

California targets social media companies over CSAM with legal questions lingering

By Eric He

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Recent efforts by California lawmakers to regulate social media platforms have run into legal challenges, but that hasn't stopped the Legislature from continuing to set rules on an industry that they argue makes it too easy for hate speech and other inappropriate material to fester.

The latest bill, from Assemblymember [Buffy Wicks](#) (D-Oakland), will fine social media platforms that don't take steps to prevent or remove child sexual abuse material, or CSAM. [AB 1394](#) — a [first-in-the-nation bill](#) signed into law by Gov. [Gavin Newsom](#) on Nov. 8 — follows measures that aim to [clamp down on hate speech](#) (which is [being challenged](#) by Elon Musk's X) and [protect children online](#) (which was [temporarily blocked](#) by a federal judge earlier this year).

Wicks introduced the measure amid rising reports of child sexual abuse content nationwide, which increased by nearly 50 percent from 21 million reports in 2020 to 32 million in 2022 — the highest number of reports ever received in one year, according to the [National Center for Missing and Exploited Children](#).

Neither NetChoice nor TechNet, two of the main trade groups representing platforms, are currently looking into challenging AB 1394, which they argue is unconstitutional. But Carl Szabo, vice president and general counsel of NetChoice, told POLITICO that he expects lawmakers to amend the “flawed” legislation next year.

Wicks said that AB 1394 was written with the expectation that it would be challenged in the courts, adding that she believes it passes constitutional muster. The bill makes companies liable for between \$1 and \$4 million every time they “knowingly facilitate, aid, or abet commercial sexual exploitation,” and enacts separate fines if complaints about CSAM are founded.

“I think there's bipartisan, universal support for these multi-billion dollar, profitable tech companies to take more responsibility to ensure — particularly in the space of trafficking of sexual abuse materials and illegal content — that the companies have to do more,” Wicks told POLITICO.

WHAT'S IN THE BILL?

This Pro Bill Analysis is based on the [text of the bill](#) as signed into law on Oct. 8.

The bill finds that social media companies have not taken sufficient steps to address the sexual abuse, exploitation and trafficking of children on their platforms — which they play a role in facilitating. It references [Facebook whistleblower](#) Frances Haugen, who in 2021 testified before Congress alleging the company's efforts to prevent sexual abuse of children were inadequate and under-resourced, as Facebook prioritized profits over the safety of children and young adults. It also cites a [2022 Forbes article](#) that reported on TikTok viewers asking young girls in the comments to perform inappropriate acts that bordered on child pornography (Sec. 1).

The measure adds a section titled “Child Sexual Abuse Material Hosted On A Social Media Platform” to Division 3 of the [California Civil Code](#). It requires social media companies to provide a mechanism for users to report child sexual abuse material to the platform, if the reporting user is an identifiable minor depicted in material that is displayed, stored or hosted on the platform. The company must collect the user's contact information (Sec. 2).

The company must permanently block the material if there is a “reasonable basis” to believe it is child sexual abuse material, or CSAM, and the material is stored and locatable on the platform. Platforms must also make “reasonable efforts” to remove and block other instances of the material.

The platform must provide written confirmation to the reporting party within 36 hours of the material being reported. Every week thereafter, the platform must provide a written update to the user on how it is handling the reported material until it issues a final determination on whether the material is CSAM that is stored on the platform (Sec. 2).

Companies have 30 days after the material is reported to comply, or up to 60 days if there are circumstances beyond their control that lead to a delay.

Platforms are liable to pay damages to reporting users if they don't comply. In addition to actual damages from the CSAM violation, they could face a fine of up to \$250,000 per violation, which could be lessened by meeting certain requirements.

Specifically, the fine would be \$125,000 if the platform preemptively blocks CSAM before a complaint is filed, and \$75,000 if it registers and reports the CSAM to the National Center for Missing and Exploited Children's [Take It Down service](#). Regarding the latter requirement, the platform must remove CSAM within 36 hours of receiving a hash value from NCMEC, report CSAM to the center's tip line and provide written confirmation to the reporting user.

