

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2025-2026 Regular Session

AB 392 (Dixon)
Version: June 30, 2025
Hearing Date: July 8, 2025
Fiscal: Yes
Urgency: No
AWM

SUBJECT

Pornographic internet websites: consent

DIGEST

This bill requires the operator of a pornographic internet website, as defined, to obtain from its users a verification that sexually explicit material the user is uploading to the site does not include a depiction of a person who was a minor at the time the material was created, a person who did not consent to be in the material, or who did not consent to have the material uploaded, and establishes a rebuttable presumption that the failure to do so violates the operator's duty of care, as specified.

EXECUTIVE SUMMARY

Over the past decade, California has enacted a series of reforms to address image-based sexual abuse, including nonconsensual pornography, child sexual exploitation, and digitally altered deepfake content. Despite these efforts, major gaps remain in the current legal framework – particularly in the context of commercial pornography websites that host vast volumes of user-generated content. Victims of nonconsensual sexual content, including child sexual abuse material (CSAM), often face daunting, opaque, or ineffective takedown procedures, while the platforms profiting from that content typically avoid accountability, citing user anonymity or lack of notice.

This bill seeks to close that gap by establishing an enforceable duty of care for operators of websites, and establishing a specific duty of care for the operators of websites that specifically hold themselves out as pornographic websites or solicit the upload of sexually explicit material. The bill requires platforms to implement a pre-upload compliance mechanism that ensures sexually explicit content involves only consenting adults and is not distributed without authorization. Operators are also required to collect uploader contact information and verify that the contact information is valid before accepting uploads from the user. The bill also establishes both a private right of action and a civil enforcement action for public prosecutors, which can be brought

against both an operator who failed to verify whether material displayed on their site contained nonconsensual or CSAM imagery and the user who uploaded the material. The author has agreed to minor amendments to align the bill's definitions with other statutes relating to similar subject matter.

This bill is sponsored by the author and is supported by the California Catholic Conference, the California Family Council, the Children's Advocacy Institute at the University of San Diego School of Law, and Fieldstead and Company. The Committee has not received timely opposition to this bill.

PROPOSED CHANGES TO THE LAW

Existing constitutional law:

- 1) Provides that the U.S. Constitution, and the Laws of the United States, are the supreme law of the land. (U.S. Const., art. VI, cl. 2.)
- 2) Provides that Congress shall make no law abridging the freedom of speech. (U.S. Const., 1st amend. (the First Amendment) & 14th amends.; 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).)
- 3) Provides that every person may freely speak, write, and publish their sentiments on all subjects, and that a law may not restrain or abridge liberty of speech. (Cal. Const., art. I, § 2.)

Existing federal law:

- 1) Establishes the Tools to Address Known Exploitation by Immobilizing Technological Deepfakes on Websites and Networks (TAKE IT DOWN) Act, which defines the following relevant terms:
 - a) "Consent" means an affirmative, conscious, and voluntary authorization made by an individual free from force, fraud, duress, misrepresentation, or coercion.
 - b) "Digital forgery" means any intimate digital depiction of an identifiable individual created through the use of software, machine learning, artificial intelligence, or any other computer-generated or technological means, or altering an authentic visual depiction, that, when viewed as a whole by a reasonable person, is indistinguishable from an authentic visual depiction of the individual.
 - c) "Identifiable individual" means an individual who appears in whole or in part in an intimate visual depiction, and whose face, likeness, or other distinguishing characteristic (including a unique birthmark or other

recognizable feature) is displayed in connection with such intimate visual depiction. (47 U.S.C. § 223(h)(1).)

- 2) Makes it a crime for any person, in interstate or foreign commerce, to use an interactive computer service to knowingly publish an intimate visual depiction of an identifiable individual, including a digital forgery, as follows:
 - a) If the person is not a minor, when the intimate visual depiction was obtained or created under circumstances in which the person knew or reasonably should have known that the identifiable individual had a reasonable expectation of privacy, the content depicted was not voluntarily exposed by the individual, the content depicted is not a matter of public concern, and the publication of the intimate visual depiction is intended to cause harm to the identifiable individual.
 - b) If the person is a minor, when the depiction is posted with the intent to abuse, humiliate, harass, or degrade the minor, or to arouse or gratify the sexual desire of any person. (47 U.S.C. § 223(h)(2) & (3).)
- 3) Requires, not later than May 19, 2026, a covered platform to establish a process whereby an identifiable individual, or an authorized person acting on their behalf, may notify the platform of an intimate visual depiction on the platform and request its removal, with information sufficient for the platform to identify the individual and to locate the intimate visual depiction in question.
 - a) The platform must provide a clear and conspicuous notice of the removal process that is easy to read, in plain language, and provides information regarding the platform's obligations, including how to submit a removal notice.
 - b) Upon receiving a valid removal request, a covered platform shall, as soon as possible, but not later than 48 hours after receiving the request, remove the intimate visual depiction and make reasonable efforts to identify and remove any known identical copies of such depiction.
 - c) A platform's failure to remove an intimate visual depiction after receiving a valid request is treated as a violation of specified federal laws and may be enforced by the Federal Trade Commission. (47 U.S.C. 223a note.)
- 4) Provides that a provider or user of an interactive computer service shall not be treated as the publisher or speaker of any information provided by another information content provider. (47 U.S.C. § 230(c)(1).)
- 5) Provides that a provider or user of an interactive computer service shall not be held liable on account of:
 - a) any action voluntarily taken in good faith to restrict access to, or availability of, material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected; or

- b) any action taken to enable or make available to information content providers or others the technical means to restrict access to such material. (47 U.S.C. § 230(c)(2).)

