

Senate Study Bill 1189 - Introduced

SENATE FILE _____
BY (PROPOSED COMMITTEE
ON TECHNOLOGY BILL BY
CHAIRPERSON COURNOYER)

A BILL FOR

1 An Act relating to censorship of expression on online
2 platforms, and providing penalties.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 659B.1 Short title.

2 This chapter shall be known and may be cited as "*The*
3 *Protecting Online Free Speech Act*".

4 Sec. 2. NEW SECTION. 659B.2 Definitions.

5 As used in this chapter, unless the context otherwise
6 requires:

7 1. "*Active state user*" means an individual who uses a
8 particular online platform's platform services three or more
9 times in a quarter while located in this state.

10 2. "*Adversely treat*" means to delete, remove, demonetize, or
11 restrict access to, or availability of, content.

12 3. "*Annual gross revenues*" means income or revenue from all
13 sources, before any expenses or taxes, computed according to
14 generally accepted accounting principles.

15 4. "*Annual gross revenues attributable to users located in*
16 *this state*" means the part of the annual gross revenues of the
17 corporation that is computed using the apportionment fraction,
18 the numerator of which is the population of residents of this
19 state age thirteen years or older, and the denominator of which
20 is the population of the United States age thirteen years or
21 older, both as reported in the most annual estimates produced
22 by the United States census bureau.

23 5. "*Demonetize*" means excluding or restricting an
24 information content provider from participating in the
25 service's advertisement revenue sharing arrangements.

26 6. "*Deplatform*" means an online platform restricting,
27 in whole or in part, covertly or overtly, the ability of an
28 information content provider to post, upload, or publish
29 content, as opposed to such platform taking such actions on
30 an individual basis against specific and particular content
31 produced by such information content provider.

32 7. "*Distinct category of services*" means general internet
33 search, personal social networking, microblogging social
34 networking, online video sharing, or online photo sharing.

35 8. "*General internet search*" means internet-based software

1 that responds to a user's textual query by using an algorithm
2 or other methods to produce potentially relevant responses to
3 such query, and responds to general queries, not simply those
4 confined to a particular subject or featuring results from a
5 specific internet site.

6 9. "*Information content provider*" means any person or entity
7 that is responsible, in whole or in part, for the creation or
8 development of information provided through the internet or any
9 other interactive computer service.

10 10. "*Microblogging social networking*" means a combination of
11 blogging and instant messaging focused around users creating
12 short messages to be posted and shared on an online social
13 networking service.

14 11. "*Online photo sharing*" means an internet-based service
15 that allows users to upload and store photographs and share
16 them with other users, and that is primarily focused on the
17 posting and transmission of such user-provided photos.

18 12. "*Online platform*" means any internet site or application
19 that is open to the public and allows users to create and share
20 content electronically or engage in social networking, or any
21 general search engine, provided that an online platform does
22 not include any of the following:

23 a. Electronic mail services.

24 b. An internet site or application that consists primarily
25 of news, sports, entertainment, or other information or content
26 that is not user-generated but is created or preselected by
27 the provider and for which any chat, comments, or interactive
28 functionality is incidental to, directly related to, or
29 dependent upon the provision of such information or content.

30 13. "*Online video sharing*" means an internet-based service
31 that allows users to upload and store videos and share them
32 with other users, and that is primarily focused on the posting
33 and transmission of such user-provided videos.

34 14. "*Personal social networking*" means an internet-based
35 service that allows users to construct public or semipublic

1 profiles, publish content on such profiles, articulate a list
2 of other users with whom they share a connection, and view or
3 exchange content with such users, without the service being
4 oriented toward a specific interest or service such as career
5 networking or romantic connections.

6 15. "*Platform services*" means the distinct category of
7 services an online platform offers to the public for creating
8 and sharing content electronically, engaging in social
9 networking, or searching for content.

10 Sec. 3. NEW SECTION. **659B.3 Platform fees to support**
11 **universal service programs.**

12 1. A corporation with annual gross revenues attributable
13 to users located in this state of more than ten million
14 dollars that owns or operates an online platform or platforms,
15 shall be, in addition to any taxes, fees, or other charges,
16 assessed a quarterly fee on platform services actively
17 used by ten percent or more of individuals located in this
18 state age thirteen and older. Such platform fee shall be
19 equal to the lesser of fifteen percent of the annual gross
20 revenues attributable to users located in this state that the
21 corporation generates through such platform service and the sum
22 of all of the following:

23 a. Seven dollars and fifty cents per quarter per active
24 state user of the corporation's general internet search
25 platform services.

