

SESSION OF 2023

SUPPLEMENTAL NOTE ON SENATE BILL NO. 50

As Amended by Senate Committee on Federal
and State Affairs

Brief*

SB 50, as amended, would create a crime concerning instances of social media websites entering into contracts with Kansas residents through terms of service that allow the website to censor certain speech.

Terms of Service

The bill would prohibit any interactive computer service from entering into a contract with a person residing in Kansas that contains the terms of service for use of a social media website operated by such service that includes any provisions that authorize the service to restrict, censor, or suppress information, including political information and political expression, unless such information pertains to obscene, lewd, lascivious, filthy, excessively violent, harassing, or other objectionable subject matter.

The bill would allow an interactive computer service to limit content on a social media website to certain subject matters as explicitly provided in the website's terms of service.

Contemporary Community Standards

The bill would clarify that information pertains to obscene, lewd, lascivious, or filthy subject matter if the

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

average person applying contemporary community standards would find that the information:

- Appeals to the prurient interest; or
- Has patently offensive representations or descriptions of sexual acts, whether normal or perverted, actual or simulated, including sexual intercourse, sodomy, masturbation, excretory functions, sadomasochistic abuse, or exhibition of the genitals; and
- Taken as a whole lacks serious literary, educational, artistic, political, or scientific value.

The bill would clarify that information pertains to excessively violent, harassing, or otherwise objectionable subject matter if the average person applying contemporary community standards would find that the information:

- Represents or depicts the extreme use of physical violence with the intention to hurt, maim, or kill a person or animal; or
- Is of a persistent harassing nature directed toward a specific individual or group of individuals identified by race, religion, sex, color, disability, nationality, or ethnicity; and
- Taken as a whole, lacks serious literary, educational, artistic, political, or scientific value.

Criminal Penalty

The bill would make violation of the provisions of the bill an unclassified misdemeanor that would be punishable by a fine between \$500 and \$10,000.

Furthermore, the bill would make each instance in which an interactive computer service enters into a contract in violation of the bill a separate violation.

Such violations could, under the provisions of the bill, be prosecuted by the Attorney General, any county attorney, or any district attorney.

The bill would also clarify that the provisions of the bill do not apply to Kansas residents who enter into a contract with an interactive computer service.

Definitions

The bill would define the term “interactive computer service” to mean any information service, system, or access software that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the internet and such systems operated or services offered by libraries or educational institutions.

The bill would define “social media website” to mean a website through which users are able to share and generate content and find and connect with other users of common interests.

Effective Date

The bill would be in effect upon publication in the *Kansas Register*.

Background

The bill was introduced by Senators Steffen, Straub, and Thompson on January 18, 2023.

Senate Committee on Federal and State Affairs

In the Senate Committee on Federal and State Affairs hearing on February 1, 2023, Senator Steffen and six private citizens provided **proponent** testimony, generally indicating their personal experiences with having content removed from social media websites. Written-only proponent testimony was provided by 21 private citizens.

Opponent testimony was provided by representatives of the Central U.S. Chamber of Progress and the Computer & Communications Industry Association, who expressed their concerns about being required to post objectionable content and the potential for lawsuits. A representative of TechNet and a private citizen provided written-only opponent testimony.

No other testimony was provided.

The Senate Committee amended the bill on February 9, 2023, to remove provisions that would have given Kansas residents a civil cause of action and set civil penalties for violation of the bill's provisions. Provisions setting a criminal penalty for violations of the bill were inserted by the Senate Committee.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the Office of Judicial Administration indicates enactment of the bill could increase the number of cases filed in district court, which would result in an increase in time spent by court staff in processing, researching, and hearing cases. The bill could also result in the collection of additional docket fees that would be deposited into the State General Fund (SGF). However, a fiscal effect could not be estimated.

The Office of Attorney General states enactment of the bill could generate between 5 and 10 complaints per week, which would require an additional 0.50 FTE Investigator position at a cost of \$38,500 for salaries and wages, and an additional \$22,681 for equipment and other operating expenditures for FY 2024. The Office also states the constitutionality of the bill could be challenged, which could take between 2 and 4 years to get a definitive ruling as a result of the appellate process. The defense could be handled through the agency's existing resources, but specialized outside counsel could be necessary. If the challenge is successful, the state could be ordered to pay the plaintiff's attorney fees.

The Kansas Association of Counties indicates the bill would not have a fiscal effect on counties.

Any fiscal effect associated with the bill is not reflected in *The FY 2024 Governor's Budget Report*.

Social media; censor; interactive computer service; contemporary community standards