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SUBJECT

Social Media Youth Addiction Law

DIGEST

This bill prohibits “social media platforms” from providing “addictive feeds,” as those terms are defined, to minors without parental consent and from sending notifications to minors at night and during school hours without parental consent. The bill requires platforms to make available to parents a series of protective measures for controlling access to and features of the platform for their children. The bill also requires reporting on data regarding children on their platforms, as specified.

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 use 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 seeks to address these issues by preventing children from being exposed to addictive feeds without their parents’ consent. These algorithmic feeds display media to children based on information regarding the user. The bill further restricts notifications to children without parental consent and requires platforms to place a number of protective tools

into the hands of parents, such as the ability to limit the amount of time exposed to these feeds or block the display of how many likes media has received. Many of these features are required to be the default for children.

This bill is co-sponsored by Attorney General Rob Bonta, the Association of California School Administrators, and Public Health Advocates. It is supported by a number of advocacy organizations and educational entities and associations, including the Association of California School Administrators. It is opposed by a number of industry associations, including Technet and the Computer and Communications Industry Association.

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) Makes it unlawful for the operator of an “addictive social media platform” to provide an “addictive feed” to a user unless either of the following is met:
 - a) the operator has reasonably determined that the user is not a minor.
 - b) the operator has obtained verifiable parental consent to provide an addictive feed to the user who is a minor.
- 2) Defines an “addictive social media platform” as a website, online service, online application, or mobile application, that offers or provides users an addictive feed that is not incidental to the provision of that website, online service, online application, or mobile application. “User” is defined as a person, located in the State of California, who uses an internet website, online service, online application, or mobile application. “Minor” means an individual under 18 years of age.¹
- 3) Defines “addictive feed” as a website, online service, online application, or mobile application, or a portion thereof, in which multiple pieces of media generated or shared by users are, either concurrently or sequentially, recommended, selected, or prioritized for display to a user based, in whole or in part, on information provided by the user, or otherwise associated with the user or the user’s device, unless any of the following conditions are met, alone or in combination with one another:

¹ Given the bill is intended to provide protections for minors within California, the author is taking amendments to remove the “located in the state of California” from the definition of user and putting it into the definition for minor.

- a) The information, including search terms entered by a user, is not persistently associated with the user or user's device, and does not concern the user's previous interactions with media generated or shared by others.
 - b) The information consists of user-selected privacy or accessibility settings, technical information concerning the user's device, or device communications or signals concerning whether the user is a minor.
 - c) The user expressly and unambiguously requested the specific media or media by the author, creator, or poster of the media, provided that the media is not recommended, selected, or prioritized for display based, in whole or in part, on other information associated with the user or the user's device, except as otherwise permitted by this chapter and, in the case of audio or video content, is not automatically played.
 - d) The media consists of direct, private communications between users.
 - e) The media recommended, selected, or prioritized for display is exclusively the next media in a preexisting sequence from the same author, creator, poster, or source and, in the case of audio or video content, is not automatically played.
- 4) Makes it unlawful for the operator of an addictive social media platform, between the hours of 12:00 AM and 6:00 AM, inclusive, in the user's local time zone, and between the hours of 8:00 AM and 3:00 PM, inclusive, from Monday through Friday from September through May in the user's local time zone, to send notifications to a user who is a minor unless the operator has obtained verifiable parental consent to send those notifications.
- 5) Provides that information collected for the purpose of determining a user's age shall not be used for any purpose other than compliance with this law or with another applicable law.
- 6) Requires the operator of an addictive social media platform to provide a mechanism through which the verified parent of a user who is a minor may do the following:
- a) Prevent their child from accessing or receiving notifications from the addictive social media platform between specific hours chosen by the parent. This setting shall be set by the operator as "on" by default, in a manner in which the child's access is limited between the hours of 12:00 AM and 6:00 AM, inclusive, in the user's local time zone.
 - b) Limit their child's access to the addictive social media platform to a length of time per day specified by the verified parent. This setting shall be set by the operator as "on" by default, in a manner in which the child's access is limited to one hour per day unless modified by the verified parent.

