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Senator Thomas Umberg, Chair
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SB 287 (Skinner)
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SUBJECT

Features that harm child users: civil penalty

DIGEST

This bill subjects social media platforms to civil liability for damages caused by their practices, affordances, designs, algorithms, or features, as provided. The bill provides a safe harbor where certain auditing practices are carried out.

EXECUTIVE SUMMARY

In 2005, five percent of adults in the United States used social media. In just six years, that number jumped to half of all Americans. Today, over 70 percent of adults use at least one social media platform. Facebook alone is used by 69 percent of adults, and 70 percent of those adults say they use the platform on a daily basis.

However, this explosion is not limited to adults. Survey data found that overall screen use among teens and tweens increased by 17 percent from 2019 to 2021 with the number of hours spent online spiking sharply during the pandemic. A recent survey found almost 40 percent of tweens stated that they used social media and estimates from 2018 put the number of teens on the sites at over 70 percent.

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 creates a legal obligation on social media platforms not to use designs, algorithms, practices, affordances, or features that they know, or should know, cause child users to receive certain content, such as illegal offers to buy guns or drugs, or cause them to experience addiction to the platform, develop eating disorders, or inflict harm on themselves. Platforms are insulated from liability if they conduct quarterly audits and correct identified issues, as provided.

This bill is author sponsored. It is supported by a wide variety of organizations and individuals, including the Jewish Public Affairs Committee of California, the California Federation of Teachers, and NextGen California. The bill is opposed by various industry groups, including the California Chamber of Commerce and TechNet.

PROPOSED CHANGES TO THE LAW

Existing federal law:

1) Establishes the federal Children's Online Privacy Protection Act (COPPA) to provide protections and regulations regarding the collection of personal information from children under the age of 13. (15 U.S.C. § 6501 et seq.)

2) Provides, in federal law, 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).)

3) 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 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).)

2) Establishes the Privacy Rights for California Minors in the Digital World (PRCMDW), which prohibits an operator of an internet website, online service, online application, or mobile application ("operator") from the following:
    a) marketing or advertising specified products or services, such as firearms, cigarettes, and alcoholic beverages, on its internet website, online service, online application, or mobile application that is directed to minors;
    b) marketing or advertising such products or services to minors who the operator has actual knowledge are using its site, service, or application

online and is a minor, if the marketing or advertising is specifically directed to that minor based upon the personal information of the minor; and

c) knowingly using, disclosing, compiling, or allowing a third party to use, disclose, or compile, the personal information of a minor with actual knowledge that the use, disclosure, or compilation is for the purpose of marketing or advertising such products or services to that minor, where the website, service, or application is directed to minors or there is actual knowledge that a minor is using the website, service, or application. (Bus. & Prof. Code § 22580.)

3) Requires, pursuant to the PRCMDW, certain operators to permit a minor user to remove the minor's content or information and to further inform the minor of this right and the process for exercising it. (Bus. & Prof. Code § 22581.)

4) Requires, pursuant to the Parent's Accountability and Child Protection Act, a person or business that conducts business in California, and that seeks to sell any product or service in or into California that is illegal under state law to sell to a minor to, notwithstanding any general term or condition, take reasonable steps, as specified, to ensure that the purchaser is of legal age at the time of purchase or delivery, including, but not limited to, verifying the age of the purchaser. (Civ. Code § 1798.99.1(a)(1).)

5) Establishes the CCPA, which grants consumers certain rights with regard to their personal information, including enhanced notice, access, and disclosure; the right to deletion; the right to restrict the sale of information; and protection from discrimination for exercising these rights. It places attendant obligations on businesses to respect those rights. (Civ. Code § 1798.100 et seq.)

6) Establishes the California Privacy Rights Act of 2020 (CPRA), which amends the CCPA and creates the California Privacy Protection Agency (PPA), which is charged with implementing these privacy laws, promulgating regulations, and carrying out enforcement actions. (Civ. Code § 798.100 et seq.; Proposition 24 (2020).)

7) Prohibits a business from selling or sharing the personal information of consumers if the business has actual knowledge that the consumer is less than 16 years of age, unless the consumer, in the case of consumers at least 13 years of age and less than 16 years of age, or the consumer's parent or guardian, in the case of consumers who are less than 13 years of age, has affirmatively authorized the sale or sharing of the consumer's personal information. A business that willfully disregards the consumer's age shall be deemed to have had actual knowledge of the consumer's age. (Civ. Code § 1798.120.)

8) Establishes the California Age-Appropriate Design Code Act, which places a series of obligations and restrictions on businesses that provide online services, products, or features likely to be accessed by children. (Civ. Code § 1798.99.28 et seq.)

9) Requires a business that provides an online service, product, or feature likely to be accessed by children ("covered business") to take specified actions, including to:
    a) undertake a Data Protection Impact Assessment for any online service, product, or feature likely to be accessed by children, as specified;
    b) estimate the age of child users with a reasonable level of certainty appropriate to the risks that arise from the data management practices of the business, or apply the privacy and data protections afforded to children to all consumers;
    c) provide any privacy information, terms of service, policies, and community standards concisely, prominently, and using clear language suited to the age of children likely to access that online service, product, or feature;
    d) if the online service, product, or feature allows the child's parent, guardian, or any other consumer to monitor the child's online activity or track the child's location, provide an obvious signal to the child when the child is being monitored or tracked;
    e) enforce published terms, policies, and community standards established by the business, including, but not limited to, privacy policies and those concerning children; and
    f) provide prominent, accessible, and responsive tools to help children, or if applicable their parent or guardian, exercise their privacy rights and report concerns. (Civ. Code § 1798.99.31.)

10) Provides that a covered business shall not engage in specified activity, including:
    a) using the personal information of any child in a way that the business knows or has reason to know is materially detrimental to the physical health, mental health, or well-being of a child;
    b) profiling a child by default, except as specified;
    c) collecting, selling, sharing, or retaining any personal information that is not necessary to provide an online service, product, or feature with which a child is actively and knowingly engaged, except as specified;
    d) using the personal information of a child for any reason other than a reason for which that personal information was collected, except as specified;
    e) collecting, selling, or sharing any precise geolocation information of children by default unless the collection of that precise geolocation information is strictly necessary to provide the service, product, or feature requested and then only for the limited time that the collection of precise

geolocation information is necessary to provide the service, product, or feature; and

f) collecting, selling, or sharing any precise geolocation information without providing an obvious sign to the child for the duration of that collection that precise geolocation information is being collected. (Civ. Code § 1798.99.31.)