Existing state law:

- 1) Provides that every person is responsible, not only for the result of their willful acts, but also for an injury occasioned to another by their want of ordinary care or skill in the management of their property or person, except so far as the latter has, willfully or by want of ordinary care, brought the injury upon themselves. (Civ. Code, § 1714.)
- 2) Defines the following relevant terms for purposes of 3), below:
 - a) “Altered depiction” means a performance that was actually performed by the depicted individual but was subsequently altered to be in violation of 3), below.
 - b) “Consent” means an agreement written in plain language signed knowingly and voluntarily by the depicted individual that includes a general description of the sexually explicit material and the audiovisual work in which it will be incorporated, and which may be rescinded within three days of the date the notice was given, as specified.
 - c) “Depicted individual” means an individual who appears, as a result of digitization, to be giving a performance they did not actually perform or to be performing in an altered depiction.
 - d) “Despicable conduct” means conduct that is so vile, base, or contemptible that it would be looked down on and despised by a reasonable person.
 - e) “Digitization” means to realistically depict the nude body parts of another human being, computer-generated nude body parts as body parts of the individual, or the depicted individual engaging in sexual conduct in which they did not engage.
 - f) “Sexually explicit material” means any portion of an audiovisual work that shows the depicted individual performing in the nude or appearing to engage in, or being subjected to, sexual conduct. (Civ. Code, § 1708.86(a).)
- 3) Provides that a depicted individual has a cause of action against a person who does either of the following, subject to specified defenses:
 - a) Creates and intentionally discloses sexually explicit material and the person knows or reasonably should have known that the depicted individual did not consent to its creation or its disclosure.
 - b) Intentionally discloses sexually explicit material that the person did not create and the person knows the depicted individual in that material did not consent to the creation of the sexually explicit material. (Civ. Code, § 1708.86(b).)
- 4) Defines the following relevant terms for purposes of 5):

- a) "Child pornography," "identifiable minor," and "minor" have the same meanings as in 118 U.S.C. § 2256.
 - b) "Child sexual abuse material" means either child pornography or obscene matter that depicts a minor personally engaging in, or personally simulating, sexual conduct.
 - c) "Obscene matter" has the same definition as in 6), below.
 - d) "Reporting user" means a natural person who reports material to a social media platform using the means provided by the social media platform pursuant to 5), below.
- 5) Requires a social platform, as defined, to provide a mechanism for a user in California to report to the platform material that the user reasonably believes is CSAM depicting an identifiable minor and to permanently block such reported material when there is a reasonable basis to believe that the reported material is CSAM; failure to comply with these requirements subjects a platform to liability in a civil action for actual damage and statutory damages, as specified. (Civ. Code, §§ 3273.66, 3273.67.)
- 6) Defines the following terms for purposes of 7), below:
- a) "Obscene matter" means matter, taken as a whole, that to the average person, applying contemporary statewide standards, appeals to the prurient interest that, taken as a whole, depicts or describes sexual content in a patently offensive way, and that, taken as a whole, lacks serious literary, artistic, political, or scientific value. (Pen. Code, § 311; *see also Miller v. California* (1973) 413 U.S. 15, 24.)
 - b) "Sexual conduct" means any of the following, whether actual or simulated: sexual intercourse, oral copulation, anal intercourse, anal oral copulation, masturbation, bestiality, sexual sadism, sexual masochism, penetration of the vagina or rectum by any object in a lewd or lascivious manner, exhibition of the genitals or pubic or rectal area for the purpose of sexual stimulation of the viewer, any lewd or lascivious sexual act, as defined, or excretory functions performed in a lewd or lascivious manner, whether or not any of the above conduct is performed alone or between members of the same or opposite sex or between humans and animals. An act is simulated when it gives the appearance of being sexual conduct. (Pen. Code, § 311.4(d).)
- 7) Makes the following a crime:
- a) Knowingly distributing obscene matter, including obscene matter, matter that depicts a person under 18 years of age personally engaging in or personally simulating sexual conduct, and generated images that depict a person under 18 years of age engaging in or personally simulating sexual conduct. (Pen. Code, § 311.2)

- b) Sexual exploitation of a child, defined as developing, duplicating, printing, or exchanging images or data depicting a person under 18 years engaged in an act of sexual conduct. (Pen. Code, § 311.3.)
- c) Hiring, using, or coercing a minor to engage in acts prohibited under (a), knowing the person is a minor. (Pen. Code, § 311.4)
- d) Knowingly possessing or controlling any matter, representation of information, data, or image, the production of which involves the use of a person under 18 years of age personally engaging in or simulating sexual conduct. (Pen. Code, § 311.11.)
- e) Secretly filming or taking images of an identifiable person under or through their clothing, or while they are in a state of full or partial undress, for the purpose of viewing their body or undergarments, without their consent, under circumstances where they have a reasonable expectation of privacy, with the intent to arouse, appeal to, or gratify the lust, passions, or sexual desires of the person taking the image and invade the privacy of the identifiable person. (Pen. Code, § 647(j)(2)-(3).)
- f) Intentionally creating and distributing, or causing to be created or distributed, any photorealistic image, computer-generated image, or pictorial representation of an intimate body part or parts of another identifiable person, or image of them engaged in specified sexual acts, when the image was created in a manner that would cause a reasonable person to believe the image is an authentic image of the person depicted, under circumstances in which the person distributing the image knows or should know that distribution of the image will cause serious emotional distress, and the person depicted suffers that distress. (Pen. Code, § 647(j)(4).)

This bill:

1) Defines the following terms:

- a) “Clear and conspicuous” means in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from the surrounding text of the same size by symbols or other marks, in a manner that clearly calls attention to the language. In the case of an audio disclosure, “clear and conspicuous” and “clearly and conspicuously” means in a volume and cadence sufficient to be readily audible and understandable.
- b) “Depicted individual” means an individual who is depicted as engaging in sexual acts in sexually explicit content who meets any of the following criteria: (1) the individual did not consent to being depicted in the sexually explicit content; (2) the individual was a minor at the time the sexually explicit content was created; (3) when the sexually explicit content was uploaded to the pornographic internet website, the individual did not consent to the uploading.
- c) “Operator” means a person who operates an internet website.

