



Questions & Answers

AB 2408 (Cunningham and Wicks)

The Social Media Platform Duty to Children Act

“Facebook’s internal research is aware that there are a variety of problems facing children on Instagram, they know that severe harm is happening to children.”¹

--Former Facebook Executive and Whistleblower Frances Haugen

“Among teen users [of Instagram] who reported suicidal thoughts, 13% of British users and 6% of American users traced the desire to kill themselves to Instagram.”²

--Meta’s internal research

“Facebook has taken big tobacco’s playbook, it has hidden its own research on addiction and the toxic effects of its products. It has ... weaponized childhood vulnerabilities against children themselves. It’s chosen growth over children’s mental health and well-being, greed over preventing the suffering of children.”³

– United States Senator Richard Blumenthal

“I feel bad when I use Instagram, and yet I can’t stop.”⁴

-- Teen interviewed by Instagram revealed in leaked documents

“Fully 95% of teens have access to a smartphone, and 45% say they are online ‘almost constantly.’”⁵

--Pew Research Center

“Adolescence is ...associated with an increased risk for... addictive disorders.”⁶

-- *Neurobiology of Adolescent Substance Use and Addictive Behaviors: Prevention and Treatment Implications*, Adolescent Medicine: State of the Art Reviews

¹ Facebook Whistleblower Frances Haugen Testifies on Children and Social Media Use: Full Senate Hearing Transcript, <https://www.rev.com/blog/transcripts/facebook-whistleblower-frances-haugen-testifies-on-children-social-media-use-full-senate-hearing-transcript>.

² Georgia Wells et al., *Facebook Knows Instagram Is Toxic for Teen Girls, Company Documents Show*, WALL STREET JOURNAL (Sept. 14, 2021), <https://www.wsj.com/articles/facebook-knows-instagram-is-toxic-for-teen-girls-company-documents-show-11631620739>.

³ Facebook Head of Safety Testimony on Mental Health Effects: Full Senate Hearing Transcript, REV, <https://www.rev.com/blog/transcripts/facebook-head-of-safety-testimony-on-mental-health-effects-full-senate-hearing-transcript>.

⁴ Facebook Whistleblower, *supra* note 1.

⁵ Monica Anderson & Jingjing Jiang, *Teens, Social Media & Technology 2018*, PEW RESEARCH CENTER (May 31, 2018), <https://www.pewresearch.org/internet/2018/05/31/teens-social-media-technology-2018/>.

⁶ Christopher J. Hammond et al., *Neurobiology of Adolescent Substance Use and Addictive Behaviors: Prevention and Treatment Implications*, 25 ADOLESC. MED. STATE ART. REV. 15 (Apr. 2014), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4446977/>.

1. What is the public policy aim of the bill?

The aim of the bill is simple and narrow: to discourage some of the world's largest and most profitable social media platform corporations from manipulating their platforms to be addictive to children.

AB 2408 poses the question: do you think it should be legal for giant social media platforms to use neuroscience to make addicts of our children?

2. How does the bill work?

First, the bill enacts a new law that says it is illegal for social media platforms to make addicts of their child customers through a design, feature, or affordance of the platform.

Second, the bill permits California's public prosecutors who under current law are empowered to enforce laws against unfair business competition (the Attorney General, District Attorneys, four city attorneys) to enforce the new law.

Third, the bill creates a safe harbor from major financial penalties for responsible social media platforms that take basic steps to avoid addicting children.

3. What platforms would be subject to this bill?

To avoid impacting small and medium-sized enterprises not contributing to the child mental illness crisis, this bill only applies to social media platforms controlled by companies earning more than \$100 million in annual revenue. In addition, the bill excludes various types of digital platforms including video games, email providers, search engines, streaming services, file-sharing and collaboration tools, internal business services, and limited-functionality sites like comment sections and product reviews.

The bill will cover many of the most popular social media platforms used by children, including TikTok, Instagram, and Facebook.

4. How many children are being harmed?

Research using widely accepted measures of social media addiction suggests a prevalence rate of approximately five percent across the general population.⁷ The rates of addiction for children may be higher: research shows that rates of behavioral addictions are elevated during adolescence.⁸ With 22 million American teenagers using Instagram alone,⁹ it is likely that more than a million young Americans are addicted to social media ... *at least*.