26 b. Five dollars per quarter per active state user of the
27 corporation's personal social networking platform services.

28 c. One dollar and fifty cents per quarter per active state
29 user of the corporation's microblogging social networking
30 platform services.

31 d. One dollar and fifty cents per quarter per active
32 state user of the corporation's online video sharing platform
33 services.

34 e. Five dollars per quarter per active state user of the
35 corporation's online photo sharing platform services.

1 2. The attorney general shall determine the number of
2 applicable platform services' active state users on which
3 platform fees are owed, and the proportion of individuals
4 located within this state who actively use such platform
5 services, as follows:

6 *a.* The attorney general shall estimate the quarterly number
7 and proportion of active state users by any of the following:

8 (1) Utilizing reputable commercially available estimates
9 of the platform services' active state users age thirteen and
10 older, and computing the proportion of active state users by
11 dividing such number by the most recent annual estimates for
12 the state population age thirteen or older produced by the
13 United States census bureau.

14 (2) Conducting a statistically representative survey of
15 individuals located within this state age thirteen and older
16 with a sample size sufficient to produce a margin of error of
17 less than two percent at the ninety-five percent confidence
18 level. Such survey shall estimate, for each corporation
19 subject to online platform fees, the proportion of individuals
20 located within this state who used each applicable platform
21 service three or more times in the previous quarter. The
22 estimated active state users for that quarter shall be the
23 product of that proportion and the most recent annual estimates
24 for the state population age thirteen and older produced by the
25 United States census bureau.

26 *b.* The attorney general shall transmit its estimated
27 number of active state users to the applicable corporations
28 within sixty days of the end of the applicable quarter. The
29 proportion and number of active state users shall be the
30 estimated proportion and estimated number of active state
31 users for that quarter, unless the online platform provides
32 administrative records demonstrating by a preponderance of
33 evidence that a different number of users within this state
34 used the applicable platform services three or more times in
35 the previous quarter. In such cases, the fee shall be owed

1 on the administratively determined number of active state
2 users, and the proportion shall be calculated by dividing such
3 administratively determined number by the most recent annual
4 estimates for the state population age thirteen and older
5 produced by the United States census bureau.

6 3. Platform fees collected under this section shall be
7 deposited in the Iowa communications network fund created in
8 section 8D.14 and used for the purposes designated for that
9 fund.

10 4. *a.* Each corporation that owns or operates an online
11 platform or platforms subject to fees under this chapter shall
12 complete, under oath, and file with the attorney general
13 a return for quarterly fee payments, along with such fee
14 payment, within one hundred twenty days of the completion of
15 the applicable quarter, provided that the attorney general may
16 extend this deadline for good cause related to administratively
17 determining the number of active state users in the applicable
18 quarter.

19 *b.* A person who willfully files a false return under this
20 section with the intent to evade the payment of fees due under
21 this section is guilty of perjury and shall be punished as
22 provided in section 720.2.

23 *c.* A person who is required to file a fee return and who
24 willfully fails to file the return as required under this
25 section is guilty of a class "D" felony.

26 5. *a.* The attorney general shall assess interest on unpaid
27 platform fees from the due date to the date on which the fee is
28 paid if a person who is required to pay an online platform fee
29 under this section either fails to pay an installment when due
30 or pays less than the amount due.

31 *b.* In addition to such interest, the attorney general
32 shall assess a penalty not exceeding twenty-five percent of
33 the amount due if a corporation required to pay a platform fee
34 under this section fails to pay such tax within one hundred
35 eighty days of the due date of such fee.

1 6. The attorney general shall issue regulations governing
2 the assessment and collection of platform fees under this
3 section, including the process for corporations to provide
4 administrative data on the number of active state users on
5 which fees are owed and certifying corporations for exemption
6 under section 659B.4.

7 Sec. 4. NEW SECTION. **659B.4 Fee exemption for platforms**
8 **that foster open discourse.**

9 1. Notwithstanding section 659B.3, a corporation shall not
10 owe any platform fees, nor be required to file a platform fee
11 return, for any platform services for which, whether or not
12 such platform services are market dominant, the corporation
13 does all of the following:

14 a. Publishes on a quarterly basis the number of times
15 during the quarter content created by information content
16 providers within this state was adversely treated, the number
17 of information content providers within this state who were
18 deplatformed or demonetized, the number of appeals of such
19 actions filed, and the number of appeals of such actions
20 granted.