The law asks courts to consider the severity of the violation and prior offenses when determining the amount of fines (Sec. 2).

The legislation exempts the following from the definition of a "social media platform":

- Standalone direct messaging services that have end-to-end encryption
- The portion of a multiservice platform with end-to-end encryption
- A website run by a nonprofit.

Next, the measure amends [Section 3345.1 of the Civil Code](#) to allow lawsuits against social media platforms that "knowingly facilitate, aid, or abet commercial sexual exploitation." Companies could be sued for anywhere from \$1 million to \$4 million in damages, per violation (Sec. 3).

A social media platform is considered to have knowledge of the material if said material was reported via the mechanism established by this measure for four consecutive months. The law defines "facilitate, aid, or abet" as partaking in a "substantial factor" that results in minors becoming victims of commercial sexual exploitation.

Companies would be exempt from civil action if they conduct audits twice a year on anything that might result in CSAM appearing on their platform, take action within 30 days to mitigate any risks and provide copies of the audit to their board of directors within 90 days.

The law contains a severability clause (Sec. 4) and takes effect in 2025 (Sec. 5).

WHO ARE THE POWER PLAYERS?

Assemblymember [Buffy Wicks](#) (D-Oakland) has championed tech regulation as one of her priorities in the Legislature. Wicks — who was recently made chair of the influential Assembly Appropriations Committee — said she was motivated to introduce the bill after listening to a [New York Times "The Daily" podcast](#) on child sexual abuse imagery.

"I've done a number of bills in this space now, but this particular aspect of that felt to me the most egregious, the most need for immediate reform," she said.

Wicks, who negotiated directly with social media companies on the bill, described her relationship with them as "critical but functional." Wicks said she spoke with platforms such as **TikTok**, **Snap**, **Meta**, **Google** and **X** (formerly Twitter), among others. Several tech trade groups, such as **TechNet** and **NetChoice**, served as the listed opposition to the bill.

"I think I'm a reasonable lawmaker," Wicks said. "I want to solve the problems. I'm not trying to be punitive. So I think the relationship is such that I can negotiate."

Wicks noted that she intentionally seeks bipartisanship on her tech regulation bills because it's "one of the last remaining issues that Democrats and Republicans can actually work on together" — and asked GOP Assemblymember [Heath Flora](#) (R-Ripon) to author AB 1394 with her.

Flora, who calls himself a business-friendly Republican, told POLITICO that he helped Wicks and the platforms reach a middle ground to ensure there was a “right to cure” for companies that are working in good faith to address CSAM on their platforms. Flora could speak with the opposition and his Republican colleagues “in a way that I can’t,” Wicks explained.

The bill, which passed both chambers with no dissenting votes, was co-authored by Assemblymembers [Jesse Gabriel](#) (D-Encino) and [Josh Lowenthal](#) (D-Long Beach), as well as [Rebecca Bauer-Kahan](#) (D-Orinda), the new chair of the Assembly Privacy and Consumer Protection Committee.

It was also backed by a coalition that included [Common Sense Media](#), [#HalfTheStory](#), the [American Association of University Women](#) and the [Children’s Advocacy Institute at University of San Diego School of Law](#).

Danny Weiss, chief advocacy officer for Common Sense Media, said advocates have turned to regulation to ensure internet safety because platforms have repeatedly resisted requests to be more transparent.

“Generally speaking, I wouldn’t trust the companies to do the right thing,” Weiss told POLITICO. “That’s why we advocate for policy change and strong enforcement of laws.”

A spokesperson for TikTok said the company supports the “intent” of AB 1394 but plans to work with lawmakers during the next legislative cycle. TikTok has “zero tolerance for this type of content” and automatically removes CSAM if it is detected, the spokesperson added.