⁷ <https://www.addictioncenter.com/drugs/social-media-addiction/>

⁸ Christopher J. Hammond et al., *supra* note 6.

⁹ Wells et. al, *supra* note 2.

5. What harms are associated with social media addiction?

Several studies have found positive correlations between time spent on social media and rates of suicide and depression among teens, especially girls.¹⁰ In reviewing studies about social media use and girls:

Most lump all screen-based activities together (including those that are harmless, such as watching movies or texting with friends), and most lump boys and girls together. Such studies cannot be used to evaluate the more specific hypothesis that Instagram is harmful to girls. It's like trying to prove that Saturn has rings when all you have is a dozen blurry photos of the entire night sky.

But as the resolution of the pictures increases, the rings appear. The subset of studies that allow researchers to isolate social media, and Instagram in particular, show a much stronger relationship with poor mental health. The same goes for those that zoom in on girls rather than all teens. Girls who use social media heavily are about two or three times more likely to say that they are depressed than girls who use it lightly or not at all.¹¹

Social media addiction has a negative impact on children's normal socialization and contributes to feelings of social isolation in young people.¹² Over time, social media addiction can create a vicious cycle: discomfort with real-life socialization drives lonely youth to internet interactions, which increase the perception of isolation; as tolerance increases, the addicted young person needs to spend more time online to feel its rewards.

Meanwhile, *reducing* social media use has been shown to result in mental health benefits.¹³

6. Do social media companies themselves document these or similar harms?

Yes. One social media company's own internal documented research confirms the health experts' findings of the severe harm to some children caused by exposure to their products:

- Among teen users who reported suicidal thoughts, 13% of British users and 6% of American users traced the desire to kill themselves to Instagram.

¹⁰ Elia Abi-Jaoude et al., *Smartphones, Social Media Use and Youth Mental Health*, 192 CAN. MED. ASS'N. J. E136 (Feb. 2020); RSPH, *Instagram Ranked Worst for Young People's Mental Health*, <https://www.rsph.org.uk/about-us/news/instagram-ranked-worst-for-young-people-s-mental-health.html> (last visited Feb. 27, 2022).

¹¹ Jonathan Haidt, *The Dangerous Experiment on Teen Girls*, THE ATLANTIC (November 21, 2021), <https://www.theatlantic.com/ideas/archive/2021/11/facebooks-dangerous-experiment-teen-girls/620767/>

¹² Brian A. Primack et al., *Social Media Use and Perceived Social Isolation Among Young Adults in the US*, 53 AM. J. PREVENTATIVE MED. 1 (2017).

¹³ Roberto Mosquera et al., *The Economic Effects of Facebook*, 23 Exp. Econ. 575 (Jun. 2020). Melissa G. Hunt et al., *No More FOMO: Limiting Social Media Decreases Loneliness and Depression*, 37 J. SOC. CLINICAL PSYCH. 751 (Guilford Publications Inc. Nov. 2018). Hunt Allcott et al., *The Welfare Effects of Social Media*, 110 AM. EC. REV. 629 (Mar. 2020).

- About one in five U.S. teenagers with mental health concerns (which Meta’s own research says is “most teens”) say that Instagram makes them feel worse about themselves and their mental health.
- Meta’s research showed that “teens blame Instagram for increases in the rates of anxiety and depression among teens.”
- Instagram’s features create a “perfect storm” of social comparison.¹⁴

7. Why would social media companies want to addict child users?

Social media platforms are financially incentivized to deploy design features that increase the likelihood of addiction. Social media platforms offer users access to their platforms and services for free.¹⁵ Digital platforms earn “substantially all” of their revenue through digital advertising.¹⁶ The “product” that social media companies sell to advertisers is the opportunity to display targeted ads to the platform’s billions of users.¹⁷ The time and attention users spend on such platforms (a metric that companies call “user engagement”) are thus critical ingredients in sustaining social media platforms’ profitability.¹⁸ Thus, social media companies have a strong financial incentive to design their platforms in ways that maximize the amount of time and attention that users spend logged in.

