SENATE PRIVACY, DIGITAL TECHNOLOGIES, AND CONSUMER PROTECTION COMMITTEE
Senator Christopher Cabaldon, Chair
2025-2026 Regular Session

AB 2 (Lowenthal)
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Urgency: No
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SUBJECT

Injuries to children: civil penalties

DIGEST

This bill increases the penalties that can be sought against a social media platform, as defined, if the platform fails to exercise ordinary care or skill and injures a child.

EXECUTIVE SUMMARY

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 use social media and estimates from 2018 put the number of teens on the sites at over 70 percent. Given the reach of social media and the increasing role they play in many children's lives, concerns have arisen over the connection between social media usage and mental health, drug use, and other self-harming conduct.

This bill seeks to address these issues by simply enhancing the remedies that can be sought against a social media platform that breaches its existing duty of ordinary care and skill to a child. Based on existing causes of action under negligence law, this bill provides for statutory damages of $5,000 to $1 million per violation or three times the amount of the child's actual damages, whichever is larger.

This bill is supported by various groups, including the Los Angeles County Office of Education and Common Sense Media. It is opposed by a number of industry associations, including Technet and the Computer and Communications Industry Association. Should the bill pass out of this Committee, it will next be heard in the Senate Judiciary Committee.

PROPOSED CHANGES TO THE LAW

Existing federal law:

1) 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)(1).)

2) 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).)

Existing state law:

1) Provides that every person is responsible, not only for the result of their willful acts, but also for an injury occasioned to another by the person's 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) ("Section 1714(a)").)

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 users to interact socially with each other within the service or application. A service or application that provides email or direct messaging services shall not be considered to meet this criterion on the basis of that function alone.
   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).)

This bill:

1) Provides that a social media platform that violates Section 1714(a) by causing injury to a child shall, in addition to any other remedy, be 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.

2) Aligns the definition of "social media platform" with that in Section 22675 of the Business and Professions Code, and limits application of the bill to those platforms that generate more than $100 million per year in gross revenues.

3) Provides that the duties, remedies, and obligations it imposes 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.

4) Includes a severability clause and applies prospectively.

5) Provides that any attempted waiver is void and unenforceable.

6) States specified findings and declarations.

COMMENTS

1. Social media and children

The effects of social media on our mental health and what should and can be done about it are pressing policy and societal questions that have become increasingly urgent. Evidence shows that engagement on social media has a clear effect on our emotions.

Researchers conducted a massive experiment on Facebook involving almost 700,000 users to test the emotional effects of social networks:

> The results show emotional contagion. [For] people who had positive content reduced in their News Feed, a larger percentage of words in people's status updates were negative and a smaller percentage were positive. When negativity was reduced, the opposite pattern occurred. These results suggest that the emotions expressed by friends, via online social networks, influence our own moods, constituting, to our

> knowledge, the first experimental evidence for massive-scale emotional contagion via social networks [. . .] and providing support for previously contested claims that emotions spread via contagion through a network.[1]

Research has shown that amongst American teenagers, YouTube, Instagram, and Snapchat are the most popular social media sites, and 45 percent of teenagers stated that they are "online almost constantly."[2] A meta-analysis of research on social networking site (SNS) use concluded the studies supported an association between problematic SNS use and psychiatric disorder symptoms, particularly in adolescents.[3] The study found most associations were with depression and anxiety.

As pointed out by Wall Street Journal reporting, the companies' employees are aware of the dangers:

> A Facebook Inc. team had a blunt message for senior executives. The company's algorithms weren't bringing people together. They were driving people apart.
>
> "Our algorithms exploit the human brain's attraction to divisiveness," read a slide from a 2018 presentation. "If left unchecked," it warned, Facebook would feed users "more and more divisive content in an effort to gain user attention & increase time on the platform."
>
> That presentation went to the heart of a question dogging Facebook almost since its founding: Does its platform aggravate polarization and tribal behavior?
> The answer it found, in some cases, was yes.[4]

A New York Times article on leadership at Facebook elaborates:

> To achieve its record-setting growth, [Facebook] had continued building on its core technology, making business decisions based on how many hours of the day people spent on Facebook and how many times a day

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[1] Adam D. I. Kramer et al., *Experimental Evidence of Massive-Scale Emotional Contagion through Social Networks* (June 17, 2014) Proceedings of the National Academy of Sciences, vol. 111, No. 24, https://www.pnas.org/doi/full/10.1073/pnas.1320040111. All internet citations are current as of June 1, 2026.

