers the use of gene editing technologies such as CRISPR-Cas9 in humans to be gene therapy, there has been some concern that this bill may be federally preempted. However, because the notices required by this bill align with the FDA's position that the sale of these kits for self-administration is illegal, sellers should be able to comply with both this bill and federal law. Accordingly, this bill does not obstruct federal law and is likely not preempted. (*See Wyeth v. Levine* (2009) 555 U.S. 555.)

REGISTERED SUPPORT / OPPOSITION:

Support

None on file

Opposition

None on file

Analysis Prepared by: David Watson / P. & C.P. / (916) 319-2200

Date of Hearing: June 25, 2019

ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION
Ed Chau, Chair
SB 348 (Chang) – As Amended May 17, 2019

SENATE VOTE: 38-0

SUBJECT: Department of Technology: Department of Motor Vehicles: artificial intelligence: strategic plans

SUMMARY: This bill would, among other things, require the Director of the California Department of Technology (CDT) and the Director of the Department of Motor Vehicles (DMV) to each devise a strategic plan, as specified, to utilize artificial intelligence (AI) technology to improve state services. Specifically, **this bill would**:

1) Require the strategic plans to evaluate both of the following:

   - The potential effects of utilizing AI to improve state services on the department's workforce and job classifications.

   - How to minimize the impacts of utilizing AI to improve state services on the department's workforce and job classifications.

2) Authorize the Directors of CDT and the DMV to seek input from each office or other unit within their department, and from experts in the field of AI technology.

3) State that the Legislature encourages the Governor to appoint a special adviser on AI to coordinate with state agencies, local governments, and the federal government in order to devise a statewide strategic plan to utilize AI to improve state services.

4) Provide that the statewide strategic plan should evaluate, among other things, the following:

   - The potential effects of utilizing AI to improve state services on the job responsibilities of state employees.

   - How to mitigate the impacts of utilizing AI to improve state services on state employees.

   - The impact of utilizing AI to improve state services on the privacy of citizens of this state.

5) State that the Legislature encourages the Controller's office, Treasurer's office, Secretary of State's office, the California State University, and the University of California to designate a chief AI officer.

EXISTING LAW:

1) Establishes in the state government certain agencies, including the Government Operations Agency. (Gov. Code Sec. 12800.) Provides that each agency is under the supervision of an executive officer known as the secretary, appointed by, and holding office at the pleasure of, the Governor. The appointment of each secretary is subject to confirmation by the Senate. (Gov. Code Sec. 12801.)

2) Establishes the California Department of Technology (CDT) within the Government Operations Agency in state government. (Gov. Code Sec. 11545(a)(1).) Provides that unless the context clearly requires otherwise, whenever the term "State Chief Information Officer" or "Secretary of California Technology" appears in any statute, regulation, or contract, or any other code, it shall be construed to refer to the Director of Technology. (Gov. Code Sec. 11545(a)(2).)

3) Enumerates the duties of the Director of Technology, which includes, among other things:

   - advising the Governor on the strategic management and direction of the State's information technology (IT) resources;
   - establishing and enforcing state IT strategic plans, policies, standards, and enterprise architecture, as specified;
   - minimizing overlap, redundancy, and cost in state IT operations by promoting the efficient and effective use of information technology;
   - providing technology direction to agency and department chief information officers to ensure the integration of statewide technology initiatives, compliance with IT policies and standards, and the promotion of the alignment and effective management of IT services;
   - working to improve organizational maturity and capacity in the effective management of IT; and,
   - establishing performance management and improvement processes to ensure state IT systems and services are efficient and effective. (Gov. Code Sec. 11545(b).)

4) Establishes the California Department of Motor Vehicles (DMV) within the California Transportation Agency in state government. (Veh. Code Sec. 1500 et seq.)