It is important to note that “user engagement” does not necessarily track a user’s subjective enjoyment or objective health and well-being. In fact, user enjoyment and well-being are sometimes negatively correlated to user engagement. In other words, many users spend *even more time* on social media when engaging with content they don’t like¹⁹ or objectively makes them unhealthier.²⁰

Thus, social media companies are financially motivated to use design features that maximize user engagement instead of features that would increase user enjoyment or well-being but decrease engagement.²¹ Addicted consumers are particularly profitable because their consumption behavior

¹⁴ Wells et. al, *supra* note 2.

¹⁵ Meta Platforms, Inc., Annual Report (Form 10-K) (Feb. 2, 2022).

¹⁶ Meta Platforms, Inc., Annual Report (Form 10-K) (Feb. 2, 2022).

¹⁷ Meta’s Annual Report for 2021 states: “We generate substantially all of our revenue from selling advertising placements to marketers.” Meta Platforms, Inc., Annual Report (Form 10-K) (Feb. 2, 2022).

¹⁸ Meta Platforms, Inc., Annual Report (Form 10-K) (Feb. 2, 2022).

¹⁹ Facebook’s research “suggests that no matter where we draw the lines for what is allowed, as a piece of content gets close to that line, people will engage with it more on average – even when they tell us afterwards they don’t like the content.” Mark Zuckerberg, *A Blueprint for Content Governance and Enforcement*, FACEBOOK, Nov. 15, 2018, <https://www.facebook.com/notes/751449002072082/>.

²⁰ Facebook’s own research has proven that “people reporting problematic use report the site as more valuable to them, highlighting the complex relationship between [Facebook] use and well-being.” Justin Cheng et al., *Understanding Perceptions of Problematic Facebook Use*, in CHI CONFERENCE ON HUMAN FACTORS IN COMPUTING SYSTEMS PROCEEDINGS (CHI 2019), May 4-9, 2019, Glasgow, Scotland, <https://research.facebook.com/publications/understanding-perceptions-of-problematic-facebook-use/>.

²¹ In an internal Facebook memo leaked as part of the Facebook Files, Mark Zuckerberg told internal hate speech researchers that a proposed fix “wouldn’t launch if there was a material tradeoff with MSI impact”(MSI, or “meaningful social interactions,” is Facebook’s internal metric for user engagement). Elizabeth Dwoskin et al., *The Case Against Mark Zuckerberg: Insiders Say Facebook’s CEO Chose Growth Over Safety*, WASH. POST, Oct. 25,

goes beyond normal engagement levels. The extra profit generated by addicted consumers is known as “the addiction surplus.”²² Because addicted consumers are generally more profitable than consumers who are not addicted, businesses are motivated to create addiction and capture the “addiction surplus.”²³

8. How do social media companies addict child users? What sort of features and designs are proven to be addictive?

Just as tobacco companies employed scientists and doctors to maximize the addictive properties of the tobacco in their cigarettes, Meta and other social media companies employ neuroscientists and user-interface designers to maximize the addictive properties of their technologies. Until recently, some design leaders boasted openly about such tactics in such industry bestsellers like *Hooked: How to Build Habit-Forming Products*²⁴ and *Evil by Design*.²⁵

Examples of addictive design patterns can be loosely grouped into three buckets.²⁶ First, the use of “reward schemes,” such as “likes,” take advantage of our desire for validation. Second, the timing of “intermittent variable rewards,” such as loading icons or notifications, make us feel rewarded for staying on the platform longer.²⁷ Third, the use of design patterns such as bottomless-scroll and auto-play, erode our natural stopping cues. The longer that users engage with social media, the more data is collected about how they respond to these designs, enabling the enhancement and personalization of addictive design features.²⁸

As bluntly explained in the BBC’s *Science Focus*:

And to do this, [the social media companies] build features into their apps that manipulate our brain chemistry. These tricks are borrowed straight from casinos and slot machines, which are widely considered to be some of the most addictive machines ever invented.

Consider the ‘pull-to-refresh’ feature common to social media apps, where dragging the screen downwards prompts the screen to refresh. Not only is the action itself similar to pulling the lever on a slot machine, but it takes advantage of our attraction to unpredictability. Psychologists call this ‘intermittent reinforcements’ (and I call it ‘the reason we date jerks’). Sometimes, when we

2021, <https://www.adn.com/nation-world/2021/10/25/the-case-against-mark-zuckerberg-insiders-say-facebooks-ceo-chose-growth-over-safety/>.

