

1 State of Arkansas
2 93rd General Assembly
3 Regular Session, 2021
4

A Bill

DRAFT ANS/ANS
HOUSE BILL

5 By: Representative Evans
6 By: Senator Hill
7

For An Act To Be Entitled

9 AN ACT TO PROMOTE ARKANSAS VOICES; TO COMBAT CANCEL
10 CULTURE AND PROTECT FREEDOM OF SPEECH; TO ESTABLISH
11 THE ARKANSAS UNFAIR SOCIAL MEDIA CENSORSHIP ACT; TO
12 CLARIFY THAT CERTAIN ACTS OF CENSORSHIP ARE DECEPTIVE
13 TRADE PRACTICES; AND FOR OTHER PURPOSES.
14

Subtitle

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17 TO PROMOTE ARKANSAS VOICES; AND TO COMBAT
18 CANCEL CULTURE AND PROTECT FREEDOM OF
19 SPEECH.
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22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
23

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

25 (a) The General Assembly finds that:

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

30 (2) Technology companies that offer social media services have
31 enjoyed extraordinary growth and profits from the dependence on their
32 internet services by individuals and businesses;

33 (3) Recently, national events have demonstrated that the
34 absolute and unscrupulous power and motives held by global technology
35 companies to control and silence any speech by individuals and businesses to
36 which the technology companies may disagree has created a culture to cancel

1 out the right of freedom of expression for all;

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

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

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

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

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

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

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

23 (5) To define the meaning of “good faith” for any actions taken
 24 by technology companies under 47 U.S.C. § 230, as it existed on January 1,
 25 2021, to censor, restrict, or ban speech by individuals or businesses on
 26 their services; and

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

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

36 CHAPTER 119

1 ARKANSAS UNFAIR SOCIAL MEDIA CENSORSHIP ACT

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3 4-119-101. Title.

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

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7 4-119-102. Definitions.

8 As used in this chapter:

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

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

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

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

18 (3) "Information content provider" means the same as defined in
19 47 U.S.C. § 203(f), as it existed on January 1, 2021;

20 (4) "Interactive computer service" means the same as defined in
21 47 U.S.C. § 203(f), as it existed on January 1, 2021;

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

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

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28 4-119-103. Personal jurisdiction – Advertisement revenue sharing –
29 Interactive computer service.

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

35 (b) As a matter of law, an interactive computer service is considered
36 to have performed certain minimum contacts by purposefully availing itself of

1 the privileges of conducting activity within this state for activity
2 described in subsection (a) of this section, and that activity is sufficient
3 to subject the interactive computer service to the personal jurisdiction of a
4 court in this state to hear a civil action brought under this chapter.

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6 4-119-104. Interactive computer service – Good faith actions.

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

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

14 (1) Dubious or pretextual;

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

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

21 (4) For the purpose of:

22 (A) Demonetizing;

23 (B) Content banning;

24 (C) Labeling content;

25 (D) Deleting or removing content; or

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

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

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34 4-119-105. Exceptions.

35 This chapter does not apply to an interactive computer service taking
36 an action described under this chapter against content it objectively and

1 reasonably believes is:

2 (1) Constitutionally unprotected content in furtherance of
3 unlawful activity, including without limitation obscene material, material
4 related to child sexual abuse, human trafficking, drug trafficking, or
5 cyberstalking;

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

8 (3) Constitutionally unprotected content promoting terrorism or
9 violence.

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11 4-119-106. Violations – Unfair and deceptive act or practice.

12 (a) A violation of this chapter is an unfair and deceptive act or
13 practice, as defined by the Deceptive Trade Practices Act, § 4-88-101 et seq.

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

17 (c) The remedies and penalties for violations under this chapter are
18 cumulative and in addition to other procedures or remedies for violations or
19 conduct under other law.

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

23 (1) The interactive computer service describes the relevant
24 content moderation policies in plain and particular terms of service that are
25 available to the information content provider at the time of posting;

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

29 (3) The interactive computer service:

30 (A) Provides an explanation in writing of the action taken
31 under § 4-119-104(a), including identifying the specific term of service that
32 was violated;

33 (B) Provides the aggrieved information content provider
34 with a timely, meaningful, and good faith opportunity to appeal the alleged
35 bad faith decision related to content banning, labeling, or moderation; and

36 (C) Publishes statistics on a quarterly basis of:

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

3 (ii) The number of appeals filed under subdivision
4 (d)(3)(B) of this section; and

5 (iii) The number of appeals granted.

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