FISCAL EFFECT: According to the Senate Appropriations Committee:

- Unknown, significant costs, likely in the hundreds of thousands of dollars, for the directors of CDT and the DMV to devise a strategic plan. (GF/special funds)
- Unknown, potential cost, in the hundreds of thousands of dollars, to create the position of special adviser on AI and for related resources necessary to devise a statewide strategic plan. (GF)

- Unknown, significant cost pressure, to adopt and implement a statewide strategic plan developed by the special adviser on AI.

- Unknown, potential cost, likely in the high hundreds of thousands of dollars, should the Controller's office, the Treasurer's office, the Secretary of State's office, the California State University, and the University of California each designate a Chief AI officer. (GF)

COMMENTS:

1) **Purpose of the bill**: This bill seeks to encourage a comprehensive effort to ensure state departments and agencies are utilizing AI technology to improve state services by requiring CDT and the DMV to develop AI-specific strategic plans, encouraging the governor to appoint a special advisor on AI, and encouraging various constitutional offices to designate a chief AI officer. This bill is author-sponsored.

2) **Author's statement**: According to the author:

> Artificial intelligence is emerging technology that has the likelihood to have a great impact on California's workforce. Other states are already creating commissions or developing strategic plans to address the implications of AI in the government. California has taken the leading role in AI development in the private sector but it is falling behind in implementation in state government. AI is already being utilized to by some state departments to enhance their services but there is no comprehensive effort to ensure departments and agencies are developing a strategic plan to recognize, and implement AI technology in an ethical way that improves internal and external functions.
>
> This bill was created largely based off a report authored by the Little Hoover Commission. In *Artificial Intelligence: A Roadmap for California*, the Commission outlines the impact of AI on the workforce and outlines recommendations to the state government on how to best prepare for a future with AI.

3) **What is AI?** AI is not a term that is heavily legislated at this time, though it continues to be a more frequent topic in public policy discussions. First coined by a Dartmouth professor, John McCarthy, in the 1950s, there does not appear to be any singular, consistent definition of AI in use today, over 60 years later. McCarthy described the process as "that of making a machine behave in ways that would be called intelligent if a human were so behaving." (Kaplan, *Artificial Intelligence: What Everyone Needs to Know* (2016) p. 1 (internal citations omitted).) Today, there are many proposed definitions of AI, but most appear to be aligned around that same concept of creating computer programs or machines capable of "intelligent" behavior if exhibited by humans. (*Id.*)

4) **The opportunities and challenges of AI**: Last spring, this Committee held a joint informational hearing with the Assembly Select Committee on Emerging Technologies & Innovation on the topic of AI, to begin a preliminary discussion of the promises and challenges presented by AI. The overarching goal of the hearing was to bring members and staff a greater understanding of AI to engender more thoughtful public policy in the future. As recognized in the committees' background paper on AI, the opportunities and challenges posed by AI are significant, and in many ways still being uncovered.

Notably, at the same time that this Committee began this joint-endeavor to generate greater understanding of the opportunities and challenges of AI within the Legislature, the Little Hoover Commission (LHC) was simultaneously studying the same topic. The LHC began its process, which included both public hearings and roundtables, with a public hearing on January 25, 2018, entitled "Artificial Intelligence: Applications and Implications." At that first hearing, the LHC indicated that it ultimately intended to produce a report and policy recommendations about how the State of California can approach AI.

Indeed, in November 2018, the LHC produced its report, *Artificial Intelligence: A Roadmap for California*, wherein it similarly recognized the possible benefits and potential misuses of AI in an opening "Letter from the Chair" by LHC Chairman, Pedro Nava:

> Imagine using AI applications to predict where fires may occur, detect early-stage wildfires, or guide firefighters where best to fight a fire and save lives. Conceive of an environment where AI could promote biodiversity and water conservation, and protect endangered species. See educators using AI to improve student learning and increase graduation rates. Envision better detection of diseases, including cancer, and more finely-tuned effective treatments. Certainly, such visions must be tempered with appropriate privacy protections and robust laws aimed at preventing the misuse of data. In addition, this encouraging future, which is presently knocking at our door, will require not just foresight but insight, not just political will but political action, and not just one mind but a collaboration of minds in government, academia, and private industry. (*See* LHC Report #245, *Artificial Intelligence: A Roadmap for California* (Nov. 2018), p. 1; hereinafter "LHC Report.")

