

Legislative Analysis



SOCIAL MEDIA CENSORSHIP PREVENTION ACT

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 5973 as introduced
Sponsor: Rep. Ryan Berman
Committee: Communications and Technology
Complete to 5-11-22

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

House Bill 5973 would create a new act, the Social Media Censorship Prevention Act, to define certain social media platforms as common carriers and prohibit them from blocking or discriminating against certain communications.

Common carrier

Under the bill, a *social media platform* that meets both of the following would be a common carrier as at common law and could not unjustly or unlawfully discriminate against *expressions* on its internet website or platform:

- It has more than 50.0 million active members in the United States in a calendar month.
- It has one or more *users* who reside, do business, or share or *receive* expressions in Michigan, or it has one or more expressions that are shared or received in Michigan.

Social media platform would mean an internet website or application that is open to the public, allows a user to create an account, and enables users to communicate with other users for the primary purpose of posting information, comments, messages, or images. The following would not be social media platforms under the bill:

- Email.
- An online service, application, or website that consists primarily of news, sports, entertainment, or other information or content that is not user generated but is preselected by the provider and for which any chat, comments, or interactive functionality is incidental to, directly related to, or dependent on the provision of that content.

Expression would mean any word, music, sound, still or moving image, number, or other perceivable communication.

User would mean a person who posts, uploads, transmits, shares, or otherwise publishes or receives an expression through a social media platform and would include a person whose social media account has been disabled or blocked by the platform.

Receive would mean to read, hear, look at, access, or gain access to an expression.

Prohibition

The bill would prohibit a social media platform that is a common carrier as described above from *censoring* a user, a user's expression, or a user's ability to receive the expression of another person based on any of the following:

- The viewpoint of the user or another person (regardless of whether the viewpoint is expressed on a social media platform or through any other medium).

- The viewpoint represented in the user’s expression or another person’s expression (regardless of whether the viewpoint is expressed on a social media platform or through any other medium).
- A user’s geographic location in Michigan or any part of Michigan.

Censor would mean to block, ban, remove, deplatform, demonetize, de-boost, restrict, deny equal access or visibility to, or otherwise discriminate against an expression.

Scope

The bill would apply only to a user that meets one of the following requirements:

- Resides in Michigan.
- Does business in Michigan.
- Shares or receives an expression in Michigan.

The bill would apply only to an expression that is shared or received in Michigan.

The bill would apply to the maximum extent allowed by the United States Constitution and federal law, but not beyond that.

Exceptions

The bill would not prohibit a common carrier from censoring an expression that meets any of the following conditions:

- It directly incites criminal activity, consists of specific threats of violence targeted against an individual or group because of their race, color, disability, religion, national origin or ancestry, age, sex, or status as a peace officer or judge.
- It is the subject of a referral or request from an organization with the purpose of preventing the sexual exploitation of children and protecting survivors of sexual abuse from ongoing harassment.
- It is an ***unlawful expression***.

Unlawful expression would mean an expression that is unlawful under the United States Constitution, federal law, the state constitution, or state law, including an expression that constitutes a tort under state or federal law.

The bill also would not prohibit or restrict a common carrier from authorizing or facilitating a user’s ability to censor a specific expression on its platform or page at the request of that user.

The bill states that it would not limit or expand intellectual property law.

Remedies and penalties

The bill would allow a user to bring an action against a common carrier that violates the bill with respect to that user. The user would be entitled to one or more of the following if the user proves that the common carrier violated the bill with respect to that user:

- Declaratory relief.
- Injunctive relief.
- Costs and reasonable and necessary attorney fees.

Failure of a common carrier to promptly comply with a court order in an action described above could be punished as contempt of court, and the court could use all lawful measures to secure immediate compliance with the order, including daily penalties sufficient to secure immediate compliance.

A user could bring an action described above regardless of whether another court has enjoined the attorney general from enforcing the bill or declared any provision of it unconstitutional, unless that court decision is binding on the court where the action is brought.

Nonmutual issue preclusion and nonmutual claim preclusion would not be defenses to an action described above.

Attorney general

A person could notify the attorney general of a violation or potential violation of the bill by a common carrier, and the attorney general could bring an action to enjoin a violation or potential violation. If the injunction were granted, the attorney general could recover reasonable investigative costs incurred in relation to the action and costs and reasonable attorney fees incurred in bringing the action.

FISCAL IMPACT:

House Bill 5973 would have an indeterminate fiscal impact on local units of government. Costs would be incurred depending on how provisions of the bill affected caseloads in courts and the related administrative costs. It is difficult to project the actual fiscal impact to courts due to variables such as law enforcement practices, prosecutorial practices, judicial discretion, case types, and complexity of cases.

In addition, the bill could result in additional personnel costs to the Department of the Attorney General depending on the extent to which the department chooses to take action in response to violations or potential violations of the bill and the resulting caseloads.

Legislative Analyst: E. Best
Fiscal Analysts: Robin Risko
Michael Cnossen

■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.