- c) Limit their child's ability to view the number of likes or other forms of feedback to pieces of media within an addictive feed. This setting shall be set by the operator as "on" by default.
 - d) Require that the default feed provided to the child when entering the platform be one in which pieces of media are not recommended, selected, or prioritized for display based on information provided by the user, or otherwise associated with the user or the user's device, other than the user's age or status as a minor.
 - e) Set their child's account to private mode, in a manner in which only users to whom the child is connected on the addictive social media platform may view or respond to content posted by the child. This setting shall be set by the operator as "on" by default.
- 7) Clarifies that the bill does not require any special access or control for parents over their children's data or accounts.
- 8) Clarifies that an operator may choose not to provide services to minors but is prohibited from withholding, degrading, lowering the quality of, or increasing the price of, any product, service, or feature, other than as required by this law, due to a user or parent availing themselves of the rights provided herein, or due to the protections required herein.
- 9) Provides that a parent's provision of, or the use by a parent of a mechanism as described, does not waive, release, otherwise limit, or serve as a defense to, any claim that the parent, or that the user who is a minor or was a minor at the time of using the platform, might have against the operator of an addictive social media platform regarding any harm to the mental health or well-being of the user. It further clarifies that the protections provided are in addition to those provided by any other applicable law, including, but not limited to, the California Age-Appropriate Design Code Act.
- 10) Requires an operator of an addictive social media platform to disclose, on an annual basis, the number of minor users of its addictive social media platform, and of that total the number for whom the operator has received verifiable parental consent to provide an addictive feed, and the number of minor users as to whom the controls set forth above are or are not enabled.
- 11) Authorizes the Attorney General to adopt regulations to further the purposes of this law, including regulations regarding age verification and parental consent.
- 12) Includes a savings and severability clause.

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 with 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.

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 April 14, 2024.

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/fpsy-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

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

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.

“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.”

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 day⁸

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

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

2. Addressing the problematic features of social media for children

According to the author:

Social media companies have designed their platforms to addict users, especially our kids. Countless studies show that once a young person has a social media addiction, they experience higher rates of depression, anxiety, and low self-esteem. We've waited long enough for social media

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.

companies to act. SB 976 is needed now to establish sensible guardrails so parents can protect their kids from these preventable harms.

There are various features of social media that are believed to contribute to excessive social media use and preoccupation and attendant mental health issues in children and that are repeatedly highlighted as the most problematic for users, especially children. They are pinpointed by academic research,¹¹ and lawsuits brought by most states' Attorneys General,¹² as the core of the problem. These include the display of "likes" and other feedback on posted media that drive minors' unhealthy comparisons to others and their obsessive usage. In addition, the constant notifications that are sent to users to nudge them back onto a platform throughout the day and night to seek the next hit of dopamine. The biggest and most central of them all is the algorithmic feeds that are fueled by a user's own information and inferences drawn from their past behavior and data collected from other sources. While these features can effectively serve up content curated for our personal tastes and create social connections among users, it is these types of features that are most concerning to advocates for reform and that are at the heart of this bill.

a. Addictive feeds

This bill first targets what it labels "addictive feeds." This is defined as an internet website, online service, online application, or mobile application, or a portion thereof, in which multiple pieces of media generated or shared by users are, either concurrently or sequentially, recommended, selected, or prioritized for display to a user based, in whole or in part, on information provided by the user, or otherwise associated with the user or the user's device. The bill provides certain exceptions from this, including for direct, private communications or where the information is not persistently associated with the user or their device, and does not concern previous interactions with other media.

The algorithms driving such feeds are somewhat opaque but incredibly effective:

What we know of how social media algorithms work often feels dwarfed by how much we don't know, which Kelley Cotter, an assistant professor in the College of Information Sciences and Technology at Penn State University, frames as "the black box problem."

Cotter asserts that companies are intentionally opaque with how their algorithms work to protect proprietary tech and avoid any potential scrutiny. Social media platforms have given cursory explanations of why

¹¹ Kirsten Weir, *Social media brings benefits and risks to teens. Here's how psychology can help identify a path forward* (September 1, 2023) American Psychological Association, <https://www.apa.org/monitor/2023/09/protecting-teens-on-social-media>.

