

## AMENDMENTS TO ASSEMBLY BILL NO. 2408

## Amendment 1

In the heading, in line 1, strike out “Member” and insert:

Members

## Amendment 2

In the heading, in line 1, after “Cunningham” insert:

and Wicks

## Amendment 3

In the title, in line 1, strike out “amend Section 1632 of” and insert:

add Section 1714.48 to

## Amendment 4

In the title, in line 1, strike out “contracts.” and insert:

social media platforms.

## Amendment 5

On page 2, before line 1, insert:

SECTION 1. This act shall be known as the Social Media Platform Duty to Children Act.

SEC. 2. The Legislature finds and declares all of the following:

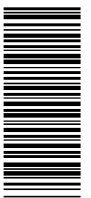
(a) California should take reasonable, proportional, and effective steps to ensure that its children are not harmed by addictions of any kind.

(b) A broad diversity of psychologists and psychiatrists in the field of addiction, as well as scientists, doctors, and other researchers, acknowledge the existence of social media addiction.

(1) Research using the Bergen Social Media Addiction Scale, a widely used measure of social media platform addiction, has found that social media platform addiction has a prevalence across the general population of about 5 percent.

(2) In people who become addicted, the brain’s reward system is more active when using social media than it is in the brains of people who are not addicted. The result, according to health experts and researchers, is compulsive and excessive social media use.

(c) There is growing evidence that social media platform addiction is a particular problem, particularly among adolescent children.



(1) The largest social media platform company in the world's own secret internal research validates both the existence of social media addiction in children and that social media addiction hurts children. As an example, in September 2021, The Wall Street Journal published a series of articles referred to as "The Facebook Files." Those articles, citing a trove of internal documents obtained from Frances Haugen, a whistleblower, demonstrated the extent to which Facebook knew that its platforms cause significant harm to users, especially children.

(2) More specifically, as revealed by Haugen's sworn testimony before Congress and the accompanying secret research she revealed to The Wall Street Journal, "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." ... "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."

(3) During whistleblower Haugen's sworn testimony to Congress, she revealed that, when it comes to meeting the platform's addiction-like definition of "problematic use": "Five to six percent of 14 year olds have the self-awareness to admit both those questions" that qualify a child as having problematic use.

(4) Five to six percent of Instagram's child users is millions of children, certainly many thousands of which reside in California.

(d) Social media platform addiction is more acute in girls than boys.

(1) Girls experience a higher prevalence of social media addiction than boys.

(2) Girls who admit to excessive social media platform use are two to three times more likely to report being depressed than girls who use social media platforms lightly.

(3) A March 2020 presentation posted by Facebook researchers to Facebook's internal message board reported that "66% of teen girls on IG experience negative social comparison (compared to 40% of teen boys)" and that "[a]spects of Instagram exacerbate each other to create a perfect storm."

(e) The business models of some social media platform companies financially motivate them to deploy design features that increase the likelihood of addiction among all users, including children.

(1) Instead of charging to sign up, social media platforms earn "substantially all" of their revenue through advertising.

(2) The more time users engage with the platform, the more ads users see, and the more valuable the advertising becomes.

(3) In this regard, addicted consumers are particularly profitable because their consumption behavior goes beyond normal engagement levels.

(4) User engagement does not distinguish between engagement that increases because it is enjoyable and enhances health and well-being and engagement that increases because of addiction. In fact, many users spend even more time on social media when engaging with content that makes them subjectively unhappy or objectively unhealthier.

(5) For these profit-driven reasons, social media platform companies intentionally invent, design, and deploy features that are intended to make it hard for users to stop using the platform, including deploying techniques used in gambling and techniques that mask or avoid cues that might prompt a user to stop using.

(f) Companies that market high-volume addictive products, including tobacco, have a special incentive to addict young, potentially life-long, consumers.

(g) Adolescent children are at far greater risk than adults to becoming addicted to social media platforms.

(1) Adolescent children exhibit higher levels of stress and an increased proclivity toward taking risks.

(2) During adolescence, children's reward systems develop much faster, while their self-control systems, which are not fully developed until 21 years of age, lag behind. For this reason, rates of behavioral addictions are elevated in adolescence as compared to adulthood.

(3) Social media platform companies can use the data they collect on children to determine which children are most likely to be vulnerable to a given ad, thereby exacerbating the risks of addiction.

(4) As compared to adults, children are more susceptible to the pressures and influence of advertisements, less likely to recognize paid-for content, and less likely to understand how data is used for these purposes.

(h) Because their brains are still developing, children are at far greater risk of being harmed by social media platform addiction than adults. Addiction adversely influences the development of judgment, attention, and memory in the brain.

(1) Higher daily rates of checking social media platforms have been linked to a reduction in the volume of brain tissue that controls memory, emotions, speech, decisionmaking, and self-control.

(2) For this reason, reduction in this kind of brain tissue is in turn correlated with higher impulsivity, something with which children and adolescents are already susceptible by dint of their youth.

(3) Several studies have found links between spending time on social media platforms and rates of suicide and depression among teens.

