Date of Hearing: April 16, 2024

ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION
Rebecca Bauer-Kahan, Chair
AB 3172 (Lowenthal) – As Amended March 21, 2024

AS PROPOSED TO BE AMENDED

SUBJECT: Social media platforms: injuries to children: damages

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, sponsored by Common Sense Media, provides that a social media platform that violates this duty and harms a minor is additionally liable for either $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 supported by, among others, Children's Advocacy Institute and Parents Against Social Media Addiction. 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, including Technet, Netchoice, and Electronic Frontier Foundation, 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.

Committee amendments clarify that a finding of negligence is a predicate for the application of the new statutory damages, and that the bill does not apply to litigation pending prior to its effective date.

SUMMARY: Makes social media platforms liable for specified damages in addition to any other remedy provided by law, if the platform fails to exercise ordinary care or skill toward a child. Specifically, **this bill**:

1) Finds and declares:

    a) The biggest social media platforms invent and deploy features they know injure large numbers of children, including contributing to child deaths.

    b) The costs of these injuries are unfairly being paid by parents, schools, and taxpayers, not the social media platforms.

    c) The bill is necessary to ensure that the social media platforms that are causing the most severe injuries to the largest number of children are more financially motivated than they have been previously to prevent injury from occurring to children.

2) Provides that a social media platform that violates its responsibility of ordinary care and skill to a child—defined as a minor under 18 years of age—shall, in addition to any other remedy, be liable for damages in the amount of either $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.

3) Provides that waivers of 2) are void and unenforceable as contrary to public policy.

4) Specifies that the duties, remedies, and obligations imposed under the bill are cumulative and must not be construed to relieve a social media platform from any duties, remedies, or obligations imposed under any law.

5) Contains a severability clause.

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) Exempts from Section 230 protection violations of federal criminal law; intellectual property law; state law that is consistent with Section 230; communications privacy law; and sex trafficking law. (47 U.S.C. § 230(e).) 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).)

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).)

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

COMMENTS:

1) **Social media harms to children.** 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."[1]

According to the recent U.S. Surgeon General's advisory 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.[2]

Whereas the European Union requires platforms to take down certain illegal content, Section 230 of the Communications Decency Act of 1996 provides civil immunity for online platforms based on third-party content and for the removal of content in certain circumstances.[3] 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."[4] 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.[5] 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.[6] Many social media platforms use algorithms that are carefully calibrated to continually mesmerize

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[1] 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/.
[2] *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.
[3] 47 U.S.C. § 230.
[4] *Section 230—Nurturing Innovation or Fostering Unaccountability* (June, 2020), https://www.justice.gov/ag/file/1072971/dl?inline=.
[5] 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) N.Y. Times, https://www.nytimes.com/2022/05/19/health/pills-fentanyl-social-media.html.
[6] 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/1CC67609A12E9A912BB8A291FDFFE799/share/08cfe97de12fef45b5175836cfd00d3941a74b78

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."[7] 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.[8]

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.[9] 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 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.[10]

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.[11] 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.

2) **Author's statement.** The author writes:

AB 3172 amends Section 1714 only 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

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[7] Tolentino, *How TikTok holds our attention* (Sep. 23, 2019), New Yorker https://www.newyorker.com/magazine/2019/09/30/how-tiktok-holds-our-attention.
[8] *Ethics of the Attention Economy: The Problem of Social Media Addiction*, *supra*.
[9] Center for Humane Technology, *Extractive Technology is Damaging our Attention and Mental Health*, https://www.humanetech.com/attention-mental-health.
[10] *Social Media and Youth Mental Health*, *supra*, p. 4.
[11] *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.

platforms who count their profits in the tens of billions to proactively safeguard children against potential harm by changing how they operate their platforms.

3) **Enhanced liability for 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." This bill amends that section to provide that a social media platform that violates its responsibility of ordinary care and skill to a child—defined as a minor under 18 years of age—shall, in addition to any other remedy, be liable for damages in the amount of either $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. The bill would also provide that any waivers of this liability exposure are void and unenforceable as contrary to public policy.

The bill closely tracks a recently proposed ballot measure and is kindred with a number of bills in recent years that have sought to situate social media platform liability in tort law by expressly delineating a duty of care.[12] AB 2408 (Cunningham, 2022), for example, would have prohibited a social media platform from using a design, feature, or affordance that the platform knows, or should know by the exercise of reasonable care, causes a child user to become addicted to the platform. The bill was held in the Senate Appropriations Committee. SB 287 (Skinner, 2023) and SB 680 (Skinner, 2023) similarly would have prohibited a social media platform from using a design, algorithm, or feature that the platform knows or reasonably should have known causes a child user to inflict harm on themselves or others, develop an eating disorder, or experience addiction to the social media platform. SB 287 made it to the Senate floor but was not brought up for a vote, and SB 680 was held in the Assembly Appropriations Committee.

