

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
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AB 1979 (Ward)
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AM

SUBJECT

Doxing Victims Recourse Act

DIGEST

This bill provides an individual with a specific cause of action and robust civil remedies against any person who doxes, as defined, another person with the intent to place another person in reasonable fear for their or their immediate family's safety and for the purpose of imminently causing that other person unwanted contact, injury, or harassment by a third party. The bill provides for economic and noneconomic damages, a statutory penalty anywhere from \$1,500 to \$30,000, punitive damages, reasonable attorney fees and costs to the prevailing plaintiff, and equitable relief. The bill authorizes a plaintiff to proceed under a pseudonym, and requires the court to keep the plaintiff's name and excluded or redacted characteristics confidential. The bill provides that a plaintiff is exempted from the requirement to provide an undertaking when being granted an injunction.

EXECUTIVE SUMMARY

This bill seeks to address the growing and troubling trend of doxing. Doxing is generally understood to be the act of providing or publishing personally identifiable information about a person on the internet with malicious intent. Victims of doxing suffer physical injury, harassment, stalking, threats of violence and death, which causes severe emotional and psychological distress. This bill's provisions will provide some recourse for victims to attempt to rebuild their lives and hopefully serve as a deterrent. The bill is sponsored by the Anti-Defamation League, the California Legislative LGBTQ Caucus, TransFamily Support Services, and TransYouth Liberation. The bill is supported by numerous organizations, including Equality California, the Jewish Center for Justice, and the Jewish Public Affairs Committee.

PROPOSED CHANGES TO THE LAW

Existing federal law;

- 1) Provides that Congress shall make no law abridging the freedom of speech, or the right of the people to peaceably assemble, and to petition the government for redress of grievances. (U.S. Const., 1st amend. (the First Amendment) & 14th amend.; *see Gitlow v. People of State of New York* (1925) 268 U.S. 652, 666 (First Amendment guarantees apply to the states through the due process clause of the Fourteenth Amendment).)
- 2) Provides that no provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider. (47 U.S.C. § 230(c)(1).)
- 3) Provides that no provider or user of an interactive computer service shall be held liable on account of:
 - a. Any action voluntarily taken in good faith to restrict access to or availability of material that users consider to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected.
 - b. Any action taken to enable or make available to content providers or others the technical means to restrict access to material described above. (47 U.S.C. § 230(c)(2).)
- 4) Provides that no cause of action may be brought and no liability may be imposed under any state or local law that is inconsistent with items 1) and 2). (47 U.S.C. § 230(e)(3).)

Existing state law:

- 1) Makes it a misdemeanor for a person to, with intent to place another person in reasonable fear for their safety, or the safety of the other person's immediate family, by means of an electronic communication device, and without consent of the other person, and for the purpose of imminently causing that other person unwanted physical contact, injury, or harassment, by a third party, electronically distribute, publish, email, hyperlink, or make available for downloading, personal identifying information, including, but not limited to, a digital image of another person, or an electronic message of a harassing nature about another person, which would be likely to incite or produce that unlawful action. (Pen. Code § 653.2.)
- 2) Defines, for the purposes of 1), the following terms:
 - a) "Electronic communication device" includes, but is not limited to, telephones, cell phones, computers, Internet Web pages or sites, Internet phones, hybrid

