Date of Hearing: July 2, 2024

ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION
Rebecca Bauer-Kahan, Chair
SB 976 (Skinner) – As Amended April 25, 2024

SENATE VOTE: 35-2

SUBJECT: Protecting our Kids from Social Media Addiction Act

SYNOPSIS

According to U.S. Surgeon General Vivek Murthy, "The mental health crisis among young people is an emergency — and social media has emerged as an important contributor. Adolescents who spend more than three hours a day on social media face double the risk of anxiety and depression symptoms, and the average daily use in this age group, as of the summer of 2023, was 4.8 hours. Additionally, nearly half of adolescents say social media makes them feel worse about their bodies." In order to "shield young people from online harassment, abuse and exploitation and from exposure to extreme violence and sexual content that too often appears in algorithm-driven feeds," the Surgeon General has called for legislation to "prevent platforms from collecting sensitive data from children and should restrict the use of features like push notifications, autoplay and infinite scroll, which prey on developing brains and contribute to excessive use." The Surgeon General concluded: "The moral test of any society is how well it protects its children. . . . We have the expertise, resources and tools to make social media safe for our kids. Now is the time to summon the will to act."[1]

This bill answers that call. Based on a recently enacted law in New York, the bill would prohibit social media companies from providing minors, unless their parent or guardian consents, "addictive feeds," thereby requiring, by default, chronological rather than algorithmically-amplified feeds. The bill prohibits platforms from sending minors notifications during certain timeframes, unless the parent or guardian consents. The bill also requires platforms to provide parents with several default protective measures for controlling access to certain features—but not content or connections—of the platform for their children. The bill requires platforms to annually report information related to the use of these features, and requires the AG to adopt implementing regulations, including regulations regarding age assurance and parental consent, on or before January 1, 2027.

The bill is 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, as well as by ACLU California Action, LGBT Tech, the Trevor Project, and Woodhull Freedom Foundation.

SUMMARY: Prohibits social media companies from providing minors, without parental consent, addictive feeds, and from sending minors notifications during certain timeframes.

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[1] Dr. Vivek Murthy, "Surgeon General: Why I'm Calling for a Warning Label on Social Media Platforms" (Jun. 17, 2024) *New York Times*, https://www.nytimes.com/2024/06/17/opinion/social-media-health-warning.html.

Requires platforms to provide parents with certain default measures for controlling access to features of the platform for their children. Requires platforms to annually report information related to the use of these features. Requires the AG to adopt implementing regulations, including regulations regarding age assurance and parental consent, on or before January 1, 2027. Specifically, **this bill**:

1) Defines:

    a. "Addictive feed" 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, unless any of the following conditions are met, alone or in combination with one another:

        i. 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.

        ii. 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.

        iii. 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.

        iv. The media consists of direct, private communications between users.

        v. 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.

    b. "Addictive internet-based service or application" as an internet website, online service, online application, or mobile application, including, but not limited to, a "social media platform" as defined in Section 22675 of the Business and Professions Code, that offers or provides users an addictive feed as a significant part of the service provided by that internet website, online service, online application, or mobile application.

2) Prohibits an operator of an addictive internet-based service or application from providing an addictive feed to a user unless either of the following is met:

    a. Until January 1, 2027: operator does not have actual knowledge that the user is a minor. After January 1, 2027: the operator has reasonably determined that the user is not a minor, pursuant to regulations promulgated by the AG.

   b. The operator has obtained verifiable parental consent to provide the addictive feed to the user who is a minor.

3) Prohibits information gathered for the purpose of determining a user's age from being used for any reason other than compliance with the bill.

4) Prohibits operators of addictive internet-based services or applications from sending notifications if the operator actually knows the user is a minor, unless parental consent is obtained, between the hours of 12 a.m. and 6 a.m. and between 8 a.m. and 3 p.m. from Monday through Friday from September through May, in the user's local time zone. Commencing January 1, 2027, shifts from the "actual knowledge" standard to whether the operator "reasonably determines" that the user is a minor, pursuant to regulations promulgated by the AG.

5) Requires operators of addictive internet-based services or applications to provide a mechanism through which the verified parent of a user who is a minor may do any of the following:

   a. Prevent their child from accessing or receiving notifications from the addictive internet-based service or application between specific hours chosen by the parent. Requires that the default settings for a child's access is limited 12 a.m. and 6 a.m., in the user's local time zone.

   b. Limit their child's access to the addictive internet-based service or application to a length of time per day specified by the verified parent. Requires that the default settings for a child's access is limited to one hour per day.

