

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

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

2 93rd General Assembly

A Bill

3 Regular Session, 2021

HOUSE BILL 1647

4

5 By: Representatives Evans, *Barker, Beaty Jr., Beck, Bentley, M. Berry, Boyd, Brooks, Brown, Bryant,*
6 *Carr, Cavenaugh, Christiansen, Cloud, Coleman, C. Cooper, Cozart, Crawford, M. Davis, L. Fite,*
7 *Gonzales, Haak, Hillman, Hollowell, Ladyman, Lowery, Lundstrum, Lynch, Maddox, McCollum, McNair,*
8 *S. Meeks, Penzo, Pilkington, Richmond, Rye, Slape, B. Smith, S. Smith, Speaks, Vaught, Wooten*

9 By: Senators Hill, *B. Ballinger, Beckham, Caldwell, A. Clark, J. Dismang, J. English, Flipppo, T. Garner,*
10 *Gilmore, K. Hammer, Irvin, B. Johnson, M. Johnson, Rapert, Rice, G. Stubblefield, D. Sullivan, D.*
11 *Wallace*

12

13

For An Act To Be Entitled

14

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

19

20

21

Subtitle

22

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

25

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

28

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

30 (a) The General Assembly finds that:

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

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



1 internet services by individuals and businesses;

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

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

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

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

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

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

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

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

28 (5) To define the meaning of "good faith" for any actions taken
29 by technology companies under 47 U.S.C. § 230, as it existed on January 1,
30 2021, to censor, restrict, or ban speech by individuals or businesses on
31 their services; and

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

1 favor certain speech over other speech.

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

5 CHAPTER 119

6 ARKANSAS UNFAIR SOCIAL MEDIA CENSORSHIP ACT

7
8 4-119-101. Title.

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

11
12 4-119-102. Definitions.

13 As used in this chapter:

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

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

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

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

23 (3) "Information content provider" means the same as defined in
24 47 U.S.C. § 230(f), as it existed on January 1, 2021;

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

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

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

1 provider; and

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

3
4 4-119-103. Personal jurisdiction – Advertisement revenue sharing –
5 Interactive computer service.

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

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

17
18 4-119-104. Interactive computer service – Good faith actions.

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

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

26 (1) Dubious or pretextual;

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

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

33 (4) For the purpose of:

34 (A) Demonetizing;

35 (B) Content banning;

36 (C) Labeling content;

1 (D) Deleting or removing content; or

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

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

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

15
16 4-119-105. Exceptions.

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

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

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

25 (3) Promoting terrorism or violence.

26
27 4-119-106. Violations – Unfair and deceptive act or practice.

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

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

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

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

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

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

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

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

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

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

20 (3) The interactive computer service:

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

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

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

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

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

34 (3) The number of appeals granted.

35
36 /s/Evans