



March 5, 2024

The Honorable Reggie Jones-Sawyer
1021 O Street, Room 6320
Sacramento, CA 95814

RE: AB 1800 (Jones-Sawyer) – Controlled Substances – OPPOSE

Dear Assemblymember Jones-Sawyer,

TechNet and the following organizations must respectfully oppose AB 1800, which imposes such an extreme standard of both civil and criminal liability on social media platforms that companies would have no choice but to limit or cease operations. Furthermore, AB 1800 is unambiguously preempted by federal law.

AB 1800 ignores the numerous industry efforts to curb the abuse of their platforms by drug traffickers. Our member companies have clear rules prohibiting the sale of controlled substances on their platforms. Online platforms invest heavily in the security and design of their sites as well as employ teams to identify, remove, and report to law enforcement harmful content related to controlled substances. Our companies have been at the forefront of creating new technologies to identify and remove offending accounts more efficiently and effectively. This bill would upend those efforts in favor of an ill-conceived imposition of civil and criminal liability that would punish our companies but do little to protect the public.

We've also worked closely with the Legislature in recent years to address this clear misuse of platforms. Just last year, TechNet and our members supported AB 1027 (Petrie-Norris), which helps provide law enforcement with better data and information to aid in their investigations, arrests, and prosecutions of drug traffickers abusing online platforms. AB 1800 distracts from this progress as well as other potential solutions and will do little to protect Californians.

AB 1800's criminal liability, new private right of action, and strict liability will result in a severe restriction or elimination of access for California users

This bill would make a social media company criminally liable of a misdemeanor if controlled substances are sold on their platform. Setting aside the ambiguity of whether every California based employee of the company, the CEO, or other named agent of the company would be guilty of this misdemeanor, the bill imposes no fault, strict liability for this crime. Despite expending millions of dollars and employing teams of people to combat this issue, if a controlled substance is sold, then the company is criminally liable. If this wasn't enough, the company shall be

imprisoned for up to three years if the individual overdoses and up to six years if they die.

AB 1800 also authorizes a private right of action and civil penalties for each day that users offer controlled substances for sale on the platform. To reiterate, a platform doesn't need to be aware of the illicit content, have been involved in aiding or abetting the sale of the controlled substance, or even know that a sale occurred to be liable. If the prohibited action happens on a social media platform, then the social media platform is liable.

AB 1800 imposes both civil and criminal liability on platforms for the failure to be perfect. This is not a standard the state has applied to public agencies, which in the context of the bill perform many of the same functions as platforms but also have police power. State and local governments establish laws, deploy enforcement strategies and resources, and balance their enforcement postures with broader societal goals. In fact, there is great debate in California about whether the current balance implemented through various state, local, and enforcement agencies is adequate to protect Californians. AB 1800 does not propose to saddle legislators, city council members, county supervisors, police chiefs, school principals, or their institutions criminally liable for failing to stop the sale of drugs in school bathrooms or street corners.

This extreme amount of liability will not protect Californians because there is no way for a company to change their practices and achieve the level of perfection required to avoid liability. Even completely ceasing operations in California or severely limiting access would not be enough. The bill does not require the sale to have happened in California or have been sold to a Californian. It just has to have happened on the platform.

AB 1800 is preempted by Federal Law

Section 230 of the Communications Decency Act (47 U.S.C. §230) generally protects platforms from liability for content that users generate with limited exceptions. This protection enables platforms to host third party content and to moderate third-party content on their platforms without fear of liability. It creates an incentive to identify and remove harmful content, such as content relating to controlled substances.

Without the protections of Section 230, the internet ecosystem would be dramatically different with a limited ability for users to post, share, read, view, and discover the content of others.

Fortunately, Section 230 explicitly preempts state laws such as AB 1800 that would conflict with this protection. This bill creates liability for platforms based on third party content and as a result is likely preempted.

Thank you for your consideration. If you have any questions regarding our opposition, please contact Dylan Hoffman, Executive Director, at dhoffman@technet.org or 505-402-5738.

Sincerely,

A handwritten signature in black ink, appearing to read 'Dylan Hoffman', with a stylized flourish extending to the right.

Dylan Hoffman
Executive Director for California and the Southwest
TechNet

Ronak Daylami, California Chamber of Commerce
Robert Singleton, Chamber of Progress
Khara Boender, Computer and Communications Industry Association