- d) "Pornographic internet website" means an internet website that the owner or operator of the website holds out as featuring sexually explicit content or invites users to upload, or solicits from users, sexually explicit content for display on the internet website.
 - e) "Sexually explicit content" means visual imagery, including imagery generated by artificial intelligence through digitization, of an individual or individuals engaging in an act of masturbation, sexual intercourse, oral copulation, or other overtly sexual conduct that, taken as a whole, lacks serious literary, artistic, political, or scientific value.
 - f) "User" means a person or entity that uploads or otherwise provides sexually explicit content to a pornographic internet website.
- 2) Requires an operator to exercise ordinary care, as defined in Section 1714 of the Civil Code, and reasonable diligence to ensure that each instance of sexually explicit content displayed on the operator's internet website does not include a depicted individual.
- 3) Requires a user, before uploading sexually explicit content to a pornographic internet website, to submit both of the following to the operator of a pornographic internet website:
 - a) A statement certifying, not under penalty of perjury, that each individual depicted in the sexually explicit content meets all of the following criteria: (1) the individual was not a minor at the time the sexually explicit content was created; (2) the individual consents to the sexually explicit content being uploaded to the internet on the pornographic internet website; and (3) the individual consented to being depicted in the sexually explicit content.
 - b) Information sufficient to enable the operator to contact the user, including, at a minimum, an email address. The operator shall verify a user's email address before permitting the user to upload sexually explicit content to the operator's pornographic internet website.
- 4) Provides that an operator of a pornographic internet website who does not obtain the statement in 3)(a) shall be presumed to have violated 2). This presumption may be rebutted if the operator establishes, by a preponderance of the evidence, that the operator took other steps to verify that the material uploaded to, and displayed on, the pornographic website satisfied the criteria described in 3)(a) that were consistent with its duty of care described in 2).
- 5) Provides that knowingly providing false information described in 3)(a) is an infraction punishable by a \$1000 fine.
- 6) Requires an operator of a pornographic website to retain the statement and information required under 3) in a readily available format for at least seven years after the statement and information are submitted.

- 7) Permits an operator of a pornographic website to require a user to submit the information required under 3) through a specific mechanism or medium.
- 8) Provides that a depicted individual who suffers harm as a result of sexually explicit content depicting the individual being displayed on a pornographic internet website may bring a civil action against:
 - a) The operator of the website, if the operator allowed the content to be uploaded to, or displayed on, its website in violation of 2) or 3).
 - b) The user who uploaded the content, if the user knew or should have known that it included a depicted individual.
- 9) Permits a depicted individual who prevails in a civil action under 8) to obtain all of the following relief:
 - a) Actual damages or statutory damages in an amount that is not greater than \$75,000, whichever is greater.
 - b) Punitive damages.
 - c) Reasonable attorney's fees and costs.
 - d) Any other available relief, including injunctive relief.
- 10) Permits a public prosecutor to bring a civil action to enforce 2)-6) to obtain all of the following relief:
 - a) A civil penalty of \$25,000 per violation.
 - b) Injunctive and equitable relief.
 - c) Reasonable attorney's fees and costs.
 - d) Any other relief the court deems appropriate.
- 11) Provides that each full calendar day that sexually explicit content, subject to removal, remains accessible on the website constitutes a separate violation of 2)-6).¹
- 12) Provides that the remedies provided in 8)-11) are cumulative and shall not be construed as restricting a remedy that is available under any other law.

COMMENTS

1. Author's comment

According to the author:

The Protect Act would require users to verify age and consent when uploading sexually explicit material to adult media sites. With our hyper-technological age, it is easy for individuals to share nonconsensual sexually explicit materials online. We must look for every opportunity to protect all Californians from

¹ The bill currently refers to a removal window, which would have applied to a takedown mechanism no longer in the bill. The Committee's recommended amendments include removing this reference to conform with the current version of the bill.

having their personal images and videos uploaded without their consent. One in 12 people has been a victim of image-based sexual abuse and anyone can become the next victim. AB 392 is a barrier to block abuse from happening in the first place.

2. California's duty of ordinary care

Under California law, every person is responsible for the harms caused by their willful acts and the harms caused by their failure to exercise ordinary care.² This requirement—known as the duty of ordinary care—“establishes the default rule that each person has a duty to exercise, in [their] activities, reasonable care for the safety of others.”³ “[T]he question whether one owes a duty to another must be decided on a case-by-case basis,” and “the foreseeability of the risk [of harm] is a primary consideration in establishing the element of duty.”⁴ While, generally speaking, a party has no obligation to protect a third party from the wrongful acts of others, a duty can arise if that party “has a special relationship with the foreseeably dangerous person that entails an ability to control that person’s conduct.”⁵

3. The internet is full of CSAM, nonconsensual sexual images, and deepfake porn

CSAM was a problem before the advent of the internet, but the internet has led to a “dramatic increase” in CSAM, along with “the degree of violence and sadistic content depicted in CSAM.”⁶ “CSAM is readily available through virtually every internet technology, including social networking platforms, file-sharing sites, gaming devices, and mobile apps.”⁷ A significant amount of CSAM is exchanged through end-to-end encrypted technologies or on Dark Web sites like those on the Tor network.⁸ In other cases, however, CSAM is available on supposedly legitimate pornography sites. After Nicholas Kristoff reported that Pornhub was hosting videos depicting minor sex trafficking victims,⁹ Pornhub removed all of the content from the site that was uploaded by unverified community members—over 10 million of the 13.5 million videos on the site.¹⁰

² Civ. Code, § 1714(a); e.g., *Vasilenko v. Grace Family Church* (2017) 3 Cal.5th 1077, 1083.

³ *Kuciamba v. Victory Woodworks, Inc.* (2023) 14 Cal.5th 993, 1016 (internal quotation marks omitted).

⁴ *Weirum v. RKO General, Inc.* (1975) 15 Cal.3d 40, 47.

⁵ *Regents of University of California v. Superior Court* (2018) 4 Cal.5th 607, 619.

