



February 6, 2024

Hon. Rob Bonta
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

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Attention: Ms. Anabel Renteria
Initiative Coordinator

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

Dear Attorney General Bonta:

Pursuant to Elections Code Section 9005, we have reviewed the proposed statutory initiative related to social media platforms (A.G. File No. 23-0035, Amendment #1).

Background

Social Media Platforms. A social media platform is generally defined as an internet-based application or service that allows users to connect and interact with each other on the platform. Users connect and interact on the platform by, for example, posting content or sending messages using one or more of its features. To create a user account, social media platforms often require users to be 13 years of age or older. Social media platforms differ in their scale and value, with some large platforms hosting billions of users and generating billions of dollars in revenue.

Statutory Duty of Care and Responsibility for Injury. State law establishes for everyone, including individuals, businesses, and other entities, a duty of “ordinary care and skill” in the “management” of their “property or person.” A party that violates its duty of care, accidentally or intentionally, is responsible for any resulting injury to another party. The injured party can file a civil case to seek remedies, such as compensatory damages, from the party that violated its duty of care. Civil cases filed by injured parties against social media platforms for alleged violations of duty of care are fairly new. Court interpretations of and rulings on the statutory duty of care and responsibility within this context, therefore, continue to evolve.

Civil Cases. Civil cases are noncriminal lawsuits filed in court and typically involve disputes between private parties where one or multiple parties are seeking compensation from another party or parties. Civil cases are generally resolved by (1) dismissal of the case prior to trial, (2) settlement prior to trial, or (3) judge or jury trial. An example of a civil case is a tort claim, in which parties allege another party accidentally or intentionally violated a duty of care owed to

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them, causing them to suffer an injury. Tort claims can be individual claims or class-action claims in which lawsuits represent the interests of a group of individuals. State law, along with court rules, specify the rules and processes that must be followed in civil cases. Such rules and processes can differ based on various factors—including the complexity of the case, the action being sought from the court, and the specifics of the claim itself.

Proposal

Specifies Damages for Certain Civil Cases Against Social Media Platforms. The measure specifies damages for civil cases brought against social media platforms for violations of their duty of care, as defined in state law, and injury to children under 18 years of age. Social media platforms could be held liable for damages of (1) \$5,000 per violation, up to a maximum of \$1 million per child, or (2) three times the amount of the child’s actual damages. These damages are cumulative of any other available remedies that might be sought under existing law.

Applies to Social Media Platforms Above a Certain Revenue Threshold. While the definition of social media platform provided in the measure references a definition that is in current state law, the measure applies only to those social media platforms that generate more than \$100 million in gross annual revenues. Therefore, the damages for civil cases that are specified in the measure apply to a subset of social media platforms.

Fiscal Effects

The fiscal effects associated with this measure, described below, are subject to uncertainty. This is because they would depend primarily on how the measure is legally interpreted, how many and what type of civil cases are filed in state courts, the outcomes of those cases, and how the social media platforms covered by the measure would respond.

State Court Costs. This measure likely would increase state court costs and workload from additional civil cases being filed in state courts against social media platforms. The magnitude of this increase in state court costs and workload, however, could depend on several factors. A number of cases could be dismissed or settled prior to trial, leaving a smaller number of cases to continue to a court or jury trial. Some cases also might be consolidated by state courts. Additionally, a number of these cases could be complex and fact-intensive, requiring additional court resources and time. Therefore, while the exact amount of additional state court costs and workload would depend on the type and volume of civil cases filed, the increase in state costs would likely be in the millions of dollars.

Other Fiscal Effects. This measure could result in other fiscal impacts. For example, social media platforms, some of which are based in California, could take various actions in response to the measure. In addition to filing lawsuits seeking to challenge the measure, at least some social media platforms could take actions to limit the use of their platforms by users under 18 years of age in an effort to reduce the risk of being found liable for damages under the measure. How these actions could impact the revenues of social media platforms, and whether these revenue impacts would impact state and local tax revenue, is uncertain.

Summary of Fiscal Effects. We estimate that this measure would have the following major fiscal effects:

- Increased state court costs likely in the millions of dollars depending on the type and volume of additional civil cases filed in state courts and how they are resolved.
- Uncertain impact on state and local tax revenue that would depend primarily on how social media platforms respond to the measure.

Sincerely,



for Gabriel Petek
Legislative Analyst



for Joe Stephenshaw
Director of Finance