

Senate Bill 393

By: Senators Dolezal of the 27th, Miller of the 49th, Strickland of the 17th, Dugan of the 30th, Burke of the 11th and others

AS PASSED SENATE

A BILL TO BE ENTITLED

AN ACT

1 To amend Title 46 of the Official Code of Georgia Annotated, relating to public utilities and
2 public transportation, so as to provide for anti-discrimination obligations of common carriers;
3 to provide for a short title; to provide for legislative findings; to provide for definitions; to
4 provide for statutory construction and applicability; to require common carriers to publish
5 transparency reports; to provide for the promulgation of certain rules and regulations; to
6 provide for civil remedies; to provide for related matters; to provide for severability; to repeal
7 conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Title 46 of the Official Code of Georgia Annotated, relating to public utilities and public
11 transportation, is amended by adding a new chapter to read as follows:

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12 "CHAPTER 6A13 46-6A-1.14 This chapter shall be known and may be cited as the 'Common Carrier Non-Discrimination
15 Act.'16 46-6A-2.17 The General Assembly finds and declares that:18 (1) Each person in this state has a fundamental interest in the free exchange of ideas and
19 information, including, but not limited to, the freedom of others to share and receive ideas
20 and information, regardless of their religious, political, or social beliefs or affiliations;21 (2) The state has a fundamental interest in protecting the free exchange of ideas and
22 information in this state to ensure a vibrant and inclusive political discourse;23 (3) As the Supreme Court of the United States has recognized, large social media
24 platforms are the 'modern public squares';25 (4) In offering their services to all and providing a basic service to our economic,
26 political, and social lives, social media platforms function as common carriers, are
27 affected with a public interest, and are central public forums for public debate. Such
28 common carriers have enjoyed governmental support in the United States and, in at least
29 some instances, have cooperated with government and party officials to censor opinions
30 and information;31 (5) Social media platforms with the largest number of users are common carriers by
32 virtue of their market dominance;33 (6) Given the pivotal role large social media platforms play in controlling the flow of
34 information in political, social, economic, and cultural life in this state, large social media
35 platforms must disclose their policies for removing citizens from their platforms,
36 promoting and diminishing access to content, and moderating content; and

37 (7) The citizens of this state should have legal mechanisms to ensure the accuracy and
38 timeliness of these disclosures as well as the truthfulness of social media platforms'
39 representations and terms of services.

40 46-6A-3.

41 As used in this chapter, the term:

42 (1) 'Broadband services' means a service that provides the capability to transmit data to
43 and receive data from all or substantially all internet endpoints, including any capabilities
44 that are incidental to and enable the operation of the communication service.

45 (2) 'Censor' means any action taken:

46 (A) To edit, alter, block, ban, delete, remove, deplatform, demonetize, deboost,
47 regulate, restrict, inhibit the publication or reproduction of, deny equal access or
48 visibility to, suspend a right to post, remove, or otherwise discriminate against
49 expression;

50 (B) To inhibit or restrict the ability of a user to be viewed by or interact with another
51 user of the common carrier; or

52 (C) To block, ban, remove, suspend a right to post, demonetize, restrict, deplatform, or
53 otherwise discriminate against a user.

54 (3) 'Common carrier' includes a social media platform.

55 (4) 'Expression' means any word, music, sound, still or moving image, number, or other
56 perceivable communication.

57 (5) 'Internet service provider' means any person qualified to do business in this state that
58 provides the ability to connect to the internet with broadband services.

59 (6) 'Receive' means to read, hear, look at, access, or gain access to an expression.

60 (7) 'Shadow banning' means blocking or partially blocking a user or a user's content from
61 some areas of a platform or from the view of other users in a manner such that it may not

62 be readily apparent to the user that such user or such user's content has been so blocked
63 or banned.

64 (8) 'Social media platform' means an internet website or application that is open to the
65 public, allows a user to create an account, and enables users to communicate with other
66 users for the primary purpose of posting information, comments, messages, or images.