   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 must be set by the operator as on by default.

   d. Require that the default feed provided to the child when entering the internet-based service or application 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 internet-based service or application may view or respond to content posted by the child. This setting must be set by the operator as on by default.

6) Clarifies that it does not require the operator of an addictive internet-based service or application to give a parent any additional or special access to, or control over, the data or accounts of their child. Clarifies that it does not prevent any action taken in good faith to restrict access to, or availability of, media.

7) Provides that an operator may choose not to provide services to minors. Prohibits operators of addictive internet-based service or applications from withholding, degrading, lowering the quality of, or increasing the price of, any product, service, or feature, other than as required

by the bill, due to a user or parent availing themselves of the rights provided by the bill or due to the protections of the bill.

8) Provides that parental consent 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 internet-based service or application, might have against the operator of an addictive internet-based service or application regarding any harm to the mental health or well-being of the user.

9) Provides that the bill's protections are in addition to any other applicable law, including but not limited to the California Age-Appropriate Design Code Act. (AB 2273, Wicks, Stats. 2022, Ch. 320.)

10) Requires an operator of an addictive internet-based service or application to publicly disclose, on an annual basis, the number of minor users of its addictive internet-based service or application, 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 are or are not enabled.

11) Requires the AG to adopt implementing regulations, including regulations regarding age assurance and parental consent on or before January 1, 2027.

12) Contains a severability clause.

EXISTING 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) Prohibits, under Section 230 of the Communications Decency Act, treating a provider or user of an interactive computer service as the publisher or speaker of any information provided by another information content provider. (47 U.S.C. § 230(c)(1).)

3) 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 § 22675(e).)

4) Establishes the California Consumer Privacy Act (Civ. Code §§ 1798.100-1798.199.100), which, among other things, limits a business' collection, use, retention, and sharing of a consumer's personal information to that which is reasonably necessary and proportionate to achieve the purposes for which the personal information was collected or processed, or for another disclosed purpose that is compatible with the context in which the personal information was collected, and not further processed in a manner that is incompatible with those purposes. (Civ. Code § 1798.100(c).)

5) Prohibits a business from selling or sharing the personal information of a child that is 16 years of age or younger, if the business has actual knowledge of the child's age, unless the child, or the child's parent or guardian in the case of children less than 13 years old has affirmatively authorized the sharing of selling of the personal information. (Civ. Code § 1798.120(c).)

6) 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.)

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

COMMENTS:

1) **Social media harms, infinite feeds, and the quest for likes.** From 2010 to 2019, "rates of depression and anxiety—fairly stable during the 2000s—rose by more than 50 percent in many studies" and "[t]he suicide rate rose 48 percent for adolescents ages 10 to 19." This trend tracks "the years when adolescents in rich countries traded their flip phones for smartphones and moved much more of their social lives online—particularly onto social-media platforms designed for virality and addiction."[2]

According to the recent advisory from U.S. Surgeon General Vivek Murthy on the impact of social media on children's mental health, social media use by youth is nearly universal. Up to 95% of youth ages 13-17 report using a social media platform, with more than a third saying they use social media "almost constantly." Although age 13 is commonly the required minimum age used by social media platforms in the U.S., nearly 40% of children ages 8–12 use social media. As of 2021, the Surgeon General notes that 8th and 10th graders spent an average of 3.5 hours per day on social media.[3]

Whereas the European Union requires platforms to take down certain illegal content, Section 230 of the Communications Decency Act of 1996 (CDA) provides civil immunity for online

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[2] Haidt, "End the Phone-Based Childhood Now" (March 13, 2024) *The Atlantic*, https://www.theatlantic.com/technology/archive/2024/03/teen-childhood-smartphone-use-mental-health-effects/677722/.
[3] "Social Media and Youth Mental Health: The U.S. Surgeon General's Advisory" (May 23, 2023) p. 7, https://www.hhs.gov/sites/default/files/sg-youth-mental-health-social-media-advisory.pdf.

platforms based on third-party content and for the removal of content in certain circumstances.[4] 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."[5] Social media platforms thus have virtually no duty to remove deplorable, tortious, or even criminal content such as hate speech, harassment, misinformation, criminal incitement, sexually predatory content, and drug trafficking.[6] Inadequate content moderation exposes users, particularly children, to enormous risks.