¹² Matt Richtel, *Is Social Media Addictive? Here's What the Science Says* (October 25, 2023) The New York Times, <https://www.nytimes.com/2023/10/25/health/social-media-addiction.html>.

certain content winds up in your feed, albeit exactly what you'd expect: Videos or photos that have high engagement—comments, likes, shares, and so forth—are more likely to bubble to the surface. But, to Cotter, those explanations amount to little more than PR moves.

“A lot of it also is made up of rationales,” Cotter says. “So not just, ‘This is what the algorithm does,’ but ‘It does this because we want X to happen.’ Usually it’s like, ‘We want to make sure that you’re seeing the things that you care about or you’re making real connections with people.’ So, it’s really a lot of couching of the information in these really lofty goals that they have.” . . .

Social media algorithms are designed with retention in mind: The more dedicated eyeballs, the more advertising revenue that pours in. For some people, scrolling through social media for hours on end mainly leaves them feeling guilty for having wasted a chunk of their day. But for others, getting sucked in like that can have a major impact on their mental health. Studies have shown that high levels of social media use have been linked to increased depression and anxiety in both teens and adults.¹³

This bill prohibits operators of social media platforms from providing addictive feeds to a user unless they can reasonably determine the user is not a minor, or they received verifiable consent from parents to provide it.

The author explains that this prohibits social media platforms from serving content to children through a manipulative, addictive algorithmic feed and would “require that social media platforms—by default—serve children content through a chronological feed from people they’ve already followed and information that they’ve searched for.”

Attorney General Rob Bonta, a co-sponsor of this bill, states this regulation is necessary as, for many social media platforms, “the default is an algorithmic feed that uses data and information collected from and about the child user to curate a targeted feed of content—one that manipulates and addicts users to keep them online, and too often sends them down rabbit holes of harmful content.”

A coalition of industry associations in opposition, including the California Chamber of Commerce and NetChoice, argue against the efficacy of this:

The bill prohibits the provision of an “addictive feed”, which it defines as any feed in which content is recommended or prioritized for display to a

¹³ KC Ifeanyi, *Inside the good, bad, and very ugly of social media algorithms* (June 24, 2022) Fast Company, <https://www.fastcompany.com/90761087/inside-the-good-bad-and-very-ugly-of-social-media-algorithms>.

user based on information provided by the user, unless the user is not a minor or, in the case of a minor, their parent consents. By prohibiting this type of algorithmically curated feed, SB 976 effectively requires a chronological feed, in which content would be presented in order of what was posted most recently without any recommendations or curation.

This preference for a chronological feed is based on the faulty assumption that an algorithmically curated feed is harmful and that a chronological feed is safe. Chronological feeds [have] numerous significant limitations and drawbacks. Namely, users experience posts and content from accounts that post the most, not necessarily accounts they want to see the most. This means that their friends' posts and content will be drowned out by brands and influencers employing teams of people to post throughout the day. A chronological feed can also be gamed by bad actors to spread more low quality or harmful content. A chronological feed isn't an improvement in many cases.

An algorithmic feed boosts user engagement precisely because it shows users information and posts that are most relevant to them; posts from their friends, family, and interests are prioritized. Personalized recommendation systems and algorithmic curation is vital and a core feature of many platforms. It's what organizes online content into something manageable and usable, making it easier and faster for users to find information.

As social media platforms need to "reasonably determine" the age of users to know whether they can provide these "addictive" feeds or need to seek parental consent, the issues associated with age verification present themselves. The opposition coalition lays out the concerns:

Age-verification is a complex challenge for our industry and government entities to address and requires consideration of how to properly balance the interests of privacy and security. While some companies are able to estimate a user's age range, these processes and tools are not nearly accurate enough to support the mandate of this bill. The fact is there isn't a reliable method of verifying age and identity without collecting users' personal information such as government IDs, birthdates, and other information. This is even more difficult when trying to verify minors, who often don't have identification. Efforts are ongoing to develop more privacy protective ways to verify age online. But until there are industry-wide tools available, age-verification will continue to have tradeoffs and be difficult to implement in practice.

As to some of the privacy concerns, the bill does make clear that any information collected for purposes of age verification must be used only for those purposes.¹⁴ The bill also authorizes the Attorney General to promulgate regulations, specifically identifying regulations regarding age verification and parental consent, but does not require it.

b. Notifications to minor users

Next, this bill prohibits social media platforms from sending notifications to minors, without parental consent, between the hours of 12:00 AM and 6:00 AM, and between the hours of 8:00 AM and 3:00 PM from Monday through Friday from September through May. Essentially, this keeps children from receiving notifications that nudge them onto platforms at night and during school hours.

