

Date of Hearing: June 18, 2024

ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION

Rebecca Bauer-Kahan, Chair  
SB 1504 (Stern) – As Amended June 4, 2024

**SENATE VOTE:** 34-0.

**SUBJECT:** Cyberbullying Protection Act

**SYNOPSIS**

*The Cyberbullying Protection Act (CPA), passed in 2022, requires social media platforms to disclose their cyberbullying reporting procedures and to implement a reporting mechanism for the reporting of cyberbullying between pupils as well as other conduct that violates the platform's terms of service. The Attorney General is authorized to bring suit against platforms for intentional failure to comply and seek a civil penalty of \$7,500 per day, per violation.*

*This bill (1) expands the CPA's scope beyond pupils by providing that the subject of the cyberbullying may be any minor and that the cyberbully may be any person; (2) provides specific examples of severe and pervasive conduct that rises to the level of cyberbullying; (3) augments provisions governing the reporting mechanism by adding timelines and procedures; (4) grants a private right of action for a parent or legal guardian of a minor, or a teacher or administrator in the school that the minor attends, who submits a report of cyberbullying to the social media platform; and (5) increases the CPA's civil penalty provision tenfold, from \$7,500 to \$75,000 for each intentional violation.*

*The bill is sponsored by #HalfTheStory, Children's Advocacy Institute, Jewish Family and Children's Services of San Francisco, the Peninsula, Marin and Sonoma Counties, and Rethink. It is supported by several organizations, including the Los Angeles County Office of Education and the California Teachers Association. The bill is opposed by a coalition of industry associations—Computer & Communications Industry Association, California Chamber of Commerce, and TechNet—as well as Electronic Frontier Foundation.*

**SUMMARY:** Expands the CPA's scope beyond pupils, augments the reporting mechanism requirements, grants a private right of action with a tenfold increase in the CPA's damages provision. Specifically, **this bill:**

- 1) Expands the CPA's scope beyond pupils by providing that the subject of the cyberbullying may be any minor and that the cyberbully may be any person.
- 2) Defines the term "severe and pervasive" for purposes of the existing definition of "cyberbullying" to include content that does any of the following:
  - a. Calls for self-injury or suicide of a minor or a specific person of a group related to a minor.
  - b. Attacks a minor based on the minor's experience of sexual assault, sexual exploitation, sexual harassment, or domestic abuse.

- c. Includes statements of intent to engage in a sexual activity or advocating to engage in a sexual activity with a minor.
  - d. Threatens to release a minor's telephone number, residential address, images, or email address.
  - e. Calls for, or statements of intent to engage in, threats of violence, humiliation, or criminal activity against a minor.
  - f. Degrades, or expresses disgust toward, a minor who is depicted in the process of, or right after, menstruating, urinating, vomiting, or defecating.
- 3) Requires the reporting mechanism under the CPA to do all of the following:
- a. Allow, but not require, an individual to upload a screenshot of the content that contains cyberbullying or violates the terms of service related to cyberbullying.
  - b. Include a method of contacting a reporting individual in writing by a method, including a telephone number for purposes of sending text messages or an email address, that is chosen by the reporting individual and is not within the control of the social media platform.
  - c. Provides, within 36 hours of receipt of a report, written confirmation to the reporting individual that the social media platform received that individual's report.
  - d. Issues a final written determination to the reporting user within 10 days of receiving the report stating one of the following:
    - i. The reported material has been determined to be cyberbullying that was displayed, stored, or hosted on the social media platform and has been blocked from being viewable on the social media platform.
    - ii. The reported material has been determined to be cyberbullying that was displayed, stored, or hosted on the social media platform and has not been, or will not be, blocked on the social media platform.
    - iii. The reported material has been determined not to be cyberbullying.
    - iv. The reported material has been determined not to be displayed, stored, or hosted on the social media platform.
- 4) Revises the CPA's enforcement mechanism by expanding standing from the Attorney General to include a parent or legal guardian of a minor, or a teacher or administrator in the school that the minor attends, who submits a report of cyberbullying to the social media platform.
- 5) Increases the CPA's civil penalty provision tenfold, from \$7,500 to \$75,000 for each intentional violation. Enables courts to award reasonable attorney's fees and costs to prevailing plaintiffs.

- 6) Provides that the CPA's remedies, duties, and obligations do not supplant other remedies, duties, and obligations provided under other provisions of law.

