

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2023-2024 Regular Session**

SB 1504 (Stern)  
Version: April 3, 2024  
Hearing Date: April 23, 2024  
Fiscal: Yes  
Urgency: No  
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**SUBJECT**

Cyberbullying Protection Act

**DIGEST**

This bill amends the Cyberbullying Protection Act by requiring social media platforms to respond to reports of cyberbullying and disclose final determinations. The bill authorizes minors to bring civil actions for violations and increases the applicable penalty tenfold. The bill also updates the definition of “severe and pervasive conduct.”

**EXECUTIVE SUMMARY**

Social media can connect people – for good or for ill. Social media have opened up new avenues for bullies of all ages to harass their victims; research indicates that cyberbullying is now common among teens and tweens. Cyberbullying presents an especially difficult problem to solve because it so often takes place in online spaces parents, school administrators, and other adults cannot access.

Existing law, the Cyberbullying Protection Act (the Act), requires social media platforms, as defined, to disclose their cyberbullying reporting procedures and to implement a reporting mechanism for the reporting of cyberbullying between pupils as well as other conduct that violates the platform’s terms of service. The Attorney General is authorized to bring suit against platforms for intentional failure to comply and seek a \$7,500 per day, per violation civil penalty.

This bill bolsters that law by, in part, extending its reach to cover cyberbullying of any minor by any person and establishing a timeline and process for the platform’s response to those reports. The bill increases the civil penalties to \$75,000 per violation per day and authorizes anyone reporting cyberbullying to bring civil actions to recover those penalties. The bill also includes a non-exclusive list of content that meets the definition of “severe or pervasive conduct,” an element of cyberbullying.

This bill is sponsored by #HalfTheStory. It is supported by several organizations including the Los Angeles County Office of Education and the California Teachers Association. The bill is opposed by the Electronic Frontier Foundation and various industry associations, including the Computer and Communications Industry Association.

### **PROPOSED CHANGES TO THE LAW**

Existing federal law:

- 1) Provides a right to free speech and expression. (U.S. Const., 1st amend; Cal. Const., art 1, § 2.)
- 2) Provides that no provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider. (47 U.S.C. § 230(c)(1).)
- 3) Provides that no provider or user of an interactive computer service shall be held liable on account of:
  - a) Any action voluntarily taken in good faith to restrict access to or availability of material that users consider to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected.
  - b) Any action taken to enable or make available to content providers or others the technical means to restrict access to material described above. (47 U.S.C. § 230(c)(2).)
- 4) Defines “interactive computer service,” for purposes of 2) and 3), as any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions. (47 U.S.C. § 230(f)(2).)

Existing state law:

- 1) Establishes the Student Cyberbullying Protection Act, which requires a social media platform to disclose all cyberbullying reporting procedures in its terms of service. The Act only applies to platforms that generated more than \$100,000,000 in gross revenue during the preceding calendar year. (Bus. & Prof. Code § 22589 et seq.)
- 2) Requires a social media platform to establish a mechanism within its internet-based service that allows any individual, whether or not that individual has a profile on the internet-based service, to report cyberbullying or any content that violates the existing terms of service. The reporting mechanism must allow, but not require, an

individual to upload a screenshot of the content that contains cyberbullying or violates the terms of service. (Bus. & Prof. Code § 22589.1.)

- 3) Defines “cyberbullying” as any severe or pervasive conduct made by an electronic act or acts, as defined, committed by a pupil or group of pupils directed toward one or more pupils that has or can reasonably be predicted to have the effect of one or more of the following:
  - a) Placing a reasonable pupil or pupils in fear of harm of their person or property,
  - b) Causing a reasonable pupil to experience a substantially detrimental effect on the pupil’s physical or mental health,
  - c) Causing a reasonable pupil to experience substantial interference with the pupil’s academic performance, or
  - d) Causing a reasonable pupil to experience substantial interference with the pupil’s ability to participate in or benefit from the services, activities, or privileges provided by a school. (Bus. & Prof. Code § 22589.)
  
- 4) Provides that the Attorney General may bring an action against a social media platform that intentionally violates the provisions of the Act and to recover a civil penalty of up to \$7,500 for each intentional violation per day that the violation was incurred. The Attorney General may also seek injunctive relief. (Bus. & Prof. Code § 22589.3.)
  