[2] Zaheer Hussain and Mark D Griffiths, *Problematic Social Networking Site Use and Comorbid Psychiatric Disorders: A Systematic Review of Recent Large-Scale Studies*."
(December 14, 2018) Frontiers in psychiatry vol. 9 686, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6302102/pdf/fpsyt-09-00686.pdf.

[3] *Ibid.*

[4] Jeff Horowitz & Deepa Seetharaman, *Facebook Executives Shut Down Efforts to Make the Site Less Divisive* (May 26, 2020) Wall Street Journal, https://www.wsj.com/articles/facebook-knows-it-encourages-division-top-executives-nixed-solutions-11590507499.

> they returned. Facebook's algorithms didn't measure if the magnetic force pulling them back to Facebook was the habit of wishing a friend happy birthday, or a rabbit hole of conspiracies and misinformation.
>
> Facebook's problems were features, not bugs.[5]

A series of startling revelations unfolded after a Facebook whistle-blower, Frances Haugen, began sharing internal documents. The Wall Street Journal published many of the findings:

> About a year ago, teenager Anastasia Vlasova started seeing a therapist. She had developed an eating disorder, and had a clear idea of what led to it: her time on Instagram.
>
> She joined the platform at 13, and eventually was spending three hours a day entranced by the seemingly perfect lives and bodies of the fitness influencers who posted on the app.
>
> "When I went on Instagram, all I saw were images of chiseled bodies, perfect abs and women doing 100 burpees in 10 minutes," said Ms. Vlasova, now 18, who lives in Reston, Va.
>
> Around that time, researchers inside Instagram, which is owned by Facebook Inc., were studying this kind of experience and asking whether it was part of a broader phenomenon. Their findings confirmed some serious problems.
>
> "Thirty-two percent of teen girls said that when they felt bad about their bodies, Instagram made them feel worse," the researchers said in a March 2020 slide presentation posted to Facebook's internal message board, reviewed by The Wall Street Journal. "Comparisons on Instagram can change how young women view and describe themselves."
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> For the past three years, Facebook has been conducting studies into how its photo-sharing app affects its millions of young users. Repeatedly, the company's researchers found that Instagram is harmful for a sizable percentage of them, most notably teenage girls.

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[5] Sheera Frenkel & Cecilia Kang, *Mark Zuckerberg and Sheryl Sandberg's Partnership Did Not Survive Trump* (July 8, 2021) The New York Times, https://www.nytimes.com/2021/07/08/business/mark-zuckerberg-sheryl-sandberg-facebook.html.

> "We make body image issues worse for one in three teen girls," said one slide from 2019, summarizing research about teen girls who experience the issues.
>
> "Teens blame Instagram for increases in the rate of anxiety and depression," said another slide. "This reaction was unprompted and consistent across all groups."
>
> Among teens who reported suicidal thoughts, 13% of British users and 6% of American users traced the desire to kill themselves to Instagram, one presentation showed.
>
> Expanding its base of young users is vital to the company's more than $100 billion in annual revenue, and it doesn't want to jeopardize their engagement with the platform.
>
> More than 40% of Instagram's users are 22 years old and younger, and about 22 million teens log onto Instagram in the U.S. each day . . . .[6]

The released documents from Instagram make clear that "Facebook is acutely aware that the products and systems central to its business success routinely fail":

