

2023

SB 93 - Government Devices, Social Media Platforms, and Foreign Adversaries

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Recommended Citation

Kelsey V. O'Neill & Rachel Gadra Rankin, *SB 93 - Government Devices, Social Media Platforms, and Foreign Adversaries*, 40 GA. ST. U. L. REV. 259 (2023).

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STATE GOVERNMENT

Information Technology: Amend Chapter 29 of Title 50 of the Official Code of Georgia Annotated, Relating to Information Technology, so as to Restrict the Use of Certain Social Media Platforms on State Equipment; Provide for Definitions; Prohibit a State Employee or Student from Installing, Using, or Visiting a Social Media Platform that is Controlled or Influenced by a Foreign Adversary on State Equipment; Provide for Exceptions; Provide for Applicability; Provide for the Establishment and Maintenance of a List of Prohibited Social Media Platforms upon State Equipment by the Director of the Georgia Emergency Management and Homeland Security Agency; Make Such List Available to the Public; Provide for Interpretation; Provide for Related Matters; Provide for Legislative Findings; Provide for an Effective Date; Repeal Conflicting Laws; and for Other Purposes

CODE SECTIONS:	O.C.G.A. §§ 50-29-1, -2, -3, -4, -5, -6, -7, -8, -9, -10, -11, -12 (amended); 50-29-20, -21, -22, -23 (new)
BILL NUMBER:	SB 93
ACT NUMBER:	255
GEORGIA LAWS:	2023 Ga. Laws 405
EFFECTIVE DATE:	May 2, 2023
SUMMARY:	The Act functions to prevent state devices from interacting with social media platforms that are owned, operated, or influenced by foreign adversaries. Specifically, the Act prohibits state employees and students from installing, using, or visiting any such social media platforms on state equipment. In addition, the Act outlines steps toward enforcing this prohibition, such as directing the Georgia

Emergency Management and Homeland Security Agency to prepare a list of barred social media platforms and to make that list publicly available on the agency's website.

History

More than one hundred and fifty million Americans use TikTok, a short-form video social media platform owned by the Chinese company ByteDance Ltd.¹ TikTok's software platform can track and store its users' personal information.² Chinese national security laws require Chinese companies to assist their government in intelligence work through data sharing and other means.³ The Chinese government can demand data from Chinese companies like ByteDance and access the personal information collected by the companies' users.⁴ Therefore, Chinese-owned social media applications like TikTok, Telegram, and WeChat pose a security threat, especially when installed on devices containing confidential government information.⁵

Reacting to a report that alleged Chinese engineers accessed United States consumer data from TikTok, nine United States Senators, including Senator Marsha Blackburn (R-TN) and Senator Ted Cruz (R-TX), sent a letter to TikTok's CEO requesting answers to specific data privacy questions.⁶ In his response letter, the TikTok CEO

1. Press Release, TikTok, Celebrating Our Thriving Community of 150 Million Americans (Mar. 21, 2023), <https://newsroom.tiktok.com/en-us/150-m-us-users> [<https://perma.cc/99FK-BQTC>].

2. David Shepardson & Echo Wang, *TikTok Seeks to Reassure U.S. Lawmakers on Data Security*, REUTERS (July 1, 2022, 8:18 PM), <https://www.reuters.com/business/media-telecom/tiktok-seeks-reassure-lawmakers-us-data-security-2022-07-01/> [<https://perma.cc/GD8C-MUCR>].

3. *See id.*

4. Sapna Maheshwari & Amanda Holpuch, *Why Countries Are Trying to Ban TikTok*, N.Y. TIMES (May 23, 2023), <https://www.nytimes.com/article/tiktok-ban.html> [<https://perma.cc/5HLN-5XWQ>].

5. Riley Bunch, *Kemp Bans Use of TikTok on State Agency Devices*, GA. PUB. BROAD. (Dec. 15, 2022, 1:26 PM), <https://www.gpb.org/news/2022/12/15/kemp-bans-use-of-tiktok-on-state-agency-devices> [<https://perma.cc/XSW7-TZ8U>].

