

HB 320-FN - AS INTRODUCED

2023 SESSION

23-0427

05/10

HOUSE BILL ***320-FN***

AN ACT relative to free speech in interactive computer services.

SPONSORS: Rep. Schmidt, Straf. 14

COMMITTEE: Judiciary

ANALYSIS

This bill prohibits, with limited exception, censorship of speech on interactive computer services social media platforms. The bill establishes a civil right of action for violation of the statute.

Explanation: Matter added to current law appears in ***bold italics***.
 Matter removed from current law appears ~~[in brackets and struckthrough]~~
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Three

AN ACT relative to free speech in interactive computer services.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 Findings. The legislature finds that:

2 I. Each person in this state has a fundamental interest in the free exchange of ideas and
3 information, including the freedom of others to share and receive ideas and information;

4 II. This state has a fundamental interest in protecting civil rights, including the free
5 exchange of ideas and information in this state;

6 III. Some interactive computer services social-media platforms function as common carriers,
7 are affected with a public interest, are public accommodations, are central public forums for public
8 debate, have enjoyed governmental support in the United States, and have cooperated with
9 government and party officials to censor opinions and information; and

10 IV. The interactive computer services social-media platforms with the very largest number
11 of users are most clearly common carriers by virtue of their market dominance.

12 2 New Chapter; Free Speech in Interactive Computer Services. Amend RSA by inserting after
13 chapter 359-T the following new chapter:

14 CHAPTER 359-U

15 FREE SPEECH IN INTERACTIVE COMPUTER SERVICES

16 359-U:1 Definitions. In this chapter:

17 I. "Censor" means:

18 (a) Any action taken to edit, alter, block, ban, delete, remove, deplatform, demonetize,
19 de-boost, regulate, restrict, inhibit the publication or reproduction of, deny equal access or visibility
20 to, suspend a right to post, remove, or otherwise discriminate against expression; or

21 (b) Any action taken to inhibit or restrict the ability of a user to be viewed by or to
22 interact with another user of the platform or any other action taken to block, ban, remove, suspend a
23 right to post, demonetize, restrict deplatform, or otherwise discriminate against a user.

24 II. "Expression" means any word, number, music, sound, still or moving image, or other
25 perceivable communication.

26 III "Interactive computer service" means an information service, system, or access software
27 provider that provides or enables computer access by multiple users to a computer server.

28 IV. "Receive," with respect to an expression, means to read, hear, look at, access, or gain
29 access to the expression.

30 V. "Social-media platform" means an Internet search engine, Internet website, Internet
31 system, software provider, or application that is open to the public, allows a user of the platform to

1 create an account, and enables users to communicate with one another for the primary purpose of
2 posting information, comments, messages, or images or otherwise disseminating expression. The
3 term does not include:

4 (a) An electronic mail provider or service; or

5 (b) An Internet website, service, or application:

6 (1) That consists primarily of news, sports, entertainment, or other information or
7 material that is not user generated but is preselected by the owner or operator of the website,
8 service, or application; and

9 (2) For which any chat, comments, or interactive functionality that allows
10 dissemination of expression by users is incidental to, directly related to, or dependent on the
11 dissemination of the information or material described by subparagraph (1).

12 VI. “Unlawful expression” means an expression that is tortious or otherwise unlawful under
13 the constitution or laws of this state or of the United States.

14 VII. “User” means a person who receives expression or who posts, uploads, transmits,
15 shares, publishes, or otherwise disseminates expression through an interactive computer service
16 social-media platform.

17 359-U:2 Censorship Prohibited.

18 I. An interactive computer service shall not censor a user of the interactive computer
19 service, the expression of such a user, or the ability of such a user to receive the expression of
20 another person based on:

21 (a) The viewpoint of the user or another person;

22 (b) The viewpoint represented in the user’s expression or another person’s expression; or

23 (c) A user’s geographic location in this state or any part of this state.

24 II. A social-media platform shall not censor a user of the social-media platform, the
25 expression of such a user, or the ability of such a user to receive the expression of another person
26 based on:

27 (a) The viewpoint of the user or another person;

28 (b) The viewpoint represented in the user’s expression or another person’s expression; or

29 (c) A user’s geographic location in this state or any part of this state.

30 III. This section applies regardless of whether the viewpoint is expressed on the interactive
31 computer service social-media platform or elsewhere.

32 359-U:3 Waiver Prohibited.

33 I. A waiver or purported waiver of a person’s right to bring a civil action under this chapter
34 or any other protection provided by this chapter is void as unlawful and against public policy, and a
35 court or arbitrator may not enforce or give effect to such a waiver, notwithstanding any choice-of-law
36 or other provision in any contract or other agreement.

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1 II. The waiver prohibition described by paragraph I shall not apply to contractual waivers to
2 the extent any such application of the prohibition would impair the obligation of contract in violation
3 of the constitution of this state or of the United States.

4 III. The waiver prohibition described by paragraph I is a public-policy and civil rights
5 limitation on contractual and other waivers of the highest importance and interest to this state, and
6 this state is exercising and enforcing this prohibition to the full extent permitted by the constitutions
7 of this state and the United States.

8 359-U:4 Applicability of Chapter.

9 I. This chapter applies only to a user who:

- 10 (a) Currently resides in this state;
11 (b) Does business in this state; or
12 (c) Shares or receives expression in this state.

13 II. This chapter applies only to expression to the extent it is shared or received in this state.

14 III. This chapter applies only to an interactive computer service social-media platform that
15 is open to the public or offers its services to the public and that functionally has more than 50 million
16 active users in the United States in a calendar month, and any such interactive computer service
17 social-media platform is hereby declared to be a common carrier.

