

Date of Hearing: May 12, 2021

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Lorena Gonzalez, Chair

AB 35 (Chau) – As Amended April 28, 2021

Policy Committee:	Judiciary	Vote:	8 - 2
	Arts, Entertainment, Sports, Tourism, and		4 - 1
	Internet Media		

Urgency: No State Mandated Local Program: No Reimbursable: No

SUMMARY:

This bill requires a person that operates a social media platform to disclose what, if anything, it does to address the spread of misinformation.

Specifically, this bill:

- 1) Requires a social media platform, as defined, to disclose whether it has a policy or mechanism in place to address the spread of misinformation with a respect to, at a minimum, the following:
 - a) Reducing the spread of misinformation that contributes to the risk of imminent violence or physical harm.
 - b) Reducing the spread of harmful, verifiably inauthentic content.
 - c) Practices intended to deceptively and substantially manipulate or disrupt the behavior of users on the social media platform.
- 2) Subjects a person who fails to provide the above disclosures to a civil penalty of \$1,000 per day for each day the person violates the requirements of this bill after the date the person received notice of the violation.
- 3) Requires the \$1,000 civil penalty be assessed and recovered in a civil action brought in the name of the people of California by the Department of Justice (DOJ) or by any district attorney, county counsel, or city attorney in any court of competent jurisdiction.

FISCAL EFFECT:

- 1) Costs (General Fund (GF)), possibly in the low-to-mid-hundreds of thousands of dollars, to the DOJ in additional legal staff and infrastructure to bring action against social media platforms for violations of this bill.
- 2) Possible cost pressures (Trial Court Trust Fund) in the low hundreds of thousands of dollars annually to the trial courts in increased workload, given this bill creates a new civil action for violation of the requirements of this bill. It is unclear how many new actions will be filed, but if five cases are filed to enforce the requirements of this bill, requiring 48 total hours of workload, at a cost of \$7,644 for each eight hours, the cost would be approximately

\$229,320. Although courts are not funded on the basis of workload, increased pressure on the Trial Court Trust Fund and staff workload may create a need for increased funding for courts from the General Fund (GF) to perform existing duties. This is particularly true, given that courts have delayed hundreds of trials and civil motions during the COVID-19 pandemic resulting in a serious backlog that must be resolved. The Governor's 2021-22 budget proposes \$72.2 million dollars in ongoing GF revenue for trial courts to continue addressing the backlog of cases in order to provide timely access to justice.

COMMENTS:

1) **Purpose.** According to the author:

By requiring social media platforms to have a misinformation disclosure policy, AB 35 will give users and the public the ability to assess the information they are consuming and how platforms are stopping the spread of misinformation.

2) **Social Media Platform Liability.** Section 230 of the Communications Decency Act of 1996 states online service providers or intermediaries that host or republish speech are protected against liability for what others say and do on online. Section 230 protect internet service providers (ISPs), as well as a range of "interactive computer service providers," including basically any online service that publishes third-party content. Though there are important exceptions for certain criminal and intellectual property-based claims, Section 230 creates broad protections for social media platforms. This bill requires a social media platform to disclose its policies as to how it handles, among other things, the "spread of harmful, verifiably inauthentic content." Failure to provide those policies in an accessible form may be subject to a civil penalty of \$1,000 a day after the platform is notified of a possible violation. Given that a platform cannot be held liable for the comments of others even where the comments are demonstrably false, the platform could comply with this bill by stating it does not regulate the content of speech on its site that does not violate the law. However, it is arguable that a greater degree of transparency as to how social media platforms like Twitter and Facebook address misinformation will provide users more information so as to make an informed decision about what they see on those platforms.

3) **Related Legislation.** AB 587 (Gabriel) requires a social media company to post its terms of service (TOS) related to permitted and prohibited user behavior and activity on its site. AB 587 is pending in this committee.

4) **Prior Legislation.** AB 2442 (Chau), of 2019-20 Legislative session, was substantially similar to this bill and was held in the Senate Committee on Judiciary.

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