

HOUSE BILL NO. 5973

March 24, 2022, Introduced by Reps. Berman, Markkanen, Bezotte, LaFave and Steenland and referred to the Committee on Communications and Technology.

A bill to prohibit certain censorship by certain social media platforms; to designate certain social media platforms as common carriers; to prescribe civil sanctions; to provide remedies; and to provide for the powers and duties of certain state and local governmental officers and entities.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act may be cited as the "social media censorship
2 prevention act".

3 Sec. 3. As used in this act:

1 (a) "Censor" means to block, ban, remove, deplatform,
2 demonetize, de-boost, restrict, deny equal access or visibility to,
3 or otherwise discriminate against expression.

4 (b) "Common carrier" means a social media platform described
5 in section 5.

6 (c) "Expression" means any word, music, sound, still or moving
7 image, number, or other perceivable communication.

8 (d) "Receive", with respect to an expression, means to read,
9 hear, look at, access, or gain access to the expression.

10 (e) "Social media platform" means an internet website or
11 application that is open to the public, allows a user to create an
12 account, and enables users to communicate with other users for the
13 primary purpose of posting information, comments, messages, or
14 images. Social media platform does not include any of the
15 following:

16 (i) An internet service provider. As used in this subparagraph,
17 "internet service provider" means a person providing connectivity
18 to the internet or another wide area network.

19 (ii) Email.

20 (iii) An online service, application, or website if both of the
21 following requirements are met:

22 (A) The online service, application, or website consists
23 primarily of news, sports, entertainment, or other information or
24 content that is not user generated but is preselected by the
25 provider.

26 (B) Any chat, comments, or interactive functionality for the
27 online service, application, or website is incidental to, directly
28 related to, or dependent upon the provision of the content
29 described in sub-subparagraph (A).

1 (f) "Unlawful expression" means an expression that is unlawful
2 under the United States Constitution, federal law, the state
3 constitution of 1963, or the laws of this state, including
4 expression that constitutes a tort under the laws of this state or
5 the United States.

6 (g) "User" means a person who posts, uploads, transmits,
7 shares, or otherwise publishes or receives expression, through a
8 social media platform. User includes a person that has a social
9 media platform account that the social media platform has disabled
10 or locked.

11 Sec. 5. A social media platform that meets both of the
12 following requirements is a common carrier as at common law and
13 shall not unjustly or unlawfully discriminate against expression on
14 its internet website or platform:

15 (a) Has more than 50,000,000 active users in the United States
16 in a calendar month.

17 (b) Has 1 or more of the following:

18 (i) A user described in section 11(1).

19 (ii) Expression described in section 11(2).

20 Sec. 7. (1) Subject to section 11, a common carrier shall not
21 censor a user, a user's expression, or a user's ability to receive
22 the expression of another person based on any of the following:

23 (a) The viewpoint of the user or another person.

24 (b) The viewpoint represented in the user's expression or
25 another person's expression.

26 (c) A user's geographic location in this state or any part of
27 this state.

28 (2) This section applies regardless of whether the viewpoint
29 is expressed on a social media platform or through any other

1 medium.

2 Sec. 9. (1) A waiver or purported waiver of the protections
3 provided by this act is void as unlawful and against public policy,
4 and a court or arbitrator shall not enforce or give effect to the
5 waiver, notwithstanding any contract or choice-of-law provision in
6 a contract.

7 (2) The legislature finds that subsection (1) is necessary for
8 the public good and the general welfare of the people of this
9 state.

10 Sec. 11. (1) This act applies only to a user that meets 1 of
11 the following requirements:

12 (a) Resides in this state.

13 (b) Does business in this state.

14 (c) Shares or receives expression in this state.

15 (2) This act applies only to expression that is shared or
16 received in this state.

17 (3) This act applies to the maximum extent permitted by the
18 United States Constitution and federal law, but no further than the
19 maximum extent permitted by the United States Constitution and
20 federal law.

21 Sec. 13. (1) This act does not prohibit a common carrier from
22 censoring expression that meets any of the following conditions:

23 (a) Directly incites criminal activity or consists of specific
24 threats of violence targeted against an individual or group because
25 of their race, color, disability, religion, national origin or
26 ancestry, age, sex, or status as a peace officer or judge.

27 (b) Is the subject of a referral or request from an
28 organization with the purpose of preventing the sexual exploitation
29 of children and protecting survivors of sexual abuse from ongoing

1 harassment.

2 (c) Is unlawful expression.

3 (2) This act does not prohibit or restrict a common carrier
4 from authorizing or facilitating a user's ability to censor
5 specific expression on the user's platform or page at the request
6 of that user.

7 (3) This act does not limit or expand intellectual property
8 law.

9 Sec. 15. (1) A user may bring an action against a common
10 carrier that violates this act with respect to the user.

11 (2) If the user proves that the common carrier violated this
12 act with respect to the user, the user is entitled to 1 or more of
13 the following:

14 (a) Declaratory relief.

15 (b) Injunctive relief.

16 (c) Costs and reasonable and necessary attorney fees.

17 (3) Failure of a common carrier to promptly comply with a
18 court order in an action brought under this section may be punished
19 as contempt of court, and the court may use all lawful measures to
20 secure immediate compliance with the order, including daily
21 penalties sufficient to secure immediate compliance.

22 (4) A user may bring an action under this section regardless
23 of whether another court has enjoined the attorney general from
24 enforcing this act or declared any provision of this act
25 unconstitutional, unless that court decision is binding on the
26 court in which the action is brought.

27 (5) Nonmutual issue preclusion and nonmutual claim preclusion
28 are not defenses to an action brought under this section.

29 Sec. 16. (1) A person may notify the attorney general of a

1 violation or potential violation of this act by a common carrier.

2 (2) The attorney general may bring an action to enjoin a
3 violation or potential violation of this act. If the injunction is
4 granted, the attorney general may recover costs and reasonable
5 attorney fees incurred in bringing the action and reasonable
6 investigative costs incurred in relation to the action.