⁶ U.S. Dept. of Justice, Child Sexual Abuse Material (2023) p. 5, available at https://www.justice.gov/d9/2023-06/child_sexual_abuse_material_2.pdf. All links in this analysis are current as of July 3, 2025.

⁷ *Id.* at p. 2.

⁸ *Id.* at pp. 4-5.

⁹ Kristoff, *The Children of Pornhub* (Dec. 4, 2020) New York Times, <https://www.nytimes.com/2020/12/04/opinion/sunday/pornhub-rape-trafficking.html>.

¹⁰ Valinsky, *Pornhub removes a majority of its videos after investigation reveals child abuse* (Dec. 15, 2020) CNN, <https://edition.cnn.com/2020/12/15/business/pornhub-videos-removed/index.html>.

The internet is also rife with nonconsensual sexual images of adults. Sometimes these images are of ex-partners, taken consensually at the time, but uploaded without consent and with the express purpose of getting revenge; for example, the “Is Anyone Up” website explicitly solicited revenge porn images.¹¹ Some images were taken consensually but obtained and posted nonconsensually, such as in 2014 when hackers stole private, intimate photos from the iCloud accounts of celebrities, including Jennifer Lawrence and Kate Upton, and posted the photos online.¹² Other images are created and posted all without the subject’s knowledge, much less consent.¹³

The availability of generative AI has made it even easier for an individual to create nonconsensual sexual images. Some of these images are made for use as pornography – such sexually explicit AI-generated images that “went viral on Twitter after jumping from 4chan and a specific Telegram group dedicated to abusive images of women.”¹⁴ Some of these images are used to threaten, harass, and blackmail the persons depicted in the images. For example, the FBI is accusing an Ohio man of creating “pornographic deepfake videos of at least 10 people he was stalking and harassing,” including by threatening to “blackmail [them] using AI generated images of themselves having sex with their relatives.”¹⁵ The man’s search history revealed that he had searched for ClothesOff,¹⁶ which is one of many apps that openly offer to create AI-generated nude images from photos. Facebook and Instagram have allowed these apps to advertise on their platforms, Google Play and Apple App stores have hosted these apps for download.¹⁷ When a Twitter¹⁸ user posts a photo, Grok, Elon Musk’s AI chatbot, will generate an image of the user without their clothes (naked or in just their

¹¹ U.S District Attorney’s Office for the Central District of California, Press Release: Operator of ‘Revenge Porn’ Website Sentenced to 2 ½ Years in Federal Prison in Email Hacking Scheme to Obtain Nude Photos (Dec. 2, 2015) <https://www.justice.gov/usao-cdca/pr/operator-revenge-porn-website-sentenced-2-years-federal-prison-email-hacking-scheme>.

¹² Arthur, *Naked celebrity hack: security experts focus on iCloud backup theory* (Sept. 1, 2014) The Guardian, <https://www.theguardian.com/technology/2014/sep/01/naked-celebrity-hack-icloud-backup-jennifer-lawrence>.

¹³ E.g., Hounsell, *She was searching online for a receipt. She found a video of herself engaged in a sex act* (Jan. 17, 2025) CBC, <https://www.cbc.ca/news/canada/nova-scotia/intimate-partner-violence-sharing-intimate-images-1.7432723>.

¹⁴ Maiberg & Cole, *AI-Generated Taylor Swift Porn Went Viral on Twitter. Here’s How It Got There* (Jan. 25, 2024) 404 Media, <https://www.404media.co/ai-generated-taylor-swift-porn-twitter/>.

¹⁵ Cole, *A Deepfake Nightmare: Stalker Allegedly Made Sexual AI Images of Ex-Girlfriends and Their Families* (Jun. 26, 2025) 404 Media, <https://www.404media.co/deepfake-harassment-ohio-undress-clothoff-nudify-apps/>.

¹⁶ *Ibid.*

¹⁷ Maiberg, *Instagram Advertises Nonconsensual AI Nude Apps* (Apr. 22, 2024) 404 Media, <https://www.404media.co/instagram-advertises-nonconsensual-ai-nude-apps/>; Maiberg, *Google Bans Face Swap App for Inviting Users to Make Deepfake Porn* (Apr. 2, 2024) 404 Media, <https://www.404media.co/google-bans-face-swap-app-for-advertising-deepfakes-on-porn-sites/>.

¹⁸ Aka “X.”

underwear) in the comments upon request by another user.¹⁹ The AI-generated image is public and viewable to the user and any of their followers.²⁰

Children and teens are also victims of “undress” apps and deepfake porn generators — story²¹ after story²² has been written²³ about students²⁴ in middle and high schools²⁵ generating²⁶ fake nude and/or pornographic images²⁷ of their fellow students²⁸ and sharing the images with their friends.²⁹ Female and LGBTQ+ students are far more likely to be depicted in deepfaked nonconsensual imagery.³⁰ Major AI and tech companies have also facilitated the creation of massive amounts of AI-generated CSAM.³¹ AI generative technologies “are also being employed to facilitate the grooming and sextortion of minor victims.”³²

¹⁹ Shalabaieva, *Elon Musk’s Grok AI Will ‘Remove Her Clothes’ In Public, On X* (May 6, 2025) 404 Media, <https://www.404media.co/elon-musks-grok-ai-will-remove-her-clothes-in-public-on-x/>.

²⁰ *Ibid.*

²¹ Koebler & Maiberg, ‘What Was She Supposed to Report?:’ Police Report Shows How a High School Deepfake Nightmare Unfolded (Feb. 15, 2024) 404 Media, <https://www.404media.co/what-was-she-supposed-to-report-police-report-shows-how-a-high-school-deepfake-nightmare-unfolded/>.

²² Reuters, *Spanish prosecutor to probe AI-generated images of naked minors* (Sept. 25, 2023) Reuters, <https://www.reuters.com/world/europe/spanish-prosecutor-probe-ai-generated-images-naked-minors-2023-09-25/>.