Beyond the directly harmful content created by third parties that is all too common on many social media sites, the conduct of social media sites themselves has also been associated with harm to users. In particular, social media sites often build engagement and, in turn, addict users, through features that exploit human psychology. The encouragement to publicly "like" or favorite another user's content or message provides a sense of validation while also nudging the receiver of a "like" to "like" content as well, generating a mutually-reinforcing network of engagement. Snapchat's "snap streaks" feature capitalizes on the desire for social reciprocity by encouraging users to exchange content daily. The feature employs a system of emoji badges that indicate how many days the streak has lasted and when the streak is about to expire.[7] Many social media platforms use algorithms that are carefully calibrated to continually mesmerize users. For example, TikTok uses "a machine-learning system that analyzes each video and tracks user behavior to serve up a continually refined, never-ending stream of TikToks optimized to hold [users'] attention."[8] Moreover, social media products tend to addict users by omitting natural stopping cues from products. Nearly all social media products contain a near-infinite feed of content with no logical end. Finally, the content in such feeds is often only partly displayed on the screen, which is designed to encourage users to continue to scroll to see the content.[9]

Adolescents, in a critical formative period of brain development, are especially vulnerable to the mental health impacts of social media. Among these impacts are increased neuroticism and anxiety, higher rates of depression, lower self-esteem, decreased attention spans, impulsivity, and brain patterns that resemble attention-deficit hyperactivity disorder.[10] The studies reviewed by the Surgeon General's Office point to a higher risk of harm in adolescent girls and those already experiencing poor mental health. The Surgeon General concludes:

> [T]he current body of evidence indicates that while social media may have benefits for some children and adolescents, there are ample indicators that social media can also have a

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[4] 47 U.S.C. § 230.
[5] "Section 230—Nurturing Innovation or Fostering Unaccountability" (June, 2020), https://www.justice.gov/ag/file/1072971/dl?inline=.
[6] See Rustad and Koenig, "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) *New York Times*, https://www.nytimes.com/2022/05/19/health/pills-fentanyl-social-media.html.
[7] Bhargava and Velazquez, "Ethics of the Attention Economy: The Problem of Social Media Addiction," (July 2021) https://www.cambridge.org/core/journals/business-ethics-quarterly/article/ethics-of-the-attention-economy-the-problem-of-social-media-addiction/.
[8] Tolentino, "How TikTok holds our attention" (Sep. 23, 2019), *New Yorker* https://www.newyorker.com/magazine/2019/09/30/how-tiktok-holds-our-attention.
[9] "Ethics of the Attention Economy: The Problem of Social Media Addiction," *supra*.
[10] Center for Humane Technology, *"*Extractive Technology is Damaging our Attention and Mental Health," https://www.humanetech.com/attention-mental-health.

> profound risk of harm to the mental health and well-being of children and adolescents. At this time, we do not yet have enough evidence to determine if social media is sufficiently safe for children and adolescents.[11]

Social media companies have known for some time that social media use can be harmful to young users, and despite that knowledge, have continued to use algorithms and other design features to capture and hold their attention. Whistleblower Frances Haugen, for instance, revealed in 2021 that Facebook was well aware of the apparent causal connection between the teen mental health crisis and social media—including the severe harm to body image visited disproportionately on young teen women as a result of social comparison on these platforms—but nonetheless sought to recruit more children and expose them to addictive features that would lead to harmful content.[12] Such revelations underscore the culpability of some social media companies in propagating features detrimental to the wellbeing of youth through intentional design choices that maximize engagement with profit-motivated online services.

In a recent *New York Times* opinion essay, the Surgeon General called for safety warning labels—similar to those on tobacco and alcohol products—on social media platforms in order to remind teens and parents that social media has not been proven to be safe. Additionally, in order to "shield young people from online harassment, abuse and exploitation and from exposure to extreme violence and sexual content that too often appears in algorithm-driven feeds," the Surgeon General has called for legislation to "prevent platforms from collecting sensitive data from children and should restrict the use of features like push notifications, autoplay and infinite scroll, which prey on developing brains and contribute to excessive use." [13]

2) **Author's statement.** 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 companies to act. SB 976 is needed now to establish sensible guardrails so parents can protect their kids from these preventable harms.

3) **This bill.** This bill, the Protecting our Kids from Social Media Addiction Act, seeks to regulate how social media companies can use certain addictive design features. The bill is similar to a recently enacted law in New York.[14]

"Addictive feeds" and covered platforms. The author and sponsors point out that social media companies use algorithms that specifically tailor and push content to individuals so that they stay on their platforms longer, earning more ad revenue. Because of these algorithms' incredible

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[11] "Social Media and Youth Mental Health," *supra*, p. 4.
[12] "Facebook Whistleblower Frances Haugen Testifies on Children & Social Media Use: Full Senate Hearing Transcript" (Oct. 5, 2021), https://www.rev.com/blog/transcripts/facebook-whistleblower-frances-haugen-testifies-on-children-social-media-use-full-senate-hearing-transcript.
[13] Dr. Vivek Murthy, "Surgeon General: Why I'm Calling for a Warning Label on Social Media Platforms" (Jun. 17, 2024) *New York Times*, https://www.nytimes.com/2024/06/17/opinion/social-media-health-warning.html.
[14] New York State Senate, "New Regulations Require Parental Consent for Curated Feeds for Users Under the Age of 18" (Jun. 6, 2024) https://www.nysenate.gov/newsroom/press-releases/2024/first-nation-legislation-limiting-social-media-algorithmic-reach

success, social media platforms become increasingly addictive as they collect more data on the user.