(4) Numerous studies show that reducing social media platform use results in mental health benefits.

(5) Social media platform addiction can create a vicious cycle for shy and lonely youth. Discomfort with real-life interactions leads to internet interactions, isolation from real-world interaction causes loneliness, loneliness combined with social phobia motivate additional engagement online.

(i) When social media platform companies create, design, implement, or maintain features for users, including child users, on their social media platforms that the company knows or should know are addictive to children, they should be held liable for the harms that result.

(j) Other addictions, including gambling addictions, have had a demonstrable negative effect on state economies.

(k) California has a compelling interest in protecting the mental health of its children from social media platform addiction for, at a minimum, all of the following reasons:

(1) To prevent needless suffering to California children and their families.

(2) To ensure the capacity of all its children to fulfill their potential and to reach normal goals for social and educational achievement to the benefit of all Californians.

(3) To prevent the costs of treating mental health harms to children from being incurred by and shifted to California families, businesses, insurers, schools, and mental health professionals.

SEC. 3. Section 1714.48 is added to the Civil Code, to read:

1714.48. (a) For purposes of this section:

(1) “Addict” means to knowingly or negligently cause or contribute to addiction through any act or omission or any combination of acts or omissions.

(2) “Addiction” means use of one or more social media platforms that does both of the following:

(A) Indicates preoccupation or obsession with, or withdrawal or difficulty to cease or reduce use of, a social media platform despite the user’s desire to cease or reduce that use.

(B) Causes or contributes to physical, mental, emotional, developmental, or material harms to the user.

(3) “Child user” means a person who uses a social media platform and is not older than 17 years of age.

(4) “Personal data” means information that identifies a natural person or is linked or linkable to an identifiable natural person.

(5) (A) “Social media platform” means an internet service that meets both of the following criteria:

(i) (I) The internet service is a means by which content is generated by a user of the service, or uploaded to or shared on the service by a user of the service, that may be encountered by another user, or other users, of the service.

(II) For purposes of this subparagraph:

(ia) “Content” means anything communicated by means of an internet service, whether publicly or privately, including written material or messages, oral communications, photographs, videos, or visual images.

(ib) “Content that may be encountered by another user, or other users, of a service” includes content that is capable of being shared with a user by operation of a functionality of the service that allows the sharing of content.

(ic) “Encounter” means to read, view, hear, or otherwise experience content.

(ii) The internet service is controlled by a business entity that generated at least one hundred million dollars (\$100,000,000) in gross revenue during the preceding calendar year.

(B) “Social media platform” does not include any of the following:

(i) An email service, if emails are the only user-generated content enabled by the service.

(ii) An SMS and MMS service, if SMS or MMS messages are the only user-generated content enabled by the service.

(iii) A service offering only one-to-one live aural communications.

(iv) An internal business service that is an internal resource or tool for a business or nonprofit organization in which the services is not available to children in the general public.

(v) A service, including a comment section on a digital news internet website or a consumer review of a product and service on an online commerce internet website, with functionalities that allow users to communicate only in any of the following ways:



(I) Posting comments or reviews relating to content produced and published by the provider of the service or by a person acting on behalf of the provider of the service.

(II) Sharing comments or reviews described in subclause (I) on a different internet service.

(III) Expressing a view on comments or reviews described in subclause (I), or on content mentioned in subparagraph (A), by means of any of the following:

(ia) Applying a “like” or “dislike” button or other button of that nature.

(ib) Applying an emoji or symbol of any kind.

(ic) Engaging in yes or no voting.

(id) Rating or scoring the content, or the comments or reviews, in any way.

(vi) An internet-based subscription streaming service offered to consumers for the exclusive purpose of transmitting licensed media, including audio or video files, in a continuous flow from the internet-based service to the end user.

(vii) A service that operates for the sole purpose of cloud storage or shared document or file collaboration.

(viii) A service that operates for the sole purpose of providing general or tailored internet search services.

(b) An operator of a social media platform has a duty not to addict child users. A social media platform’s duty not to addict child users includes a duty not to addict child users by any of the following means:

(1) The use or sale of a child user’s personal data.

(2) The child user’s engagement in the platform’s products or services, including through the use of notifications soliciting child users to access those products or services, or permissions or advertising related to those products or services.

(3) The development, design, implementation, or maintenance of a design, feature, or affordance.

(c) (1) A person authorized to assert the legal rights of a child user who suffers injury as a result of a violation of this section may bring an action against a violator to recover or obtain any of the following relief:

(A) (i) Actual damages.

(ii) In a class action, the amount of damages awarded pursuant to this subparagraph shall not be less than one thousand dollars (\$1,000) per member of the class.

(B) A civil penalty of up to twenty-five thousand dollars (\$25,000) per violation per calendar year.

(C) Injunctive relief.

(D) Punitive damages.

(E) An award of litigation costs and no more than twice the amount of reasonable attorney’s fees to a prevailing plaintiff.

(F) Any other relief that the court deems proper.

