

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

SB 60 (Umberg)
Version: February 14, 2023
Hearing Date: March 28, 2023
Fiscal: No
Urgency: No
AWM

SUBJECT

Social media platforms: controlled substances: order to remove

DIGEST

This bill allows a person to seek a court order to require a social media platform, as defined, to remove a post that constitutes an offer to sell specified controlled substances.

EXECUTIVE SUMMARY

Over the last 12 years, overdose deaths involving opioids, including synthetic opioids like fentanyl, have nearly quadrupled. Over 50 times more potent than heroin, fentanyl presents a high overdose risk, yet many distributors and dealers regularly spike other drugs – including counterfeit prescription drugs – with fentanyl.

Over the same period of time, social media platforms became easily available on phones and increasingly sophisticated in terms of sharing locations and providing private message settings. The result is that large social media platforms have now become the medium of choice for many drug dealers to connect with, and sell drugs to, persons seeking drugs. Law enforcement have compared the ease of buying illegal drugs over social media apps to the ease of ordering food online or hailing a ride-share car. While many social media companies argue that they have taken steps to reduce the use of their platforms for illicit drug sales, others argue that the steps are insufficient and that platforms have failed to take even the most basic safety steps, such as removing posts that are reported to be offering to sell drugs.

This bill creates a narrow cause of action that allows a person to seek an order to require a social media platform to remove a post containing an offer to sell drugs that violates California's prohibition on controlled substances. The provision is being added to an existing statutory regime governing drug safety policies on social media platforms, and will be limited to platforms with over \$100,000,000 gross annual revenues in the

preceding year and that operate in California. The cause of action created by this bill will sunset along with the remainder of the chapter, on January 1, 2028.

This bill is sponsored by the author. The bill is opposed by the Chamber of Progress.

PROPOSED CHANGES TO THE LAW

Existing constitutional law:

- 1) Provides a right to free speech and expression. (U.S. Const., 1st amend; Cal. Const., art 1, § 2.)
- 2) Provides that “[o]ffers to engage in illegal transactions are categorically excluded from First Amendment protection.” (*U.S. v. Williams* (2008) 553 U.S. 285, 298.)

Existing federal law:

- 1) 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).)
- 2) 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).)
- 3) Provides that no cause of action may be brought and no liability may be imposed under any state or local law that is inconsistent with items 1) and 2). (47 U.S.C. § 230(e)(3).)

Existing state law:

- 1) Defines the following relevant terms:
 - a) “Content” is statements or comments made by users and media that are created, posted, shared, or otherwise interacted with users on an internet-based service or application, but does not include media put on a service or application exclusively for the purpose of cloud storage, transmitting files, or file collaboration. (Bus. & Prof. Code, § 22945(a)(1).)

- b) A “controlled substance” is a drug, substance, or immediate precursor listed in Schedules I-V within the Health and Safety Code. (Bus. & Prof. Code, § 22645(a)(2); Health & Saf. Code, §§ 11007, 11054-11058.)
 - c) A “social media platform” is a public or semi-public internet service or application that has users in California and that meets both of the following criteria:
 - i. A substantial function of the service or application is to connect users in order to allow users to interact socially with each other within the service or application; but a service or application that provides email or direct messaging services does not qualify on the basis of that function alone.
 - ii. The service or application allows users to (1) construct a public or semipublic profile for purposes of signing into and using the service; (2) populate a list of other users with whom an individual shares a social connection within the system; and (3) create or pose content viewable by other users, including, but not limited to, on message boards, in chat rooms, or through a landing page or main feed that presents the user with content generated by other users. (Bus. & Prof. Code, § 22945(a)(3).)
 - d) A “public or semipublic internet-based service or application” does not include a service or application used to facilitate communication within a business or enterprise among employees or affiliates of the business or enterprise, provided that access to the service or application is restricted to employees or affiliates of the business or enterprise using the service or application. (Bus. & Prof. Code, § 22945(a)(4).)
- 2) Requires a social media platform that operates in the state to create and publicly post on the platform’s website a policy statement that includes all of the following:
- a) The platform’s policy on the use of the social media platform to illegally distribute a controlled substance.
 - b) A general description of the platform’s moderation policies employed to prevent users from posting or sharing electronic content pertaining to the illegal distribution of a controlled substance; the platform need not disclose information that might compromise operational efforts to identify prohibited content or activity.
 - c) A link to mental health and drug education resources provided by public health authorities.
 - d) A link to the platform’s reporting mechanism for illegal or harmful content or behavior on the platform, if one exists.
 - e) A general description of the platform’s policies and procedures for responding to law enforcement inquiries, including warrants, subpoenas, and other court orders compelling the production of or access to electronic communication information. (Bus. & Prof. Code, § 22945(b).)