21 b. Incorporates into such platform service's terms of
22 service applicable to users in this state the following
23 contractual terms:

24 Section [Appropriate Section Number] — Open Discourse and
25 Fair Treatment

26 Part 1. Coverage and Scope.

27 This section applies to individuals who are residents of and
28 physically located in the state of Iowa and are either users,
29 or desired users, of our service.

30 In the event of a conflict between the provisions of this
31 section and any other provision in these terms of service, the
32 provisions of this section shall prevail.

33 Part 2. Definitions.

34 For the purpose of this section:

35 1. *"Restricting access to"* or *"availability of content"*

1 means restricting, in whole or in part, covertly or overtly,
2 manually or algorithmically, the availability, visibility, or
3 distribution of content a user posts, uploads, or publishes;
4 provided that this phrase does not encompass the output of an
5 algorithm we use for presenting or prioritizing content when
6 such algorithm is:

- 7 a. Generally applicable.
- 8 b. Viewpoint neutral.
- 9 c. Not designed to restrict the visibility or distribution
10 of content of a specific user.

11 2. "*Demonetize*" means excluding or restricting a user
12 from participating in user advertisement revenue-sharing
13 arrangements.

14 3. "*Deplatform*" means restricting, in whole or in part,
15 covertly or overtly, a user's or desired user's ability to
16 post, upload, or publish content, as opposed to our taking such
17 actions on a case-by-case basis against specific and particular
18 content produced by such individual.

19 Part 3. Commitments to Open Discourse and Fair Treatment.

20 We promise:

21 1. We will not deplatform or otherwise categorically deny
22 service to you, although this commitment does not prejudice
23 the ability of other users to decide with whom they interact,
24 continue to interact, or accept to dialogue from.

25 2. We will provide you an open forum for public debate or
26 dialogue, without regard to differing ideological, political,
27 philosophical, or religious perspectives.

28 3. We will not demonetize or restrict access to or
29 availability of your content based on ideological, political,
30 philosophical, or religious views implied or expressed;
31 provided that nothing in this paragraph prevents us from
32 removing content that is otherwise obscene, lewd, lascivious,
33 filthy, excessively violent, harassing, or otherwise
34 objectionable on similar grounds even though such content
35 may also express philosophical, political, ideological, or

1 religious views.

2 4. We will only demonetize or restrict access to, or
3 availability of, your content if it is not permitted under
4 specific and plain and particular provisions of either our
5 community standards or other provisions of our terms of
6 service. We will apply those community standards and terms
7 of service transparently, consistently, in good faith, and
8 without pretext. We will not apply our community standards
9 or terms of service selectively to some users and not others.
10 If we demonetize or restrict access to or availability of
11 your content, evidence that we have intentionally declined to
12 demonetize or restrict access to or availability of similarly
13 situated content from other users may be taken as evidence we
14 have violated our obligations under this paragraph.

15 5. If we demonetize or restrict access to or availability
16 of your content, we will give you written notification within
17 seven days of the action being taken. That notification will
18 provide a specific and detailed explanation of the reason that
19 content violated our community standards or terms of service,
20 including a description of the plain and particular provisions
21 of our community standards or terms of service such content
22 violated.

23 6. Appeals: Upon any restriction, demonetization, or
24 content moderation as described above or under relevant law,
25 you will have a meaningful opportunity to appeal to have such
26 actions reversed. The grounds for appeal include, but are
27 not limited to, the fact that our act of content moderation,
28 whatever form it is in, must be made in good faith, without
29 pretext, and applied consistently to all users.

30 Part 4. Limitations.

31 Nothing in this section affects our ability to demonetize or
32 restrict access to or availability of content that is obscene
33 or pornographic. Nor does anything in this section limit our
34 ability to demonetize or restrict access to or availability of
35 any content that is illegal under state or federal law, such as

1 constitutionally unprotected content in furtherance of unlawful
2 activity, content that is in violation of intellectual property
3 laws, or content subject to a final judgment of a federal court
4 or state court directing the removal of such content.

5 Part 5. Enforcement and Damages.

6 1. The provisions of this section are contractual and are
7 enforceable at law or in equity. We expressly do not contract
8 for any venue, jurisdiction, judicial forum, or choice of law
9 provision for enforcement of this section. Notwithstanding
10 any other provision in these terms of service, we waive said
11 forum and choice of law provisions as applied to this section,
12 allowing you or any proper legal authority to determine those,
13 should the need arise, under all relevant and applicable laws.
14 If you bring an action against us to enforce the terms of this
15 section and obtain a final judgment prevailing against us, we
16 will, in addition to any other remedies or penalties provided
17 by law:

18 a. Reimburse your court costs, fees, and reasonable
19 attorney fees.