- 5) Provides that a student may be suspended or expelled from an elementary or secondary school for an act of bullying, which is any severe or pervasive physical or verbal act or conduct, including communications made in writing or by means of an electronic act, and including acts of sexual harassment, hate violence, and threats or harassment, as defined, directed toward one or more pupils that has or can be reasonably predicted to have the effect of one or more of the following:
  - a) Placing a reasonable pupil or pupils in fear of harm to that pupil's or those pupils' person or property.
  - b) Causing a reasonable pupil to experience a substantially detrimental effect on the pupil's physical or mental health.
  - c) Causing a reasonable pupil to experience substantial interference with the pupil's academic performance.
  - d) Causing a reasonable pupil to experience substantial interference with the pupil's ability to participate in or benefit from the services, activities, or privileges provided by a school. (Ed. Code § 48900(r)(1).)
  
- 6) Defines an “electronic act,” as the creation or transmission originated on or off the schoolsite, by means of an electronic device of a communication, including, a post on a social network internet website. (Ed. Code § 48900(r)(2).)
  
- 7) Provides that a pupil cannot be suspended or expelled for an act of bullying or cyberbullying unless the act is related to a school activity or school attendance

occurring within a school under the jurisdiction of the superintendent of the school district or principal or occurring within any other school district, which includes being on school grounds, going to or coming from school, during the lunch period whether on or off campus, and during, or while going to or coming from, a school-sponsored activity. (Ed. Code § 48900(s).)

This bill:

- 1) Extends the Act's definition of cyberbullying to include acts committed by any person directed toward one or more minors.
- 2) Inserts a definition of "severe or pervasive conduct" to include content that does any of the following:
  - a. Calls for self-injury or suicide of a minor or a specific person or of a group of individuals related to a minor.
  - b. Attacks a minor based on the minor's experience of sexual assault, sexual exploitation, sexual harassment, or domestic abuse.
  - c. Includes statements of intent to engage in a sexual activity or advocating to engage in a sexual activity with a minor.
  - d. Threatens to release a minor's telephone number, residential address, images, or email address.
  - e. Calls for, or statements of intent to engage in, threats of violence, humiliation, or criminal activity against a minor.
  - f. Degrades, or expresses disgust toward, a minor who is depicted in the process of, or right after, menstruating, urinating, vomiting, or defecating.
- 3) Requires the reporting mechanism to be prominent but limits the scope of reporting to cyberbullying or content that violates the terms of service related to cyberbullying.
- 4) Mandates the mechanism meet the following criteria:
  - a. The mechanism shall include a method of contacting a reporting individual in writing by a method, including a telephone number for purposes of sending text messages or an email address, that meets both of the following criteria:
    - i. The method is chosen by the reporting individual.
    - ii. The method is not a method that is within the control of the social media platform.
  - b. The mechanism provides, within 36 hours of receipt of a report, written confirmation to the reporting individual that the social media platform received that individual's report.
  - c. The mechanism issues a final written determination to the reporting user within 10 days of receiving the report stating one of the following:

- i. The reported material has been determined to be cyberbullying that was displayed, stored, or hosted on the social media platform and has been blocked from being viewable on the social media platform.
  - ii. The reported material has been determined to be cyberbullying that was displayed, stored, or hosted on the social media platform and has not been, or will not be, blocked on the social media platform.
  - iii. The reported material has been determined not to be cyberbullying.
  - iv. The reported material has been determined not to be displayed, stored, or hosted on the social media platform.
- 5) Authorizes anyone that reports cyberbullying to the platform, as well as any city attorney, district attorney, or county counsel, to bring a civil action for intentional violations and raises the statutory damages available to \$75,000 per intentional violation per day. A prevailing plaintiff may be awarded reasonable attorney's fees and costs.
- 6) Provides that the remedies provided are in addition to any other civil, criminal, and administrative remedies, penalties, or sanctions provided by law and do not supplant, but are cumulative to, other remedies, penalties, or sanctions. The duties and obligations imposed are cumulative with any other duties or obligations imposed under other law and shall not be construed to relieve any party from any duties or obligations imposed under other law.
- 7) Includes a severability clause.