²² Peter J. Adams, *Addiction Industry Studies: Understanding How Proconsumption Influences Block Effective Interventions*, AMERICAN JOURNAL OF PUBLIC HEALTH (2012).

²³ *Id.*

²⁴ Nir Eyal & Ryan Hoover, *HOOKED: HOW TO BUILD HABIT-FORMING PRODUCTS* (2014).

²⁵ Chris Nodder, *EVIL BY DESIGN: INTERACTION DESIGN TO LEAD US INTO TEMPTATION* (2013).

²⁶ Vikram Bhargava & Manuel Velasquez, *Ethics of the Attention Economy: The Problem of Social Media Addiction*, 31 CAMBRIDGE UNIVERSITY PRESS 321 (Jul. 2021).

²⁷ *Id.*

²⁸ *Id.*

check social media there's something exciting waiting for us (a 'reward'), sometimes there's not. It's the unpredictability that keeps us coming back.

Once you're plopped in front of a slot machine, the casino wants to keep you there – that's why most casinos are windowless with no clocks. Similarly, once you're trapped in a spiral of infinite scrolling, social media apps don't want you to look up. That's why their feeds are deliberately designed to be endless.²⁹

Several former Facebook executives have acknowledged that design features they invented exploit weaknesses in human psychology. Leah Pearlman, co-inventor of Facebook's "like" button, admitted that she herself had become hooked on Facebook because she had begun basing her sense of self-worth on the number of "likes" she had.³⁰ Sean Parker, Facebook's first president, admitted that user interface designers "exploit[ed] a vulnerability in human psychology" by rewarding users with "a little dopamine hit" to ensure Facebook would "consume as much of [the users'] time and conscious attention as possible."³¹ The inventor of the infinite scroll at Mozilla has said that behind each phone home screen, there are teams of engineers working on increasing addictiveness.³²

9. Is it really appropriate to call social media use disorder an addiction?

"Addiction" has a chemical and a behavioral definition. Gambling, for example, is not a recognized chemical addiction—as drug addiction would be— but a recognized behavioral one.³³

Meta's own leaked documents reveal its strategy of purposefully behaviorally addicting children to a known harmful product to earn profits. The Facebook whistleblower explained:

*"Facebook has studied a pattern that they call **problematic use**, what we might more commonly call **addiction**. It has a **very high bar** for what it believes ["problematic use"] is.*

It [means] you self-identify that you don't have control over your usage and that it is materially harming your health, your schoolwork or your physical health.

Five to 6% of 14 year olds have the self-awareness to admit both those questions. It is likely that far more than five to 6% of 14 year olds are addicted to Instagram."³⁴

"An addict's narrative" -- this is Meta's characterization, not anyone else's:

²⁹ Catherine Price, *Trapped – the secret ways social media is built to be addictive (and what you can do to fight back)* (October 29, 2018), <https://www.sciencefocus.com/future-technology/trapped-the-secret-ways-social-media-is-built-to-be-addictive-and-what-you-can-do-to-fight-back/>.

³⁰ Hilary Andersson, *Social Media Apps "deliberately" Addictive to Users*, BBC NEWS (Jul. 3, 2018), <https://www.bbc.com/news/technology-44640959>.

³¹ Olivia Solon, *Ex-Facebook President Sean Parker: Site Made to Exploit Human "Vulnerability,"* THE GUARDIAN, <http://www.theguardian.com/technology/2017/nov/09/facebook-sean-parker-vulnerability-brain-psychology> (Nov. 9, 2017).

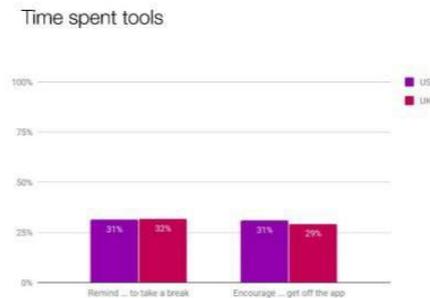
³² Andersson, *supra* note 30.

³³ <https://www.healthline.com/health/types-of-addiction>.