²³ Healey, *Beverly Hills middle school rocked by AI-generated nude images of students* (Feb. 26, 2024) Los Angeles Times, <https://www.latimes.com/california/story/2024-02-26/beverly-hills-middle-school-is-the-latest-to-be-rocked-by-deepfake-scandal>.

²⁴ Ciavaglia, *Council Rock middle schooler investigated over alleged deepfake images of girls* (Jun. 6, 2025) phillyburbs.com, <https://www.phillyburbs.com/story/news/local/2025/06/06/council-rock-newtown-middle-school-deepfake-ai-technology-police-investigation-porn-bucks-county/84029305007/>.

²⁵ Blume, L.A. school district probes inappropriate images shared at Fairfax High. More AI abuse? (Apr. 9, 2024) Los Angeles Times, <https://www.latimes.com/california/story/2024-04-09/student-generated-inappropriate-ai-image-of-girls-at-fairfax-high>.

²⁶ Haskell, *Calabasas teen says classmate not disciplined for sharing real and fake images of her* (Mar. 14, 2024) ABC 7 Eyewitness News, <https://abc7.com/calabasas-high-school-student-accuses-classmate-sharing-real-and-fake-nude-photos/14521422/>.

²⁷ McNicholas, *New Jersey high school students accused of making AI-generated pornographic images of classmates* (Nov. 2, 2023) CBS News, <https://www.cbsnews.com/newyork/news/westfield-high-school-ai-pornographic-images-students/>.

²⁸ Fry, *Laguna Beach High School investigates ‘inappropriate’ AI-generated images of students* (Apr. 2, 2025) Los Angeles Times, <https://www.latimes.com/california/story/2024-04-02/laguna-beach-high-school-investigating-creation-of-ai-generated-images-of-students>.

²⁹ Guardian staff, *Sydney teenager allegedly used AI to create deepfake pornography of students* (Jan. 8, 2025) The Guardian, <https://www.theguardian.com/australia-news/2025/jan/09/sydney-high-school-ai-deepfake-porn-scandal-ntwnfb>.

³⁰ Center for Democracy & Technology, *In Deep Trouble: Surfacing Tech-Powered Sexual Harassment in K-12 Schools* (Sept. 2024) p. 18, available at <https://cdt.org/insights/report-in-deep-trouble-surfacing-tech-powered-sexual-harassment-in-k-12-schools/>.

³¹ E.g., Maiberg, *Tech Companies Promise to Try to Do Something About All the AI CSAM They’re Enabling* (Apr. 29, 2024) 404 Media, <https://www.404media.co/tech-companies-promise-to-try-to-do-something-about-all-the-ai-csam-theyre-enabling/>.

³² Thoel, Stroebel, & Portnoff, *Generative ML and CSAM: Implications and Mitigations* (Jun. 24, 2023) Thorn & Stanford Internet Observatory, p. 8.

Once CSAM or nonconsensual imagery is online, it can be virtually impossible to get it taken down. The founder of Foundation Ra, who inspired this bill, was a victim of the 2014 iCloud hack: her private images and a video were stolen and posted to adult sites without her consent. She reports that it took over seven years to get the material removed. California now has laws requiring social media platforms to have reporting mechanisms for nonconsensual images and CSAM,³³ though it is unclear how responsive the platforms have been. And in May of this year, Congress enacted the TAKE IT DOWN Act, which makes it illegal to knowingly publish or threaten to publish nonconsensual sexual images, and beginning in May 2026, requires a website or social media company to remove such material within 48 hours' notice from a victim.³⁴ The TAKE IT DOWN Act was inspired in part by a teen whose classmates posted deepfake images of her to Snapchat, which Snapchat refused to take down for nearly a year.³⁵

4. The costs of nonconsensual sexual imagery

Although persons of all genders are victims of CSAM and nonconsensual sexual image depictions, the harms fall disproportionately on women and girls and gender-nonconforming individuals, with women of color, women who work in stereotypically “male” fields, and bisexual women being at particular risk of harassment.³⁶ The perpetrators are mostly male.³⁷ Our patriarchal society, however, frequently tells victims that they're responsible for the publication of nonconsensual sexual images; for example, when celebrities' images were stolen in 2014, many referred to it as a “leak” rather than an act of theft, and suggested that, if women did not want their private images published, they should not take private images of themselves. This is the same kind of victim-blaming that is common in the sexual assault context to excuse rapists if their victim did not meet some unattainable fantasy standard of purity. And, of course, even if a person never took any nude photos, generative AI can now produce nudes and sexual images from a fully clothed photo. The only way for a woman to be “good” enough is to never go outside her home and never make the people in her life mad – which is sometimes the point.

As noted above, nonconsensual sexual images are often shared with the intention of harassing or punishing the victims – whether by exes or persons who felt rejected by the subject of the images. And in some cases, nonconsensual sexual images are used to

³³ See Bus. & Prof. Code, § 22671; Civ. Code, § 3273.66.

³⁴ Pub. L. No. 119-12 (May 19, 2025) 139 Stat. 55.

³⁵ Ortutay, *President Trump signs Take It Down Act, addressing nonconsensual deepfakes. What is it?* (May 20, 2025) AP News, <https://apnews.com/article/take-it-down-deepfake-trump-melania-first-amendment-741a6e525e81e5e3d8843aac20de8615>.

³⁶ Maddocks, *Image-Based Abuse: A Threat to Privacy, Safety, and Speech* (Mar. 150, 2023) MediaWell, <https://mediawell.ssrc.org/research-reviews/image-based-abuse-a-threat-to-privacy-safety-and-speech/>.

³⁷ *Ibid.*

punish (mostly) women for simply being online and speaking their minds.³⁸ This is consistent with the overt hostility displayed toward women in other online spaces, such as in many online games.³⁹ The only way for women and other marginalized folks to escape the abuse is to log off—depriving them of the benefits of online spaces and their ability to engage in online debate and discussion. In other words, this kind of hostility prevents women and others from engaging in society as fully as men.

