

ASSEMBLY, No. 180

STATE OF NEW JERSEY

221st LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2024 SESSION

Sponsored by:

Assemblywoman DAWN FANTASIA

District 24 (Morris, Sussex and Warren)

Assemblyman MICHAEL INGANAMORT

District 24 (Morris, Sussex and Warren)

SYNOPSIS

Prohibits social media websites from selectively suspending candidates for elective office and creates private right of action for users whose political or religious speech has been deleted.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 **AN ACT** concerning social media websites and supplementing Title
2 56 of the Revised Statutes.

3

4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6

7 1. As used in P.L. , c. (C.) (pending before the
8 Legislature as this bill):

9 “Algorithm” means a set of computer coded instructions
10 designed to perform a specific task on a social media website.

11 “Candidate” means an individual seeking election to a public
12 office of the State or any political subdivision thereof, or party
13 office, at any election. “Candidate” includes an individual who runs
14 unopposed, loses an election, withdraws from an election, or raises
15 or spends money, or both, to run for elected office but does not
16 appear on the ballot.

17 “Consumer Price Index” means the consumer price index for all
18 urban consumers in the New York City and Philadelphia areas as
19 reported by the Department of Labor or any successor index.

20 “Hate speech” means a word or phrase that an individual finds
21 offensive based on the individual’s morality.

22 “Obscene” means material that a reasonable person, applying
23 contemporary community ethical standards, would find that, taken
24 as a whole, the dominant theme of the material appeals to prurient
25 interests.

26 “Political speech” means speech relating to the federal, State, or
27 local government, body politic, or public administration as it relates
28 to governmental policymaking and includes, but is not limited to,
29 speech made by a candidate for office and any discussion of social
30 issues. “Political speech” shall not include speech concerning the
31 administration of law or civil aspects of government.

32 “Religious speech” means a set of unproven answers, truth
33 claims, faith-based assumptions, and assertions that attempt to
34 explain greater questions concerning how the world was created,
35 what constitutes right and wrong actions by humans, and what
36 happens after death.

37 “Selectively suspend” means the action or practice by a social
38 media website to permanently delete posts or ban a user or to
39 temporarily delete posts or ban a user for more than 60 days.

40 “Social media website” means any information service, Internet
41 search engine, or access software provider that does business in the
42 State of New Jersey, and provides or enables computer access by
43 multiple users to a computer server, including an Internet website or
44 a social media website, or both, which is a sole proprietorship,
45 partnership, limited liability company, corporation, association, or
46 other legal entity that is organized or operated for the profit or
47 financial benefit of its shareholders or other owners, and that
48 satisfies one or more of the following thresholds:

- 1 a. is open to the public;
- 2 b. has annual gross revenues in excess of \$100 million, as
- 3 adjusted in January of every odd-numbered year to reflect any
- 4 increase in the Consumer Price Index; and
- 5 c. has at least 100 million monthly users globally.
- 6 "User" means a person who has an account on a social media
- 7 website, regardless of whether the person posts or has posted
- 8 content or material to the social media website.

9

- 10 2. a. Notwithstanding the provisions of State law, rule,
- 11 regulation, or order to the contrary, and consistent with federal law,
- 12 a social media website shall not willfully selectively suspend a
- 13 candidate who is known by the social media website to be a
- 14 candidate, beginning on the date the candidate declares an intent to
- 15 seek election to public office or party office and ending on the date
- 16 of the election or the date the candidate ceases to be a candidate. A
- 17 social media website shall provide each user a method by which the
- 18 user may be identified as a qualified candidate and which provides
- 19 sufficient information to allow the social media website to confirm
- 20 the user's qualification as a declared candidate by reviewing the
- 21 Internet website of the candidate's campaign, the Division of
- 22 Elections in the Department of State, the New Jersey Election Law
- 23 Commission, or the Internet website of the local board of elections,
- 24 as appropriate.
- 25 b. A social media website that willfully provides free
- 26 advertising for a candidate shall inform the candidate of the in-kind
- 27 contribution and comply with all appropriate provisions of "The
- 28 New Jersey Campaign Contributions and Expenditures Reporting
- 29 Act," P.L.1973, c.83 (C.19:44A-1 et seq.). Posts, content, material,
- 30 and comments by candidates that are shown on the social media
- 31 website in the same or similar way as other users' posts, content,
- 32 material, and comments shall not be considered free advertising.