- 3) Provides that a social media platform may satisfy the requirements of 2) by posting the necessary information separately or within another document or post, such as the terms of service or community guidelines. (Bus. & Prof. Code, § 22945(c).)
- 4) Requires a person or entity operating a social media platform in the state to do both of the following:
 - a) Update the policy statement required by 2) as necessary; and
 - b) Consider consulting with nonprofit organizations, safety advocates, and survivors to assist in developing and supporting the policy statement required by 2). (Bus. & Prof. Code, § 22945(d).)
- 5) Provides that the requirements in 1)-5) do not apply to a business that generated less than \$100,000,000 in gross revenue in the preceding calendar year and will sunset on January 1, 2028. (Bus. & Prof. Code, § 22945(e), (f).)
- 6) Permits a person who is the target of a violent post, as defined, on a social media platform, as defined, to seek an order requiring the social media platform to remove the post, subject to the following conditions:
 - a) If the platform has a mechanism for reporting violent content, the target of the post must notify the platform of the post and the court cannot grant the order until at least 48 hours have passed since the notice was provided.
 - b) If the platform does not have a reporting mechanism, the target may seek the order, and the court may grant the request, at any time. (Civ. Code, § 1978.99.22(a).)
- 7) Provides that a court shall award reasonable attorney fees to a plaintiff who prevails in an action under 6), and that a court may award attorney fees to a prevailing defendant if the court finds the plaintiff's prosecution of the action was not in good faith. (Civ. Code, § 1798.99.22(b).)
- 8) Makes it a felony to offer to sell, furnish, administer, or give away specified controlled substances, including, but not limited to, fentanyl, heroin, cocaine base, and certain medications without a prescription. (Health & Saf. Code, §§ 11352(a), 11054-11056.)

This bill:

- 1) Is added to the chapter setting forth the definitions and terms in items 1)-5) of "existing state law," above.
- 2) Permits a person to seek a court order to require a social media platform to remove content that offers to sell, furnish, administer, give away, or transport a controlled substance in violation of Health and Safety Code section 11352.

- 3) Provides that, if the social media platform has a reporting mechanism for illegal content as set forth in 2)(d) in the “existing law” section, a person must notify the social media platform of the content and request that it be removed before bringing an action in 2).
 - a) A court may not rule on the action until the platform has had 48 hours in which to respond to the notice and take-down request.
 - b) A court may dismiss the action if the platform deletes the content before 48 hours has passed from the provision of notice.
- 4) Provides that, if a social media platform does not have a reporting mechanism described in 2)(d) in the “existing law” section, the person may file the action and the court may rule on the action at any time.
- 5) Provides that a court shall award court costs and attorney fees to the prevailing plaintiff, and may award reasonable attorney fees to a prevailing defendant if it finds that the plaintiff’s prosecution of the action was not in good faith.

COMMENTS

1. Author’s comment

According to the author:

With the growth of social media and the proliferation of smartphones, a dangerous and deadly new drug threat has emerged: criminal drug networks that are abusing social media to expand their reach, create new markets, and target new clientele.

No longer confined to street corners and the dark web, criminal drug networks are now in every home and school in America because of the internet apps on our smartphones. Drug traffickers solicit customers via social media platforms such as Snapchat, Facebook, Instagram, Twitter, TikTok, and YouTube. In addition, fentanyl and other drugs are often falsely marketed as legitimate prescription pills, but instead are counterfeit pills that are illicitly manufactured and are illegally distributed. Causing unintentional poisoning and drug overdoses.

As lawmakers, we have a moral, ethical, and legal obligation to protect lives in California. The scourge of synthetic opioids like fentanyl is unlike anything we have ever seen. We have lost more people to opioid overdose in the last year alone than the number of U.S. military personnel killed during the Korean, Vietnam, Iraq and Afghanistan wars combined – we cannot continue to throw up our hands in confusion while an entire generation of Americans perishes.

As a society, we bear a collective responsibility to care for the health and safety of our citizens. That responsibility extends to private companies. Social media companies find themselves in a unique position in terms of their monopolization of communication between people of all ages. With this in mind, companies and sites should be more proactive and aggressive in their enforcement of their terms of service, especially when it comes to prohibitions on drug sales. SB 60 is an attempt to stop drug traffickers from using social media to distribute drugs and prevent unintentional overdoses. It will authorize a person to seek a court order requiring a social media platform to remove accounts pertaining to the sale of illegal drugs.