³⁴ *Facebook Whistleblower*, *supra* note 1 (emphases added).

Teens want help controlling the time they spend on the app

- Teens talk about the amount of time they spend on Instagram as one of the “worst” aspects of their relationship to the app.
- They have an addicts’ narrative about their use -- it can make them feel good, feel bad. They wish they could spend less time caring about it, but they can’t help themselves.
- Teens recognize the amount of time they spend online isn’t good for them but at the same time know they lack the willpower to control the time spent themselves



Q: Now you're going to see some things that Instagram could do to help teens. Please select your top 3 for what Instagram should do.
US n = 1296; UK n = 1308

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10. Can you summarize based on Meta’s own research what it is about Instagram and social media addicting girls that makes their inability to step away so hurtful?

As one expert observed, “Instagram perpetuates the myth that our happiness and ability to be loved are dependent on external things: For girls, it’s appearance[.]”³⁶ The picture-perfect images on Instagram’s news feeds are so potent that they cement these superficial and harmful values into adolescent brains without them even knowing it.”³⁷

Indeed, “observational studies have linked spending more than 2 hours a day on social networking sites and personal electronic devices with high rates of suicidality and depressive symptoms among adolescent girls[.]”³⁸

As summed up by Senator Marsha Blackburn (R-TN) at the whistleblower hearing, using Meta’s own leaked data (emphases supplied):

66% of teen girls on Instagram and 40% of teen boys experience negative social comparisons, this is Facebook’s research.

³⁵ Teen Mental Health Deep Dive. (Sept. 29, 2021). THE WALL STREET JOURNAL. <https://s.wsj.net/public/resources/documents/teen-mental-health-deep-dive.pdf>.

³⁶ Jennifer Wallace, *Instagram is Even Worse than We Thought for Kids. What Do We Do about It?*, WASHINGTON POST, <https://www.washingtonpost.com/lifestyle/2021/09/17/instagram-teens-parent-advice/>.

³⁷ *Id.*

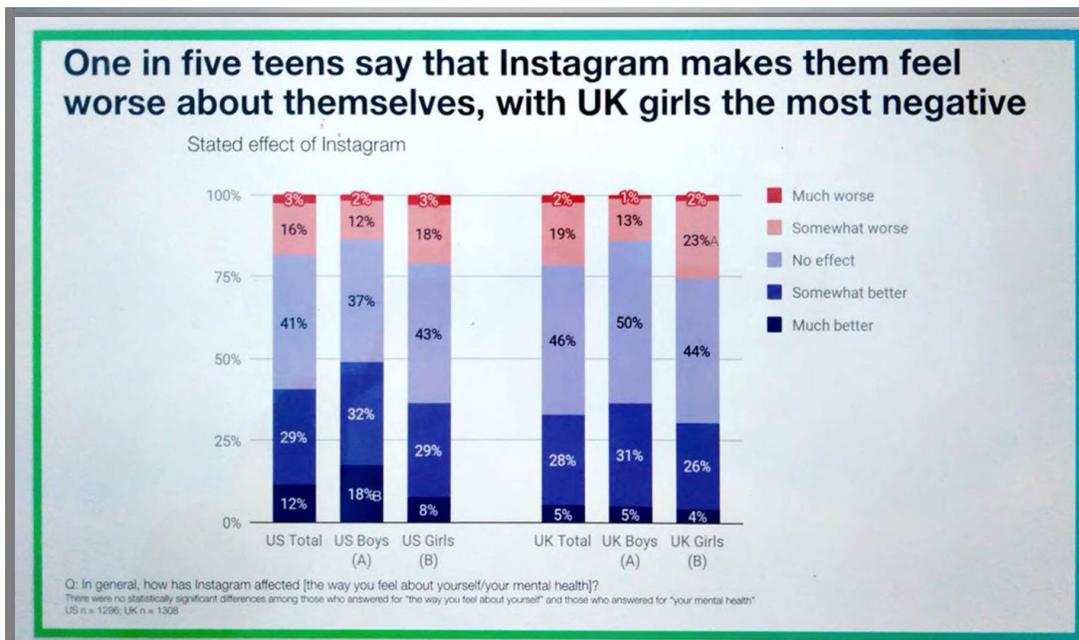
³⁸ Elia Abi-Jaoude, Karline Treurnicht Naylor & Antonio Pignatiello, *Smartphones, Social Media Use and Youth Mental Health* 192 CANADIAN MED. ASSOC. J. 136, 137 (2020).

