

Date of Hearing: April 1, 2025

Fiscal: No

ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION

Rebecca Bauer-Kahan, Chair

AB 2 (Lowenthal) – As Amended March 17, 2025

PROPOSED AMENDMENTS

SUBJECT: Injuries to children: civil penalties

SYNOPSIS

State law provides that everyone, including individuals, businesses, and other entities, has a duty of “ordinary care and skill” in the “management” of their “property or person” – the long-established standard for negligence. This bill, which is identical to last year’s AB 3172 (Lowenthal) as it passed out of this Committee, provides that a large social media platform that violates this duty and harms a minor is additionally liable for the higher of \$5,000 per violation, with a per-child maximum of \$1,000,000, or three times the amount of the child’s actual damages.

The bill is sponsored by Common Sense Media and the Los Angeles County Office of Education, and supported by educational and children’s safety groups. Proponents contend that augmented financial liability will incentivize platforms, who count their profits in the tens of billions, to proactively safeguard children against potential harm by changing how they operate their platforms.

Opponents include TechNet, California Chamber of Commerce, Computer and Communications Industry Association, and Electronic Frontier Foundation. They argue, among other things, that the bill is largely preempted by federal law, will lead to a flood of unmeritorious litigation, and will restrict protected speech.

Clean-up amendments are proposed in Comment #6.

If passed by this Committee, this bill will next be heard by the Assembly Judiciary Committee.

THIS BILL:

- 1) Finds and declares:
 - a. Subdivision (a) of Section 1714 of the Civil Code already makes every person and corporation, including social media platforms, financially responsible for an injury occasioned to another by their want of ordinary care or skill in the management of their property or person.
 - b. Children are uniquely vulnerable on social media platforms.
 - c. The biggest social media platforms invent and deploy features they know injure large numbers of children, including contributing to child deaths.

- d. The costs of these injuries are unfairly being paid by parents, schools, and taxpayers, not the platforms.
 - e. The bill is necessary to ensure that the social media platforms that are knowingly causing the most severe injuries to the largest number of children receive heightened damages to prevent injury from occurring to children in the first place.
- 2) Provides that a social media platform that violates subdivision (a) of Section 1714 and breaches its responsibility of ordinary care and skill to a child is, in addition to any other remedy, liable for statutory damages for the larger of the following:
 - a. \$5,000 per violation up to a maximum, per child, of \$1,000,000.
 - b. Three times the amount of the child's actual damages.
 - 3) Makes waivers of the bill's provisions void and unenforceable.
 - 4) Defines:
 - a. "Child" as a minor under 18 years of age.
 - b. "Social media platform" as a social media platform, as defined in Section 22675 of the Business and Professions Code (see below), that generates more than \$100,000,000 per year in gross revenues.
 - 5) States that the duties, remedies, and obligations imposed by the bill are cumulative to the duties, remedies, or obligations imposed under other laws and shall not be construed to relieve a social media platform from any duties, remedies, or obligations imposed under any other law.
 - 6) Contains a severability clause and clarifies that its provisions do not apply to cases pending before January 1, 2026.

EXISTING LAW:

- 1) 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).)
- 2) 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.

- c. Populate a list of other users with whom an individual shares a social connection within the system.
 - d. 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(f).)
- 3) Provides that everyone is responsible, not only for the result of their willful acts, but also for an injury occasioned by their want of ordinary care or skill in the management of their property or person, except so far as the latter has, willfully or by want of ordinary care, brought the injury upon themselves. (Civ. Code § 1714(a).)

COMMENTS:

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

AB 2 amends Section 1714 of the Civil Code by adding statutory damages against platforms that are found in court to be liable under current law for negligently causing harm to children under the age of 18. Under the bill, if a company is proven to have failed to exercise its already established duty of operating with ordinary care, the company becomes financially liable for a set amount of \$5,000 per violation, up to a maximum penalty of \$1 million per child, or three times the amount of the child’s actual damages, whichever is applicable. This financial liability aims to incentivize platforms who count their profits in the tens of billions to proactively safeguard children against potential harm by changing how they operate their platforms.

