

CONCURRENCE IN SENATE AMENDMENTS

AB 316 (Krell)

As Amended September 2, 2025

Majority vote

SUMMARY

Establishes that in civil actions, where a plaintiff alleges harm caused by AI, a defendant who developed, modified, or used the AI is prohibited from asserting that the AI acted autonomously as a defense.

Major Provisions

- 1) *Establishes that in civil actions, where a plaintiff alleges harm caused by AI, a defendant who developed, modified, or used the AI is prohibited from asserting that the AI acted autonomously as a defense.*
- 2) *Defines "artificial intelligence" as "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."*
- 3) *Clarifies that the bill does not limit or preclude a defendant from presenting any other affirmative defense, including evidence relevant to causation or foreseeability, or other evidence relevant to the comparative fault of any other person or entity.*

Senate Amendments

Clarify that the bill does not limit or preclude a defendant from presenting any other affirmative defense or other evidence relevant to comparative fault.

COMMENTS

The increasing integration of artificial intelligence—systems that, with varying degrees of autonomy, generate outputs influencing physical or virtual environments—prompts a reevaluation of liability when these systems cause harm. Under current tort law, responsibility hinges on human action, with defenses available when harm stems from independent causes. AI's autonomy complicates this, as its decisions may not directly trace to human oversight, potentially allowing developers or users to avoid liability. Right now, if an AI system misdiagnoses a patient or generates defamatory content, defendants might argue the system's independence absolves them—an argument this bill seeks to eliminate.

California's tort system, rooted in Civil Code Section 1714, imposes a duty of care on all *persons* to avoid injuring others through negligence or willful acts, a principle adaptable to any tort claim—negligence-based (e.g., defamation, medical malpractice) or strict liability-based (e.g., products liability)—while allowing defenses like intervening causation when independent forces break the causal chain (Restatement (Second) of Torts Section 441). AI's autonomous capabilities strain this system, as its outputs may appear detached from direct human control, raising questions about accountability when harm occurs. Courts have previously adapted traditional principles to technology-related harms, such as software defects, but no statute explicitly governs AI autonomy as a defense, leaving judicial interpretation to bridge the gap.

Under California law, negligence is established when a plaintiff proves that the defendant owed a legal duty of care, breached that duty, and that the breach was both the actual and proximate cause of the plaintiff's injury, resulting in damages. (*Ladd v. County of San Mateo* (1996) 12 Cal.4th 913, 917; Civil Code Section 1714 (a).) Applied to AI, this framework holds developers or users liable if their oversight or deployment of the system falls below a reasonable standard of care.

For example, consider XYZ Corp., a California-based software company, which develops an AI-powered navigation system used in autonomous vehicles. The company markets the software as highly reliable, claiming it has undergone extensive testing. However, due to cost-cutting measures, XYZ Corp. skips several recommended safety protocols and releases the software without adequately testing how it responds to construction zones. When an autonomous vehicle using XYZ's software encounters an unmarked road closure, the AI misinterprets the data and accelerates instead of stopping, causing a collision that severely injures a pedestrian.

Under California's negligence standard, the injured pedestrian could prevail against XYZ Corp. for damages by proving all of the required elements of negligence:

- 1) *Duty of care.* As a software developer selling AI-based navigation technology, the corporation owes a duty of care to consumers and the general public to design and maintain a reasonably safe product. (Civil Code Section 1714 (a); *Rowland v. Christian* (1968) 69 Cal.2d 108, 112-13.)
- 2) *Breach of duty.* XYZ Corp. breached its duty by failing to properly test its AI system under foreseeable real-world conditions, such as road closures, before deployment. A reasonable software company would have conducted rigorous testing to prevent foreseeable risks. (*Mosley v. Arden Farms Co.* (1945) 26 Cal.2d 213, 216.)
- 3) *Causation.* XYZ's breach was a substantial factor in causing the harm. (*Mitchell v. Gonzales* (1991) 54 Cal.3d 1041, 1052.) Here, the accident would not have occurred but for XYZ's defective software, making XYZ's negligence the actual cause. Additionally, the harm was foreseeable because navigation software must account for common road conditions like closures, establishing proximate cause.
- 4) *Damages.* The pedestrian suffered severe injuries, resulting in medical expenses, lost wages, and pain and suffering, which are compensable under California law.
- 5) *Defenses and comparative negligence.* XYZ Corp. may argue that the vehicle manufacturer also contributed to the harm by failing to include a manual override system. Under California's pure comparative negligence rule (*Li v. Yellow Cab Co.* (1975) 13 Cal.3d 804, 828-29), the pedestrian's recovery would be reduced in proportion to any fault assigned to other parties but would not be entirely barred, unless the AI's autonomy is deemed an independent cause—a defense courts currently weigh on a case-by-case.