As the former Deputy Director of the White House Office of National Drug Control Policy, Chair of the Senate Judiciary Committee, a former U.S. Attorney, and a career prosecutor, I have dedicated my life to the equal pursuit of justice for all. Drug addiction, treatment, and rehabilitation will always be a focus for lawmakers as a consequence of drug use and addiction. In the meantime, we must do everything we can to prevent fentanyl poisonings and deaths in an effort to save the lives of Californians.

2. The problem of drug sales on social media

According to the National Center for Health Statistics, 106,699 people died of drug-involved overdoses in 2021.¹ Over 80,000 of those deaths involved opioids, including fentanyl, a synthetic opioid.² By contrast, in 2010, there were approximately 40,000 drug-involved overdose deaths, 21,089 of which involved opioids.³ “The primary driver of the opioid epidemic today is illicit fentanyl...[which] is up to 50 times more potent than heroin.”⁴

Because of fentanyl’s extreme potency, “imprecise dosing and a lack of quality controls increase the risk of a fatal overdose.”⁵ Additionally, many individuals who take fentanyl do not realize they are taking fentanyl; fentanyl is frequently present in counterfeit tablets represented as heroin or prescription medications.⁶ The federal Drug Enforcement Administration (DEA) found that about four out of ten counterfeit pills it seized in 2021 contained lethal doses of fentanyl.⁷

¹ National Institutes of Health, National Institute on Drug Abuse, Drug Overdose Death Rates (Feb. 9, 2023), <https://nida.nih.gov/research-topics/trends-statistics/overdose-death-rates>. All links in this analysis are current as of March 23, 2023.

² *Ibid.*

³ *Ibid.*

⁴ Commission on Combating Synthetic Opioid Trafficking, *Final Report* (Feb, 2022), p. ix.

⁵ *Id.* at p. xi.

⁶ *Ibid.*

⁷ Hoffman, *Fentanyl Tainted Pills Bought on Social Media Cause Youth Drug Deaths to Soar*, N.Y. Times (May 19, 2022), available at <https://www.nytimes.com/2022/05/19/health/pills-fentanyl-social-media.html>.

The rise of fentanyl coincides with the rise of young people increasingly seeking and using drugs.⁸ Drug use among teenagers and young adults has surged, in part due to the mental health harms caused by the COVID-19 pandemic.⁹ 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.¹⁰

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.¹¹ Snapchat, a social media app 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,¹² but the DEA has identified other social media platforms – including Facebook, Instagram, and TikTok – that are also used for drug sales.¹³ 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.”¹⁴

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.¹⁵ Some argue, however, that the steps are inadequate to meaningfully reduce the problem.¹⁶ 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.¹⁷ In February 2023, the

⁸ *Ibid.*

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ *Ibid.*; Whitehurst, *Group urges feds to investigate Snapchat over fentanyl sales*, L.A. Times (Dec. 22, 2022), available at <https://www.latimes.com/business/story/2022-12-23/group-urges-feds-investigate-snapchat-over-fentanyl-sales>.

¹² Mann, *Social media platforms face pressure to stop online drug dealers who target kids*, NPR (Jan. 26, 2023), <https://www.npr.org/2023/01/26/1151474285/social-media-platforms-face-pressure-to-stop-online-drug-dealers-who-target-kids>.

¹³ Whitehurst, *Group urges feds to investigate Snapchat over fentanyl sales*, L.A. Times (Dec. 22, 2022), available at <https://www.latimes.com/business/story/2022-12-23/group-urges-feds-investigate-snapchat-over-fentanyl-sales>.

¹⁴ Colorado Department of Law, *Social Media, Fentanyl, & Illegal Drug Sales: A Report from the Colorado Department of Law* (2023), pp. 8-9.

¹⁵ Mann, *Social media platforms face pressure to stop online drug dealers who target kids*, NPR (Jan. 26, 2023), <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*, N.Y. Times (May 19, 2022), available at <https://www.nytimes.com/2022/05/19/health/pills-fentanyl-social-media.html>.

¹⁶ Colorado Department of Law, *Social Media, Fentanyl, & Illegal Drug Sales: A Report from the Colorado Department of Law*, *supra* at p. 7.

¹⁷ *Id.* at p. 87.