This bill:

1) Prohibits a social media platform from using a design, algorithm, practice, affordance, or feature that the platform knows, or which by the exercise of reasonable care should have known, causes child users to do any of the following:
   a) receive content that facilitate the purchase of a controlled substance;
   b) inflict harm on themselves or others;
   c) develop an eating disorder;
   d) receive content that facilitate suicide by offering information on how to die by suicide;
   e) receive content offering diet pills, diet products, or ways to reduce eating, purge food that has been eaten, or lose weight;
   f) experience addiction to the social media platform; or
   g) receive content that facilitate a sale, purchase, or transfer of a firearm that would violate Penal Code Section 16000 et seq.

2) Subjects a platform that has knowingly and willfully violated this law to a civil penalty of up to $250,000 per violation, an injunction, and an award of litigation costs and attorney's fees. An action to enforce a cause of action pursuant to this section shall be commenced within four years after the cause of action accrued.

3) Provides a safe harbor from liability if the platform demonstrates it did both of the following:
   a) instituted and maintained a program of at least quarterly audits of its designs, algorithms, practices, affordances, and features to detect whether they have the potential to cause or contribute to violations of the above; and
   b) corrected, within 30 days of the audit, any design, algorithm, practice, affordance, or feature discovered by the audit to present more than a de minimis risk of violating the above.

4) Provides that it shall not be construed to impose liability on a social media platform for any of the following:
   a) content that is generated by a user of the service or uploaded to or shared on the service by a user of the service;
   b) passively displaying content that is created entirely by third parties;

c) information or content for which the social media platform was not, in whole or in part, responsible for creating or developing;
d) conduct by a social media platform involving child users that would otherwise be protected by Section 230 of Title 47 of the United States Code; or
e) conduct protected by the First Amendment to the United States Constitution or Section 2 of Article I of the California Constitution.

5) Defines the relevant terms, including:
   a) "addiction" means a use of one or more social media platforms that does both of the following:
      i. indicates preoccupation or obsession with, or withdrawal or difficulty to cease or reduce use of, a social media platform despite the user's desire to cease or reduce that use; and
      ii. causes physical, mental, emotional, developmental, or material harms to the user.
   b) "audit" means a good faith, written, systemic review or appraisal by a social media platform that provides reasonable assurance of monitoring compliance with this section that meets both of the following criteria:
      i. the review or appraisal describes and analyzes each of the social media platform's current and forthcoming designs, algorithms, practices, affordances, and features that have the potential to cause or contribute to the addiction of child users.
      ii. the review of appraisal includes any plans to change designs, algorithms, practices, affordances, and features that pose more than a de minimis risk of violating subdivision (a);
   c) "content" means statements or comments made by users and media that are created, posted, shared, or otherwise interacted with by users on an internet-based service or application. However, it does not include media put on a service or application exclusively for the purpose of cloud storage, transmitting files, or file collaboration; and
   d) "social media platform" has the same meaning as defined in Section 22675 of the Business and Professions Code, but does not include those controlled by a business entity that generated less than $100,000,000 in gross revenue during the preceding calendar year.[1]

6) Provides that it shall not negate or limit a cause of action under common law or any other statute, including any cause of action that may have existed or exists against a social media platform under the law as it existed before January 1, 2024.

[1] The bill was recently amended to include this cross-reference to Section 22675. Language in the bill defining "public or semipublic internet-based service or application" is now no longer necessary. The author has agreed to remove it.

COMMENTS

1. Social media and children

The effects of social media on our mental health and what should and can be done about it are pressing policy and societal questions that have become increasingly urgent. Evidence shows that engagement on social media has a clear effect on our emotions.

Researchers conducted a massive experiment on Facebook involving almost 700,000 users to test the emotional effects of social networks:

> The results show emotional contagion. [For] people who had positive content reduced in their News Feed, a larger percentage of words in people's status updates were negative and a smaller percentage were positive. When negativity was reduced, the opposite pattern occurred. These results suggest that the emotions expressed by friends, via online social networks, influence our own moods, constituting, to our knowledge, the first experimental evidence for massive-scale emotional contagion via social networks [. . .] and providing support for previously contested claims that emotions spread via contagion through a network.[2]

Research has shown that amongst American teenagers, YouTube, Instagram, and Snapchat are the most popular social media sites, and 45 percent of teenagers stated that they are "online almost constantly."[3] A meta-analysis of research on social networking site (SNS) use concluded the studies supported an association between problematic SNS use and psychiatric disorder symptoms, particularly in adolescents.[4] The study found most associations were between such problematic use and depression and anxiety.

As pointed out by recent Wall Street Journal reporting, the companies' employees are aware of the dangers:

> A Facebook Inc. team had a blunt message for senior executives. The company's algorithms weren't bringing people together. They were driving people apart.

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[2] Adam D. I. Kramer et al., *Experimental Evidence of Massive-Scale Emotional Contagion through Social Networks* (June 17, 2014) Proceedings of the National Academy of Sciences, vol. 111, No. 24, https://www.pnas.org/doi/full/10.1073/pnas.1320040111. All internet citations are current as of March 30, 2023.

[3] Zaheer Hussain and Mark D Griffiths, *Problematic Social Networking Site Use and Comorbid Psychiatric Disorders: A Systematic Review of Recent Large-Scale Studies*." (December 14, 2018) Frontiers in psychiatry vol. 9 686, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6302102/pdf/fpsyt-09-00686.pdf.