This example shows how the existing negligence framework could address AI harm by focusing on human oversight, but AI's autonomy might complicate causation, prompting defendants to argue it acted unforeseeably, a contention this bill seeks to foreclose.

This bill is largely preemptive. It seeks to eliminate autonomy as a shield, streamlining causation across torts like defamation, malpractice, and products liability. As noted above, this "autonomy

defense" has not been legally tested. Defendants facing liability for AI-related harm have instead challenged negligence and strict liability in other ways, including by raising a First Amendment defense, Section 230 preemption, and failure to meet the elements of negligence/strict liability, depending on the case. This bill merely eliminates one other possible avenue of defense. By barring autonomy defenses before they are tested in court, this bill ensures AI outputs are legally tied to developers or users, preventing them from pointing the finger at AI's so-called autonomous conduct as an "independent cause." For example, in the XYZ Corp. navigation hypothetical above, under AB 316, the pedestrian's claim would succeed if XYZ's design or testing flaws are shown, regardless of the AI's "decision" to accelerate. This bill strengthens California's tort framework for AI harm but doesn't fully resolve its complexities, marking a bold yet incomplete step in the evolving AI accountability debate.

According to the Author

The California AI industry is rapidly growing, both from an economic and technological standpoint. AI has seen extraordinary advancements in its applications, complexity, and autonomy, to the point where AI is replacing human intelligence in certain tasks. As AI becomes more complex, it is increasingly involved in daily interactions and significant decision-making. While this has the potential to bring positive changes to various industries and facets of life, this also means that AI related harm can be much more significant. These harms are already manifesting and will only worsen as the AI race becomes more competitive. Specifically, AI being deployed through social media has been shown to be particularly harmful to youth.

This bill ensures that companies benefiting from the use of AI are also responsible for the harms AI may cause. By eliminating a potential AI defense theory, this bill encourages careful vetting of AI products before they are used and ensures that there is a legal entity held to account if AI is shown to violate the law.

Arguments in Support

The Organization for Social Media Safety explains its support for AB 316:

Given both the alarming speed at which AI-based products are being deployed and the clear, convincing proof that these products can cause severe harm, especially to children, we must ensure that our standard product liability framework functions as expected to protect consumers. This established jurisprudence has been instrumental in ensuring that California's products have an outstanding safety record, preventing deaths and injuries for millions of consumers while reliably fostering innovation.

We cannot afford to wait decades for litigation to unfold while Big Social advances novel legal theories arguing that autonomously operating AI, rather than the companies themselves, should bear responsibility for the harm caused. At a minimum, this ambiguity must be clarified now.

Your AB 316 (Krell) does just that. It codifies a straightforward principle: those who profit from the development and use of AI cannot evade liability by blaming the intended autonomy of their own machines. If Big Social wishes to profit from this technology, it must do so within the framework of existing tort law, which incentivizes the consideration of safety in product development and deployment. In this way, we can protect against more broken children.

The University of San Diego's Children's Advocacy Institute explains the urgency of this measure, against a speedily changing backdrop:

[W]e cannot wait for the most basic legal question about autonomously operating AI – who is legally responsible if it harms someone -- to be clarified definitively through decades of litigation. It took 25 years for courts finally to decree that Amazon's marketplace was subject to the same products liability laws as a corner store selling the identical product. It has taken 20 years for courts to figure out how to apply basic negligence and public nuisance law to the harms caused by these companies; a process that is still evolving. According to the most recent data available, the median time frame for resolving just the appeal of a case in California (not including years for the trial) is about a year and a half. That's the median; by definition half of the appeals take longer.