This provision also requires platforms to determine who is a minor unless they limit notifications to all users. One difference with this provision compared to that above is that there is no “reasonableness” standard included. Whereas the provision for providing addictive feeds allows it when it is “reasonably determined that the user is not a minor,” this provision simply makes it unlawful to provide notifications to minors. This could be interpreted as a strict liability standard.

To address some concerns and uncertainty with regard to the age verification required in this and the previous provision, the author has agreed to amend the bill to apply these restrictions only as to users whom the platforms have “actual knowledge” are minors until 2027. Thereafter, the restrictions will apply unless the platform has reasonably determined that the user is not a minor, including pursuant to regulations promulgated by the Attorney General. The amendments will require the Attorney General to adopt regulations, including for age verification and parental consent by January 1, 2027.

c. Putting tool in the hands of parents

Next, the bill requires the operator of an addictive social media platform to provide a mechanism through which the verified parent of a user who is a minor may do the following:

- Prevent their child from accessing or receiving notifications from the addictive social media platform between specific hours chosen by the parent. This setting shall be set by the operator as on by default, in a manner in which the child’s access is limited between the hours of 12:00 AM and 6:00 AM, inclusive, in the user’s local time zone.

¹⁴ The wording of this provision refers only to information collected for that section of the bill. The author has agreed to amendments that make clear that any information collected for age verification is only used for those purposes.

- Limit their child’s access to the addictive social media platform to a length of time per day specified by the verified parent. This setting shall be set by the operator as on by default, in a manner in which the child’s access is limited to one hour per day unless modified by the verified parent.
- Limit their child’s ability to view the number of likes or other forms of feedback to pieces of media within an addictive feed. This setting shall be set by the operator as on by default.
- Require that the default feed provided to the child when entering the platform be one in which pieces of media are not recommended, selected, or prioritized for display based on information provided by the user, or otherwise associated with the user or the user’s device, other than the user’s age or status as a minor.
- Set their child’s account to private mode, in a manner in which only users to whom the child is connected on the addictive social media platform may view or respond to content posted by the child. This setting shall be set by the operator as on by default.

The Attorney General explains this provision and the need for it:

SB 976 recognizes that parents are trying to do their best to monitor and control their children’s social media use, but that it is a difficult task with the limited set of options made available to them – even for the more tech-savvy parents. To address this, SB 976 expands parental controls by requiring social media platforms to provide parents the ability to:

- Prevent notifications during other hours – for example, when the child should be at school or doing homework.
- Limit the length of time a child can spend on the social media platform as determined by the parent or guardian, with a default of one hour per day.
- Limit the visibility of likes and other engagement metrics that contribute to an addictive social media experience.
- Select a private mode, where only the user’s connections can view or respond to content posted by the child.
- Select a feed that’s not recommended, selected, or prioritized based on information collected from that child.

Social media companies should have a duty to provide parents with controls – defaulted to “On” so that safety is the default – that will protect kids. Accordingly, SB 976 would require the majority of the above protections to be turned on by default, both because safety should be the default, and because the alternative – requiring parents to manually choose safety – would give platforms an incentive to employ dark

patterns and to design confusing, deceptive, and hard-to-use user controls.

d. Reporting

To gain more insights into the social media use of children in California, the bill also requires annual reporting from operators of the number of minor users of their social media platforms, and of that total the number for whom the operator has received verifiable parental consent to provide an addictive feed, and the number of minor users as to whom the controls discussed above are or are not enabled. There is no indication of how the reporting shall be done or to whom it should be sent. The author has agreed to amendments that make clear platforms must publicly disclose the report.

In order to avoid laws regulating “social media platforms” with multiple definitions, the author has also agreed to rework the structure of the bill to regulate “addictive internet-based services or applications,” that include “social media platforms,” as defined in Business and Professions Code section 22675.

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).¹⁵ 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.¹⁶ The result – Section 230 – was relatively uncontroversial at the time, in part because of the relative

¹⁵ 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.)

¹⁶ Kosseff, *The Twenty-Six Words That Created The Internet* (2019) pp. 57-65.