[4] *Ibid.*

> "Our algorithms exploit the human brain's attraction to divisiveness," read a slide from a 2018 presentation. "If left unchecked," it warned, Facebook would feed users "more and more divisive content in an effort to gain user attention & increase time on the platform."
>
> That presentation went to the heart of a question dogging Facebook almost since its founding: Does its platform aggravate polarization and tribal behavior?
>
> The answer it found, in some cases, was yes.[5]

A recent New York Times article on leadership at Facebook elaborates:

> To achieve its record-setting growth, [Facebook] had continued building on its core technology, making business decisions based on how many hours of the day people spent on Facebook and how many times a day they returned. Facebook's algorithms didn't measure if the magnetic force pulling them back to Facebook was the habit of wishing a friend happy birthday, or a rabbit hole of conspiracies and misinformation.
>
> Facebook's problems were features, not bugs.[6]

Another paper recently released provides "Recommendations to the Biden Administration," and is relevant to the considerations here:

> The Administration should work with Congress to develop a system of financial incentives to encourage greater industry attention to the social costs, or "externalities," imposed by social media platforms. A system of meaningful fines for violating industry standards of conduct regarding harmful content on the internet is one example. In addition, the Administration should promote greater transparency of the placement of digital advertising, the dominant source of social media revenue. This would create an incentive for social media companies to modify their algorithms and practices related to harmful content, which their advertisers generally seek to avoid.[7]

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[5] Jeff Horowitz & Deepa Seetharaman, *Facebook Executives Shut Down Efforts to Make the Site Less Divisive* (May 26, 2020) Wall Street Journal, https://www.wsj.com/articles/facebook-knows-it-encourages-division-top-executives-nixed-solutions-11590507499.

[6] Sheera Frenkel & Cecilia Kang, *Mark Zuckerberg and Sheryl Sandberg's Partnership Did Not Survive Trump* (July 8, 2021) The New York Times, https://www.nytimes.com/2021/07/08/business/mark-zuckerberg-sheryl-sandberg-facebook.html.

[7] Caroline Atkinson, et al., *Recommendations to the Biden Administration On Regulating Disinformation and Other Harmful Content on Social Media* (March 2021) Harvard Kennedy School & New York University Stern School of Business,

A series of startling revelations unfolded after a Facebook whistle-blower, Frances Haugen, began sharing internal documents. The Wall Street Journal published many of the findings:

> About a year ago, teenager Anastasia Vlasova started seeing a therapist. She had developed an eating disorder, and had a clear idea of what led to it: her time on Instagram.
>
> She joined the platform at 13, and eventually was spending three hours a day entranced by the seemingly perfect lives and bodies of the fitness influencers who posted on the app.
>
> "When I went on Instagram, all I saw were images of chiseled bodies, perfect abs and women doing 100 burpees in 10 minutes," said Ms. Vlasova, now 18, who lives in Reston, Va.
>
> Around that time, researchers inside Instagram, which is owned by Facebook Inc., were studying this kind of experience and asking whether it was part of a broader phenomenon. Their findings confirmed some serious problems.
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> "Thirty-two percent of teen girls said that when they felt bad about their bodies, Instagram made them feel worse," the researchers said in a March 2020 slide presentation posted to Facebook's internal message board, reviewed by The Wall Street Journal. "Comparisons on Instagram can change how young women view and describe themselves."
>
> For the past three years, Facebook has been conducting studies into how its photo-sharing app affects its millions of young users. Repeatedly, the company's researchers found that Instagram is harmful for a sizable percentage of them, most notably teenage girls.
>
> "We make body image issues worse for one in three teen girls," said one slide from 2019, summarizing research about teen girls who experience the issues.
>
> "Teens blame Instagram for increases in the rate of anxiety and depression," said another slide. "This reaction was unprompted and consistent across all groups."

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https://static1.squarespace.com/static/5b6df958f8370af3217d4178/t/6058a456ca24454a73370dc8/1616421974691/TechnologyRecommendations_2021final.pdf.

> Among teens who reported suicidal thoughts, 13% of British users and 6% of American users traced the desire to kill themselves to Instagram, one presentation showed.
>
> Expanding its base of young users is vital to the company's more than $100 billion in annual revenue, and it doesn't want to jeopardize their engagement with the platform.
>
> More than 40% of Instagram's users are 22 years old and younger, and about 22 million teens log onto Instagram in the U.S. each day . . . .[8]

The released documents from Instagram make clear that "Facebook is acutely aware that the products and systems central to its business success routinely fail":

> The features that Instagram identifies as most harmful to teens appear to be at the platform's core.
>
> The tendency to share only the best moments, a pressure to look perfect and an addictive product can send teens spiraling toward eating disorders, an unhealthy sense of their own bodies and depression, March 2020 internal research states. It warns that the Explore page, which serves users photos and videos curated by an algorithm, can send users deep into content that can be harmful.
>
> "Aspects of Instagram exacerbate each other to create a perfect storm," the research states.[9]

It is these types of features that are most concerning and that are at the heart of the bill. In addition to the "Explore page" there are various other features that are believed to contribute to excessive social media use and preoccupation and attendant mental health issues in children. The referenced documents revealed that Facebook's own internal research found "1 in 8 of its users reported compulsive social media use that interfered with their sleep, work, and relationships— what the social media platform calls 'problematic use' but is more commonly known as 'internet addiction.'"[10]

Another increasing prevalent issue is the connection between social media and drug use in children. Drug use among teenagers and young adults has surged, in part due to the

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[8] Georgia Wells et al., *Facebook Knows Instagram Is Toxic for Teen Girls, Company Documents Show* (September 14, 2021) The Wall Street Journal, https://www.wsj.com/articles/facebook-knows-instagram-is-toxic-for-teen-girls-company-documents-show-11631620739?mod=article_inline.
[9] *Ibid.*
[10] Kim Lyons, *Facebook reportedly is aware of the level of 'problematic use' among its users* (November 6, 2021) The Verge, www.theverge.com/2021/11/6/22766935/facebook-meta-aware-problematic-use-addiction-wellbeing.

mental health harms caused by the COVID-19 pandemic.[11] Teenagers and young adults appear to prefer using prescription pills over opioids like heroin, due to "a skittishness about syringes" and "the false imprimatur of medical authority" that comes with prescription medication.[12]

For many young people seeking pills, they need look no further than the social media apps on their smartphones. Large numbers of drug dealers now use social media apps—particularly those with encrypted or disappearing messages—to offer drugs and make sales.[13] Snapchat, a social media app with features that allow messages to disappear and to be locked with a password, has been particularly widely criticized for facilitating drug sales to minors over its platform,[14] but the DEA has identified other social media platforms—including Facebook, Instagram, and TikTok—that are also used for drug sales.[15] Drug dealers have been able to exploit the built-in features of these platforms, as well as inconsistent content moderation by the platforms, to the point that "gaining access to illicit drugs via social media…is nearly as convenient as using one's phone to order a pizza or call an Uber."[16]