- cellular/Internet/wireless devices, personal digital assistants (PDAs), video recorders, fax machines, or pagers.
- b) "Electronic communication" has the same meaning as the term is defined in Title 18 of the United States Code.
 - c) "Harassment" means knowing and willful course of conduct directed at a specific person that a reasonable person would consider as seriously alarming, seriously annoying, seriously tormenting, or seriously terrorizing the person and that serves no legitimate purpose.
 - d) "Of a harassing nature" means of a nature that a reasonable person would consider as seriously alarming, seriously annoying, seriously tormenting, or seriously terrorizing of the person and that serves no legitimate purpose.
(*Ibid.*)
- 3) Creates a private right of action against a person who intentionally distributes a photograph or recorded image of another that exposes that person's intimate body parts, as defined, or shows the other person engaged in specified sexual acts, without that person's consent, knowing that the other person had a reasonable expectation that the material would remain private, if specified conditions are met. (Civ. Code § 1708.85(a)-(c).)
- 4) Creates a cause of action against a person that knowingly sends obscene material, as defined, that the person knows, or reasonably should know, is unsolicited, and provides for specified civil penalties. (Civ. Code § 1708.88.)
- 5) Makes a person liable for physical invasion of privacy if that person (defendant) knowingly enters onto the land of another person (plaintiff) without permission or otherwise commits a trespass in order to physically invade the privacy of the plaintiff with the intent to capture any type of visual image, sound recording, or other physical impression of the plaintiff engaging in a personal or familial activity and the physical invasion occurs in a manner that is offensive to a reasonable person. (Civ. Code § 1708.8(a).)
- 6) Creates a private right of action against a person who intentionally distributes by any means a photograph, film, videotape, recording, or any other reproduction of another, without the other's consent if (1) the person knew, or reasonably should have known, that the other person had a reasonable expectation that the material would remain private, (2) the distributed material exposes an intimate body part of the other person, or shows the other person engaging in an act of intercourse, oral copulation, sodomy, or other act of sexual penetration, and (3) the other person suffers general or special damages as described. (Civ. Code § 1708.85(a).)
- 7) Allows a party to file an action anonymously or to keep names out of public records and court proceedings under certain circumstances. (Civ. Code § 3427.3 (health care

patients and staff); Health & Saf. Code § 120291 (victim of intentional HIV infection); Penal Code § 293 and 293.5 (victims of sexual offenses).)

- 8) Requires an applicant for an injunction or restraining order to make an “undertaking” (post a bond) that is sufficient to cover damages the party enjoined may sustain by reason of the injunction, if the court finally decides that the applicant was not entitled to the injunction. Exempts from the undertaking requirement certain persons seeking an injunction, as specified. (Code of Civ. Proc. § 529.)

This bill:

- 1) Establishes a private cause of action against a person who doxes another person.
- 2) Authorizes a prevailing plaintiff who suffers harm as a result of being doxed to recover any of the following:
 - a) economic and noneconomic damages proximately caused by being doxed, including, but not limited to, damages for physical harm, emotional distress, or property damages;
 - b) statutory damages of a sum of not less than \$1,500 but not more than \$30,000;
 - c) punitive damages; and
 - d) reasonable attorney’s fees and costs to the prevailing plaintiff, upon the court holding a properly noticed hearing.
- 3) Authorizes a court to order equitable relief against the person who doxes another person, including a temporary restraining order, or a preliminary injunction or a permanent injunction ordering the defendant to cease doxing activities. Authorizes the court to grant injunctive relief maintaining the confidentiality of a plaintiff using a pseudonym as provided in 5) through 8), below.
- 4) Authorizes a plaintiff in a civil proceeding described in 2), above, to proceed using a pseudonym, either John Doe, Jane Doe, or Doe, for the true name of the plaintiff and to exclude or redact from all pleadings and documents filed in the action other identifying characteristics of the plaintiff.
- 5) Requires a plaintiff who proceeds using a pseudonym and excluding or redacting identifying characteristics as provided to file with the court and serve upon the defendant a confidential information form for this purpose that includes the plaintiff’s name and other identifying characteristics excluded or redacted.
- 6) Requires the court to keep the plaintiff’s name and excluded or redacted characteristics confidential.
- 7) Specifies the following apply in cases where a plaintiff proceeds using a pseudonym:

- a) Requires all other parties and their agents and attorneys to use the pseudonym in all pleadings, discovery documents, and other documents filed or served in the action, and at hearings, trial, and other court proceedings that are open to the public.
- b) Requires any party filing a pleading, discovery document, or other document in the action to exclude or redact any identifying characteristics of the plaintiff from the pleading, discovery document, or other document, except for a confidential information form.
- c) Requires a party excluding or redacting identifying characteristics to file with the court and serve upon all other parties a confidential information form that includes the plaintiff's name and other identifying characteristics excluded or redacted. Requires the court to keep the plaintiff's name and excluded or redacted characteristics confidential.
- d) Requires all court decisions, orders, petitions, discovery documents, and other documents to be worded so as to protect the name or other identifying characteristics of the plaintiff from public revelation.
- e) Requires the parties and their attorneys to bear the responsibility for excluding or redacting the name or identifying characteristics of the plaintiff from all documents filed with the court. Clarifies that this does not require the court to review pleadings or other papers for compliance.
- f) Requires, upon request of the plaintiff, the court to limit access to the court records in an individual action to the following individuals:
 - i. A party to the action, including a party's attorney;
 - ii. A person by order of the court on a showing of good cause for access;
 - iii. A person 60 days after judgment is entered unless the court grants a plaintiff's motion to seal records pursuant to specified section of the California Rules of Court.
- g) Requires, in an action brought pursuant to 2) the plaintiff to state in the caption of the complaint "ACTION BASED ON CIVIL CODE SECTION 1708.89."
- h) States that the section does not alter or negate any rights, obligations, or immunities of an interactive service provider under Section 230 of Title 47 of the United States Code, and that the section does not limit or preclude a plaintiff from securing or recovering any other available remedy.
- i) Requires the Judicial Council to adopt or revise as appropriate rules and forms to implement 5) through 8).
- j) Specifies that none of the above apply against a person who does solely either of the following:
 - i. Provide a person's personal identifying information or sensitive personal information in connection with the reporting of criminal activity to an employee of a law enforcement agency or with any lawfully authorized investigative, protective, or intelligence activity of any law enforcement agency or of an intelligence agency of the United States and the person making the report reasonably believes it is true;

- ii. Disseminate the personally identifiable information for the purpose of, or in connection with, the reporting of conduct reasonably believed to be unlawful.
- 8) Makes the above provisions severable.
- 9) Defines the following terms for the purposes described above:
 - a) "Doxes" means an act when a person, with intent to place another person in reasonable fear for their safety, or the safety of the other person's immediate family, by means of an electronic communication device, and without consent of the other person, and for the purpose of imminently causing that other person unwanted physical contact, injury, or harassment, by a third party, electronically distributes, publishes, emails, hyperlinks, or makes available for downloading, personal identifying information, including, but not limited to, a digital image of another person, or an electronic message of a harassing nature about another person, which would be likely to incite or produce that unlawful action.
 - b) "Electronic communication" has the same meaning as the term is defined in specified sections of the United States Code.
 - c) "Electronic communication device" includes, but is not limited to, telephones, cell phones, computers, internet web pages or websites, internet phones, hybrid cellular/wireless devices, personal digital assistants, video recorders, fax machines, or pagers.
 - d) "Harassment" means a knowing and willful course of conduct directed at a specific person that a reasonable person would consider as seriously alarming, seriously annoying, seriously tormenting, or seriously terrorizing the person and that serves no legitimate purpose.
 - e) "Identifying characteristics" means name or any part thereof, address or any part thereof, city or unincorporated area of residence, age, marital status, relationship to defendant, and race or ethnic background, telephone number, email address, social media profiles, online identifiers, contact information, or any other information, including images of the plaintiff, from which the plaintiff's identity can be discerned.
 - f) "Of a harassing nature" means of a nature that a reasonable person would consider as seriously alarming, seriously annoying, seriously tormenting, or seriously terrorizing of the person and that serves no legitimate purpose.
 - g) "Online identifiers" means any personally identifying information or signifiers that would tie an individual to a particular electronic service, device, or internet application, website, or platform account, including, but not limited to, access names, access codes, account names, aliases, avatars, credentials, gamer tags, display names, handles, login names, member names, online identities, pseudonyms, screen names, user accounts, user identifications, usernames, Uniform Resource Locators (URLs), domain

names, Internet Protocol (IP) addresses, and media access control (MAC) addresses.

- 10) Exempts a plaintiff bringing a claim pursuant to 2) from a requirement that an applicant for an injunction or restraining order make an “undertaking” (post a bond) that is sufficient to cover damages the party enjoined may sustain by reason of the injunction, if the court finally decides that the applicant was not entitled to the injunction.