52% of teen girls who experience negative social comparison on Instagram said it was caused by images related to beauty.

Social comparison is worse on Instagram **because it is perceived as real life** but based on celebrity standards.

Social comparison **mimics the grief cycle and includes a downward emotional spiral, encompassing a range of emotions from jealousy to self-proclaimed body dysmorphia.** Facebook addiction, which Facebook calls, conveniently, **problematic use is most severe in teens peeking at age 14.**³⁹

Slide from internal Meta (then-Facebook) documents, leaked to the Wall Street Journal:⁴⁰



11. Why is legal accountability the right approach?

Absent public utility-like all-embracing regulation, it is very hard for government by force of overseeing regulation to change a corporation's harmful behavior when its harmful behavior is the core of its profitable business model and the key to its growth. In such circumstances, the best way of ensuring the corporation abandons harm-causing policies is to prompt self-compliance by making the harmful things risky or unprofitable.

Here, to Meta and other large social media companies, addiction—greater and greater time spent on a site, even when the user wants to reduce their use and is experiencing preoccupation, withdrawal, and other physical or mental harms—is their business model. These companies are

³⁹ Facebook Whistleblower, *supra* note 1.

⁴⁰ Teen Mental Health Deep Dive. (2021, Sept. 29). THE WALL STREET JOURNAL. <https://s.wsj.net/public/resources/documents/teen-mental-health-deep-dive.pdf>.

intensely focused on increasing the amount of time teens and children spend on their platforms, despite the growing evidence of harm.⁴¹ Meta went so far as to explore creating a version of Instagram specifically for children under 13; they abandoned those plans only after public outcry.⁴² These companies know that the more time children spend on these platforms, the more of their data the social media companies can collect, use, and sell to advertisers.

In fact, one recent study found that Meta continues to collect and sell vast amounts of data about its child users, despite promises not to.⁴³ The reason? Doing so is fantastically profitable and to grow it must continue to explore ambitious ways to glue users to their screens.

As whistleblower Frances Haugen told Congress in testimony last year:

“Until the incentives change, [Meta] will not change. Left alone, [Meta] will continue to make choices that go against the common good, our common good.”⁴⁴

12. Has Meta been the subject of official investigations or lawsuits already regarding this harmful behavior? If so, what are they?

Yes, since the whistleblower’s revelations, Meta has been the subject of multiple investigations and lawsuits regarding the harmful effects of their addictive technologies on children.

- A bipartisan group of state attorneys general have opened an investigation into Meta for violations of consumer protection laws, based on the documents Haugen released.⁴⁵
- The Republican attorney general of Ohio filed a lawsuit against Meta on behalf of Meta investors and the Ohio Public Employees Retirement System for violations of securities laws, arguing that Meta misled the public about, among other things, its platforms’ harmful effects on children.⁴⁶
- The mother of an 11-year-old girl in Connecticut recently sued Meta and Snapchat for wrongful death after her daughter committed suicide. The suit alleges that these companies

⁴¹ Jeff Horwitz & Georgia Wells, *Facebook’s Effort to Attract Preteens Goes Beyond Instagram Kids, Documents Show*, WALL STREET JOURNAL (Sept. 28, 2021), <https://www.wsj.com/articles/facebook-instagram-kids-tweens-attract-11632849667>.

⁴² Matt Grossman, *Facebook to Halt Instagram Kids Project Amid Pressure From Lawmakers, Parents Groups*, WALL STREET JOURNAL (Sept. 27, 2021), <https://www.wsj.com/articles/facebook-pauses-instagram-kids-project-11632744879>.

⁴³ Natasha Lomas, *Facebook Continuing to Surveil Teens for Ads, Says Report*, TECHCRUNCH (Nov. 16, 2021), <https://social.techcrunch.com/2021/11/16/facebook-accused-of-still-targeting-teens-with-ads/>.

⁴⁴ *Facebook Whistleblower*, *supra* note 1.