This bill, SB 348, arises out of the LHC Report's recommendations and would require the directors of two different departments, CDT and the DMV, to devise a strategic plan that encompasses each office or other unit within each department to utilize AI technology to improve state services, as specified. The bill would also encourage the Governor to appoint a special adviser on AI to coordinate with various entities in order to devise a statewide strategic plan to utilize AI to improve state services. Finally, the bill would encourage various constitutional offices to designate a chief AI officer. In support, the LHC notes that this bill would carry out three of the recommendations noted in the LHC Report and help California establish clear leadership focusing on the development and use of AI technology.

5) **Findings and recommendations made by Little Hoover Commission report on AI**: The LHC Report begins by recognizing that "[AI] is already changing the structure of goods and services in the economy, and altering the nature of work. This has major implications for our workforce and opens critical questions about our human values like privacy. […] AI poses four key decisions for California: (1) how to support AI research and responsible AI use to grow the state's economy; (2) how to take advantage of advances in AI to enhance services to Californians; (3) how to configure a new structure for lifelong education and training to respond to the inevitable disruption in the tasks or content of work; and (4) how to protect its values of privacy, transparency and accountability in this new economic era." (*Id.* at p. 6.)

The LHC Report describes how California is currently unprepared to take the lead in a race to prepare for AI because it "lacks any single clear leadership and focus on the development and use of AI technology and applications to improve internal and external operations and services within an ethical framework." The Report also warns that California has not begun

"the necessary work to forecast and prepare for the inevitable changes the new technology will impose on the state's workforce and economy. This void could leave California flatfooted in a highly competitive race for AI superiority where only the winner takes all." (*Id.*)

To make the necessary decisions posed by AI and to fill this identified void, the LHC Report sets forth nine recommendations to the Governor and Legislature, which cover everything from state government infrastructure and planning, education and training, the collection of data, creation of an AI commission, and more. The recommendations, for example, include:

- The Governor should appoint an AI special advisor within the Governor's cabinet, with certain suggested duties. (*See* Recommendation 1.)

- The Governor and Legislature should require each state agency or standalone department to designate a chief AI officer, with certain suggested duties. (*See* Recommendation 2.)

- The Governor and Legislature should require each state agency, which includes departments, boards, commissions and the like, to devise strategic plans that include the use and implementation of AI technology and applications to improve and enhance the agency's internal and external operations and services within an ethical framework that promotes the use of AI for economic, social and environmental good. The strategic plan should also include strategies to minimize the impact of AI technology and applications on jobs and job classifications. (*See* Recommendation 4.)

This bill, SB 348, now seeks to partially adopt the recommendations noted above by:

- Requiring the directors of CDT and the DMV to devise strategic plans to utilize AI technology to improve state services, and require that each plan evaluate the potential effects of utilizing on the job responsibilities of department employees, and how to minimize the impacts of AI on the department's workforce and job classifications.

- Encouraging the Governor to appoint a special advisor on AI to coordinate with state agencies, local governments, and the federal government in order to devise a statewide strategic plan to utilize AI to improve state services.

- Encouraging the Controller's office, the Treasurer's office, the Secretary of State's office, the California State University, and the University of California each designate a chief AI officer.

In support, the Future of Life Institute writes, "[w]e are proud to support SB 348 for two major reasons. First, we believe the potential creation of a special adviser on AI by the Governor could fulfill a valuable role in overseeing the government-wide application of AI technologies. Such a position may be needed to ensure the application of consistent ethical standards for AI technology across many use cases. Likewise, the potential creation of chief artificial intelligence officers by varied state agencies could fulfill a similar role within the more specific domain of their respective agencies."

