CONCURRENCE IN SENATE AMENDMENTS
AB 2 (Lowenthal and Patterson)
As Amended July 2, 2026
Majority vote

SUMMARY

Augments, until January 1, 2035, the penalties large social media platforms may face if they violate existing law by causing an injury to a minor through failure to exercise ordinary care.

Senate Amendments

1) Sunset the bill January 1, 2035.

2) Provide that the bill does not apply to cases pending on or before January 1, 2027, rather than 2026.

COMMENTS

Social media harms to children. From 2010 to 2019, "rates of depression and anxiety—fairly stable during the 2000s—rose by more than 50% in many studies" and "[t]he suicide rate rose 48% 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 Surgeon General:

> [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.[2]

Some 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 connection between the teen mental health crisis and social media – including the severe harm to body image visited disproportionately on teen girls 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.[3] Such revelations underscore the culpability of some social media companies in propagating features detrimental to the wellbeing of youth through intentional

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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] Surgeon General's Advisory, *Social Media and Youth Mental Health* (2023), p. 4, https://www.hhs.gov/surgeongeneral/reports-and-publications/youth-mental-health/social-media/index.html.
[3] *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.

design choices that maximize engagement with profit-motivated online services. Recent litigation that has resulted in liability and in major settlements reflects the increasing accountability that social media companies are facing.

Enhanced liability for negligence. 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 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-minor maximum of $1,000,000, or three times the amount of the minor's actual damages.

Under existing law, social media platforms, like other entities, owe everyone a duty of care. The breach of this duty in a manner that causes harm can give rise to negligence lawsuits. This bill does not change those underlying principles. It simply increases the amount of damages that may be recovered from large social media companies if the injured party in such cases is a minor.

Constitutional considerations. Under existing law, some cases against social media platforms do not make it past the hurdles posed by Section 230 of the federal Communications Decency Act of 1996 and the First Amendment to the United States Constitution.

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."[4] Case law suggests that social media platforms continue to have a duty of care to users and that negligence claims arising from a platforms' independent conduct, rather than their status as publishers of third party content, are compatible with Section 230. Recent litigation that has resulted in liability and in major settlements bolsters this view, reflecting the increasing accountability that social media companies are facing.

The First Amendment to the United States Constitution, among other things, prohibits states from abridging freedom of speech. Because the bill does not regulate speech, it likely does not facially violate First Amendment. Nevertheless, as with negligence claims under existing law, there may be some cases in which the application of the bill to a particular situation unduly infringes on speech.

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

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[4] 47 U.S.C. Section 230(c)(1).

Arguments in Support
A coalition of organizations, including Common Sense Media, writes in support:

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.

Arguments in Opposition
A group of industry associations, including TechNet, write in opposition:

Section 230 of the Communications Decency Act (47 U.S.C. Section 230) generally protects platforms from liability for content that users generate with limited exceptions. This protection enables platforms to host third party content and moderate third-party content on their platforms without fear of liability.

Without the protections of Section 230, the internet ecosystem would be dramatically different with a limited ability for users to post, share, read, view, and discover the content of others.

Fortunately, 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.

FISCAL COMMENTS

As currently in print, this bill is keyed nonfiscal.

VOTES:

ASM PRIVACY AND CONSUMER PROTECTION: 9-0-6
YES: Dixon, Berman, Bryan, Lowenthal, McKinnor, Ortega, Patterson, Pellerin, Ward
ABS, ABST OR NV: Bauer-Kahan, DeMaio, Irwin, Macedo, Petrie-Norris, Wilson

ASM JUDICIARY: 9-0-3
YES: Kalra, Wicks, Bryan, Connolly, Harabedian, Pacheco, Papan, Stefani, Zbur
ABS, ABST OR NV: Dixon, Sanchez, Tangipa

ASSEMBLY FLOOR: 66-0-13
YES: Addis, Aguiar-Curry, Ahrens, Alanis, Alvarez, Arambula, Ávila Farías, Bauer-Kahan, Bennett, Berman, Boerner, Bonta, Bryan, Calderon, Caloza, Carrillo, Chen, Connolly, Davies, Dixon, Elhawary, Ellis, Flora, Fong, Gabriel, Gallagher, Garcia, Gipson, Mark González, Haney, Harabedian, Hart, Hoover, Jackson, Kalra, Krell, Lee, Lowenthal, McKinnor, Muratsuchi, Nguyen, Ortega, Pacheco, Papan, Patel, Patterson, Pellerin, Quirk-Silva, Ramos, Ransom, Celeste Rodriguez, Michelle Rodriguez, Rogers, Blanca Rubio, Sanchez, Schiavo, Schultz, Sharp-Collins, Solache, Soria, Valencia, Wallis, Ward, Wicks, Zbur, Rivas
ABS, ABST OR NV: Bains, Castillo, DeMaio, Jeff Gonzalez, Hadwick, Irwin, Lackey, Macedo, Petrie-Norris, Stefani, Ta, Tangipa, Wilson

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