



Tech Oversight

CALIFORNIA

April 28, 2025

Re: Support AB 2 (Lowenthal) Injuries to children: civil penalties

Assemblymember Lowenthal:

Tech Oversight California, an advocacy organization that champions meaningful tech accountability reforms that address Big Tech's toxic business model and provide powerful online protections for Californians, wishes to express enthusiastic support for AB 2.

AB2 would improve accountability by making a social media platform liable for damages if it fails to exercise ordinary care or skill by causing injury to a child.

Every person and business in California has an obligation to avoid reasonably foreseeable harm to others. This is the common law tort of negligence, codified in Civil Code Sec. 1714. Social media companies are already subject to this statute, and litigating cases under this section in both state and federal courts. Unfortunately, the actual damages plaintiffs have traditionally been able to prove in these cases have not been high enough to deter harmful behavior by these companies, some of the most profitable in the world.

AB 2 offers a simple solution: it builds upon existing law and creates statutory damages for social media companies who have breached the ordinary standard of care resulting in harm to a child through their negligence.

This bill is strongly opposed by Big Tech companies seeking to protect the billions of dollars in exorbitant profits they make advertising to U.S. children each year. The industry argues that ordinary care in this context is ill-defined making it inappropriate to subject them to increased penalties. Despite the fact that AB 2 does not modify the existing tort of negligence in California, they argue that this bill is unconstitutional content moderation and that the bill is preempted by Section 230.

These arguments are nothing more than a red herring by an industry seeking to ensure that its liability remains disproportionately small compared to its profits.

Standard of Care: The standard of ordinary care for social media platforms exists under current law. This bill does not change it. Social media companies fail to meet the standard of care when they have reason to **know** that their products are harmful but fail to **mitigate** those harms.

- Whistleblowers Frances Haugen, Arturo Bejar, and Sarah Wynn-Williams have shown that these companies have knowledge of how their products harm kids, including increased risks of depression, anxiety, and suicide, but choose to do nothing.
- Changes social media platforms have rolled out overseas in response to demands that they mitigate harm show that platforms know exactly how to protect kids, but will not do it unless forced to.

Content: Big Tech argues in opposition that AB 2 is content moderation that will ultimately subject kids to surveillance and shrink the universe of information available to them.

- But the bill does not regulate content. Notifications, endless scroll, autoplay, friend suggestions, and likes are **business decisions**, not content. They are features designed by platforms looking to maximize consumer attention. And we know that it is often that design-driven **addiction** to social media that is harmful to young people's health and well-being.

Section 230: Section 230 of the Federal Communications and Decency Act provides specified immunity for publishers of third-party content. It does not provide immunity for all business decisions, such as features a platform chooses to offer to the public.

- In recent cases brought under Civil Code Sec. 1714 which this bill seeks to supplement, platforms have raised the First Amendment and Section 230 as defenses.
- The court has evaluated those defenses on a case-by-case basis and determined which theories of liability are barred by Section 230 or the First Amendment and which theories are viable.
- Should AB 2 become law, that process would not change. Claims based on the publishing of third-party content would likely be barred by the First Amendment or Section 230, and claims based on negligence unrelated to content would be permitted to move forward.

This bill offers California a simple, elegant and urgently-needed step we can take now to hold Big Tech accountable. It creates right-sized penalties to ensure kids' well-being is acknowledged by social media companies as required by existing law. Tech Oversight California thanks you for bringing this important measure.

Sincerely,

A handwritten signature in black ink, appearing to read "Sacha Haworth", enclosed within a dashed rectangular border.

Sacha Haworth

Executive Director, Tech Oversight California