Date of Hearing: August 7, 2024

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ASSEMBLY COMMITTEE ON APPROPRIATIONS
Buffy Wicks, Chair
SB 1047 (Wiener) – As Amended July 3, 2024

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| Policy Committee: | Privacy and Consumer Protection | Vote: | 8 - 0 |
| | Judiciary | | 9 - 1 |

Urgency: No   State Mandated Local Program: Yes   Reimbursable: No

SUMMARY:

This bill establishes requirements the developer of an artificial intelligence (AI) model trained using a specified level of computing power ("covered model") must meet before training and releasing the model, establishes a state entity to provide oversight and guidance regarding covered model compliance, provides related whistleblower protections, grants enforcement authority to the Attorney General and Labor Commissioner, and creates CalCompute, a public cloud computing cluster.

Specifically, among other provisions, this bill:

1) Establishes risk assessment, safety, security, and testing requirements the developer of a covered AI model must fulfill before training the covered model, using the covered model, or making the covered model available for public or commercial use.

2) Requires, beginning January 1, 2028, the developer of a covered model to annually retain a third-party auditor to perform an independent audit of compliance with the requirements of the bill.

3) Establishes the Frontier Model Division (FMD) within the Government Operations Agency (GovOps) to, among other responsibilities, annually review certifications from developers, establish an accreditation process for third party auditors of covered models, publish anonymized safety reports, and issue guidance, standards, and best practices necessary to prevent unreasonable risks of covered models and covered model derivatives causing or enabling critical harms.

4) Establishes the Board of Frontier Models (Board) within GovOps and makes the Board responsible for directly supervising the FMD.

5) Requires the developer of a covered model to submit an annual certification to the FMD certifying the developer's compliance with the bill's requirements and providing FMD with specified information about its covered model. Beginning January 1, 2028, a developer must also submit its most recent audit report to FMD as part of this annual certification.

6) Requires the developer of a covered model to report each AI safety incident affecting the covered model to the FMD, as specified.

7) Requires the FMD, by January 1, 2027, and annually thereafter, to issue regulations to update the definition of a "covered model" to ensure it accurately reflects technological

developments and applies to AI models that pose the greatest risk of causing or enabling critical harms.

8) Requires a person who operates a computing cluster to implement written policies and procedures when a customer utilizes computer resources sufficient to train a covered model.

a) Authorizes the Attorney General to bring a civil action to enforce any provision of the bill, and authorizes the Labor Commissioner to enforce any provision that would constitute a violation of the Labor Code, and specifies applicable penalties.

9) Provides whistleblower protections under the California Whistleblower Protection Act for employees of the FMD and employees of developers of covered models.

10) Requires the California Department of Technology (CDT) to create a public cloud computing cluster known as CalCompute to study the safe and secure deployment of large-scale AI models and fostering equitable innovation.

FISCAL EFFECT

1) Costs (General Fund) to GovOps to establish and operate the FMD and the Board. GovOps reports ongoing annual costs between $5 million and $10 million.

2) Costs (General Fund) to CDT to establish and operate CalCompute. In the first year of implementation, CDT reports costs of $508,000 for two temporary positions, $6 million for external consultants, and $1 million for GenAI talent practices to train state employees. In subsequent years, CDT anticipates costs of $3.7 million for 16 additional positions, $3 million for external consultants, and $700,000 for GenAI talent practices. The bill authorizes CDT to receive private donations, grants, and local funds to support CalCompute, which may offset General Fund costs by an unknown amount.

   CDT notes it is challenging to hire GenAI talent in the public sector since salaries are often two or three times higher in the private sector, and private sector employers can offer bonuses, equity, and stock options. As a result, CDT reports, its fiscal estimates for this bill include significant funding for external consultants, and actual costs for consultants may be higher if the state does not provide sufficient funding for training of state employees. GovOps will likely also face these challenges and additional cost pressures.

3) Costs (General Fund, Labor and Enforcement Compliance Fund) of an unknown but potentially significant amount to the Department of Justice (DOJ) and Labor Commissioner to enforce violations of the bill. Costs to DOJ may be in the high hundreds of thousands to low millions of dollars annually. Actual costs will depend on the number of violations, the number of actions filed, and the amount of workload associated with each action.

4) Costs (Trial Court Trust Fund, General Fund) to the courts to adjudicate violations of the bill and whistleblower cases. Actual costs will depend on the number of violations, the number of actions filed, and the amount of court time needed to resolve each case. Although courts are not funded on the basis of workload, increased pressure on the Trial Court Trust Fund may create a need for increased funding for courts from the General Fund. The fiscal year 2024-25 budget provides $37.3 million ongoing General Fund to backfill declining revenue to the Trial Court Trust Fund.

5) Minor and absorbable costs to Judicial Council to review and process the model jury instructions recommended by the FMD, as required by the bill.

According to the Legislative Analyst's Office, the General Fund faces a structural deficit in the tens of billions of dollars over the next several fiscal years.

COMMENTS:

1) **Purpose.** This bill is sponsored by the Center for AI Safety Action Fund, Economic Security California Action, and Encode Justice. According to the author:

> Large-scale artificial intelligence has the potential to produce an incredible range of benefits for Californians and our economy—from advances in medicine and climate science to improved wildfire forecasting and clean power development. It also gives us an opportunity to apply hard lessons learned over the last decade, as we've seen the consequences of allowing the unchecked growth of new technology without evaluating, understanding, or mitigating the risks. SB 1047 does just that, by developing responsible, appropriate guardrails around development of the largest, most powerful AI systems, to ensure they are used to improve Californians' lives, without compromising safety or security.

2) **Background.** As the development of AI models has progressed, scholars, policymakers, philosophers, and others have raised concern about the lack of regulation for the most powerful emerging AI models. As discussed thoroughly in the policy committee analyses of this bill, many people inside and outside the industry have encouraged governments to put an anticipatory regulatory framework in place now, despite the considerable uncertainty about the future of AI modeling, to mitigate the risk of future harm resulting from AI models.

This bill seeks to fill this void in California by implementing risk assessment, safety, analysis, cybersecurity, and testing requirements with which developers of the most powerful AI models must comply. Under the bill, the FMD and its governing Board within GovOps are responsible for monitoring compliance with the bill's requirements, among many other duties outlined in the bill. The Attorney General may file a civil action to enforce any violation of the bill's provisions, and the Labor Commissioner may enforce any provision of the bill that is also a violation of the Labor Code. The bill contains an initial definition of a "covered model" that determines which models must comply with the bill's requirements in the short term. The bill requires the FMD to issue regulations by January 2027 to provide an updated definition of "covered model," and requires the FMD to update the definition annually thereafter to ensure it captures the most powerful AI models that carry the greatest risk of inflicting harm.

This bill also establishes whistleblower protections for employees of the FMD and employees of developers with covered models, with the goal of protecting employees who report violations and other unsafe practices of covered developers. Finally, the bill establishes CalCompute, a public computing cluster, within CDT.

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