The bill defines "addictive feed" as an online site on 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, except as specified. An "addictive internet-based service or application" is an online site that offers or provides users an addictive feed as a significant part of the service provided by that internet website. In effect, this requires platforms to default to serving content to children through a chronological feed.

Restrictions on notifications. The bill prohibits operators of covered platforms from sending notifications to minors between midnight and 6:00 a.m., unless the parent or guardian consents.

Parental controls and default settings. The bill requires operators of covered platforms to provide parents and guardians the ability to:

- Prevent notifications during other hours.
- Limit the length of time the child can spend on the platform, with a default setting of one hour per day.
- Limit the visibility of likes and other engagement features.
- Select a feed that is not recommended, selected, or prioritized based on information collected from that child.
- Select a private mode in which only the child's connections can view or respond to content posted by the child.

These settings would be turned on by default to promote child safety.

Privacy protections. The bill prohibits information gathered for the purpose of determining a user's age from being used for any reason other than compliance with the bill. The bill also clarifies that it does not require the operator of an addictive internet-based service or application to give a parent any additional or special access to, or control over, the data or accounts of their child.

Reporting requirements. The bill requires an operator of a covered platform to publicly disclose, on an annual basis, the number of minor users of its services, 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 are or are not enabled.

AG regulations and age assurance. The bill would require the AG to adopt regulations to further the bill's purposes. A key component of the regulations would address the change in how covered platforms determine that the user is a minor. Until January 1, 2027, operators would not be required to apply the bill's provisions if they lack actual knowledge that the user is a minor—the standard applicable under the CCPA. After January 1, 2027, the operators would be required to do so only if they have reasonably determined that the user is not a minor, pursuant to regulations promulgated by the AG.

Enforcement. Unlike other bills in this space, this bill does not contain an express enforcement mechanism. A violation of this bill would be actionable under California's "unfair competition law," which prohibits "any unlawful, unfair or fraudulent business act or practice."[15] The law gives standing to the AG and certain public prosecutors as well as private actors who have "suffered an injury in fact" and "lost money or property as a result of" the challenged business practice.

4) **Opposition concerns.** The bill is opposed by industry associations, including TechNet and the Computer and Communications Industry Association, as well as by ACLU California Action, LGBT Tech, the Trevor Project, and Woodhull Freedom Foundation. Their principal concerns, and the responses from the author and sponsors, are set forth below.

Chronological feeds. The bill would require that covered platforms—by default—serve children content through a chronological feed. Industry opponents write:

> 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 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.
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> 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. Personalized recommendations also help connect young users with high-quality, developmentally appropriate content that is better suited to their individual needs and interests, while helping them avoid inappropriate or content they do not want to see. Chronological feeds tend to bury this useful content under a flood of posts from all other accounts. Mandating a chronological feed yields the opposite user experience and safety improvements this bill assumes.

It is worth keeping in mind, however, that the bill allows a parent or guardian to consent to an algorithmic feed. Attorney General Rob Bonta, a co-sponsor of this bill states that 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

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[15] Bus. & Prof. Code § 17200 *et seq.* "The California unfair competition law (UCL) ([Bus. & Prof. Code,] § 17200 [et seq.]) defines 'unfair competition' as 'any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising.' Prevailing plaintiffs are limited to injunctive relief and restitution, but the scope of the law is broad, 'embracing "anything that [is] a business practice and that at the same time is forbidden by law."' Even a practice not specifically proscribed by law may be deemed unfair under the statute, which 'is written in the disjunctive, [and] establishes three varieties of unfair competition—acts or practices which are unlawful, or unfair, or fraudulent.'" (*Nolte v. Cedars-Sinai Medical Center* (2015) 236 Cal.App.4th 1401, 1407, internal citations and nested quotation marks omitted.)

manipulates and addicts users to keep them online, and too often sends them down rabbit holes of harmful content."

