

## SENATE THIRD READING

SB 771 (Stern)

As Amended

Majority vote

**SUMMARY**

Effective January 1, 2027, authorizes civil penalties against large social media platforms that knowingly or recklessly contribute to violations of existing state civil rights laws through their algorithmic content delivery systems.

**Major Provisions**

- 1) Provides that a social media platform that earns more than \$100,000,000 in annual revenue and that violates specified civil rights laws, including through recommendation algorithms, or that aid, abet, act in concert, or conspire in a violation of any of those laws, or is a joint tortfeasor in an action alleging a violation of any of those laws, is, in addition to any other remedy, subject to a civil penalty of up to \$1,000,000 for intentional, knowing, or willful violations, or \$500,000 for reckless violations. Such amounts maybe doubled if the platform knew or should have known the plaintiff was a minor.
- 2) Provides that deploying an algorithm that relays content to users may be considered an act of the platform independent from the message of the content relayed.
- 3) Deems a platform to have actual knowledge of the operations of its own algorithms, including how and under what circumstances its algorithms deliver content to some users but not to others.
- 4) Includes a severability clause and deems waivers of the bill's provisions void and unenforceable as contrary to public policy.
- 5) Becomes operative January 1, 2027.

**COMMENTS**

In 2022, after Elon Musk took over X, the platform formerly known as Twitter, he rolled back its content moderation policies. Rates of hate speech on the platform – including posts containing homophobic, transphobic, and racist slurs – spiked by about 50% shortly thereafter.<sup>1</sup> In 2025, Meta CEO Mark Zuckerberg followed suit. Citing the reelection of Donald J. Trump, he announced Facebook, Instagram, and Threads would "remove restrictions on topics like immigration and gender that are out of touch with mainstream discourse."<sup>2</sup> Meta platform users soon thereafter reported a similar spike in harmful content.

To help ensure social media companies are held accountable for the ways their policies may contribute to violence against such communities, this bill provides that a social media platform that earns more than \$100,000,000 in annual revenue and that violates specified civil rights laws

---

<sup>1</sup> UC Berkeley News, *Study finds persistent spike in hate speech on X* (Feb. 13, 2025), <https://news.berkeley.edu/2025/02/13/study-finds-persistent-spike-in-hate-speech-on-x/>.

<sup>2</sup> Barbara Ortutay, "Meta rolls back hate speech rules as Zuckerberg cites 'recent elections' as a catalyst" *Chicago Sun-Times* (Jan. 9, 2025) <https://chicago.suntimes.com/nation-world/2025/01/09/meta-rolls-back-hate-speech-rules-zuckerberg-election-trump-x-twitter-musk-immigration-gender>.

– including the Ralph Civil Rights Act of 1976 (Ralph Act)<sup>3</sup> and the Tom Bane Civil Rights Act (Bane Act)<sup>4</sup> – is, in addition to any other remedy, subject to a civil penalty of up to \$1,000,000 for intentional, knowing, or willful violations, or \$500,000 for reckless violations. Such amounts maybe doubled if the platform knew or should have known the plaintiff was a minor.

The Ralph Act provides that all persons within the jurisdiction of California have the right to be free from any violence, or intimidation by threat of violence, committed against their persons or property because of political affiliation, or on account of any protected characteristic, or position in a labor dispute, or because another person perceives them to have one or more of those characteristics.<sup>5</sup> Rights protected under this act may be enforced by a private action for damages.<sup>6</sup>

The Bane Act prohibits “threat[s], intimidation or coercion” designed to prevent a person’s exercise or enjoyment of their constitutional or statutory rights. “A plaintiff must show (1) intentional interference or attempted interference with a state or federal constitutional or legal right, and (2) the interference or attempted interference was by threats, intimidation or coercion.”<sup>7</sup> Speech alone is not sufficient to show a violation, “except upon a showing that the speech itself threatens violence against a specific person or group of persons and the person or group of persons against whom the threat is directed reasonably fears that, because of the speech, violence will be committed against them or their property and that the person threatening violence had the apparent ability to carry out the threat.”<sup>8</sup> The section provides for civil damages and equitable relief, as well as criminal sanctions for violations.

