

Date of Hearing: April 26, 2021

ASSEMBLY COMMITTEE ON ARTS, ENTERTAINMENT, SPORTS, TOURISM, AND  
INTERNET MEDIA

Sharon Quirk-Silva, Chair  
AB 35 (Chau) – As Amended March 24, 2021

**As Proposed to be Amended**

**SUBJECT:** Social media platforms: false information.

**SUMMARY:** 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 or not 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) Requires a person that operates a social media platform to make the above disclosures easily accessible on the social media platform’s internet website and mobile application, as applicable.
- 3) Subjects a person who fails to provide the above disclosures to a civil penalty of \$1000 per day for each day that the person remains in violation after the date upon which the person received notice of the violation. Specifies that this penalty will be assessed and recovered in a civil action brought in the name of the people of California by the Attorney General or by any district attorney, county counsel, or city attorney in any court of competent jurisdiction.
- 4) Defines “social media platform” to mean any internet-based service through which users develop a persistent virtual network or community comprised of other users for the purpose of sharing information, ideas, news reports, and other content that allows individuals to do all of the following:
  - a) Construct a public or semipublic profile with a bounded system created by the service.
  - b) Create a list of other users with whom an individual shares a connection within the system.
  - c) View and navigate a list of the individual’s connections and the connections made by other individuals within the system.
- 5) Specifies that “social media platform” does not include:

- a) Electronic mail
  - b) A comment section on a digital news internet website
  - c) An internet-based subscription streaming service that is 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..
- 6) Specifies that the duties and obligations imposed by this title are cumulative to any other duties or obligations imposed under other law, and shall not be construed to relieve any party from any duties or obligations imposed under other law.

**EXISTING LAW:**

- 1) Prohibits false or deceptive advertising to consumers about the nature of any property, product, or service. Applies to false or misleading statements made in print, over the internet, or any other advertising method. (Business & Professions Code Section 17500.)
- 2) Defines libel as a false and unprivileged publication by writing, printing, or any other representation that exposes any person to hatred, contempt, ridicule, or obloquy, or which causes that person to be shunned or avoided, or which has a tendency to injure that person in their occupation. (Civil Code Sections 45 and 47.)
- 3) Requires, under the California Consumer Privacy Act (CCPA), certain businesses that collect consumers' personal information to implement policies that give consumers greater control over their personal information, including, subject to specified exemptions, the ability to prevent the sale of their personal information, to know what personal information is collected about them, to access their personal information, to request that certain personal information be deleted, and to not be discriminated against for exercising their right to do any of these things. In addition, the CCPA disclosure provisions require that a business's privacy policy inform consumers of the categories of personal information collected, the sources from which that information is collected, and with whom the information is shared. In addition, the business must provide consumers with a description of their rights under the CCPA. (Civil Code Sections 1798.100 *et seq.*)

**FISCAL EFFECT:** Unknown. This measure has been keyed Fiscal by the Legislative Counsel.

**COMMENTS:**

- 1) *Author and supporters statement of need for legislation: Misinformation can be dangerous.* The Consumer Attorneys of California write in support of AB 35 saying, "Most Americans today receive their news from social media. The Pew Research Center found in 2020 that 53% of Americans got their news from social media. Research has also found an alarming rate of sharing of misinformation on social media. Statistics reported that 10% of US adults knowingly shared inaccurate news online and 50% shared a news story only to later find out that the news story was false. As we well know, misinformation can have dangerous consequences, especially as we navigate through an unprecedented pandemic."

According to the Author, "Misinformation reported online or in the news has proliferated in the age of social media and came to a head in the 2016 Presidential elections. As a result of

misleading information and hoaxes, the public has become suspicious of information they read online, particularly when most Americans receive their news from social media. Despite their suspicions, the data shows that Americans continue to rely on news being shared on social media platforms.

“The COVID-19 pandemic has been used by bad actors preying on the understandable fears of Americans by touting false cures or home remedies not sanctioned by medical experts. Despite the policies in place to further prevent the spread of COVID-19 and an effort to share vetted information, the number of infected people continues to climb as many defy or circumvent safety measures, in part, due to the false claims that the symptoms of COVID-19 are not life threatening. The impact of misinformation is a reality for the Asian and Pacific Islander American (APIA) community, as families grapple with the violence against them for the misplaced belief that they are to blame for COVID-19. These hate crimes have generated harm against the elderly and children. Furthermore, already debunked claims about voter fraud continues to escalate months after the results of the 2020 Presidential election. Experts and investigators have found no proof of voter fraud and released their findings and yet misinformation has persisted.

AB 35 would require social media platforms to disclose whether or not they have a policy to address the spread of misinformation. 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. Users of these platforms share much of their private information online and should have the ability to assess if they can trust their platform.”

- 2) *Opposition: “The First Amendment demands more clarity.”* The Electronic Frontier Foundation (EFF) opposes this bill largely because of its broad definition of “social media platform” and the ambiguity of some of its key terms. First, EFF notes that “social media platform” is defined so broadly that “could encompass chat and other communications technologies that use the Internet and involve information sharing, such as a Listserv or other group communications tools such as Slack. One’s own Twitter feed/following might be a ‘persistent virtual network.’” Second, EFF notes that key terms, including “misinformation,” are barely or vaguely defined. In addition, the definition’s three prongs – “Reducing the spread of misinformation that contributes to the risk of imminent violence or physical harm,” “Reducing the spread of harmful, verifiably inauthentic content,” and “Practices intended to deceptively and substantially manipulate or disrupt the behavior of users on the social media platform”—are quite subjective . . . The First Amendment,” EFF concludes, “demands more clarity from bills that seek to regulate speech.”
- 3) *This analysis reflects the proposed amendments by the Author to remove online streaming services such as Netflix, Hulu and Amazon Prime Video from the definition of “social media platform.”* As mentioned above by the opposition and prior analysis of this measure, drafting a definition of “social media platform” is tricky. In this instance, the author has attempted to provide parameters through exclusion – sometimes it’s easier to say what isn’t covered. To the list which currently includes electronic mail and a comment section on a digital news internet website, the author has added, “(iii) An internet-based subscription streaming service that is 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” in an attempt to carve out these streaming content services from the bill.