## COMMENTS

### 1. Incidence of cyberbullying

Cyberbullying – bullying tactics made through online means – is remarkably prevalent. Studies suggest that around 15 percent of teens and tweens have experienced cyberbullying.<sup>1</sup> Bullying of any kind is associated with negative health effects, but cyberbullying presents unique risks to its victims in light of the nature of social media and the internet in general. Social media platforms can be used to create a false profile for a person, disseminate embarrassing photos or videos, or engage in bullying anonymously in ways that are not available in the real world. Without a reliable mechanism to report cyberbullying, parents and other concerned adults might not have alternative means to protect their children from ongoing online harassment.

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<sup>1</sup> See Basile, et al., *Interpersonal Violence Victimization Among High School Students – Youth Risk Behavior Survey, United States, 2019*, CDC National Center for Injury Prevention and Control, Division of Violence Prevention (Aug. 21, 2020), at p. 1; Patchin & Hinduja, *Tween Cyberbullying in 2020*, Cyberbullying Research Center (2020) at p. 4.

In response, AB 2879 (Low, Ch. 700, Stats. 2022) was signed into law. It establishes the Act and requires a social media platform, as defined, to establish a reporting mechanism for the reporting of cyberbullying and other conduct that violates the platform's terms of service. The reporting mechanism must include two features: it must be useable by individuals who do not have an account on the platform, and it must permit, but not require, the report to include a screenshot of the problematic post. These measures are designed to make the mechanism as useful as possible for, e.g., a parent who might not have an account on a particular platform but who wishes to protect their child. Platforms are also required to disclose in their terms of service the procedures for using the reporting mechanism.

## 2. Strengthening the Act

This bill seeks to enhance the law to provide great protection for victims of cyberbullying. Currently the law defines cyberbullying as requiring acts by one or more pupils directed toward another pupil. This bill expands that definition to include acts by any person directed toward any minor. Furthermore, the bill requires the mechanism to be prominent to avoid it being buried on the platform.

The bill also ensures the effectiveness of the mechanism by placing clear guidelines for how the platforms must respond. The mechanism must include a method of contacting a reporting individual in writing by a method that is chosen by the individual, which is not within the control of the social media platform. Within 36 hours of receipt of a report, written confirmation must be provided to the reporting individual that the social media platform received that individual's report. The mechanism must then issue a final written determination within 10 days of receiving the report. The determination must identify whether the material was found to be cyberbullying and whether the platform blocked it from being viewable. It should be noted that the bill does not require any specific action to be taken other than disclosing the platform's determination and the action taken, if any.

This follows the model established in AB 1394 (Wicks, Ch. 576, Stats. 2023), which requires platforms to have mechanisms to report child sexual abuse material and to respond to reports in a timely manner by a method chosen by the reporting individual.

The Act can currently only be enforced by the Attorney General and caps civil penalties at \$7,500 per day, per intentional violation. This bill extends enforcement authority to city attorneys, district attorneys, and county counsel and further allows any individual that submits a report of cyberbullying to the platform to bring such an action. The bill also expands the available remedies, providing for statutory damages of up to \$75,000 and authorizes awards of reasonable attorney's fees and costs to the prevailing plaintiff.

### 3. Constitutional issues

State law regulating social media activity generally implicates two discrete constitutional issues: preemption by federal law governing when an “interactive computer service” may be held liable for third-party content (47 U.S.C. § 230, or Section 230) and the First Amendment to the United States Constitution.<sup>2</sup> As explained in greater detail below, this analysis concludes that this bill, as the statute it modifies, does not clearly run afoul of either.

First, with respect to Section 230, the statute states 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.”<sup>3</sup> The statute further provides that an “interactive computer service” – which includes websites such as social media platforms – may engage in its own content good-faith moderation efforts without being treated as the publisher of other statements, and that no state may pass a law contrary to Section 230’s strictures.<sup>4</sup> This bill does not seek to hold a social media platform liable for the content posted by its users. It merely requires a social media platform to provide a mechanism for reporting instances of cyberbullying and online harassment and set forth in its terms of service the means for doing so. While the platform is required to respond and disclose its determination, it does not even hold platforms liable where they find cyberbullying content and refuse to take it down. Section 230 is thus not plainly implicated by this bill.