18 IV. This chapter applies to the maximum extent permitted by the constitution of this state
19 and the constitution and laws of the United States, but no further than the maximum extent
20 permitted by the constitution of this state and the constitution and laws of the United States.

21 359-U:5 Limitation on Effect of Chapter.

22 I. This chapter does not subject an interactive computer service social-media platform to any
23 cause of action or liability to the extent the interactive computer service social-media platform is
24 protected from causes of action or liability by federal law.

25 II. This chapter does not prohibit an interactive computer service social-media platform
26 from censoring:

27 (a) Expression that the interactive computer service social-media platform is specifically
28 authorized to censor by federal law;

29 (b) Unlawful expression, including expression that unlawfully harasses individuals or
30 unlawfully incites violence; or

31 (c) Any expression, including obscene, lewd, lascivious, filthy, excessively violent,
32 harassing, or otherwise objectionable expression, on grounds other than those described in RSA 359-
33 U:2.

34 III. This chapter does not prohibit an interactive computer service social-media platform
35 from merely providing expression to a user in a particular instance in response to that user's express
36 request in that particular instance for expression limited on the basis of viewpoint or geographic
37 location.

1 IV. This chapter does not prohibit an interactive computer service social-media platform
2 from disseminating its own commentary or other expression, except to the extent the expression is
3 disseminated in a manner that delays or otherwise diminishes the visibility of the expression of a
4 user, or delays or otherwise denies equal access to it, or otherwise censors it, on the basis of
5 viewpoint or geographic location in violation of this chapter.

6 V. This chapter does not limit or expand intellectual property law.

7 VI. This chapter's prohibitions do not apply in cases to the extent they would violate the
8 doctrine on the dormant Commerce Clause enunciated by the Supreme Court of the United States.

9 359-U:6 User Remedies.

10 I. A user may bring:

11 (a) An action against an interactive computer service social-media platform that violates
12 this chapter with respect to the user; or

13 (b) A qui tam action against an interactive computer service social-media platform that
14 violates this chapter with respect to the user; but

15 (c) After a user brings an action under either subparagraph (a) or (b), the user may not
16 bring an action under the other subparagraph, unless a user's action under subparagraph (a) is held
17 to have been waived by any choice-of-law or other provision in the user's contract or other agreement
18 with the defendant.

19 II. If the user proves that the interactive computer service social-media platform violated
20 this chapter with respect to the user, the user is entitled to recover:

21 (a) Actual damages or, at the election of the plaintiff, statutory damages in the amount
22 of \$100,000 for a censored user or \$1,000 for a user affected in the ability to receive the expression of
23 another person;

24 (b) Declaratory relief;

25 (c) Injunctive relief; and

26 (d) Costs and reasonable and necessary attorney's fees.

27 III. In a qui tam action brought under this chapter, any damages awarded shall be divided
28 equally between the plaintiff and this state.

29 IV. If an interactive computer service social-media platform fails to promptly comply with a
30 court order in an action brought under this section, the court shall hold the interactive computer
31 service social-media platform in contempt and shall use all lawful measures to secure immediate
32 compliance with the order, including daily penalties sufficient to secure immediate compliance.

33 V. Notwithstanding any other law, the following are not a defense to an action brought
34 under this section:

35 (a) Ignorance or mistake of law;

36 (b) A defendant's belief that the requirements or provisions of this chapter are or were
37 unconstitutional;

1 (c) A defendant's reliance on any court decision that has been vacated, reversed, or
2 overruled on appeal or by a subsequent court, even if that court decision had not been vacated,
3 reversed, or overruled when the cause of action accrued;

4 (d) A defendant's reliance on any state or federal court decision that is not binding on
5 the court in which the action has been brought;

6 (e) Non-mutual issue preclusion or non-mutual claim preclusion.

7 VI. Notwithstanding any other law, the courts of this state shall have personal jurisdiction
8 over any defendant sued under this section to the maximum extent permitted by the Fourteenth
9 Amendment to the United States Constitution.

10 VII. Notwithstanding any other law, the law of this state shall apply to any civil action
11 brought under this section, to the maximum extent permitted by the Constitution of the United
12 States.

13 359-U:7 Severability. Every provision, section, paragraph, sentence, clause, phrase, or word in
14 this chapter, and every application of the provisions in this chapter, are severable from each other.

15 3 Applicability.

16 I. RSA 359-U, as inserted by section 2 of this act, applies only to an action taken on or after
17 the effective date of this act.

18 II. A person who was a user, as defined in RSA 359-U:1,VII, before the effective date of this
19 act may bring an action under RSA 359-U:6 to remedy censorship of the user's ability to share or
20 receive expression that occurred before the effective date of this act if the censorship continues after
21 this act takes effect and violates RSA 359-U, as inserted by section 2 of this act.

22 4 Effective Date. This act shall take effect on January 1, 2024.

**HB 320-FN- FISCAL NOTE
AS INTRODUCED**

AN ACT relative to free speech in interactive computer services.

FISCAL IMPACT: ☒ State ☐ County ☐ Local ☐ None

STATE:	Estimated Increase / (Decrease)			
	FY 2023	FY 2024	FY 2025	FY 2026
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
Funding Source:	<input checked="" type="checkbox"/> General	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input type="checkbox"/> Other

METHODOLOGY:

This bill prohibits, with limited exception, censorship of speech on interactive computer services social media platforms. The bill establishes a civil right of action for violation of the statute. The Judicial Branch states they cannot determine how many new cases would be filed or the resources required for the new case filings. As such, the results would be an indeterminable increase in FY 2025 and FY 2026 General fund expenditures.

AGENCIES CONTACTED:

Judicial Branch