

SENATE BILL No. 50

By Senators Steffen, Straub and Thompson

1-18

1 AN ACT concerning ~~consumer protection~~ **crimes, punishment and**  
2 **criminal procedure**; relating to terms of service for social media  
3 websites; prohibiting censorship of certain speech made via such  
4 websites; **providing penalties for violations.**

5  
6 *Be it enacted by the Legislature of the State of Kansas:*

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

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

28 (c) ~~Any~~ Violation of this section is an ~~unconscionable act and practice~~  
29 ~~under the Kansas consumer protection act~~ **unclassified misdemeanor**  
30 **punishable by a fine of not less than \$500 or more than \$10,000. Each**  
31 **contract entered into by a person in violation of subsection (a) shall**  
32 **constitute a separate violation.**

33 (d) ~~For purposes of the remedies and penalties provided by the~~  
34 ~~Kansas consumer protection act:~~

35 (1) ~~The person alleging a violation of this section shall be deemed a~~  
36 ~~consumer, and the service whose terms of service violate this section shall~~

1 be deemed the supplier; and

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

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

7 ~~(A) Statutory damages in an amount not less than \$75,000 for each~~  
8 ~~instance in which the interactive computer service restricted, censored or~~  
9 ~~suppressed such person's content;~~

10 ~~(B) actual damages;~~

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

12 ~~(D) injunctive and such other equitable relief.~~

13 ~~(2) An interactive computer service that restores such person's~~  
14 ~~censored content within a reasonable time may assert such fact to mitigate~~  
15 ~~any damages.~~

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

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

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

24 ~~(h)(e) *The provisions of this section shall not apply to a resident of*~~  
25 ~~*this state who enters into a contract with an interactive computer service.*~~

26 ~~(f) (1) Information pertains to obscene, lewd, lascivious or filthy~~  
27 ~~subject matter if the average person applying contemporary community~~  
28 ~~standards would find that the information:~~

29 ~~(A) (i) Appeals to the prurient interest; or~~

30 ~~(ii) has patently offensive representations or descriptions of sexual~~  
31 ~~acts, whether normal or perverted, actual or simulated, including sexual~~  
32 ~~intercourse, sodomy, masturbation, excretory functions, sadomasochistic~~  
33 ~~abuse or exhibition of the genitals; and~~

34 ~~(B) taken as a whole, lacks serious literary, educational, artistic,~~  
35 ~~political or scientific value.~~

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

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

41 ~~(ii) is of a persistent harassing nature directed toward a specific~~  
42 ~~individual or group of individuals identified by race, religion, sex, color,~~  
43 ~~disability, nationality or ethnicity; ~~or~~~~

1       ~~(iii) has patently offensive representations or descriptions of specific~~  
2 ~~individuals or groups of individuals identified by race, religion, sex, color,~~  
3 ~~disability, nationality or ethnicity; and~~

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

6       ~~(i)~~**(g)** As used in this section:

7       (1) "Interactive computer service" means any information service,  
8 system or access software that provides or enables computer access by  
9 multiple users to a computer server, including specifically a service or  
10 system that provides access to the internet and such systems operated or  
11 services offered by libraries or educational institutions.

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

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

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