COMMENTS

1. Stated need for the bill

The author writes:

As hate and extremism continue to permeate our nation, community members face an increased risk of being a target of doxing, which can result in harms such as, physical injury, harassment, stalking, emotional and psychological distress, identity theft, property damage, and death. AB 1979, Doxing Victims Recourse Act, provides a mode of recourse for victims who have been harmed as a result of being doxed. By providing doxing victims a mode of civil recourse, not only will the offenders be held accountable, but the victims will be afforded the opportunity to get their lives back on track.

2. This bill seeks to enact a civil cause of action for doxing, which is defined as conduct that is already made illegal under Penal Code Section 653.2

a. Doxing

Doxing is understood to be the act of providing or publishing personally identifiable information, such as the home address, phone number, and name or alias, about a person on the internet generally with malicious intent. As our society becomes ever more dependent on technology and the internet, this issue will continue to exist. The person who doxes another generally does not commit the ensuing harassment – their goal in publically identifying the other person is to get others to harass the person. One example of doxing that illustrates the problem is found in the situation that happened to Tanya Gersh, a Jewish real estate agent from Montana. Ms. Gersh was doxed by Andrew Anglin, a publisher of website Daily Stormer, which experts consider to be a neo-Nazi website.¹ Ms. Gersh’s name and photos of herself and her children were posted on the website, resulting in her receiving hundreds of threatening calls, emails,

¹ Neo-Nazi website founder accused of ignoring \$14M judgment, AP (Dec. 11, 2023), available at <https://apnews.com/article/technology-race-and-ethnicity-montana-courts-1554c9a9254449b75018cee56317c557>.

and text messages, many of which were antisemitic.² The reason for why Ms. Gersh was targeted seems to center around a real estate deal that did not pan out with the mother of Richard Spencer, a white nationalist.³ Ms. Gersh said that the stress of this experience “took an unfortunate toll on [her] professionally, physically and emotionally” and that the “bulk of the harassment didn’t stop until [she] filed the lawsuit,” but noted she still receives terrifying messages.⁴ This fact emphasizes the utility of this bill.

The author points to a 2022 Anti-Defamation League report entitled “Online Hate and Harassment: The American Experience 2022” as evidence for why this bill is needed.⁵ The report states that 44 percent of Americans reported experiencing some form of online harassment, with 27 percent of Americans experiencing severe online harassment, which includes physical threats, sustained harassment, stalking, sexual harassment, doxing, and swatting. Of those who reported experiencing severe online harassment, 54 percent identified as LGBTQ+, 23 percent identified as Jewish; 26 percent identified as Muslim; 27 percent identified as African American; 24 percent identified as Hispanic; 31 percent identified as Asian American; and, 26 percent identified as women.⁶

b. Private cause of action

This bill seeks to enact a civil cause of action for doxing. The term under the statute is defined identically to the conduct that is made illegal under Penal Code Section 653.2. A person bringing a cause of action will have to make the following showing in order to bring a claim under the bill:

- the defendant electronically distributes, publishes, emails, hyperlinks, or makes available for downloading, personal identifying information, including, but not limited to, a digital image of another person, or an electronic message of a harassing nature about another person;
- by means of an electronic communication device, and without consent of the other person;
- with the intent to place the plaintiff in reasonable fear for their safety, or the safety of their family;
- for the purpose of imminently causing that other person unwanted physical contact, injury, or harassment, by a third party; and
- that would be likely to incite or produce that unlawful action.

² *Doxing should be illegal. Reporting Extremists Should Not*, ADL (Jan. 15, 2021), available at <https://www.adl.org/resources/blog/doxing-should-be-illegal-reporting-extremists-should-not>.

³ Fn. 1, *supra*.

⁴ Fn. 2, *supra*.

⁵ *Online Hate and Harassment: The American Experience 2022*, ADL (June 2, 2022), available at <https://www.adl.org/resources/report/online-hate-and-harassment-american-experience-2022>.