The victims of nonconsensual sexual imagery publication also suffer deep emotional and psychological harm. Post-traumatic stress disorder is common among victims, who often “can’t reach a place of psychological safety because their images are never fully deleted.”⁴⁰ Victims also experience anger, guilt, paranoia, depression, and suicidal ideation; adult victims of revenge porn face similar long-term negative consequences to those seen in victims of child pornography.⁴¹

5. This bill imposes accountability for people who upload, and websites that display, CSAM and nonconsensual images

This bill establishes requirements relating the display of CSAM and nonconsensual sexual images on websites. First, the bill specifies that the operator of a website has a duty of care and ordinary diligence to ensure that sexually explicit content displayed on its website is not CSAM or either created or posted without the consent of the person(s) depicted. Second, the bill sets forth how the operator of a pornographic website can satisfy this duty of care. The statutory scheme is specifically limited to “pornographic internet websites” as defined, i.e., commercial websites that hold themselves out as featuring sexually explicit content or that invite users to upload, or solicit from users, sexually explicit content.

Under the bill’s terms, operators of pornographic websites must take “reasonable steps” to ensure that no “depicted individual” — defined to include any person who either did not consent to being depicted, did not consent to the upload, or was a minor at the time of creation—is featured in uploaded content. In practice, this duty is fulfilled by requiring users to submit (prior to upload) a signed statement affirming three facts:

- That no one depicted was a minor at the time of creation;
- That all depicted individuals consented to being depicted in the sexual content;
- And that all such individuals consented to the online upload.

³⁸ See Narvali, Skorborg, & Goldenberg, *Cyberbullying girls with pornographic deepfakes is a form of misogyny* (Nov. 28, 2023) The Conversation, <https://theconversation.com/cyberbullying-girls-with-pornographic-deepfakes-is-a-form-of-misogyny-217182>.

³⁹ E.g., Bevan, *75 percent of Young Women Report Abuse in Online Games* (May 27, 2023) The Gamer, <https://www.thegamer.com/women-abuse-sexism-in-online-games-depression/>.

⁴⁰ Maddocks, *supra*.

⁴¹ Kamal & Newman, *Revenge Pornography: Mental Health Implications and Related Legislation* (Sept. 2016) The Journal of the American Academy of Psychiatry and the law, Vol. 44, Iss. 3, available at <https://jaapl.org/content/44/3/359>.

Operators are further required to collect identifying contact information from the uploading user, including an email address; the operator must verify that the email address is valid before accepting an upload. If an operator fails to obtain this certification from the uploader, a rebuttable presumption arises that the operator violated its obligations under the statute. The presumption can be rebutted with evidence establishing, by a preponderance of the evidence, that the operator took other steps to verify that material uploaded by a user was not CSAM or nonconsensual sexual material. A user who certifies false information in their verification statement is guilty of an infraction punishable by a fine of \$1,000, and may be civilly liable for damages. It seems likely that the simple act of requiring verification will make users reconsider posting CSAM or revenge porn.

The bill permits the person depicted in CSAM or a nonconsensual sexual image displayed on a pornographic website to pursue a civil action against both the operator and the user who uploaded the video. The operator's liability is predicated on their failure to perform the verification required; the user's liability is predicated on their possession and publication of illegal sexual material. The depicted person can obtain actual damages or statutory damages of up to \$75,000, punitive damages, reasonable attorney's fees and costs, and any other available relief. The bill also authorizes a public prosecutor to file suit against a violating operator or user and to seek civil penalties of \$25,000 per day of a violation.

The author has agreed to amend the bill to harmonize certain definitions with existing statutory regimes and to delete provisions left over from a prior version of the bill. The amendments are set forth in Comment 7 of this analysis.

6. Constitutional issues

There are two main issues here: whether the bill infringes on a social media platform's First Amendment rights, and whether the bill is prohibited under Section 230 of Title 47 of the United States Code, better known as just "Section 230."

a. The First Amendment

This bill limits the distribution of two types of content: CSAM, and sexually explicit images that were created or distributed without the consent of the person depicted. While this bill thus facially imposes a content-based restriction on speech – which is normally a nonstarter under the First Amendment – the nature of these two categories make the analysis more nuanced.

The First Amendment, as applied to the states through the Fourteenth Amendment, prohibits Congress or the states from passing any law "abridging the freedom of speech."⁴² "[A]s a general matter, the First Amendment means that government has no

⁴² U.S. Const., 1st & 14th amends.

power to restrict expression because of its message, its ideas, its subject matter, or its content.”⁴³ However, while the amendment is written in absolute terms, the courts have created narrow exceptions to the First Amendment’s protections⁴⁴ relevant to this analysis.

One such exception is for CSAM. The First Amendment does not protect child pornography, period.⁴⁵ The Supreme Court has, however, held that First Amendment protects child pornography material “that does not depict an actual child”.⁴⁶ That opinion addressed child pornography that was entirely computer-generated, on the basis that “[t]hese images do not involve, let alone harm, any children in the production process.”⁴⁷ Although the Supreme Court has not squarely addressed the issue, this analysis proceeds on the assumption that AI-generated CSAM depicting an identifiable child also falls outside the First Amendment’s protections, given the obvious and documented harms involved.⁴⁸

With respect to nonconsensual sexual images of adults, there is no such clearly established exception to the First Amendment. These images are, however, against the law in California – whether they are real or AI-generated.⁴⁹ The constitutionality of these prohibitions has not yet been tested in court, but for purposes of this analysis, we must assume they do not run afoul of the First Amendment.

