

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

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HOUSE BILL 494

Short Title: Digital Interference Censorship Act. (Public)

Sponsors: Representatives McNeely, Johnson, Kidwell, and Tyson (Primary Sponsors).
For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Commerce, if favorable, Judiciary 3, if favorable, Rules, Calendar, and Operations
of the House

April 12, 2021

1 A BILL TO BE ENTITLED
2 AN ACT TO ENACT THE NORTH CAROLINA DIGITAL INTERFERENCE CENSORSHIP
3 ACT.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** Chapter 75 of the General Statutes is amended by adding a new Article
6 to read:

7 "Article 9.

8 "Digital Interference Censorship Act.

9 "**§ 75-150. Title.**

10 This act shall be known and may be cited as the "North Carolina Digital Interference
11 Censorship Act."

12 "**§ 75-151. Definitions.**

13 As used in this Article, the following definitions apply:

- 14 (1) Developer. – A creator of a software application made available for download
15 by a user through a digital application distribution platform or other digital
16 distribution platform.
- 17 (2) Digital application distribution platform. – A digital distribution platform for
18 applications and services provided to a user on a general-purpose hardware,
19 including a mobile phone, smartphone, tablet, personal computer, or other
20 similar internet-enabled device. The term includes a digital application
21 platform provided or used only for a certain type of device, including a certain
22 grade of computing device, a device made only by a particular manufacturer,
23 or a device running a particular operating system.
- 24 (3) Digital transaction platform. – A system for accepting payments from a user
25 for an application or service received from a digital application distribution
26 platform. The term includes a digital platform that is usable for transactions
27 not related to the digital application distribution platform.
- 28 (4) Domiciled in this State. – When a person is living as a resident of this State or
29 when a person is headquartered in this State, conducts business in this State,
30 and the majority of the person's business is to create and maintain an
31 application.
- 32 (5) In-application payment system. – An application, service, or user interface
33 used to process a payment from a user to a developer for a software application
34 and digital and physical product distributed through a software application.



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- 1 (6) Provider. – A person that owns, operates, implements, or maintains a digital
2 application distribution platform, a digital transaction platform, or an
3 in-application payment system.
- 4 (7) Resident of this State. – A person whose last known billing address, other than
5 an Armed Forces post office or fleet post office address, is located within this
6 State, as shown in the records of a provider of a digital application distribution
7 platform.
- 8 (8) Special-purpose digital application distribution platform. – A digital
9 distribution platform for single or specialized categories of applications,
10 software, and services provided to a user on hardware primarily intended for
11 specific purposes, including a gaming console, music player, and other
12 special-purpose internet-enabled devices.

13 **"§ 75-152. Applicability.**

14 (a) This Article applies to digital application distribution platforms with cumulative gross
15 receipts from sales on the digital application distribution platform to residents of this State that
16 exceed ten million dollars (\$10,000,000) in either the current or previous calendar year and that
17 use the platform for one of the following:

- 18 (1) To provide an application that was created by a person domiciled in this State
19 to a user.
- 20 (2) To provide an application to a resident of this State.

21 (b) This Article shall not apply to a special-purpose digital application distribution
22 platform.

23 **"§ 75-153. Prohibited conduct.**

24 A provider of a digital application distribution platform shall not do any of the following:

- 25 (1) Require a developer to do any of the following:
- 26 a. Use the provider's in-application payment system as the exclusive
27 means for accepting payment from a user to download the developer's
28 software application.
- 29 b. Purchase a digital or physical product or service created, offered, or
30 provided by the developer through a software application.
- 31 (2) Retaliate against a developer for choosing to use another digital transaction
32 system or in-application payment system.
- 33 (3) Refuse to allow a developer to provide the provider's application or digital
34 product to or through the provider's platform or system or refuse to allow a
35 user access to the developer's application or digital product through the
36 provider's platform or system, on account of any of the following:
- 37 a. The developer's use of another payment system.
- 38 b. The religious or political content of the developer's application.
- 39 c. The religious or political content of users of the developer's
40 application.

41 **"§ 75-154. Enforcement.**

42 (a) If the Attorney General fails to enjoin or otherwise prosecute a claim under this
43 Article within 60 days of receiving a complaint of a violation, a person or entity aggrieved by a
44 violation of this Article may bring any of the following actions in Superior Court:

- 45 (1) An action to enjoin further violations of this Article by the provider.
- 46 (2) An action to recover costs and other damages resulting from the conduct of
47 the provider.

48 (b) In an action in Superior Court brought pursuant to this Article, the court may award
49 a prevailing plaintiff reasonable attorneys' fees if the court finds the defendant willfully engaged
50 in the act or practice in violation of this Article, and the court may award reasonable attorneys'

1 fees to a prevailing defendant if the court finds that the plaintiff knew, or should have known,
2 that the action was frivolous and malicious.

3 (c) Actions brought by a person or entity pursuant to this section shall be tried in the
4 county where the plaintiff resides at the time of the commencement of the action.

5 (d) This section shall not be construed to alter or restrict any remedy a person may have
6 under any other State or federal law.

7 (e) A violation of this Article is a violation of G.S. 75-1.1.

8 (f) A private right of action is created under this Article only if the Attorney General fails
9 to enforce this Article as provided by G.S. 114-2(11) and subsection (a) of this section."

10 **SECTION 2.** G.S. 114-2 is amended by adding a new subdivision to read:

11 "(11) To enforce Article 9 of Chapter 75 of the General Statutes, the North Carolina
12 Digital Interference Censorship Act."

13 **SECTION 3.** This act becomes effective October 1, 2021.