(2) In an action pursuant to this subdivision in which the plaintiff has shown, by a preponderance of the evidence, that the defendant addicted a child in violation of subdivision (b), the defendant shall have the burden of proving, by a preponderance of the evidence, that the extent of the injury or injuries alleged in the action were not, in whole or in part, caused or exacerbated by the defendant’s violation.

(3) (A) A knowing or willful violation of this section shall subject the violator to an additional civil penalty not to exceed two hundred fifty thousand dollars (\$250,000) per violation per calendar year.

(B) A civil penalty pursuant to this paragraph shall not be treated as an offset against an award of damages caused by the same knowing or willful violation in an action pursuant to this subdivision.

(4) A social media platform that, before January 1, 2023, developed, designed, implemented, or maintained features that were known, or should have been known, by the platform to be addictive to child users shall be liable for all damages to child users that are, in whole or in part, caused by the platform's features, including, but not limited to, suicide, mental illness, eating disorders, emotional distress, and costs for medical care, including care provided by licensed mental health professionals.

(d) An operator of a social media platform shall not be subject to a civil penalty pursuant to subdivision (c) if, before engaging in a practice that led to that violation, the operator did both of the following:

(1) Instituted and maintained a program of at least quarterly audits of its practices, designs, features, and affordances to detect practices or features that have the potential to cause or contribute to the addiction of child users.

(2) Corrected, within 30 days of the completion of an audit described in paragraph (1), any practice, design, feature, or affordance discovered by the audit to present more than a de minimis risk of violating this section.

(e) The provisions of this section are cumulative to any other duties or obligations imposed under other law.

(f) This section shall not be construed to impose liability for a social media platform for content that is generated by a user of the service, or uploaded to or shared on the service by a user of the service, that may be encountered by another user, or other users, of the service.

(g) This section shall not be construed to negate or limit a cause of action that may have existed against an operator of a social media platform under the law as it existed before the effective date of this section.

(h) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

(i) A waiver of this section is unenforceable as void against public policy.

#### Amendment 6

On page 2, strike out lines 1 to 38, inclusive, and strike out pages 3 to 6, inclusive

PROPOSED AMENDMENTS TO ASSEMBLY BILL NO. 2408

CALIFORNIA LEGISLATURE—2021–22 REGULAR SESSION

ASSEMBLY BILL

No. 2408

Introduced by Assembly Member ~~Members~~ Cunningham and Wicks

February 17, 2022

An act to ~~amend Section 1632 of~~ add Section 1714.48 to the Civil Code, relating to ~~contracts~~. *social media platforms.*

LEGISLATIVE COUNSEL'S DIGEST

AB 2408, as introduced, Cunningham. ~~Contracts; translations. Child users: addiction.~~

*Existing law, the California Consumer Privacy Act of 2018, prohibits a business from selling the personal information of a consumer if the business has actual knowledge that the consumer is less than 16 years of age, unless the consumer, in the case of a consumer at least 13 years of age and less than 16 years of age, or the consumer's parent or guardian, in the case of a consumer who is less than 13 years of age, has affirmatively authorized the sale of the consumer's personal information.*

*This bill, the Social Media Platform Duty to Children Act, would impose on an operator of a social media platform a duty not to addict, as defined, child users and would, among other things, prohibit a social media platform from addicting a child user by any of certain means, including the use or sale of a child user's personal data. The act would authorize a person authorized to assert the legal rights of a child user who suffers injury as a result of a violation of the act to bring an action against a violator to recover or obtain certain relief, including a civil penalty of up to \$25,000 per violation per calendar year.*



RN2209849

Amendments 1 & 2

Amendments 3 & 4

~~Existing law requires a person engaged in a trade or business who negotiates primarily in Spanish, Chinese, Tagalog, Vietnamese, or Korean, orally or in writing, in the course of entering into specified agreements to deliver to the other party to the contract or agreement, and before the execution thereof, a translation of the contract or agreement in the language in which the contract or agreement was negotiated, that includes a translation of every term and condition in that contract or agreement. Existing law specifies that these provisions do not apply to a person engaged in a trade or business who negotiates primarily in a language other than English, as specified, if the party with whom that person is negotiating is a buyer of goods or services, or receives a loan or extension of credit, or enters an agreement obligating that party as a tenant, lessee, or sublessee, or similarly obligates the party by contract or lease, and the party negotiates the terms of the contract, lease, or other obligation through the party's own interpreter.~~

~~This bill would make a nonsubstantive change to those provisions.~~

~~Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.~~

*The people of the State of California do enact as follows:*

- + *SECTION 1. This act shall be known as the Social Media*
- + *Platform Duty to Children Act.*
- + *SEC. 2. The Legislature finds and declares all of the following:*
- + *(a) California should take reasonable, proportional, and*
- + *effective steps to ensure that its children are not harmed by*
- + *addictions of any kind.*
- + *(b) A broad diversity of psychologists and psychiatrists in the*
- + *field of addiction, as well as scientists, doctors, and other*
- + *researchers, acknowledge the existence of social media addiction.*
- + *(1) Research using the Bergen Social Media Addiction Scale,*
- + *a widely used measure of social media platform addiction, has*
- + *found that social media platform addiction has a prevalence across*
- + *the general population of about 5 percent.*
- + *(2) In people who become addicted, the brain's reward system*
- + *is more active when using social media than it is in the brains of*
- + *people who are not addicted. The result, according to health*
- + *experts and researchers, is compulsive and excessive social media*
- + *use.*