6. Letter from U.S. Senators to Shou Zi Chew, TikTok Chief Executive Officer (June 27, 2022), <https://www.blackburn.senate.gov/services/files/8DE2B2CF-27BF-4ADD-8E4C-D83598D9424D> [<https://perma.cc/HL3H-VA8Q>].

admitted that Chinese-based employees can have access to United States user data.⁷

Federal and state governments recognized the danger in allowing the Chinese government to access applications that control data collection or the recommendation algorithm on users' devices.⁸ These concerns prompted widespread TikTok bans across the nation.⁹ On December 14, 2022, the United States Senate unanimously approved a bill that would ban TikTok on all federal agency devices.¹⁰ The following day, Georgia Governor Brian Kemp (R) issued a memorandum banning TikTok from all state systems and devices, including employee-issued laptops and cell phones.¹¹

Recognizing the need to formally memorialize Governor Kemp's order, Senator Jason Anavitarte (R-31st) and others introduced legislation in the 2023–2024 session of the Georgia General Assembly aimed at protecting state devices from foreign adversary interference.¹² Georgia legislators unanimously supported the legislation to secure the state's assets.¹³ "It can wreak havoc," said Charlie Barrett, Chief of Staff to President Pro Tempore Senator John F. Kennedy (R-18th), when Barrett described seeing the effects of malware and spyware installed on government systems.¹⁴ "I've seen it completely decimate communities," Barrett continued, discussing how poor counties may lose basic necessities such as trash, water, sewer,

7. Shepardson & Wang, *supra* note 2.

8. Bunch, *supra* note 5.

9. Sawdah Bhaimiya, *Here's a Full List of the US States That Have Introduced Full or Partial TikTok Bans on Government Devices over Mounting Security Concerns*, INSIDER (Jan. 15, 2023, 5:00 AM), <https://www.businessinsider.com/tiktok-banned-us-government-state-devices-2023-1> [<https://perma.cc/N2ZK-KJRW>].

10. Brian Fung, *Senate Passes Legislation to Ban TikTok from US Government Devices*, CNN (Dec. 15, 2022, 3:06 PM), <https://www.cnn.com/2022/12/15/tech/senate-tiktok-ban-devices/index.html> [<https://perma.cc/E3SB-QVA9>].

11. Memorandum from Brian P. Kemp, Ga. Gov., to State of Ga. Agency Heads (Dec. 15, 2022).

12. *Georgia Senators File Bill to Restrict TikTok, Other Apps on State Devices*, FOX 5 ATLANTA (Feb. 7, 2023), <https://www.fox5atlanta.com/news/georgia-senate-bill-tik-tok-telegram-wechat-ban> [<https://perma.cc/Y6CS-ZAGG>]; Georgia General Assembly, SB 93, Bill Tracking [hereinafter SB 93, Bill Tracking], <https://www.legis.ga.gov/legislation/64009> [<https://perma.cc/B9JT-CTN7>].

13. Telephone Interview with Charlie Barrett, Chief of Staff to President Pro Tempore Sen. John F. Kennedy (R-18th) (May 22, 2023) [hereinafter Barrett Interview] (on file with the Georgia State University Law Review).

14. *Id.*

and power services if ransomware corrupted the state's Wi-Fi.¹⁵ Senator Anavitarte's action set Georgia on a path to joining the twenty-seven other states, including Florida, South Carolina, and Tennessee, that already adopted similar legislation.¹⁶

Bill Tracking of SB 93

Consideration and Passage by the Senate

Senator Jason Anavitarte (R-31st) sponsored Senate Bill (SB) 93 in the Senate with President Pro Tempore John F. Kennedy (R-18th), Senator Steve Gooch (R-51st), Senator Randy Robertson (R-29th), Senator Matt Brass (R-28th), and Senator Mike Dugan (R-30th) cosponsoring.¹⁷ Senator Anavitarte filed the bill on February 2, 2023, and the Senate first read the bill on February 6, 2023.¹⁸ The Senate then committed the bill to the Senate Veterans, Military, and Homeland Security Committee that same day.¹⁹

The Committee favorably reported the bill by substitute on February 14, 2023.²⁰ The substitute provided the following revisions: (1) clarified the definition of "Company" to broadly include any entity or business association; (2) removed "Scrutinized Company" as a defined term; and (3) refined the characteristics that qualify a social media platform as barred.²¹ Emphasizing the importance of flexibility, the Committee desired broad language that could encompass future companies that may pose a threat to national security.²² Senator Josh

15. *Id.*

16. Bhaimya, *supra* note 9.

17. SB 93, Bill Tracking, *supra* note 12.

18. *Id.*; State of Georgia Final Composite Status Sheet, SB 93, May 9, 2023.

