

CONCURRENCE IN SENATE AMENDMENTS

AB 1331 (Elhawary)

As Amended August 28, 2026

Majority vote

SUMMARY

Prohibits an employer from using a workplace surveillance tool to monitor or surveil employees in a bathroom located in the workplace. Additionally provides that employees generally have the right to leave behind workplace surveillance tools that are on their person or in their possession when entering a bathroom. Authorizes the Labor Commissioner (LC) or public prosecutor, as specified, to enforce the bill.

Senate Amendments

- 1) Define "artificial intelligence" to mean an engineered or machine-based system that varies in its level of autonomy and that can, for explicit or implicit objectives, infer from the input it receives how to generate outputs that can influence physical or virtual environments.
- 2) Make clarifying and conforming changes.
- 3) Revise the definition of "employer" to mean a person who directly or indirectly, or through an agent or any other person, employs or exercises control over the wages, hours, or working conditions of any person. "Employer" includes:
 - a) All branches of state government, or the several cities, counties, cities and counties, and municipalities thereof, or any other political subdivision of the state, or a school district, or any special district, or any authority, commission, or board or any other agency or instrumentality thereof.
 - b) Labor contractor of an employer and any entity or individual that contracts with the labor contractor for labor or services, including, but not limited to, a "client employer," as specified, or an individual or business entity that contracts for property services, as specified.
 - c) A farm labor contractor, as defined, or foreign labor contractor, as defined.
- 4) Delete the definition of "worker" which included independent contractors.
- 5) Revise the definition of "workplace surveillance tool" to mean a system, application, instrument, or device that collects or facilitates the collection of employee data, activities, communications, actions, biometrics, or behaviors by means other than direct observation by a person, including but not limited to, video or audio surveillance, continuous incremental time-tracking tools, geolocation, electromagnetic tracking, photoelectronic tracking, a photo-optical system, or other means.
- 6) Limit the prohibition on an employer's use of a workplace surveillance tool to monitor or surveil employees to a bathroom located in the workplace.
- 7) Limit an employee's right to leave behind workplace surveillance tools that are on their person or in their possession to when entering a bathroom.

- 8) Delete a number of provisions, including the prohibition on an employer requiring a worker to physically implant a device that collects or transmits data and restrictions on how an employer uses workplace surveillance tools in an employee only breakroom or cafeteria.
- 9) Provide that the following circumstances do not constitute a violation of the bill:
 - a) An employee voluntarily chooses to bring a workplace surveillance tool into a bathroom in the workplace.
 - b) An employee brings a workplace surveillance tool, including a badge or personal alarm system, into a bathroom in the workplace because the employer has a policy that requires that tool to be in the employee's possession while on work premises for identification or safety purposes, or if the tool is required to access a locked or secured bathroom, and the tool meets certain criteria, as specified.
- 10) Remove the bill's anti-retaliation provision for an employee exercising their rights, as specified.

COMMENTS

Employers are increasingly relying on technology to monitor, manage, and collect data on their workers. Information provided by the author notes that reports from ExpressVPN found that close to 80% of employers use monitoring software to track employee performance. ¹ With employer surveillance on the rise, workers have limited access to spaces in their workplace, or around their homes that are not under constant surveillance. Employers use workplace surveillance to track and prevent workers from advocating for their rights. The new surveillance state at the workplace has proven to increase psychological distress, stress, and lower job satisfaction among workers. ²

According to the Author

According to the author, "AB 1331 is an important step in securing a worker's right to privacy while new invasive surveillance technologies are being used by employers."

Arguments in Support

A coalition of labor organizations, including the California Federation of Labor Unions, AFL-CIO, are in support and state, "Workplace surveillance is not a new phenomenon. Employers have surveilled workers for decades with traditional cameras and microphones. However, today's workplace surveillance capabilities differ in scale, speed, and invasiveness. Employers now have access to a plethora of tools such as wearable devices to monitor worker biometrics, speech, and location, as well as heat and retina tracking technology. With the use of these powerful surveillance tools, workers have limited access to spaces in their workplace and homes that are not under constant surveillance. Areas such as restrooms, lactation spaces, and worker lounges are not protected from being surveilled with advanced technology that does not rely solely on traditional audio or visual recordings. The new surveillance state at the workplace has proven to increase the likelihood of discrimination, harassment, and psychological distress of workers.

¹ <https://www.cnn.com/2023/04/24/employee-surveillance-is-on-the-rise-that-could-backfire-on-employers.html>

² <https://pmc.ncbi.nlm.nih.gov/articles/PMC11300163/>

To protect worker privacy in sensitive areas..., AB 1331 will update and expand existing workplace privacy laws to address new surveillance technology."

Arguments in Opposition

[Note: opposition arguments may not necessarily reflect the newest version of the bill.]

A coalition of employer organizations, including the California Chamber of Commerce, are opposed and state, "Substantively, AB 1331 is intended to ban surveillance of individual employees at inappropriate times or places, but uses unnecessarily overbroad language to do so, causing impractical results. AB 1331 limits the use of "workplace surveillance tools," which is broadly defined to include *any tool* that collects or even "facilitates" the collection of "worker data." "Worker data" is defined as any information that is reasonably capable of being associated with a worker. In other words, AB 1331 would limit the use of anything from old-school security cameras and keycards to cybersecurity tools and GPS tracking. In fact, the definition is so broad that even non-tracking devices such as *an email storage system* could fall under the bill."

FISCAL COMMENTS

There is no fiscal analysis available for this version of the bill.

VOTES:

ASM LABOR AND EMPLOYMENT: 5-0-2

YES: Ortega, Elhawary, Kalra, Lee, Ward

ABS, ABST OR NV: Flora, Chen

ASM PRIVACY AND CONSUMER PROTECTION: 10-3-2

YES: Bauer-Kahan, Bryan, Irwin, Lowenthal, McKinnor, Ortega, Pellerin, Ward, Wicks, Wilson

NO: Dixon, DeMaio, Macedo

ABS, ABST OR NV: Patterson, Petrie-Norris

ASM APPROPRIATIONS: 11-3-1

YES: Wicks, Arambula, Calderon, Caloza, Elhawary, Fong, Mark González, Hart, Pacheco, Pellerin, Solache

NO: Dixon, Ta, Tangipa

ABS, ABST OR NV: Sanchez

ASSEMBLY FLOOR: 55-15-9

YES: Addis, Aguiar-Curry, Ahrens, Alvarez, Arambula, Bains, Bauer-Kahan, Bennett, Berman, Boerner, Bonta, Bryan, Calderon, Caloza, Carrillo, Connolly, Elhawary, Fong, Gabriel, Garcia, Gipson, Mark González, Haney, Harabedian, Hart, Irwin, Jackson, Kalra, Krell, Lee, Lowenthal, McKinnor, Muratsuchi, Papan, Patel, Pellerin, Petrie-Norris, Quirk-Silva, Ransom, Celeste Rodriguez, Michelle Rodriguez, Rogers, Blanca Rubio, Schiavo, Schultz, Sharp-Collins, Solache, Soria, Stefani, Valencia, Ward, Wicks, Wilson, Zbur, Rivas

NO: Ávila Fariás, DeMaio, Dixon, Ellis, Gallagher, Jeff Gonzalez, Hadwick, Hoover, Macedo, Patterson, Ramos, Sanchez, Ta, Tangipa, Wallis

ABS, ABST OR NV: Alanis, Castillo, Chen, Davies, Flora, Lackey, Nguyen, Ortega, Pacheco

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