**Amendment 5**

+ (c) *There is growing evidence that social media platform*  
+ *addiction is a particular problem, particularly among adolescent*  
+ *children.*

+ (1) *The largest social media platform company in the world's*  
+ *own secret internal research validates both the existence of social*  
+ *media addiction in children and that social media addiction hurts*  
+ *children. As an example, in September 2021, The Wall Street*  
+ *Journal published a series of articles referred to as "The Facebook*  
+ *Files." Those articles, citing a trove of internal documents obtained*  
+ *from Frances Haugen, a whistleblower, demonstrated the extent*  
+ *to which Facebook knew that its platforms cause significant harm*  
+ *to users, especially children.*

+ (2) *More specifically, as revealed by Haugen's sworn testimony*  
+ *before Congress and the accompanying secret research she*  
+ *revealed to The Wall Street Journal, "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." ...*  
+ *"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."*

+ (3) *During whistleblower Haugen's sworn testimony to*  
+ *Congress, she revealed that, when it comes to meeting the*  
+ *platform's addiction-like definition of "problematic use": "Five*  
+ *to six percent of 14 year olds have the self-awareness to admit*  
+ *both those questions" that qualify a child as having problematic*  
+ *use.*

+ (4) *Five to six percent of Instagram's child users is millions of*  
+ *children, certainly many thousands of which reside in California.*

+ (d) *Social media platform addiction is more acute in girls than*  
+ *boys.*

+ (1) *Girls experience a higher prevalence of social media*  
+ *addiction than boys.*

+ (2) *Girls who admit to excessive social media platform use are*  
+ *two to three times more likely to report being depressed than girls*  
+ *who use social media platforms lightly.*

+ (3) *A March 2020 presentation posted by Facebook researchers*  
+ *to Facebook's internal message board reported that "66% of teen*

- + girls on IG experience negative social comparison (compared to
- + 40% of teen boys)” and that “[a]spects of Instagram exacerbate
- + each other to create a perfect storm.”
- + (e) The business models of some social media platform
- + companies financially motivate them to deploy design features that
- + increase the likelihood of addiction among all users, including
- + children.
- + (1) Instead of charging to sign up, social media platforms earn
- + “substantially all” of their revenue through advertising.
- + (2) The more time users engage with the platform, the more ads
- + users see, and the more valuable the advertising becomes.
- + (3) In this regard, addicted consumers are particularly
- + profitable because their consumption behavior goes beyond normal
- + engagement levels.
- + (4) User engagement does not distinguish between engagement
- + that increases because it is enjoyable and enhances health and
- + well-being and engagement that increases because of addiction.
- + In fact, many users spend even more time on social media when
- + engaging with content that makes them subjectively unhappy or
- + objectively unhealthier.
- + (5) For these profit-driven reasons, social media platform
- + companies intentionally invent, design, and deploy features that
- + are intended to make it hard for users to stop using the platform,
- + including deploying techniques used in gambling and techniques
- + that mask or avoid cues that might prompt a user to stop using.
- + (f) Companies that market high-volume addictive products,
- + including tobacco, have a special incentive to addict young,
- + potentially life-long, consumers.
- + (g) Adolescent children are at far greater risk than adults to
- + becoming addicted to social media platforms.
- + (1) Adolescent children exhibit higher levels of stress and an
- + increased proclivity toward taking risks.
- + (2) During adolescence, children’s reward systems develop
- + much faster, while their self-control systems, which are not fully
- + developed until 21 years of age, lag behind. For this reason, rates
- + of behavioral addictions are elevated in adolescence as compared
- + to adulthood.
- + (3) Social media platform companies can use the data they
- + collect on children to determine which children are most likely to

- + *be vulnerable to a given ad, thereby exacerbating the risks of*  
+ *addiction.*
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+ *pressures and influence of advertisements, less likely to recognize*  
+ *paid-for content, and less likely to understand how data is used*  
+ *for these purposes.*
- + *(h) Because their brains are still developing, children are at*  
+ *far greater risk of being harmed by social media platform addiction*  
+ *than adults. Addiction adversely influences the development of*  
+ *judgment, attention, and memory in the brain.*
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+ *been linked to a reduction in the volume of brain tissue that*  
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+ *turn correlated with higher impulsivity, something with which*  
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+ *social media platforms and rates of suicide and depression among*  
+ *teens.*
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+ *use results in mental health benefits.*
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+ *for shy and lonely youth. Discomfort with real-life interactions*  
+ *leads to internet interactions, isolation from real-world interaction*  
+ *causes loneliness, loneliness combined with social phobia motivate*  
+ *additional engagement online.*
- + *(i) When social media platform companies create, design,*  
+ *implement, or maintain features for users, including child users,*  
+ *on their social media platforms that the company knows or should*  
+ *know are addictive to children, they should be held liable for the*  
+ *harms that result.*
- + *(j) Other addictions, including gambling addictions, have had*  
+ *a demonstrable negative effect on state economies.*
- + *(k) California has a compelling interest in protecting the mental*  
+ *health of its children from social media platform addiction for, at*  
+ *a minimum, all of the following reasons:*
- + *(1) To prevent needless suffering to California children and*  
+ *their families.*

