

WEST VIRGINIA LEGISLATURE

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Originating

House Bill 3307

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[Originating in the Committee on Technology and

Infrastructure; Reported on March 25, 2021]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §3-8-12a; and, to amend said Code by adding thereto a new section
3 designated as §55-7-32; all relating to limiting abuses by social media corporations;
4 creating the Social Media Integrity and Anti-Corruption in Elections Act; defining terms;
5 providing requirements for social media companies to prevent corruption and provide
6 transparency of election-related content made available on social media websites;
7 providing equal opportunities for all candidates and political parties to speak without policy
8 or partisan-based censorship; setting forth definitions; providing for the protection of the
9 integrity of elections by ensuring election-related content hosted, posted, and made
10 available on social media websites is not monetized or otherwise used or manipulated for
11 nefarious purposes; prohibiting modifying visibility of election information based on type
12 of content; due process requirements for restriction of access to social media platforms;
13 providing civil penalties, including asset seizure; providing rulemaking authority; creating
14 the Stop Social Media Censorship Act; defining terms; setting forth criminal and civil
15 penalties for a social media provider who, without good cause, deletes or censor a user's
16 religious or political speech; or uses an algorithm to disfavor or censure the user's religious
17 or political speech; providing for right of enforcement by the Attorney General; and
18 providing exceptions and limitations.

Be it enacted by the Legislature of West Virginia:

CHAPTER 3. ELECTIONS.

ARTICLE 8. REGULATION AND CONTROL OF ELECTIONS.

§3-8-12a. Social Media Integrity and Anti-Corruption in Elections Act; approval of election information by state's Chief Elections Official; uniform dissemination of election content; prohibition on untraceable messaging originated by social media platforms; record maintenance; prohibition of monetization of election content;

prohibition of modifying visibility of election information based on type of content;
due process requirements for restriction of access to social media platforms; civil
penalties.

1 (a) This section may be cited as the “Social Media Integrity and Anti-Corruption in
2 Elections Act”.

3 (b) The Legislature finds that the State of West Virginia has a compelling interest in
4 ensuring transparency in financial expenditures and other speech which advocates for the
5 election or defeat of candidates or political parties to prevent corruption or the appearance of
6 corruption in elections. The Secretary of State is the Chief Elections Officer of the State of West
7 Virginia, and, along with the State Election Commission, are concurrently responsible for
8 overseeing the regulation of certain election speech, campaign finances, and other election-
9 related activities in the State of West Virginia. Such regulation has not taken into full consideration
10 the availability of online forums and social media platforms where West Virginia citizens and
11 voters increasingly seek, discuss, receive, and exchange election-related ideas, issues, and
12 news, and get information about candidates that appear on the ballot and organizations, political
13 parties, and other election-specific matters. Similarly, online forums and social media platforms
14 reportedly have hundreds of millions of users from around the world, which has resulted in
15 significant monetization of user-specific content preferences which can include users’ desires,
16 policy positions, political leanings, and affiliations. Social media platforms also have access to
17 other election content which has been and can be used for significant advertising value. To protect
18 the integrity of elections held in West Virginia, the Legislature finds it compellingly important in
19 the interest of the state, its citizens, and voters, to prevent the potential for corruption, widespread
20 intentional or accidental misinformation, disinformation, and unequal treatment generated by
21 social media platforms or providers themselves. Therefore, because the Constitution of West
22 Virginia places the authority to oversee, administer, and regulate West Virginia elections to the
23 Chief Elections Officer and associated government agencies such as the State Election

24 Commission, public elections are to be funded and run by the government and its agents. This
25 act is designed to keep the integrity of elections held within West Virginia free from actual and
26 perceived manipulation and corruption. To that end, as detailed in this section, social media
27 platforms desiring to disseminate election-related information in West Virginia must ensure:

28 (1) The accuracy of all election-related information that it disseminates;

29 (2) The equal opportunity of use of its platform to all candidates and political parties that
30 appear on West Virginia ballots;

31 (3) Any attempt or action to censor or promote any candidate, party, or political party based
32 on election-related content shall not be conducted without prior written notice and due process to
33 the impacted person, political party, or organization, and the express approval of the Chief
34 Elections Officer; and

35 (4) Compliance with the State's campaign finance laws when the platform's actions bestow
36 value for one candidate or political party over that of another candidate or political party.

37 (c) For purposes of this section, the following definitions shall apply:

38 (1) "Algorithm" means a set of instructions or rules designed to perform a specific task;

39 (2) "Chief Elections Officer" means the West Virginia Secretary of State;

40 (3) "Disparate impact" means that an ostensibly facially neutral policy has an unintentional
41 disproportionate adverse outcome.

42 (4) "Disparate treatment" means an ostensibly facially neutral policy has an intentional
43 disproportionate adverse outcome.

44 (5) "Election Content" includes, but is not limited to, data comprising posts, comments,
45 messages, or images, and hyperlinks created or promoted by a social media platform without
46 user engagement, to any of the foregoing where the data conveys information to a social media
47 platform user about candidates or parties associated with a federal or statewide primary, general,
48 or special election;

49 (6) "Issue advocacy organization" means an organization devoted to political activity which

50 does not attempt to persuade the public of particular electoral outcomes, but rather seeks to
51 highlight broader political or social issues.

