

Arkansas SB 612, creating a private right of action to sue social media platforms

OPPOSITION TESTIMONY

April 7, 2025

Dear Chair Clark, Vice Chair Dees and Members of the Senate Judiciary Committee:

On behalf of NetChoice, a trade association working to make the internet safe for free enterprise and free expression, I write to express our strong opposition to SB 612, which would create a private right of action for parents to sue social media platforms if their child develops eating disorders, self-harms, commits or tries to commit suicide, or becomes “addicted” to the platform’s feeds because of content the child was exposed to.

We share the sponsor’s goal to better protect minors from harmful content online. NetChoice members have taken issues of minor safety seriously and have consistently rolled out numerous new features, settings, parental tools, and protections to better empower parents and assist in monitoring their children’s use of social media. We ask that you oppose SB 612 and instead use this bill as a way to jumpstart a larger conversation about how best to protect minors online and consider alternatives that do not raise constitutional issues.

Key Concerns:

1. The bill creates vague and impractical liability standards, creating perverse incentives for litigation through its attorney’s fee provisions and extended statute of limitations, leading to a flood of speculative lawsuits regardless of merit
2. The bill would likely harm Arkansas residents by incentivizing platforms to either drastically limit content available in the state or withdraw services completely, reducing access to valuable online resources and communication tools

SB 612 proposes an overly broad regulatory framework that misunderstands how online services operate while creating legal liability that would devastate innovation and free speech in Arkansas.

First, SB 612 introduces vague standards of liability that would be impossible for platforms to reasonably comply with. The bill would hold platforms liable if they “know or should have known through the exercise of reasonable care” that their design, algorithm, or feature causes users to engage in prohibited activities. This creates an impractical standard where platforms would be forced to predict how any

feature might be misused by any individual user, an impossible task given the millions of unique interactions that occur daily.

We are particularly troubled that this legislation appears designed to benefit trial lawyers rather than protect consumers. The bill's provisions for attorney's fees, including the requirement that fees "shall be no less than the lesser of the total cost of the defendant's legal fees" or "reasonable legal fees for the defense," creates perverse incentives for litigation. This would encourage a flood of speculative lawsuits against platforms, as attorneys would be virtually guaranteed substantial compensation regardless of case merit.

The bill also creates liability if platforms "knowingly and willfully" contribute to suicide attempts by minors following exposure to content promoting self-harm. However, the language fails to establish clear standards for what constitutes "promoting" content, and when platforms would be deemed to have "knowingly and willfully" contributed to such tragic outcomes. Such ambiguity would lead platforms to implement overly aggressive content removal policies that would inevitably restrict legitimate speech.

The provisions regarding addiction to social media platforms are also problematic. The term "addiction" is not clearly defined, lacks established diagnostic criteria in this context, and would subject platforms to liability based on subjective judgments about user behavior patterns. This vagueness would create legal uncertainty that would stifle innovation and development of new online services in Arkansas while creating another avenue for trial lawyers to extract settlements from technology companies.

Perhaps most concerning is that SB 612 would incentivize platforms to either drastically limit content available to Arkansas residents or withdraw services from the state entirely. Many platforms would likely choose to restrict access rather than face potential penalties of up to \$10,000 per violation plus attorney's fees and litigation costs. This would significantly reduce Arkansans' access to valuable online resources and communication tools.

While we share the legislature's commitment to protecting minors online and addressing serious issues like youth suicide and substance abuse, this bill takes an approach that would not achieve its intended goals. Instead, it would likely reduce access to helpful resources for at-risk individuals while creating an unworkable legal environment for online services that primarily benefits the trial bar.

The First Amendment exceptions in the bill are insufficient to address the constitutional concerns this legislation raises. Courts have consistently recognized that algorithm-based content curation and recommendation systems are forms of protected speech.¹ By targeting these systems, SB 612 infringes on constitutionally protected expression.

We would instead recommend focusing on evidence-based approaches to mental health support for young people, including increased funding for suicide prevention hotlines, school counseling services, and family education programs. Additionally, supporting digital literacy education would help young people develop healthy online habits without restricting access to valuable online resources.

¹ Moody v. NetChoice, LLC, 144 S. Ct. 2383, 2394 (2024).

NetChoice remains committed to working with legislators to develop thoughtful, effective policies that protect minors online while preserving innovation and expression. We believe alternative approaches that emphasize education, parental tools, and mental health resources would better address the serious concerns motivating this legislation without the significant drawbacks of SB 612 and without creating a litigation bonanza for trial lawyers.

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Again, we respectfully ask you to **oppose SB 612**. As always we offer ourselves as a resource to discuss any of these issues with you in further detail, and we appreciate the opportunity to provide the committee with our thoughts on this important matter.²

Sincerely,

Amy Bos
Director of State and Federal Affairs
NetChoice

NetChoice is a trade association that works to make the internet safe for free enterprise and free expression.

² The views of NetChoice expressed here do not necessarily represent the views of NetChoice members.