

# **The Prinz Law Office Announces New Quarterly Fractional Service Plans**

The Prinz Law Office is pleased to announce the availability of new quarterly fractional service plans, effective immediately. The new fractional service plans are intended for the client who seeks to reserve the firm's time on defined terms without the commitment of exhausting the time reserved within a single calendar month. The new quarterly plans allow for ninety (90) days to utilize the reserved time instead of the usual thirty (30) day legal subscription periods, thereby providing clients with more flexibility in utilizing their subscription commitments. The quarterly plans start at just a ten (10) hour commitment, and increase at ten (10) hour increments above the minimum commitment. To learn more about the firm's fractional service plans, the firm' invites you to schedule a **new client consultation today**.

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# **The Prinz Law Office Unveils New Advisory and Contract Review Subscription Plans**

The Prinz Law Office is pleased to announce the availability of new advisory and contract review subscription plans, which will be offered on both a monthly and a quarterly basis, effective immediately. These plans are intended for clients with ongoing but unpredictable legal needs who are seeking more certainty with their legal budget and prefer not to work

with an attorney on a billable hour arrangement. The plans will provide the client with access to a defined set of legal services during the subscription period, as well as access to certain additional services outside the defined legal services for a specified flat fee charge. Unlike many other legal subscription plans currently on the market, clients will have no obligation to remain on the subscription plan beyond the defined subscription period, and may elect to upgrade or discontinue the subscription upon expiration at their sole and absolute discretion. For more information about the firm's new subscription plans, please schedule a new client consultation today.

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## **FTC Announces Final “Click to Cancel” Rule for Subscriptions, Memberships**

The Federal Trade Commission (“FTC”) has just announced the final version of its “Click to Cancel” Rule for consumer subscriptions. The Rule will go into effect 180 days after it is published with the Federal Register. This Rule will directly apply to all SaaS, digital health, tech, and non-tech companies selling on a subscription basis to consumers.

### ***Full Text of FTC Rule***

The full text of the FTC Rule is linked here, at pages 222-230.

### ***Fact Sheet of FTC Rule***

The FTC has also made available a fact sheet which briefly

summarizes key provisions of the “Click to Cancel Rule,” which is attached here.

## ***Key Provisions of the FTC Rule***

According to the FTC announcement, the “Click to Cancel” Rule will apply to “almost all negative option programs in any media.” The key provisions of the FTC Rule will prohibit:

- misrepresenting any material fact made while marketing goods or services with a negative option feature;
- failing to “clearly and conspicuously disclose” material terms prior to obtaining a consumer’s billing information in connection with a negative option feature;
- failing to obtain a consumer’s express informed consent to the negative option feature before charging the consumer; and
- failing to provide a simple mechanism to cancel the negative option feature and immediately stop the charges.

## ***Revisions to Final Version of the FTC Rule***

Also according to the FTC announcement, the FTC dropped from its final Rule an annual reminder requirement that would have required vendors to provide annual reminders to consumers advising them of the negative option feature of their subscription, as well as a requirement that vendors had to ask canceling consumers for approval before a vendor could tell a canceling subscriber about reasons to keep the existing agreement or of possible modifications that could be made without canceling the subscription.

## ***Reasons for Adoption of the Rule***

Why did the FTC adopt a Click to Cancel Rule? According to the FTC Announcement, the FTC was receiving 70 consumer complaints per day over negative option programs, and this

number was “steadily increasing over the past five years.”

The FTC’s announcement follows a recent California enactment of a more comprehensive “Click to Cancel” law.

### ***Does the FTC Rule Supersede California Law?***

The FTC Rule should not supersede California’s more comprehensive law; in fact, the Rule specifically states in its text that the Rule will not be construed to supersede any State statute, regulation or order “except to the extent that it is inconsistent with the provisions of this part, and then only to the extent of the inconsistency.” The expected impact of the FTC Rule is primarily to bring federal regulatory law closer to California regulatory law as it pertains to subscriptions and memberships.

### ***What do SaaS, Digital Health, Tech, and other Companies Utilizing the Subscription Model Need to do in Response to this Announcement?***

All companies utilizing a subscription model should revise consumer contracts and processes to comply with the FTC Rule over the next 180 days. Companies utilizing the subscription model with a business-focused customer base should similarly consider what changes to make to their contracts and processes as public policy will likely change regarding subscriptions generally along with the new FTC Rule and California law changes.

