



# NATIONAL CENTER ON SEXUAL EXPLOITATION

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## **Why the Kids Online Safety Act (KOSA) Is Most Valuable Pending Child Protection Bill**

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KOSA, [S. 1409](#), is essential legislation because it requires social media companies to abide by a legal duty of care and be accountable to users by implementing best practices, including allowing users to opt-out of dangerous algorithmic recommendation systems, which have substantially contributed to the youth mental health crisis. It's a bipartisan solution ([49 cosponsors](#) equally divided between Rs and Ds) to today's urgent problem of protecting children online. NCOSE believes the Senate will take up S. 1409 in January and hopes the House can fast track consideration, for political reasons (which we can discuss) and on the merits, outlined below.

### Default to Safety

KOSA marks a fundamental shift from social media platforms' current no limits, profit-motivated model of operation to an emphasis on online safety and wellbeing for users, especially children. It creates a legal duty of care that platforms are required to abide by that default to the highest levels of safety for minor users. In this arena, the duty of care requires covered platforms to act in the best interest of minor users. This will effectively reduce inappropriate content that minors are exposed to, including but not limited to sexually explicit content, glamorization of mental health disorders and suicide, promotion/marketing of narcotic drugs, diets that prompt eating disorders, and other harmful material.

Common misconceptions surrounding KOSA claim that it would effectively shut down websites and wipe the internet of any content that is "inappropriate" for minors, but that is not the case. KOSA does not regulate any particular content on a given website but rather addresses how a website interacts with its minor users; for example, whether harmful social media content can be promoted to children. Functionally, it gives control back to parents of what content their children can see online by giving them tools to manage device and screen time settings. And it requires websites to protect minor users from known dangers on their platforms. In the offline world, this is like safety caps on medicine bottles or seatbelts and child lock features in cars. The mandatory duty of care to act in the best interest of minor users and implement heightened safety standards for minors will mark a crucial shift in the way social media platforms are held accountable.

### Disclosure, Reporting, and Transparency

KOSA also requires platforms to provide easy-to-use ways to submit reports on their platforms. On many platforms, users experience difficulties submitting detailed reports of harmful or exploitive content, and do not get responses in a timely manner. This provision requires platforms to establish internal processes for taking reports seriously, keeping track of reports that are made, and responding to them quickly.

KOSA modernizes reporting by requiring disclosure of policies and practices that companies use for personal data and minors' safety. These public reports are an important way to hold platforms accountable and help pinpoint solutions if they are not reaching those standards. Importantly, because the way "personal recommendation systems," (i.e. social media algorithms) function is a

mystery, KOSA requires platforms to pull back the curtain and provide users an overview of how the recommendation system works and allows users to opt-out of the algorithm if they choose. This puts the type of content individuals are exposed to back into our own hands instead of the hands of tech companies.

There are a number of things KOSA does not do and is not intended to do. KOSA does not prevent minors from seeking information, such as suicide prevention or other sensitive topics, but will prevent unwanted exposure to content they have not affirmatively sought. KOSA also does not put an affirmative duty on platforms to scan, block, remove, or prevent content, or limit adults from seeing content, but focuses on making platforms' safety policies transparent and effective.

### Enforcement

Section 230 of the Communications Decency Act is a favorite defense for internet service providers that prevents them from facing even *potential* liability for content posted on their platforms by third parties. Litigated extensively, it has proven strong and nearly impossible to bypass, which has created almost blanket immunity for internet service providers and social media companies. As a result, tech companies have no incentive to limit harmful content or harmful features for safety's sake, even for minors, when such action would increase cost and reduce revenue. Cars have seatbelts and child lock features because if they did not, car manufacturers would be at serious risk of liability. The cost of implementing these safety features is less than the risk of litigation costs for not implementing them. Because of Section 230, this analysis looks very different for tech companies. Without liability, safety features will never be profitable or cost saving for them. KOSA strikes the balance of imposing narrow liability via state attorney general enforcement, thus incentivizing safety for platforms, without disrupting Section 230 immunity for third party content.

KOSA does not reach Section 230 because it does not involve holding an internet service provider accountable for content posted by third parties. Instead, KOSA provides for state attorneys general to bring civil enforcement action when a platform fails to abide by the duty of care established by KOSA in the design and operation of its product, not for any of the content posted by its users. In this way, it creates narrow liability without modifying Section 230. This is a crucial, necessary step in making the online world a safer place for children, because without the threat of litigation, platforms feel no pressure to factor in safety requirements for users.

One political note: Recent polling by Hart Research found massive bipartisan support for KOSA's operational goals: [86% of voters support](#) what KOSA would accomplish.

### Conclusion

KOSA will make social media safer for ALL children who are vulnerable to the inherent pitfalls and dangers of social media because it will require platforms to factor in the safety of their users as they develop and implement products, be transparent in what they are doing to facilitate safety on their platforms, make reporting easier, and subject platforms to enforcement action if they do not comply with the requirements set forth. KOSA is bipartisan legislation that will have a positive and notable impact on making the online world safer for children.