

SENATE BILL No. 50

By Senators Steffen, Straub and Thompson

1-18

1 AN ACT concerning consumer protection; relating to terms of service for
2 social media websites; prohibiting censorship of certain speech made
3 via such websites.
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5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. (a) No contract between an interactive computer service
7 and a person that contains the terms of service for use of a social media
8 website operated by such service shall include any provisions that
9 authorize such service to restrict, censor or suppress information, including
10 political information and political expression, unless such information
11 pertains to obscene, lewd, lascivious, filthy, excessively violent, harassing
12 or otherwise objectionable subject matter.

13 (b) Any person using a social media website pursuant to terms of
14 service that violate this section may report such violation to the attorney
15 general. Upon receipt of any such report, the attorney general shall
16 investigate and may bring an action for injunctive relief to enjoin any
17 continuing violation. In addition to any injunctive relief, such action may
18 also seek to impose a civil penalty on the interactive computer service of
19 not less than \$500 and not more than \$10,000 for each such violation
20 instead of the penalty provided for in K.S.A. 50-636(a), and amendments
21 thereto. Each instance in which an interactive computer service enters into
22 a contract with a person containing terms of service that violate this
23 section shall constitute a separate violation.

24 (c) Any violation of this section is an unconscionable act and practice
25 under the Kansas consumer protection act.

26 (d) For purposes of the remedies and penalties provided by the
27 Kansas consumer protection act:

28 (1) The person alleging a violation of this section shall be deemed a
29 consumer, and the service whose terms of service violate this section shall
30 be deemed the supplier; and

31 (2) proof of a consumer transaction shall not be required.

32 (e) (1) Any person alleging a violation of this section may bring a
33 private action against the interactive computer service. Notwithstanding
34 the provisions of K.S.A. 50-634 and 50-636, and amendments thereto, a
35 person bring such action may seek the following relief:

36 (A) Statutory damages in an amount not less than \$75,000 for each

1 instance in which the interactive computer service restricted, censored or
2 suppressed such person's content;

3 (B) actual damages;

4 (C) punitive damages, if aggravating factors are present; and

5 (D) injunctive and such other equitable relief.

6 (2) An interactive computer service that restores such person's
7 censored content within a reasonable time may assert such fact to mitigate
8 any damages.

9 (3) The prevailing party in any such action may be awarded
10 reasonable attorney fees and court costs.

11 (f) The provisions of this section shall not apply to an interactive
12 computer service that affirmatively states in the service's terms of service
13 that the service is a publisher.

14 (g) An interactive computer service may limit content on a social
15 media website to certain subject matters as explicitly provided in such
16 service's terms of service.

17 (h) (1) Information pertains to obscene, lewd, lascivious or filthy
18 subject matter if the average person applying contemporary community
19 standards would find that the information:

20 (A) (i) Appeals to the prurient interest; or

21 (ii) has patently offensive representations or descriptions of sexual
22 acts, whether normal or perverted, actual or simulated, including sexual
23 intercourse, sodomy, masturbation, excretory functions, sadomasochistic
24 abuse or exhibition of the genitals; and

25 (B) taken as a whole, lacks serious literary, educational, artistic,
26 political or scientific value.

27 (2) Information pertains to excessively violent, harassing or otherwise
28 objectionable subject matter if the average person applying contemporary
29 community standards would find that the information:

30 (A) (i) Represents or depicts the extreme use of physical violence
31 with the intention to hurt, maim or kill a person or animal;

32 (ii) is of a persistent harassing nature directed toward a specific
33 individual or group of individuals identified by race, religion, sex, color,
34 disability, nationality or ethnicity; or

35 (iii) has patently offensive representations or descriptions of specific
36 individuals or groups of individuals identified by race, religion, sex, color,
37 disability, nationality or ethnicity; and

38 (B) taken as a whole, lacks serious literary, educational, artistic,
39 political or scientific value.

40 (i) As used in this section:

41 (1) "Interactive computer service" means any information service,
42 system or access software that provides or enables computer access by
43 multiple users to a computer server, including specifically a service or

1 system that provides access to the internet and such systems operated or
2 services offered by libraries or educational institutions.

3 (2) "Social media website" means a website through which users are
4 able to share and generate content and find and connect with other users of
5 common interests.

6 (j) The provisions of this section shall be a part of and supplemental
7 to the Kansas consumer protection act.

8 Sec. 2. This act shall take effect and be in force from and after its
9 publication in the Kansas register.