



August 11, 2023

The Honorable Chris Holden
Chair, Assembly Appropriations Committee
1021 O Street, Room 8220
Sacramento, CA 95814

Re: S.B. 680 – OPPOSE (As Amended 7/13/2023)

Dear Assemblymember Holden:

The undersigned organizations represent a broad coalition of advocacy organizations which focus on privacy, free expression, and equity. We write in respectful opposition to S.B.680, authored by Senator Nancy Skinner, which would prohibit social media companies from using a “design, algorithm, or feature” that causes someone under 16 to do certain things, including becoming addicted to a social media platform.

We appreciate the ongoing conversations we have had with the supporters of this bill and the author’s office. We recognize their genuine concern for children. Unfortunately, as written the bill will fail to accomplish its goals of protecting children, all while running afoul federal preemption, violating the First Amendment, and likely creating new privacy dangers for all Californians.

S.B. 680 is Federally Preempted by Section 230

First, we find S.B. 680 – despite its intentions – to be preempted by the federal law protecting online speech, 47 U.S.C. §230 (“Section 230”). That law protects online platforms from liability

for user-generated content. Without Section 230, online platforms would be less willing to allow users to express themselves. S.B. 680 ignores that many aspects of an online service’s design are inseparable from the user generated content they publish. While S.B. 680 purports to steer clear of conduct protected by Section 230, this will prove difficult, given the frequent close relationship between platform design and user content.

EFF understands that some supporters of S.B. 680 have suggested that the bill avoids Section 230 preemption under *Lemmon v Snap, Inc.*, 995 F.3d 1085 (9th Cir. 2021). But this decision does not support the proposition that California—or any state—can avoid Section 230’s preemption by simply claiming that some or all aspects of an online service’s interactive features are defective or dangerous.

Lemmon held that Section 230 did not apply to a specific defective product claim based on specific allegations about a product created by a service. The Ninth Circuit’s narrow decision was the correct result in an early stage of the case, and its careful reasoning avoided undermining Section 230 in ways that would harm online speech.¹

S.B. 680 Constricts Protected Speech

Second, S.B. 680’s focus on design features and algorithms deployed by social media platforms have clear First Amendment issues. Just as news outlets have discretion to choose how to lay out articles or sequences stories in a broadcast, so too do social media platforms have a First Amendment right to exercise editorial judgment over how content is served on their sites.

Further, in the bill’s efforts to protect children, we are concerned it will sweep in speech that is not only protected by the First Amendment, but also seeks to help the same children as the bill’s author does. The categories of content that are implicated are very broad. For example, people of all ages may wish to see content about losing weight that is not problematic or does not encourage eating disorders. A site may promote a news article that discusses the location of an open-air fentanyl market to illustrate the need for better law enforcement action. Would these pieces of content create liability for social media platforms? Companies, to minimize liability, will be incentivized to censor any speech that even vaguely touches these topics. A consequence of this will be that groups who seek to help people recover from addiction, treat eating disorders, or prevent suicide attempts would be swept up, making helpful resources inaccessible to those in need.

Compliance to S.B. 680 Will Likely Result in Privacy Dangers to All Californians

Lastly, S.B. 680 will likely exacerbate existing privacy concerns that legislators and the public have with platforms collecting our sensitive, private information. Because S.B. 680 applies only to those under 16, covered platforms would likely be incentivized to confirm the age of every

¹ Sophia Cope, *Lawsuit Against Snapchat Rightfully Goes Forward Based on “Speed Filter,” Not User Speech*, EFF Deeplinks (May 18, 2021). <https://www.eff.org/deeplinks/2021/05/lawsuit-against-snapchat-rightfully-goes-forward-based-speed-filter-not-user>.

Coalition Opposition re. S.B. 680

August 11, 2023

Page 3 of 3

visitor, or contract with a third party to do so. This age verification requires the new collection and analysis of private information, like government issued identification, for every platform to identify which users would be covered by the bill. There is no foolproof method for protecting this newly collected private data, and no language on how to protect this data from being shared. As a result, S.B. 680 will likely lead large platforms to collect information they otherwise would not have.

We agree with the author and the bill's supporters that there are many problems with the ways social media companies operate. Changing the incentives that encourage data collection, for example, by limiting how companies can collect and use information from all people on their platforms, would help address this problem without running into the issues that S.B. 680's product liability framing presents, or encouraging further data collection.

As written, S.B. 680 is not the proper method to protect children online. It will instead harm all online speakers by burdening free speech and diminishing online privacy by incentivizing companies to collect more private information just to comply with this bill. It also conflicts with Section 230. For these reasons, we respectfully urge your no vote. Thank you.

Sincerely,

Center for Democracy and Technology
Electronic Frontier Foundation
Fight for the Future
Privacy Rights Clearinghouse
Woodhull Freedom Foundation
Yale Privacy Lab

cc: The Honorable Nancy Skinner; Honorable Members and Committee Staff, Assembly
Appropriations Committee