If you have questions or concerns about how new FTC “Click to Cancel” Rule or the new California “Click to Cancel Law” will impact your digital health company, please schedule a consultation at <https://calendly.com/prinzlawoffice>.

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# **Kristie Prinz to Speak at Upcoming Practicing Law Institute Program**

Silicon Valley Tech Business Lawyer Kristie Prinz of The Prinz Law Office will be speaking at an upcoming one-day Practicing Law Institute Program to be held on October 9, 2024 at the PLI headquarters in San Francisco, California.

Kristie will be speaking on “Drafting Privacy Policies for Devices with No User Interface – What Do You Do?”, along with Peter McLaughlin of Rimon, P.C. The presentation will examine the challenges of managing legal and privacy terms with IOT devices.

The one-day program is titled “Advanced Internet of Things 2024: Deeper Dive, Practical Wisdom” and will also feature presentations by Leonard Naura of Flatiron Law Group, LLP, Ian Ballon of Greenberg Traurig, LLP, Kate Downing of the Law Office of Kate Downing, Megan Ma of Stanford University, and John Yates of Morris, Manning & Martin, LLP. For more information and to register to attend this event, visit the Practicing Law Institute website at [this link](#).

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## **California Adopts “Click to Cancel” Law to Regulate**

# Consumer Subscriptions

California has just adopted the new “click to cancel” law that will regulate consumer subscriptions, along with memberships and other autorenewing or continuous service arrangements with consumers.

AB 2863 amends California’s existing autoren renewal law to add additional protections for consumers with respect to autorenewing or continuous billing charges.

SaaS, digital health, tech and other consumer-focused companies need to be aware of this new law and its potential to impact contracts and customer relationships, particularly in light of the currently slow tech and life sciences market.

## ***Text of AB 2863***

To view the full text of AB 2863, please **click here**. The law goes into effect in 2025, and applies to all contracts entered into, amended, or extended after its effective date.

## ***New Requirements for Consumer Subscriptions***

Under the new California law, it will now be unlawful for any company in the state that makes an autoren renewal or continuous service offer to a consumer in the state to do any of the following:

- Fail to present the terms of the offer in a clear and conspicuous manner in visual proximity to the request for consent of the offer, which includes if there is a free gift or trial, a clear and conspicuous explanation of the price that will be charged when the trial ends;
- Charge the consumer’s credit or debt card or any third party account for the automatic renewal or continuous service without first obtaining affirmative consent from the consumer to the automatic renewal or continuous service agreement;

- Fail to provide an acknowledgement that includes the automatic renewal offer terms or continuous service offer terms, cancellation policy, and information regarding how to cancel in a manner that the consumer can retain, and if the offer contained a free gift or trial, the acknowledgement must include a disclosure of how to cancel and must permit the consumer to cancel before the consumer pays for the goods or services;
- Fail to obtain express affirmative consent from a consumer to the automatic renewal or continuous service offer terms;
- Include terms in a contract that interfere with, detract from, contradict, or otherwise undermine the ability of consumers to provide their affirmative consent to automatic renewal or continuous service terms;
- Fail to maintain verification of consumer's affirmative consent for at least three years, or one year after the contract is terminated, whichever is longer;
- Misrepresent expressly or by implication a material fact related to the transaction;
- Fail to provide consumer with a notice, before confirming the consumer's billing information that clearly and conspicuously states:
  - The service will automatically renew unless the consumer cancels;
  - The length and any additional terms of the renewal period;
  - The amount or range of costs consumer will be charged and the frequency of those charges, unless consumer stops the charges;
  - One or more methods which consumer can cancel the autorenewal or service;
  - If sent electronically, the notice must include a link that directs consumer to the cancellation process, or another electronic method that directs the consumer to cancellation; and
  - Contact information for the business.