2) **Social media’s impact on children.** In May 2023, U.S. Surgeon General Vivek Murthy issued an advisory warning of the potential mental health impacts of social media on young people.¹ The advisory calls for more research and concludes that while “the 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 profound risk of harm to the mental health and well-being of children and adolescents.”²

According to the Surgeon General, adolescents, in a critical formative period of brain development, are especially vulnerable to potential mental health impacts of social media.³ While noting that several complex factors shape social media’s influence on children and adolescents, the Surgeon General points to two primary risk factors: 1) harmful content, and 2) excessive and problematic use.

Harmful content. According to the Surgeon General, “extreme, inappropriate, and harmful content continues to be easily and widely accessible by children and adolescents” and is “spread

¹ “Social Media and Youth Mental Health: The U.S. Surgeon General’s Advisory” (May 23, 2023) p. 6 (emphasis added), <https://www.hhs.gov/sites/default/files/sg-youth-mental-health-social-media-advisory.pdf>. (“Surgeon General’s Advisory”)

² *Id.* at p. 4.

³ “Extractive Technology is Damaging our Attention and Mental Health,” Center for Humane Technology, <https://www.humanetech.com/attention-mental-health>.

through direct pushes, unwanted content exchanges, and algorithmic designs.”⁴ Such content includes:

- Extreme content such as live depictions of self-harm acts, like asphyxiation or cutting, “which can normalize such behaviors, including through the formation of suicide pacts and posing of self-harm models for others to follow.”⁵
- Bullying and harassment: roughly two-thirds of adolescents are “often” or “sometimes” exposed to hate-based content, with nearly 75% of adolescents stating that social media sites do a fair to poor job of addressing online harassment and bullying.⁶
- Predatory behaviors, including financial or sexual exploitation of children and adolescents; nearly 6-in-10 adolescent girls surveyed had received unwanted advances from strangers on social media platforms.⁷

Leaked internal platform studies indicate that youth exposure to unwanted, disturbing, graphic, or sexual content is common and facilitated by platform design.⁸ According to documents obtained by the *Wall Street Journal*, one in eight users under the age of 16 experienced unwanted sexual advances on Instagram, facilitated by lax privacy settings.⁹

Additionally, the advisory cites a synthesis of 20 studies demonstrating that many users, especially adolescent girls, experience envy and social comparison, leading to body dissatisfaction, disordered eating behaviors, and low self-esteem. “When asked about the impact of social media on their body image, nearly half (46%) of adolescents aged 13–17 said social media makes them feel worse, 40% said it makes them feel neither better nor worse, and only 14% said it makes them feel better.”¹⁰ Internal studies by platforms also indicate similar patterns of social comparison, with negative effects on wellbeing.¹¹ In an internal Meta study, younger and female users reported much greater rates of feeling “worse about yourself because of other

⁴ Surgeon General’s Advisory, *supra*, at p. 8.

⁵ *Ibid.*

⁶ Alhaji et al., “Cyberbullying, Mental Health, and Violence in Adolescents and Associations With Sex and Race: Data From the 2015 Youth Risk Behavior Survey” *Global pediatric health* (2019), <https://journals.sagepub.com/doi/10.1177/2333794X19868887>; Vogels, “Teens and Cyberbullying,” Pew Research Center: *Internet, Science & Tech* (2022), <https://www.pewresearch.org/internet/2022/12/15/teens-and-cyberbullying-2022/>.

⁷ Nesi, et al. “Teens and mental health: How girls really feel about social media” Common Sense Media (2023), <https://www.commonsensemedia.org/research/teens-and-mental-health-how-girls-really-feel-about-social-media>.

