
THIRD READING

Bill No: AB 587
Author: Gabriel (D), et al.
Amended: 8/11/22 in Senate
Vote: 21

SENATE JUDICIARY COMMITTEE: 9-0, 6/28/22
AYES: Umberg, Caballero, Cortese, Durazo, Hertzberg, McGuire, Stern,
Wieckowski, Wiener
NO VOTE RECORDED: Borgeas, Jones

SENATE APPROPRIATIONS COMMITTEE: 5-0, 8/11/22
AYES: Portantino, Bradford, Laird, McGuire, Wieckowski
NO VOTE RECORDED: Bates, Jones

ASSEMBLY FLOOR: 64-1, 6/2/21 - See last page for vote

SUBJECT: Social media companies: terms of service

SOURCE: Anti-Defamation League

DIGEST: This bill requires social media companies, as defined, to post their terms of service and to submit reports to the Attorney General on their terms of service and content moderation policies and outcomes.

ANALYSIS:

Existing law:

- 1) Prohibits, through the United States Constitution, the enactment of any law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances. (U.S. Const. Amend. 1.)

- 2) Provides, through the California Constitution, for the right of every person to freely speak, write, and publish their sentiments on all subjects, being responsible for the abuse of this right. Existing law further provides that a law may not restrain or abridge liberty of speech or press. (Cal. Const., art. I, § 2(a).)
- 3) Provides, in federal law, that a provider or user of an interactive computer service shall not be treated as the publisher or speaker of any information provided by another information content provider. (47 U.S.C. § 230(c)(2).)
- 4) Provides that a provider or user of an interactive computer service shall not be held liable on account of:
 - a) 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; or
 - b) any action taken to enable or make available to information content providers or others the technical means to restrict access to such material. (47 U.S.C. § 230(c)(2).)
- 5) Establishes the Unfair Competition Law (UCL) and defines “unfair competition” to mean and include any unlawful, unfair, or fraudulent business act or practice and unfair, deceptive, untrue, or misleading advertising. (Bus. & Prof. Code § 17200 et seq.) Prohibits false or deceptive advertising to consumers about the nature of any property, product, or service, including false or misleading statements made in print, over the internet, or any other advertising method. (Bus. & Prof. Code § 17500.)
- 6) Requires certain businesses to disclose the existence and details of specified policies. (Bus. & Prof. Code § 22575; Civ. Code §§ 1714.43, 1798.90.53; Educ. Code § 66406.7(f).)

This bill:

- 1) Requires a social media company to post terms of service for each social media platform owned or operated by the company in a manner reasonably designed to inform all users of the social media platform of the existence and contents of the terms of service.

- 2) Requires the terms of service to be available in all Medi-Cal threshold languages, as defined, in which the social media platform offers product features, including, but not limited to, menus and prompts.
- 3) Requires social media companies to submit a terms of service report, on a semiannual basis to the Attorney General, who must make it available to the public in a searchable repository on its website.
- 4) Subject companies in violation to penalties of up to \$15,000 per violation per day to be sought by specified public prosecutors.

Comments

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.

Given the reach of social media platforms and the role they play in many people's lives, concerns have arisen over what content permeates these sites, entering the lives of the billions of users, and the effects that has on them and society as a whole. In particular, the sharpest calls for action focus on the rampant spread of misinformation, hate speech, and sexually explicit content. Social media companies' content moderation of a decade ago involved handfuls of individuals and user policies were minimal. These programs and policies have dramatically evolved over the years but the proliferation of objectionable content and "fake news" has led to calls for swifter and more aggressive action in response. However, there has also been backlash against perceived censorship in response to filtering of content and alleged "shadow banning."

One area the author specifically focuses in on as motivation for the bill is the rise of hate speech online and the real world consequences. The author points to a recent study of over 500 million Twitter posts from 100 cities in the United States that found that "more targeted, discriminatory tweets posted in a city related to a higher number of hate crimes."¹

This bill seeks to increase transparency around what terms of service social media companies are setting out and how it ensures those terms are abided by. The goal is

¹ Press Release, *Hate speech on Twitter predicts frequency of real-life hate crimes* (June 24, 2019) NYU Tandon School of Engineering, <https://engineering.nyu.edu/news/hate-speech-twitter-predicts-frequency-real-life-hate-crimes>.

to learn more about the methods of content moderation and how successful they are.