19. State of Georgia Final Composite Status Sheet, SB 93, May 9, 2023.

20. *Id.*; SB 93, Bill Tracking, *supra* note 12.

21. *Compare* SB 93, as introduced, § 2, p. 3, l. 40, 2023 Ga. Gen. Assemb., with SB 93 (SCS), § 2, p. 3, ll. 40–44, 2023 Ga. Gen. Assemb.; *compare* SB 93, as introduced, § 2, p. 3, ll. 43–45, 2023 Ga. Gen. Assemb., with SB 93 (SCS), § 2, p. 3, ll. 45–62, 2023 Ga. Gen. Assemb.; *compare* SB 93, as introduced, § 2, p. 4, ll. 66–78, 2023 Ga. Gen. Assemb., with SB 93 (SCS), § 2, p. 4, ll. 67–75, 2023 Ga. Gen. Assemb.

22. Video Recording of Senate Veterans, Military, and Homeland Security Committee Meeting at 5 min., 4 sec. (Feb. 13, 2023) [hereinafter Feb. 13, 2023 Senate Committee Video] (remarks by Sen. Jason Anavitarte (R-31st)), <https://vimeo.com/showcase/8822010/video/797501044> [<https://perma.cc/3EMF-ZYXM>].

McLaurin (D-14th) raised concerns that the language cast too wide of a scope and muddled the goal of the bill—to prevent unauthorized access of United States information through social media platforms acting specifically as an “arm of the foreign adversary.”²³ Ultimately, although the substitutes provided a few narrower specifications, the adopted language resolved in favor of a broad and flexible interpretation.²⁴

The Senate read the bill for the second time on February 15, 2023.²⁵ Then, on February 16, 2023, the Senate read the bill for a third time and adopted the bill by substitute, absent one nonvoting senator and five excused senators, by a unanimous vote of 50 to 0.²⁶

Consideration and Passage by the House

Representative Clint Crowe (R-118th) sponsored the bill in the House, and the House first read the bill on February 21, 2023.²⁷ The House read the bill for a second time on February 22, 2023.²⁸ The House then committed the bill to the House Public Safety and Homeland Security Committee.²⁹

The Committee favorably reported the bill by substitute on March 15, 2023.³⁰ The substitute provided the following revisions: (1) clarified that “Foreign Adversary” is defined according to the Code of Federal Regulations’ definition effective as of January 1, 2023; (2) extended the scope to apply to any company, not just the social media platform itself, owned by a foreign adversary that has direct or indirect control over the social media platform’s content moderation practices; (3) clarified that the director of the Georgia Emergency Management and Homeland Security Agency (GEMA/HS) maintains authority to

23. *Id.* at 12 min., 29 sec. (remarks by Sen. Josh McLaurin (D-14th)).

24. *See id.* at 26 min., 28 sec. (remarks by Sen. Jason Anavitarte (R-31st)).

25. SB 93, Bill Tracking, *supra* note 12; State of Georgia Final Composite Status Sheet, SB 93, May 9, 2023.

26. SB 93, Bill Tracking, *supra* note 12; State of Georgia Final Composite Status Sheet, SB 93, May 9, 2023; Georgia Senate Voting Record, SB 93, #56 (Feb. 16, 2023).

27. SB 93, Bill Tracking, *supra* note 12.

28. *Id.*; State of Georgia Final Composite Status Sheet, SB 93, May 9, 2023.

