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Senator Thomas Umberg, Chair
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AB 2 (Lowenthal)
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SUBJECT

Injuries to children: civil penalties

DIGEST

This bill 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.

EXECUTIVE SUMMARY

Under California law, every person is responsible "for an injury occasioned to another by [their] want of ordinary care or skill in the management of [their] property or person." (Civ. Code, § 1714(a) (Section 1714).) This baseline standard is known as the "duty of ordinary care"; a person who fails to exercise ordinary care and skill in their activities acts negligently, and can be liable for any injuries that result from their negligence. Section 1714 applies to all interactions unless the specific relationship between the parties requires a higher or lower degree of care (e.g., a parent has a duty to affirmatively protect their child from harm, not just avoid harming their child through their own negligence).

Given the reach of social media platforms and the increasing role they play in many children's lives, concerns have arisen over the connection between social media usage and mental health, drug use, and other self-harming conduct. This bill seeks to address these issues by increasing the remedies that can be sought against a social media platform that harms a child through its own negligence, i.e., its failure to use ordinary care and skill in its own activities. There is no new cause of action, only the potential for greater damages under existing causes of action sounding in negligence towards a child user. In the event a plaintiff prevailed on such a claim, the bill permits them to recover statutory damages of $5,000 to $1 million per violation or three times the amount of the child's actual damages, whichever is larger. The bill does not permit a prevailing plaintiff to recover attorney's fees or costs. The author has agreed to an eight-year sunset on the bill.

This bill is sponsored by Common Sense Media and is supported by various groups, including the Los Angeles County Office of Education and the California Charter Schools Association. This bill is opposed by a number of industry associations, including Technet and the Computer and Communications Industry Association. The Senate Privacy, Digital Technologies, and Consumer Protection Committee passed this bill with a vote of 6-0.

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 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).)

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) 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) (Section 230).)

2) 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. (Section 230, subd. (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 the person's 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(a) (Section 1714).)

2) Defines "social media platform" as a public or semipublic internet-based service or application that has users in California and that meets both of the following criteria:
    a) A substantial function of the service or application is to connect users in order to allow users to interact socially with each other within the service or application. A service or application that provides email or direct messaging services shall not be considered to meet this criterion on the basis of that function alone.
    b) The service or application allows users to do all of the following:
        i. Construct a public or semipublic profile for purposes of signing into and using the service or application.
        ii. Populate a list of other users with whom an individual shares a social connection within the system.
        iii. Create or post content viewable by other users, including, but not limited to, on message boards, in chat rooms, or through a landing page or main feed that presents the user with content generated by other users. (Bus. & Prof. Code, § 22675(e).)

This bill:

1) States that the Legislature finds and declares the following:
    a) Section 1714(a) already makes every person and corporation, including social media platforms, financially responsible for an injury occasioned to another by their want of ordinary care or skill in the management of their property or person.
    b) Children are uniquely vulnerable on social media platforms.
    c) The biggest social media platforms invent and deploy features they know injure large numbers of children, including contributing to child deaths.
    d) The costs of these injuries are unfairly being paid by parents, schools, and taxpayers, not the platforms.
    e) This measure is necessary to ensure that the social media platforms that are knowingly causing the most severe injuries to the largest number of children receive heightened damages to prevent injury from occurring to children in the first place.

2) Provides that a social media platform that violates Section 1714(a) by causing injury to a child shall be liable for statutory damages for the larger of the following:
    a) $5,000 per violation, up to a per-child maximum of $1 million.
    b) Three times the amount of the child's actual damages.

3) Provides that any waiver of 2) is void and unenforceable as contrary to public policy.

4) Aligns the definition of "social media platform" with that in Section 22675 of the Business and Professions Code, and limits application of the bill to those platforms that generate more than $100 million per year in gross revenues.

5) Provides that the duties, remedies, and obligations it imposes are cumulative to the duties, remedies, or obligations imposed under other law and shall not be construed to relieve a social media platform from any duties, remedies, or obligations imposed under any other law.

6) Includes a severability clause and specifies that its provisions apply only prospectively.

7) Provides that any attempted waiver is void and unenforceable.