## ***New Requirements for Gifts and Trials***

In addition, companies offering free gifts or trials at promotional or discount prices that last for more than 31 days in conjunction with an automatic renewal or continuous service offer will now be mandated to provide the same kind of clear and conspicuous notice no less than 3 days before and no more than 21 days before the expiration of the gift or trial. The only exception to this requirement is in cases of contracts that are not electronic, where the business has not collected or maintained the consumer's valid email address, phone number, or other means of notifying the consumer electronically. "Free gifts" for the purpose of this law does not apply to a gift that is different than the subscribed product or service.

## ***New Requirements for Contracts or Offers with Initial Term of One Year or Longer***

If the contract or service offer was for an initial term of one year or longer, companies will now be required to provide the specified notice at no less than 15 days and no more than 45 days before the offer renews.

## ***Online "Click to Cancel" Requirement***

Companies that sign-up or subscribe consumers online will be required to provide one of two methods to allow consumers to cancel at will by either (a) a prominent link or button within the customer account or profile or within device or user settings, or (b) an immediately accessible termination email formatted and provided by the business that a consumer can email to the business without any additional requirement.

## ***Direct Billing Requirement***

Companies that direct bill consumers on an automatic renewal or continuous offer basis will be required to provide a toll-free telephone number, email address, and postal address or



“another cost-effective, timely, and easy-to-use mechanism for cancellation” that is described in the acknowledgement. If a telephone number is provided as the mechanism for termination, the business is required to answer calls promptly during normal business hours without obstructing or delaying the ability to cancel. If a voice mail is left by the consumer requesting cancellation, the company shall be required to either process the requested cancellation in one business day or call the customer back regarding the request within one business day.

### ***Customer Retention Offer Requirement***

Companies will still be permitted to make customer retention offers, provided that they must first clearly and conspicuously inform the consumer that they may complete the cancellation process at any time by stating they want to “cancel” or similar words to that effect. Once the consumer states their intention to “cancel” or uses similar words, the company must promptly process the cancellation without obstruction or delay. Companies making online customer retention offers will be required to display a simultaneous, prominently and proximately located and continuously displayed direct link or button labeled “click to cancel” alongside the offer. Once the consumer clicks on the button, the business is required to promptly process the cancellation.

### ***Requirement for Material Term Changes***

Companies who materially change terms that have already been accepted by a consumer in the state will be required to provide to the consumer a clear and conspicuous notice of the material change and to provide information on how to cancel. If the change involves a fee that was already accepted, the companies will be required to provide at least 7 days (and no more than 30 days) prior clear and conspicuous notice of the fee change and information on how to cancel.

### ***Requirement for Annual Reminder***

Companies will be required to send an annual remind to consumers who have entered into annual automatic renewal

agreements or continuous service agreements in the same medium that the agreement was activated or in the same medium by which the consumer is interacting with the business. If the medium was in-person or voice-based then the company may submit the reminder via telephone, mail, or another internet-based communication. The notice is required to disclose the product or service to which the agreement applies; the frequency and amount of charges; and the means to cancel.

## ***Implications of Requirements***

While these new rules apply only to automatic renewal agreements and continuous service agreements with consumers, they may be applied to companies in cases where they are run by sole proprietors. Also, they may be applied in other contexts to companies on public policy grounds, where the terms of service or contract terms in effect are not at least as good as what is required now by law in the case of consumers.

## ***What does this mean for SaaS, Digital Health, Tech and other Companies Operating on a Subscription Basis?***

Companies need to start reviewing and updating their contracts and terms of service, as well as their practices and procedures. Given there are so many changes, most companies who serve a consumer client base will need to rethink their terms and practices and procedures, and companies who serve a business client base will also want to consider whether or not their current agreements and practices and procedures are aligned with the new law.

If you have questions or concerns about how this new law will impact your company, please schedule a consultation today at <https://calendly.com/prinzlawoffice>.

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# **Kristie Prinz to Lead Silicon Valley Group in ProVisors**

I am pleased to announce that I am a new ProVisors home group leader in the Silicon Valley Region. I will be leading a new Silicon Valley Virtual 1 Group, which will be an all-virtual home group for service providers engaged in Silicon Valley business. The group will meet the first Friday of the month at 11:30 a.m. PT, and we are currently seeking our first members. If you would like to learn more about ProVisors or Silicon Valley Virtual 1, please reach out to me for additional information, either through Linked In or email at [kprinz@prinzlawoffice.com](mailto:kprinz@prinzlawoffice.com). I am excited about this new opportunity and look forward to the challenge of leading a new ProVisors group in this dynamic region. For more information on ProVisors, view <https://provisors.com>.