Hence, AB 316 (Krell) simply codifies what should be obvious: that the persons who profit from the development and use of AI cannot, if the AI harms someone or violates a law, point a blaming finger at the intended autonomy of their own machine in an effort to escape liability.

Arguments in Opposition

TechNet, a network of CEOs and senior executives from tech industry, raises the following concerns:

We are concerned about strict liability that this bill would create. The bill disallows the defense that "artificial autonomously caused the harm." It eliminates key arguments regarding foreseeability, design diligence, and user error from the conversation. This would risk imposing a strict liability for any harm allegedly associated with AI and open the door to frivolous lawsuits claiming the alleged fraud. Additionally, the bill does not demonstrate how courts should evaluate complex questions regarding causation, risk foreseeability, or comparative fault when multiple parties are involved in an AI system as developers and users are included in the same liability. As industry and policymakers alike continue to pursue the responsible deployment of AI systems, it is necessary to recognize that the technology will evolve considerably over time. There are multiple, ongoing efforts within the industry as well as national entities to leverage safety tools and create national and international transparency standards to create a cohesive framework that prioritizes responsible AI deployment. Companies are implementing safety frameworks and developing AI-based detection technologies to monitor other AI systems.

FISCAL COMMENTS

According to the Senate Appropriations Committee:

- 1) Unknown, potentially significant costs to the state funded trial court system (Trial Court Trust Fund, General Fund). The elimination of a defense, as proposed by this bill, may increase the likelihood of success for plaintiffs and encourage plaintiffs to file suits that they otherwise would not have. The fiscal impact of this bill to the courts will depend on many unknowns, including the number of cases filed and the factors unique to each case. An eight-hour court day costs approximately \$10,500 in staff in workload. If court days exceed 10, costs to the trial courts could reach hundreds of thousands of dollars. While the courts are not funded on a workload basis, an increase in workload could result in delayed court services

and would put pressure on the General Fund to fund additional staff and resources and to increase the amount appropriated to backfill for trial court operations.

- 2) Unknown, potentially significant costs (General Fund, local funds) to state and local agencies for increased exposure to civil liability to the extent they use artificial intelligence. Agencies may also incur higher liability insurance costs because of increased litigation exposure.

VOTES:

ASM JUDICIARY: 12-0-0

YES: Kalra, Dixon, Bauer-Kahan, Bryan, Connolly, Essayli, Harabedian, Pacheco, Papan, Sanchez, Stefani, Zbur

ASM PRIVACY AND CONSUMER PROTECTION: 11-2-2

YES: Bauer-Kahan, Dixon, Bryan, DeMaio, Irwin, Macedo, Ortega, Patterson, Petrie-Norris, Ward, Wilson

NO: Lowenthal, McKinnor

ABS, ABST OR NV: Pellerin, Wicks

ASSEMBLY FLOOR: 70-1-8

YES: Addis, Aguiar-Curry, Ahrens, Alanis, Alvarez, Arambula, Ávila Farías, Bauer-Kahan, Bennett, Berman, Boerner, Bonta, Bryan, Calderon, Caloza, Carrillo, Castillo, Chen, Connolly, Davies, DeMaio, Elhawary, Ellis, Fong, Gabriel, Gallagher, Garcia, Gipson, Mark González, Hadwick, Haney, Harabedian, Hart, Hoover, Irwin, Jackson, Kalra, Krell, Lackey, Lee, Lowenthal, Macedo, Muratsuchi, Nguyen, Ortega, Pacheco, Patel, Patterson, Petrie-Norris, Quirk-Silva, Ramos, Ransom, Celeste Rodriguez, Michelle Rodriguez, Rogers, Blanca Rubio, Sanchez, Schiavo, Schultz, Sharp-Collins, Solache, Soria, Stefani, Ta, Wallis, Ward, Wicks, Wilson, Zbur, Rivas

NO: McKinnor

ABS, ABST OR NV: Bains, Dixon, Flora, Jeff Gonzalez, Papan, Pellerin, Tangipa, Valencia

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