6) **Numerous bills on AI this year**: This bill is one of many bills on AI this year. For example, this Committee previously heard and approved AB 1576 (Calderon) which would require the

Secretary of Government Operations to appoint participants to an AI working group, would define "AI" for these purposes, and would require the working group to report to the Legislature on the potential uses, risks, and benefits of the use of AI technology by California-based businesses. More relevant to SB 348, this Committee also approved three bills dealing specifically with the use of AI in state government. AB 976 (Chau), which is also supported by the LHC, would create the AI in State Government Services Commission (Commission) comprised of eight members with certain knowledge and expertise related to the field of AI and would require the Commission provide specified recommendations to the Legislature and the Governor. This Committee also approved AB 459 (Kiley) which would have required the AB 976-proposed Commission to develop various minimum standards for the use of AI in state government. Finally, this Committee approved AB 594 (Salas) which would require the director of CDT to appoint a Chief AI Officer within the department to evaluate the uses of AI in state government and to advise the Director of Technology on incorporating AI into state information technology strategic plans, policies, standards, and enterprise architecture.

Staff notes that there is a considerable amount of overlap in these bills, and should they each be signed into law, they could create duplicative and potentially conflicting obligations in state government. Furthermore, given the risks associated with AI, such as bias, discrimination, and potential displacement of the workforce, it would be prudent for any AI-specific strategic plans in state government to incorporate the most contemporary and relevant research available. To this point, writing in support of this bill, the Future of Life Institute notes that "the decisions made by chief intelligence officers regarding how to deploy AI technologies may be best informed by a Commission-like entity, such as that called for by AB-976, that can provide the officers with minimum standards for the ethical use of AI technologies in government services."

Indeed, the AB 976 Commission seeks to compile research that is tailored specifically to how AI technology could be used to improve state services and will be comprised of eight individuals "with knowledge of, and expertise in, the field of AI from private industry, governments, nonprofit organizations, unions, and academia," and would include the director of CDT specifically. The Commission would be required to submit its findings to the Governor and the Legislature by January 1, 2020. Arguably, these findings would provide valuable information to state departments and agencies as they endeavor to devise strategic plans on how AI may be used to improve state services while still minimizing the impact on workforce and job classifications, as required by this bill.

7) **CDT has a statutory responsibility to advise on the state's information technology resources**: The director of CDT has a statutory responsibility to advise the Governor on the strategic management and direction of the state's information technology (IT) resources (many of which may be shaped or affected by uses of AI), to provide technology direction to agency and department chief information officers to ensure the integration of statewide technology initiatives, and to establish and enforce state IT strategic plans, policies, standards, and enterprise architecture. (*See* Gov. Code Sec. 11545(b).) This statutory obligation would naturally extend to providing AI-specific direction to the Director of the DMV, thereby calling into question the requirement that the Director of the DMV create a strategic plan independently of CDT.

Furthermore, encouraging state departments and agencies to rely on CDT expertise to devise AI-specific strategic plans is arguably appropriate not only because CDT houses the State's existing expertise in statewide IT resources and IT-related solutions and initiatives, but it is also consistent with activities undertaken by CDT in recent years to cultivate AI expertise within its Office of Digital Innovation (ODI). CDT originally launched ODI in 2016 to define an approach to government technology innovation that would drive the department forward as a thought leader and technology innovator in state government. To that end, ODI already appears to be considering some applications of AI within state government.

Acknowledging these considerations, the author offers the following amendments to ensure that the strategic plans required by this bill will take into account the most relevant information and expertise available to state government. The amendments strike the requirement that the Director of the DMV devise a strategic plan, and would instead require that the Director of CDT take into account the findings generated by the AB 976-proposed Commission in devising a strategic plan designed to aid state departments and agencies in appropriately integrating AI into state services.