COMMENTS

1. Author's comment

According to the author:

> AB 2 amends Section 1714 of the Civil Code by adding statutory damages against platforms that are found in court to be liable under current law for negligently causing harm to children under the age of 18. Under the bill, if a company is proven to have failed to exercise its already established duty of operating with ordinary care, the company becomes financially liable for a set amount of $5,000 per violation, up to a maximum penalty of $1 million per child, or three times the amount of the child's actual damages, whichever is applicable. This financial liability aims to incentivize platforms who count their profits in the tens of billions to proactively safeguard children against potential harm by changing how they operate their platforms.

2. The origins of Section 230

In 1995, nearly 14 millions Americans subscribed to an "online service" or connected directly to the internet.[1] 1995 is also the year that a single trial judge in New York issued the ruling[2] that led to the enactment of Section 230, also known as the "twenty-six words that created the internet."[3]

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[1] Pew Research Center, Report: *Americans Going Online…Explosive Growth, Uncertain Destinations* (Oct. 16, 1996) *available at* www.pewresearch.org/politics/1995/10/16/americans-going-online-explosive-growth-uncertain-destinations/#online-numbers. All links in this analysis are current as of June 27, 2026.
[2] *See Stratton Oakmont v. Prodigy Servs. Co.* (N.Y. Sup. Ct., May 26, 1995) 1995 WL 323710.
[3] *E.g.*, Kosseff, The Twenty-Six Words That Created The Internet (2019).

The case in question was a defamation case seeking to hold the internet service provider, Prodigy, liable for an unknown user's defamatory statements posted a message board.[4] The court decided that, because Prodigy held itself out as a "family oriented computer network" that exercised editorial control over the content on its bulletin boards, Prodigy should be treated as a publisher of the anonymous user's statements, rather than a distributor.[5] Under longstanding defamation law, publishers are liable for repeating or broadcasting defamatory statements as if they were the speaker; distributors—such as bookstores and libraries—are liable for the defamation contained in works they distribute only if they know or have reason to know that a statement in their materials is false.[6] The upshot was, because Prodigy engaged in content moderation, it was at risk of being held liable for any defamatory statement posted by its users.

In response to this single New York judge's order, two federal legislators and members of the burgeoning internet industry crafted a law to give internet platforms immunity from liability for users' statements, even if they might have reason to know that such statements might be false, defamatory, or otherwise actionable.[7]

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."[8] 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, harassing, or otherwise objectionable, whether or not such material is constitutionally protected."[9] Section 230 also expressly preempts state law, stating that it does not preempt federal criminal laws but 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."[10]

3. Early Section 230 caselaw: an expansive approach

Section 230 uses terminology generally applicable in defamation cases (e.g., "publisher," "speaker"), but the courts interpreting Section 230 following its enactment did not limit its application to the defamation context. Instead, courts allowed Section

[4] *Ibid.*
[5] *Id.* at pp. *2, 5.
[6] *Id.* at p. *3.
[7] Kosseff, *supra*, at pp. 57-65.
[8] 47 U.S.C. § 230(c)(1).
[9] *Id.*, § 230(c)(1) & (2).
[10] *Id.*, § 230(e)(1) & (3).

230 to immunize internet platforms from "virtually all suits arising from third-party content."[11]

One such early case is *Zeran v. America Online*.[12] The plaintiff, Ken Zeran, was the target of a multi-day harassment campaign in which an anonymous user repeatedly posted messages falsely connecting Zeran to the sale of offensive products—such as t-shirts "featuring offensive and tasteless slogans related to the April 19, 1995, bombing of the Alfred P. Murrah Federal Building in Oklahoma City"—and instructing users to "call Ken" at his actual home telephone number.[13] Zeran was inundated with angry phone calls, including death threats.[14] Zeran called AOL repeatedly (it was a simpler time) and company representatives assured him they would take down the messages.[15] But the posts, and the death threats, kept coming.[16]

Zeran filed a negligence suit against AOL, alleging that AOL's response to the fake posts was inadequate, particularly after Zeran made them aware of the problem.[17] The United States Court of Appeals for the Fourth Circuit, however, held that the suit was preempted by Section 230.[18] Both Zeran and the court seemed stuck on the question of whether Zeran was seeking to hold AOL liable as a publisher or a distributor, rather than whether AOL's actions in response to the third-party content could separately give rise to liability.[19]