Representatives from Snap (Snapchat's parent company) and other social media companies say that they have taken steps to identify drug dealer accounts and limit the sales of drugs on their platforms.[17] Some argue, however, that the steps are inadequate to meaningfully reduce the problem.[18] Others report that social media platforms have been slow to cooperate with law enforcement officials investigating drug sales arranged over the platforms, further thwarting efforts to protect minors.[19] In February 2023, the House Energy and Commerce Committee held a roundtable to discuss the problem of drug sales over social media and whether federal legislation is needed to limit the

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[11] Hoffman, *Fentanyl Tainted Pills Bought on Social Media Cause Youth Drug Deaths to Soar* (May 19, 2022) N.Y. Times, https://www.nytimes.com/2022/05/19/health/pills-fentanyl-social-media.html.
[12] *Ibid.*
[13] *Ibid.*; Whitehurst, *Group urges feds to investigate Snapchat over fentanyl sales* (Dec. 22, 2022) L.A. Times, https://www.latimes.com/business/story/2022-12-23/group-urges-feds-investigate-snapchat-over-fentanyl-sales.
[14] Mann, *Social media platforms face pressure to stop online drug dealers who target kids* (Jan. 26, 2023) NPR, https://www.npr.org/2023/01/26/1151474285/social-media-platforms-face-pressure-to-stop-online-drug-dealers-who-target-kids.
[15] Whitehurst, *Group urges feds to investigate Snapchat over fentanyl sales* (Dec. 22, 2022) L.A. Times, https://www.latimes.com/business/story/2022-12-23/group-urges-feds-investigate-snapchat-over-fentanyl-sales.
[16] Colorado Department of Law, *Social Media, Fentanyl, & Illegal Drug Sales: A Report from the Colorado Department of Law* (2023), pp. 8-9.
[17] Mann, *Social media platforms face pressure to stop online drug dealers who target kids* (Jan. 26, 2023) NPR, https://www.npr.org/2023/01/26/1151474285/social-media-platforms-face-pressure-to-stop-online-drug-dealers-who-target-kids; Hoffman, *Fentanyl Tainted Pills Bought on Social Media Cause Youth Drug Deaths to Soar* (May 19, 2022) N.Y. Times, https://www.nytimes.com/2022/05/19/health/pills-fentanyl-social-media.html.
[18] Colorado Department of Law, *Social Media, Fentanyl, & Illegal Drug Sales: A Report from the Colorado Department of Law*, *supra* at p. 7.
[19] *Id.* at p. 87.

liability protections given to online platforms for injuries caused by drug sales facilitated by those platforms.[20]

2. Holding social media platforms liable for damages caused

As a general rule, California law provides that persons are 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(a).) Liability has the primary effect of ensuring that some measure of recourse exists for those persons injured by the negligent or willful acts of others; the risk of that liability has the primary effect of ensuring parties act reasonably to avoid harm to those to whom they owe a duty.

a. Scope of liability

This bill seeks to hold social media platforms accountable when they have caused harm to children. The bill prohibits a platform from using a design, algorithm, practice, affordance, or feature that the platform knows, or which by the exercise of reasonable care should have known, causes child users to do any of the following:

- receive content that facilitate the purchase of a controlled substance;
- inflict harm on themselves or others;
- develop an eating disorder;
- receive content that facilitate suicide by offering information on how to die by suicide;
- receive content offering diet pills, diet products, or ways to reduce eating, purge food that has been eaten, or lose weight;
- experience addiction to the social media platform; or
- receive content that facilitate a sale, purchase, or transfer of a firearm that would violate Part 6 (commencing with Section 16000) of the Penal Code.

The bill defines the relevant terms. For instance, "addiction" means use of one or more social media platforms that does both of the following:

- indicates preoccupation or obsession with, or withdrawal or difficulty to cease or reduce use of, a social media platform despite the user's desire to cease or reduce that use; and
- causes physical, mental, emotional, developmental, or material harms to the user.

[20] Feiner, *Snaptchat's role in fentanyl crisis probed during house roundtable: "It's a Snap-specific problem'* (Jan. 25, 2023) CNBC, https://www.cnbc.com/2023/01/25/snapchats-role-in-fentanyl-crisis-probed-during-house-roundtable.html.

"Suicidal" means likely to die by suicide and includes major depressive disorder with suicidal ideation. "Content" means statements or comments made by users and media that are created, posted, shared, or otherwise interacted with by users on an internet-based service or application.

According to the author:

> Research demonstrates that social media companies' algorithms direct their users to specific content, including to content that promotes extremely dangerous and harmful practices. Children are particularly vulnerable to becoming addicted to these platforms and are being targeted with content that facilitates the sale of deadly fentanyl and promotes eating disorders, suicide, and other harmful practices. Additionally, social media sites promote the sale of illegal firearms, including ghost guns, which are untraceable. It's time for California to hold social media companies accountable. SB 287 will help curb dangerous content by strengthening the legal rights that Californians have to stop social media from targeting users with harmful information via specialized algorithms, especially our kids. Social media companies are no longer passive actors in the online marketplace. They're active participants that decide what users see and what they don't. As a result, they must be held responsible when their algorithms purposely target our children with dangerous or harmful content.

Common Sense writes in support:

> While social media use is not inherently a bad thing for kids and teens, there are alarming – and in some cases deadly – threats lurking on the social media platforms. During the time that Instagram use rose from 1 million users to 1 billion, suicide among girls age 10 to 14 doubled. Among American teens who reported suicidal thoughts, 6% of users traced the desire to kill themselves to Instagram. TikTok has pushed harmful content promoting eating disorders and self-harm to young users; every 39 seconds, TikTok recommended such videos about body image and mental health to teens. Fentanyl was the cause of 77.14% of drug deaths among teens in 2021, and, according to one California DA, "Social media is almost exclusively the way they get the pills."
>
> These are a few of the tragic impacts that problematic algorithms or artificial intelligence are having on child users. SB 287 addresses these known problems on platforms through prevention: companies that distribute harmful content are penalized and companies that regularly audit their practices for unlawfully harmful conduct and then fix all identified problems, are immunized from liability.

b. Enforcement

The bill provides a cause of action for those that are able to prove that the social media platform used a design, algorithm, practice, affordance, or feature that caused the specified harms. This includes establishing that the platform knew, or should have known, that these harms would occur.