⁸ “Minnesota Attorney General’s Report on Emerging Technology and Its Effects on Youth Well-Being” (Feb. 2025), p. 10-11. https://www.ag.state.mn.us/Office/Reports/EmergingTechnology_2025.pdf. (“Minnesota Attorney General’s Report”)

⁹ Jeff Horwitz, “His Job Was to Make Instagram Safe for Teens. His 14-Year-Old Showed Him What the App Was Really Like” *The Wall Street Journal* (Nov. 2, 2023), https://www.wsj.com/tech/instagram-facebook-teens-harassment-safety-5d991be1?mod=hp_feats_pos3.

¹⁰ Bickham et al., “Adolescent Media Use: Attitudes, Effects, and Online Experiences” Boston Children’s Hospital Digital Wellness Lab (2022), https://digitalwellnesslab.org/wpcontent/uploads/Pulse-Survey_Adolescent-Attitudes-Effectsand-Experiences.pdf.

¹¹ Minnesota Attorney General’s Report, *supra*, p. 11-12.

peoples’ posts on Instagram,” with 27.4% of 13-15 year old females reporting this experience over a 7-day period, compared to 14.6% of males in the same age group.¹²

Excessive and problematic use. The advisory cites studies showing that on a typical weekday, nearly one in three adolescents report using screens – most commonly social media – until midnight or later.¹³ One third or more of girls aged 11-15 feel “addicted” to certain platforms. Excessive use correlates with attention problems, feelings of exclusion, and sleep problems.¹⁴ Poor sleep, in turn, is linked with neurological development issues, depression, and suicidality.¹⁵ These findings are borne out by the observations of platforms themselves: internal Meta research detailed in a recent lawsuit concluded that “when social media use displaces sleep in adolescents, it is negatively correlated to indicators of mental health.”¹⁶

Excessive use is driven in part by systems that are optimized to maximize user engagement through design features, such as recommendation algorithms, likes, push notifications, auto-play, and endless scroll.¹⁷ According to a former social media company executive’s statements, such features were designed intentionally to increase time spent through features that “give you a little dopamine hit every once in awhile.”¹⁸ These features “can trigger pathways comparable to addiction.”¹⁹ Young people with still-developing pre-frontal cortexes who crave social reward and lack inhibition are especially susceptible.²⁰

3) **Negligence.** Civil Code section 1714(a) provides: “Everyone is responsible, not only for the result of his or her willful acts, but also for an injury occasioned to another by his or her want of ordinary care or skill in the management of his or her property or person, except so far as the latter has, willfully or by want of ordinary care, brought the injury upon himself or herself.” To establish negligence, “the plaintiff must show that the defendant had a duty to use due care, that he breached that duty, and that the breach was the proximate or legal cause of the resulting injury.”²¹ “A duty exists only if ‘the plaintiff’s interests are entitled to legal protection against the defendant’s conduct.’”²² “[A]s a general matter, there is no duty to act to protect others from the conduct of third parties.”²³ However, “[i]n a case involving harm caused by a third party, a person may have an affirmative duty to protect the victim of another’s harm if that person is in what the law calls a ‘special relationship’ with either the victim or the person who created the

¹² *Arizona et al. v. Meta Platforms, Inc., et al.*, Case No. 4:23-cv-05448, Complaint (N.D. Cal. Oct. 24, 2023), <https://storage.courtlistener.com/recap/gov.uscourts.nmd.496039/gov.uscourts.nmd.496039.36.2.pdf>.

¹³ Rideout, V., & Robb, M. B. “Social media, social life: Teens reveal their experiences” Common Sense Media (2018), <https://www.commonsensemedia.org/sites/default/files/research/report/2018-social-mediasocial-life-executive-summary-web.pdf>.

¹⁴ Surgeon General’s Advisory, *supra*, at p. 10.

¹⁵ *Ibid.*

¹⁶ *Arizona et al. v. Meta Platforms, Inc., supra.*

¹⁷ Burhan & Moradzadeh, “Neurotransmitter Dopamine and its Role in the Development of Social Media Addiction” 11 Journal of Neurology & Neurophysiology 507 (2020), <https://www.iomcworld.org/open-access/neurotransmitter-dopamine-da-and-its-role-in-the-development-of-social-mediaaddiction.pdf>.