Zeran was one of the first Court of Appeal cases to consider Section 230, and its expansive reading of Section 230's preemption clause was subsequently adopted across the country. Courts even extended Section 230 immunity to situations where the platform's moderator affirmatively solicited the information, selected the user's statement for publication, and/or edited the content.[20] This interpretation of Section 230 gave speech on social media greater protections than speech in other contexts, e.g., by eliminating distributor liability for statements that an online provider knew or should have known was false,[21] and also relieved platforms of virtually all responsibility to take action to protect their users. This "Internet exceptionalism"

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[11] Kosseff, *supra*, at pp. 94-95; *see, e.g., Doe v. MySpace Inc.* (5th Cir. 2008) 528 F.3d 413, 421-422; *Carfano v. Metrospalsh.com, Inc.* (9th Cir. 2003) 339 F.3d 1119, 1125; *Zeran v. America Online, Inc.* (4th Cir. 1997) 129 F.3d 327, 333-334.
[12] (4th Cir. 1997) 129 F.3d 327.
[13] *Id.* at p. 329.
[14] *Ibid.*
[15] *Ibid.*
[16] *Ibid.*
[17] *Id.* at pp. 329-330.
[18] *Id.* at p. 328.
[19] *E.g., id.* at pp. 331-332.
[20] *See, e.g., Jones v. Dirty World Entertainment Recordings LLC* (6th Cir. 2014) 755 F.3d 398, 415; *Batzel v. Smith* (9th Cir. 2003) 333 F.3d 1018, 1030-1031; *cf. Blumenthal v. Drudge* (D.D.C. 1998) 992 F.Supp. 44, 51-52.
[21] *Zeran*, *supra*, 129 F.3d at p. 332.

approach enabled the development of the social media platforms that dominate the landscape today.[22]

4. The rise of algorithmic social media

While chatrooms and other social networking sites existed before the 21st century, Friendster and Myspace, launched in 2002 and 2003, were arguably the first modern social media sites.[23] These sites' popularity opened the floodgates: TheFacebook launched in 2004, YouTube and Reddit launched in 2005, Twitter in 2006, Tumblr in 2007, and Pinterest and Instagram in 2010.

These websites "built their operations around third-party content,"[24] enabled by the expansive interpretation of Section 230:

> The broad *Zeran* interpretation of Section 230 was a catalyst for the success of these interactive websites. If there was even a chance that the websites could successfully be sued for user posts, their business models simply could not exist. The sites could not review the millions of words, pictures, and videos that were uploaded. And if they did not screen every bit of third-party content in advance, they could be liable for existential amounts of damages…These sites have faced many potentially devastating lawsuits because of user content, and Section 230 has provided nearly bulletproof protection.[25]

That nearly bulletproof protection continued to protect social media platforms throughout the 2010s, as they took on an increasingly active role in the presentation of content to their users.

Take Facebook. When it launched, it wasn't actually all that social—users created profile pages, and could view the profile pages of their friends, but there wasn't any way to engage with other users in a public-facing way. When Facebook first moved to a "news feed" model, wherein a user could see their friends' updates in a single feed, those updates were presented chronologically. It wasn't until Facebook started inserting non-friends' info into users' feed and presenting content based on what an algorithm "recommended" for the user that the platform began to look like it does today.

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[22] *See* Kosseff, *supra*, p. 81.
[23] Leskin, *These are 13 of the most popular social networks a decade ago that have died or faded into obscurity*, (Dec. 23, 2019) Business Insider, https://www.businessinsider.com/aim-myspace-club-penguin-social-apps-popular-2010-decade-2019-11. One could also argue that LiveJournal, founded in 1999, should get the title. (*Ibid.*)
[24] Kosseff, *supra*, p. 122.
[25] *Id.* at p. 124.

An algorithm is a sequence of instructions designed to perform a specific computation. Modern computing means algorithms can incorporate hundreds or thousands of data points, called "signals," to reach a conclusion. In the social media context, the "algorithm" is the set of instructions that a platform uses to determine what content to present to the user, and in what order. The more time a person spends on a platform, and the more information they provide about themselves, the more accurate the algorithm can be.