67 Such term does not include an:

68 (A) Internet service provider or provider of broadband services; or

69 (B) Online service, application, or website:

70 (i) That consists primarily of news, sports, entertainment, cultural, or artistic features;
71 community information; or other features, information, or content that is not
72 generated but rather is preselected by the provider; and

73 (ii) For which any chat, comments, or interactive functionality is incidental to,
74 directly related to, or dependent on the provision of the content described in
75 division (i) of this subparagraph.

76 (9) 'Unlawful expression' means an expression that is prohibited under the Constitution
77 of the United States, the Constitution of Georgia, federal law, or the laws of this state,
78 including, but not limited to, expression that constitutes a tort under the laws of this state
79 or the laws of the United States.

80 (10) 'User' means a person who posts, uploads, transmits, shares, or otherwise publishes
81 or receives expression through a common carrier.

82 46-6A-4.

83 (a) A common carrier shall not censor or discriminate against a user, a user's expression,
84 or a user's ability to receive the expression of another person based on:

85 (1) The viewpoint of the user or another person;

86 (2) The viewpoint represented in the user's expression or another person's expression;

87 (3) A user's geographic location in this state or any part of this state; or

88 (4) The actual or perceived race, color, ethnicity, religion, religious beliefs, political
89 beliefs, political affiliation, national origin, sex, gender, sexual orientation, or disability
90 of a user or another person or of a class of users or a class of other persons.

91 (b) This Code section shall apply regardless of whether the viewpoint is an expression that
92 is communicated on or through the common carrier or elsewhere.

93 46-6A-5.

94 (a) A contractual or other waiver or purported waiver of the protections provided by this
95 chapter is void as unlawful and against public policy, and no court or arbitrator may
96 enforce or give effect to such a waiver, including, but not limited to, in an action brought
97 under this chapter, notwithstanding any contract or choice-of-law provision in a contract.

98 (b) The waiver prohibition described in subsection (a) of this Code section is a
99 public-policy limitation on contractual and other waivers of the highest importance and
100 interest to this state, and this state is exercising and enforcing this limitation to the full
101 extent permitted by the Constitution of the United States and by the Constitution of
102 Georgia.

103 46-6A-6.

104 (a) This chapter shall apply only to:

105 (1) A user that:

106 (A) Currently resides in this state;

107 (B) Does business in this state; or

108 (C) Shares or receives expression in this state;

109 (2) A common carrier that:

110 (A) Is open to the public or offers its services to the public; and

111 (B) Functionally has more than 20 million active users in the United States in a
112 calendar month; and

113 (3) An expression that is shared or received in this state.

114 (b) This chapter shall apply to the maximum extent permitted by the Constitution and laws
115 of the United States and of this state, but no further than such maximum extent.

116 46-6A-7.

117 This chapter shall not be construed to subject a common carrier to damages or other legal
118 remedies to the extent the common carrier is protected from such remedies under federal
119 law.

120 46-6A-8.

121 (a) Nothing in this chapter shall be construed to prohibit or restrict a common carrier from
122 censoring:

123 (1) An expression that the common carrier is specifically authorized to censor by federal
124 law;

125 (2) Any unlawful expression, including, but not limited to, an expression that unlawfully
126 harasses individuals or unlawfully incites violence; or

127 (3) Any expression that is obscene, lewd, lascivious, filthy, excessively violent, or
128 harassing.

129 (b) Nothing in this chapter shall be construed to limit or expand the intellectual property
130 laws of this state.

131 (c) Any prohibition set forth in this chapter shall not apply to the extent that such
132 prohibition would violate the doctrine on the dormant commerce clause enunciated by the
133 United States Supreme Court.

134 46-6A-9.

135 (a) A common carrier shall, in accordance with this chapter, publicly disclose accurate
136 information regarding its content management, data management, and business practices,

137 including, but not limited to, specific information regarding the manner in which the
138 common carrier:

139 (1) Curates and targets content to users;

140 (2) Makes decisions concerning content removal, content demonetization, content
141 deprioritization, the addition of an assessment statement to user-generated content,
142 account suspension, and account removal;

143 (3) Places and promotes content, services, and products, including, but not limited to, its
144 own content, services, and products;

145 (4) Moderates content;

146 (5) Uses search, ranking, or other algorithms or procedures that determine search results
147 on the platform;

148 (6) Uses one or more algorithms to promote or hide content, including, but not limited
149 to, suggested content to users, preferential search techniques, or techniques to depromote
150 data, including, but not limited to, techniques such as shadow banning; and

151 (7) Provides a user's performance data on the use of the common carrier and its products
152 and services.