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 liability protections given to online platforms for injuries caused by drug sales facilitated by those platforms.¹⁸

3. This bill authorizes a person to seek a court order requiring a social media platform to remove a post that contains an offer to sell a controlled substance in violation of California law

As discussed below in Part 4, federal law prevents California from taking action to directly hold social media platforms liable for permitting drug sales on their sites. In recent years, the Legislature has attempted to protect its residents from illegal drug sales on social media through the avenues left available to it, such as requiring social media platforms to have a policy on the illegal distribution of controlled substances and requiring those policies to be posted publicly on the platforms.

This bill provides a narrow remedy to require the removal of illegal offers to sell drugs on a social media platform, when the platform itself fails to act. The bill authorizes any person to file an action in court for a court order requiring a social media platform to remove a post that constitutes an illegal offer to sell a controlled substance on the platform. If the social media platform has a reporting mechanism for such posts, the person must use the mechanism before filing the suit, and the court must wait 48 hours before ruling on the request for an order to remove the post. If the social media platform does not have a reporting mechanism, the person may file the action, and the court may rule on it, at any time. If the court determines the post constitutes an illegal offer to sell drugs, the court may order it removed. Finally, the bill provides that the court must award reasonable attorney fees to a prevailing plaintiff in this action. If the court rules against the plaintiff, the court may award reasonable attorney fees to the defendant if the court determines that the plaintiff's prosecution of the action was not in good faith.

This remedy builds on existing law that already requires social media platforms to have a policy about the illegal distribution of a controlled substance on the platform, to publicly post that policy, and to clearly post a reporting mechanism for such posts if the platform has such a policy.¹⁹ The bill incorporates the existing definitions of "social media platform" and related terms, and the limitation of application to companies that generate \$100 million or more in gross revenue per year, thereby ensuring continuity.

¹⁸ Feiner, *Snapchat's role in fentanyl crisis probed during house roundtable: 'It's a Snap-specific problem'*, CNBC (Jan. 25, 2023), <https://www.cnbc.com/2023/01/25/snapchats-role-in-fentanyl-crisis-probed-during-house-roundtable.html>.

¹⁹ Bus. & Prof. Code, § 22945.

The remedy added by this bill, along with the existing law regarding drug distribution policies, will sunset on January 1, 2028.²⁰

The Chamber of Progress, a coalition of tech industry businesses including social media companies, opposes the bill on the basis that social media companies' efforts to reduce drug sales on their platforms are sufficient. They also argue that the bill is likely to cause platforms to take down drug-content that does not violate the law, such as conversations providing support to persons trying to overcome addiction. The question of whether this bill will chill legitimate speech is discussed below.

Another tech industry coalition, Internet.Works, has a "support if amended" position on the bill. The coalition shares the goals advanced by the bill and believes the standardized process set forth in the bill will lead to greater clarity and safer outcomes. They argue, however, that the bill's 48-hour window for a platform to respond to a notification is too short in light of platforms' technical and operational limitations and suggest a 7-day window instead.

4. Constitutional implications

a. *First Amendment issues*

The First Amendment of the United States Constitution and the corresponding provision of the California Constitution generally guarantee the freedoms of speech and expression.²¹ "The hallmark of the protection of free speech is to allow 'free trade in ideas' – even ideas that the overwhelming majority of people might find distasteful or discomforting."

This bill targets offers to sell controlled substances in violation of state law on a social media platform, by allowing a person to seek a court to order their removal from a social media platform if the platform fails to do so on its own. Posts on social media platforms constitute speech. The First Amendment, however, does not protect speech that constitutes an offer to sell controlled substances, because "[o]ffers to engage in illegal transactions are categorically excluded from First Amendment protection."²² The bill therefore appears not to present a facial violation of the First Amendment.

With respect to other concerns implicated by the First Amendment, it is also likely that the bill will pass muster. The bill does not impose an impermissible prior restraint on speech because a post can be removed only after the fact.²³ And while the bill is not content-neutral – it expressly targets only illegal offers to sell controlled substances – it

²⁰ See *ibid.*

²¹ U.S. Const., 1st amend; Cal. Const., art 1, § 2; e.g., *Texas v. Johnson* (1989) 491 U.S. 397, 404-405.

²² *U.S. v. Williams* (2008) 553 U.S. 285, 297.