⁶ *Ibid.*

If a plaintiff is successful in a suit, they would be able to recover: economic and noneconomic damages proximately caused by being doxed, including, but not limited to, damages for physical harm, emotional distress, or property damages; statutory damages of a sum of not less than \$1,500, but not more than \$30,000; punitive damages; and reasonable attorney's fees and costs to the prevailing plaintiff, upon the court holding a properly noticed hearing. These remedies are similar to the ones that are granted under the revenge porn statute enacted by AB 2643 (Wieckowski, Ch. 859, Stats. 2014), which passed this Committee on a vote of 6 to 0.

c. First Amendment concerns

The federal and state Constitutions prohibit the government from abridging the freedom of speech and the right to peaceably assemble.⁷ Although the First Amendment's speech guarantee is written as an absolute, there are certain narrow categories of speech that fall outside of the First Amendment's protections.⁸ Relevant to this analysis, these categories include:

- "True threats" of violence: "[w]hen a reasonable person would foresee that the context and import of the words will cause the listener to believe he or she will be subjected to physical violence, the threat falls outside First Amendment protection."⁹ While the rationale behind the true threats doctrine is based on the harm to the listener – "[t]rue threats subject individuals to 'fear of violence' and to the many kinds of 'disruption that fear engenders' " – the Court recently held that "the First Amendment precludes punishment, whether civil or criminal, unless the speaker's words were 'intended' (not just likely) to produce imminent disorder."¹⁰
- Inciting imminent lawless action: a state may "forbid advocacy of the use of force or of law violation" "where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action."¹¹ The "mere abstract teaching of the moral propriety or even moral necessity for a resort to force and violence, is not the same as preparing a group for violent action and steeling it to such action."¹²
- "Fighting words": in 1942, the Supreme Court held that "the insulting or 'fighting words' – those which by their very utterance inflict injury or tend to incite an immediate breach of the peace" are not protected by the First Amendment.¹³ The Court has since clarified that fighting words must be

⁷ U.S. Const., 1st & 14th Amend.; Cal. Const., art. I, §§ 2, 3.

⁸ *Counterman v. Colorado* (2023) 600 U.S. 66, 73.

⁹ *In re M.S.* (1995) 10 Cal.4th 698, 711.

¹⁰ *Counterman, supra*, 600 U.S. at pp. 74, 76.

¹¹ *Brandenburg v. Ohio* (1969) 395 U.S. 444, 447 (*Brandenburg*).

¹² *Id.* at p. 448 (cleaned up).

¹³ *Chaplinsky v. State of New Hampshire* (1942) 315 U.S. 568, 572 (*Chaplinsky*).

“personally abusive epithets”¹⁴ or “an invitation to exchange fisticuffs”¹⁵ directed to a specific person, not generally provocative statements.¹⁶ The Court has also arguably, though not officially, done away with the “inflict injury” prong of the fighting words doctrine.¹⁷

These doctrines have been used to uphold state laws criminalizing false bomb threats;¹⁸ hate speech, where the speech itself threatened violence and the speaker had the apparent ability to carry out the threat;¹⁹ and other threats that cause the listener to believe they will be subjected to physical violence.²⁰ But the First Amendment also protects speech that many people would rather do without. For example, a state cannot prohibit all cross-burning, but it can ban cross-burning “with intent to intimidate.”²¹ A person can send hundreds of Facebook messages to a stranger, with details indicating they are surveilling the stranger’s movements and vitriolic profanity, and still be protected from government interference.²² Students can publish pretty appalling opinions about immigrants in the school newspaper without censorship.²³ And, famously, the Court has held that the First Amendment protected a Ku Klux Klan rally, at which members wore full Klan regalia, some carried guns, and speakers made general statements about the need for violence if the government “continues to suppress the white, Caucasian race.”²⁴ The Court reiterated that “the mere abstract teaching of the moral propriety or even moral necessity for a resort to force and violence[...] is not the same as preparing a group for violent action and steeling it to such action.”²⁵

This bill implicates the First Amendment and it is not inconceivable that a defendant in such a cause of action would attempt to argue that it violates the First Amendment. However, the bill is drafted to fit within the confines of prior case law around true threats, incitement to lawlessness, and “fighting words.” The definition of “doxes” under the bill is the same as conduct that is already made a misdemeanor under the

¹⁴ *Cohen v. California* (1971) 403 U.S. 15, 20 (*Cohen*).