- 4) *Background: Truth, lies, Covid-19 and Q have all come together online to create confusion.* As noted in the excellent Judiciary Committee analysis of AB 35, according to author, the potentially dangerous effects of social media disinformation first entered the nation's consciousness in the election of 2016 and reached deadly levels on January 6 of this year, when persons mobilized by claims of election fraud and various conspiracy theories unlawfully entered and occupied the U.S. Capitol in an apparent effort to stop the confirmation of Electoral College votes. The author cites studies and news reports suggesting that removing such information from social media platforms dramatically reduced the spread of misinformation. (See e.g. Elizabeth Dvoskin and Craig Timberg, "Misinformation dropped dramatically the week after Twitter banned Trump and some allies," *Washington Post*, January 16, 2021, citing a study by Zignal Labs finding that online misinformation about election fraud decreased by 73% after several social media sites, including Twitter, banned President Trump's accounts.)

Although many social media platforms claim that they monitor content and attempt to flag or remove false or potentially harmful information, an "experiment" conducted by Consumer Reports (CR) suggested that the mechanisms in place do not always succeed. CR set up an advertising account with Facebook under the name of a made-up organization called the "Self Preservation Society." The fake organization submitted seven paid advertisements to Facebook, all of which contained false and dangerous information about the coronavirus, claiming, for example, that coronavirus was a hoax, that social distancing did not stop the spread of the virus, and that persons under 30 years of age could not contract the COVID-19 disease. To CR's surprise, Facebook approved all seven of the ads for publication. (CR pulled the ads before they went public.) While CR conceded that its contrived "experiment" amounted only to anecdotal evidence, it nonetheless maintained that the experiment illustrated a serious problem. Not only is it apparently easy to post false and even dangerously misleading advertisements on Facebook, it is not clear what steps, if any, Facebook and other social media platforms take to identify false or malicious information and prohibit or remove that information. (Kevin Waddell, "Facebook approves ads with Coronavirus misinformation," *Consumer Reports*, April 7, 2020, at [www.consumerreports.org](http://www.consumerreports.org), last visited March 12, 2021)

The lack of clarity in Facebook's policies also emerged in an exchange about political advertising between New York Representative Alexandria Ocasio-Cortez and Facebook founder and CEO, Mark Zuckerberg, during Congressional hearings in October of 2019. When asked if Facebook would remove an ad that targeted predominantly African American zip codes and contained an incorrect election date, Zuckerberg suggested that Facebook would prohibit or remove such an ad because it contributes to voter suppression. However, when asked if Facebook would prohibit an ad that falsely claimed that certain Republicans supported the Green New Deal, Zuckerberg responded that such an ad, even if clearly a lie, would not be prohibited by Facebook. While there may be any number of justifications for treating the political ads differently, Zuckerberg did not explain what policy justified removing one ad, but not the other. ("Ocasio-Cortez grills Zuckerberg in fiery exchange," *Washington Post*, October 24, 2019.)

5) *Prior related legislation.*

- a) AB 2442 (Chau), Legislation of 2020, substantially similar to AB 35, that measure would have required a person or entity that operates a social media platform to disclose whether or not the social media platform has a policy to address the spread of misinformation  
Status: Held in the Senate Committee on Judiciary
- b) AB 2391 (Gallagher), Legislation of 2020, would have prohibited a person who operates a social media internet website located in California, as defined, from removing or manipulating content from that site on the basis of the political affiliation or political viewpoint of that content.  
Status: Held in Assembly Committee on Arts, Entertainment, Sports, Tourism & Internet Media
- c) AB 1316 (Gallagher), Legislation of 2019, would have prohibited social media internet website operators located in California, as defined, from removing or manipulating content from that site on the basis of the political affiliation or political viewpoint of that content, except as specified  
Status: Held in Assembly Rules Committee
- d) AB 1950 (Levine), Legislation of 2018, would have required an operator of a commercial Web site or online service that collects personally identifiable information through the Internet about individual consumers, as specified, to disclose whether the operator utilizes bots for the dissemination of information.  
Status: Held in Assembly Privacy and Consumer Protection Committee
- e) SB 1424 (Pan), Legislation of 2018, would have directed the Attorney General to establish an advisory group to study the problem of the spread of false information through Internet-based social media platforms and to draft a model strategic plan for such platforms to mitigate the spread of false information through their platforms.  
Status: Vetoed by Governor Brown:  
To the Members of the California State Senate:  
I am returning Senate Bill 1424 without my signature.  
This bill directs the Attorney General to establish an advisory group to study the problem of the spread of false information through Internet-based social media platforms.  
As evidenced by the numerous studies by academic and policy groups on the spread of false information, the creation of a statutory advisory group to examine this issue is not necessary.  
Sincerely, Edmund G. Brown Jr.
- f) AB 3169 (Gallagher), Legislation of 2017, would have prohibited any person who operates a social media internet website or search engine located in California, as specified, from removing or manipulating content on the basis of the political affiliation or political viewpoint of that content.  
Status: Failed Passage in Assembly Privacy and Consumer Protection Committee

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

Consumer Attorneys of California

**Opposition**

Electronic Frontier Foundation

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