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.¹⁷

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.”¹⁸ 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.”¹⁹

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.”²⁰ Courts have applied Section 230 in a vast range of cases to immunize internet platforms from “virtually all suits arising from third-party content.”²¹

This bill provides for the potential liability of platforms if they provide addictive feeds or send notifications to minor users without parental consent. Therefore, the bill arguably does not hold platforms liable for the content of third parties. In opposition, the Electronic Frontier Foundation writes: “We find S.B. 976 – despite its intentions – to be preempted by the federal law protecting online speech, 47 U.S.C. § 230 (“Section 230”). While it focuses on ‘design’ aspects, it ignores that many aspects of a service are inseparable from the user generated content they publish.”

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.”²² “[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

¹⁷ *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 v. ACLU* (1997) 521 U.S. 844, 874.)

¹⁸ *Id.*, § 230(c)(1).

¹⁹ *Id.*, § 230(c)(1) & (2).

²⁰ *Id.*, § 230(e)(1) & (3).

²¹ 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. Metrosplash.com, Inc.* (9th Cir. 2003) 339 F.3d 1119, 1125; *Zeran v. America Online, Inc.* (4th Cir. 1997) 129 F.3d 327, 333-334.

²² U.S. Const., 1st & 14th amends.

content.”²³ 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,”²⁴ “fighting words,”²⁵ incitement to imminent lawless action,²⁶ defamation,²⁷ and obscenity.²⁸ Expression on the internet is given the same measure of protection granted to in-person speech or statements published in a physical medium.²⁹

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.”³⁰ 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.”³¹

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.’”³² 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.’”³³

If a restriction on speech is determined to be content based, it will be subject to strict scrutiny.³⁴ 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.”³⁵ Content-based restrictions subject to strict scrutiny are “presumptively unconstitutional.”³⁶ A restriction can survive strict scrutiny only if it uses the least-restrictive means available to achieve a compelling government purpose.³⁷

The coalition in opposition argues that the bill violates the First Amendment rights of the platforms and their minor users:

²³ *Ashcroft v. American Civil Liberties Union* (2002) 535 U.S. 564, 573.

²⁴ *Snyder v. Phelps* (2011) 562 U.S. 443, 452.

²⁵ *Cohen v. California* (1971) 403 U.S. 15, 20.

²⁶ *Virginia v. Black* (2003) 538 U.S. 343, 359.

²⁷ *R.A.V. v. St. Paul* (1992) 505 U.S. 377, 383.

²⁸ *Ibid.*

²⁹ *Reno v. ACLU* (1997) 521 U.S. 844, 870.

³⁰ *Ward v. Rock Against Racism* (1989) 491 U.S. 781, 791.

³¹ *FCC v. League of Women Voters* (1984) 468 U.S. 364, 383.

³² *Packingham v. North Carolina* (2017) 582 U.S. 98, 105.

³³ *McCullen v. Coakley* (2014) 573 U.S. 464, 486 (*McCullen*).

³⁴ *Id.* at p. 478.

³⁵ *Id.* at p. 479.

³⁶ *Reed v. Town of Gilbert* (2015) 135 S.Ct. 2218, 2226 (*Reed*).

³⁷ *United States v. Playboy Entertainment Group* (2000) 529 U.S. 803, 813.

[O]ne of the main benefits of a social media platform is its curation of vast amounts of user-generated content to highlight what a particular user will be most interested in viewing. By restricting access to these features with age verification and parental consent, SB 976 impermissibly and unconstitutionally burdens adults' access to lawful content and minors' ability to access and share information. As the Supreme Court emphasized in *Packingham v. North Carolina*: "For many," social media platforms "are the principal sources for knowing current events, checking ads for employment, speaking and listening in the modern public square, and otherwise exploring the vast realms of human thought and knowledge," such that "to foreclose access to social media altogether is to prevent the user from engaging in the legitimate exercise of First Amendment rights." SB 976 effectively requires a platform to age verify or obtain parental consent to offer an algorithmically curated feed of information and content. While protecting children from harm is an important interest and a goal we share, SB 976 does not attempt to reasonably scope the restrictions on social media platforms to that goal, let alone to "narrowly tailor" the law as the Constitution requires.