Contrary to the assertions of some opponents, the bill does not create a novel basis for liability. Instead, it augments liability for violations of specified existing civil rights laws, including the Ralph Act and Bane Act. The bill provides that a predicate violation can occur directly, by conspiracy, or by aiding and abetting. Conspiracy requires an actual agreement to commit a crime. Aiding and abetting requires participation in the crime. “Aid” requires some conduct by which one becomes concerned in the commission of a crime, whether it be to aid (i.e., assist or supplement), promote, encourage, or instigate. “Abet,” on the other hand, requires that this conduct be accompanied by the requisite criminal state of mind – that is, knowledge of the perpetrator’s unlawful purpose and the intent that it be facilitated.<sup>9</sup>

To assist in proving such claims, the bill specifies that deploying an algorithm that relays content to users may be considered an act of the platform independent from the message of the content relayed. The bill also deems a platform to have actual knowledge of the operations of its own algorithms, including how and under what circumstances its algorithms deliver content to some users but not to others.

Opponents of the bill also raise concerns relating to freedom of speech and federal preemption under Section 230 of the federal Communications Decency Act of 1996. With respect to the former, the Senate Judiciary Committee writes:

---

<sup>3</sup> The Ralph Civil Rights Act of 1976 (Civ. Code, § 51.7; Ralph Act) Tom Bane Civil Rights Act (Civ. Code, § 52.1; Bane Act)

<sup>4</sup> Civ. Code, § 52.1

<sup>5</sup> Civ. Code, § 51.7.

<sup>6</sup> See § 52, subd. (b).

<sup>7</sup> *Allen v. City of Sacramento* (2015) 234 Cal.App.4th 41, 67.

<sup>8</sup> Civ. Code § 52.1(k).

<sup>9</sup> *People v. Campbell* (Cal. App. 6th Dist. 1994), 25 Cal. App. 4th 402.

there should be no real concern that this bill will penalize a platform for protected speech. The statutes referred to in the bill are longstanding civil rights laws. Each is narrowly tailored so as not to penalize purely protected speech, requiring an additional element—such as an actual threat of violence or force, hostile sexual advances, or coercion—before liability or a penalty can attach. If a platform truly aids and abets the violation of one of these statutes, the First Amendment should not be a defense.

With respect to the latter, the Assembly Judiciary Committee writes:

SB 771 is clearly structured to present a strong challenge case. If successful, it could realign Section 230 immunity with its original intent—shielding platforms for third-party content, but not for platform-engineered systems that cause foreseeable and preventable harm.

### **According to the Author**

Violence, threats, and intimidation targeting certain historically vulnerable populations – Jews, LGBTQ+ community members, women, immigrants, and people of color especially – are at historic highs and rising at record-shattering rates. A recent Harvard study found a causal relationship between widespread violence against historically targeted groups and the practices of social media platforms.

Notwithstanding the escalating danger, social media platforms have announced dramatic retreats in screening and moderation practices to protect targeted populations. This change could not have come at a more dangerous time for groups that are historically targeted. L.A. County's most recent hate crime report reflected double or triple digit increases in hate crimes resulting in "the largest number[s] ever recorded" against the LGBTQ+ community, Jews, Asians, Blacks, Latinos, and immigrants. This is a national trend that is accelerating.

California must respond to protect its most vulnerable residents. The least California can do is ensure that our existing laws against hate crimes, intimidation, and harassment, including conduct aimed at preventing our neighbors from exercising their constitutional rights, unambiguously apply to platform practices and offer penalties sufficient to prompt compliance with our laws without the necessity of a lawsuit.

### **Arguments in Support**

The bill's cosponsors write: "One of the world's largest corporations controlled by the world's second wealthiest person (\$232 billion) has, with perfect self-awareness, imperiled the lives and rights of the most vulnerable of all Californians. How California, to borrow the Governor's phrase, 'meets' this 'moment' will properly determine how we are judged by history. SB 771 is a good step toward ensuring the judgment is a positive one."