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# **Kristie Prinz to Speak at Practicing Law Institute**

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examine the challenges of managing legal and privacy terms with IOT devices.

The one-day program is titled “Advanced Internet of Things 2024: Deeper Dive, Practical Wisdom” and will also feature presentations by Leonard Naura of Flatiron Law Group, LLP, Ian Ballon of Greenberg Traurig, LLP, Kate Downing of the Law Office of Kate Downing, Megan Ma of Stanford University, and John Yates of Morris, Manning & Martin, LLP. For more information and to register to attend this event, visit the Practising Law Institute website at this link.

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## **Tech Lawyer Kristie Prinz Introduces The Prinz Law Office**

Tech Lawyer Kristie Prinz introduces The Prinz Law Office in this video recorded on 8.20.24.

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## **Tech Lawyer Kristie Prinz Explains Why to Review Key Customer Contracts**

Tech Lawyer Kristie Prinz explains why to review key customer contracts in a sluggish economy in this video recorded on

# Revisiting Your SaaS Company's Key Customer Contracts in a Sluggish Economy

It has become increasingly clear over the past few months that businesses are in a cost-cutting mode, as the economy has become more and more sluggish. While your software company is likely focusing on its own cost-cutting strategy, have you stopped to consider whether your most significant customers might be doing the same? Is it possible those key customers may be focusing on how to cut the cost of their contract with your business? Could they be talking to one of your competitors? Could they be building their own proprietary product to replace the cost of your product?

A sluggish economy is the perfect occasion to audit and review your key customer contracts for weaknesses that might allow your customer to walk out the door as a cost-cutting move.

You might wonder why you should spend any resources on contracts when business is already sluggish: isn't this exactly the time when you should be reducing legal expenses, along with all your other cost-cutting efforts?

Well, no, actually. While, it has been my experience that this is in fact what most software companies do; however, I have been practicing now for 26 years and had the occasion to

see a lot of sluggish economies, and given that experience, I would argue that it is exactly the wrong move to make in a sluggish economy. Why would I say this?

Imagine this: it is two months in the future. Over the last 30 days, all of your key customers have stopped paying on their contracts with you and have advised you that they are suspending performance. You are confident that they are just cutting costs and have no grounds to terminate the relationship. You pull out the executed contracts and send them to your software attorney to review for the first time, confident that he or she will confirm your assessment. However, instead of confirming your position, your software attorney tells that the signed contracts were poorly drafted and that the customers may have had valid grounds to terminate.

In this scenario, if you had known there was something you could do to interrupt this chain of events and shore up the customer relationships before they collapsed, would it have been worthwhile to do it? Presumably, yes. If the customers were your truly your key customers, you probably had a lot riding on the continuation of those relationships.

If the fact pattern seems far-fetched, I've actually seen it play out many times during sluggish economies. The larger and more expensive the contract, the more at risk it is for termination in a sluggish economy. If you are confident it won't happen to your company, consider what kind of representation you had for the drafting and negotiation of that contract? Did you work with experienced software counsel who had advised other software and SaaS companies through multiple bad economies, and involve that counsel at every stage of the negotiation and drafting process and then implement all of his or her recommendations? Or did you cut a few corners in getting your deal done? Perhaps handled a lot of the negotiation and drafting without counsel, or relied on less experienced counsel that was more affordable? If you are

like many software companies, you probably cut at least a few corners—perhaps you even cut a lot of corners—and the contracts executed by you and your key customers are full of holes.

What would truly be the impact to your software company of a complete loss of your three largest customers? Your six largest customers? Your ten largest customers? How fast could you really recover in a sluggish economy?

If the prospect of this kind of business loss fills you with terror, then this is precisely why you should revisit your significant contracts now.

So, what is it that you can do to shore up your key client relationships now? Well, skilled software counsel can evaluate those contracts and identify the potential liabilities and then work with you to develop a strategy to renegotiate them. By taking the opportunity to renegotiate a weak contract before the contract terminates, you can extend the term of the relationship, fix the legal problems in the contract, and keep the customer happy in the first place by giving the customer a concession that the customer really wants in exchange for the longer relationship term that carries the relationship through the down economy.