**EXISTING LAW:**

- 1) Establishes the Cyberbullying Protection Act, which requires a social media platform to disclose all cyberbullying reporting procedures in its terms of service. The Act only applies to platforms that generated more than \$100,000,000 in gross revenue during the preceding calendar year. (Bus. & Prof. Code § 22589 *et seq.*)
- 2) Requires a social media platform to establish a mechanism within its internet-based service that allows any individual, whether or not that individual has a profile on the internet-based service, to report cyberbullying or any content that violates the existing terms of service. The reporting mechanism must allow, but not require, an individual to upload a screenshot of the content that contains cyberbullying or violates the terms of service. (Bus. & Prof. Code § 22589.1.)
- 3) Defines "cyberbullying" as any severe or pervasive conduct made by an electronic act or acts, as defined, committed by a pupil or group of pupils directed toward one or more pupils that has or can reasonably be predicted to have the effect of one or more of the following:
  - a) Placing a reasonable pupil or pupils in fear of harm of their person or property,
  - b) Causing a reasonable pupil to experience a substantially detrimental effect on the pupil's physical or mental health,
  - c) Causing a reasonable pupil to experience substantial interference with the pupil's academic performance, or
  - d) Causing a reasonable pupil to experience substantial interference with the pupil's ability to participate in or benefit from the services, activities, or privileges provided by a school. (Bus. & Prof. Code § 22589.)
- 4) Provides that the Attorney General may bring an action against a social media platform that intentionally violates the provisions of the Act and to recover a civil penalty of up to \$7,500 for each intentional violation per day that the violation was incurred. The Attorney General may also seek injunctive relief. (Bus. & Prof. Code § 22589.3.)
- 5) Defines "social media platform" as a public or semipublic internet-based service or application that has users in California and that meets both of the following criteria:
  - a) A substantial function of the service or application is to connect users in order to allow them to interact socially with each other within the service or application. (A service or application that provides email or direct messaging services does not meet this criterion based solely on that function.)
  - b) The service or application allows users to do all of the following:
    - i) Construct a public or semipublic profile for purposes of signing into and using the service or application.

- ii) Populate a list of other users with whom an individual shares a social connection within the system.
- iii) Create or post content viewable by other users, including, but not limited to, on message boards, in chat rooms, or through a landing page or main feed that presents the user with content generated by other users. (Bus. & Prof. Code § 22945(a)(3).)

**FISCAL EFFECT:** As currently in print, this bill is keyed fiscal.

**COMMENTS:**

1) **Author's statement.** According to the author:

SB 1504 is simply a bill requiring social media platforms to offer minimal customer service to those pleading for the platforms' help to prevent cyberbullying; a widespread phenomenon that too often leads to children dying by suicide.

Research disclosed by an Instagram whistleblower and widespread complaints from children, parents, teachers, and administrators reveal that platforms make it nearly impossible to find out where to seek help and too often do not offer the party asking for help the dignity of a response.

As Attorney General Rob Bonta has correctly observed, unlawful "cyberbullying can destroy a young life. It takes the worst of youthful cruelty and puts it on that most public of forums – the Internet. Too many American young people keep quiet about online abuse. And too many kill themselves over it."

"As many as 56 percent of teens report being cyberbullied, and certain groups, such as lesbian, gay, bisexual and transgender teens, are targeted more than others. Teenagers who are cyberbullied are more likely to struggle with depression and substance abuse. They are at a higher risk offline to be victims of sexual harassment and physical assault." "Black or Hispanic teens are more likely than White teens to say cyberbullying is a major problem for people their age."

Current law (22589 of the Business and Professions Code) addressing platforms and cyberbullying offers no specific ability for a child to hold a platform directly accountable for failing to respond to requests to block cyberbullying and has no specific requirements ensuring that platforms heed and respond to the urgent pleas of each child being bullied. SB 1504 seeks to update current law to plug those gaps.

2) **Cyberbullying.** In recent years, cyberbullying has become a familiar social problem that many families, communities, and schools, have to face. A 2022 Pew Research Center survey found "Nearly half of U.S. teens ages 13 to 17 (46%) report ever experiencing at least one of six cyberbullying behaviors."<sup>1</sup> These six behaviors, in order of most to least common, are offensive name-calling, spreading false rumors; receiving unwanted explicit images; constant questioning about the person's location, what they're doing, and who they're with; physical threats; sharing

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<sup>1</sup> Pew Research Center, Teens and Cyberbullying 2022, <https://www.pewresearch.org/internet/2022/12/15/teens-and-cyberbullying-2022/>.

of explicit images of the victim without their consent. Cyberbullying often appears as hurtful social media posts, mean statements made while gaming, hate accounts created to embarrass, threaten, or abuse, or similar forms of cruelty and meanness online. Over the last fifteen years, research on teens has shown that those who have been cyberbullied – as well as those who cyberbully others – are more likely to struggle academically, emotionally, psychologically, and even behaviorally.