153 (b) The disclosures required by subsection (a) of this Code section must be sufficient to
154 enable users to make informed choices regarding the purchase of, use of, access to, or
155 services from the common carrier.

156 (c) A common carrier shall publish the disclosures required by subsection (a) of this Code
157 section on a website that is easily accessible by the public.

158 46-6A-10.

159 (a) A common carrier shall publish on its website a biannual transparency report with
160 respect to the preceding six-month period that contains:

161 (1) The number of instances in which the common carrier was alerted to illegal content,
162 illegal activity, or potentially policy-violating content by:

- 163 (A) A user complaint;
164 (B) An employee of the common carrier;
165 (C) A person or group working with the common carrier; or
166 (D) An internal automated detection tool; and
167 (2) The number of instances in which the common carrier took action with respect to
168 illegal content, illegal activity, or potentially policy-violating content known to the
169 common carrier due to the nature of the content as illegal content, illegal activity, or
170 potentially policy-violating content, including, but not limited to:
171 (A) Content removal;
172 (B) Content demonetization;
173 (C) Content deprioritization;
174 (D) The addition of an assessment to content, including:
175 (i) Account suspension; and
176 (ii) Account removal; or
177 (E) Any other action taken in accordance with the common carrier's terms of service.
178 (b) The common carrier shall provide to the commission the biannual transparency report
179 required under subsection (a) of this Code section. The commission shall publish such
180 biannual transparency report on its website. The commission shall promulgate any rules
181 and regulations necessary to carry out the provisions of this Code section.
- 182 46-6A-11.
183 (a) If a common carrier violates any provision of this chapter, a user may bring a civil
184 action against such common carrier. Such civil action may be brought in a representative
185 capacity and may be the subject of a class action under Code Section 9-11-23.
186 (b) If the user proves that the common carrier violated any provision of this chapter with
187 respect to the user, the user shall be entitled to recover injunctive relief or declaratory

188 relief, including, but not limited to, court costs and reasonable and necessary attorney's
189 fees, or both injunctive and declaratory relief.

190 (c) If a common carrier fails to promptly comply with a court order in a civil action
191 brought under this Code section, the court shall hold the common carrier in contempt and
192 shall use all lawful measures to secure immediate compliance with the order, including
193 daily penalties sufficient to secure immediate compliance.

194 46-6A-12.

195 It shall constitute an unfair or deceptive act or practice and shall be a violation of Part 2 of
196 Article 15 of Chapter 1 of Title 10, the 'Fair Business Practices Act of 1975,' for any
197 common carrier to:

198 (1) Disclose or publish incorrect or false disclosures as set forth in Code Section
199 46-6A-9;

200 (2) Fail to disclose or publish any disclosure as set forth in Code Section 46-6A-9;

201 (3) Violate its own terms of service or any other representation made to a user; or

202 (4) Fail to publish the biannual transparency report or to misrepresent any information
203 published in the biannual transparency report required under Code Section 46-6A-10.

204 46-6A-13.

205 (a) This chapter shall apply only to actions taken or not taken by a common carrier on or
206 after July 1, 2022.

207 (b) An action may be brought under this chapter by or on behalf of a person that was a user
208 prior to July 1, 2022, to remedy censorship of the user's ability to share or receive
209 expression that occurred prior to July 1, 2022, if the censorship continues on or after July 1,
210 2022, and is in violation of this chapter."

211

SECTION 2.

212 This Act shall be severable in accordance with Code Section 1-1-3 of the Official Code of
213 Georgia Annotated.

214

SECTION 3.

215 All laws and parts of laws in conflict with this Act are repealed.