Furthermore, courts have long held that social media platforms are entitled to First Amendment protection for their editorial discretion akin to more traditional types of media, like newspapers. As the District Court noted in *NetChoice v. Moody*, social media platforms "routinely manage . . . content, allowing most, banning some, arranging content in ways intended to make it more useful or desirable for users", all of which are expressions of editorial discretion. Several cases have established that the tools that implement a social media platform's editorial discretion, its computer code, source code and algorithms, are protected speech under the First Amendment.

The de facto ban on providing content suggestions and recommendations, unless a user's age can be verified or their parent consents, likely runs afoul of platforms' protected discretion to present content on their sites. For these reasons we believe a court is likely to find SB 976 to be unconstitutional.

Responding to First Amendment concerns, the author states:

SB 976 is a reasonable, necessary and appropriately tailored step towards addressing a crisis affecting the mental health and well-being of youth in California. The algorithmic limitations in SB 976 apply to underage users only and it is content neutral legislation. SB 976 in no way limits the content that online operators may deliver to children, nor the content that children may access. Accordingly, SB 976 in no way implicates the First

Amendment. The bill nowhere restricts what content may be recommended or suggested to minor users. Online operators remain free to recommend or suggest whatever they wish and no user is prohibited from accessing any particular content available.

An addictive feed is not the kind of editorial discretion protected by the First Amendment. It is unclear what if any expressive methods a social media company wishes to send when it uses an addictive feed to arrange user content.

Social media companies do not face constraints on the amount of space or time they have to host content. The feed is infinite in contrast to a parade or op-ed printed in a newspaper. Prohibiting an addictive feed, or shifting the default on the availability of an addictive feed in the way SB 976 does, does not compel any speech by the social media company and does not associate user speech with the company speech in a way they may wish to avoid.

The statute does not prohibit any particular speech or content from being shown to minors. It permits the use of an addictive feed under certain circumstances designed to minimize harm to minors. SB 976 leaves companies free to recommend anything they wish to a minor or to engage in their own affirmative speech how they wish.

To the extent that the First Amendment is implicated, SB 976 is a content neutral law. Further, protecting the health and well-being of minors is clearly an important government interest. SB 976 is designed to further that interest. SB 976 is properly tailored to further the interest of protecting the health and well-being of minors.

SUPPORT

Association of California School Administrators (sponsor)

Attorney General Rob Bonta (sponsor)

Public Health Advocates (sponsor)

Alameda County Office of Education

American Academy of Pediatrics, California

California County Superintendents

Children's Advocacy Institute

Children's Specialty Care Coalition

Church State Council

Common Sense Media

Parents Television and Media Council

Santa Clara County Office of Education

OPPOSITION

California Chamber of Commerce
Chamber of Progress
Civil Justice Association of California
Computer and Communications Industry Association
Electronic Frontier Foundation
Internet.works
Netchoice
Technet

RELATED LEGISLATION

Pending Legislation:

SB 981 (Wahab, 2024) requires a social media platform to provide a mechanism that is reasonably accessible to users for a user who is a California resident to report nonconsensual, sexual deep fakes to the social media platform and to permanently block such content. SB 981 is currently in this Committee.

AB 3172 (Lowenthal, 2024) makes social media platforms liable for specified damages in addition to any other remedy provided by law, if the platform fails to exercise ordinary care or skill toward a child. AB 3172 is currently in the Assembly Judiciary Committee.

AB 3080 (Alanis, 2024) requires a covered platform, as defined, that publishes or distributes material harmful to minors, as defined, to perform reasonable age verification methods, as defined, to verify the age of each individual attempting to access the material and to prevent access by minors to the material. AB 3080 is currently in the Assembly Judiciary Committee.

Prior Legislation:

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

AB 1394 (Wicks, Ch. 579, Stats. 2023) required social media platforms to provide a reporting mechanism for suspected child sexual abuse material and requires them to permanently block the material, as provided. It also prohibits platforms from knowingly facilitating, aiding, or abetting minor's commercial sexual exploitation.

SB 1056 (Umberg, Ch. 881, Stats. 2022) required a social media platform, as defined, to clearly and conspicuously state whether it has a mechanism for reporting violent posts, as defined; and 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) prohibited 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) required 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.