The amount of data collected by social media platforms over the years allows them to create enormously detailed, personal profiles of their users. People talk about their personal lives, work troubles, family issues, hopes, dreams, their fears with their online communities, all of which is turned into signals for the algorithm. TikTok's rapid ascent to become one of the most popular social media platforms among teens is credited to its algorithm's impeccable ability to predict what video a user would enjoy next; some people said the algorithm knew them better than they knew themselves.[26]

The thing about an algorithm is, it can be programmed for any result. An algorithm can be tailored to prioritize content from the user's friends and family, or to produce fewer scary videos late at night, or to flood everyone's feeds with videos about bees—the platform picks the desired conclusion. Virtually every platform, however, uses their algorithm to keep users on the platform as long as possible, because that's how they make money. Social media is free because the cost of providing the platform infrastructure is dwarfed by the value of the individualized data they collect from their users—data that is used to sell precisely targeted ad space.[27] The more time a user spends on the platform, the more data the platform can collect (to hone its own user profile), and the more ads the user will see. In the words of Dr. Margaret McCarney, "if we don't pay for the product, dear colleagues—we are the product."[28]

For the 2025 fiscal year, Meta (the parent company of Facebook and Instagram) reported $83.28 billion in income from $200.97 billion in revenues, an increase of 20 percent over 2024.[29] Ads on the social media platform YouTube generated $40.3 billion in revenues

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[26] Smith, *How TikTok Reads Your Mind* (Dec. 5, 2021), New York Times, *available at* https://www.nytimes.com/2021/12/05/business/media/tiktok-algorithm.html.
[27] *E.g.*, Meta Platforms, Inc., Form 10-K for the fiscal year ended December 31, 2025, p.15, *available at* https://www.sec.gov/ix?doc=/Archives/edgar/data/0001326801/000162828026003942/meta-20251231.htm#icc066a9e83ae4c46b57ee4d9dc9d7021_19 ("Substantially all of our revenue is currently generated from marketers advertising on Facebook and Instagram.").
[28] McCartney, *If you don't pay for it you are the product* (2018) BMJ, *available at* https://www.bmj.com/content/bmj/362/bmj.k3249.full.pdf.
[29] Meta 10-K, *supra* at p. 60, *available* at https://www.sec.gov/ix?doc=/Archives/edgar/data/0001326801/000162828026003942/meta-20251231.htm#icc066a9e83ae4c46b57ee4d9dc9d7021_49.

for Alphabet in 2025.[30] TikTok generated an estimated $23 billion in revenue in 2024; precise numbers are hard to come by because TikTok is privately held.[31]

5. Social media usage and its effects

As of 2025, the vast majority of American adults and teens use social media. Among adults, the top platforms are YouTube (84 percent of American adults), Facebook (71 percent), and Instagram (50 percent).[32] Among teens, the top platforms are YouTube (90 percent of American teens), TikTok (68 percent), and Instagram (63 percent).[33] About half of adults say that they go on Facebook or YouTube at least once a day.[34] Daily use of YouTube, TikTok, and Instagram is at 76 percent, 61 percent, and 55 percent of teens, respectively; 21 percent of teens report using TikTok, and 17 percent of teens report using YouTube, "almost constantly."[35]

As discussed above in Comment 4, algorithms are amoral. An algorithm is a bit of code, not a thinking thing, so unless the algorithm designer adds guardrails, the algorithm is going to reach its conclusion without factoring in the potential for unintended consequences. In the case of social media algorithms designed to maximize engagement, it turns out that the best way to keep a person online is to make them mad, insecure, and paranoid. And the platforms know this—they have for years.

The Senate Committee on Privacy, Digital Technologies, and Consumer Protection Committee's analysis of this bill provides a thorough overview of the harms caused by social media platforms and the evidence that the platforms knew that their engagement-maximization algorithms were harming users, particularly minors. That analysis is incorporated herein by reference.

6. Recent cases rejecting Section 230 immunity

This decade, courts have rejected the application of Section 230 in a number of cases alleging harm caused by features or elements of the platform itself, not content published by other users. Some of the most significant cases are discussed below.