29. State of Georgia Final Composite Status Sheet, SB 93, May 9, 2023.

30. *Id.*; SB 93, Bill Tracking, *supra* note 12.

determine the list of social media platforms barred by the bill; and (4) reorganized language for clarity without making material changes.³¹

The House read the bill for a third time on March 20, 2023.³² On the same day, the House adopted the bill by substitute, absent two nonvoting representatives and four excused representatives, by a unanimous vote of 174 to 0.³³ On March 27, 2023, the Senate agreed to the House substitute, absent four excused senators, by a unanimous vote of 52 to 0.³⁴ The Senate sent the bill to Governor Brian Kemp (R) on April 5, 2023, and he signed the bill into law as Act 255 on May 2, 2023.³⁵ The Act's effective date is May 2, 2023.³⁶

The Act

The Act amends Chapter 29 of Title 50 of the Official Code of Georgia Annotated “to prohibit the use of certain social media platforms on all government issued equipment, citing security concerns.”³⁷ The Act's overall purpose is to guard the state against cyberthreats likely to result from inadvertent sharing of personal information with foreign adversaries.³⁸

Section 1

Section 1 enumerates several key considerations that motivated the General Assembly to adopt the Act.³⁹ Summarized, the General

31. Compare SB 93, as passed Senate, § 2, p. 3, ll. 45–46, 2023 Ga. Gen. Assemb., with SB 93 (HCS), § 2, p. 3, ll. 43–44, 2023 Ga. Gen. Assemb.; compare SB 93, as passed Senate, § 2, p. 4, ll. 67–80, 2023 Ga. Gen. Assemb., with SB 93 (HCS), § 2, pp. 3–4, ll. 64–82, 2023 Ga. Gen. Assemb.; compare SB 93, as passed Senate, § 2, p. 4, ll. 81–88, 2023 Ga. Gen. Assemb., with SB 93 (HCS), § 2, p. 4, ll. 83–91, 2023 Ga. Gen. Assemb.

32. SB 93, Bill Tracking, *supra* note 12; State of Georgia Final Composite Status Sheet, SB 93, May 9, 2023.

33. SB 93, Bill Tracking, *supra* note 12; Georgia House of Representatives Voting Record, SB 93, #261 (Mar. 20, 2023).

34. SB 93, Bill Tracking, *supra* note 12; Georgia Senate Voting Record, SB 93, #311 (Mar. 27, 2023).

35. SB 93, Bill Tracking, *supra* note 12; State of Georgia Final Composite Status Sheet, SB 93, May 9, 2023.

36. SB 93, Bill Tracking, *supra* note 12; 2023 Ga. Laws 405, § 3, at 408.

37. 2023 Ga. Laws 405, § 1, at 406.

38. Feb. 13, 2023 Senate Committee Video, *supra* note 22, at 1 min., 47 sec. (remarks by Sen. Jason Anavitarte (R-31st)).

39. 2023 Ga. Laws 405, § 1, at 405–06.

Assembly's findings set forth: (1) a concern that foreign adversaries use social media platforms they own to access sensitive data and (2) a belief that the state bears responsibility to protect this data through legislative and executive acts.⁴⁰

Section 2

Section 2 of the Act first reorganizes Code sections 50-29-1 through 50-29-12, "relating to information technology," as Article 1.⁴¹ The reorganized Code sections broadly deal with state technology topics such as agency information system contracts, information technology projects, and use of electronic media to encourage public and private business.⁴² Additionally, Section 2 creates a new Article 2 that introduces Code sections 50-29-20 through 50-29-23.⁴³

Code Section 50-29-20

Code section 50-29-20 provides definitions for terms used in Article 2: "Company," "Foreign adversary," "Social media platform," "State agency," "State employee," "State equipment," and "Student."⁴⁴

Code Section 50-29-21

Code section 50-29-21 creates subsections (a), (b), and (c), which describe when a state employee or student may and may not "install, use, or visit any social media platform on state equipment."⁴⁵ Subsection (a) prohibits doing so in three limited circumstances: (1) when the company that owns or operates the social media platform is owned or operated by a foreign adversary, is domiciled in a foreign adversary, or is "[o]rganized under the laws of a foreign adversary"; (2) when a foreign adversary has "substantial direct or indirect control or influence over the content moderation practices of a company which

40. *Id.* at 406.

