A Bill

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
(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 reign 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. § 203(f), as it existed on January 1, 2021;

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

(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) 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.

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:

1. Constitutionally unprotected content 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. Constitutionally unprotected content promoting terrorism or violence.

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

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

(b) 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.

(c) 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.

(d) 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 describes the relevant content moderation policies in plain and particular terms of service that are 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) Provides an explanation in writing of the action taken under § 4-119-104(a), including identifying the specific term of service that was violated;

   (B) Provides 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; and

   (C) Publishes statistics on a quarterly basis of:
(i) The number of posts and information content providers that are subject to an action described under § 4-119-104(a);

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

(iii) The number of appeals granted.