- + (2) To ensure the capacity of all its children to fulfill their
- + potential and to reach normal goals for social and educational
- + achievement to the benefit of all Californians.
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- + children from being incurred by and shifted to California families,
- + businesses, insurers, schools, and mental health professionals.
- + SEC. 3. Section 1714.48 is added to the Civil Code, to read:
- + 1714.48. (a) For purposes of this section:
- + (1) "Addict" means to knowingly or negligently cause or
- + contribute to addiction through any act or omission or any
- + combination of acts or omissions.
- + (2) "Addiction" means use of one or more social media
- + platforms that does both of the following:
- + (A) Indicates preoccupation or obsession with, or withdrawal
- + or difficulty to cease or reduce use of, a social media platform
- + despite the user's desire to cease or reduce that use.
- + (B) Causes or contributes to physical, mental, emotional,
- + developmental, or material harms to the user.
- + (3) "Child user" means a person who uses a social media
- + platform and is not older than 17 years of age.
- + (4) "Personal data" means information that identifies a natural
- + person or is linked or linkable to an identifiable natural person.
- + (5) (A) "Social media platform" means an internet service that
- + meets both of the following criteria:
- + (i) (I) The internet service is a means by which content is
- + generated by a user of the service, or uploaded to or shared on
- + the service by a user of the service, that may be encountered by
- + another user, or other users, of the service.
- + (II) For purposes of this subparagraph:
- + (ia) "Content" means anything communicated by means of an
- + internet service, whether publicly or privately, including written
- + material or messages, oral communications, photographs, videos,
- + or visual images.
- + (ib) "Content that may be encountered by another user, or other
- + users, of a service" includes content that is capable of being shared
- + with a user by operation of a functionality of the service that allows
- + the sharing of content.
- + (ic) "Encounter" means to read, view, hear, or otherwise
- + experience content.



- + (ii) *The internet service is controlled by a business entity that*
- + *generated at least one hundred million dollars (\$100,000,000) in*
- + *gross revenue during the preceding calendar year.*
- + (B) *“Social media platform” does not include any of the*
- + *following:*
- + (i) *An email service, if emails are the only user-generated*
- + *content enabled by the service.*
- + (ii) *An SMS and MMS service, if SMS or MMS messages are*
- + *the only user-generated content enabled by the service.*
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- + *tool for a business or nonprofit organization in which the services*
- + *is not available to children in the general public.*
- + (v) *A service, including a comment section on a digital news*
- + *internet website or a consumer review of a product and service*
- + *on an online commerce internet website, with functionalities that*
- + *allow users to communicate only in any of the following ways:*
- + (I) *Posting comments or reviews relating to content produced*
- + *and published by the provider of the service or by a person acting*
- + *on behalf of the provider of the service.*
- + (II) *Sharing comments or reviews described in subclause (I) on*
- + *a different internet service.*
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- + *subclause (I), or on content mentioned in subparagraph (A), by*
- + *means of any of the following:*
- + (ia) *Applying a “like” or “dislike” button or other button of*
- + *that nature.*
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- + *or shared document or file collaboration.*
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- + *general or tailored internet search services.*

- + (b) An operator of a social media platform has a duty not to
- + addict child users. A social media platform's duty not to addict
- + child users includes a duty not to addict child users by any of the
- + following means:
- + (1) The use or sale of a child user's personal data.
- + (2) The child user's engagement in the platform's products or
- + services, including through the use of notifications soliciting child
- + users to access those products or services, or permissions or
- + advertising related to those products or services.
- + (3) The development, design, implementation, or maintenance
- + of a design, feature, or affordance.
- + (c) (1) A person authorized to assert the legal rights of a child
- + user who suffers injury as a result of a violation of this section
- + may bring an action against a violator to recover or obtain any
- + of the following relief:
- + (A) (i) Actual damages.
- + (ii) In a class action, the amount of damages awarded pursuant
- + to this subparagraph shall not be less than one thousand dollars
- + (\$1,000) per member of the class.
- + (B) A civil penalty of up to twenty-five thousand dollars
- + (\$25,000) per violation per calendar year.
- + (C) Injunctive relief.
- + (D) Punitive damages.
- + (E) An award of litigation costs and no more than twice the
- + amount of reasonable attorney's fees to a prevailing plaintiff.
- + (F) Any other relief that the court deems proper.
- + (2) In an action pursuant to this subdivision in which the plaintiff
- + has shown, by a preponderance of the evidence, that the defendant
- + addicted a child in violation of subdivision (b), the defendant shall
- + have the burden of proving, by a preponderance of the evidence,
- + that the extent of the injury or injuries alleged in the action were
- + not, in whole or in part, caused or exacerbated by the defendant's
- + violation.
- + (3) (A) A knowing or willful violation of this section shall
- + subject the violator to an additional civil penalty not to exceed
- + two hundred fifty thousand dollars (\$250,000) per violation per
- + calendar year.
- + (B) A civil penalty pursuant to this paragraph shall not be
- + treated as an offset against an award of damages caused by the