### **Arguments in Opposition**

In opposition to the bill, California Chamber of Commerce, the Computer and Communications Industry Association, and TechNet argue:

Although SB 771 does not explicitly mandate content removal, it effectively incentivizes broad suppression of speech through the threat of legal action. In practice, the elevated liability risk could compel platforms to take down content based solely on unsubstantiated allegations of violence. This dynamic sets the stage for a heckler's veto, in which bad actors or politically motivated users can flag content they disagree with, knowing the platform may err on the side of removal to avoid potential lawsuits.

This bill's implicit concern is harmful content. It is impossible for companies to identify and remove every potentially harmful piece of content because there's no clear consensus on what exactly constitutes harmful content, apart from clearly illicit content. Determining what is harmful is highly subjective and varies from person to person, making it impossible to make such judgments on behalf of millions of users. Faced with this impossible task and the liability imposed by this bill, some platforms may decide to aggressively over restrict content that could be considered harmful.

Furthermore, platforms would need to evaluate whether to eliminate their fundamental features and functions, which are the reasons users go to their platforms, due to the legal risk involved. For instance, direct messaging features could potentially be misused for contacting and bullying other teens; such features would likely be removed.

## FISCAL COMMENTS

According to the Assembly Appropriations Committee:

- 1) Cost pressures (Trial Court Trust Fund, General Fund) of an unknown but potentially significant amount to the courts to adjudicate cases filed against large social media platforms. The significant new civil penalties authorized by the bill may prompt additional lawsuits that would not otherwise have been filed. Actual costs will depend on the number of cases filed and the amount of court time needed to resolve each case. It generally costs approximately \$1,000 to operate a courtroom for one hour. Although courts are not funded on the basis of workload, increased pressure on the Trial Court Trust Fund may create a demand for increased funding for courts from the General Fund. The fiscal year 2025-26 state budget provides \$82 million ongoing General Fund to the Trial Court Trust Fund for court operations.
- 2) Possible costs (General Fund) to the Department of Justice (DOJ) to defend legal challenges to the bill. If DOJ hires legal staff to handle this workload, the department will incur significant costs, likely in the low hundreds of thousands of dollars annually at a minimum.

## VOTES

### SENATE FLOOR: 29-4-7

**YES:** Allen, Archuleta, Arreguín, Ashby, Becker, Blakespear, Cabaldon, Caballero, Cervantes, Cortese, Durazo, Gonzalez, Grayson, Hurtado, Laird, Limón, McGuire, McNerney, Menjivar, Padilla, Pérez, Richardson, Rubio, Smallwood-Cuevas, Stern, Umberg, Wahab, Weber Pierson, Wiener

**NO:** Alvarado-Gil, Choi, Jones, Strickland

**ABS, ABST OR NV:** Dahle, Grove, Niello, Ochoa Bogh, Reyes, Seyarto, Valladares

### ASM PRIVACY AND CONSUMER PROTECTION: 11-1-3

**YES:** Dixon, Bennett, Bryan, Irwin, Lowenthal, McKinnor, Ortega, Pellerin, Ward, Wicks, Wilson

**NO:** DeMaio

**ABS, ABST OR NV:** Hoover, Patterson, Petrie-Norris

### ASM JUDICIARY: 11-0-1

**YES:** Kalra, Dixon, Hart, Bryan, Connolly, Harabedian, Pacheco, Papan, Sanchez, Stefani, Zbur  
**ABS, ABST OR NV:** Macedo

**ASM APPROPRIATIONS: 11-1-3**

**YES:** Wicks, Arambula, Calderon, Caloza, Elhawary, Fong, Mark González, Ahrens, Pacheco, Pellerin, Solache

**NO:** Tangipa

**ABS, ABST OR NV:** Sanchez, Dixon, Ta

**UPDATED**

VERSION: September 2, 2025

CONSULTANT: Josh Tosney / P. & C.P. / (916) 319-2200

FN: 0001497