¹⁸ Alex Hern, ‘Never get high on your own supply’ – why social media bosses don’t use social media,” *The Guardian* (Jan. 23, 2018), <https://www.theguardian.com/media/2018/jan/23/never-get-high-on-your-own-supply-why-social-media-bosses-dont-use-social-media>.

¹⁹ Surgeon General’s Advisory, *supra*, at p. 9.

²⁰ *Ibid.*

²¹ *Nally v. Grace Community Church* (1988) 47 Cal.3d 278, 292.

²² *Brown v. USA Taekwondo* (2021) 11 Cal.5th 204, 213, internal quotes omitted.

²³ *Id.* at p. 214.

harm.”²⁴ A special relationship “‘gives the victim a right to expect’ protection from the defendant, while a special relationship between the defendant and the dangerous third party is one that ‘entails an ability to control [the third party’s] conduct.’”²⁵

4) This bill augments liability for social media platforms that negligently harm children.

This bill provides that a social media platform that violates Section 1714(a) and breaches its responsibility of ordinary care and skill to a child – defined as a minor under 18 years of age – is, in addition to any other remedy, liable for statutory damages for the larger of:

- \$5,000 per violation up to a per-child maximum of \$1,000,000; or
- Three times the amount of the child’s actual damages.

A social media platform for these purposes is one that meets an existing statutory definition and generates more than \$100,000,000 per year in gross revenues. The bill would also provide that any waivers of the bill’s provisions are void and unenforceable as contrary to public policy.

The bill is identical to last year’s AB 3172 as it passed this Committee, by an 11-0 vote. The bill was amended in Senate Appropriations to apply only to knowing and willful failure to exercise ordinary care to a child, cap statutory damages at \$250,000, and require no less than 51% of the penalties to go to a state fund dedicated to raising awareness among adolescents on safe social media use. The bill was moved to the Senate’s inactive file.

5) Constitutional considerations. Opponents of the bill raise concerns relating to freedom of speech and federal preemption.

First Amendment. The United States and California Constitutions prohibit abridging, among other fundamental rights, freedom of speech.²⁶ “The Free Speech Clause of the First Amendment . . . can serve as a defense in state tort suits.”²⁷ “[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.”²⁸ Additionally, “the creation and dissemination of information are speech”²⁹ 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.³⁰

Laws that are not content specific are generally subject to “intermediate scrutiny,” which requires that the law “be ‘narrowly tailored to serve a significant government interest.’”³¹ 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.’”³² This bill does not

²⁴ *Id.* at p. 215.

²⁵ *Id.* at p. 216.

²⁶ U.S. Const., 1st and 14th Amends; Cal. Const. art. I, § 2.

²⁷ *Snyder v. Phelps* (2011) 562 U.S. 443, 451.

²⁸ *Joseph Burstyn v. Wilson* (1952) 343 U.S. 495, 503.

²⁹ *Sorrell v. IMS Health Inc.* (2011) 564 U.S. 552, 570.

³⁰ *Ibid.*

³¹ *Packingham v. North Carolina* (2017) 582 U.S. 98, 98.

³² *McCullen v. Coakley* (2014) 573 U.S. 464, 486, emphasis added.

regulate expression; it augments liability for large platforms that violate an existing duty and harm children.