Author's amendments:

1) In Section 1 of the bill, Government Code Section 12897 is amended to read:

   (a) The Director of Technology shall devise a strategic plan *designed to aid departments and agencies with the incorporation of artificial intelligence into state information technology strategic plans, policies, standards, and enterprise architecture* ~~that encompasses each office or other unit within the Department of Technology to utilize artificial intelligence technology~~ to improve state services. The strategic plan shall evaluate both of the following:

      (1) The potential effects of utilizing artificial intelligence to improve state services on the job responsibilities of department employees.

      (2) How to minimize the *negative* impacts of utilizing artificial intelligence to improve state services on the department's workforce and job classifications.

   (b) In devising a strategic plan required by subdivision (a), the director may seek input from ~~each office or other unit within the department and~~ from experts in the field of artificial intelligence technology.

   (c) In devising a strategic plan required by subdivision (a), the director shall consider the findings of the Artificial Intelligence in State Government Services Commission. This subdivision shall become operative only if Assembly Bill 976 of the 2019–20 Regular Session is enacted and establishes the Artificial Intelligence in State Government Services Commission.

2) In Section 1 of the bill, strike Government Code section 12897.1.

8) **Bill encourages, rather than mandates, the appointment and designation of other AI advisers and officers**: This bill would provide that the Legislature encourages the Governor to appoint a special adviser on AI to coordinate with state agencies, local governments, and

the federal government in order to devise a statewide strategic plan to utilize AI to improve state services. The bill would additionally provide that the Legislature encourages the Controller's office, the Treasurer's office, the Secretary of State's office, the California State University, and the University of California each designate a Chief AI officer.

Encouraging, rather than mandating, the designation of chief AI officers in various state entities appears to be prudent as a matter of public policy because it would allow these entities to take into consideration the findings of the AB 976 Commission and the strategic plan of the director of CDT (*see* Comment 6, above). This information should not only be useful in selecting appropriate candidates for chief AI officers, but should also ensure that these officers, once designated, have clear direction in how to carry out the implementation of AI technology in their various spheres in a manner which should improve the economy, public health and safety, jobs, and the environment.

Similarly, encouraging rather than mandating the appointment of a special adviser to coordinate with various government entities in order to devise a statewide strategic plan to utilize AI to improve state services gives the Governor the flexibility to consider how the position of the special adviser may interact with other appointed positions in state government. Specifically, as noted above in Comment 6, the Director of CDT has a statutory responsibility to advise the Governor on the strategic management and direction of the state's IT resources (many of which may be shaped or affected by uses of AI), to provide technology direction to agency and department chief information officers to ensure the integration of statewide technology initiatives, and to establish and enforce state IT strategic plans, policies, standards, and enterprise architecture. (*See* Gov. Code Sec. 11545(b).) Furthermore, in January of this year, the Governor announced plans to create a new Office of Digital Innovation within the Government Operations Agency (GovOps). At the time of this writing, the GovOps is seeking a Director who, with the support of GovOps, will coordinate with the departments responsible for the state's technology backbone, hiring, and procurement, which also fall within the same agency." (*See* <https://govops.forms.fm/interest-form-director-of-the-california-office-of-digital-innovation/forms/6701> [as of Jun. 18, 2019].)

By encouraging the Governor to appoint a special adviser on AI, this bill gives the administration the appropriate flexibility to evaluate the roles of these different positions in a way that will benefit the State.

9) **Related legislation**: AB 459 (Kiley) *See* Comment 6. This bill was held in the Assembly Appropriations Committee.

AB 976 (Chau) *See* Comment 6.

AB 594 (Salas) *See* Comment 6.

AB 1576 (Calderon) *See* Comment 6.

SB 730 (Stern) would establish the Commission on the Future of Work and the Commission of Tech Equity to research the impact of technology on workers, employers, and the economy of the state. This bill is currently in the Assembly Labor and Employment Committee.

10) **Double-referral**: This bill is double-referred to the Committee on Accountability & Administrative Review.