According to the author:

The line between providing an open forum for productive discourse and permitting the proliferation of hate speech and misinformation is a fine one, and depends largely on the structure and practices of the platform. However, these platforms rarely provide detailed insight into such practices, and into the relative effectiveness of different approaches. This, along with constraints imposed by existing federal law, has historically made policy-making in this space remarkably difficult. This bill seeks to provide critical transparency to both inform the public as to the policies and practices governing the content they post and engage with on social media, and to allow for comparative assessment of content moderation approaches to better equip both social media companies and policymakers to address these growing concerns.

This bill starts with a baseline requirement to have social media platforms post their terms of service. These policies must include information about how users can ask questions, how they can flag content or users in violation, and a list of potential actions that the company might take in response. To ensure meaningful access, the terms of service must be posted in a manner reasonably designed to inform all users of their existence and contents and available in all Medi-Cal threshold languages in which the social media platform offers product features.

The bill next requires an extremely detailed report to be compiled by these companies and submitted to the Attorney General on a semiannual basis. The bill also requires the report to contain a “detailed description of content moderation practices” used by the platform. The bill leaves enforcement to public prosecutors.

This bill is sponsored by the Anti-Defamation League. It is supported by a variety of groups, including Common Sense and the Islamic Networks Group. It is opposed by various technology and business associations, including the California Chamber of Commerce and TechNet.

For a more thorough analysis of the bill, including a discussion of the relevant legal obstacles posed by the First Amendment and Section 230 of the

Communications Decency Act, please see the Senate Judiciary Committee analysis of the bill.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

According to the Senate Appropriations Committee:

- DOJ: The Department of Justice (DOJ) reports costs of \$414,000 in 2022-23 and \$711,000 annually thereafter in order to enforce the provisions of AB 587 and for IT resources to allow for submissions of terms of service (General Fund).
- Judicial Branch: Unknown cost pressures due to increased court workload (Special Fund – Trial Court Trust Fund, General Fund).

SUPPORT: (Verified 8/11/22)

Anti-Defamation League (source)

Accountable Tech

Alameda County Democratic Party

American Academy of Pediatrics, California

American Association of University Women - California

American Association of University Women, Camarillo Branch

American Federation of State, County and Municipal Employees, AFL-CIO

American Jewish Committee - Los Angeles

American Jewish Committee - San Francisco

American Muslim & Multifaith Women's Empowerment Council

The Arc and United Cerebral Palsy California Collaboration

Armenian Assembly of America

Armenian National Committee of America - Western Region

Asian Americans in Action

Asian Law Alliance

Bend the Arc: Jewish Action

Buen Vecino

California Asian Pacific American Bar Association

California Democratic Party

California Federation of Teachers AFL-CIO

California Hawaii State Conference National Association for the Advancement of Colored People

California Labor Federation, AFL-CIO

California League of United Latin American Citizens

California Nurses Association

California State Council of Service Employees International Union (SEIU California)
California Women's Law Center
Center for LGBTQ Economic Advancement & Research (CLEAR)
Center for the Study of Hate & Extremism - California State University, San Bernardino
City of San Luis Obispo
College Democrats at UC Irvine
Common Sense
Consumer Reports Advocacy
Courage California
Davis College Democrats
Decode Democracy
Democratic Party of the San Fernando Valley
Democrats for Israel-Orange County
East Bay Young Democrats
Equality California
Esperanza Immigrant Rights Project, Catholic Charities of Los Angeles
The Greenlining Institute
Harvey Milk LGBTQ Democratic Club
Hindu American Foundation, Inc.
Islamic Networks Group
Islamic Networks Inc.
Israeli-American Civic Action Network
Japanese American Citizens League, Berkeley Chapter
Jewish Center for Justice
Jewish Family and Children's Services of San Francisco, the Peninsula, Marin and Sonoma Counties
Jewish Federation of Greater Los Angeles
Jewish Federation of The Sacramento Region and The Sacramento Jewish Community Relations Council
Jewish Public Affairs Committee
Korean American Bar Association of Northern California
Korean American Coalition - Los Angeles
League of United Latin American Citizens
Los Angeles County Democratic Party
Maplight
Media Alliance
Miracle Mile Democratic Club
National Association for the Advancement of Colored People, SV/SJ

