

Date of Hearing: April 19, 2022

ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION

Jesse Gabriel, Chair

AB 2879 (Low) – As Amended April 7, 2022

As proposed to be amended

SUBJECT: Online content: Students: cyberbullying

SUMMARY: This bill would require social media platforms to provide a mechanism by which school administrators may report instances of cyberbullying and would require social media platforms to include the platform’s cyberbullying reporting procedures in the platform’s terms of service. Specifically, **this bill would:**

- 1) Require a social media platform to disclose all student cyberbullying reporting procedures in the social media platform’s terms of service.
- 2) Require a social media platform to establish a mechanism within its internet-based service separate from existing reporting procedures that enables a school administrator to report a student cyberbullying incident related to a student attending the school at which that administrator is employed.
- 3) Require, beginning July 1, 2023, and biannually every January 1 and July 1 thereafter, a social media platform shall disclose in their terms of service the median time the social media platform takes to respond to a reported instance of student cyberbullying on their platform.
- 4) Define “student cyberbullying” to mean any severe or pervasive conduct made by an electronic act or acts, as defined, committed by a pupil or group of pupils directed toward one or more pupils that has or can be reasonably be predicted to have the effect of one or more of the following:
 - Placing a reasonable pupil or pupils in fear of harm to that pupil’s or those pupils’ person or property.
 - Causing a reasonable pupil to experience a substantially detrimental effect on his or her physical or mental health.
 - Causing a reasonable pupil to experience substantial interference with his or her academic performance.
 - Causing a reasonable pupil to experience substantial interference with his or her ability to participate in or benefit from the services, activities, or privileges provided by a school.
- 5) Define “social media platform” to mean an internet-based service that generated at least one hundred million dollars (\$100,000,000) in gross revenue during the preceding calendar year and allows individuals to do all of the following:

- Construct a public or semipublic profile within a bounded system created by the service.
 - Create a list of other users with whom an individual shares a connection within the system.
 - View and navigate a list of other users' individual connections.
- 6) Exempt electronic mail and direct messaging between users or groups of users from the definition of "social media platform."
 - 7) Define "school administrator" means an administrator, faculty member, or other employee of a school for kindergarten and grades 1 to 12, inclusive.

EXISTING LAW:

- 1) Requires the California Department of Education (CDE) to monitor, among other things, whether local education agencies have:
 - Adopted a policy that prohibits discrimination, harassment, intimidation, and bullying based on the actual or perceived characteristics defined as hate crimes, and disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, sexual orientation, or association with a person or group with one or more of these actual or perceived characteristics.
 - Adopted a process for receiving and investigating complaints relating to discrimination, harassment, intimidation, and bullying, including a requirement that school personnel who witness such acts take immediate steps to intervene when safe to do so; and a timeline for the investigation and resolution of complaints, and an appeal process. (Ed. Code Sec. 234.1.)
- 2) Requires the CDE to develop an online training module to assist all school staff, school administrators, parents, pupils, and community members in increasing their knowledge of the dynamics of bullying and cyberbullying. The online training module shall include, but is not limited to, identifying an act of bullying or cyberbullying, and implementing strategies to address bullying and cyberbullying (Ed. Code Sec. 32283.5.).
- 3) Requires an operator of a commercial website or online service that collects personally identifiable information about consumers to conspicuously post its privacy policy on its website and included specified disclosures. (Bus. & Prof. Code Sec. 22575.)
- 4) Requires, pursuant to the California Consumer Protection Act of 2018 (CCPA), businesses, as defined, to include specified information in their privacy policies, such as a description of consumer rights, the categories of personal information the business collects about consumers, and a list of the categories it has sold about consumers in the preceding 12 months. (Civ. Code Sec. 1798.130.)
- 5) Requires, pursuant to the CCPA, businesses, as defined, to provide a clear and conspicuous link on the business's internet homepage, titled "Do Not Sell My Personal Information" that enables a consumer to opt-out of the sale of the consumer's personal information. (Civ. Code Sec. 1798.135.)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Purpose of this bill:** This bill seeks to provide school administrators with a simple mechanism by which to report student cyberbullying, and increase transparency regarding the speed at which social media platforms respond to allegations of student cyberbullying. This bill is author sponsored.
- 2) **Author’s statement:** According to the author:

Cyberbullying is a distinct and extremely damaging form of abuse. Web postings, text messaging, tweets, and other methods are used maliciously to publicly or privately humiliate someone. 1 in 5 tweens (9 to 12 years old) have been cyberbullied, cyberbullied others, or seen cyberbullying. Of note, more than two-third of tweens who had been cyberbullied said it negatively impacted their feelings about themselves. Also one-third said it affected their friendships. Finally, 13.1% said it affected their physical health, while 6.5% shared it influenced their schoolwork.

AB 2879 would require an operator to establish a mechanism allows a school administrator to report instances of cyberbullying through the platforms internet website. AB 2879 would also require a biannual public report that discloses the responsiveness of the platform to reported cases of cyber bullying.

- 3) **Prevalence of cyberbullying:** In recent years, cyberbullying has become a familiar social problem that many families, communities, and schools, have to face. Defined as “willful and repeated harm inflicted through the use of computers, cell phones, and other electronic devices,” cyberbullying often appears as hurtful social media posts, mean statements made while gaming, hate accounts created to embarrass, threaten, or abuse, or similar forms of cruelty and meanness online. Over the last fifteen years, research on teens has shown that those who have been cyberbullied – as well as those who cyberbully others – are more likely to struggle academically, emotionally, psychologically, and even behaviorally.

A recent study on tween cyberbullying reports that while there has been great progress to “better understand cyberbullying among teens, very little is known about the behaviors as they occur among tweens: that momentous developmental stage that occurs roughly between the ages of 9 and 12 years old. To our knowledge, no previous research has explored cyberbullying among tweens across the United States. We do know that young children’s access to and ownership of mobile devices is on the increase, and the COVID-19 pandemic in 2020 may have elevated these numbers even more because of stay-at-home orders and online learning across the United States. It stands to reason, then, that cyberbullying is likely occurring among tweens, and obtaining an accurate picture of its scope can help move us toward more informed responses.”¹

¹ (Hinduja and Patchin, *Tween Cyberbullying in 2020*, *Cyberbullying Research Center*, found at <https://i.cartoonnetwork.com/stop-bullying/pdfs/CN_Stop_Bullying_Cyber_Bullying_Report_9.30.20.pdf> [as of Apr. 15, 2022].)

Recognizing that it is incumbent upon adults rather than children to create safe environments, this bill seeks to take two modest steps in the fight against student cyberbullying. First, it would require social media companies to create a simple mechanism by which school administrators may report instances of student cyberbullying. Second, the bill aims to increase transparency by requiring social media companies to disclose the platform's student cyberbullying reporting procedures in the platform's terms of service and requires platforms to make certain disclosures related to student cyberbullying biannually.

- 4) **Provisions to increase transparency have been significantly narrowed to be workable:** As amended on April 7, 2022, this bill would have required operators of websites and online services to disclose any existing terms of services related to student cyberbullying and student cyberbullying reporting procedures “within the terms of service, user agreement, or any other policies of their internet website, online service, online application, or mobile application.” Further, the bill would have required these policies to be accessible by a link on the home page of the website or app, “in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from the surrounding text of the same size by symbols or other marks that call attention to the link.”

While it is certainly important that a website make any student cyberbullying reporting policy or process accessible, the methods prescribed by the April 7 version of this bill were arguably duplicative and onerous. As proposed to be amended, the author has agreed to instead require this disclosure in a social media platform's terms of service and eliminate the requirement that the disclosure be linked on the homepage. The terms of service is where social media platforms include other important policies and it is reasonable to expect a policy on student cyberbullying to be found among the other use policies of the platform.

