



March 16, 2021

The Honorable Jerry Klein, Chair
Senate Committee on Industry, Business & Labor
State Capitol
600 East Boulevard
Bismarck, North Dakota 58505-0360

RE: HB 1144 - Internet Association Opposition

Dear Chair Klein and Members of the Committee:

Internet Association (IA) appreciates the opportunity to explain our opposition to **HB 1144**, which would permit civil actions against social media companies for their content moderation decisions.

IA is the only trade association that exclusively represents leading global internet companies on matters of public policy. Our mission is to foster innovation, promote economic growth, and empower people through the free and open internet. We believe the internet creates unprecedented benefits for society and the economy and, as the voice of the world's leading internet companies, IA works to ensure legislators, consumers, and other stakeholders understand these benefits.

IA explains, below, how Section 230's protections benefit consumers, but first it is important to note that your bill raises important constitutional concerns. As you know, North Dakota's Constitution, Article I, Section 4, protects freedom of speech as does the First Amendment of the U.S. Constitution. It is well established that the companies covered by this bill have First Amendment rights in their content moderation decisions. Justice Kavanaugh wrote for the Supreme Court that such rights are an inherent part of their property rights. Thus, we believe that HB 1144 under consideration is unlikely to survive scrutiny in the courts, but there are also important policy reasons why it should not move forward.

In 1996 the US Congress passed Section 230 of the Communications Decency Act (Section 230) with bipartisan support. The purpose was to ensure that online service providers could allow individuals to post content to their platforms and that the platform could moderate that content without being legally viewed as the "publisher." Without Section 230, the law could treat a provider who turns a blind eye to harmful content more favorably than a platform that takes action to try to protect consumers. *Congress made clear its intent that Section 230 should empower providers to engage in content moderation.* This has allowed online platforms to make their services safe for users and delete harmful, dangerous, and illegal content.

In order to realize the full benefits of online services, it is critical that service providers are able to set and enforce robust rules designed to protect the quality and integrity of their services. Today, providers regularly take action against spam, malware and viruses, child sexual abuse material, scams, threats and harassment, impersonation, non-consensual intimate images, and other content that, regardless of whether illegal or legal, is harmful to the users of their services and the public at large. This bill will put the safety measures providers take on a daily basis at risk by allowing civil suits to be filed challenging nearly every decision.. Consumers will not benefit from this.



The proposal before you would put online companies in the position of defending these content each and every moderation decision in court in response to a lawsuit. Regardless of whether a platform was acting appropriately under the bill, individual users would still be empowered to challenge each decision and require the provider to defend content decisions. This could easily lead to an unbridled internet where harmful content overwhelms the healthy discourse and exchange of ideas that we all desire.

As stated above, Congress enacted CDA 230 to encourage companies to engage in moderation to limit harmful content and it clearly preempts state bills which are inconsistent with its protections. Not only is this bill clearly inconsistent with CDA 230 by seeking to impose new limitations and new liability on content moderation decisions, the bill also seeks to prevent a private company from exercising its constitutional rights to refuse content from its platform.

The companies IA represents understand their success depends on attracting a broad user base regardless of party affiliation or political perspective. This is core to the principles of free enterprise and we should encourage it. While no company is perfect, IA members are doing their best to be a place where ideas flourish. Compared to any other form of communication, internet companies are still the most open and most accessible for all Americans.

For those reasons, IA requests the Committee on Industry, Business & Labor not move HB 1144 forward. If you have any questions reach out to me at rose@internetassociation.org or 205-326-0712.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'Rose Feliciano', with a long horizontal line extending to the right.

Rose Feliciano
Director, Northwest Region, State Government Affairs