While section 1714 applies to both negligent and intentional conduct, the authors and sponsors focus liability arising from a showing of negligence under that section. "To establish a cause of action for 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."[13]

Opponents point out that the provision that imposes additional damages for $5,000 per violation, technically speaking, does not require harm. However, the intent of the author and sponsors is that the additional liability under this bill is predicated on a finding of negligence under section 1714(a). Author's amendments, set forth below, resolve this ambiguity.

4) **Duty of care.** Absent a statutory duty of care, California courts apply section 1714's general duty of ordinary care and skill unless "foreseeability and policy considerations justify a categorical no-duty rule."[14] The test for determining whether section 1714's application should be limited in a particular case is as follows:

> [T]he foreseeability of harm to the plaintiff, the degree of certainty that the plaintiff suffered injury, the closeness of the connection between the defendant's conduct and the injury

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[12] Legislative Analyst's analysis of A.G. File No. 2023-035 (Feb. 6, 2024), https://lao.ca.gov/BallotAnalysis/Initiative/2023-035.
[13] *Hacala v. Bird Rides, Inc*. (2023) 90 Cal.App.5th 292, 310.
[14] *Cabral v. Ralphs Grocery Co*. (2011) 51 Cal.4th 764, 772.

> suffered, the moral blame attached to the defendant's conduct, the policy of preventing future harm, the extent of the burden to the defendant and consequences to the community of imposing a duty to exercise care with resulting liability for breach, and the availability, cost, and prevalence of insurance for the risk involved.[15]

Contending, correctly, that social media companies owe children—and for that matter, adults—a duty of care under common law principles, the author and sponsors point to pending superior court cases that have found that negligence actions under section 1714 against social media platforms were not barred as a matter of law.[16] But, as they recognize, many cases against social media platforms will not make it past the formidable hurdles posed by federal and constitutional law—namely, Section 230 of the Communications Decency Act and the First Amendment to the United States Constitution.

5) **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."[17] 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."[18] 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."[19]

Through this statute, "Congress intended to create a blanket immunity from tort liability for online republication of third party content."[20] "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."[21]

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."[22] *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.[23] 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

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[15] *Rowland v. Christian* (1968) 69 Cal.2d 108, 113.
[16] *Social Media Cases*, Judicial Council Coordination Case No. JCCP 5255 (Los Angeles Superior Court), October 2023; *Neville v. Snap, Inc*., Case No. 22STCV33500 (Los Angeles Superior Court), January 2024.
[17] 47 U.S.C. § 230(c)(1).
[18] *Id.* at § 230(c)(2)(A)
[19] *Id.* at (e)(3).
[20] *Barrett v. Rosenthal* (2006) 40 Cal.4th 33, 57.
[21] *The Case for a CDA Section 230 Notice-and-Takedown Duty*, *supra*, 23 Nev.L.J. at p. 536.
[22] *Id.* at pp. 1100-1101.
[23] *Id.* at p. 1109.

publisher or speaker of third party content, but rather the counter-party to a contractor, as a promisor who has breached."[24]

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.'"[25] 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."[26]

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 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."[27] 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."[28]

These precedents show that social media platforms continue to have a duty of care to users and that negligence claims arising from a platform's independent conduct are compatible with Section 230. Indeed, such conduct, rather than the content on social media platforms, is what the bill seeks to address. The bill's findings and declarations state that "[t]he biggest social media platforms invent and deploy features they know injure large numbers of children, including contributing to child deaths."

Nevertheless, a coalition of opponents argues:

> This bill creates liability for platforms based on third party content by applying to any feature that allows users to encounter content. It effectively assumes that all features are harmful and imposes liability on a site for offering any of those features to children. Platforms' algorithms and features that allow users to encounter or share content from other users are inextricably linked to the underlying content. Therefore, by imposing liability on platforms for these features, AB 3172 conflicts with Section 230 and is likely preempted.

The contention that the bill "effectively assumes that all features are harmful" is addressed in the committee amendments that clarify that a finding of negligence—an element of which is harm—is the predicate for the augmented liability this bill provides.