Federal preemption. Section 230(c)(1) of the federal Communications Decency Act of 1996 shields online platforms from liability for third-party content: “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.”³³ This provision has been hailed as the law that created the modern internet, fostering free expression online and allowing an array of innovative services and spaces to flourish, from search engines to social media.³⁴ It has also come with a destructive side, absolving platforms of responsibility for virtually all third-party harms arising from the use of their services – “a protection not available to print material or television broadcasts.”³⁵

Section 230 was intended to promote investment in online companies and encourage “‘Good Samaritan’ blocking and screening of offensive material”³⁶ without fear of liability for defamation.³⁷ Courts soon adopted an expansive interpretation – a key early decision construed “publisher” immunity as encompassing “traditional editorial functions” such as deciding whether to publish, remove, or even alter content.³⁸ Consequently, the plaintiff, a victim of online defamation by an anonymous user, had no recourse against the platform despite its failure to timely remove the content, which would have resulted in liability in the offline world. Following this logic, courts have extended Section 230 well beyond the defamation context, routinely concluding that online intermediaries are not liable for harms related to third-party illicit content.³⁹ “The common thread weaving through these cases is that the courts have sapped §230’s Good Samaritan concept of its meaning.”⁴⁰

This sweeping grant of immunity has been the subject of widespread criticism and calls for reform.⁴¹ Senators Lindsey Graham and Dick Durbin are planning to introduce a bill that would sunset Section 230.⁴² Justice Clarence Thomas has called for the Supreme Court to review the scope of Section 230.⁴³ Ninth Circuit Judge Ryan Nelson recently stated that courts have “stretch[ed] the statute’s plain meaning beyond recognition,” leading to “perverse effects.”⁴⁴ The

³³ 42 U.S.C. § 230(c)(1). Section 230 also (1) provides a safe harbor for good faith content moderation, (2) preempts contrary state laws, and (3) enumerates exemptions for enforcement of federal criminal statutes, intellectual property laws, communications privacy laws, and sex trafficking.

³⁴ See e.g., Kosseff, *The Twenty-Six Words that Created the Internet* (2019).

³⁵ Quinta Jurecic, “The politics of Section 230 reform: Learning from FOSTA’s mistakes” *Brookings* (Mar. 1, 2022), <https://www.brookings.edu/articles/the-politics-of-section-230-reform-learning-from-fostas-mistakes>.

³⁶ § 230(c).

³⁷ *Fair Hous. Council v. Roommates.com, LLC* (9th Cir. 2008) 521 F.3d 1157, 1163.

³⁸ *Zeran v. Am. Online, Inc* (4th Cir. 1997) 129 F.3d 327.

³⁹ Michael Rustad & Thomas Koenig, “The Case for a CDA Section 230 Notice-and-Takedown Duty” (2023) 23 Nev.L.J. 533, 561-574.

⁴⁰ Danielle Keats Citron, “How to Fix Section 230” (2023) 103 B.U.L. Rev. 713, 727.

⁴¹ E.g., John Lucas, “AG Moody Joins with Other Attorneys General to Urge Congress to Stop Protecting Illegal Activity on the Net,” *Capitolist* (May 23, 2019), <https://thecapitolist.com/ag-moody-joins-with-other-attorneys-general-to-urge-congress-to-stop-protecting-illegal-activity-on-the-net>.

⁴² Lauren Feiner, “Lawmakers are trying to repeal section 230 again” *The Verge* (Mar. 21, 2025), <https://www.msn.com/en-us/politics/government/lawmakers-are-trying-to-repeal-section-230-again/ar-AA1BptAI?ocid=BingNewsVerp>.

⁴³ *Doe ex rel. Roe v. Snap, Inc.* (2024) 144 S. Ct. 2493 (Thomas, J., dissenting from denial of certiorari).

⁴⁴ *Calise v. Meta Platforms, Inc.* (9th Cir. 2024) 103 F.4th 732, 747 (Nelson, J. concurring) (*Calise*).

