

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

# A Bill

HOUSE BILL 1647

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.  
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## 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:  
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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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