- + same knowing or willful violation in an action pursuant to this  
+ subdivision.
- + (4) A social media platform that, before January 1, 2023,  
+ developed, designed, implemented, or maintained features that  
+ were known, or should have been known, by the platform to be  
+ addictive to child users shall be liable for all damages to child  
+ users that are, in whole or in part, caused by the platform's  
+ features, including, but not limited to, suicide, mental illness, eating  
+ disorders, emotional distress, and costs for medical care, including  
+ care provided by licensed mental health professionals.
- + (d) An operator of a social media platform shall not be subject  
+ to a civil penalty pursuant to subdivision (c) if, before engaging  
+ in a practice that led to that violation, the operator did both of the  
+ following:
- + (1) Instituted and maintained a program of at least quarterly  
+ audits of its practices, designs, features, and affordances to detect  
+ practices or features that have the potential to cause or contribute  
+ to the addiction of child users.
- + (2) Corrected, within 30 days of the completion of an audit  
+ described in paragraph (1), any practice, design, feature, or  
+ affordance discovered by the audit to present more than a de  
+ minimis risk of violating this section.
- + (e) The provisions of this section are cumulative to any other  
+ duties or obligations imposed under other law.
- + (f) This section shall not be construed to impose liability for a  
+ social media platform for content that is generated by a user of  
+ the service, or uploaded to or shared on the service by a user of  
+ the service, that may be encountered by another user, or other  
+ users, of the service.
- + (g) This section shall not be construed to negate or limit a cause  
+ of action that may have existed against an operator of a social  
+ media platform under the law as it existed before the effective date  
+ of this section.
- + (h) The provisions of this section are severable. If any provision  
+ of this section or its application is held invalid, that invalidity shall  
+ not affect other provisions or applications that can be given effect  
+ without the invalid provision or application.
- + (i) A waiver of this section is unenforceable as void against  
+ public policy.

# PROPOSED AMENDMENTS

AB 2408

— 10 —

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SUBSTANTIVE

Amendment 6

Page 2 1 SECTION 1. ~~Section 1632 of the Civil Code is amended to~~  
2 ~~read:~~  
3 ~~1632. (a) The Legislature hereby finds and declares all of the~~  
4 ~~following:~~  
5 ~~(1) This section was enacted in 1976 to increase consumer~~  
6 ~~information and protections for the state's sizeable and growing~~  
7 ~~Spanish-speaking population.~~  
8 ~~(2) Since 1976, the state's population has become increasingly~~  
9 ~~diverse and the number of Californians who speak languages other~~  
10 ~~than English as their primary language at home has increased~~  
11 ~~dramatically.~~  
12 ~~(3) According to data from the American Community Survey,~~  
13 ~~which has replaced the decennial census for detailed socioeconomic~~  
14 ~~information about United States residents, approximately 15.2~~  
15 ~~million Californians speak a language other than English at home,~~  
16 ~~based on data from combined years 2009 through 2011. This~~  
17 ~~compares to approximately 19.6 million people who speak only~~  
18 ~~English at home. Among the Californians who speak a language~~  
19 ~~other than English at home, approximately 8.4 million speak~~  
20 ~~English very well, and another 3 million speak English well. The~~  
21 ~~remaining 3.8 million Californians surveyed do not speak English~~  
22 ~~well or do not speak English at all. Among this group, the five~~  
23 ~~languages other than English that are most widely spoken at home~~  
24 ~~are Spanish, Chinese, Tagalog, Vietnamese, and Korean. These~~  
25 ~~five languages are spoken at home by approximately 3.5 million~~  
26 ~~of the 3.8 million Californians with limited or no English~~  
27 ~~proficiency, who speak a language other than English at home.~~  
28 ~~(b) Any person engaged in a trade or business who negotiates~~  
29 ~~primarily in Spanish, Chinese, Tagalog, Vietnamese, or Korean,~~  
30 ~~orally or in writing, in the course of entering into any of the~~  
31 ~~following, shall deliver to the other party to the contract or~~  
32 ~~agreement, and any other person who will be signing the contract~~  
33 ~~or agreement, and before the execution thereof, a translation of~~  
34 ~~the contract or agreement in the language in which the contract or~~  
35 ~~agreement was negotiated, that includes a translation of every term~~  
36 ~~and condition in that contract or agreement:~~  
37 ~~(1) A contract or agreement subject to the provisions of Title 2~~  
38 ~~(commencing with Section 1801) of, and Chapter 2b (commencing~~  
Page 3 1 ~~with Section 2981) and Chapter 2d (commencing with Section~~  
2 ~~2985.7) of Title 14 of, Part 4 of Division 3.~~

