

2022 BSA State Legislative Summary: PLATFORM REGULATION

- In 2022, 193 platform regulation bills have been introduced in 36 states, a nearly 70 percent increase in bill volume over 2021 sessions.
- New York, California, Illinois, and Tennessee were the most likely states to have had introduce a bill about social media.
- 2022 saw a 43 percent increase in volume of platform regulation bills over 2021 with only Colorado and Utah enacting legislation in 2021; there was an increase and geographic shift in 2022 with four eastern states enacting platform legislation: Alabama, Florida, Illinois, and Ohio.
- States specifically assessed the possibilities of regulating the use of artificial intelligence (AI) in social media, platforms' terms of service, as well as the impact of social media algorithms on children.
- Twenty percent of states, primarily Republican controlled legislatures, examined the possibility of prohibiting the deplatforming of political candidates or journalistic enterprises. Only Florida enacted a law to prohibit the "shadowbanning" of political candidates and prohibiting censoring journalistic enterprises.
- Thirty-six percent of states, both Republican and Democratic controlled legislatures, examined legislation based largely on the federal Shop Safe Act. In 2022, seven states had laws requiring only verifiable third-party sellers on online marketplaces, including Alabama, Illinois, Iowa, Louisiana, Michigan, Ohio, and Pennsylvania.
- Twenty-eight percent of states introduced bills seeking to address competition concerns raised by application developers regarding platform payment systems and associated fees, but no bills have been enacted to date.
- Approximately a quarter of 2022 state platform regulation bills are either related to the third-party sellers on online marketplaces, similar to the federal Shop Safe act, or in-application payment system platforms.
- New York specifically attempted to regulate the use of social media for the purpose of debt collection.
- New York City passed legislation to regulate employment AI systems to prevent civil rights discrimination and establish third-party auditing.

In 2022, 80 percent of state legislatures explored social media or platform regulation legislation. Additionally, there was a 70 percent increase in the volume of bills from 2021 to 2022 and the number of bill enactments climbed from 2 in 2021 to 13 in 2022. The vast majority of those new laws are related to third-party sellers on online marketplaces.

Within the subcategories related to platform regulation, regulation of online content was the most common representing 26 percent of filed bills and regulating the use of certain activities including hosting services (Hawaii) and debt collection (New York), was the least common. Only 8 percent of content regulation bills and resolutions were enacted and about 60 percent did not receive a public hearing.

Nearly half the states (22), proposed legislation related to regulating content on social media platforms. New York established a task force to study violent extremism and social media in response to the mass shooting in Buffalo. New York was also the only state in 2022 to enact a law to require social media networks to maintain a mechanism for reporting hate speech. Iowa and Arizona explored the possibility of prohibiting their states from entering contracts with or providing tax incentives to companies that censor online content, whereas Tennessee focused on investigating certificate of public convenience and necessity and the possibility of charging a quarterly platform fee. Ten states, primarily Republican controlled legislatures, examined the possibility of prohibiting the deplatforming of political candidates or journalistic enterprises. Only Florida enacted a law to prohibit the “shadowbanning” of political candidates and prohibiting censoring journalistic enterprises. Three states, Arizona, California, Rhode Island, specifically looked at data and information within platforms; none of these bills moved past the first stage in the legislative process.

Unlike many other specific areas of legislation, bills similar to federal Shop Safe legislation and in-application payment system legislation in the states moved quickly to enact in both Republican and Democratic controlled legislatures. Over a third of states had legislation to verify third-party sellers on online marketplaces and over a quarter of states considered legislation to address in-application payment system platform. States were by far more likely to pass third party seller legislation, over a quarter of introduced legislation was enacted in 2022, than in-application only payment systems, none of which was enacted in 2022.

Given the broad examination of online platforms throughout the 2022 sessions, it is very likely this issue will continue into 2023. Furthermore, unless there’s Congressional action to pass the federal Shop Safe Act, states will continue to introduce, move, and pass similar legislation at the state level in states like Alabama, Connecticut, Maryland, New Hampshire, New Jersey, New York, Rhode Island, Tennessee, and Wisconsin. Content moderation on platform legislation will likely be proposed in various state legislatures ranging from restricting users’ ability to create or interact with content to liability for incitement of violence with civil penalties. Republican controlled legislatures will be more likely to introduce legislation prohibiting the restriction of content, whereas Democratic legislatures will be more likely to introduce legislation specifically about platforms promoting misinformation or content that causes individual harm and/or incites violence.

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