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[30] Alphabet Inc., Form 10-K for the fiscal year ended December 31, 2025, p. 60, *available at* https://www.sec.gov/Archives/edgar/data/1652044/000165204426000018/goog-20251231.htm#i6be430fe3ebf411481dcec8b0abe9149_187.
[31] Curry, *TikTok Revenue and Usage Statistics (2026)* (June 11, 2026) Business of Apps, https://www.businessofapps.com/data/tik-tok-statistics/.
[32] Gottfried & Park, *Americans' Social Media Use 2025* (Nov. 20, 2025) Pew Research Center, https://www.pewresearch.org/internet/2025/11/20/americans-social-media-use-2025/.
[33] Faverio & Sidoti, *Teens, Social Media and AI Chatbots 2025* (Dec. 9, 2025) Pew Research Center, https://www.pewresearch.org/internet/2025/12/09/teens-social-media-and-ai-chatbots-2025/. Snapchat, used by 55 percent of American teens, is a close fourth. (*Ibid.*)
[34] Gottfried & Park, *supra*.
[35] Faverio & Sidoti, *supra.*

a. Lemmon v. Snap, Inc.

In 2017, two 17-year-olds and a 20-year old died in a fiery car crash.[36] They were going 113 miles an hour and documenting it for Snapchat when the car lost control and hit a tree.[37] They were using Snapchat's "Speed Filter," which could be overlayed over a user's live video.[38] Two of the young men's parents sued Snap for negligent design, alleging that the company was well aware that the Speed Filter was encouraging users to speed dangerously, and that the Speed Filter had led to at least three accidents prior to the crash.[39]

The district court dismissed the parents' complaint on the ground that Snap was immune from liability under Section 230.[40] On appeal, however, the United States Court of Appeals for the Ninth Circuit reversed the district court's ruling.[41] The court explained that the parents' claim for negligent design "rests on the premise that manufacturers have a 'duty to exercise due care in supplying products that do not present an unreasonable risk of injury or harm to the public,' " a duty that "differs markedly from the duties of publishers as defined in [Section 230]."[42] The fact that Snap allowed users to transmit speed data to other users did not override Snap's duty as a manufacturer to design a safe product.[43]

b. Anderson v. Tiktok, Inc.

TikTok's "For You Page" (FYP) is where a user views content recommended by TikTok's algorithm.[44] TikTok's algorithm recommended a "Blackout Challenge" video on ten-year-old Nylah's FYP.[45] The 'Blackout Challenge…encourages users to choke themselves with belts, purse strings, or anything similar until passing out.' "[46] Nylah attempted to recreate the Blackout Challenge and died of asphyxiation.[47]

The district court dismissed Nylah's mother's products liability and negligence claims on Section 230 immunity grounds.[48] The United States Court of Appeals for the Ninth Circuit reversed, holding that TikTok's *recommendation* of the Blackout Challenge video on a user's FYP is expressive conduct distinct from the conduct of the party who created

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[36] *Lemmon v. Snap, Inc.* (9th Cir. 2021) 995 F.3d 1085, 1088.
[37] *Ibid.*
[38] *Ibid.*
[39] *Id.*at pp. 1089-1090.
[40] *Id.* at p. 1090.
[41] *Id.* at p. 1095.
[42] *Id.*at p. 1092.
[43] *Ibid.*
[44] *Anderson v. TikTok* (9th Cir. 2024) 116 F.4th 180, 182.
[45] *Ibid.*
[46] *Ibid.*
[47] *Ibid.*
[48] *Ibid.*

the video: "Section 230 immunizes only information provided by another, and here, because the information that forms the basis of Anderson's lawsuit—i.e., TikTok's recommendations via its FYP algorithm—is TikTok's own expressive activity, § 230 does not bar [the parent's] claims."[49]

c. P.F., et al. v. Meta Platforms, Inc., et al. (*Social Media Cases*)

In 2022, hundreds of lawsuits alleging harms caused by Facebook, Instagram, Snapchat, and YouTube were consolidated into a Joint Counsel Coordination Proceeding (JCCP) in the Los Angeles Superior Court.[50] JCCPs are used when civil actions pending in different superior courts share a common question of law or fact that predominates the litigation, such that litigating each separate case would be inefficient and risk duplicative and inconsistent rulings, orders, or judgments. The cases in the social media JCCP asserted a range of claims, including for defective design, failure to warn, negligence, and fraudulent concealment (against Meta only).[51] All of the cases share the legal question of whether, as the defendants argued, Section 230 bars the plaintiffs' claims.