33

- 34 3. Upon a finding of a violation of section 2 of this act by the
- 35 Election Law Enforcement Commission, in addition to any
- 36 remedies available pursuant to Title 19 of the Revised Statutes, the
- 37 commission may assess against a social media website a penalty of
- 38 \$250,000 per day for a violation affecting a candidate for Statewide
- 39 office and \$25,000 per day for a violation affecting a candidate for
- 40 other offices.

41

- 42 4. a. The owner or operator of a social media website shall be
- 43 subject to a private right of action by a user if the social media
- 44 website willfully:

- 45 (1) deletes or censors the user's political or religious speech; or
- 46 (2) uses an algorithm to disfavor or censor the user's political or
- 47 religious speech.

48 b. A user may be awarded all of the following damages:

- 1 (1) a minimum of \$75,000 per violation of subsection a. of this
2 section;
- 3 (2) actual damages;
- 4 (3) punitive damages; and
- 5 (4) any other form of equitable relief as determined by a court of
6 competent jurisdiction.
- 7 c. The prevailing party in a cause of action pursuant to this
8 section may be awarded costs and reasonable attorney fees.
- 9 d. In determining damages to be awarded pursuant to
10 subsection b. of this section, a court or jury shall consider whether
11 the owner or operator of a social media website restores from
12 deletion or removes the censoring of a user's speech in a reasonable
13 time.
- 14 e. A court or jury shall not consider evidence of a user's
15 alleged hate speech on the social media website as a basis for
16 justification or defense of the social media website's actions
17 pursuant to subsection a. of this section.
- 18
- 19 5. a. The Attorney General may bring a civil cause of action
20 pursuant to section 4 of P.L. , c. (C.) (pending before the
21 Legislature as this bill) on behalf of a user whose political or
22 religious speech has been censored, deleted, or disfavored by a
23 social media website.
- 24 b. The provisions of subsection a. of this section shall not
25 apply to a social media website that deletes or censors a user's
26 speech or that uses an algorithm to disfavor or censor speech that:
- 27 (1) calls for immediate acts of violence;
- 28 (2) is obscene or pornographic in nature;
- 29 (3) is the result of operational error;
- 30 (4) is the result of a court order;
- 31 (5) comes from an inauthentic source or involves false
32 impersonation;
- 33 (6) entices criminal conduct;
- 34 (7) involves the bullying or harassment of a user under the age
35 of 18; or
- 36 (8) involves a user censoring another user.
- 37
- 38 6. This act shall take effect immediately.
- 39
- 40

41 STATEMENT

42

43 This bill, notwithstanding any contrary provisions of State law,
44 and consistent with federal law, prohibits a social media website
45 from willfully selectively suspending, commonly referred to as
46 "deplatforming," a candidate for office who is known by the social
47 media website to be a candidate, beginning on the date of the
48 qualification and ending on the date of the election or the date the

1 candidate ceases to be a candidate. A social media website is to
2 provide each user of the social media website a method by which
3 the user may be identified as a qualified candidate and which
4 provides sufficient information to allow the social media website to
5 confirm the user's qualification by reviewing the Internet website of
6 the Division of Elections in the Department of State or the Internet
7 website of the local board of elections.

8 The bill provides that a social media website that willfully
9 provides free advertising for a candidate is to inform the candidate
10 of that in-kind contribution. Posts, content, material, and comments
11 by candidates that are shown on the social media website in the
12 same or similar way as other users' posts, content, material, and
13 comments are not to be considered free advertising.

14 The bill provides that, upon finding a violation of the provisions
15 of the bill by the Election Law Enforcement Commission, in
16 addition to any remedies available pursuant to State law, the
17 commission may assess against a social media website a penalty of
18 \$250,000 per day for a violation affecting a candidate for Statewide
19 office and \$25,000 per day for a violation affecting a candidate for
20 other offices.

21 This bill also creates a private right of action for users of a social
22 media website, as those terms are defined in the bill, whose political
23 or religious speech has been deleted or censored by the social media
24 website or whose political or religious speech has been disfavored
25 or censored by an algorithm used by the social media website. A
26 user may be awarded certain damages provided in the bill.

27 The bill provides that the prevailing party in a cause of action
28 may be awarded costs and reasonable attorney fees.

29 The bill provides that a court or jury is required to consider
30 evidence that the owner or operator of a social media website
31 restored from deletion or removed the censoring of a user's speech
32 in a reasonable time when determining damages sought by a user.
33 A court may not consider evidence of a user's alleged hate speech
34 on the social media website as a basis for justification or defense of
35 the social media website's actions.

36 The bill provides that the Attorney General may bring a civil
37 cause of action on behalf of a user whose political or religious
38 speech has been censored by a social media website under certain
39 circumstances provided in the bill.