Additionally, the April 7, 2022 version of the bill would have required social media platforms to report specified statistics related to reported instances of cyberbullying both on their platforms and to the Legislature biannually. Because legislators (or their staff) would be able to access the exact same information that the bill would have required in a legislative report on the social media platform itself, this requirement was duplicative and arguably burdensome. The author has therefore agreed to only require the specified statistics to be reported on the social media platform.

- 5) **Separate mechanism by which school administrators may report cyberbullying:** This bill would require a separate mechanism by which school administrators may report a student cyberbullying incident that is separate from existing reporting procedures on the platform. TechNet and the California Chamber of Commerce, both of whom are opposed to this bill, argue that a separate mechanism for school administrators is unnecessary:

Platforms already allow users to report harmful content they believe violates the platform's terms of service or community standards. A separate reporting mechanism only for school administrators will have little impact on the number of incidents that are reported and addressed and will only be costly to implement and maintain.

At the time of this writing the school administrators have not reached out to Committee staff regarding this bill, and thus it is difficult to determine if a separate mechanism for reporting student cyberbullying would provide sufficient utility to justify the costs to social media platforms. Accordingly, the author should continue to work with stakeholders to ensure that

the usefulness of this additional feature is appropriately balanced with the burden it will create for industry.

- 6) **Opposition remains concerned about reporting requirements in bill:** This bill would require a social media platform to report biannually the median time the platform takes to respond to reports of student cyberbullying. Importantly, the bill does not require social media platforms to respond to reports in any prescribed manner, which helps ensure that the bill is not preempted by federal law.² As amended on April 7, 2022, this bill would have also required social media platforms report this same information to the Legislature, which would have been duplicative of the reporting on their websites. Prudently, the author agreed to remove that requirement.

Nonetheless, the opposition argues that “most companies already provide detailed transparency reports, many of which include data and information about cyberbullying. These reports are easily accessible and linked to on their websites or available on apps.” The opposition is also concerned that “reporting the median response times will not provide much insight into a company’s moderation efforts. For example, a company that automatically removes any content that is reported as cyberbullying without review by human moderators will have a short response time. A company that has human moderators carefully review the report and analyze the context will have a much longer response time. Speed should not be the only metric used to evaluate the efficacy of content moderation policies.”

Accordingly, the author should continue to work with the opposition to determine which metrics would be useful to the public and the Legislature in evaluating the adequacy of social media platform’s student cyberbullying policies.

- 7) **Mockup of amendments reflected in this analysis:** The author has agreed to significantly amend the bill as in print on April 7, 2022 to address a number of concerns raised by this Committee and the opposition, including narrowing the definition of social media platform (referred to as an “operator” in the bill in print), and amending the definition of student cyberbullying to reflect well-established definitions in the Education Code. The amendments also delete a number of provisions and make other technical changes. This analysis is based those amendments as reflected in the mockup below.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Chapter 22.2.9 (commencing with Section 22589) is added to Division 8 of the Business and Professions Code, to read:

CHAPTER 22.2.9. Student Cyberbullying Protection Act

1) ²See Sec. 230 of the federal Communications Decency Act of 1996, providing, that “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,” and affords broad protection from civil liability for the good faith content moderation decisions of interactive computer services. (47 U.S.C. Sec. 230(c)(1) and (2).)

22589. For purposes of this chapter, the following definitions apply:

~~(a) “Content” means media, including, but not limited to, text, images, videos, and groups of users that are created, posted, shared, or otherwise interacted with by users on an internet website, online service, online application, or mobile application.~~

~~(b) (1) “Student cyberbullying” means harmful or false content related to a person under 18 years of age attending a school for kindergarten and grades 1 to 12, inclusive, that is intended to cause that person embarrassment or humiliation.~~

~~(2) “Student cyberbullying” does not include any of the following:~~

~~(A) Content that is disseminated for the purpose of reporting unlawful activity.~~