⁴⁵ Cecilia Kang & Mike Isaac, *State Attorneys General Open an Inquiry into Instagram’s Impact on Teens.*, THE NEW YORK TIMES (Nov. 18, 2021), <https://www.nytimes.com/2021/11/18/technology/meta-instagram-investigation-teens.html>. The states involved in the investigation, as of November 2021, include California, Florida, Kentucky, Massachusetts, Minnesota, Nebraska, New Jersey, New York, Oregon, Tennessee, Vermont, and the District of Columbia. *Id.*

⁴⁶ Meghan Bobrowsky, *Ohio Sues Meta Alleging Facebook Parent Misled Public About Its Products’ Effect on Children*, WALL STREET JOURNAL (Nov. 15, 2021), <https://www.wsj.com/articles/ohio-sues-meta-alleging-facebook-parent-misled-public-about-its-products-effect-on-children-11637011332>.

“knowingly and purposefully designed, manufactured, marketed, and sold social media products that were unreasonably dangerous because they were designed to be addictive to minor users.”⁴⁷

13. Would the bill apply if a company accidentally created an addictive product, but the company did not and should not have known it was harmful to children?

No. Social media platform companies would not be held liable under this bill solely for practices or features of social media platforms that the platform operator did not know, and had no reason to know, would cause or contribute to addiction of child users.

Indeed, if the social media platform did not cause any harm, then the platform would not be considered addictive under this bill. In the bill, “addiction” is defined as the use of a social media platforms that indicates a preoccupation or obsession with the platform, difficulty withdrawing or reducing use, despite the child’s desire to cease or reduce use and that has caused physical, emotional, developmental, or other harm to the child.

Both addiction *and* real harm are required to impose liability.

This bill reserved its harshest penalties for companies that affirmatively *know* their platforms are addictive to children. A company that knowingly or willfully violates the duty not to addict child users under this bill is subject to an additional civil penalty of up to \$250,000 per child user.⁴⁸

14. Are businesses that reform their behavior treated differently by the bill?

Yes. This bill includes a safe harbor from the largest civil penalties for social media platform companies that a) institute audits of their practices and platform features to detect any practices or features that have the potential to cause or contribute to addiction of children, and b) remove or correct such practices or features within 30 days of completing the audit.

15. Isn't this bill preempted by Section 230?

No, this bill would not be preempted by Section 230 because this bill holds companies liable for their own product’s practices and features, *not for not content that others post on their platforms*. Section 230 of the federal Communications Decency Act of 1996 immunizes social media companies, among others, from liability for content that others post on their platforms or services.⁴⁹ This bill, on the other hand, expressly states that it shall not be construed as imposing liability for content created by persons or parties other than the social media platform.⁵⁰ Instead,

⁴⁷ Adela Suliman, *Mother of 11-Year-Old Who Died by Suicide Sues Social Media Firms Meta and Snap*, WASHINGTON POST (Jan. 22, 2022), <https://www.washingtonpost.com/nation/2022/01/22/selena-rodriguez-suicide-meta-snap-lawsuit/>.

⁴⁸ *Id.* section (c)(3)(A).

⁴⁹ 47 U.S.C. § 230(c)(1), 110 Stat. 137 (1996).

⁵⁰ See, proposed Civil Code section 1714.48(f).

this bill targets the harms that result from social media company’s practices and product features that cause children’s addiction to the platform.

Recent court precedent clarifies that Section 230 does not immunize social media companies from harms that their own practices or product features cause. Last year, the Ninth Circuit ruled that Section 230 does not immunize social media platforms from liability for “unreasonable and negligent” design decisions, including product features that encourage users to take harmful actions.⁵¹ As the Electronic Frontier Foundation, a proponent of Section 230 generally, explained in support of the Ninth Circuit’s decision, “Section 230 does not protect companies when a claim is premised on harm that flows from the company’s own speech or actions, independent from the speech of other users.”⁵²

Moreover, Section 230 states that it shall not “be construed to prevent any State from enforcing any State law that is consistent with this section.”⁵³ Our bill is consistent with Section 230, as interpreted by the Ninth Circuit, and would not be preempted by it.

16. Aren't you discouraging businesses from checking to see if their addictive products are harmful?

Not at all. The bill holds companies liable for addicting children only when they knew or reasonably should have known they were causing addiction. Unreasonable blindness is no defense. Any suspicion or awareness of addictiveness or harm should create an obligation to look into whether the relevant practices or features are harmful to children.