Nailing It for America
National Center for Lesbian Rights
National Council of Jewish Women, California
National Hispanic Media Coalition
Oakland Privacy
Orange County Racial Justice Collaborative
Pakistani-American Democratic Club of Orange County
Pilipino American Los Angeles Democrats
Planned Parenthood Affiliates of California
Progressive Zionists of California
ProtectUS
Rabbis and Cantor of Congregation or Ami
Sacramento County Young Democrats
Sacramento LGBT Community Center
San Diego City Attorney's Office
San Fernando Valley Young Democrats
San Francisco Democratic Party
Santa Barbara Women's Political Committee
Sikh American Legal Defense and Education Fund
Simon Wiesenthal Center, Inc.
The Source LGBT+ Center
Stonewall Democratic Club
United Food and Commercial Workers, Western States Council
United Nurses Associations of California/union of Health Care Professionals
Voices for Progress

OPPOSITION: (Verified 8/11/22)

California Chamber of Commerce
Chamber of Progress
Civil Justice Association of California
Computer and Communications Industry Association
Consumer Technology Association
Internet Coalition
MPA - the Association of Magazine Media
Netchoice
TechNet

ARGUMENTS IN SUPPORT: A coalition of groups, including ADL, Equality California, NAACP, and Esperanza Immigrant Rights Project, emphasizes the need for the bill:

“Despite the widespread nature of these concerns, efforts by social media companies to self-police such content have been widely criticized as opaque, arbitrary, biased, and inadequate. While some platforms share limited information about their efforts, the current lack of transparency has exacerbated concerns about the intent, enforcement, and impact of corporate policies, and deprived policymakers and the general public of critical data and metrics regarding the scope and scale of online hate and disinformation. Additional transparency is needed to allow consumers to make informed choices about the impact of these products (including the impact on their children) and so that researchers, civil society leaders, and policymakers can determine the best means to address this growing threat to our democracy.

AB 587 would address this troubling lack of transparency by requiring social media platforms to publicly disclose their policies and report key data and metrics around the enforcement of their policies. This disclosure would be accomplished through quarterly public filings with the Attorney General.”

ARGUMENTS IN OPPOSITION: A coalition, including TechNet, writes:

“AB 587 requires companies to publicly disclose more than just content moderation policies, which are already available to the public. The bill requires companies to report to the Attorney General sensitive information about how we implement policies, detect activity, train employees, and use technology to detect content in need of moderation. The language makes it explicit that the bill is seeking “detailed” information about content moderation practices, capabilities, and data regarding content moderation.”

ASSEMBLY FLOOR: 64-1, 6/2/21

AYES: Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Berman, Bloom, Boerner Horvath, Bryan, Burke, Calderon, Carrillo, Cervantes, Chau, Chiu, Cooley, Cooper, Cunningham, Daly, Davies, Frazier, Friedman, Gabriel, Gallagher, Cristina Garcia, Eduardo Garcia, Gipson, Lorena Gonzalez, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Lackey, Lee, Levine, Low, Maienschein, McCarty, Medina, Mullin, Muratsuchi, Nazarian, O'Donnell, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Stone, Ting, Valladares, Villapudua, Waldron, Ward, Akilah Weber, Wicks, Wood, Rendon

NOES: Gray

NO VOTE RECORDED: Bigelow, Chen, Choi, Megan Dahle, Flora, Fong, Kiley,
Mathis, Mayes, Nguyen, Patterson, Seyarto, Smith, Voepel

Prepared by: Christian Kurpiewski / JUD. / (916) 651-4113
8/15/22 13:15:10

**** **END** ****