¹⁵ *Johnson, supra*, 491 U.S. at p. 409.

¹⁶ *Cohen, supra*, 403 U.S. at p. 20.

¹⁷ *See, e.g., Terminiello, supra*, 337 U.S. at p. 4 (freedom of speech “is protected against censorship or punishment, unless shown likely to produce a clear and present danger of serious substantive evil that rises far above public inconvenience, annoyance, or unrest”). Some have questioned whether the fighting words exception is still viable, given that the Court has not upheld a “fighting words” restriction since *Chaplinsky*. (E.g., Chemerinsky, *Constitutional Law Principles and Policies* (5th ed. 2015) pp. 1053-1054.)

¹⁸ *In re J.M.* (36 Cal.App.5th 668, 677-679 (speech was a true threat that fell outside First Amendment protections).

¹⁹ *In re M.S., supra*, 10 Cal.4th at pp. 714-715.

²⁰ *People v. Toledo* (2001) 26 Cal.4th 221, 223.

²¹ *Virginia v. Black* (2003) 538 U.S. 343, 362-363.

²² *Counterman, supra*, 600 U.S. at pp. 70-72.

²³ *Smith v. Novato Unified School Dist.* (2007) 150 Cal.App.4th 1439, 1446, 1458-1459.

²⁴ *Brandenburg, supra*, 395 U.S. at pp. 445-448.

²⁵ *Id.* at pp. 447-448.

Penal Code.²⁶ The bill requires there be intent to place another in fear for their safety with the purpose of imminently causing unwanted physical contact, injury, or harassment, by a third party, when they publish personally identifying information via an electronic communication and this must be likely to incite or produce the unlawful action. The terms “harassment,” “of a harassing nature,” and “electronic communication device” also have the same definitions as under the Section 653.2 of the Penal Code.

Subsequently, the bill appears, on its face, to not violate the First Amendment. It is too speculative for this Committee to determine if there would ever be a situation where an as applied challenge, i.e. as applied to that specific defendant, could be made due to the requirements of inciting unlawful activity and purpose of imminently causing unwanted injury or harassment. However, even if there ever was such a situation it would not invalidate the entire statute, just hold that the statute does not apply to the defendant based on the specific facts of that case. Additionally, there may be instances where, depending on who the plaintiff is, the First Amendment concerns may be heightened, such as if the plaintiff is a public official. For instance, in *Publius v. Boyer-Vine* a court held that a California statute prohibiting anyone from posting the home address and telephone number of a public official on the internet without their consent violated the First Amendment. ((E.D. Cal. 2017) 237 F.Supp.3d 997, 1020.) However, that statute can be distinguished in that it did not contain any of the true threat and intent to incite language that this bill does.

d. Authorizes plaintiff to file case under a pseudonym and provides other confidentiality protections

California courts have long permitted the use of pseudonyms in legal filings, and California’s statutes formally recognize the use of pseudonyms in legal filings in certain cases. In addition to statutorily required anonymity, California courts have broadly permitted the use of pseudonyms in legal filings.²⁷ In all of these cases, the court recognized the potential physical or mental harm to a party or the potentially significant detrimental impact to the parties of being identified in public by name.

SB 157 (Wieckowski, Ch. 233, Stats. 2017) authorized a plaintiff to proceed under a pseudonym under the revenge porn statute. This current measure mirrors the provisions in SB 157 regarding a plaintiff’s ability to file under a pseudonym. Doxing presents a similar situation. Additionally, if a plaintiff could not have the court order the defendant to not release information about them during the case a plaintiff would

²⁶ Committee staff could not find any published cases where this Penal Code section has been challenged as in violation of the First Amendment.