Judge Carolyn Kuhl, the judge assigned to the JCCP, ruled that social media platforms are not "products" for purposes of liability claims, but that claims for negligence, and for fraudulent concealment against the Meta defendants, could move forward.[52] Judge Kuhl relied on *Lemmon* to rule that claims based on the platforms' interactive features, which plaintiffs allege operate to addict and harm minor users regardless of the particular third-party content, were not within the scope of Section 230's liability.[53]

The JCCP's first "bellwether" trial—a case selected as a test case to give the parties a sense of the likely outcomes in the rest of the cases—concluded in January of this year. The jury found Meta and YouTube liable for negligently designing their platforms and awarded the plaintiff $6 million in damages.[54] Judge Kuhl denied the defendants' motions for judgment notwithstanding the verdict and for a new trial.[55] The next bellwether trial is scheduled for July of this year.

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[49] *Id.* at p. 1084 (cleaned up).
[50] *See In re Social Media Cases*, JCCP5255, Master Complaint.
[51] *See id.*, pp. 255-292.
[52] *See In re Social Media Cases*, JCCP5255, Order (Oct. 13, 2023) p. 2.
[53] *Id.* at pp. 59-61. Judge Kuhl reiterated her ruling in response to Meta's motion for summary judgment. (*In re Social Media Cases*, JCCP5255, Order (Nov. 5, 2025).
[54] Allyn, *Jury finds Meta and Google Negligent in social media harms trial* (Mar. 26, 2026) NPR, https://www.npr.org/2026/03/25/nx-s1-5746125/meta-youtube-social-media-trial-verdict. Snap and TikTok settled with the plaintiff prior to trial, but they remain defendants in the overall JCCP. (*Ibid.*)
[55] *In re Social Media Cases*, JCCP5255, Order (Jun. 9, 2026) p. 1.

d. New Mexico v. Meta Platforms

New Mexico's Attorney General sued Meta for misleading consumers about the safety of its products under New Mexico's Unfair Practices Act.[56] The case went to trial after the judge rejected Meta's arguments that the claims were barred by Section 230.[57] The jury found Meta liable and assessed the maximum civil penalties available under the statute—$5,000 per violation—for a total of $375 million.[58]

7. This bill creates an enhanced remedy available to a minor who was harmed by a social media platform as a result of the platform's negligence

This bill does not create a new cause of action. Instead, the bill increases the remedies available to a person who was harmed as a minor by a social media platform's failure to act with ordinary care, as required by Section 1714. Specifically, the bill permits such a plaintiff to seek the greater of (1) $5,000 per violation, up to a per-child maximum of $1 million; or (2) three times the amount of the child's actual damages. The enhanced remedy is cumulative to existing remedies, and the duty recognized by this bill does not supplant any other duties a social media platform may have under the law. The bill also clarifies that these enhanced remedies will be available only prospectively, and will not apply in any legal case pending on or before January 1, 2027.

The Senate Committee on Privacy, Digital Technologies, and Consumer Protection Committee considered this bill from an overall policy standpoint and passed it with a vote of 6-0. This analysis, therefore, focuses on the legal issues implicated by the bill, including the opposition's argument that the bill would violate federal or constitutional law.

The author has agreed to an eight-year sunset on the bill.

8. Does Section 230 preempt this bill?

The short answer is no.

The longer answer is, Section 230 will be relevant in determining whether a social platform had a duty of care in a particular circumstance, but Section 230 does not provide blanket immunity for a platform's own negligence such that Section 230 preempts this bill.[59] Section 1714 establishes the basic duty of care that governs interactions absent a more specific duty: each person must exercise, in their own

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[56] McQue, *Meta ordered to pay $375m after being found liable in child exploitation case* (Mar. 24, 2026) The Guardian, https://www.theguardian.com/technology/2026/mar/24/meta-new-mexico-jury.
[57] *Ibid.*
[58] *Ibid.*
[59] *See* 47 U.S.C. § 230(e) (state laws that are inconsistent with Section 230 are preempted).

activities, reasonable care for the safety of others.[60] Section 1714's duty of ordinary care applies to corporations as well as to actual human people.[61]

Under *Lemmon*, which is the prevailing law in the Ninth Circuit, a platform can be liable for negligence that is distinct from the platform's republication of third-party content.[62] Judge Kuhl relied on this legal framework to allow the JCCP to proceed to the trial stage. The opposition has not provided any cases, in the Ninth Circuit or otherwise, establishing that social media platforms, uniquely among all other people and businesses, get off scot-free when they fail to exercise reasonable care for the safety of others.