Enhanced remedies are available where it can be proven that the platform knowingly and willfully violated this law, providing a civil penalty of up to $250,000 per violation, injunctive relief, and an award of litigation costs and attorney's fees.

A coalition of opposition groups, including the Civil Justice Association of California, argues strongly against private enforcement:

> The reality is that SB 287 invites a flood of litigation and the risk of liability will likely result in companies severely limiting or completely eliminating online spaces for teens. Litigation leads to uneven and inconsistent outcomes, with different companies choosing to limit the immense exposure this bill will create in different ways.

In response to these concerns, the author has agreed to limit enforcement to public prosecutors, namely those that can already enforce laws such as California's Unfair Competition Law. While this hampers the ability of children and their parents from enforcing their rights under the bill, it likely limits enforcement to the most egregious violations.

c. Safe Harbor

To incentivize more internal oversight and self-regulation, the bill provides platforms a prospective safe harbor from liability where they have: (1) instituted and maintained a program of at least quarterly audits of its designs, algorithms, practices, affordances, and features to detect designs, algorithms, practices, affordances, or features that have the potential to cause or contribute to violations and (2) corrected, within 30 days of the completion of an audit, any design, algorithm, practice, affordance, or feature discovered by the audit to present more than a de minimis risk of violating this law.

3. Legal concerns

Concerns have been raised about whether the bill runs afoul of federal statutory and constitutional law. Namely, whether the bill is preempted by Section 230 of the Communications Decency Act, 47 U.S.C. § 230 and the First Amendment to the United States Constitution.

a. Section 230

Section 230 does not apply to the *users* of social media (or the internet generally), but rather applies to the *platforms themselves*. In the early 1990s, prior to the enactment of Section 230, two trial court orders—one in the United States District Court for the Southern District of New York, and New York state court—suggested that internet platforms could be held liable for allegedly defamatory statements made by the platforms' users if the platforms engaged in any sort of content moderation (e.g., filtering out offensive material).[21] In response, two federal legislators and members of the burgeoning internet industry crafted a law that would give internet platforms immunity from liability for users' statements, even if they might have reason to know that statements might be false, defamatory, or otherwise actionable.[22] The result—Section 230—was relatively uncontroversial at the time, in part because of the relative novelty of the internet and in part because Section 230 was incorporated into a much more controversial internet regulation scheme that was the subject of greater debate.[23]

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."[24] 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."[25]

Together, these two provisions give platforms immunity from any civil or criminal liability that could be incurred by user statements, while explicitly authorizing platforms to engage in their own content moderation without risking that immunity. Section 230 specifies that "[n]o cause of action may be brought and no liability may be imposed under any State law that is inconsistent with this section."[26] Courts have

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[21] *See Cubby, Inc. v. Compuserve, Inc.* (S.D.N.Y. 1991) 776 F.Supp. 135, 141; *Stratton Oakmont v. Prodigy Servs. Co.* (N.Y. Sup. Ct., May 26, 1995) 1995 N.Y. Misc. LEXIS 229, *10-14. These opinions relied on case law developed in the context of other media, such as whether bookstores and libraries could be held liable for distributing defamatory material when they had no reason to know the material was defamatory. (*See Cubby, Inc.*, 776 F. Supp. at p. 139; *Smith v. California* (1959) 361 U.S. 147, 152-153.)

[22] Kosseff, The Twenty-Six Words That Created The Internet (2019) pp. 57-65.

[23] *Id.* at pp. 68-73. Section 230 was added to the Communications Decency Act of 1996 (title 5 of the Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56), which would have imposed criminal liability on internet platforms if they did not take steps to prevent minors from obtaining "obscene or indecent" material online. The Supreme Court invalidated the CDA, except for Section 230, on the basis that it violated the First Amendment. (*See Reno*, *supra*, 521 U.S. at p. 874.)

[24] *Id.*, § 230(c)(1).

[25] *Id.*, § 230(c)(1) & (2).

[26] *Id.*, § 230(e)(1) & (3).

applied Section 230 in a vast range of cases to immunize internet platforms from "virtually all suits arising from third-party content."[27]

The bill provides for the potential liability of platforms if their use of certain elements foreseeably causes child users to receive certain content, engage in certain conduct, or become addicted to the platform. Therefore, the relevant provision here is subdivision (c)(1) of Section 230, dealing with the treatment of providers as the publisher or speaker of third party content. Ninth Circuit case law may shed light on how it might assess this legislation.

The Ninth Circuit Court of Appeals in *Barnes v. Yahoo!, Inc.* (9th Cir. 2009) 570 F.3d 1096, 1100-01 established a three-part test for claims pursuant to this provision in Section 230: "[I]t appears that subsection (c)(1) only protects from liability (1) a provider or user of an interactive computer service (2) whom a plaintiff seeks to treat, under a state law cause of action, as a publisher or speaker (3) of information provided by another information content provider."

This test was recently applied by the Ninth Circuit in *Lemmon v. Snap, Inc.* (9th Cir. 2021) 995 F.3d 1085. In that case, the parents of minor decedents sued Snap, the owner and operator of Snapchat, a social media application. At issue was the use of a filter provided by Snapchat that allowed users to record their real-life speed and overlay it over photos or video. The plaintiffs' children opened Snapchat and used the filter shortly before their fatal high-speed car crash. The opinion states that "[t]o keep its users engaged, Snapchat rewards them with 'trophies, streaks, and social recognitions' based on the snaps they send. Snapchat, however, does not tell its users how to earn these various achievements" but that many users believed hitting 100 miles per hour using the filter would result in such rewards. According to the opinion: "Snapchat allegedly knew or should have known, before May 28, 2017, that its users believed that such a reward system existed and that the Speed Filter was therefore incentivizing young drivers to drive at dangerous speeds."

The parents filed a negligent design lawsuit against Snap, and the district court agreed with Snap's argument that Section 230 immunity foreclosed such suit, granting Snap's motion to dismiss. On appeal, the Ninth Circuit turned to the *Barnes v. Yahoo* test. After acknowledging the first element was met, it turned to the second:

> The second Barnes question asks whether a cause of action seeks to treat a defendant as a "publisher or speaker" of third-party content. We conclude that here the answer is no, because the Parents' claim turns on Snap's design of Snapchat.

