

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
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As Engrossed: H3/10/21 H4/7/21

A Bill

HOUSE BILL 1647

By: Representatives Evans, *Barker, Beaty Jr., Beck, Bentley, M. Berry, Boyd, Brooks, Brown, Bryant, Carr, Cavanaugh, Christiansen, Cloud, Coleman, C. Cooper, Cozart, Crawford, M. Davis, L. Fite, Gonzales, Haak, Hillman, Hollowell, Ladyman, Lowery, Lundstrum, Lynch, Maddox, McCollum, McNair, S. Meeks, Penzo, Pilkington, Richmond, Rye, Slape, B. Smith, S. Smith, Speaks, Vaught, Wooten*
By: Senators Hill, *B. Ballinger, Beckham, Caldwell, A. Clark, J. Dismang, J. English, Flipppo, T. Garner, Gilmore, K. Hammer, Irvin, B. Johnson, M. Johnson, Rapert, Rice, G. Stubblefield, D. Sullivan, D. Wallace*

For An Act To Be Entitled

AN ACT TO PROMOTE ARKANSAS VOICES; TO COMBAT CANCEL CULTURE AND PROTECT FREEDOM OF SPEECH; TO ESTABLISH THE ARKANSAS UNFAIR SOCIAL MEDIA CENSORSHIP ACT; TO CLARIFY THAT CERTAIN ACTS OF CENSORSHIP ARE DECEPTIVE TRADE PRACTICES; AND FOR OTHER PURPOSES.

Subtitle

TO PROMOTE ARKANSAS VOICES; AND TO COMBAT CANCEL CULTURE AND PROTECT FREEDOM OF SPEECH.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. DO NOT CODIFY. Legislative findings and intent.

(a) The General Assembly finds that:

(1) Technological advances have propelled internet and online services to become an essential means upon which individuals and businesses depend to communicate and conduct business within communities, regionally, nationally, and globally;

(2) Technology companies that offer social media services have enjoyed extraordinary growth and profits from the dependence on their



internet services by individuals and businesses;

(3) Recently, national events have demonstrated that the absolute and unscrupulous power and motives held by global technology companies to control and silence any speech by individuals and businesses to which the technology companies may disagree has created a culture to cancel out the right of freedom of expression for all;

(4) The citizens of Arkansas have become painfully aware of how vulnerable they are to the whims of social media services to censor, restrict, or ban anyone who may express an idea, ideology, or any speech that is deemed not compatible to the opinions held by the global technology companies that provide these services; and

(5) Existing federal law does not adequately protect citizens from the autonomous power of censorship by technology companies.

(b) It is the intent of the General Assembly:

(1) To protect the citizens of this state from being unfairly targeted by technology companies for exercising their freedom of speech in an online social media platform;

(2) To protect the citizens of this state from being unfairly subjected to the unilateral judgments of technology companies to censor the free expression of ideas and speech;

(3) To protect the citizens of this state from becoming victims of cancel culture unfairly imposed on them by technology companies that do not act in good faith and act with bias to silence and cancel certain speech while permitting other speech;

(4) To rein in the absolute and unrestrained power exercised by technology companies to act with impunity to silence speech and the free expression of ideas with which they disagree;

(5) To define the meaning of "good faith" for any actions taken by technology companies under 47 U.S.C. § 230, as it existed on January 1, 2021, to censor, restrict, or ban speech by individuals or businesses on their services; and

(6) That this act is construed as broadly as possible to ensure that the citizens of this state are protected from the infringement and silencing of the freedom of speech guaranteed as a right in the First Amendment of the United States Constitution and to ensure that technology companies are held accountable for acting unfairly and without good faith to

favor certain speech over other speech.

SECTION 2. Arkansas Code Title 4 is amended to add an additional chapter to read as follows:

CHAPTER 119

ARKANSAS UNFAIR SOCIAL MEDIA CENSORSHIP ACT

4-119-101. Title.

This chapter shall be known and may be cited as the "Arkansas Unfair Social Media Censorship Act".

4-119-102. Definitions.

As used in this chapter:

(1) "Content banning" means to restrict, in whole or in part, covertly or overtly:

(A) The ability of an information content provider to post, upload, or publish content; or

(B) The visibility or distribution of content posted, uploaded, or published by an information content provider;

(2) "Demonetizing" means to exclude or restrict an information content provider from participating in advertisement revenue sharing arrangements of an interactive computer service;

(3) "Information content provider" means the same as defined in 47 U.S.C. § 230(f), as it existed on January 1, 2021;

(4)(A) "Interactive computer service" means the same as defined in 47 U.S.C. § 230(f), as it existed on January 1, 2021.