Isn't this a better outcome than losing a key customer altogether over a vulnerability in your contract that is exploited in a cost-cutting effort?

If your software company has not had its key software contracts evaluated recently by an experienced software lawyer, schedule a consultation today at <https://calendly.com/prinzlawoffice>. Let's identify the vulnerabilities in your key contracts before a key customer exploits the vulnerabilities as a cost-cutting move and resolve potential problems in the relationships before they arise and become the reason you lose those relationships.

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# California Telehealth Policy Coalition Presents Webinar on Cross-State Licensure and Compacts

The California Telehealth Policy Coalition presented a webinar last week on cross-state licensure and compacts, which provided an excellent overview of ongoing efforts in California and other states in facilitating cross-state licensure for physicians and other licensed providers. The webinar is now publicly available for viewing at the following link:

<https://www.cchpca.org/resources/cross-state-licensure-compacts-webinar/>. The powerpoint is also separately available at this link:

<https://www.cchpca.org/2024/08/CTPC-Licensure-Compacts-Webinar-Slides-v31-Read-Only.pdf>.

In case you are unfamiliar with the California Telehealth Policy Coalition (the “Coalition”), the list of Coalition members is published here:

<https://www.cchpca.org/california-telehealth-policy-coalition/coalition-members/>. The Coalition first came together in 2011 when AB 415, The Telehealth Advancement Act, was introduced, in order to keep each other apprised on developments and to share information with each other. See this link for the full discussion of the history of the Coalition:

<https://www.cchpca.org/california-telehealth-policy-coalition/>. The Coalition is today focused on modernizing California telehealth policy. See link for more information: <https://www.cchpca.org/california-telehealth-policy->



# **Kristie Prinz Selected as 2024 Super Lawyer California**

The Prinz Law Office is pleased to announce that Kristie Prinz has been selected to the 2024 Super Lawyers Northern California list. Each year, no more than five percent of the lawyers in the state are selected by the research team at Super Lawyers to receive this honor. Super Lawyers, part of Thomson Reuters, is a rating service of outstanding lawyers from more than 70 practice areas who have attained a high degree of peer recognition and professional achievement. The annual selections are made using a patented multiphase process that includes a statewide survey of lawyers, an independent research evaluation of candidates, and peer reviews by practice area. For more information about Super Lawyers, visit [Super Lawyers.com](https://www.superlawyers.com).

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# **The Prinz Law Office Announces New Service Offerings**

The Prinz Law Office is pleased to announce that we have recently made available three new service offerings to our clients. First, we have just launched a new fractional

counsel services plan for those of our clients seeking a recurring monthly arrangement with the firm based on an anticipated volume of work at a discounted rate. To view our new fractional services plan, please **click here**. Second, we have just launched a new subscription services plan for those of our clients seeking a recurring monthly arrangement with the firm based on an uncertain volume of work at a discounted rate. To view our new subscription services plan, please **click here**. Third and finally, we have just entered into a relationship with several senior paralegals to make available paralegal services through the firm, which our clients may utilize at their option. Our paralegal services will be priced at special paralegal price rates.

The firm is excited to be able to make these new offerings available to our valued clients. If you have any questions about the new offerings, please reach out to Kristie Prinz with questions, or schedule a consultation at this **link**.

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## **Tech Lawyer Kristie Prinz Introduces Legal Practice**

Silicon Valley Tech Lawyer Kristie Prinz introduces herself in this video recorded on July 24, 2024.

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# **Software Contract Lessons to Be Learned from Technology Incident**

Software Lawyer Kristie Prinz explains the software contract lessons to be learned from the technology disruption in this video recorded on July 19, 2024.

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## **Kristie Prinz Discusses FTC Suit Over Annual Paid Monthly Software Subscription Plans**

Software Lawyer Kristie Prinz discusses FTC concerns with annual paid monthly software subscription plans in this video recorded 7.17.24.

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## **FTC Seeks to Expand Scope of “Negative Option Rule” to Apply to Subscriptions**

The FTC has just filed a complaint against a Silicon Valley

software company over its “Annual Paid Monthly” subscription contract. The FTC has separately also sought the expansion of its “Negative Option Rule” to amend the provisions to specifically apply to subscriptions by adding a “Click to Cancel” provision. A copy of the FTC notice of proposal is linked [here](#).