REGISTERED SUPPORT / OPPOSITION:

Support

Future of Life Institute
Little Hoover Commission

Opposition

None on file

Analysis Prepared by: Nichole Rapier / P. & C.P. / (916) 319-2200

Date of Hearing: June 25, 2019

ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION
Ed Chau, Chair
SJR 6 (Chang) – As Introduced March 11, 2019

SENATE VOTE: 38-0

SUBJECT: Artificial intelligence

SUMMARY: This measure would urge the President and the Congress of the United States to develop a comprehensive Artificial Intelligence (AI) Advisory Committee and to adopt a comprehensive AI policy. Specifically, **this measure would**:

1) State, among other things, that:

   - 15% of enterprises use AI, but 31% said AI is on the agenda for adoption within the next 12 months.
   - 77% of consumers use an AI-powered service or device.
   - One-half of the leading 10 AI startups are companies located in the United States.
   - A study conducted by the Pew Research Center of over 1,800 experts found that nearly one-half of the experts envision "a future in which robots and digital agents [will] have displaced significant numbers of both blue- and white-collar workers."
   - The federal government has a role in protecting the nation's workforce by planning for the future changes that will be brought on by emerging AI technologies.
   - Over one dozen countries, including Canada, China, France, and the United Kingdom, are already developing AI implementation strategies.
   - The United States should be promoting innovation to help American companies grow.
   - California has attracted 41% of all global AI investment in the last five years.
   - There is a growing gap between technological change and regulatory response.

2) Urge the President and the Congress of the United States to develop a comprehensive AI Advisory Committee and to adopt a comprehensive AI policy, and require the Secretary of the Senate to transmit copies of this resolution, as specified.

FISCAL EFFECT: None. This measure has been keyed nonfiscal by the Legislative Counsel.

COMMENTS:

1) **Purpose of this measure**: This measure seeks to urge the federal government to develop a comprehensive AI policy through an advisory committee to ensure an appropriate regulatory response to emerging AI technology. This measure is author-sponsored.

2) **Author's statement**: According to the author, "[a]rtificial intelligence has already begun to revolutionize the way that the private and public sector functions. Artificial intelligence introduces incredible opportunities as well as risk, including potential workforce reduction. The United States should be promoting innovation to help advance American companies and maintain our competitiveness on a global scale. Other countries, including: China, Canada, and the United Kingdom, are already developing implementation strategies and it is critical we keep pace. Developing a federal regulatory framework and Advisory Committee is critical to preparing the United States workforce, both private and public, for the various implications of AI technology. We should not be stifling innovation but instead we should be setting a realistic framework to follow for implementation."

3) **What is AI?** AI is not a term that is heavily legislated at this time, though it continues to be a more frequent topic in public policy discussions. First coined by a Dartmouth professor, John McCarthy, in the 1950s, there does not appear to be any singular, consistent definition of AI in use today, over 60 years later. McCarthy described the process as "that of making a machine behave in ways that would be called intelligent if a human were so behaving." (Kaplan, *Artificial Intelligence: What Everyone Needs to Know* (2016) p. 1 (internal citations omitted).) Today, there are many proposed definitions of AI, but most appear to be roughly around that same concept of creating computer programs or machines capable of "intelligent" behavior if exhibited by humans.[1] (*Id.*)

4) **The opportunities and challenges of AI**: On March 6, 2018, the Assembly Committees on Privacy & Consumer Protection and Emerging Technologies & Innovation held a joint informational hearing whereby they began the process of bringing the Legislature more actively to the table on the topic of AI, alongside academics, technology professionals, and public policy experts. The committees' questions centered on the following: what exactly is encompassed by the term "AI"; what are the opportunities and challenges AI provides to California's economy, workforce, consumers, and general population alike; and what might the appropriate balance between regulations and uninhibited innovation look like in preparing for those challenges and opportunities?