~~(B) Content that is directed at a public figure.~~

~~(C) Content that exclusively contains information related to a matter of public concern.~~

~~(e) (1) “Operator” means any person or entity that owns an internet website, online service, online application, or mobile application who knows or should know that the site, service, or application is used by, designed for, or marketed to, minors attending schools for kindergarten and grades 1 to 12, inclusive.~~

~~(2) “Operator” does not include any service providers.~~

(a) “Student cyberbullying” means any severe or pervasive conduct made by an electronic act or acts, as defined in Ed. Code Sec 48900(r)(2)(A), committed by a pupil or group of pupils directed toward one or more pupils that has or can be reasonably be predicted to have the effect of one or more of the following:

(1) Placing a reasonable pupil or pupils in fear of harm to that pupil’s or those pupils’ person or property.

(2) Causing a reasonable pupil to experience a substantially detrimental effect on his or her physical or mental health.

(3) Causing a reasonable pupil to experience substantial interference with his or her academic performance.

(4) Causing a reasonable pupil to experience substantial interference with his or her ability to participate in or benefit from the services, activities, or privileges provided by a school.

(b)(1) “Social media platform” means an internet-based service that generated at least one hundred million dollars (\$100,000,000) in gross revenue during the preceding calendar year and allows individuals to do all of the following:

(A) Construct a public or semipublic profile within a bounded system created by the service.

(B) Create a list of other users with whom an individual shares a connection within the system.

(C) View and navigate a list of other users’ individual connections.

(2) "Social media platform" does not include electronic mail and direct messaging between users or groups of users.

(c) "School administrator" means an administrator, faculty member, or other employee of a school for kindergarten and grades 1 to 12, inclusive.

22589.1. (a) (1) An ~~operator~~ social media platform shall disclose all student cyberbullying reporting procedures in the social media platform's terms of service. ~~all existing terms of service related to student cyberbullying and student cyberbullying reporting procedures within the terms of service, user agreement, or any other policies of their internet website, online service, online application, or mobile application.~~

~~(2) The disclosure made pursuant to this subdivision shall be accessible by a link, located on the home page or first significant page after entering the internet website, online service, online application, or mobile application, that is in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from the surrounding text of the same size by symbols or other marks that call attention to the link.~~

~~(b) An operator~~ A social media platform shall establish a mechanism within its internet-based service ~~internet website, online service, online application, or mobile application,~~ separate from existing reporting procedures, that enables a school administrator to report a student cyberbullying incident related to a student attending the school at which that administrator is employed.

22589.2. ~~An operator shall establish and maintain a database that records all instances of student cyberbullying reported by users or discovered by the operator's employees.~~

22589.3. (a) (1) Beginning July 1, 2023, and biannually every January 1 and July 1 thereafter, ~~an operator~~ a social media platform shall disclose in their terms of service the median time the ~~operator~~ social media platform takes to respond to a reported instance of student cyberbullying on their platform.

~~(2) The disclosure made pursuant to this subdivision shall be accessible by a link, located on the home page or first significant page after entering the internet website, online service, online application, or mobile application, that is in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from the surrounding text of the same size by symbols or other marks that call attention to the link.~~

~~(b) (1) Beginning July 1, 2023, and biannually every January 1 and July 1 thereafter, an operator shall submit a report to the Legislature disclosing the median time the operator takes to respond to a reported instance of student cyberbullying on their internet website, online service, online application, or mobile application.~~

~~(2) (A) The requirement for submitting a report imposed under this subdivision is inoperative on January 1, 2027, pursuant to Section 10231.5 of the Government Code.~~

~~(B) A report to be submitted pursuant to this subdivision shall be submitted in compliance with Section 9795 of the Government Code.~~

22589.4. The provisions of this chapter are severable. If any provision of this chapter or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

8) **Double referral:** This bill has been double referred to the Assembly Judiciary Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file

Opposition

TechNet
California Chamber of Commerce

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