With respect to the First Amendment, this bill does not explicitly restrict any speech. It does, however, compel a social media platform to speak, specifically, by making a disclosure about the procedures for reporting cyberbullying or other acts that violate the social media platform’s terms of service and the determination it has made in response to a report. Because the right to speak encompasses the right not to speak, this provision does implicate the First Amendment.<sup>5</sup> Compelled speech in the commercial context, however, is subjected to much less exacting scrutiny than in other arenas; a law concerning commercial speech is generally upheld if the law advances a substantial government interest and directly advances that interest.<sup>6</sup>

Here, the state’s interest in protecting children from cyberbullying is clearly substantial, and the requirement that social media platforms explain how to report such harmful speech and to respond to such reports is clearly related to the state’s interest in reducing the volume of, and exposure to, harmful social media posts.

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<sup>2</sup> See U.S. Const., 1st amend,

<sup>3</sup> 47 U.S.C. § 230(c)(1).

<sup>4</sup> *Id.*, § 230(c), (e).

<sup>5</sup> E.g., *U.S. v. United Foods, Inc.* (2001) 533 U.S. 405, 410.

<sup>6</sup> *Central Hudson Gas & Elec. Corp. v. Public Service Commission of New York* (1980) 477 U.S. 556, 566.

Writing in opposition, the Electronic Frontier Foundation argues the bill will lead to censorship of protected speech:

We recognize that cyberbullying hurts children online. As written, however, the expansion of the definition of cyberbullying is overbroad. When combined with the reporting mechanism, this bill will lead to over-censorship of protected speech.

The types of content included under “severe or pervasive conduct” can pose hard problems of assessment. The determination of what is an “attack,” “statement of intent,” “threat,” or any like content can be quite subjective, hinging on factual context or disputed circumstances unknown to the online platform. As such, otherwise protected speech could easily be considered cyberbullying by this statute.

Combined with its broad authorization for private reporting and requirement to make a “final written determination” within ten days, S.B. 1504 may lead to over-censorship of protected speech.

#### 4. Stakeholder positions

According to the author:

SB 1504 aims to address the urgent issue of cyberbullying, which has become increasingly prevalent in today's digital age. Too often, young people suffer in silence, and tragically, some even take their own lives as a result of online abuse.

Statistics underscore the severity of the problem, with up to 56 percent of teens reporting experiences with cyberbullying. Certain demographics, such as LGBTQ+ teens, are particularly targeted, leading to increased risks of depression, substance abuse, and offline victimization. Furthermore, Black or Hispanic teens disproportionately bear the brunt of cyberbullying.

The prevalence of cyberbullying on various social media platforms is alarming, with Instagram, Facebook, and Snapchat emerging as the primary platforms for such harmful behavior. Recent revelations have shed light on social media companies' reluctance to take adequate measures to protect children from cyberbullying and other harms.

Existing California law falls short in addressing this pressing issue. Current statutes lack specific provisions holding platforms accountable for failing to address cyberbullying and offer insufficient protections for



bullied children. SB 1504 seeks to rectify these deficiencies by updating current legislation to ensure platforms respond promptly and effectively to reports of cyberbullying.

By enhancing accountability and enforcement measures, SB 1504 aims to provide bullied children with the protections they urgently need in today's digital landscape. It is imperative that we take decisive action to safeguard the well-being of our youth and foster a safer online environment for all.

#HalfTheStory, the sponsor of this bill, explains the need for the bill:

In order to get ahead of the next generation of technological advancement, we need to implement government standards that hold our current digital landscape accountable. The next generation, I-Gen, is the first generation in human history that does not know a world without pervasive and largely unregulated digital technology. We have implemented standards at the national level of safety across drugs, food, automobiles, and more; yet we fail to have a system in place to protect our teens in the virtual world.

Writing in support, the American Academy of Pediatrics argues existing law is simply not enough to address the issue:

Current California law is simply inadequate to the task of requiring platforms to operate with a minimum of responsiveness and respect to those who are cyberbullied. Among the law's gaps:

- It confusingly addresses only "pupils" (not defined) and not youth and children.
- Its definition of cyberbullying is not as robust as the definitions used by social media platforms themselves.
- The "mechanism" required to report cyberbullying can be buried in the platform's boilerplate, never-read terms of service.
- A platform is not required to respond to an entreating child in any way.
- Only the Attorney General – the agency tasked with protecting 39 million Californians with criminal, environmental, consumer rights, and a long list of urgent priorities and limited capacity – is permitted to enforce the law. Cyberbullying is often a matter of life and death. The Attorney General should not be in the business of being a law firm for individual children or families. Cyberbullied children and their parents need to be able enforce their own rights

without regard to whether the law is being so widely flouted that it becomes a priority for the Attorney General.