## ***What is the FTC’s Negative Option Rule?***

The Negative Option Rule was adopted by the FTC in 1973, to address “negative option offers,” which the FTC defines as offers containing “a term or condition that allows a seller to interpret a customer’s silence, or failure to take an affirmative action, as acceptance of an offer.”

According to the FTC, negative option marketing utilizes four types of offers: prenotification plans, continuity plans, automatic renewals, and free trial conversion offers.

However, the FTC’s original Negative Option Rule only pertained to prenotification plans, excluding the continuity plans, automatic renewals and free trial offers that have become commonplace in 2024. Also, in the case of the original Negative Option Rule, prenotification plans were limited to the sale of goods, where sellers provided periodic notices to participating customers and then sent and charged for those goods only if the consumers took no action to cancel and decline the offer (i.e. the example of a wine club).

Also, the Negative Option Rule required clear and conspicuous disclosure of certain terms before a subscription agreement was reached. According to the FTC, those terms were as follows:

- how subscribers must notify the seller if they do not wish to purchase the selection;
- any minimum purchase obligations;
- the subscribers’ right to cancel;
- whether billing charges include postage and handling;

- that subscribers have at least ten days to reject a selection;
- that if any subscriber is not given ten days to reject a selection, the seller will credit the return of the selection and postage to return the selection, along with shipping and handling; and
- the frequency with which announcements and forms will be sent.'

Finally, under the existing Negative Option Rule, sellers were required to define particular periods for sending merchandise, to give consumers a defined period to respond, to provide instructions for rejecting merchandise, and to promptly honor written cancellation requests.

### ***What is “Click to Cancel”?***

What would change with the FTC’s newly proposed “Click to Cancel” amendment?

Under the FTC’s proposed “Click to Cancel” rule change, the scope of the Negative Option Rule would be increased to make it pertain to not only prenotification plans but also to continuity plans, automatic renewals, and free trial conversion offers. Also, the proposed “Click to Cancel” rule provisions would mandate the following:

- Businesses would be required to make cancelling a subscription or membership at least as easy as it was to start it;
- Businesses would have to ask consumers if they want to hear new offers when they ask to cancel before they would be able to pitch new offers;
- Businesses would be required to provide an annual reminder if enrolled in a negative option program involving anything other than physical goods, before they are automatically renewed.

Another “Click to Cancel” change is that the under the new

provisions any misrepresentation of a material fact related to any of the four negative option offers, whether expressly or by implication, would constitute a violation of not only the Negative Option Rule but also an unfair or deceptive act or practice in violation of Section 5 of the Federal Trade Commission Act.

### ***What is the Potential significance of “Click to Cancel” to the SaaS, Tech, and Digital Health Industries?***

The potential significance of the “Click to Cancel” change to the average SaaS, tech, and digital health company is that, if this proposed rule is adopted, SaaS, tech, and digital health companies who sell directly to consumers will need to update consumer contracts and terms of service to confirm that they are compliant with the requirements of the Negative Option Rule, as amended.

If your company is concerned about its compliance with “Click to Cancel” please schedule a consultation today at <https://calendly.com/prinzlawoffice>.

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## **California’s Safe and Secure Innovation for Frontier Artificial Intelligence Models Act Advances to**

# Adoption in State Legislature

California is currently considering the adoption of a bill that would impose unprecedented new regulations on the development of AI. The bill under consideration is SB 1047, the Safe and Secure Innovation for Frontier Artificial Intelligence Models Act. A full copy of the bill is linked [here](#).

## **SB 1047, the Safe and Secure Innovation for Frontier Artificial Intelligence Models Act**

The Safe and Secure Innovation for Frontier Artificial Intelligence Models Act or SB 1047 would create a new Frontier Model Division within California's Department of Technology which would have oversight powers over the training of new AI models. Pursuant to SB 1047, developers of AI models would be required to build a so-called kill switch into the AI model and to potentially shut down the model until the Frontier Model Division deems that the AI model is subject to a "limited duty exemption," which would be defined as:

*a determination. . . . that a developer can provide reasonable assurance that the covered model does not have a hazardous capability, as defined, and will not come close to possessing a hazardous capability when accounting for a reasonable margin for safety and the possibility of posttraining modifications.*

A "covered model" under SB 1047 would be defined to mean an AI model "that was trained using a quantity of computing power greater than  $10^{26}$  integer or floating-point operations, and the cost of that quantity of computing power would exceed one hundred million dollars (\$100,000,000) if calculating using average market prices of cloud compute as reasonably assessed by the developer at the time of training."