20 b. Pay any actual damages you incurred through our failure
21 to abide by the terms of this section.

22 2. The fee exemption provided under this section shall
23 not apply to any corporation's platform services if a court
24 of competent jurisdiction issues a final order holding the
25 contractual language set forth in subsection 1, paragraph "b",
26 unenforceable, in whole or in part, against such corporation
27 and platform services. In such event, the attorney general
28 shall submit a notice within thirty days informing such
29 corporation that it will be liable for the platform fees of
30 section 659B.3. Such liability shall commence the first full
31 quarter beginning after the attorney general submits such
32 notice.

33 Sec. 5. NEW SECTION. 659B.5 Rules of construction.

34 1. This chapter shall not be construed as requiring online
35 platforms to verify the state of residency of users of their

1 services. An online platform fulfills its duties under this
2 chapter if it satisfies them with regard to conduct that occurs
3 within this state.

4 2. Platform services of an online platform shall be
5 construed as mutually distinct categories.

6 Sec. 6. NEW SECTION. **659B.6 Severability.**

7 1. Subject to the provisions of this section, the provisions
8 of this chapter are severable pursuant to section 4.12. If
9 any section, subsection, or other part of this chapter is
10 declared invalid or unconstitutional by a court of competent
11 jurisdiction, that declaration shall not affect the part which
12 remains.

13 2. The provisions of section 659B.4 are not severable.
14 If any provision or a part thereof is declared invalid or
15 unconstitutional, that declaration shall invalidate the whole
16 of section 659B.4; provided that such declaration shall not
17 affect the rest of this chapter which remains.

18 EXPLANATION

19 The inclusion of this explanation does not constitute agreement with
20 the explanation's substance by the members of the general assembly.

21 This bill relates to the censorship of expression on
22 market dominant online platforms and creates the protecting
23 online free speech Act. The bill defines "active state
24 user", "adversely treat", "annual gross revenues", "annual
25 gross revenues attributable to users located in this state",
26 "demonetize", "deplatform", "distinct category of services",
27 "general internet search", "information content provider",
28 "microblogging social networking", "online photo sharing",
29 "online platform", "online video sharing", "personal social
30 networking", and "platform services".

31 The bill provides a corporation with more than 10 million
32 users in the state shall be assessed a quarterly fee on
33 platform services to support universal service programs. The
34 bill provides that the attorney general shall determine the
35 number of applicable platform services' active state users on

1 which platform fees are owed, and the proportion of individuals
2 located within this state who actively use such platform
3 services and provide its estimated number of active state users
4 to the applicable corporations within 60 days of the end of
5 the applicable quarter. The fees collected shall be deposited
6 in the Iowa communications network fund for the purposes of
7 that fund. A corporation subject to platform fees shall file
8 a return for quarterly fee payments and the fee payment to
9 the attorney general within 120 days of the completion of the
10 quarter. A person who willfully files a false return with the
11 intent to evade the payment of fees or willfully fails to file
12 a fee return is guilty of a class "D" felony. A class "D"
13 felony is punishable by confinement for no more than five years
14 and a fine of at least \$1,025 but not more than \$10,245.

15 The bill provides that the attorney general shall assess
16 interest on unpaid platform fees from the due date to the date
17 on which the fee is paid if a person who is required to pay an
18 online platform fee and shall assess a penalty not exceeding
19 25 percent of the amount due if a corporation required to pay a
20 platform fee fails to pay such tax within 180 days of the due
21 date of such fee. The bill provides that the attorney general
22 shall issue regulations governing the assessment and collection
23 of platform fees.

24 The bill provides that a corporation shall not owe any
25 platform fees when the corporation publishes the statistics
26 called for by the bill and incorporates into such platform
27 service's terms of service applicable to users in this state
28 contractual terms provided in new Code section 659B.4.

29 The bill provides that the protecting online free speech
30 Act shall not be construed as requiring online platforms to
31 verify the state of residency of users of their services and
32 that platform services shall be construed as mutually distinct
33 categories.

34 The bill provides that provisions of the bill are severable
35 pursuant to Code section 4.12 except for Code section 659B.4

S.F. _____

1 (fee exemption for platforms that foster open discourse).