So yes, in any lawsuit that seeks the enhanced remedy available under this bill, the court will have to determine whether the alleged breach of duty stems from the platform's status as a publisher or from the platform's own negligence. This is exactly what the courts are already doing. This bill does not alter that underlying liability framework; it merely increases the potential damages award in suits that are permitted to proceed.

9. Does the First Amendment absolve social media of duty of ordinary care?

The bill's opponents argue that this bill violates social media platforms' First Amendment rights. This analysis will take a few of those arguments in turn.

"AB 2 seeks to regulate speech by requiring platforms to exercise 'ordinary care and skill' for teen users."

Social media platforms already owe a duty of ordinary care and skill to all users.[63]

"This will inevitably lead to lawsuits based on harmful content as well as content-serving features, both of which violate first amendment principles.[] These applications of the bill are likely subject to 'heightened scrutiny' because they are neither content- nor speaker-neutral (i.e., they impose liability for disseminating some types of content but not others and distinguish between large social media platforms and other services)."

Section 1714 is content-neutral and speaker-neutral.[64] This bill does not impose any new duties with respect to content moderation or require a platform to block or restrict access to any particular content.

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[60] Civ. Code, § 1714(a); *Brown v. USA Taekwondo* (2021) 11 Cal.5th 204, 214.
[61] *E.g.*, *Safechuck v. MJJ Productions, Inc.* (2023) 94 Cal.App.5th 675, 680.
[62] *Lemmon*, *supra*, 995 F.3d at p. 1093.
[63] Civ. Code, § 1714(a).
[64] *Ibid.*

"AB 2 is unconstitutional because it imposes liability on social media platforms for whether certain types of third-party content are shown to young users, as well as the expressive choices social media platforms make in designing the user experience"

This bill does not impose liability on anyone. This bill adds additional remedies to already-existing causes of action.

"Courts have repeatedly upheld and protected platforms' First Amendment rights to decide how to moderate and present content on their platforms."

The opposition is correct that courts have held a that platform's "editorial judgment" in presenting content can be expressive conduct protected by the First Amendment.[65] But the First Amendment right to engage in expressive conduct does not immunize anyone, including social media platforms, when their expressive conduct falls below the duty of ordinary care and results in harm.[66]

"AB 2 also directly interferes with the expressive rights of both the minors who will be banned from social media services and the service providers themselves. The imposition of liability for harm to a minor (the bill does not require the provider to know that a user is under 18 to trigger liability) amounts to a requirement to age verify all users of social media services, interfering with constitutionally-protected rights of adults and minors alike."

Again, this bill does not impose any new liability.

"To the extent AB 2 has the practical effect of foreclosing minors' access to social media 'altogether' (e.g., because the bill makes it practically impossible for social media platforms to offer their services to children in California), the law would raise grave concerns under the First Amendment."

This appears to be an argument that, if a social media platform is not confident that it can exercise ordinary care and skill towards its users, the First Amendment compels the state to permit the platform to operate negligently. Committee staff are unaware of any statutes or case law to that effect.

10. <u>Arguments in support</u>

According to a coalition of the bill's supporters:

> This bill establishes statutory damages under California's existing negligence law for harms to minors related to social media that can be proven in court. That is the only

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[65] *See Moody v. NetChoice LLC* (2024) 603 U.S. 707, 718.

[66] *See Anderson*, *supra*, 116 F.4th at p. 182; *cf. Aspen Skiing Co. v. Aspen Highlands Skiing Corp.* (1985) 472 U.S. 1985, 602 ("[T]he word 'right' is one of the most deceptive of pitfalls; it is so easy to slip from a qualified meaning in the premise to an unqualified one in the conclusion. Most rights are qualified." (internal quotation marks omitted).)

change to California law that this bill makes. These financial penalties are needed and intended to motivate large social media companies to do what they currently refuse to do - ensure that the way they design and operate their platforms does not injure young users. There is mounting evidence, including from internal company communications, that social media platforms contribute to our youth mental health crisis and to other direct harms to kids and teens, including accessing fentanyl and other illegal drugs.