> The features that Instagram identifies as most harmful to teens appear to be at the platform's core.
>
> The tendency to share only the best moments, a pressure to look perfect and an addictive product can send teens spiraling toward eating disorders, an unhealthy sense of their own bodies and depression, March 2020 internal research states. It warns that the Explore page, which serves users photos and videos curated by an algorithm, can send users deep into content that can be harmful.
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> "Aspects of Instagram exacerbate each other to create a perfect storm," the research states.[7]

The referenced documents revealed that Facebook's own internal research found "1 in 8 of its users reported compulsive social media use that interfered with their sleep, work,

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[6] Georgia Wells et al., *Facebook Knows Instagram Is Toxic for Teen Girls, Company Documents Show* (September 14, 2021) The Wall Street Journal, https://www.wsj.com/articles/facebook-knows-instagram-is-toxic-for-teen-girls-company-documents-show-11631620739?mod=article_inline.
[7] *Ibid.*

and relationships— what the social media platform calls 'problematic use' but is more commonly known as 'internet addiction.'"[8]

There are various features of social media that are believed to contribute to excessive social media use and preoccupation and attendant mental health issues in children and that are repeatedly highlighted as the most problematic for users, especially children. They are pinpointed by academic research,[9] and lawsuits brought by most states' Attorneys General,[10] as the core of the problem. These include the display of "likes" and other feedback on posted media that drive minors' unhealthy comparisons to others and their obsessive usage.

In addition, the constant notifications that are sent to users nudge them back onto a platform throughout the day and night to seek the next hit of dopamine. The biggest and most central of them all is the algorithmic feeds that are fueled by a user's own information and inferences drawn from their past behavior and data collected from other sources. While these features can effectively serve up content curated for a user's personal tastes and create social connections among users, it is these types of features that are most concerning to advocates for reform.

2. <u>Ensuring social media platforms are held accountable for the harms they cause</u>

Existing negligence law imposes a responsibility on everyone, including social media platforms, for injuries occasioned to others by their want of ordinary care or skill in the management of their property or person. This bill does not alter any existing duty. Rather, it seeks to acknowledge the unique impacts that social media platforms are shown to have on a particularly vulnerable population, California's children.

The bill does this by increasing the remedies that children may seek when social media platforms break this existing duty to refrain from causing them injury. The bill provides for statutory damages from $5,000 to $1 million per violation, per child or three times the child's actual damages, whichever is more.

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

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[8] Kim Lyons, *Facebook reportedly is aware of the level of 'problematic use' among its users* (November 6, 2021) The Verge, www.theverge.com/2021/11/6/22766935/facebook-meta-aware-problematic-use-addiction-wellbeing.
[9] Kirsten Weir, *Social media brings benefits and risks to teens. Here's how psychology can help identify a path forward* (September 1, 2023) American Psychological Association, https://www.apa.org/monitor/2023/09/protecting-teens-on-social-media.
[10] Matt Richtel, *Is Social Media Addictive? Here's What the Science Says* (October 25, 2023) The New York Times, https://www.nytimes.com/2023/10/25/health/social-media-addiction.html.

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.

3. Legal considerations

Concerns have been raised about whether the bill runs afoul of federal statutory and constitutional law. Namely, whether the bill is preempted by Section 230 of the Communications Decency Act, 47 U.S.C. § 230, or violates the First Amendment to the United States Constitution. As stated above, the bill will next be heard in the Senate Judiciary Committee should it pass out of this Committee, but a brief overview of the relevant legal landscape is provided below.

a. Section 230

Section 230 does not apply to the *users* of social media (or the internet generally), but rather applies to the *platforms themselves*. In the early 1990s, prior to the enactment of Section 230, two trial court orders—one in the United States District Court for the Southern District of New York, and New York state court—suggested that internet platforms could be held liable for allegedly defamatory statements made by the platforms' users if the platforms engaged in any sort of content moderation (e.g., filtering out offensive material).[11] In response, two federal legislators and members of the burgeoning internet industry crafted a law that would give internet platforms immunity from liability for users' statements, even if they might have reason to know that statements might be false, defamatory, or otherwise actionable.[12] The result—Section 230—was relatively uncontroversial at the time, in part because of the relative novelty of the internet and in part because Section 230 was incorporated into a much more controversial internet regulation scheme that was the subject of greater debate.[13]