Page 3     3     ~~(2) A loan or extension of credit secured other than by real~~  
4     ~~property, or unsecured, for use primarily for personal, family, or~~  
5     ~~household purposes.~~  
6     ~~(3) A lease, sublease, rental contract or agreement, or other term~~  
7     ~~of tenancy contract or agreement, for a period of longer than one~~  
8     ~~month, covering a dwelling, an apartment, or mobilehome, or other~~  
9     ~~dwelling unit normally occupied as a residence.~~  
10    ~~(4) Notwithstanding paragraph (2), a loan or extension of credit~~  
11    ~~for use primarily for personal, family, or household purposes in~~  
12    ~~which the loan or extension of credit is subject to the provisions~~  
13    ~~of Article 7 (commencing with Section 10240) of Chapter 3 of~~  
14    ~~Part 1 of Division 4 of the Business and Professions Code, or~~  
15    ~~Division 7 (commencing with Section 18000), or Division 9~~  
16    ~~(commencing with Section 22000) of the Financial Code.~~  
17    ~~(5) Notwithstanding paragraph (2), a reverse mortgage as~~  
18    ~~described in Chapter 8 (commencing with Section 1923) of Title~~  
19    ~~4 of Part 4 of Division 3.~~  
20    ~~(6) A contract or agreement, containing a statement of fees or~~  
21    ~~charges, entered into for the purpose of obtaining legal services,~~  
22    ~~when the person who is engaged in business is currently licensed~~  
23    ~~to practice law pursuant to Chapter 4 (commencing with Section~~  
24    ~~6000) of Division 3 of the Business and Professions Code.~~  
25    ~~(7) A foreclosure consulting contract subject to Article 1.5~~  
26    ~~(commencing with Section 2945) of Chapter 2 of Title 14 of Part~~  
27    ~~4 of Division 3.~~  
28    ~~(c) Notwithstanding subdivision (b), for a loan subject to this~~  
29    ~~part and to Article 7 (commencing with Section 10240) of Chapter~~  
30    ~~3 of Part 1 of Division 4 of the Business and Professions Code,~~  
31    ~~the delivery of a translation of the statement to the borrower~~  
32    ~~required by Section 10240 of the Business and Professions Code~~  
33    ~~in any of the languages specified in subdivision (b) in which the~~  
34    ~~contract or agreement was negotiated, is in compliance with~~  
35    ~~subdivision (b).~~  
36    ~~(d) At the time and place where a lease, sublease, or rental~~  
37    ~~contract or agreement described in subdivision (b) is executed,~~  
38    ~~notice in any of the languages specified in subdivision (b) in which~~  
39    ~~the contract or agreement was negotiated shall be provided to the~~  
40    ~~lessee or tenant.~~  
Page 4     1     ~~(e) Provision by a supervised financial organization of a~~  
              2     ~~translation of the disclosures required by Regulation M or~~

Page 4     3    Regulation Z, and, if applicable, Division 7 (commencing with  
4    Section 18000) or Division 9 (commencing with Section 22000)  
5    of the Financial Code in any of the languages specified in  
6    subdivision (b) in which the contract or agreement was negotiated;  
7    prior to the execution of the contract or agreement, shall also be  
8    deemed in compliance with the requirements of subdivision (b)  
9    with regard to the original contract or agreement.

10    (1) “Regulation M” and “Regulation Z” mean any rule,  
11    regulation, or interpretation promulgated by the Board of  
12    Governors of the Federal Reserve System and any interpretation  
13    or approval issued by an official or employee duly authorized by  
14    the board to issue interpretations or approvals dealing with,  
15    respectively, consumer leasing or consumer lending, pursuant to  
16    the Federal Truth in Lending Act, as amended (15 U.S.C. Sec.  
17    1601 et seq.).

18    (2) As used in this section, “supervised financial organization”  
19    means a bank, savings association as defined in Section 5102 of  
20    the Financial Code, credit union, or holding company, affiliate, or  
21    subsidiary thereof, or any person subject to Article 7 (commencing  
22    with Section 10240) of Chapter 3 of Part 1 of Division 4 of the  
23    Business and Professions Code, or Division 7 (commencing with  
24    Section 18000) or Division 9 (commencing with Section 22000)  
25    of the Financial Code.

26    (f) At the time and place where a contract or agreement  
27    described in paragraph (1) or (2) of subdivision (b) is executed, a  
28    notice in any of the languages specified in subdivision (b) in which  
29    the contract or agreement was negotiated shall be conspicuously  
30    displayed to the effect that the person described in subdivision (b)  
31    is required to provide a contract or agreement in the language in  
32    which the contract or agreement was negotiated, or a translation  
33    of the disclosures required by law in the language in which the  
34    contract or agreement was negotiated, as the case may be. If a  
35    person described in subdivision (b) does business at more than one  
36    location or branch, the requirements of this section shall apply  
37    only with respect to the location or branch at which the language  
38    in which the contract or agreement was negotiated is used.