²³ See *Bantam Books, Inc. v. Sullivan* (1963) 372 U.S. 58, 70 ("Any system of prior restraints of expression comes to this Court bearing a heavy presumption against its constitutional validity").

is viewpoint-neutral, in that it does not prohibit speech “based on hostility – or favoritism – towards the underlying message expressed.”²⁴

There is some risk that the bill could give rise to as-applied challenges, if courts were to order the removal of content that did not clearly offer to sell controlled substances in violation of the law. To constitute a criminal offer to sell, the speaker must have the specific intent to sell a narcotic;²⁵ accordingly, courts applying this bill will be required to determine whether the content of the post itself demonstrates that the poster had such intent. The alarming posts that gave rise to this bill – lists and photos of specific drugs with prices listed – appear unlikely to land in any sort of First Amendment gray area. If, however, courts were to order the removal of posts that did not constitute obvious offers to sell drugs, those orders would likely violate the posters’ First Amendment rights.

The Chamber of Progress, writing in opposition, also suggests that this bill will chill legitimate speech by causing the platforms to remove drug-related content that is reported to them, even if it does not constitute a prohibited offer to sell drugs. They argue that, for example, “it would be difficult for platforms to distinguish public safety alerts related to fentanyl-contaminated drugs circulating in a community or advertisements for needle exchange programs from the type of content targeted by this bill.” This potential for confusion conflicts with the opposition’s assertion that the platforms’ own content-moderation efforts are sufficient.

This bill is set to sunset on January 1, 2028, along with AB 1628; at that time, the Legislature can revisit the application of the bill’s provisions and determine whether they have been used to stifle legitimate speech.

b. Section 230 and preemption issues

The federal law governing social media platforms was enacted years before social platforms existed. Section 230 of the Communications Decency Act,²⁶ also known as Section 230, was enacted in 1996.²⁷ Designed to prevent burgeoning internet sites from being liable for material posted by users, Section 230 (1) prohibits a website from being treated as the publisher or speaker of information provided by users, and (2) clarifies that, if a website engages in content moderation of objectionable content, it does not lose its protection under (1).²⁸ Section 230 expressly preempts state law, stating 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.”²⁹

²⁴ *R.A.V. v. City of Saint Paul, Minnesota* (1992) 505 U.S. 377, 386.

²⁵ *People v. Brown* (1960) 55 Cal.2d 64, 68.

²⁶ 47 U.S.C. § 230.

²⁷ Pub. L. 104-104, 110 Stat. 56 (1996).

²⁸ 47 U.S.C. § 230(c)(1), (2).)

²⁹ *Id.*, § 230(e)(1), (3).

The United States Court of Appeals for the Ninth Circuit has held that Section 230 does not grant online platforms a general immunity for third-party content, but instead “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.”³⁰ The California Supreme Court has taken a different tack, holding that Section 230 provides blanket immunity to online platforms for third-party content; a majority of justices, however, has declined to hold that an injunction requiring the removal of third-party content automatically runs afoul of Section 230.³¹

This bill does not seek to hold social media platforms liable as the publisher or speaker of third-party offers to sell drugs on their sites. Instead, the bill provides law enforcement and users one more means to shut down the posts that offer to sell illegal drugs, allowing them to obtain an order requiring the social platform to take down the post that sells drugs. Accordingly, it appears that this bill fits in the narrow window of action that a party can take against a social media platform under the state and federal courts’ interpretation of Section 230, and therefore is not clearly preempted by federal law.

SUPPORT

None known

OPPOSITION

Chamber of Progress

RELATED LEGISLATION

Pending Legislation:

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.

³⁰ *Barnes, supra*, 570 F.3d at pp. 1100-1101.

³¹ See *Hassell v. Bird* (2018) 5 Cal.5th 522, 527 (plur. opn. of Cantil-Sakauye, C.J.) (order to remove defamatory Yelp posts violated Section 230), 548 (conc. opn. of Krueger, J.) (concurring in the judgment but declining to rule on whether injunctions to remove content always violate Section 230), 560-561 (dis. opn. of Liu, J.), 566-567 (dis. opn. of Cuéllar, J.).

SB 287 (Skinner, 2023) prohibits a social media platform, as defined, from using a design, algorithm, or feature that the platform knows, or by the exercise of reasonable care should have known, causes child users to, among other things, receive content or messages that facilitate the purchase of fentanyl. SB 287 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 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 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 587 (Gabriel, Ch. 269, Stats. 2021) required social media companies, as defined, to post their terms of service and report certain information to the Attorney General on a quarterly basis.

SB 890 (Pan, 2020) would have required social media companies to remove images and videos depicting crimes, as specified, and imposed civil penalties for failing to do so. SB 890 died in the Senate Judiciary Committee.