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[27] Kosseff, *supra*, fn. 13, at pp. 94-95; *see, e.g., Doe v. MySpace Inc.* (5th Cir. 2008) 528 F.3d 413, 421-422; *Carfano v. 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.

> In this particular context, "publication" generally "involve[s] reviewing, editing, and deciding whether to publish or to withdraw from publication third-party content." A defamation claim is perhaps the most obvious example of a claim that seeks to treat a website or smartphone application provider as a publisher or speaker, but it is by no means the only type of claim that does so. Thus, regardless of the type of claim brought, we focus on whether "the duty the plaintiff alleges" stems "from the defendant's status or conduct as a publisher or speaker."
>
> Here, the Parents seek to hold Snap liable for its allegedly "unreasonable and negligent" design decisions regarding Snapchat. They allege that Snap created: (1) Snapchat; (2) Snapchat's Speed Filter; and (3) an incentive system within Snapchat that encouraged its users to pursue certain unknown achievements and rewards. The Speed Filter and the incentive system then supposedly worked in tandem to entice young Snapchat users to drive at speeds exceeding 100 MPH.
>
> The Parents thus allege a cause of action for negligent design—a common products liability tort. This type of claim 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." Thus, a negligent design action asks whether a reasonable person would conclude that "the reasonably foreseeable harm" of a product, manufactured in accordance with its design, "outweigh[s] the utility of the product."
>
> The duty underlying such a claim differs markedly from the duties of publishers as defined in the CDA.[28]

Particularly relevant is a pending case before the Supreme Court, *Gonzalez v. Google LLC* (2022) 143 S. Ct. 80, which presents the highest court with the task of determining the scope of Section 230's protective shield. The cases below were brought by the families of several victims of ISIS attacks in various parts of the world, including San Bernardino. The defendants are several social media platforms. The lead plaintiff asserted claims against Google, as owner of YouTube, based on their use of algorithms to target users and recommend someone else's content. The Ninth Circuit lays out the theory of liability:

> The Gonzalez Plaintiffs' theory of liability generally arises from Google's recommendations of content to users. These recommendations are based upon the content and "what is known about the viewer." Specifically, the complaint alleges Google uses computer algorithms to match and suggest

[28] *Lemmon v. Snap, Inc.*, 995 F.3d at 1091-92, internal citations omitted.

> content to users based upon their viewing history. The Gonzalez Plaintiffs allege that, in this way, Google has "recommended ISIS videos to users" and enabled users to "locate other videos and accounts related to ISIS," and that by doing so, Google assists ISIS in spreading its message. The Gonzalez Plaintiffs' theory is that YouTube is "useful[] in facilitating social networking among jihadists" because it provides "[t]he ability to exchange comments about videos and to send private messages to other users."
>
> The complaint also asserts that Google pairs videos with advertisements and that it targets advertisements based on information about the advertisement, the user, and the posted video. The complaint alleges that by doing so, Google exercises control over which advertisements are matched with videos posted by ISIS on YouTube, creating new unique content for viewers "by choosing which advertisement to combine with the posted video with knowledge about the viewer."[29]

Ultimately, the Ninth Circuit rejected the claims and plaintiffs appealed the ruling:

> A divided panel of the U.S. Court of Appeals for the 9th Circuit ruled that Section 230 protects such recommendations, at least if the provider's algorithm treated content on its website similarly. The majority acknowledged that Section 230 "shelters more activity than Congress envisioned it would." However, the majority concluded, Congress – rather than the courts – should clarify how broadly Section 230 applies. The Gonzalez family then went to the Supreme Court, which agreed last year to weigh in.
>
> In the Supreme Court, the Gonzalez family insists that recommendations are not always shielded from liability under Section 230. Whether they are protected, the family says, hinges on whether the defendant can meet all of the criteria outlined in Section 230, which bars providers of "an interactive computer service" from being "treated as the publisher … of any information provided by" a third party. For example, the family argues, Section 230 does not protect a defendant from liability for recommendations that contain material that the defendant itself created or provided, such as URLs for the user to download or "notifications of new postings the defendant hopes the user will find interesting," because in that scenario, the information would not be provided by someone else.
>
> A website like YouTube is also not shielded from liability, the family continues, when it provides unsolicited recommendations that it thinks will appeal to users. In that scenario, the family asserts, the defendant is

[29] *Gonzalez v. Google LLC* (9th Cir. 2021) 2 F.4th 871, 881-82.

> not providing access to a computer server (because the user is not making a request) and therefore is not acting as a "provider … of an interactive computer service."[30]

The case has been argued and the parties, and the public, await the result.

A coalition of groups in opposition, including NetChoice and TechNet, argue the bill clearly runs afoul of Section 230:

> Without the protections of Section 230, the internet ecosystem would be dramatically different with a limited ability for users to post, share, read, view, and discover the content of others. Fortunately, Section 230 explicitly preempts state laws such as SB 287 that would conflict with this protection. This bill creates liability for platforms based on third party content by applying to any feature that allows users to encounter content. It effectively assumes all features are harmful and imposes liability on a site for offering any of those features to children. Platforms' algorithms and features that allow users to encounter or share content from other users are inextricably linked to the underlying content. Therefore, by imposing liability on platforms for these features, SB 287 conflicts with Section 230 and is likely preempted.

Writing in support, the Children's Advocacy Institute argues the bill does not violate Section 230 for a host of reasons, including:

> Section 230 protects platforms in certain circumstances from being held liable for harms that are caused when they host content uploaded by third parties. But, the dopamine-hitting techniques that cause child addiction, such as "Likes" and "Streaks" and slot machine-like auto-scrolling, as described above, are not content uploaded by third parties. They are the inventions of the platforms themselves and were, as conceded by their inventors, designed to be addictive all by themselves without reference to third party uploaded content. These are inventions of the platforms and are independently harmful and actionable apart from any content uploaded by third parties.
>
> . . . as one of the friends of the court briefs filed on behalf of Google in the pending Section 230-related Supreme Court case of *Gonzalez v. Google* acknowledged, "Where, as in a discrimination claim, the alleged basis for liability is the illegality of the platform's targeting and not the third-party content, immunity does not apply." Exactly. If this ability to hold platform's

[30] Amy Howe, *Justices will consider whether tech giants can be sued for allegedly aiding ISIS terrorism* (February 19, 2023) SCOTUSblog, https://www.scotusblog.com/2023/02/justices-will-consider-whether-tech-giants-can-be-sued-for-allegedly-aiding-isis-terrorism/.