39    (g) The term “contract” or “agreement,” as used in this section,  
40    means the document creating the rights and obligations of the  
Page 5     1    parties and includes any subsequent document making substantial  
2    changes in the rights and obligations of the parties. The term

Page 5    3    ~~“contract” or “agreement” does not include any subsequent~~  
4    ~~documents authorized or contemplated by the original document~~  
5    ~~such as periodic statements, sales slips or invoices representing~~  
6    ~~purchases made pursuant to a credit card agreement, a retail~~  
7    ~~installment contract or account or other revolving sales or loan~~  
8    ~~account, memoranda of purchases in an add-on sale, or refinancing~~  
9    ~~of a purchase as provided by, or pursuant to, the original document.~~  
10    ~~The term “contract” or “agreement” does not include a home~~  
11    ~~improvement contract as defined in Sections 7151.2 and 7159 of~~  
12    ~~the Business and Professions Code, nor does it include plans,~~  
13    ~~specifications, description of work to be done and materials to be~~  
14    ~~used, or collateral security taken or to be taken for the retail buyer’s~~  
15    ~~obligation contained in a contract for the installation of goods by~~  
16    ~~a contractor licensed pursuant to Chapter 9 (commencing with~~  
17    ~~Section 7000) of Division 3 of the Business and Professions Code,~~  
18    ~~if the home improvement contract or installation contract is~~  
19    ~~otherwise a part of a contract described in subdivision (b).~~  
20    ~~Matters ordinarily incorporated by reference in contracts or~~  
21    ~~agreements as described in paragraph (3) of subdivision (b),~~  
22    ~~including, but not limited to, rules and regulations governing a~~  
23    ~~tenancy and inventories of furnishings to be provided by the person~~  
24    ~~described in subdivision (b), are not included in the term “contract”~~  
25    ~~or “agreement.”~~  
26    ~~(h) (1) This section does not apply to any person engaged in~~  
27    ~~a trade or business who negotiates primarily in a language other~~  
28    ~~than English, as described in subdivision (b), if the party with~~  
29    ~~whom that person is negotiating is a buyer of goods or services,~~  
30    ~~or receives a loan or extension of credit, or enters an agreement~~  
31    ~~obligating that party as a tenant, lessee, or sublessee, or similarly~~  
32    ~~obligates the party by contract or lease, and the party negotiates~~  
33    ~~the terms of the contract, lease, or other obligation through the~~  
34    ~~party’s own interpreter.~~  
35    ~~(2) As used in this subdivision, “the party’s own interpreter”~~  
36    ~~means a person who is not a minor and who is able to speak~~  
37    ~~fluently and read with full understanding both the English language~~  
38    ~~and any of the languages specified in subdivision (b) in which the~~  
39    ~~contract, lease, or other obligation was negotiated, and who is not~~  
Page 6    1    ~~employed by, or whose service is not made available through, the~~  
2    ~~person engaged in the trade or business.~~

Page 6 3 (i) ~~Notwithstanding subdivision (b), a translation may retain the~~  
4 ~~following elements of the executed English-language contract or~~  
5 ~~agreement without translation: names and titles of individuals and~~  
6 ~~other persons, addresses, brand names, trade names, trademarks,~~  
7 ~~registered service marks, full or abbreviated designations of the~~  
8 ~~make and model of goods or services, alphanumeric codes,~~  
9 ~~numerals, dollar amounts expressed in numerals, dates, and~~  
10 ~~individual words or expressions having no generally accepted~~  
11 ~~non-English translation. It is permissible, but not required, that~~  
12 ~~this translation be signed.~~  
13 (j) ~~The terms of the contract or agreement that is executed in~~  
14 ~~the English language shall determine the rights and obligations of~~  
15 ~~the parties. However, the translation of the contract or the~~  
16 ~~disclosures required by subdivision (c) in any of the languages~~  
17 ~~specified in subdivision (b) in which the contract or agreement~~  
18 ~~was negotiated shall be admissible in evidence only to show that~~  
19 ~~no contract was entered into because of a substantial difference in~~  
20 ~~the material terms and conditions of the contract and the translation.~~  
21 (k) ~~Upon a failure to comply with the provisions of this section,~~  
22 ~~the person aggrieved may rescind the contract or agreement in the~~  
23 ~~manner provided by this chapter. If the contract for a consumer~~  
24 ~~credit sale or consumer lease that has been sold and assigned to a~~  
25 ~~financial institution is rescinded pursuant to this subdivision, the~~  
26 ~~consumer shall make restitution to and have restitution made by~~  
27 ~~the person with whom the consumer made the contract and shall~~  
28 ~~give notice of rescission to the assignee. Notwithstanding that the~~  
29 ~~contract was assigned without recourse, the assignment shall be~~  
30 ~~deemed rescinded, and the assignor shall promptly repurchase the~~  
31 ~~contract from the assignee.~~

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