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[11] *See Cubby, Inc. v. Compuserve, Inc.* (S.D.N.Y. 1991) 776 F.Supp. 135, 141; *Stratton Oakmont v. Prodigy Servs. Co.* (N.Y. Sup. Ct., May 26, 1995) 1995 N.Y. Misc. LEXIS 229, *10-14. These opinions relied on case law developed in the context of other media, such as whether bookstores and libraries could be held liable for distributing defamatory material when they had no reason to know the material was defamatory. (*See Cubby, Inc.*, 776 F. Supp. at p. 139; *Smith v. California* (1959) 361 U.S. 147, 152-153.)

[12] Kosseff, The Twenty-Six Words That Created The Internet (2019) pp. 57-65.

[13] *Id.* at pp. 68-73. Section 230 was added to the Communications Decency Act of 1996 (title 5 of the Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56), which would have imposed criminal liability on internet platforms if they did not take steps to prevent minors from obtaining "obscene or indecent" material online. The Supreme Court invalidated the CDA, except for Section 230, on the basis that it violated the First Amendment. (*See Reno v. ACLU* (1997) 521 U.S. 844, 874.)

The crux of Section 230 is laid out in two parts. The first provides that "[n]o 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."[14] The second provides a safe harbor for content moderation, by stating that no provider or user shall be held liable because of good-faith efforts to restrict access to material that is "obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected."[15]

Together, these two provisions give platforms immunity from any civil or criminal liability that could be incurred by user statements, while explicitly authorizing platforms to engage in their own content moderation without risking that immunity. Section 230 specifies that "[n]o cause of action may be brought and no liability may be imposed under any State law that is inconsistent with this section."[16] Courts have applied Section 230 in a vast range of cases to immunize internet platforms from "virtually all suits arising from third-party content."[17]

This bill does not specifically address content at all. In fact, it does not alter any existing obligation, but merely alters the remedies.

The Ninth Circuit Court of Appeals in *Barnes v. Yahoo!, Inc.* (9th Cir. 2009) 570 F.3d 1096, 1100-01 established a three-part test for assessing the immunities of Section 230 on claims against platforms: "[I]t appears that subsection (c)(1) only protects from liability (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."

This test was applied by the Ninth Circuit in *Lemmon v. Snap, Inc.* (9th Cir. 2021) 995 F.3d 1085. In that case, the parents of minor decedents sued Snap, the owner and operator of Snapchat, a social media application. At issue was the use of a filter provided by Snapchat that allowed users to record their real-life speed and overlay it over photos or video. The plaintiffs' children opened Snapchat and used the filter shortly before their fatal high-speed car crash. The opinion states that "[t]o keep its users engaged, Snapchat rewards them with 'trophies, streaks, and social recognitions' based on the snaps they send. Snapchat, however, does not tell its users how to earn these various achievements" but that many users believed hitting 100 miles per hour using the filter would result in such rewards. According to the opinion: "Snapchat allegedly knew or should have known, before May 28, 2017, that its users believed that

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[14] *Id.*, § 230(c)(1).
[15] *Id.*, § 230(c)(1) & (2).
[16] *Id.*, § 230(e)(1) & (3).
[17] Kosseff, *supra*, fn. 13, at pp. 94-95; *see, e.g., Doe v. MySpace Inc.* (5th Cir. 2008) 528 F.3d 413, 421-422; *Carfano v. Metrospalsh.com, Inc.* (9th Cir. 2003) 339 F.3d 1119, 1125; *Zeran v. America Online, Inc.* (4th Cir. 1997) 129 F.3d 327, 333-334.

such a reward system existed and that the Speed Filter was therefore incentivizing young drivers to drive at dangerous speeds."