Ninth Circuit “should revisit our precedent,” he urged, particularly in light of “artificial intelligence raising the specter of lawless and limitless protections.”⁴⁵

Courts have emphasized, however, that Section 230 immunity is not limitless.⁴⁶ Section 230 is not “an all-purpose get-out-of-jail-free card”⁴⁷ that “create[s] a lawless no-man’s-land on the internet.”⁴⁸ The Ninth Circuit has “consistently eschewed an expansive reading of the statute that would render unlawful conduct ‘magically . . . lawful when [conducted] online,’ and therefore ‘giv[ing] online businesses an unfair advantage over their real-world counterparts.’”⁴⁹

Under Ninth Circuit precedent, Section 230(c)(1) immunity exists for “(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.”⁵⁰ With respect to the third prong, Section 230 protection extends only to claims that “derive[] from the defendant’s status or conduct as a publisher or speaker.”⁵¹ If, instead, the claim “springs from something separate from the defendant’s status as a publisher, such as from . . . obligations the defendant has in a different capacity,” Section 230 immunity does not apply.⁵² Examples of such cases involving negligence include:

- A networking website owner’s negligent failure to warn a woman who was raped by two users of the website who posed as talent scouts to lure her to a fake audition, where it was alleged that an outside source had informed the owner about the predatory scheme.⁵³
- Snap’s allegedly defectively-designed app, which promoted content that encouraged two teen boys who died in a high-speed car accident to drive at dangerous speeds.⁵⁴

While these cases are highly fact-specific and there are precedents to the contrary,⁵⁵ these cases show that negligence claims against social media platforms can survive a Section 230 defense.

6) **Amendments.** The author has agreed to the following technical clean-up amendments:

(a) A social media platform that violates subdivision (a) of Section 1714 ~~and breaches its responsibility of ordinary care and skill~~ **by causing injury** to a child shall, ~~in addition to any other remedy,~~ be liable for statutory damages for the larger of the following:

[. . .]

(b) Any waiver of this ~~subdivision~~ **section** shall be void and unenforceable as contrary to public policy.

⁴⁵ *Ibid.*

⁴⁶ *Calise, supra*, 103 F.4th at p. 739, citing cases.

⁴⁷ *Doe v. Internet Brands, Inc.* (9th Cir. 2016) 824 F.3d 846, 853.

⁴⁸ *HomeAway.com v. City of Santa Monica* (9th Cir. 2018) 918 F.3d 676, 683.

⁴⁹ *Ibid.*

⁵⁰ *Barnes v. Yahoo!, Inc.* (9th Cir. 2009) 570 F.3d 1096, 1109.

⁵¹ *Id.* at p. 1102.

⁵² *Calise, supra*, 103 F.4th at p. 742.

⁵³ *Doe v. Internet Brands, Inc., supra*, 824 F.3d at pp. 852-853.

⁵⁴ *Leemmon v. Snap, Inc.* (9th Cir. 2021) 995 F.3d 1085, 1092.

⁵⁵ *Doe v. MySpace, Inc.* (5th Cir. 2008) 528 F.3d 413.

[. . .]

ARGUMENTS IN SUPPORT: The Los Angeles County Office of Education, co-sponsors of the bill, write:

Social media platforms must be held accountable for the harm they cause, particularly to minors who are uniquely vulnerable to the harmful effects of online engagement. Research has repeatedly shown the detrimental impact of social media on young people's mental health, contributing to a range of issues, including increased instances of cyberbullying, mental health crises, and even acts of violence.

While social media platforms prioritize user engagement and growth, they often fail to adequately consider the safety and wellness of younger users. Given this imbalance, it is crucial that social media companies are required to uphold a standard of ordinary care in their management of content and interactions involving minors. This bill would establish much-needed accountability by holding social media platforms liable for civil penalties if they fail to exercise the necessary care to protect children on their platforms.

Just as institutions and businesses serving youth are held accountable for ensuring the safety and well-being of their patrons, social media companies should be held to the same standard. AB 2 represents an important step toward protecting the mental and physical health of children and ensuring that platforms act responsibly toward the younger population that depends on them.

Children's Advocacy Institute writes:

Making platforms pay more if a court finds they have negligently hurt children is not in any way, shape, or form burdensome or unfair to stubbornly bad acting platforms. As the former, long-time Chair of the Orange County Republican Party, Fred Whitaker, wrote in supporting a similar bill before this Committee last year:

Thus, all the opposition to this bill needs to do to avoid any prospect of liability under the bill is simply exercise reasonable care not to harm children. Surely, a company like Meta which in 2021 earned an incredible \$100 billion profit (General Motors which we used to think of as a big company earned 10 billion) can afford to exercise such care. If it doesn't, it should pay for the harm it causes.