> accountable for "targeting" was not the case then AI programmed in such a way as to offer products to Whites but not people of color would be cloaked by Section 230. As the Solicitor General has recently written in the same case: "Where a website operator's conduct in furthering unlawful activities goes well beyond failing to block or remove objectionable third-party content from its platform, holding the operator liable does not 'treat' it 'as the publisher or speaker of' the third party posts."

As referenced, the Biden Administration wrote an amicus in support of the theory of liability:

> The Biden administration agrees with the Gonzalez family that the court of appeals was wrong to dismiss its claim based on YouTube's recommendations of ISIS content, but its reasoning focuses only on how YouTube's algorithms operate and on their effect. YouTube's suggested videos, the administration notes, appear on the side of each user's YouTube page and will "automatically load and play when a selected video ends." In so doing, the administration explains, YouTube "implicitly tells the user that she 'will be interested in'" the content of that video – which is a separate message from the message in the video itself. Therefore, the administration concludes, although the family may ultimately "face obstacles" in proving their claims under the ATA, Google and YouTube are not entitled to immunity under Section 230 because the family is seeking "to hold YouTube liable for its own conduct and its own communications, above and beyond its failure to block ISIS videos or remove them from the site."[31]

The author and supporters also point to provisions of the bill that explicitly attempt to avoid such preemption. The bill declares that it is not to be construed to impose liability on a social media platform for (1) content that is generated by a user of the service or uploaded to or shared on the service by a user of the service; (2) passively displaying content that is created entirely by third parties; (3) information or content for which the social media platform was not, in whole or in part, responsible for creating or developing; or (4) conduct by a social media platform involving child users that would otherwise be protected by Section 230.

At its strongest, the bill holds platforms liable for engaging in practices that they know cause children to harm themselves. However, other provisions are not as strongly tied to the conduct of the platforms themselves rather than the content itself, especially those that impose liability for simply causing children to "receive content." To address these more tenuous bases of liability that are much more susceptible to legal challenge, the author has committed to working with the Committee, should the bill move forward, on narrowing and more finely tuning these provisions.

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[31] *Ibid*.

Ultimately, it is likely the bill will face legal challenge should it be signed into law. The ultimate holding in *Gonzalez* may well answer the question of whether federal law prevents liability on the part of social media platforms as that being established by this bill.

b. First Amendment

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."[32] "[A]s a general matter, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content."[33] However, while the amendment is written in absolute terms, the courts have created a handful of narrow exceptions to the First Amendment's protections, including "true threats,"[34] "fighting words,"[35] incitement to imminent lawless action,[36] defamation,[37] and obscenity.[38] Expression on the internet is given the same measure of protection granted to in-person speech or statements published in a physical medium.[39]

A constitutional challenge to a restriction on speech is generally analyzed under one of two frameworks, depending on whether the courts deem it to be "content neutral" or "content based," i.e., targeting a particular type of speech. A law is content neutral when it "serves purposes unrelated to the content of the expression."[40] On the other hand, a law is content based when the proscribed speech is "defined solely on the basis of the content of the suppressed speech."[41]

If a law is determined to be content neutral it will be subject to intermediate scrutiny, which requires that the law "be 'narrowly tailored to serve a significant government interest.'"[42] In other words, the law "'need not be the least restrictive or least intrusive means of' serving the government's interests," but "'may not regulate expression in such a manner that a substantial portion of the burden on speech does not serve to advance its goals.'"[43]

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[32] U.S. Const., 1st & 14th amends.
[33] *Ashcroft v. American Civil Liberties Union* (2002) 535 U.S. 564, 573.
[34] *Snyder v. Phelps* (2011) 562 U.S. 443, 452.
[35] *Cohen v. California* (1971) 403 U.S. 15, 20.
[36] *Virginia v. Black* (2003) 538 U.S. 343, 359.
[37] *R.A.V. v. St. Paul* (1992) 505 U.S. 377, 383.
[38] *Ibid.*
[39] *Reno v. ACLU* (1997) 521 U.S. 844, 870.
[40] *Ward v. Rock Against Racism* (1989) 491 U.S. 781, 791.
[41] *FCC v. League of Women Voters* (1984) 468 U.S. 364, 383.
[42] *Packingham*, *supra*, 137 S.Ct. at p. 1736.
[43] *McCullen v. Coakley* (2014) 573 U.S. 464, 486 (*McCullen*).

If a restriction on speech is determined to be content based, it will be subject to strict scrutiny.[44] A restriction is content based "if it require[s] 'enforcement authorities' to 'examine the content of the message that is conveyed to determine whether' a violation has occurred."[45] Content-based restrictions subject to strict scrutiny are "presumptively unconstitutional."[46] A restriction can survive strict scrutiny only if it uses the least-restrictive means available to achieve a compelling government purpose.[47]

Supporters argue that this bill does not look at what content is being posted on social media or the editorial decisions of platforms. They rely on similar reasoning as that laid out in *Lemmon v. Snap*, where liability is not tied to content or speech, but the use of algorithms, design, practices, affordances, and features that cause harm, regardless of the content underlying it. However, it should be emphasized that the ruling in that case was very narrow. Again, returning to the text of the bill, liability can be triggered where an affordance of the platform causes a child to simply receive certain content. While the author and supporters rely on examples of where platforms are taking proactive steps to place problematic content in front of children, the language of the bill arguably does not require that for liability to attach. As stated, the author has committed to continuing to work with the Committee on the language of the bill to ensure it is a narrowly tailored approach that meets constitutional muster.

Opposition argues this bill is an impermissible restriction on social media platforms' and children's speech. A coalition of groups, including Chamber of Progress, argues:

> SB 287 explicitly seeks to regulate certain types of speech on the internet. Past attempts to regulate content on social media have tried to obscure their intent by limiting their scope to "designs" and "features." These, of course, are actually restrictions on the content because the designs and features only act to serve speech. SB 287 does this but then explicitly calls out speech as its target.
>
> In section 1714.48(a)(1), SB 287 creates liability for "content." Then in six subsequent subdivisions, the bill lists adverse effects, and it is apparent that common denominator is "content" that causes the specified problems. The bill is straightforward in its recognition that social platforms are speech platforms and that the listed harms, including self-harm and addiction, could only occur from receiving or viewing content, i.e. speech.
>
> There is no debate, this bill is squarely targeting speech. It is examining what content is being posted on social media and the editorial decisions of platforms to show that content.