The parents filed a negligent design lawsuit against Snap, and the district court agreed with Snap's argument that Section 230 immunity foreclosed such a suit, granting Snap's motion to dismiss. On appeal, the Ninth Circuit turned to the *Barnes v. Yahoo* test. After acknowledging the first element was met, it turned to the second:

> The second Barnes question asks whether a cause of action seeks to treat a defendant as a "publisher or speaker" of third-party content. We conclude that here the answer is no, because the Parents' claim turns on Snap's design of Snapchat.
>
> In this particular context, "publication" generally "involve[s] reviewing, editing, and deciding whether to publish or to withdraw from publication third-party content." A defamation claim is perhaps the most obvious example of a claim that seeks to treat a website or smartphone application provider as a publisher or speaker, but it is by no means the only type of claim that does so. Thus, regardless of the type of claim brought, we focus on whether "the duty the plaintiff alleges" stems "from the defendant's status or conduct as a publisher or speaker."
>
> Here, the Parents seek to hold Snap liable for its allegedly "unreasonable and negligent" design decisions regarding Snapchat. They allege that Snap created: (1) Snapchat; (2) Snapchat's Speed Filter; and (3) an incentive system within Snapchat that encouraged its users to pursue certain unknown achievements and rewards. The Speed Filter and the incentive system then supposedly worked in tandem to entice young Snapchat users to drive at speeds exceeding 100 MPH.
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> The Parents thus allege a cause of action for negligent design—a common products liability tort. This type of claim rests 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." Thus, a negligent design action asks whether a reasonable person would conclude that "the reasonably foreseeable harm" of a product, manufactured in accordance with its design, "outweigh[s] the utility of the product."
>
> The duty underlying such a claim differs markedly from the duties of publishers as defined in the CDA.[18]

[18] *Lemmon v. Snap, Inc.*, 995 F.3d at 1091-92, internal citations omitted.

Writing in opposition, a coalition of industry groups, including TechNet argue the bill is likely preempted by Section 230:

> Section 230 explicitly preempts state laws such as AB 2 that would conflict with this protection. 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 2 conflicts with Section 230 and is likely preempted.

It should be noted that the operative part of the bill does not reference features or content. Existing negligence law has always applied to social media platforms, and as seen in cases such as *Lemmon*, platforms can be held liable for the injuries they negligently cause without triggering Section 230 preemption.

More recently, several high-profile cases have been filed against some of the biggest social media platforms, alleging their negligence caused harm to children. One such case in Los Angeles focused not on the content present on the platforms but on the "defective design" of the platforms that caused the children's harm, including the use of features such as infinite scroll, constant notifications, autoplaying videos, and beauty filters:

> A California jury … found that Meta and Google were to blame for the depression and anxiety of a woman who compulsively used social media as a small child, awarding her $6 million in a rare verdict holding Silicon Valley accountable for its role in fueling a youth mental health crisis.
>
> The jurors concluded that Meta and Google should pay the woman $3 million in compensatory damages and an additional $3 million in punitive damages, with Meta on the hook for 70% of that amount.
>
> While the financial punishment is miniscule for companies each worth trillions of dollars, the decision is still consequential. It represents the first time a jury has found that social media apps should be treated as defective products for being engineered to exploit the developing brains of kids and teenagers.[19]

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[19] Bobby Allyn, *Jury finds Meta and Google negligent in social media harms trial* (March 25, 2026) NPR, https://www.npr.org/2026/03/25/nx-s1-5746125/meta-youtube-social-media-trial-verdict.