Age assurance. The coalition of industry opponents writes:

> If a platform cannot reasonably determine that a user is not a minor it must provide a chronological feed. This is a de facto requirement to verify the age of all users in order to recommend content via an algorithm. The only reliable method to accurately assess a user's age is by collecting more personal information such as birthdates, addresses, and government IDs meaning every California resident must submit more personal information just to access a social media platform.
>
> The bill also restricts the use of an algorithmic feed for minors unless a platform obtains verifiable parental consent. One of the main benefits of a social media platform is the fact that, through algorithms, they condense the massive volume of user-generated content on the internet and recommend and show users information that is entertaining, educational, and relevant to their interests. In order to access this benefit, teens will have to get their parent's permission, which puts a significant burden on their ability to access and share information freely online.
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> With the bill leaving all details about parental verification to the Office of the Attorney General, it's unclear what types of information and documentation a parent would have to provide a platform to provide their verifiable consent. Verifiable parental consent requirements raise even more issues than age verification. Beyond identity verification, parental consent entails verifying parental relationships and parental rights, which will likely also lead to privacy-invasive processes unless companies can get protection and rely on representations from parents about their parental relationships and rights. For example, even with a birth certificate, there are custody agreements and other issues that could prevent a caregiver listed on that certificate from exercising parental rights to provide consent.
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> Furthermore, as mentioned above, without any details on the age verification and parental verification regulations this bill requires, it is highly likely that social media platforms would have to collect far more personal information from all users. The standards and requirements in this bill conflict with industry best practices regarding data minimization and California's reputation as a leader in data privacy.

The author and sponsors respond:

> Opponents will argue that they will not be able to adequately implement these defaults and have no way of knowing who on their platform is a minor. This is incredible. Social media companies collect millions of data points on each user and well know who is a minor on their platform and how to market to them.
>
> Opponents will argue that this will lead to having minors, and thus everyone, upload government identification, which some people may or may not have and which will implicate privacy concerns. Again, there are multiple ways that platforms can verify ages, and the AG will issue regulations to ensure that this legislation can be implemented effectively.

Parental control. In a joint letter, Chamber of Progress, LGBT Tech, the Trevor Project, and Woodhull Freedom Foundation write to express concerns with the bill's potential disparate impact on marginalized youth:

> While it is important to encourage parental involvement to ensure minors' safety online, parents are not always best suited to control how their child uses a platform. Consent laws, for example, can be weaponized by divorced parents who share custody of a child. If the parents are at odds with each other, they can use consent laws to override each other's decisions, especially when they disagree on what's in the best interest of their child.
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> SB 976 would mandate social media companies obtain "verifiable parental consent" for all users under eighteen. This legislation allows parents to monitor and restrict their children's accounts with access to the minor user's account, including "text, audio, an image, or a video." SB 976 also requires platforms to implement an effective curfew for minor users that restricts access between "12 AM and 6 AM, inclusive and between the hours of 8 AM and 3 PM, inclusive, Monday through Friday from September through May," unless modified by the consenting parent. However well-intentioned, this could have dire consequences for the most vulnerable Californian youth.
>
> LGBTQ+ youth, especially those who may live in communities hostile to their identity, see social media as a crucial tool to connect with LGBTQ+ groups, access content from people's shared experiences, maintain positive connections, and reduce perceived isolation. In fact, only 38% of LBGTQ youth report living in affirming households, while 60% reported finding online spaces to be supportive. As such, LGBTQ+ youth use online platforms to seek emotional support, search for information about their identities, and find communities that accept them when their own parents do not. Young LGBTQ+ Californians who are just coming to understand their identities may be cut off from affirming online communities and resources if SB 976 passes. 63 percent of LGBTQ+ individuals joined social media before the age of 18, and a majority report that they joined specifically to find LGBTQ+ support, resources, and community. (Footnotes omitted.)

The author and sponsors respond:

> LBGTQ+ youth are no less deserving of protection from the harms of addictive feeds and algorithms, which algorithms rely on addicting children and which can send extremely harmful material to youth. It is beyond dispute that addictive feeds are harming children and leading to a youth mental health crisis. Just last year, the Surgeon General of the United States issued a health advisory on the grave mental health crisis affecting all youth, a mental health crisis caused by social media use.

The author and sponsors continue:

> LBGTQ+ youth are not immune from these mental health harms. It is true that many youth, including LBGTQ+ youth, have found a community on social media.
>
> SB 976 does nothing to stop this. SB 976 is only about algorithmic delivery of user-created content. Kids can still search for and follow user-created content, and platforms can use algorithmic delivery of their own content or content produced in partnership with others, including content to help isolated LGBT+ kids. Contrary to opponents' assertions, nothing in

the bill here gives parents access to info viewed by their child, and the bill specifically has an allowance for algorithmic content moderation.