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[44] *Id.* at p. 478.
[45] *Id.* at p. 479.
[46] *Reed v. Town of Gilbert* (2015) 135 S.Ct. 2218, 2226 (*Reed*).
[47] *United States v. Playboy Entertainment Group* (2000) 529 U.S. 803, 813.

Again, the Children's Advocacy Institute argues the bill does not run afoul of the First Amendment for a variety of reasons, including:

> First, AI does not have speech rights. No 14th Amendment "person" (human or corporate) is involved in making the individual decisions or "speaking" the algorithm's output. The output produced by a recommendation algorithm is autonomous and not the product of human editorial decisions. The AI is writing the algorithms. For this reason, a law like SB 287 grounded in holding a platform liable for harms in part caused by the operations of this autonomous, content-delivery machine does not run afoul of the First Amendment.
>
> Second, machine learning, AI-written algorithms, and not persons, determine the content served to individual users, both for each user and all users. This targeting output from the AI is functional conduct, not expressive. Thus, in *Wisconsin v. Mitchell*, the Supreme Court upheld as not violating the First Amendment, a criminal penalty enhancement statute that increased the punishment for a variety of crimes where the defendant targeted a victim because of one or more immutable characteristics, including race, religion, or ethnic background. The Court treated the targeting at the heart of the statute as a restriction only on conduct-- the selection of a victim based on his or her race, religion, or ethnic background—and not on speech.
> Indeed, if causing the physical harm of addiction were protected by the First Amendment, every drug dealer would have a First Amendment right to cause drug addiction. So, too, would words that incited a physical fight be protected by the First Amendment, but they aren't. Words that have "a direct tendency to cause acts of violence by the person to whom, individually, the remark is addressed"—words that are proven to cause physical harm—are not afforded blanket First Amendment protection.

As with the legal concerns surrounding Section 230, the bill is likely to face a constitutional challenge in the courts. One particularly susceptible provision provides for liability based upon platforms causing users to "[r]eceive content offering diet pills, diet products, or ways to reduce eating, purge food that has been eaten, or lose weight." While the target is clear, this provision is extremely broad, and could conceivably encompass content that encourages kids to exercise regularly, for instance. In response, the author has agreed to remove this provision from the bill.

SUPPORT

#halfthestory
American Association of University Women - California
Becca Schmill Foundation

Board of Supervisors for the City and County of San Francisco
California Consortium of Addiction Programs and Professionals
California District Attorneys Association
California Federation of Teachers AFL-CIO
California Youth Empowerment Network
Children's Advocacy Institute
Common Sense Media
Contra Costa County
Fairplay
Jewish Family and Children's Services of San Francisco, the Peninsula, Marin and Sonoma Counties
Jewish Public Affairs Committee
Lookup.live
Mental Health America of California
Nextgen California
City of Oakland
Parents Television and Media Council
Public Health Advocates
Safe Social Media
San Francisco Board of Supervisors
Steinberg Institute
The Kennedy Forum

OPPOSITION

California Chamber of Commerce
Chamber of Progress
Civil Justice Association of California
Computer and Communications Industry Association
Electronic Frontier Foundation
Entertainment Software Association
Netchoice
Oakland Privacy
TechNet

RELATED LEGISLATION

Pending Legislation:

SB 764 (Padilla, 2023) prohibits a social media platform from adopting or implementing a policy or practice related to the targeting of content to minors that prioritizes user engagement of minor users over the safety, health, and well-being of the minor users if the social media platform knows or, should know that it has caused harm to minor

users or it is reasonably foreseeable that it will cause harm to minor users. SB 764 is currently pending before the Senate Judiciary Committee.

SB 845 (Stern, 2023) requires large social media platforms, as defined, to create, maintain, and make available to third-party safety software providers a set of real-time application programming interfaces, through which a child or a parent or legal guardian of a child may delegate permission to a third-party safety software provider to manage the child's online interactions, content, and account settings on the large social media platform on the same terms as the child, and for other purposes. SB 845 is pending before the Senate Judiciary Committee.

AB 955 (Petrie-Norris, 2023) would make the sale of fentanyl on a social media platform a crime punishable by imprisonment in a county jail for three, six, or nine years (higher than the existing penalty for selling fentanyl, which is imprisonment in a county jail for two, three, or four years). AB 955 is pending before the Assembly Public Safety Committee.

Prior Legislation:

SB 1056 (Umberg, Ch. 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 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 report certain information to the Attorney General on a quarterly basis.

AB 1628 (Ramos, Ch. 432, Stats. 2022) required a social media platform, as defined, that operates in this state to create and publicly post a policy statement including specified information pertaining to the use of the platform to illegally distribute controlled substances, until January 1, 2028.

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 2408 (Cunningham, 2022) would have prohibited a social media platform from using a design, feature, or affordance that the platform knew, or which by the exercise of reasonable care it should have known, causes child users to become addicted to the platform. AB 2408 died in the Senate Appropriations Committee.

AB 2571 (Bauer-Kahan, Ch. 77, Stats. 2022) prohibits firearm industry members from advertising or marketing, as defined, firearm-related products to minors. This bill

restricts the use of minors' personal information in connection with marketing or advertising firearm-related products to those minors.

AB 2879 (Low, Ch. 700, Stats. 2022) requires a social media platform to disclose its cyberbullying reporting procedures in its terms of service and to have a mechanism for reporting cyberbullying that is available to individuals whether or not they have an account on the platform.

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.

SB 388 (Stern, 2021) would have required a social media platform company, as defined, that, in combination with each subsidiary and affiliate of the service, has 25,000,000 or more unique monthly visitors or users for a majority of the preceding 12 months, to report to the Department of Justice by April 1, 2022, and annually thereafter, certain information relating to its efforts to prevent, mitigate the effects of, and remove potentially harmful content. This bill died in the Senate Judiciary Committee.

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