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[24] *Id.* at p. 1107, emphasis added.
[25] *Id.* at p. 1092.
[26] *Id.* at p. 1089, internal quotation marks and brackets omitted.
[27] *Id.* at p. 1092, citing *Barnes*, *supra*, 570 F.3d at 1107.
[28] *Ibid.*

6) **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."[29] "[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."[30] "[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."[31] Additionally, "the creation and dissemination of information are speech . . . ."[32] 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.[33]

At the threshold, the bill does not directly restrict speech. Opponents argue, however, that "the extreme risk of liability will likely result in companies severely limiting or completely eliminating online spaces for teens." In their view:

> AB 3172 is unconstitutional because it imposes liability on social media platforms for whether certain types of third-party content are shown to child users, as well as the expressive choices social media platforms make in designing the user experience. This violates the First Amendment rights of both minors and social media platforms. Courts have repeatedly upheld and protected platforms' First Amendment rights to decide how to moderate and present content on their platforms. Likewise, because the bill would result in limited or restricted access to teens, it infringes upon their First Amendment rights to receive information and express themselves.

Arguably, by increasing a platform's exposure to liability, the bill ups the stakes of litigation and thus gives more leverage to injured plaintiffs seeking redress. Such power could, depending on the facts of a given case, lead to more aggressive content moderation, interfering with young social media users' communication and consumption of information.

Applying a First Amendments analysis, the bill does not, on its face, concern any particular type of content and thus it appears the bill would, at most, be subject to "intermediate scrutiny," which requires that the law "be 'narrowly tailored to serve a significant government interest.'"[34] 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.' "[35]

The bill certainly serves an important government interest by protecting children from addiction and emotional harm. And, again, the bill does not "regulate" speech; any burden imposed on speech would result from the social media platform's own content moderation. Presumably this would begin with filtering the most odious content—the very result the sponsors are seeking. Opponents warn that platforms, faced with enormous exposure to liability, may feel they have no choice but to dramatically restrict content or cease operations for minors. This seems to tacitly

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[29] *Snyder v. Phelps* (2011) 562 U.S. 443, 451.
[30] *Ashcroft v. American Civil Liberties Union* (2002) 535 U.S. 564, 573.
[31] *Joseph Burstyn v. Wilson* (1952) 343 U.S. 495, 503.
[32] *Sorrell v. IMS Health Inc.* (2011) 564 U.S. 552, 570.
[33] *Ibid.*
[34] *Packingham v. North Carolina* (2017) 582 U.S. 98, 98.
[35] *McCullen v. Coakley* (2014) 573 U.S. 464, 486.

concede that current practices are resulting in widespread harms—the very reason the sponsors introduced this bill.

One thing the parties agree on is that the bill's application will be resolved in court. The author and sponsors write:

> Ultimately, liability will depend on whether the harms to children were caused by the social media companies' unilateral conduct (then the claims would not be barred), or third party content of users (then the claims may be barred). But it will be left to the courts to decide. This is the law today. AB 3172 changes none of this. What it does do, in response to the damage knowingly and admittedly being done to an entire generation of children by just a handful of companies that are earning enormous profits off of children and teen users, is to use financial incentives to prompt these few companies to be more careful.

7) **Committee amendments.** As discussed above, opponents have raised concerns that the bill would impose statutory damages in the absence of a finding of harm. Because this is not the author's intention, the author has agreed to amend the bill to clarify that a violation of section 1714(a) is the predicate for the imposition of additional liability under the bill. Additionally, in lieu of amending section 1714, which is a longstanding statute with a large body of case law, the amendments would instead add a new section in the same area of the code. That section will read as follows:

> SEC. 2 Section 1714.02 is added to the Civil Code:
>
> **1714.02** ***(a) A social media platform that violates Section 1714, subdivision (a) and breaches its responsibility of ordinary care and skill to a child shall, in addition to any other remedy, be liable for statutory damages for the larger of the following:***
>
> ***(1) Five thousand dollars ($5,000) per violation up to a maximum, per child, of one million dollars ($1,000,000).***
>
> ***(2) Three times the amount of the child's actual damages.***
>
> ***(b) Any waiver of this subdivision shall be void and unenforceable as contrary to public policy.***
>
> ***(c) For the purpose of this subdivision the following definitions apply:***
>
> ***(1) "Child" means a minor under 18 years of age.***
>
> ***(2) "Social media platform" means a platform as defined in Section 22675 of the Business and Professions Code that generates more than one hundred million dollars ($100,000,000) per year in gross revenues.***
>
> ***(d) The duties, remedies, and obligations imposed by this subdivision are cumulative to the duties, remedies, or obligations imposed under other law and shall not be construed to relieve a social media platform from any duties, remedies, or obligations imposed under any other law.***

Additionally, to ensure there is no confusion about how the bill applies, the author has offered to amend the bill to clarify that it does not apply to cases pending before January 1, 2025.