SB 976 explicitly protects:

- A minor's ability to search for or follow whatever content or content creators they want
    - 27000.5 (a)(1) and (a)(3) – exempts from definition of addictive feed both search terms entered by a user and content delivered when "the user expressly and unambiguously requested the specific media or media by the author, creator, or poster of the media;
- A minor's ability to directly message and communicate directly with other users
    - 27000.5 (a) (4) – exempts from definition of addictive feed "the media consists of direct, private communication between users;
- A minor's identity
    - 270001 (b) – "Information collected for the purpose of determining a user's age pursuant to this chapter shall not be used for any purpose other than compliance with this chapter or with another applicable law. The information collected shall be deleted immediately after it is used to determine a user's age, except as necessary to comply with state or federal law."
- A minor's right to privacy
    - 27003.(a) This chapter shall not be construed as requiring the operator of an addictive internet-based service or application to give a parent any additional or special access to, or control over, the data or accounts of their child.
- Public health education supporting the LGBTQ+ community
    - 27000.5's limits on algorithms only apply to "media generated or shared by users" – still 27005(g) allows platforms to partner with advocates and public health educators
- The ability of a platform to do content moderation to combat online hate
    - 27003 (b) This chapter shall not be construed as preventing any action taken in good faith to restrict access to, or availability of, media.

With respect to parental consent, numerous laws, on the books for decades, already require online operators to obtain "verifiable parental consent" when dealing with child users, including, for example, the federal Children's Online Privacy Protection Act of 1998, (COPPA). Compliance with SB 976 should present no additional "issues" that businesses must not already comply with.

In sum, SB 976 protects all youth against the most harmful aspects of social media – the addictive feed, the infinite scroll, the sleep- and school-disrupting notifications – and it does nothing to limit youth's access to people, a community, or information.

In view of these concerns, however, the author has offered an amendment to clarify that the parent or guardian's control over the child's access to a platform is limited to the access to the addictive feed. The amendment is set forth in more detail below.

Section 230. Section 230 of the federal Communications Decency Act of 1996 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."[16] 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, whether or not such material is constitutionally protected."[17] 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."[18]

Through this statute, "Congress intended to create a blanket immunity from tort liability for online republication of third party content."[19] "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."[20]

However, section 230 applies to content, not conduct. The Ninth Circuit's test for whether section 230 bars a claim was set forth in *Barnes v. Yahoo!, Inc.* (9th Cir. 2009) 570 F.3d 1096, 1100-1101 (*Barnes*). That test provides that section 230(c)(1) only immunizes "(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."[21] *Barnes* held that section 230 did not bar a lawsuit against Yahoo for promising and then failing to remove fictitious profiles of the plaintiff containing revenge porn and defamatory content.[22] The asserted liability did not "derive[] from the defendant's status or conduct as a publisher or speaker." Rather, "the duty the defendant allegedly violated *springs from* a contract—an enforceable promise… Barnes does not seek to hold Yahoo liable as a publisher or speaker of third party content, but rather the counter-party to a contractor, as a promisor who has breached."[23]

Lemmon v. Snap, Inc. (9th Cir. 2021) 995 F.3d 1085 is instructive. The Ninth Circuit held that section 230 did not protect Snap from the claim that its negligently designed app encouraged two teen boys who died in a high-speed car accident to drive at dangerous speeds. The cause of action "rest[ed] on the premise that manufacturers have 'a duty to exercise due care in supplying products that do not present an unreasonable risk of injury or harm to the public.'"[24] The unreasonable risk, the parents alleged, was posed by Snap's "Speed Filter" app, which enabled users to capture how fast they are driving and share it with friends. The parents argued the app was "a game for Snap and many of its users with the goal being to reach 100 MPH, take a photo or video with the Speed Filter, and then share the 100-MPH-Snap on Snapchat."[25]

Applying the test set forth in *Barnes*, the court held Section 230 did not bar the case because the parents' claim neither treated Snap as a "publisher or speaker," nor relied on "information

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[16] 47 U.S.C. § 230(c)(1).
[17] *Id.* at § 230(c)(2)(A)
[18] *Id.* at (e)(3).
[19] *Barrett v. Rosenthal* (2006) 40 Cal.4th 33, 57.
[20] *The Case for a CDA Section 230 Notice-and-Takedown Duty*, *supra*, 23 Nev.L.J. at p. 536.
[21] *Id.* at pp. 1100-1101.
[22] *Id.* at p. 1109.
[23] *Id.* at p. 1107, emphasis added.
[24] *Id.* at p. 1092.
[25] *Id.* at p. 1089, internal quotation marks and brackets omitted.