A separate trial in New Mexico also resulted in a verdict against Meta, ordering it to pay extensive damages for "failing to protect young users from child predators on Instagram and Facebook. The New Mexico jury found Meta responsible for misleading consumers about the safety of its platforms, declaring that the tech company had flouted state consumer protection laws."[20]

b. First Amendment

The First Amendment, as applied to the states through the Fourteenth Amendment, prohibits Congress or the states from passing any law "abridging the freedom of speech."[21] "[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."[22] However, while the amendment is written in absolute terms, the courts have created a handful of narrow exceptions to the First Amendment's protections, including "true threats,"[23] "fighting words,"[24] incitement to imminent lawless action,[25] defamation,[26] and obscenity.[27] Expression on the internet is given the same measure of protection granted to in-person speech or statements published in a physical medium.[28]

A constitutional challenge to a restriction on speech is generally analyzed under one of two frameworks, depending on whether the courts deem it to be "content neutral" or "content based," i.e., targeting a particular type of speech. A law is content neutral when it "serves purposes unrelated to the content of the expression."[29] On the other hand, a law is content based when the proscribed speech is "defined solely on the basis of the content of the suppressed speech."[30]

If a law is determined to be content neutral, it will be 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]

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[20] *Ibid.*
[21] U.S. Const., 1st & 14th amends.
[22] *Ashcroft v. American Civil Liberties Union* (2002) 535 U.S. 564, 573.
[23] *Snyder v. Phelps* (2011) 562 U.S. 443, 452.
[24] *Cohen v. California* (1971) 403 U.S. 15, 20.
[25] *Virginia v. Black* (2003) 538 U.S. 343, 359.
[26] *R.A.V. v. St. Paul* (1992) 505 U.S. 377, 383.
[27] *Ibid.*
[28] *Reno v. ACLU* (1997) 521 U.S. 844, 870.
[29] *Ward v. Rock Against Racism* (1989) 491 U.S. 781, 791.
[30] *FCC v. League of Women Voters* (1984) 468 U.S. 364, 383.
[31] *Packingham v. North Carolina* (2017) 582 U.S. 98, 105.
[32] *McCullen v. Coakley* (2014) 573 U.S. 464, 486 (*McCullen*).

If a restriction on speech is determined to be content based, it will be subject to strict scrutiny.[33] A restriction is content based "if it require[s] 'enforcement authorities' to 'examine the content of the message that is conveyed to determine whether' a violation has occurred."[34] Content-based restrictions subject to strict scrutiny are "presumptively unconstitutional."[35] A restriction can survive strict scrutiny only if it uses the least-restrictive means available to achieve a compelling government purpose.[36]

The coalition in opposition argues that the bill seeks to regulate speech because it requires "platforms to exercise 'ordinary care and skill' for teen users." Essentially, the argument is that any application of negligence law to platforms is a regulation of speech. The coalition states:

> AB 2 is unconstitutional because it imposes liability on social media platforms for whether certain types of third-party content are shown to young 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.
>
> Additionally, the bill's "overbreadth" appears both "real" and "substantial,"3 and is thus arguably unconstitutional, because it sweeps in social media activity that might negatively affect a relatively small amount of children but prove to be of utility to many more (i.e., organizing children's social media feeds to highlight content they are more interested in).
>
> AB 2 also directly interferes with the expressive rights of both the minors who will be banned from social media services and the service providers themselves.

Again, the operative part of the bill does not reference content or the moderation choices of platforms. It does not change any basis for liability.

4. <u>Arguments in support</u>

A coalition of organizations, including Common Sense Media, states in support:

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[33] *Id.* at p. 478.
[34] *Id.* at p. 479.
[35] *Reed v. Town of Gilbert* (2015) 135 S.Ct. 2218, 2226 (*Reed*).
[36] *United States v. Playboy Entertainment Group* (2000) 529 U.S. 803, 813.

> This bill establishes statutory damages under California's existing negligence law for harms to minors related to social media that can be proven in court. That is the only change to California law that this bill makes. These financial penalties are needed and intended to motivate large social media companies to do what they currently refuse to do - ensure that the way they design and operate their platforms does not injure young users. There is mounting evidence, including from internal company communications, that social media platforms contribute to our youth mental health crisis and to other direct harms to kids and teens, including accessing fentanyl and other illegal drugs.
>
> As the use of social media continues to climb among children and adolescents, so too does the urgency for legislative action. AB 2 offers a path to mitigate the risks faced by our youth in an increasingly connected world, ensuring that social media companies operate with the due care our children deserve.