In addition, as noted above, the bill would immunize social media companies from the largest civil penalties if they regularly audit their practices and features for addiction of child users and promptly correct or remove any features that they find to be causing or contributing to addiction. This creates a further incentive for companies to investigate and fix the addictive aspects of their products.

⁵¹ *Lemmon v. Snap*, 995 F.3d 1085, 1094 (9th Cir. 2021) (“In short, Snap is being sued for the predictable consequences of designing Snapchat in such a way that it allegedly encourages dangerous behavior. [Section 230] does not shield Snap from liability for such claims.”).

⁵² Sophia Cope, *Lawsuit Against Snapchat Rightfully Goes Forward Based on “Speed Filter,” Not User Speech*, ELECTRONIC FRONTIER FOUNDATION, <https://www.eff.org/deeplinks/2021/05/lawsuit-against-snapchat-rightfully-goes-forward-based-speed-filter-not-user> (May 18, 2021).

⁵³ 47 U.S.C. § 230(e)(3).

17. Is Congress considering similar legislation? If so, who is the sponsor and what is its status?

Yes, there are multiple efforts, with one federal bill that specifically targets internet platforms for addicting kids (amongst other provisions). That is the Kids Online Safety Act (KOSA), introduced in February by Senators Richard Blumenthal (D-CT) and Marsha Blackburn (R-TN).⁵⁴

The bill proposes creating new responsibilities for tech platforms to protect children from digital harms, including sexual exploitation, the promotion of gambling and alcohol, and rabbit holes of dangerous material. The bill would require companies to provide settings for families to protect their kids from harmful content and from potential app addiction, with those settings enabled by default.⁵⁵ The bill states: “In acting in the best interests of minors, a covered platform has a duty to prevent and mitigate the heightened risks of physical, emotional, developmental, or material harms to minors posed by materials on, or engagement with, the platform, including... patterns of use that indicate or encourage addiction-like behaviors.”⁵⁶

For the second bill, in late 2021, the Energy and Commerce Committee Chairman Frank Pallone, Jr. (D-NJ), Communications and Technology Subcommittee Chairman Mike Doyle (D-PA), Consumer Protection and Commerce Subcommittee Chair Jan Schakowsky (D-IL), and Health Subcommittee Chair Anna Eshoo (D-CA) announced new legislation to reform Section 230 of the Communications Decency Act, which shields websites and online platforms from being held liable for third-party content.⁵⁷

The legislation, titled the *Justice Against Malicious Algorithms Act*, would amend Section 230 to remove absolute immunity in certain instances. Specifically, the bill would lift the Section 230 liability shield when an online platform knowingly or recklessly uses an algorithm or other technology to recommend content that materially contributes to physical or severe emotional injury.⁵⁸ The U.S. House Energy and Commerce Committee's Subcommittee on Communications and Technology held a hearing in December 2021 on this bill.

⁵⁴ Press Release, Office of Senator Richard Blumenthal, Blumenthal & Blackburn Introduce Comprehensive Kids' Online Safety Legislation (Feb. 16, 2022), <https://www.blumenthal.senate.gov/newsroom/press/release/blumenthal-and-blackburn-introduce-comprehensive-kids-online-safety-legislation>.

⁵⁵ *Id.*

⁵⁶ Kids Online Safety Act (proposed), 117th Congress, (2022). The proposed bill also has transparency and research requirements, by forcing social media companies to publish third-party audits outlining the risks of their platforms for minors and forcing companies to make their data available to independent researchers and academics to study platforms' impact on young people. The bill also has a much broader reach: it would target all entities that provide “a commercial software application or electronic service that connects to the internet and that is used, or is reasonably likely to be used, by a minor.” It does not exempt smaller companies, and applies to non-profits and common carriers. *See id.*

⁵⁷ Press Release, U.S. House Committee on Energy & Commerce, E&C Leaders Announce Legislation to Reform Section 230 (Oct. 14, 2021) <https://energycommerce.house.gov/newsroom/press-releases/ec-leaders-announce-legislation-to-reform-section-230>.

⁵⁸ *Id.*