provided by another information content provider." Instead, the parents' "negligent design lawsuit treats Snap as a products manufacturer, accusing it of negligently designing a product (Snapchat) with a defect (the interplay between Snapchat's reward system and the Speed Filter). Thus, the duty that Snap allegedly violated 'springs from' its distinct capacity as a product designer."[26] The court specifically contrasted the duties of manufacturers, who "have a specific duty to refrain from designing a product that poses an unreasonable risk of injury or harm to consumers" with "entities acting solely as publishers," who "generally have no similar duty."[27]

In opposition, the ACLU argues:

> SB 976 is very likely preempted by Section 230 of the Communications Act of 47 U.S.C. § 230 ("Section 230"). Under Section 230, generally, platforms cannot be held liable for any third-party content that they publish. While SB 976 aims to prohibit online platforms from "recommend[ing], selecting[ing], or prioritiz[ing]" content for minors, such organizing of content is inextricably intertwined with publishing content online. [. . .]

However, the cases discussed above suggest that liability under section 230 may apply where the platform's conduct is intertwined with content.

First Amendment. While section 230 broadly immunizes social media platforms from liability for publishing third party content, the First Amendment also protects the speech acts of the platforms themselves. "The Free Speech Clause of the First Amendment . . . can serve as a defense in state tort suits."[28] "[A]s a general matter, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content."[29] "[T]he basic principles of freedom of speech and the press, like the First Amendment's command, do not vary when a new and different medium for communication appears."[30] Additionally, "the creation and dissemination of information are speech . . . ."[31] Dissemination of speech is different from "expressive conduct," which is conduct that has its own expressive purpose and may be entitled to First Amendment protection.[32]

The bill does not, on its face, concern any particular type of content and so arguably would, at most, be subject to "intermediate scrutiny," which requires that the law "be 'narrowly tailored to serve a significant government interest.'"[33] 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.'"[34]

Industry opponents point to a line of cases that protect editorial judgments about what to publish or not publish. While this doctrine originally applied to traditional publishing activities such as

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[26] *Id.* at p. 1092, citing *Barnes, supra,* 570 F.3d at 1107.
[27] *Ibid.*
[28] *Snyder v. Phelps* (2011) 562 U.S. 443, 451.
[29] *Ashcroft v. American Civil Liberties Union* (2002) 535 U.S. 564, 573.
[30] *Joseph Burstyn v. Wilson* (1952) 343 U.S. 495, 503.
[31] *Sorrell v. IMS Health Inc.* (2011) 564 U.S. 552, 570.
[32] *Ibid.*
[33] *Packingham v. North Carolina* (2017) 582 U.S. 98, 98.
[34] *McCullen v. Coakley* (2014) 573 U.S. 464, 486.

newspapers and editorials,[35] district courts have extended it to online platforms in recognizing that search-engine results may constitute speech protected by the First Amendment.[36] Courts have also found that computer code can merit First Amendment protections.[37] While these cases could be extended to algorithms, it is worth bearing in mind that the bill does not *prohibit* algorithmic feeds—it simply requires parental or guardian consent before the child may access features that a compelling body of research has shown to be addictive and harmful. As the author and sponsors write:

> 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.

5) **Author's amendment.** In view of concerns regarding parental or guardian control of at-risk children, as set forth above, the author has offered an amendment to clarify that the parent's control over the child's access to a platform is limited to the access to the addictive feed. This change may assuage, but it unlikely to resolve, these concerns. The amendment is as follows.

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[35] *Miami Herald Pub. Co. v. Tornillo* (1974) 418 U.S. 241, 257-58.
[36] *Zhang v. Baidu.com, Inc.* (S.D.N.Y. 2014) 10 F. Supp. 3d 433, 435.
[37] See, e.g., *Universal City Studios, Inc. v. Corley* (2d Cir. 2001) 273 F.3d 429, 449.

(b) The operator of an addictive internet-based service or application shall provide a mechanism through which the verified parent of a user who is a minor may do any of the following:

(1) Prevent their child from accessing or receiving notifications from the addictive internet-based service or application 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 a.m. and 6 a.m., in the user's local time zone.

(2) Limit their child's access to ***any addictive feed from*** the addictive internet-based service or application 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.

6) **Related legislation.** AB 1949 (Wicks, 2024) prohibits businesses subject to the CCPA from using or disclosing personal information of a consumer less than 18 years of age, unless the consumer who is between 13 and 18 years old, or their guardian or parent, affirmatively authorizes the use or disclosure of the consumer's personal information. The bill is pending in the Senate Judiciary Committee.

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 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 1504 (Stern, 2024) expands the Cyberbullying Protection Act's scope beyond pupils, augments the reporting mechanism requirements, and grants a private right of action to parents, teachers, and school administrators.

