



March 8, 2021

The Honorable Ed Chau  
 California State Assembly  
 State Capitol, Room 5016  
 Sacramento, CA 95814

**SUBJECT: AB 13 (CHAU) PERSONAL RIGHTS: AUTOMATED DECISION SYSTEMS  
 OPPOSE – AS INTRODUCED DECEMBER 7, 2020**

Dear Assemblymember Chau:

The California Chamber of Commerce and the listed organizations must **OPPOSE AB 13 (Chau)**, as introduced December 07, 2020. While we stand strongly against negative bias and discrimination, **AB 13** as drafted is overbroad, ambiguous, and ignores existing safeguards for protected classes. Instead of taking a fact-based approach to this issue, **AB 13** intends to eliminate negative bias in algorithms by imposing punitive burdens on any business using any computational process, including menial and ubiquitous tools used every day. Failure to comply will result in civil penalties.

**AB 13 is overbroad.** **AB 13** is overbroad because its definition of “automated decision systems” (ADS) captures any “computational process” that “facilitates human decision making” that “impacts persons.” Thus, **AB 13** applies to even the most basic tools and applications that businesses use to make everyday decisions, including spreadsheets, office applications, and many of the apps you see on mobile devices. Because of this broad applicability, the costs of compliance are likely to harm many businesses, products, and services. **AB 13** also impacts some of the most important tools and applications used by businesses today, including systems designed to protect user safety and security. For example, the bill would inhibit a

program that calculates an individual's tax bracket, a predictive search bar on a local retailer's website, or a system that uses machine learning to identify sexual abuse online.

**AB 13 imposes debilitating costs for businesses but creates small benefits to consumers.** **AB 13** requires businesses to develop processes to continually test each use of ADS for biases, conduct impact assessments on each ADS or device, and to submit annual reports to the Department of Financial Protection and Innovation. **AB 13** could also require the creation of new software, potentially new ADS, in order to continually test each existing ADS for bias. Likewise, a separate impact assessment must be conducted for each use of ADS, regardless of the size, scope, or application. An annual report alone would constitute a massive burden on companies of all sizes across the state. The sheer cost of compliance could cripple many companies in California for using technology that is not more sophisticated than basic computational processes. And although **AB 13** requires businesses to bear the monumental cost of producing separate impact assessments for each and every computational process used to make decisions involving people, it provides little tangible benefit to consumers under the purposes of the bill.

**AB 13 threatens disclosure of proprietary and trade secret information.** **AB 13's** reporting requirements are so broad and arbitrary that many businesses could be required to reveal proprietary information about internal processes and trade secrets in order to comply with the law. **AB 13** requires California's businesses to submit details about their proprietary systems through an online portal to the Department of Financial Protection and Innovation (DFPI), which has no directive under the bill to protect or even use the information. Because **AB 13** makes no allowances for the protection of California's proprietary and trade secret information, it effectively inhibits innovation and discourages development in the State.

**AB 13 ignores that there are existing laws addressing discrimination and privacy.** Regardless of the use of an algorithm, California citizens can bring disparate impact claims under existing federal and state law. Plaintiffs are permitted to bring claims under a variety of statutes as a check against any discrimination. There is no need for a separate and overbroad ADS law.

**AB 13 will force many businesses to collect information they do not currently collect.** In accordance with existing law and best industry practices, many algorithmic systems do not collect information about protected classes. Businesses try to minimize the amount of data they collect from consumers. However, **AB 13** will require businesses to begin collecting protected class information and linking it with existing data for the sole purpose of complying with the impact assessment requirement. This requirement violates basic principles of data minimization.

**AB 13 inhibits innovation of technologies that increase accountability and eliminate bias.** Many businesses rely on ADS in part because they offer greater accountability and eliminate implicit human bias. Indeed, it is likely that the comparison requirement in **AB 13** to evaluate ADS against non-computational alternatives will lead to the selection of less burdensome non-computational alternatives even if they are also less precise. Accordingly, it is unfair to hold businesses that develop and use "automated decision systems" differently from businesses that employ non-computational decision-making processes. **AB 13's** regulation on the use of technology would thereby deter businesses from adopting technologies that in fact reduce bias.

**Voters Addressed ADS in Proposition 24.** In the most recent election, California voted to create a dedicated privacy protection agency that is explicitly required to address ADS. Under Proposition 24, the California Privacy Rights Act, the new California Privacy Protection Agency is required to issue rules and regulations on automated decision making. (§1798.185(a)(16)). Because the voters have approved and funded a new privacy agency and provided it with a mandate to regulate ADS, it does not make sense for the legislature to act inconsistently with their decision here.

Due to its broad scope and failure to account for the consequences of its application, **AB 13** is poised to have a disruptive negative impact on California businesses and the economy. From small businesses struggling to survive the pandemic to large businesses who provide support and critical digital infrastructure in our state, **AB 13** is demonstrably harmful to most, if not all businesses in California. We

invite the opportunity to join stakeholders and study this issue further, but we must respectfully oppose **AB 13** as drafted.

Sincerely,



Shoeb Mohammed  
Policy Advocate  
California Chamber of Commerce

American Council of Life Insurers  
American Property Casualty Insurance  
Association  
Alliance for Automotive Innovation  
Association of California Life & Health Insurance  
Companies  
Association of National Advertisers  
California Bankers Association  
California Business Properties Association  
California Cable & Telecommunications  
Association  
California Credit Union League  
California Financial Services Association  
California Manufacturers & Technology  
Association  
California Mortgage Bankers Association  
California New Car Dealers Association  
California Retailers Association

Civil Justice Association of California  
Consumer Data Industry Association  
Electronics Transactions Association  
Insights Association  
Internet Association  
Internet Coalition  
Pacific Association of Domestic Insurance  
Companies  
Personal Insurance Federation of California  
Motion Picture Association - America  
National Association of Mutual Insurance  
Companies  
National Payroll Reporting Consortium  
Securities Industry and Financial Markets  
Association  
Silicon Valley Leadership Group  
TechNet  
The Association of Magazine Media

cc: Legislative Affairs, Office of the Governor

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