²⁷ *Starbucks Corp. v. Superior Court*, (2011) 194 Cal. App. 4th 820, 123 permitted the use of pseudonyms by former drug users who were seeking to invalidate an employment application about former drug use; *John B. v. Superior Court*, (2006) 137 P.3d 153 permitted use of pseudonyms for HIV positive litigants whose status was critical to the case; and *M.P. v. City of Sacramento*, (2009) 98 Cal.Rptr.3d 812 permitted use of pseudonyms for victims of sexual assault.

run the risk of further doxing, which could increase the harassment they are already experiencing. It is reasonable to excuse the plaintiff from further disclosing personally identifying information and requiring the court to protect this information during the pendency of the case.

e. Exemption from undertaking requirement under Code of Civil Procedure 529

Under the bill, a court is authorized to issue any equitable remedies, including a temporary restraining order, a preliminary injunction, or a permanent injunction ordering the defendant to cease doxing the plaintiff. Section 529 of the Code of Civil Procedure requires a court or judge to mandate an undertaking on the part of a successful applicant for an injunction. Essentially, when an injunction is granted, a plaintiff must post an undertaking sufficient to reimburse the enjoined defendant any damages the defendant sustains as a result of the injunction, in case the court ultimately decides that the plaintiff was not entitled to the injunction. Section 529 also allows the enjoined to object to the undertaking, and, if the court determines that the undertaking is insufficient, the injunction must be dissolved. Existing law provides exemptions to this undertaking requirement, including for victims of revenge porn. This bill seeks to grant a similar exemption to a plaintiff bringing a cause of action for doxing. Equality California, a supporter of the bill, notes that “[w]ithout such protection, courts would be forced to make a victim pay for a bond when seeking a preliminary injunction, even where an offender admits to doxing the victim who was harmed.”

f. Does not modify existing rights, immunities, or remedies

This bill expressly states that none of its provisions are to be construed to affect existing rights and remedies. In addition, this bill will not diminish any other remedies that a plaintiff may have under existing law. Under appropriate circumstances, a victim of doxing can potentially bring a cause of action based on various theories of tort (such as public disclosure of private facts or intentional infliction of emotional distress). This bill is intended to supplement, not displace, those other civil remedies.

The federal law governing social media platforms was enacted years before social platforms existed. Section 230 of the Communications Decency Act,²⁸ also known as Section 230, was enacted in 1996.²⁹ Designed to prevent burgeoning internet sites from being liable for material posted by users. The crux of Section 230 is laid out in two parts. The first provides that “[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.”³⁰ The second provides a safe harbor for content moderation, by stating that no provider or user shall be held liable because of good-faith efforts to restrict access to material that is “obscene, lewd, lascivious, filthy, excessively violent,

²⁸ 47 U.S.C. § 230.

²⁹ Pub. L. 104-104, 110 Stat. 56 (1996).

³⁰ *Id.*, § 230(c)(1).

harassing, or otherwise objectionable, whether or not such material is constitutionally protected.”³¹ Together, these two provisions give platforms immunity from any civil or criminal liability that could be incurred by user statements, while explicitly authorizing platforms to engage in their own content moderation without risking that immunity. Section 230 specifies that “[n]o cause of action may be brought and no liability may be imposed under any State law that is inconsistent with this section.”³² Courts have applied Section 230 in a vast range of cases to immunize internet platforms from “virtually all suits arising from third-party content.”³³ In light of federal preemption in this area, the bill specifically provides that it does not alter or negate any rights, obligations, or immunities of an interactive service provider under Section 230.

3. Statements in support

The Anti-Defamation League, one of the sponsors of the bill, writes:

California has the opportunity to take strong concrete action in addressing the rising threat of doxing by passing AB 1979. This bill is a good first step in addressing online hate and protecting marginalized communities – bringing forward language that ensures that the bill would not only address the threat of doxing, but also protects first amendment rights.

It is no secret that the growth of online hate and harassment targeting marginalized groups is a growing trend that deserves action by policymakers. According to a 2023 ADL study, 52% of Americans experienced some sort of hate and harassment online. Unfortunately, the disparities are stark in terms of which communities are particularly impacted by hate. California must take action to counter this rise in hate and bigotry. AB 1979 is the first of many steps toward that aim.