ARGUMENTS IN SUPPORT: Public Health Advocates, a co-sponsor of the bill, writes:

Social media is a new platform of engagement that has contributed to a major restructuring of social engagement and information sharing. It allows people to find and join communities with shared interests or identities with members beyond their immediate geographic setting. Most people will have a positive experience on the platforms; however, there are also risks. Young people spend considerable time daily on social media – averaging 4.8 hours per day – and through a combination of the content they encounter and social media replacing or competing with other activities, many young people describe social media as a major and direct contributor to depression and anxiety. Therefore, it is incumbent upon the state to develop strategies to protect young people online; parental support for efforts to improve safety online is high and bipartisan, with parents seeking guidance for how to help their children appropriately and safety navigate their online activity.

The Association of California School Administrators, another co-sponsor of the bill, adds:

SB 976 will prohibit social media platforms from sending addictive feeds to minors unless they have consent from a parent or guardian. SB 976 also requires platforms to have several default settings for all users under the age of 18 regarding times of day, should parental consent be given, to avoid disrupting school and sleeping hours. While educators are authorized to regulate mobile device use during school hours, they must still manage the heavy load that many students carry with them because of persistent, negative social media exposure outside of the classroom.

As schools seek to provide resources for student behavioral health, such as wellness coaches, we should not overlook the potential of tools that address a source of the problem. SB 976 takes the right approach to limit the constant stream of addictive social media. This assists educators in their efforts regarding both student academic success as well as socio-emotional well-being. Reducing the risk that addictive social media feeds pose to our youth will help improve outcomes across the board.

ARGUMENTS IN OPPOSITION: ACLU California Action writes:

…[A]ge-verification schemes create new privacy concerns. Because the purpose of age-gating is to identify minors and distinguish them from adults, all adults must be verified along with minors. Doing so sets up a system that necessitates additional data collection from every user — opening up new risks for security breach and misuse of personal information.

Age-verification requirements also can be inaccessible for some users, such as those who do not have a government ID or whose faces are less likely to be accurately recognized by facial recognition, which has known accuracy problems, particularly for users of color. By their inability to verify their age, adult users may be prevented from accessing content they have a First Amendment right to access.

Additionally, we have concerns with unintended harms to youth that may be created by the lack of guardrails around the way in which an adult may be able to opt-in to features for a minor. In the absence of guidance of how this should – or should not – be accomplished, the bill may create conditions in which an LGBTQI, pregnant, or otherwise vulnerable teen may be outed against their will, potentially putting them at risk if they have unsupportive parents.

As written, SB 976 is not an effective method to protect children online. It will instead undermine publishers' ability to organize their content and users' ability to access the content they need. It will also diminish online privacy by incentivizing companies to collect more private information. It may prevent adults from being able to access content they have the right to see, and it may put vulnerable teens at risk.

REGISTERED SUPPORT / OPPOSITION:

Support

California Attorney General, Rob Bonta (co-sponsor)
Association of California School Administrators (co-sponsor)
Alameda County Office of Education
American Association of University Women - California
California Academy of Child and Adolescent Psychiatry
California County Superintendents

California Psychological Association
Children's Specialty Care Coalition
Children’s Advocacy Institute
Cleanearth4kids.org
Democrats for Israel - CA
Democrats for Israel Los Angeles
ETTA
Hadassah
Holocaust Museum LA
JCRC Bay Area
Jewish Big Brothers Big Sisters of Los Angeles
Jewish Center for Justice
Jewish Community Federation and Endowment Fund
Jewish Democratic Club of Marin
Jewish Democratic Club of Solano County
Jewish Democratic Coalition of The Bay Area
Jewish Family and Children's Service of Long Beach and Orange County
Jewish Family and Children's Services of San Francisco, the Peninsula, Marin and Sonoma Counties
Jewish Family Service of Los Angeles
Jewish Family Services of Silicon Valley
Jewish Federation of Greater Los Angeles, the
Jewish Federation of The Greater San Gabriel and Pomona Valleys
Jewish Long Beach
Jewish Public Affairs Committee
Jewish Silicon Valley
Los Angeles Unified School District
Progressive Zionists of California
Public Health Advocates
Santa Clara County Office of Education
Youth First

Opposition

ACLU California Action
California Chamber of Commerce
Chamber of Progress
Civil Justice Association of California
Computer & Communications Industry Association
Electronic Frontier Foundation
LGBT Tech
NetChoice
TechNet
The Trevor Project
Woodhull Freedom Foundation

Analysis Prepared by: Josh Tosney / P. & C.P. / (916) 319-2200