The Los Angeles County Office of Education makes the case for the bill:

> Unlike schools, youth-serving agencies, and businesses that are held to high standards of accountability and care, social media companies have operated largely without consequence—even as their platforms increasingly endanger children. These platforms are often engineered to maximize screen time and engagement, prioritizing profits over safety and well-being. Research continues to show the correlation between excessive social media use and adverse youth outcomes, including suicidal ideation, cyberbullying, social isolation, and exposure to violence.

SUPPORT

California Teachers Supporting Gender-nonconforming Youth
Children's Advocacy Institute
Common Sense Media
Healthier-tech
Hebrew Academy Community Day School
Jewish Family and Children's Services of San Francisco, the Peninsula, Marin and Sonoma Counties
Los Angeles County Office of Education
Nextgen California
Organization for Social Media Safety
Parent Collective
Safe School Tech
Safe Social Media

San Mateo Foster City School District
Schools Beyond Screens San Diego

OPPOSITION

California Chamber of Commerce
Chamber of Progress
Civil Justice Association of California (CJAC)
Computer and Communications Industry Association
Electronic Frontier Foundation
Technet

RELATED LEGISLATION

AB 1709 (Lowenthal, 2026) prohibits online platforms that offer "addictive feeds" from allowing users under 16 years of age to create accounts. It requires these "covered platforms" to verify the age of users and implement reasonable measures to prevent users under 16 from accessing or using accounts on the platform. AB 1709 also creates an e-Safety Advisory Commission within the Department of Justice. AB 1709 is currently pending referral in the Senate.

SB 976 (Skinner, Ch. 321, Stats. 2024) prohibited operators of "internet-based services or applications" from providing "addictive feeds," as those terms are defined, to minors without parental consent and from sending notifications to minors at night and during school hours without parental consent, as provided. SB 976 required operators to make available to parents a series of protective measures for controlling access to and features of the platform for their children. It also required reporting on data regarding children on their platforms, as specified.

AB 3172 (Lowenthal, 2024) was largely identical to this bill but took amendments that narrowed the enforcement to public prosecutors and raised the standard of liability to knowingly and willfully. AB 3172 died on the Senate Floor.

AB 1394 (Wicks, Ch. 579, Stats. 2023) required social media platforms to provide a reporting mechanism for suspected child sexual abuse material and requires them to permanently block the material, as provided. It also prohibits platforms from knowingly facilitating, aiding, or abetting minor's commercial sexual exploitation.

SB 1056 (Umberg, Ch. 881, Stats. 2022) required 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.

AB 587 (Gabriel, Ch. 269, Stats. 2022) required social media companies, as defined, to post their terms of service and report certain information to the Attorney General on a quarterly basis.

AB 1628 (Ramos, Ch. 432, Stats. 2022) required a social media platform, as defined, that operates in this state to create and publicly post a policy statement including specified information pertaining to the use of the platform to illegally distribute controlled substances, until January 1, 2028.

AB 2273 (Wicks, Ch. 320, Stats. 2022) established 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 children. This includes a prohibition on using the personal information of any child in a way that the business knows or has reason to know is materially detrimental to the physical health, mental health, or well-being of a child. It also requires these businesses to "[e]stimate the age of child users with a reasonable level of certainty appropriate to the risks that arise from the data management practices of the business or apply the privacy and data protections afforded to children to all consumers."

AB 2408 (Cunningham, 2022) would have prohibited a social media platform from using a design, feature, or affordance that the platform knew, or which by the exercise of reasonable care it should have known, causes child users to become addicted to the platform. AB 2408 died in the Senate Appropriations Committee.

PRIOR VOTES:

Assembly Floor (Ayes 66, Noes 0)
Assembly Judiciary Committee (Ayes 9, Noes 0)
Assembly Privacy and Consumer Protection Committee (Ayes 9, Noes 0)

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