This problem, as with many problems associated with social media, is compounded by Section 230 of the Communications Decency Act of 1996. Whereas the European Union requires platforms to take down certain illegal content, Section 230 provides civil immunity for online platforms based on third-party content and for the removal of content in certain circumstances.<sup>2</sup> As the United States Department of Justice has stated, “[t]he combination of significant technological changes since 1996 and the expansive interpretation that courts have given Section 230. . . has left online platforms both immune for a wide array of illicit activity on their services and free to moderate content with little transparency or accountability.”<sup>3</sup> Social media platforms in the United States thus have virtually no duty to remove deplorable, tortious, or even criminal content.<sup>4</sup> Inadequate content moderation exposes users, particularly adolescents, to enormous risks, including cyberbullying.

**3) Expands the Cyberbullying Protection Act.** AB 2879 (Low; Ch. 700, Stats. 2022) added the Cyberbullying Protection Act, which requires social media platforms to establish a reporting mechanism for the reporting of “cyberbullying,” which is defined as any severe or pervasive conduct made by an electronic act or acts, as defined, committed by a pupil or group of pupils directed toward one or more pupils that has or can reasonably be predicted to have the effect of one or more of the following:

- Placing a reasonable pupil or pupils in fear of harm of their person or property.
- Causing a reasonable pupil to experience a substantially detrimental effect on the pupil’s physical or mental health.
- Causing a reasonable pupil to experience substantial interference with the pupil’s academic performance.
- Causing a reasonable pupil to experience substantial interference with the pupil’s ability to participate in or benefit from the services, activities, or privileges provided by a school.

The reporting mechanism must include two features: it must be useable by individuals who do not have an account on the platform, and it must permit, but not require, the report to include a screenshot of the problematic post. These measures are designed to make the mechanism as useful as possible for a parent who might not have an account on a particular platform but who wishes to protect their child. Platforms are also required to disclose in their terms of service the

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<sup>2</sup> 47 U.S.C. § 230.

<sup>3</sup> “Section 230—Nurturing Innovation or Fostering Unaccountability” (June, 2020), <https://www.justice.gov/ag/file/1072971/dl?inline=>.

<sup>4</sup> See Rustad and Koening, “The Case for a CDA Section 230 Notice-and-Takedown Duty” (Spring, 2023) 23 Nev.L.J. 533; 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>.

procedures for using the reporting mechanism. The Attorney General is authorized to bring suit against platforms for intentional failure to comply and seek a \$7,500 per day, per violation civil penalty.

Modeled in part on AB 1394 (Wicks, Ch. 579, Stats. 2023), which requires platforms to have mechanisms to report child sexual abuse material and to respond to reports in a timely manner by a method chosen by the reporting individual, this bill expands the CPA as follows:

- *Expanded scope:* The bill expands the CPA by providing that the subject of the cyberbullying may be any *minor* and that the cyberbully may be any *person*. Under existing law, both categories are limited to pupils.
- *Fleshed-out definition:* The bill defines “severe and pervasive conduct”—a component of the existing definition of “cyberbullying”—to include specified content that involves threats of physical harm, sexual assault and harassment, domestic abuse, doxing, and other types of psychological abuse.
- *Procedures and timelines for reporting mechanism:* The bill requires the reporting mechanism under the CPA to do all of the following:
  - Allow, but not require, an individual to upload a screenshot of the content that contains cyberbullying or violates the terms of service related to cyberbullying.
  - Include a method of contacting a reporting individual in writing that is chosen by the reporting individual and is not within the control of the social media platform.
  - Provides, within 36 hours of receipt of a report, written confirmation to the reporting individual that the social media platform received that individual’s report.
  - Issues a final written determination to the reporting user within 10 days of receiving the report stating the platform’s determination with regard to whether the reported content constitutes cyberbullying and whether it has been blocked.
- *Private right of action with 10x civil penalty:* The bill grants a private right of action for a parent or legal guardian of a minor, or a teacher or administrator in the school that the minor attends, who submits a report of cyberbullying to the social media platform. The bill also increases the CPA’s civil penalty provision tenfold, from \$7,500 to \$75,000 for each intentional violation. The bill also enables courts to award reasonable attorney’s fees and costs to prevailing plaintiffs.