A coalition of industry associations, including Technet, writes in opposition:

**Key compliance definitions remain undefined and subjective.**

SB 1504 defines “cyberbullying” by providing the effects certain content could have on a “reasonable minor.” However, “reasonable minor” is undefined in the bill. Moreover, the content can be reported if it “causes a reasonable minor to experience a substantially detrimental effect on the minor’s physical or mental health.” Setting aside who a “reasonable minor” is, private businesses cannot coherently or consistently make diagnostic assessments of users.

It is also very difficult to reliably describe what may cause a “detrimental effect on the minor’s physical or mental health.” Humans in general, especially children, have very nuanced opinions surrounding what may be detrimental to them. The lived experiences of children, teens, and adults differ immensely, and businesses do not have a roadmap to users’ lived experiences, and what could potentially cause them harm. It is also possible that because these definitions are subjective, platforms may consider taking an overly broad takedown approach to avoid penalties. This raises significant First Amendment concerns, as it has the potential to incentivize the removal of lawful speech.

**The proposed penalties for violations are unduly burdensome due to the lack of clarity required for compliance.**

SB 1504 specifies that covered social media companies in violation of the bill’s provisions may be subject to a civil penalty of up to \$75,000 for each “intentional violation.” In addition to those penalties, in a successful action brought by the Attorney General, the court may order injunctive relief to obtain compliance. However, the bill does not provide what injunctive relief could look like. This leaves room for significant questions and subjective interpretation. For example, there are questions regarding how to approach detrimental content, as defined under this bill, if it is found to be on another platform. It is unclear whether injunctive relief achieved on one platform can stop the proliferation of that same harmful material on another platform.

Additionally, it is unclear how platforms would address harmful content that is re-uploaded by a nefarious user once it has been taken down through a successful injunctive relief ruling.

### SUPPORT

#HalfTheStory (sponsor)

American Academy of Pediatrics

Association of California School Administrators

California Federation of Teachers AFL-CIO

California Teachers Association

Children's Advocacy Institute

Fund Her

Jewish Family and Children's Services of San Francisco, the Peninsula, Marin, and Sonoma Counties

Los Angeles County Office of Education

### OPPOSITION

California Chamber of Commerce

Chamber of Progress

Computer and Communications Industry Association

Electronic Frontier Foundation

Netchoice

Technet

### RELATED LEGISLATION

Pending Legislation: SB 976 (Skinner, 2024) establishes the Social Media Youth Addiction Law, which makes it unlawful for the operator of an addictive social media platform, as defined, to provide an addictive feed to a user, unless the operator has reasonably determined that the user is not a minor or the operator has obtained verifiable parental consent. It also makes it unlawful for the operator of an addictive social media platform to send notifications to a minor user during school hours or at night unless the operator has obtained verifiable parental consent to send those notifications. The bill also requires certain access controls to be made available to the verified parent. SB 976 is currently in this Committee.

Prior Legislation:

AB 1394 (Wicks, Ch. 576, Stats. 2023) *See* Comment 2.

SB 1056 (Umberg, Ch. 881, Stats. 2022) required a social media platform with 1,000,000 or more monthly users to clearly and conspicuously state whether it has a mechanism for reporting violent posts, as defined; and allows 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 social media companies, as defined, to post their terms of service and to submit reports to the Attorney General on their terms of service and content moderation policies and outcomes.

AB 2879 (Low, Ch. 700, Stats. 2022) *See* Comment 1.

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 2391 (Gallagher, 2020) would have prohibited social media sites from removing user-posted content on the basis of the political affiliation or viewpoint of that content, except where the social media site is, by its terms and conditions, limited to the promotion of only certain viewpoints and values and the removed content conflicts with those viewpoints or values. AB 2931 died in the Assembly Committee on Arts, Entertainment, Sports, Tourism, and Media.

AB 2219 (Chiu, Ch. 491, Stats. 2018) required local educational agencies to develop procedures for preventing acts of bullying, including cyberbullying.

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