   Definitional issues notwithstanding, examples of what are perceived to be AI applications are ubiquitous. As those examples multiply, the conversation over the opportunities that AI presents, as well as its associated challenges, is becoming more pronounced and undoubtedly will present itself in policy form for government to consider in years to come. As described in a recent Wired article entitled *The Wired Guide to Artificial Intelligence*:

   > For most of us, the most obvious results of the improved powers of AI are neat new gadgets and experiences such as smart speakers, or being able to unlock your iPhone with your face. But AI is also poised to reinvent other areas of life. One is health care. Hospitals in India are testing software that checks images of a person's retina for signs of

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[1] AI can also refer to "artificial general intelligence," "deep learning" or "neural networks." Artificial general intelligence refers to a not-yet existent software that would display a humanlike ability to adapt to different environments and tasks, and transfer knowledge between them. Deep learning refers to a machine learning technique in which data is filtered through self-adjusting networks of math loosely inspired by neurons in the brain, known as artificial neural networks. *See* Simonite, *The Wired Guide to Artificial Intelligence*, Wired (Feb. 1, 2018) <https://www.wired.com/story/guide-artificial-intelligence/> [as of June 4, 2019].

> diabetic retinopathy, a condition frequently diagnosed too late to prevent vision loss. Machine learning is vital to projects in autonomous driving, where it allows a vehicle to make sense of its surroundings. There's evidence that AI can make us happier and healthier. But there's also reason for caution. Incidents in which algorithms picked up or amplified societal biases around race or gender show that an AI-enhanced future won't automatically be a better one.

Indeed, in this way, the committees recognized that AI could very well exacerbate problems, as much as it could solve them. On the one hand, there is an incredible ability for AI to create a global paradigm shift that may propel society into an automation age and propose unique solutions to some of the world's greatest problems. On the other hand, AI comes with its own risks, including bias or loss of privacy, among other things. Thus far, academics and technology companies have led the discussion on the future of AI. Given the potential challenges of AI to society, as well as the benefits, the March informational hearing on the promises and challenges of AI was held in recognition of the fact that government arguably needs to become more actively involved in understanding AI, and the future of AI, both in terms of technology and public policy.

Key findings of that informational hearing emphasized a critical need for elected representatives to continue to engage with the academic and business community (as well as other government entities) in this fashion, as well as a need for the Legislature to better understand AI, the ethical and legal issues surrounding AI, the benefits and unintended consequences associated with the advances in AI, and how such considerations ought to factor into various possible public policy approaches the government might take to address AI and AI-related issues.

In its acknowledgment that California alone "has attracted 41[%] of all global [AI] investment in the last five years," this measure, which urges the President and Congress to develop an AI Advisory Committee and develop a comprehensive AI policy, similarly recognizes that California has a unique role to play in promoting and contributing to a federal AI policy that balances the interests of the workforce, the needs of the economy, and a shared interest in the fair and unbiased application of this technology.

5) **Related legislation**: AB 459 (Kiley) would have required the Artificial Intelligence in State Government Services Commission proposed to be created by AB 976 (Chau) to report to the Legislature on its recommended minimum standards for the use of AI in fostering accountability in state government services and prioritizing the safety and security of AI technologies used by state government. This bill was held in the Assembly Appropriations Suspense File.

   AB 976 (Chau) would establish the Artificial Intelligence in State Government Services Commission as an advisory commission comprised of eight members with certain knowledge and expertise related to the field of AI, and would require the Commission provide specified recommendations to the Legislature and the Governor. This bill is currently in the Senate Governmental Organization Committee.

   AB 594 (Salas) would require the appointment of a Chief AI Officer within the Department of Technology, as specified. This bill is currently in the Senate Governmental Organization Committee.

AB 1576 (Calderon) would require the Secretary of Government Operations to appoint participants to an AI working group, would define "AI" for these purposes, and would require the working group to report to the Legislature on the potential uses, risks, and benefits of the use of artificial intelligence technology by California-based businesses, as specified. This bill is currently in the Senate Governmental Organization Committee.

SB 730 (Stern) would establish the Commission on the Future of Work and the Commission of Tech Equity to conduct research to understand the impact of technology on workers, employers, and the economy of the state. This bill is currently in the Assembly Labor and Employment Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file

Opposition

None on file

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