4) **Section 230.** Section 230 states, “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.”<sup>5</sup> That section also provides a safe harbor for “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,

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<sup>5</sup> 47 U.S.C. § 230(c)(1).

whether or not such material is constitutionally protected.”<sup>6</sup> Finally, it provides that “[n]o cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section.”<sup>7</sup>

Through this statute, “Congress intended to create a blanket immunity from tort liability for online republication of third party content.”<sup>8</sup> “The courts have consistently construed CDA Section 230 to eliminate all tort liability against websites, search engines, and other online intermediaries arising out of third-party postings on their services. The result is that large gatekeepers such as Facebook, Google, Twitter, and YouTube have no duty to respond to takedown notices, even if the deplorable content is a continuing tort or crime.”<sup>9</sup>

Because this bill merely requires a platform to provide a mechanism for reporting cyberbullying and disclosing the platform’s disposition of the reported content, the bill does not treat a platform “as the publisher or speaker,” nor hold it liable, for such content. Section 230 is thus not plainly implicated by this bill.

5) **First Amendment.** The United States and California Constitutions prohibit abridging, among other fundamental rights, freedom of speech.<sup>10</sup> In opposition, ACLU California Action writes:

We are concerned about how broad and content-based the definition of “severe or pervasive conduct” is. The definition encompasses a wide variety of speech and other expressive conduct that might be ribald, transgressive, or even mean-spirited, but that is nonetheless constitutionally protected.

- “Calls for self-injury or suicide of a minor or a specific person or of a group of individuals related to a minor” would include hyperbolically telling another minor to “punch themselves” or “jump off a cliff” and would also apply to similar comments directed at the relative of a minor, even if it had nothing to do with the minor.
- “Attacks a minor based on the minor’s experience of sexual assault, sexual exploitation, sexual harassment, or domestic abuse” would seem to include speaking out against a person for being the alleged perpetrator of abuse.
- “Statements of intent to engage in a sexual activity or advocating to engage in a sexual activity with a minor” would include most discussions of sexual activity (past and future) among minors. It could also include someone posting about their homework related to sex education, and LGBTQI and questioning youth looking up information on social media.
- “Threatens to release a minor’s telephone number, residential address, images, or email address” appears to include any time someone offers or promises to share contact information of a minor.

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<sup>6</sup> *Id.* at § 230(c)(2)(A)

<sup>7</sup> *Id.* at (e)(3).

<sup>8</sup> *Barrett v. Rosenthal* (2006) 40 Cal.4th 33, 57.

<sup>9</sup> *The Case for a CDA Section 230 Notice-and-Takedown Duty*, *supra*, 23 Nev.L.J. at p. 536.

<sup>10</sup> U.S. Const., 1st and 14th Amends; Cal. Const. art. I, § 2.

- “Calls for, or statements of intent to engage in, threats of violence, humiliation, or criminal activity against a minor” would include statements like “if you take another one of my French fries, I’m going to punch you” and other things minors say to each other casually.
- “Degrades, or expresses disgust toward, a minor who is depicted in the process of, or right after, menstruating, urinating, vomiting, or defecating” would cover discussion (immature though it may be) of bathroom-related events and bodily functions.

Electronic Frontier Foundation, in opposition, adds:

Combined with its broad authorization for private reporting and requirement to make a “final written determination” within ten days, S.B. 1504 may lead to over-censorship of protected speech. Where any individual can report, an incredible degree of variance is created on what is reported. The ten-day deadline to make a final written determination leaves little time for contextual review. It will often be difficult for a platform to determine whether a piece of content is within the covered materials, the intent with which something was posted, and the context to make the final determination of whether it is cyberbullying. Platforms will have incentives to take content down without or with little review or investigation to avoid liability.

However, the bill does not expressly regulate speech; it simply provides a mechanism for reporting cyberbullying and requires the platform to disclose to the reporter whether the content amounts to cyberbullying and whether it has taken action to remove the content.

The requirement to make this disclosure implicates free speech principles. Because the right to speak encompasses the right *not* to speak, this provision implicates the First Amendment.<sup>11</sup> Compelled speech in the commercial context, however, is subjected to much less exacting scrutiny than in other arenas; a law concerning commercial speech is generally upheld if the law advances a substantial government interest and directly advances that interest.<sup>12</sup>

Here, the state’s interest in protecting children from cyberbullying is clearly substantial, and the requirement that large social media platforms disclose to reporting individuals the platform’s final determination and action regarding such content appears to directly advance this interest by ensuring transparency and accountability in the implementation of the bill’s provisions.

