

Date of Hearing: August 3, 2022

# ASSEMBLY COMMITTEE ON APPROPRIATIONS

Chris Holden, Chair

SB 1018 (Pan) – As Amended June 29, 2022

Policy Committee:	Privacy and Consumer Protection	Vote:	9 - 2
	Judiciary		9 - 2

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

## SUMMARY:

This bill creates the Platform Accountability and Transparency Act.

Specifically, this bill:

- 1) Requires a social media platform, on or before July 1, 2023, and annually thereafter, to disclose to the public statistics regarding the extent to which, in a preceding 12-month period, content that the platform determined violated its policies and were recommended or otherwise amplified by platform algorithms before and after that content was identified as violating the platform's policies.
- 2) Authorizes the Department of Justice (DOJ) and city attorneys, as specified, to file a civil action against any social media platform for penalties of up to \$100,000 for any violation of the requirements of the bill.

## FISCAL EFFECT:

- 1) Costs (General Fund (GF)) of \$221,000 in fiscal year (FY) 2022-23, \$388,000 in FY 2023-24, and annually thereafter in additional legal staff to file injunctive relief against any social media platform that violates the requirements of this bill.
- 2) Cost pressures (Trial Court Trust Fund (TCTF)) to the trial courts in the low-to-mid-hundreds of thousands of dollars to hear and adjudicate civil actions against social media platforms that do not provide annual statistics about content that violates platform policies before and after that content was amplified to users. It is unclear how many new claims will be filed statewide, but if 10 cases are filed in state civil court annually requiring three to five days, or 24 to 40 hours, of court time, at an average cost per hour of \$1,000 in workload costs, the cost to the trial courts would be between \$240,000 and \$400,000 annually. Although courts are not funded on the basis of workload, increased pressure on the TCTF and staff workload may create a need for increased funding for courts from the GF to perform existing duties.

## COMMENTS:

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

The detrimental effects of these policies result in the proliferation of disinformation as well as a myriad of mental health issues that are affecting our most vulnerable. [...] The pandemic has only exacerbated these issues. During the last two years, an unprecedented level of medical misinformation has proliferated and undermined the messaging from public health officials. [...] Addressing the many public policy concerns regarding social media begins with more transparency.

- 2) **First Amendment.** Whenever government requires a business to make specific disclosures, the requirement raises First Amendment concerns as a form of “compelled speech.” According to the Assembly Committee on Judiciary:

The First Amendment prevents the government from compelling speech just as certainly as it prevents the government from restraining speech. However, several state and federal statutes require the disclosure of information that is useful to the consumer, such as food labeling requirements or prescription drug warnings. Courts hold regulations of this kind of “commercial speech” to a much less exacting standard than efforts to regulate more traditional political or expressive speech. California has numerous statutes that require businesses to disclose information useful to consumers or to the public generally on their websites and elsewhere. For example, existing law requires websites to post their privacy policies, and no court has held that this requirement constitutes compelled speech. The line of compelled speech cases generally have struck down only those disclosure requirements which force a person or entity to directly or indirectly endorse positions or ideas to which the person or business objects; create a false or unwanted association with a group, movement, or set of ideas; or force the person or entity to support a group or position with which it disagrees.

This bill only requires a platform, with more than one million users, to provide aggregated statistics about the amplification of posts that violate the platform’s user policies. It appears more consistent with other lawful disclosure requirements in the California Consumer Protection Act.

- 3) **Burdens on Social Media Platforms.** Both the CalChamber and Tech Net are in an oppose-unless-amended position, arguing that providing statistics about content that may have been amplified both before and after the content is identified as violating the platform’s use policy will be very financially burdensome, even to smaller platforms with at least 1 million users. According to CalChamber:

SB 1018 requires social media platforms to report statistics regarding items of content that were determined to have violated our policies both before and after they were identified as violative.

While reporting whether items of content were recommended or amplified after they were identified as violative of one of our policies will be burdensome but possible for most social media platforms, reporting that information before will be extremely burdensome for even the largest platforms and nearly impossible for smaller platforms. Hundreds of millions of new items of content are added to social media platforms every day. This bill would require companies to engineer new data tracking and reporting processes for every piece of content that hits their site, rather than just for items that violate their policies, which will likely cost platforms tens of millions and significant employee-hours.

4) **Argument in Support.** According to Oakland Privacy:

While the bill does present some administrative burden to the platforms, we believe that burden is minimal compared to the overall burden and responsibility that they face in developing and enforcing their own content moderation policies. SB 1081 merely asks for transparency to the public about how they are doing that to allow users of the platforms to better understand what is going on under the hood, and how their accounts are affected as content creators and as content viewers.

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