As the use of social media continues to climb among children and adolescents, so too does the urgency for legislative action. AB 2 offers a path to mitigate the risks faced by our youth in an increasingly connected world, ensuring that social media companies operate with the due care our children deserve.

Again, AB 2 makes no other change to California law other than to introduce specific financial liabilities for platforms whose products or designs are proven in court to result in harm to minors, incentivizing those companies to prioritize the safety of their younger users.

In light of the compelling association between social media use and injuries to young users, including effects on their mental well-being, we strongly urge your support for AB 2. Your action on this bill will be a significant step toward protecting our children and teens from the avoidable harms perpetuated through the negligence of social media companies.

11. Arguments in opposition

According to the Chamber of Progress:

Despite widespread concerns about social media's impact on youth mental health, the vast majority of experts agree that current research does not support a direct causal link between teen social media use and negative mental health outcomes. The American Psychological Association (APA) stated that "using social media is not inherently beneficial or harmful to young people" as "adolescents' lives online both reflect and impact their offline lives."

Similarly, the National Academies of Sciences, Engineering, and Medicine's 2023 analysis found no evidence that social media causes widespread negative health changes among adolescents, countering the dominant cultural narrative that it is universally harmful.

Holding the belief that social media is inherently harmful overlooks its many benefits, particularly for those who rely on it for support and connection. The APA also highlights how online interactions can be especially valuable for youth experiencing adversity, social isolation, or stress. Social media can also serve as a

lifeline for individuals struggling with mental health issues. The Lancet's recent Commission on Self-Harm finds that social media use may have protective effects for individuals at risk of self-harm who are isolated or otherwise have difficulties forming in-person connections. AB 2 threatens access to these very important resources for struggling youth.

SUPPORT

Common Sense Media (sponsor)
California Charter Schools Association
California Initiative for Technology & Democracy
California School Boards Association
California Teachers Supporting Gender Non-Conforming Youth
Children's Advocacy Institute at the University of San Diego School of Law
Consumer Federation of California
Distraction-Free Schools CA
Healthier Tech-Inc.
Jewish Family and Children's Services of San Francisco, the Peninsula, Marin and Sonoma Counties
Los Angeles County Office of Education
NextGen California
Organization for Social Media Safety
Parent Collective
San Marcos Parents for Intentional Tech
Schools Beyond Screens CVUSD
Schools Beyond Screens LVUSD
Schools Beyond Screens San Diego
ScreenSense
Tech in Check
Tech Oversight California
The Hebrew Academy

OPPOSITION

California Chamber of Commerce
Chamber of Progress
Computer & Communications Industry Association
Electronic Frontier Foundation
Technet

RELATED LEGISLATION

Pending Legislation: AB 1709 (Lowenthal) prohibits a covered platform, as defined, from allowing a person under the age of 16 to create or maintain an account on a

covered platform, as specified. AB 1709 is pending before this Committee and is set to be heard on the same date as this bill.

Prior Legislation:

AB 1043 (Wicks, Ch. 675, Stats. 2025) establishes the Digital Age Assurance Act, which creates a signaling infrastructure that allows developers to rely on a real-time, secure indicator of a user's age bracket for purposes of complying with other California laws that require age verification or parental consent; and provides that a developer that receives a signal indicating a user's age shall be deemed to have actual knowledge of the user's age even if the developer willfully disregards the signal and requires a developer to treat a signal indicating a user's age as the primary indicator of a user's age for purposes of determining the user's age.

AB 3172 (Lowenthal, 2024) was substantially similar to this bill but was amended to limit these enhanced remedies to actions brought by public prosecutors and raised the standard of care necessary to seek such remedies. AB 3172 died on the Senate Floor.

SB 287 (Skinner, 2023) would have subjected social media platforms to civil liability for damages caused by their designs, algorithms, or features, as provided. It would have provided a safe harbor where certain auditing practices are carried out. SB 287 was held in the Senate Appropriations Committee.

PRIOR VOTES

Senate Privacy, Digital Technologies, and Consumer Protection Committee (Ayes 6, Noes 0)
Assembly Floor (Ayes 66, Noes 0)
Assembly Judiciary Committee (Ayes 9, Noes 0)
Assembly Privacy and Consumer Protection Committee (Ayes 9, Noes 0)

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