As currently proposed, “derivative” AI models would be exempt from the new compliance obligations: only “non-derivative” AI models would be subject to the obligations.

Under SB 1047, a “derivative model” is defined to constitute an artificial intelligence model that is derivative of another AI model, including either “a modified or unmodified copy of an artificial intelligence model” or “a combination of an artificial intelligence model with another software. The “derivative model” is defined not to include “an entirely independently trained artificial intelligence model” or an “artificial intelligence model, including one combined with other software, that is fine-tuned using a quantity of computing power greater than 25 percent of the quantity of computing power, measured in integer or floating-point operations, used to train the original model.”

## **What constitutes a “hazardous capability” under the proposed legislation?**

SB 1047 would define “hazardous capability” to constitute the capability of a covered model to be used in one of the following harms:

- the creation or use of a chemical, biological, radiological, or nuclear weapon in a manner that results in mass casualties
- at least \$500 million dollars of damage through cyberattacks on critical infrastructure via a single incident or multiple related incidents
- at least \$500 million dollars of damage by an AI that autonomously engages in conduct that would violate the Penal Code if taken by a human
- bodily harm to another human
- the theft of or harm to property
- other grave threats to public safety and security that are of comparable severity to the harms described above.



Penalties for noncompliance with this legislation would include punitive damages and a civil penalty for a first violation not to exceed ten percent of “the cost of the quantity of computing power used to train the covered model to be calculated using average market prices of cloud compute at the time of training” and 30 percent of the same in case of a second violation. The legislation authorizes joint and several liability against the developers directly where

*(1) steps were taken in the development of the corporate structure among affiliated entities to purposely and unreasonably limit or avoid liability.*

*(2) The corporate structure of the developer or affiliated entities would frustrate recovery of penalties or injunctive relief under this section.*

If passed, damages could be awarded for violations occurring as of January 1, 2026.

## **The reaction to SB 1047 from the Silicon Valley start-up community**

As you might expect, the Silicon Valley start-up community is raising concerns about SB 1047.

**Bloomberg** has been reporting on the Silicon Valley reaction, and indicated that that a key concern is that this law is going to “place an impossible burden on developers—and particularly open-source developers, who make their code available for anyone to review and modify—to guaranteed their services aren’t misused by bad actors.” **Bloomberg** also reported that a general partner at Andreessen Horowitz indicated that some startup founders are so concerned that they are wondering if they should leave California because of the bill.

**Bloomberg** also reported that the a key point of contention in the startup community is the idea that AI developers are responsible for people who misuse their systems, pointing to Section 230 of the Communications Decency Act of 1996, which has shielded social media companies from liability over

content users create on platforms.

Author **Jess Miers** of the Chamber of Progress criticized the legislation on the basis that it would “introduce a high degree of legal uncertainty for developers of new models, making the risks associated with launching new AI technologies prohibitively high.”

The Prinz Law Office will continue following legislative developments relating to SB 1047 as this bill advances.

If you have questions regarding your software company’s potential compliance obligations under SB1047, please schedule a consultation with The Prinz Law Office at [this link](#).

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## **Firm Launches New Subscription Plan**

The Prinz Law Office is pleased to announce the launch of a new subscription plan, which is intended to simplify the process of working with a lawyer for companies as well as individuals. The firm’s subscription plans have been designed to uniquely enable clients to hire and communicate with counsel without the fear or worry of an accruing billable hour.

Subscriber clients will pay a flat monthly rate each month with the option of purchasing add-on services at an additional flat fee rate that they can easily estimate in advance of making a work request. Subscription prices will start at just \$150 at the lowest bronze level.

To view the currently available subscription plans, please

click here: [Prinz Law Office Subscription Plans](#).

The new subscriptions are available to clients immediately.