Finally, the author wishes to amend the bill to make the following changes to the findings and declarations section:

SECTION 1. The people of the State of California find as follows:

(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.

~~(a)~~ ***(c)*** The biggest social media platforms invent and deploy features they know injure large numbers of children, including contributing to child deaths.

~~(b)~~ ***(d)*** The costs of these injuries are unfairly being paid by parents, schools, and taxpayers, not the ~~social media~~ platforms.

~~(c)~~ ***(e)*** This act is necessary to ensure that the social media platforms that are ***knowingly*** causing the most severe injuries to the largest number of children ~~are more financially motivated than they have been previously~~ ***receive heightened damages*** to prevent injury from occurring to ~~children~~ ***in the first place.***

Related legislation. SB 680 (Skinner, 2023) would have prohibited a social media platform from using a design, algorithm, or feature that the platform knows or reasonably should have known causes a child user to inflict harm on themselves or others, develop an eating disorder, or experience addiction to the social media platform. That bill was held on Appropriations Committee suspense file.

SB 287 (Skinner, 2023) was substantially similar to SB 680. That bill was not taken up for a vote on the Senate Floor.

AB 1394 (Wicks, Chap. 579, Stats. 2023) requires social media platforms to provide a mechanism for users to report child sexual abuse material in which they are depicted, and provides platforms 30-60 days after receiving a report to verify the content of the material and block it from reappearing. The bill also provide victims of commercial sexual exploitation the right to sue social media platforms for deploying features that were a substantial factor in causing their exploitation.

AB 2408 (Cunningham, 2022) would have prohibited a social media platform from using a design, feature, or affordance that the platform knows, or should know by the exercise of reasonable care, causes a child user to become addicted to the platform. The bill was held on the Senate Appropriations Committee suspense file.

ARGUMENTS IN SUPPORT: Children's Advocacy Institute writes:

> All a platform needs to do to avoid any possibility of liability under AB 3172 is do what they should be doing anyway, what every other company does all day and every day, and that is act with what the law describes as merely "ordinary care." We urge you and your colleagues

> to vote to save an entire generation of children from the greed of just a few corporations that could – but refuse – to make their products safe for children. Unless and until the profit is taken out of harming children, the harm will endure and, with the expansion of AI, become worse.

Parents Against Social Media Addiction writes:

> Legislative action is needed, now more than ever. Social media companies have sued to block the implementation of a prior online child safety law (AB 2273 (2022, Wicks/Cunningham)). We must change the incentive structure, so that these companies have the financial incentive to design products that protect kids, rather than addict kids. AB 3172 is the most direct path to changing this incentive structure, and it would be difficult to successfully challenge in court.

ARGUMENTS IN OPPOSITION: Electronic Frontier Foundation writes:

> We respectfully oppose A.B. 3172, authored by Assemblymember Lowenthal, which would restrict all Californians' access to online information. Should it become law, it will also be ineffective because a federal law preempts Californians' ability to hold online services civilly liable for harm caused by user-generated content.
>
> A.B. 3172 would allow for plaintiffs suing online information providers to collect statutory damages of up to $1 million dollars based on the vaguest of claims that the service violated "its responsibility of ordinary care and skill to a child." To be sure, children can be harmed online. A.B. 3172, however, takes a deeply flawed and punitive approach to protecting children that will disproportionately harm everyone's ability to speak and to access information online.
>
> The heavy statutory damages imposed by A.B. 3172 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.

Chamber of Progress writes:

> As written, AB 3172 presents a significant challenge with its broad language and obscurely-defined parameters, holding covered platforms "liable for specific damages" and "injuries" if the platform "fails to exercise ordinary care or skill toward a child." Social media platforms serve as valuable tools for communication and connection. They take their responsibilities to keep young users safe, but they are not meant to replace parental guidance. While AB 3172's concern for young users are important considerations, in practice, its requirement would make each platform the arbiter of appropriate content for children of all age ranges and circumstances. Platforms would face difficult choices regarding what types of content to deem as causing "injury," resulting in excessive moderation and hesitation to deploy new features – including those aimed at improving online experiences for young people – in fear of potential litigation.

REGISTERED SUPPORT / OPPOSITION:

Support

Childrens Advocacy Institute
Common Sense Media
Jakara Movement
Jewish Family and Children's Services of San Francisco, the Peninsula, Marin and Sonoma Counties
Nextgen California
Parents Against Social Media Addiction (PASMA)
Parents Television and Media Council
1 Individual

Opposition

California Chamber of Commerce
Chamber of Progress
Computer and Communications Industry Association
Electronic Frontier Foundation
Netchoice
Technet

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