The California Legislative LGBTQ Caucus, another sponsor of the bill, writes:

Existing means to hold offenders accountable are limited as it first requires an arrest to be made and then a prosecutor to pursue the charges. All the while, a victim of doxing is left to work through the trauma of experiencing emotional, physical, and other damages without being made whole for the harms they have endured. By providing doxing victims a mode of civil recourse, not only will the offenders be held accountable, but the victims will be afforded the opportunity to get their lives back on track. This includes being able to receive the critical physical and mental health support they need, increase security for them and their loved ones, and make the necessary changes to secure their privacy as a result of being harmed by doxing.

³¹ *Id.*, § 230(c)(1) & (2).

³² *Id.*, § 230(e)(1) & (3).

³³ Kosseff, *supra*, fn. 13, at pp. 94-95; see, e.g., *Doe v. MySpace Inc.* (5th Cir. 2008) 528 F.3d 413, 421-422; *Carfano v. Metrosplash.com, Inc.* (9th Cir. 2003) 339 F.3d 1119, 1125; *Zeran v. America Online, Inc.* (4th Cir. 1997) 129 F.3d 327, 333-334.

AB 1979, the Doxing Victims Recourse Act, provides a mode of recourse for victims who have been harmed as a result of being doxed. Specifically, this bill allows for a doxing victim to pursue civil action to receive restitution for the harms they endured as a result of being doxed at no fault of their own. Additionally, this bill addresses the issue of a doxing victim being forced to post a bond and an offender of doxing potentially evading liability by eliminating the requirement that a court require an undertaking on the part of a victim when seeking a preliminary injunction, an essential component to protect victims. Without such protection, courts would be forced to make a victim pay for a bond when seeking a preliminary injunction, even where an offender admits to doxing the victim who was harmed.

SUPPORT

Anti-Defamation League (sponsor)
California Legislative LGBTQ Caucus (sponsor)
Democrats for Israel - California
Democrats for Israel - Los Angeles
ETTA
Equality California
Hadassah
Holocaust Museum LA
TransFamily Support Services (sponsor)
TransYouth Liberation (sponsor)
California Democratic Party
Jewish Center for Justice
Jewish Democratic Coalition of the Bay Area
Jewish Community Federation & Endowment Fund
Jewish Community Relations Council of the Bay Area
Jewish Democratic Club of Marin
Jewish Democratic Club of Solano County
Jewish Family & Children's Services of San Francisco, the Peninsula, Marin & Sonoma Counties
Jewish Family Service of Los Angeles
Jewish Family Service of San Diego
Jewish Family Services of Silicon Valley
Jewish Federation of Greater Los Angeles
Jewish Federation of the Greater San Gabriel and Pomona Valleys
Jewish Long Beach
Jewish Public Affairs Committee of California
Jewish Silicon Valley
JFCS Long Beach and Orange County
Mayor Darrell Steinberg
Progressive Zionists of California

OPPOSITION

None received

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

AB 514 (Ward, Ch. 518, Stats. 2021) among other things, exempted from the undertaking requirement for an applicant seeking an injunction ordering the defendant to cease distribution of material applicable to the cause of action enacted by AB 2643.

AB 602 (Berman, Ch. 491, Stats. 2019) provided a cause of action for the nonconsensual disclosure of sexually explicit material depicting individuals in realistic digitized performances.

SB 157 (Wieckowski, Ch. 233, Stats. 2017) authorized a plaintiff to bring a suit under AB 2643 under pseudonym and requires the court to keep the plaintiff's name and excluded or redacted characteristics confidential.

AB 2643 (Wieckowski, Ch. 859, Stats. 2014) created a cause action against a person for acts considered "revenge porn", as defined, if specified conditions are met.

PRIOR VOTES

Assembly Floor (Ayes 61, Noes 1)
Assembly Appropriations Committee (Ayes 11, Noes 1)
Assembly Judiciary Committee (Ayes 10, Noes 1)
