

June 10, 2024

Honorable Scott Wiener
1021 O Street, Suite 8620
Sacramento, CA 95814

**SB 1047 (Safe & Secure Innovation for Frontier AI Models Act) OPPOSE UNLESS
AMENDED**

Dear Senator Wiener,

On behalf of the Electronic Transactions Association (“ETA”), the leading trade association representing the payments industry, I appreciate the opportunity to share our opposition and broad concerns with SB 1047.

ETA shares the goal of ensuring artificial intelligence (AI) is safe and lawful and supports regulation of AI when taking a risk-based approach. Oversight and ongoing supervision of AI should be tailored to the level of risk involved in the application of artificial intelligence systems. ETA also believes it is important to continue to incentivize the uptake of AI technology and further innovations in this space. Experimentation and training constitute a large initial investment cost for AI startups; therefore, ETA is concerned that adding administrative burdens too prematurely could stifle innovation. ETA encourages the legislature to engage with key stakeholders and industry experts to create a practical framework for balancing the risks posed by AI against the need to incentivize AI innovation.

ETA’s concerns with SB 1047 can be summarized as follows:

Overview: While safeguarding against the most significant risks posed by AI is important, SB 1047 poses significant challenges. For example:

- it creates a heavy burden on companies that use AI tools to make long-term predictions about their models’ capabilities before models are trained or built, and
- it introduces a vague concept of “reasonableness,” which, while potentially empowering developers to assess whether a model qualifies for an exemption, also carries the risk of ambiguity, and may prove challenging to adhere to without additional insights from industry experts.

Covered Model: As written, “Covered model” is defined in terms of computing power. Instead, ETA recommends working with companies to develop a definition targeting high-risk applications of AI, to avoid imposing significant regulation on large but responsible models.

Hazardous Capability: The current definition of “hazardous capability,” which companies are required to anticipate, is inclusive of modifications performed by third parties. It is unclear how companies can be responsible for anticipating and preparing for every eventuality or application of AI technology.

Limited Duty Exemption: The exemption includes a secondary definition stating the covered model does not “come close to possessing a hazardous capability when accounting for a reasonable margin for safety.” The terms “close” and “margin for safety” are not clearly defined, making it challenging, if not impossible, for companies to understand the implications of this provision. ETA also requests clarification on what the "average market price" means or whether there is

Developer liability: SB 1047 imposes excessive penalties, including potential criminal liability and the deletion of models. ETA believes these penalties are disproportionate to the implementation and use of many AI models. Additionally, ETA supports liability to be assigned to the user or entity causing harm, rather than the developer.

This part will be a challenge because of the way we (and likely most processors) bundle pricing to reflect discounts for using multiple products. We would have to determine what "average market price" means. I'd imagine penalties would skew higher for AI companies that do not receive discounts. They should probably follow the EU model and set a fixed amount. *(which is only a suggestion we would make if we have to live with this bill v. kill)*

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We appreciate you taking the time to consider these important issues. Thank you for the opportunity to participate in the discussion on this important issue. If you have any additional questions, you can contact me or ETA Senior Vice President, Scott Talbott at stalbott@electran.org.

Respectfully Submitted,



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CC: Members, California State Legislature