(B) "Interactive computer service" does not include internet service providers, email or any online service, application, or website consisting primarily of news, sports, entertainment, or other information or content that is not user-generated but is preselected or curated by the provider and for which any chat, comment, or interactive functionality is incidental to, directly related to, or dependent on the provision of the content;

(5) "Labeling" means the act of an interactive computer service's affixing a label or statement to content that is posted, uploaded, or published on the interactive computer service by an information content

provider; and

(6) "Obscene material" means the same as defined in § 5-68-203.

4-119-103. Personal jurisdiction – Advertisement revenue sharing – Interactive computer service.

(a) The posting, uploading, or publishing of content on an interactive computer service that generates revenues from advertising shall be deemed, as a matter of law, an activity occurring in business, commerce, or trade in connection with the advertisement, sale, purchase, or lease of goods, services, or charitable solicitations.

(b) As a matter of law, an interactive computer service is considered to have performed certain minimum contacts by purposefully availing itself of the privileges of conducting activity within this state for activity described in subsection (a) of this section, and that activity is sufficient to subject the interactive computer service to the personal jurisdiction of a court in this state to hear a civil action brought under this chapter.

4-119-104. Interactive computer service – Good faith actions.

(a) An interactive computer service that takes any action under 47 U.S.C. § 230(c)(2)(A), as it existed on January 1, 2021, against an information content provider itself or against lawful content posted, uploaded, or published by an information content provider shall have engaged in an unlawful practice when such action is not taken in good faith.

(b) An interactive computer service fails to act in good faith if the action taken by the interactive computer service is:

(1) Dubious or pretextual;

(2) Inconsistent with the terms of service of the interactive computer service;

(3) Selectively applying the terms of service of the interactive computer service to restrict access to or availability of content that is similarly situated to content that the interactive computer service intentionally declines to restrict elsewhere; or

(4) For the purpose of:

(A) Demonetizing;

(B) Content banning;

(C) Labeling content;

(D) Deleting or removing content; or

(E) Restricting access to, or availability of, content.

(c)(1) An interactive computer service shall not assert that activity as described under this chapter that is taken by the interactive computer service is consistent with the terms of service unless the interactive computer service shows that the content was not permitted under the interactive computer service's plain and particular terms of service at the time that the content was posted.

(2) It shall not be a defense to a violation under this chapter for an interactive computer service to assert any term of service that is unconscionable, inequitable, or that purports in any manner that the interactive computer service may act unilaterally to take any action described under this chapter against content or an information content provider.

4-119-105. Exceptions.

This chapter does not apply to an interactive computer service taking an action described under this chapter against content it objectively and reasonably believes is patently:

(1) In furtherance of unlawful activity, including without limitation obscene material, material related to child sexual abuse, human trafficking, drug trafficking, or cyberstalking;

(2) Subject to final judgment of a United States federal or state court directing the removal of the content; or

(3) Promoting terrorism or violence.

4-119-106. Violations – Unfair and deceptive act or practice.

(a)(1) A violation of this chapter is:

(A) An unfair and deceptive act or practice, as defined by the Deceptive Trade Practices Act, § 4-88-101 et seq.; and

(B) Punishable solely by action of the Attorney General.

(2) All remedies, penalties, and authority granted to the Attorney General under the Deceptive Trade Practices Act, § 4-88-101 et seq., shall be available to the Attorney General for the enforcement of this chapter.

(3) The remedies and penalties for violations under this chapter are

cumulative and in addition to other procedures or remedies for violations or conduct under other law.

(b) It is an affirmative defense to a single occurrence of a violation of this chapter if within ten (10) days of receiving the first communication from the Attorney General of a violation of this chapter, the interactive computer service provides the Attorney General and the affected internet content provider with notice that the violation was a single occurrence and was cured.

(c) It is an affirmative defense to a violation of this chapter if an interactive computer service demonstrates through a preponderance of the evidence that:

(1) The interactive computer service described the relevant content moderation policies in plain and particular language in its terms of service that were conspicuously disclosed separately from other unrelated disclosures and made them available to the information content provider at the time of posting;

(2) The act or conduct alleged to be a violation of this chapter is objectively consistent with the terms of service of the interactive computer service; and

(3) The interactive computer service:

(A) Provided the aggrieved information content provider an explanation in writing of the action taken under § 4-119-104(a), including identifying the specific term of service that was violated; and

(B) Provided the aggrieved information content provider with a timely, meaningful, and good faith opportunity to appeal the alleged bad faith decision related to content banning, labeling, or moderation.

(d) An interactive computer service shall publish on a quarterly basis and in a conspicuous manner and location on its service the statistics of:

(1) The number of posts and information content providers that are subject to an action described under § 4-119-104(a);

(2) The number of appeals filed under subdivision (c)(3)(B) of this section; and

(3) The number of appeals granted.

/s/Evans