A Snap spokesperson declined to comment directly on the bill but pointed to [recent safeguards](#) the company has established, adding that accounts engaging in child sexual exploitation are terminated and reported to authorities.

Meta, Google and X did not respond to requests for comment.

The **tech industry’s trade associations** worked with Wicks on amendments but [stayed opposed](#) to the bill through to the end, issuing [veto requests](#) to Gov. [Gavin Newsom](#), who ultimately signed the legislation.

The **California Chamber of Commerce**, **Civil Justice Association of California** and **Computer and Communications Industry Association** joined TechNet and NetChoice in the opposition coalition. The trade groups argued that the law violates [Section 230 of the Communications Decency Act](#), which exempts platforms from civil liability over content from a third party — adding that the standard set in the law for a platform “knowingly” hosting CSAM is overly broad.

Instead of targeting platforms, lawmakers should instead go after the “real criminals,” according to Szabo.

“If all the state of California is trying to do is attack websites that host legitimate and lawful content, then that’s never going to put the bad actors behind bars,” Szabo said.

WHAT’S HAPPENED SO FAR?

AB 1394 sailed through the Legislature without opposition, passing the Senate 38-0 and the Assembly 77-0 before Newsom signed it into law on Oct. 8. Still, Wicks engaged with the industry despite opponents “negotiating from an absolute position of weakness,” according to Flora.

“I appreciate Buffy working with us and spending as much time with the opposition as she did to try to find a middle ground here,” Flora said. “She did a really good job. And it wasn’t exactly what they wanted. They wanted a few more things. But at the end of the day, both sides spent a lot of time at the table, and I think that’s a good thing.”

Wicks said her nonnegotiable provisions included allowing for a private right of action and requiring companies to remove the illicit content.

The final measure incorporated the following amendments:

— Delaying the law taking effect until 2025

— Removing “recklessly” and “negligently” as standards for what would constitute a violation of a platform having CSAM. The final version of the bill only requires a company to “knowingly facilitate, aid, or abet commercial sexual exploitation”

— Exempting portions of social media platforms that have end-to-end encryption — such as [Meta’s Messenger feature](#) — along with nonprofit websites

— Reducing penalties if a platform reports CSAM to NCMEC

— Allowing companies to audit themselves by removing a requirement for an independent nonprofit or law enforcement agency to participate

— Reducing the frequency of required audits for companies to be exempt from civil liability from quarterly to biannually

“There were a lot of accommodations made to reduce opposition to the bill,” said Weiss, representing lead sponsor Common Sense Media. “The industry did not want this bill to pass.”

Negotiations turned feisty in late August — days before the bill passed the Senate Appropriations Committee — after a June [Wall Street Journal investigation](#) found that Instagram, which is owned by Meta, was aiding and promoting child sex material.

Jim Steyer, founder and CEO of Common Sense Media, [sent a letter](#) to members of the trade group TechNet calling for them to “either leave TechNet or publicly denounce TechNet’s duplicitous behavior and partnership with Meta.” In a [post on X](#), Steyer accused TechNet of “lobbying to allow pedophilia, bestiality, trafficking, and child sex abuse.”

In response, TechNet President and CEO Linda Moore [said the accusation](#) “[was] entirely false, defamatory, and completely ignores our member companies’ long history as active participants in the fight against commercial sexual exploitation and child pornography.” Moore added that the group was working in good faith with Wicks on amendments and called Steyer’s letter a “product of ignorance rather than malice.”

“As of last week, we were a few minor details away from an agreement that would remove our opposition,” Moore said in the Aug. 31 letter. “Unfortunately, organizations like yours have decided to upend major points of agreement and are *knowingly* pushing away from collaboration and toward litigation.”