Accordingly, while the bill imposes a content-based restriction, the restriction is limited to content that does not enjoy First Amendment protection. The remaining question, then, is whether this bill is likely to inadvertently chill legitimate speech. The concept of the “chilling effect” tends to arise in challenges to a speech-based restriction on the basis of overbreadth (the statute applies to protected speech as well as unprotected speech)⁵⁰ or vagueness (the statute does not provide clear notice of what is prohibited).⁵¹

There is one additional consideration for this analysis: the speech at issue in this bill is sexually explicit content. Some of this content might meet the test for obscenity which, like CSAM, is not protected by the First Amendment.⁵² To the extent the content is

⁴³ *Ashcroft v. American Civil Liberties Union* (2002) 535 U.S. 564, 573.

⁴⁴ *R.A.V. v. St. Paul* (1992) 505 U.S. 377, 383.

⁴⁵ *New York v. Ferber* (1982) 458 U.S. 747, 765.

⁴⁶ *Ashcroft v. Free Speech Coalition* (2002) 535 U.S. 234, 244.

⁴⁷ *Id.* at p. 241.

⁴⁸ See *Brasse v. State* (Md. Ct. App. 2025) 333 A.3d 593, 768 (holding that statute is not overbroad to the extent it criminalizes AI-generated CSAM depicting an identifiable child).

⁴⁹ Pen. Code, §§ 647

⁵⁰ E.g., *U.S. v. Williams* (2008) 553 U.S. 285, 292 (“According to our First Amendment overbreadth doctrine, a statute is facially invalid if it prohibits a substantial amount of protected speech.”).

⁵¹ E.g., *Hill v. Colorado* (2000) 530 U.S. 703, 732 (“A statute can be impermissibly vague for two reasons. First, if it fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits. Second, if it authorizes or even encourages arbitrary and discriminatory enforcement.”).

⁵² *Miller v. California* (1973) 413 U.S. 15, 24

pornographic but not, legally speaking, obscene, the Supreme Court has still indicated that non-obscene sexually explicit content is “low-value speech” and thus can be more readily regulated than other speech, particularly when the goal of the regulation is not to stifle the speech itself but to prevent the harms that arise concomitantly with the pornographic speech.⁵³

In light of all of the above, it appears reasonably likely that this bill would survive a First Amendment challenge. The speech that is regulated – CSAM and nonconsensual sexually explicit images of adults – is outside the First Amendment. On its face, the bill’s prohibitions are precisely tailored to cover those categories and no other forms of legitimate speech. And to the extent that some legitimate speech might be chilled, it would be only in the margins – the risk of chilling would arise primarily when a user was unsure whether the material they wanted to upload contained CSAM, or depicted an adult who did not consent to the creation or sharing of the content. In light of the significant harm caused by CSAM and the display of nonconsensual sexual material, the possibility that a person would rethink posting a pornographic website because they’re not entirely sure it’s legal seems like a reasonable risk.⁵⁴ And with respect to videos uploaded by professional adult film producers, it seems likely that their existing procedures to ensure that actors are giving consent will protect them against frivolous claims.

b. Section 230

Section 230 states, “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.”⁵⁵ That section also provides a safe harbor for “any action voluntarily taken in good faith to restrict access to, or the availability of, material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected.”⁵⁶ Finally, it provides that “[n]o cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section.”⁵⁷ Many have argued that the courts’ interpretation of Section 230 in the immediate aftermath of its passage is far broader than Congress intended, or than is warranted by the text of the statute.⁵⁸

⁵³ E.g., *City of Renton v. Playtime Theatres, Inc.* (1986) 475 U.S. 41, 46-48; *Young v. American Mini-Theaters, Inc.* (1976) 427 U.S. 50, 70-72.

⁵⁴ Although not directly on point, the Court’s recent decision in *Free Speech Coalition, Inc. v. Paxson* (Jun. 27, 2025) 606 U.S. ___, __ S.Ct. ___, 2025 WL 1773626 suggests that, at a minimum, the Court would not apply strict scrutiny to this bill. (See *id.* at pp. 12-17.)

⁵⁵ 47 U.S.C. § 230(c)(1).

⁵⁶ *Id.*, § 230(c)(2)(A)

⁵⁷ *Id.*, § 230(e)(3).

⁵⁸ E.g., *Anderson v. TikTok, Inc.* (3d Cir. 2024) 116 F.4th 180, 190-192 (conc. & dis. opn. of Matey, J.).

As discussed in Comment 3, it is basically common knowledge that CSAM and nonconsensual sexual images are prolific on the internet. Pornhub’s mass removal of content after discovering CSAM on the site should also serve as a warning to any website that accepts uploads of sexually explicit material. In other words, the foreseeability of hosting illegal material – CSAM or nonconsensual sexual images – is incredibly high for an operator who solicits or accepts sexually explicit uploads for display and monetization.

This bill reiterates that the operator of a website has a duty of ordinary care and reasonable diligence to keep illegal sexually explicit content off of the site. In recognition of the fact that it is highly foreseeable that users will upload illegal content to pornographic websites, and the operator is in a unique position to prevent such uploads, it appears reasonable to assume that the operator owes a duty of care to take basic steps to avoid such uploads. To that end, the bill specifies how an operator can satisfy their duty of care to avoid posting illegal material: with the relatively low-effort step of requiring its users to certify, before uploading sexually explicit material, that the material is not illegal, or through some other similar verification method. The private right of action permitted by the bill does render the operator vicariously liable for the user’s wrongdoing, but for its own negligence in failing to take basic steps to prevent the highly foreseeable injuries caused by allowing sexually explicit material to be uploaded with no checks on the users. The alternative – that Section 230 permits a website with a known heightened risk of displaying CSAM and nonconsensual sexual images to operate without taking a single measure to reduce the risk of displaying that material – surely cannot be what Congress intended.

7. Amendments

As noted above in Comment 5, the author has agreed to amend the bill to (1) harmonize some of the definitions with those in existing law, and (2) delete references to a prior version of the bill. The amendments are set forth below, subject to any nonsubstantive changes the Office of Legislative Counsel may make.