41. 2023 Ga. Laws 405, § 2, at 406.

42. O.C.G.A. §§ 50-29-1 to -12 (2023).

43. 2023 Ga. Laws 405, § 2, at 406-08.

44. *Id.* at 406-07 (codified at O.C.G.A. § 50-29-20 (2023)).

45. *Id.* at 407 (codified at O.C.G.A. § 50-29-21 (2023)).

directly or indirectly owns or operates the social media platform”; and (3) when the social media platform “uses software or an algorithm that is directly or indirectly controlled or monitored by a foreign adversary.”⁴⁶

Subsection (b) permits installing, using, or visiting any social media platforms for “law enforcement purposes, cybersecurity research and development, or judicial or legislative proceedings.”⁴⁷

Subsection (c) clarifies that the Code provisions shall extend to cover all three branches of Georgia’s state government.⁴⁸

Code Section 50-29-22

Code section 50-29-22 creates subsections (a), (b), and (c), which describe how the preceding Code section’s requirements will be implemented and managed.⁴⁹ Subsection (a) assigns the duty to “prepare and maintain” a list of applicable social media platforms to the director of the GEMA/HS.⁵⁰ The GEMA/HS director maintains sole discretion in creating this list and must publish the list on the agency’s public website.⁵¹

Subsection (b) requires the GEMA/HS director to update the list as needed but does not establish any regular cadence.⁵² Subsection (c) clarifies that the Georgia Administrative Procedure Act does not apply to this Code section—in other words, that GEMA/HS may publish the social media platform list without judicial review.⁵³

Code Section 50-29-23

Code section 50-29-23 succinctly states that the provisions of these Code sections will not preempt federal law.⁵⁴

46. *Id.* (codified at § 50-29-21(a)).

47. *Id.* (codified at § 50-29-21(b)).

48. *Id.* (codified at § 50-29-21(c)).

49. 2023 Ga. Laws 405, § 2, at 407 (codified at O.C.G.A. § 50-29-22 (2023)).

50. *Id.* (codified at § 50-29-22(a)).

51. *Id.* (codified at § 50-29-22(a)).

52. *Id.* (codified at § 50-29-22(b)).

53. *Id.* (codified at § 50-29-22(b)); O.C.G.A. §§ 50-13-1 to -3 (2023).

54. *Id.* at 408 (codified at O.C.G.A. § 50-29-23 (2023)).

*Analysis**Scope Creep*

With this Act, Georgia joins the many states that have passed similar legislation with the shared goal of securing sensitive information from abuse by foreign adversaries. As of January 2023, thirty-three out of fifty states have already restricted the use of TikTok on state-issued devices.⁵⁵ Importantly, the Act only prohibits the banned applications on state-owned devices, not personal devices, avoiding potential constitutionality arguments.⁵⁶ In *Mahanoy Area School District v. B. L. by & through Levy*, a Pennsylvania school banished a teenager from the varsity cheerleading team after she posted a profanity-laced social media post from her personal phone while off campus.⁵⁷ The Court held that the school violated the teenager's First Amendment rights when it suspended her from the cheerleading squad because the special interests offered by the school were insufficient to overcome the teenager's interest in free expression.⁵⁸ Although the Court in *Mahanoy* acknowledged that certain justifications may call for First Amendment leeway, if the Act interferes with personal device usage, it may not withstand constitutional challenges due to potential infringement on an individual's First Amendment rights.⁵⁹

The Act prohibits TikTok, Telegram, and WeChat on state devices in the executive, legislative, and judicial branches, as well as K-12 schools within the State of Georgia.⁶⁰ Tennessee lawmakers extended Tennessee's ban further to include all state-funded university campuses.⁶¹ Specifically, state-funded universities in Tennessee prohibit students and staff members from using campus Wi-Fi to access any video platforms headquartered outside of the United

55. Brian Fung & Christopher Hickey, *TikTok Access from Government Devices Now Restricted in More Than Half of US States*, CNN (Jan. 16, 2023, 2:48 PM), <https://www.cnn.com/2023/01/16/tech/tiktok-state-restrictions/index.html> [https://perma.cc/5L4J-VKT4].