That's the American way.

ARGUMENTS IN OPPOSITION: In opposition to the bill, TechNet, California Chamber of Commerce, and Computer and Communications Industry Association jointly write:

To the extent this bill provides an incentive for platforms to change their policies and features, the extreme risk of liability will likely result in companies severely limiting or completely eliminating online spaces for teens.

Litigation leads to uneven and inconsistent outcomes, with different companies choosing to limit the immense exposure this bill will create in different ways. There are two main ways

platforms could respond to the vague requirements and extreme liability in this bill, neither of which are good outcomes for teens.

First, companies could adjust their policies and terms of service to exclude all users under the age of 18. This would be a tremendous and detrimental blow to teens' ability to access information and the open internet. As discussed below, this violates First Amendment principles and protections for teens. However, even if a platform stated in its terms of service that teens under 18 were not allowed on the platform and took steps to prevent their access, that may not be enough to avoid liability for a teen who accesses the site anyway and has a negative outcome.

Second, companies could also adjust their terms of service so that users under the age of 18 have a heavily sanitized version of the platform. This could include limiting which users teens can interact with (e.g. only users approved by parents), which features they have access to (no messaging or public posting), and even what content they can interact with or view (no political, news, or other "potentially harmful" content). This might reduce but would not prevent every instance of harm to teens given the nebulosity and subjectivity that is inherent in defining "harm".

This bill's implicit concern is harmful content. It is impossible for companies to identify and remove every potentially harmful piece of content because there's no clear consensus on what exactly constitutes harmful content, apart from clearly illicit content. Determining what is harmful is highly subjective and varies from person to person, making it impossible to make such judgments on behalf of millions of users. Faced with this impossible task and the liability imposed by this bill, some platforms may decide to aggressively over restrict content that could be considered harmful for teens. For instance, content promoting healthy eating could be restricted due to concerns it could lead to body image issues. Similarly, content about the climate crisis or foreign conflicts would need to be restricted as it could lead to depression, anxiety, and self-harm. Additionally, beneficial information like anti-drug or smoking cessation programs, mental health support, and gender identity resources could get overregulated because of the impossibility of deciding what is harmful to every user.

Furthermore, platforms would need to evaluate whether to eliminate fundamental features and functions of their platform, features that are the reason teens and users go to their platforms, due to the legal risk involved. For instance, since direct messaging features could potentially be misused for contacting and bullying other teens, such features would likely be removed.

Teens' use of these platforms would be overly policed and sanitized to such a degree that they would surely leave our sites in favor of others that don't meet AB 2's \$100 million revenue threshold. Collectively, our organizations represent platforms that take their responsibility to their users incredibly seriously and have devoted millions of dollars to increasing the safety and enjoyment of their platforms. Teens will seek out the ability to interact online, whether it is on our platforms or on others, including ones that don't prioritize their safety and well-being.

Electronic Frontier Foundation adds:

The heavy statutory damages imposed by A.B. 2 will result in broad censorship via scores of lawsuits that may claim any given content online is harmful to any child. California should not enact a law that would be more harmful to children and will not be enforceable in any event. Further, should it become law, it will also be ineffective because federal law preempts Californian's ability to hold online services civilly liable for harm caused by user-generated content.

REGISTERED SUPPORT / OPPOSITION:

Support

Common Sense Media
Los Angeles County Office of Education (Sponsor)
California Charter Schools Association
Childrens Advocacy Institute
Jewish Family and Children's Services of San Francisco, the Peninsula, Marin and Sonoma Counties
Organization for Social Media Safety

Opposition

CalChamber
Computer & Communications Industry Association
Electronic Frontier Foundation
Technet-technology Network

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