Amendment 1

On page 3, in line 3, after “depicted” add “in the nude or”

Amendment 2

On page 3, in line 4, after “content” add “and”

Amendment 3

On page 3, between lines 12 and 13, insert:

(c) "Internet website" does not include the following:

(1) A service or application that provides email or direct messaging services, on the basis of that function alone.

(2) A service or application that provides cloud storage, file transfer services, or file collaboration, on the basis of that function alone.

Amendment 4

On page 3, delete lines 22-30 and insert:

(e) (1) "Sexually explicit content" means any portion of a visual or audiovisual work, including imagery created or substantially altered through digitization, that shows the depicted individual or individuals in the nude or engaging in sexual conduct.

(2) "Sexually explicit content" does not mean content that, taken as a whole, has serious literary, artistic, political, or scientific value.

(f) "Sexual conduct" has the same meaning as in Section 1708.86 of the Civil Code.

Amendment 5

On page 6, in lines 32 and 33, delete "subject to removal under this chapter" and insert "uploaded or displayed in violation of this chapter"

Amendment 6

On page 6, in line 34, delete "beyond the 48-hour removal window"

8. Arguments in support

According to the Children's Advocacy Institute at the University of San Diego School of Law:

Pornhub only acted to reform itself after its financial survival was imperiled by Visa and Mastercard's threat of cutting off the platform. Similarly, what will motivate the platforms subject to this bill to comply with the law before being sued is if they realistically fear the law will be enforced, to their significant financial detriment. If they don't fear they will have to pay money for violating the law and harming people, they won't comply with the law before being forced by court order to do so.

For these reasons, simply clarifying how current law applies to a problem facilitates the willingness of all attorneys, whether public or private, to take on

cases enforcing those laws and so, at the same time, promotes voluntary, self-interested compliance to prevent being sued. Knowing this, AB 392 clarifies that the duty of “ordinary care” imposed on people and corporations in their daily affairs by Civil Code section 1714(a) applies to ensuring that those depicted in pornographic content are of age and have consented. This is very likely already the case, but clarifying it removes all doubt, promoting fear of enforcement and thereby promoting compliance without litigation.

SUPPORT

California Catholic Conference

California Family Council

Children’s Advocacy Institute at the University of San Diego School of Law

Fieldstead and Company

OPPOSITION

None received

RELATED LEGISLATION

Pending legislation:

AB 1137 (Krell, 2025) expands on AB 1394 (Wick, Ch. 579, Stats. 2023) to allow any user to report CSAM, enable public enforcement when no reporting mechanism is available, and require third-party audits for platforms that take advantage of a safe harbor provision. AB 1137 is pending before the Assembly Appropriations Committee.

AB 621 (Bauer-Kahan, 2025) modifies the provisions put in place by AB 602 (Berman, Ch. 491, Stats. 2019) relating to nonconsensual sexual material to include a cause of action against a person who knows, or reasonably should know, that the digitized sexually explicit material depicts a person who is a minor at the time it was created, and adds a cause of action against a person who knowingly or recklessly aids or abets the creation or disclosure of such material. AB 621 is pending before this Committee.

AB 316 (Krell, 2025) prohibits a defendant from asserting the defense that AI autonomously caused harm to a plaintiff, as provided. AB 316 is pending before the Senate Appropriations Committee.

AB 2 (Lowenthal, 2025) increases the penalties that can be sought against a social media platform, as defined, if the platform fails to exercise ordinary care or skill and injures a child. AB 2 is pending before this Committee.

Prior legislation:

SB 981 (Wahab, Ch. 292, Stats. 2024) required a social media platform, as defined, to provide a reporting mechanism to report sexually explicit digital identity theft, as defined.

SB 646 (Cortese, 2024) would have allowed a person who is depicted in certain sexual images when the person was less than 18 years of age to bring a civil action for specified relief against a person or entity that distributes that material, as specified; and would have required the operator of an online service or website to list an agent for notification of claimed violation of the provisions related to CSAM, as specified. SB 646 died in the Assembly Appropriations Committee.

AB 3172 (Lowenthal, 2024) would have made a social media platform, as defined, liable for specified civil penalties if the platform knowingly and willfully failed to exercise ordinary care or skill toward the child, in an action brought by a public prosecutor. AB 3172 died in this Committee.

AB 1394 (Wick, Ch. 579, Stats. 2023) required a social media platform, as defined, to provide a reporting mechanism for suspected child sexual abuse material and required a social media platform to permanently block that material, as provided; and prohibited a social media platform from knowingly facilitating, aiding, or abetting minor's commercial sexual exploitation.

SB 1056 (Umberg, Ch. 881, Stats. 2022) required a social media platform, as defined, to clearly and conspicuously state whether it has a mechanism for reporting violent posts, as defined; and allowed a person who is the target, or who believes they are the target, of a violent post to seek an injunction to have the violent post removed.

AB 587 (Gabriel, Ch. 269, Stats. 2022) required a social media company, as defined, to post their terms of service and report certain information to the Attorney General on a quarterly basis.

AB 2273 (Wicks, Ch. 320, Stats. 2022) established the California Age-Appropriate Design Code Act, placing a series of obligations and restriction on businesses that provide online services, products, or features likely to be accessed by a child.

AB 1114 (Gallagher, 2021) would have required a social media company located in California to develop a policy or mechanism to address content or communications that constitute unprotected speech, including obscenity, incitement of imminent lawless action, and true threats, or that purport to state factual information that is demonstrably false. AB 1114 died in the Assembly Arts, Entertainment, Sports, Tourism, and Internet Media Committee.

AB 602 (Berman, Ch. 491, Stats. 2019) allows a person who is depicted in nonconsensual deepfake pornography to bring a civil action for damages against a person who intentionally creates or distributes the material.

PRIOR VOTES:

Assembly Floor (Ayes 78, Noes 0)

Assembly Appropriations Committee (Ayes 14, Noes 0)

Assembly Judiciary Committee (Ayes 12, Noes 0)

Assembly Privacy and Consumer Protection Committee (Ayes 14, Noes 0)
