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## SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair  
2021 - 2022 Regular Session

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### AB 2408 (Cunningham) - Social media platform: child users: addiction

**Version:** June 30, 2022

**Urgency:** No

**Hearing Date:** August 1, 2022

**Policy Vote:** JUD. 8 - 0

**Mandate:** No

**Consultant:** Matthew Fleming

**Bill Summary:** AB 2408 would prohibit 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.

#### **Fiscal Impact:**

- **DOJ:** The Department of Justice reports costs of \$577,000 in Fiscal Year (FY) 2022-23 and \$1 million annually thereafter for additional staff resources to review complaints and leads, investigate potential violations, and bring enforcement actions (General Fund). The bill will also likely generate revenue in an unknown amount through the assessment and collection of penalties of up to \$250,000 per violation.
- **Judicial Branch:** Unknown, potentially significant cost pressures due to increased court workload to adjudicate violations of this bill in civil actions brought by the DOJ and/or local prosecutors (Special Fund – Trial Court Trust Fund, General Fund).

**Background:** In 2005, five percent of adults in the United States used social media. In just six years, that number jumped to half of all Americans. Today, over 70 percent of adults use at least one social media platform. Facebook alone is used by 69 percent of adults, and 70 percent of those adults say they use the platform on a daily basis.

However, this explosion is not limited to adults. Survey data found that overall screen use among teens and tweens increased by 17 percent from 2019 to 2021 with the number of hours spent online spiking sharply during the pandemic. A recent survey found almost 40 percent of tweens stated that they used social media and estimates from 2018 put the number of teens on the sites at over 70 percent.

Given the reach of social media platforms and the increasing role they play in many children's lives, concerns have arisen over the connection between social media usage and mental health.

This bill seeks to hold social media platforms accountable when they addict children to their platforms. It would make clear that the "want of ordinary care" described can include a social media platform's use of any design, feature, or affordance that causes a child user to become addicted the platform. The bill would authorize the Attorney General or a local prosecutor to bring actions for violations seeking civil penalties of up to \$25,000 per violation and an additional penalty of up to \$250,000 for knowing and willful violations.

**Proposed Law:**

- Provides that “want of ordinary care or skill” in Section 1714 includes a social media platform’s use of a design, feature, or affordance that causes a child user to become addicted to the platform. A child user, or their parent or guardian on their behalf, may file suit for a violation of this duty. In order to prevail, such plaintiff must prove by a preponderance of the evidence:
  - The design, feature, or affordance was a substantial factor in causing the child user’s addiction and harm;
  - It was reasonably foreseeable that the use of that design, feature, or affordance would addict and harm child users; and
  - The child user in such a suit became addicted and was therefore harmed.
- Authorizes a public prosecutor to bring an action for a violation and seek a civil penalty of up to \$25,000 per violation, litigation costs and reasonable attorneys’ fees, and an additional civil penalty of up to \$250,000 for a knowing and willful violation.
- Provides a minimum award of damages of \$1,000 for class members in a class action brought by an individual or public prosecutor.
- Provides that a social media platform can be subject to liability for conduct occurring before January 1, 2023. It can avoid such liability by ceasing development, design, implementation, or maintenance of features that were known, or should have been known, by the platform to be addictive to child users.
- Establishes a safe harbor from liability for civil penalties if the platform institutes and maintains a program of at least quarterly audits of its practices, designs, features, and affordances to detect practices or features that have the potential to cause or contribute to the addiction of child users. And, the platform corrects within an unspecified number of days of the completion of an audit any practice, design, feature, or affordance discovered by the audit to present more than a de minimis risk of violating this subdivision.
- Provides that it shall not be construed to impose liability for a social media platform for any of the following:
  - Content that is generated by a user of the service, or uploaded to or shared on the service by a user of the service, that may be encountered by another user, or other users, of the service;
  - Passively displaying content that is created entirely by third parties;
  - Information or content for which the social media platform was not, in whole or in part, responsible for creating or developing; or
  - Any conduct by a social media platform involving child users that would otherwise be protected by 47 U.S.C. 230, or by application of case law

interpreting the First Amendment of the United States Constitution or Section 2 of Article 1 of the California Constitution.

- Clarifies that it shall not be construed to negate or limit a cause of action that may have existed or exists against an operator and that it is cumulative to any other duties or obligations imposed under other laws. It provides that any waiver is unenforceable and void.

#### **Related Legislation:**

- SB 1056 (Umberg, 2022) requires a social media platform, as defined, to clearly and conspicuously state whether it has a mechanism for reporting violent posts, as defined; and allows a person who is the target, or who believes they are the target, of a violent post to seek an injunction to have the violent post removed. SB 1056 is currently in the Assembly Appropriations Committee.
- AB 587 (Gabriel, 2022) requires social media companies, as defined, to post their terms of service and report certain information to the Attorney General on a quarterly basis. AB 587 is currently pending before this Committee.
- AB 1628 (Ramos, 2022) requires online platforms to create and post a policy that includes policies regarding distribution of controlled substances and its prevention, reporting mechanisms, and resources. This bill is currently pending on the Senate Floor.
- AB 2273 (Wicks, 2022) would establish the California Age-Appropriate Design Code Act, placing a series of obligations and restrictions on businesses that provide online services, products, or features likely to be accessed by a child and would authorize the Attorney General (AG) to seek an injunction or civil penalty against any business that violates its provisions. AB 2273 is pending in this Committee.

#### **Staff Comments:**

- DOJ: The DOJ anticipates needing 5.0 permanent positions in order to implement AB 2408. The Consumer Protection Section within DOJ's Public Rights Division would be responsible for investigation and prosecution of complaints. Specifically, they anticipate requiring 2.0 Deputy Attorneys General, 1.0 Senior Legal Analyst, and 2.0 Legal Secretaries.
- Judicial Branch: It is unknown how many additional civil actions would be brought as a result of the implementation of this bill. However, it generally costs about \$8,000 to operate a courtroom for one eight-hour day. Consequently, if the DOJ filed suit under the provisions of this measure, that otherwise it would not be able to under existing law, and combined, those additional cases take 50 or more hours of court involvement, the cost pressures of this measure to the courts would surpass the Suspense File threshold.

Although courts are not funded on the basis of workload, increased pressure on the Trial Court Trust Fund and staff workload may create a need for increased funding for courts from the General Fund (GF) to perform existing duties. Numerous trial

court operations are funded through the imposition and collection of criminal fines and fees. However, the Legislature has reduced and eliminated criminal fines and fees over the past five years. As a result, the 2022-23 budget includes an ongoing annual allocation of \$151.5 million and a one-time allocation of \$10.3 million backfill from the General Fund in order to address declining revenue to the Trial Court Trust Fund.

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