The word “knowingly” was perhaps intentionally italicized in the letter to demonstrate TechNet’s opposition to the bill’s language. The measure was amended on Sept. 8 — before the full Legislature voted on it — to specify that a platform would “knowingly facilitate, aid, or abet commercial sexual exploitation” if it was notified of the presence of CSAM for four consecutive months.

In its [veto request](#) to Newsom, TechNet and the opposition coalition argued that the language is inconsistent with [federal legislation amending Section 230 in 2017](#) — the Allow States and Victims to Fight Online Sex Trafficking Act — leaving the law open to a legal challenge. The letter claimed that negotiations “ground to halt in the last three weeks of session” and that Wicks “decided to upend previously agreed upon provisions and move the bill further from consensus.”

“Not only does the bill that passed jeopardize the significant progress that industry and victims’ advocates made this year, but it also raises serious First and Fourth Amendment concerns,” said Dylan Hoffman, TechNet’s executive director for California and the Southwest, in a statement to POLITICO.

“If the word ‘knowing’ was left unto itself, that would have been OK,” said Szabo, with NetChoice. Instead, he added, under the additional language, if “somebody basically sends an email ... you have therefore created liability” — which he believes does not demonstrate “actual knowledge.”

“Lawmakers wanted to undermine the ‘knowing’ standard, and that’s why they added in that additional language,” Szabo said. “And by undermining the ‘knowing’ standard, it undermines the constitutionality of the law.”

Wicks countered that Section 230 doesn’t shield platforms that are directly involved in unlawful conduct. Legislative counsel and lawyers on the Senate Judiciary and Assembly Privacy committees went back and forth on bill language, with Wicks fully expecting a lawsuit over the measure.

“Because that’s what the tech companies do, right?” Wicks said. “They [say they want regulation](#), but then when you put forth regulation, then they sue to stop the regulation.”

WHAT’S NEXT?

At least 35 states and Puerto Rico introduced legislation this year attempting to regulate social media in the name of child safety, according to the [National Conference of State Legislatures](#). Additionally, 12 states introduced bills copying a [2022 Louisiana law](#) requiring websites with a “substantial portion” of adult content to use age verification, per the [Free Speech Coalition’s tracker](#).

But courts have blocked some of these laws, including a [Texas bill](#) requiring age verification and a health safety warning for websites that have pornography, along with an [Arkansas measure](#) requiring parental consent for minors to create social media accounts.

States have taken action as federal legislation aimed at protecting kids’ online safety continues to flounder. On Capitol Hill, three kids’ safety and privacy bills are still awaiting Senate floor votes:

— The [EARN IT Act](#) would [pare back tech companies’](#) liability shield to hold them liable for online child sexual abuse content.

— The [Kids Online Safety Act](#) would require tech companies to build safety into products from the start.

— The [Children and Teens Privacy Protect Act](#) would expand online privacy guardrails for kids up to age 16.

All three advanced out of their respective committees unanimously earlier this year, but now have to wait until lawmakers return from recess in January.

More legislation by states could entice Congress to act on one or more of the measures, setting a national standard for online child safety rather than regulation on a state-by-state basis. The Supreme Court is set to rule on the constitutionality of laws in both [Texas](#) and [Florida](#) that restrict social media companies from blocking users based on their viewpoints.

Notwithstanding federal regulation or a decision by the high court, California lawmakers are expected to continue to introduce legislation around protecting children online, especially with advancements in artificial intelligence.

Flora said he is considering introducing legislation to make it easier for law enforcement to obtain search warrants to access a cell phone taken into evidence when there is suspicion of child trafficking, as well as proposals to fund task forces to examine the issue.

Wicks, too, is looking into additional bills next year and is actively having conversations with stakeholders.

“This issue is not going away,” Wicks said. “And I think we’re going to have to grapple with more and more of these issues, as technology evolves and becomes more pervasive in our kids’ lives.”

WHAT ARE SOME STORIES ON THE BILL?

[Read POLITICO news on AB 1394.](#)

Rebecca Kern contributed to this report.