56. 2023 Ga. Laws 405, § 2, at 407.

57. *See generally* Mahanoy Area Sch. Dist. v. B. L. *ex rel.* Levy, 141 S. Ct. 2038 (2021).

58. *Id.* at 2041.

59. *See id.* at 2046.

60. 2023 Ga. Laws 405, § 3, at 406.

61. S.B. 0834, 113th Gen. Assemb. (Tenn. 2023).

States.⁶² Some states, like Montana, took the ban a step further and forbade the use of TikTok throughout the entire state.⁶³ Montana legislation prohibits TikTok from operating within state lines and imposes potential fines of \$10,000 per day for violators, including app stores hosting the social media application.⁶⁴ Iowa Governor Kim Reynolds (R) issued a directive banning TikTok on all state-owned devices and prohibited state agencies from subscribing to TikTok or owning a TikTok account.⁶⁵

Potentially broad terms in the Act, like “direct or indirect control or influence” and “monitored by a foreign adversary,” could inadvertently cast a wider net capturing applications not originally contemplated by the law.⁶⁶ The Senate Committee on Veterans, Military and Homeland Security discussed this concern at length.⁶⁷ As illustrated in the hypothetical scenario offered by Senator Josh McLaurin (D-14th), one could argue that Twitter could be banned under the Act.⁶⁸ As Senator McLaurin explained, Saudi Arabian entities may have a stake in Twitter and could cause Twitter to adapt to the will of the Saudi government.⁶⁹ This could be interpreted as the Saudi government having at least some indirect control over the way Twitter is managed.⁷⁰ Additionally, Senator McLaurin offered his concerns around the potential broad interpretation of the “monitoring” language in the Act.⁷¹ Realistically, most foreign nations, including foreign adversaries, diligently monitor social media platforms for

62. *Id.*

63. Samantha Delouya, *Montana Governor Bans TikTok*, CNN (May 18, 2023, 12:12 PM), <https://www.cnn.com/2023/05/17/tech/montana-governor-tiktok/index.htm/> [https://perma.cc/3XH5-47EQ]; Maheshwari & Holpuch, *supra* note 4.

64. Delouya, *supra* note 63; S.B. 419, 2023 Leg., 68th Sess. (Mont. 2024).

65. Press Release, Gov. Kim Reynolds, Gov. Reynolds Issues Directive to Ban Access to TikTok on State of Iowa Devices (Dec. 13, 2022), <https://governor.iowa.gov/press-release/2022-12-13/gov-reynolds-issues-directive-ban-access-tiktok-state-iowa-devices> [https://perma.cc/GP7S-ZHVG].

66. 2023 Ga. Laws 405, § 2, at 407.

67. *See generally* Feb. 13, 2023 Senate Committee Video, *supra* note 22.

68. *Id.* at 7 min., 35 sec. (remarks by Sen. Josh McLaurin (D-14th)). Note that, since the time of this writing, Elon Musk announced a rebranding of “Twitter,” and as of July 2023 the social media platform is known as “X.” Jordan Valinsky, *Elon Musk Rebrands Twitter as X*, CNN, <https://www.cnn.com/2023/07/24/tech/twitter-rebrands-x-elon-musk-hnk-intl/index.html> [https://perma.cc/BD7N-H2XX] (July 24, 2023, 5:44 AM).

69. Feb. 13, 2023 Senate Committee Video, *supra* note 22, at 7 min., 40 sec.

70. *Id.*

71. *Id.*

various reasons, and simply loading the platforms without some additional inside access to the underlying coding of the platform could constitute “monitoring” of the platform.⁷² Without strictly defined terms, it is difficult to predict how judges will interpret the Act moving forward.