6) **Related legislation.** AB 2481 (Lowenthal, 2024), which is modeled after the Cyberbullying Protection Act, would establish the Youth Social Media Protection Act, which would create enhanced reporting mechanisms for “social media-related threats”—content posted on a social media platform that promotes, incites, facilitates, or perpetrates certain things, including cyberbullying, suicide, and drug trafficking. The bill is pending in the Senate Judiciary Committee.

SB 981 (Wahab, 2024) requires social media platforms to provide a mechanism for reporting “digital identity theft,” essentially the posting of nonconsensual, sexual deepfakes. The bill also

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<sup>11</sup> *U.S. v. United Foods, Inc.* (2001) 533 U.S. 405, 410.

<sup>12</sup> *Central Hudson Gas & Elec. Corp. v. Public Service Commission of New York* (1980) 477 U.S. 556, 566.



requires platforms to timely respond and investigate and to block instances of this material, as provided. SB 981 bill is currently in this Committee.

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

AB 1394 (Wicks, Ch. 576, Stats. 2023). *See* Comment 3.

AB 2879 (Low, Ch. 700, Stats. 2022). *See* Comment 3.

### ***ARGUMENTS IN SUPPORT:***

A coalition of supporters writes: “SB 1504 seeks to motivate social media giants to do more to address cyberbullying simply by requiring them to communicate the “why” of their own decision-making to children who complain they are being cyberbullied on their products.”

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

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

- It confusingly addresses only “pupils” (not defined) and not youth and children.
- Its definition of cyberbullying is not as robust as the definitions used by social media platforms themselves.
- The “mechanism” required to report cyberbullying can be buried in the platform’s boilerplate, never-read terms of service.
- A platform is not required to respond to an entreating child in any way.
- Only the Attorney General – the agency tasked with protecting 39 million Californians with criminal, environmental, consumer rights, and a long list of urgent priorities and limited capacity – is permitted to enforce the law. Cyberbullying is often a matter of life and death. The Attorney General should not be in the business of being a law firm for individual children or families. Cyberbullied children and their parents need to be able enforce their own rights without regard to whether the law is being so widely flouted that it becomes a priority for the Attorney General.

The Small School Districts’ Association Writes:

. . . SB 1504 expands [the CPA’s] provisions to include all minors, not just pupils and to include conduct committed by all persons, not just pupils, as reportable. Additionally, it standardizes requirements for a social media platform’s reporting mechanism such that an individual must be allowed to upload evidence of cyberbullying, that a reporting individual

can include a method of contact, and that the platform must provide a receipt of the report within 36 hours. Additionally, a final determination must be issued within 10 days of the initial report. SB 1504 will also allow any person, not just the Attorney General, to bring suit against a platform for failure to comply and increases the civil penalty tenfold to \$75,000 per violation.

### ***ARGUMENTS IN OPPOSITION:***

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

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

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

In addition, the June 4 amendments provide that a "teacher or administrator in the school that the minor attends, who submits a report of cyberbullying to the social media platform," may bring a civil action for relief. However, this requirement would be nearly impossible for covered services to operationalize as platforms have no way of knowing whether any individual submitting a report is, in fact, the teacher or administrator for any particular minor.

Moreover, SB 1504 fails to tackle the underlying source of the harmful content. As previously stated, responsible digital service providers use a variety of proactive measures to uphold their terms of service and moderate dangerous and illicit content. Nonetheless, it's important to acknowledge that no content moderation mechanism, including through human review or artificial intelligence, is infallible. Therefore, it is important that those who upload harmful material to any platform, regardless of the number of users, are held accountable. Without a mechanism in place, bad actors, such as cyberbullies, will continue to perpetuate harmful content even if that content has been taken down in one instance on one platform. Nothing would prevent a cyberbully from continuing to harass other individuals via other means such as on another service, via text message or other messaging services, or even offline, if the individual engaging in such activity is not held accountable.

### **REGISTERED SUPPORT / OPPOSITION:**

#### **Support**

#halfthestory (co-sponsor)

Children's Advocacy Institute (co-sponsor)

Jewish Family and Children's Services of San Francisco, the Peninsula, Marin and Sonoma  
Counties (co-sponsor)  
Rethink (co-sponsor)  
American Academy of Pediatrics, California  
Association of California School Administrators  
Black Youth Leadership Project  
California Consortium of Addiction Programs and Professionals  
California Teachers Association  
Common Sense Media  
Justice2jobs Coalition  
Los Angeles County Office of Education  
Parents Against Social Media Addiction

**Opposition**

ACLU California Action  
California Chamber of Commerce  
Computer & Communications Industry Association  
Netchoice  
Technet

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