Potential Spinoff Legislation

The Act may open the door for future legislation further regulating the type of content accessed by state-owned devices or using state-owned Wi-Fi networks, potentially exceeding the scope of protecting security interests. Social media applications, like TikTok, provide more than just entertainment for users by also giving them immediate access to breaking news and safety alerts and by providing potential economic benefits to content creators using the platforms.⁷³ The expedited availability of information may be indispensable to state agencies and personnel in times of immediate danger. Senator McLaurin offered his recent personal experience using social media to receive real-time updates on an active shooter situation occurring in the building next door to illustrate the valid public safety and public policy uses for social media.⁷⁴ These concerns focus on the need to strike a balance between technological security, First Amendment protection, and access to potentially lifesaving information.

In 2020, more than two million people globally made six-figure salaries by posting content on their social media platforms.⁷⁵ Though it may be unlikely for individuals with government-issued devices to belong to this group, legislation preventing any individual’s access to opportunities to generate income could face challenges under the Takings Clause of the Fifth Amendment.⁷⁶

72. *Id.*

73. John Koetsier, *2 Million Creators Make 6-Figure Incomes on YouTube, Instagram, Twitch Globally*, FORBES (Oct. 5, 2020, 5:21 PM), <https://www.forbes.com/sites/johnkoetsier/2020/10/05/2-million-creators-make-6-figure-incomes-on-youtube-instagram-twitch-globally/?sh=390f85b423be> [<https://perma.cc/CB7J-CJUJ>].

74. Telephone Interview with Sen. Josh McLaurin (D-14th) (June 2, 2023) [hereinafter McLaurin Interview] (on file with the Georgia State University Law Review).

75. Koetsier, *supra* note 73.

76. *See* U.S. CONST. amend. V.

Legislation addressing concerns with third-party access to state assets via contractors within local and municipal governments is another area for potential investigation.⁷⁷ In the hypothetical offered by Charlie Barrett, Chief of Staff to Senator John F. Kennedy (R-18th), Georgia lawmakers could pass a protective measure requiring telecommunication contractors to use state-funded software portals to block the contractors' phone from communicating with a state asset and transmitting virus or malware.⁷⁸ This type of legislation would protect against a third-party's ability to put ransomware onto a state asset's vital infrastructure, potentially destroying that asset's ability to provide state-funded services like Wi-Fi, sanitation services, water, and power.⁷⁹

Functional Management

As enacted, the Act does not provide guidance on how the ban will be administered at the state or local levels. It is unclear whether the banned applications will be removed from app stores on the state-owned devices or whether specific website addresses will be blocked.⁸⁰ States with similar legislation do not offer much guidance regarding enforcement. Montana's statewide TikTok ban takes effect in January 2024 and purports to impose a \$10,000 per day fine on any "entity" for each time someone accesses TikTok, "is offered the ability" to access TikTok, or downloads TikTok.⁸¹ These fines are not paid by the user but instead fall to the operators of the device's app store, Apple and Google.⁸²

Presently, the Act does not impose a penalty for violating the ban, so it is unclear how a punishment, if any, would be enforced. Without a clear method of implementation, it may be difficult to keep track of potential violators. Further, the Act does not include a provision

77. Barrett Interview, *supra* note 13.

78. *Id.*

79. *Id.*

80. *Id.*

81. Haleluya Hadero, *Can Montana Enforce a TikTok Ban?*, PBS (May 18, 2023, 8:08 PM), <https://www.pbs.org/newshour/economy/can-montana-enforce-a-tiktok-ban> [<https://perma.cc/KE3A-HT33>].

82. *Id.*

outlining the penalties for violators, potentially undermining the effectiveness of the Act. As the foreign adversaries list is amendable by the director of GEMA/HS, additional applications from countries deemed foreign adversaries could be added to the list of applications banned from state-owned devices, potentially impacting foreign relations.⁸³

Conclusion

The Act focuses on protecting the technological integrity of state-owned devices by preventing the download of certain applications owned or operated by countries deemed foreign adversaries.⁸⁴ Georgia's congressional leaders believe that the Act is a step towards ensuring the security of Georgia's technological infrastructure by reducing the chance of foreign adversary cyber threats.

Kelsey V. O'Neill & Rachel Gadra Rankin

83. 2023 Ga. Laws 405, § 2, at 407 (codified at O.C.G.A. § 50-29-22(a) (2023)).

84. 2023 Ga. Laws 405, § 1, at 405–06.