52 (7) "Party" means a party, committee, association, fund, or other organization, regardless
53 of incorporation, organized and operated primarily for the purpose of directly or indirectly
54 influencing the selection, nomination, election, or appointment of an individual to a federal, state,
55 or local public office;

56 (8) "Political Party" shall have the meaning prescribed in §3-1-8 the code.

57 (9) "Social media platform" means a user-specific, web-based technology intended to
58 create virtual connection through the internet, which includes any online information service
59 provider, internet search engine, access software provider, internet website, or application that
60 enables users within the state to create, publish, and view content online for no cost to the user;
61 and

62 (10) "Untraceable messaging" means the transmission of digital content created or
63 promoted by the social media platform which is not retrievable or re-viewable by users,
64 researchers, or any other person or entity, after the message has been first viewed;

65 (d) A social media platform shall not publish, promote, or otherwise disseminate election
66 content in the form of information put out by the social media platform itself, or, by an associated
67 or affiliated entity, to a user, without first receiving prior express approval by the Chief Elections
68 Officer under the process set forth in subsection (e) of this section, which election content
69 includes, but is not limited to, the following:

70 (1) Official dates or deadlines, such as election dates, early voting periods, and deadlines;

71 (2) Voter registration requirements, processes, or procedures;

72 (3) In-person or absentee ballot voting requirements, processes, or procedures;

73 (4) "Get Out The Vote" or "GOTV" information;

74 (5) Polling place locations or hours;

75 (6) Voter identification requirements;

76 (7) Security and integrity of elections;

77 (8) Instructions for receiving, completing, or submitting a ballot; and

78 (9) Information about any candidate on a ballot.

79 (e) Prior approval by the Chief Elections Officer of election content delineated in
80 subsection (d) of this section shall be requested in writing and obtained by the social media
81 platform. Such written request may be made via electronic notification or certified mail.

82 (f) Social media platforms shall

83 (1) disseminate election content uniformly to each user without regard to geography or
84 user demographics, including data associated with the user's online activity, information gathered
85 or received by the social media platform from any source, or users' perceived political preferences
86 or party affiliation whether known, assumed, or predicted by an algorithm or other manner. This
87 includes maintaining equity in push notifications, including news items, articles, and opinion
88 pieces which involve a candidate, issue advocacy organization, a party, a political party, or a topic
89 at issue, in an election as well as any indicia of support or opposition to any ballot initiative, a
90 candidate, issue advocacy organization, a party, or a political party to its users. If such equity and
91 uniformity is not maintained the social media platform shall report all such violations as corporate
92 donations to a campaign in a form prescribed by the Secretary of State's office.

93 (2) publicly report and provide written notice to the Chief Election Officer of any increase
94 in online visibility or other quantifiable assistance or attempt by the social media platform to
95 influence a user's understanding or opinion regarding any a candidate, issue advocacy
96 organization, a party, or a political party, in the state of West Virginia. Such disclosure report shall
97 be made within 48 hours of the online activity occurrence(s) in the same manner as reporting
98 electioneering communications according to §3-8-2b of this code, and without regard to the
99 timeframe or minimum expenditure threshold requirements prescribed therein.

100 (3) maintain records of all election content for no less than 10 years following the date of
101 dissemination. All records of election content shall be maintained in a publicly accessible

102 database, which shall be made available either online without request, or upon request to any
103 requestor within 7 days of receipt of a written request at no cost to the requestor.

104 (4) have 60 days to either approve or deny any candidate's, issue advocacy
105 organization's, a party's, or a political party's, application for service. A denial shall be in writing
106 and must expressly state the substantive legally required reasons therefor. The applicant may
107 correct any deficiencies and resubmit the application which shall be reviewed and either approved
108 or denied within 30 days of the resubmittal: *Provided*, That any denial of any resubmittal shall be
109 in writing and must expressly state the substantive legally required reasons. If the social media
110 platform fails to notify the applicant of approval or denial within 60 days or fails to notify the
111 applicant of approval or denial after 30 days following any resubmittal, then such application or
112 resubmittal shall be deemed approved.

113 (5) notify the Office of the Secretary of State anytime they disable advertising for any a
114 candidate, issue advocacy organization, party, or political party; and

115 (6) charge all clients of their advertising services in a like manner without disparate
116 treatment, providing like costs for circulating like advertising.

117 (g) Social media platforms shall not

118 (1) engage in, use, or make available opportunities for untraceable messaging of any
119 election content under any circumstances.

120 (2) sell, license, transfer, lend, loan, or in any manner monetize election content or data
121 related to election content which is created, obtained, observed, or captured by a social media
122 platform through user or other activity on a social media platform. This prohibition does not apply
123 to non-election content.

124 (3) use any algorithm or manual determination to modify the visibility or availability of
125 election content to any user based on any factor except that the user's physical residence is
126 located in the state of West Virginia. This prohibition does not apply to paid election
127 advertisements or content created which is regulated and publicly disclosed according to §3-8-1

128 et seq. of this code; and

129 (4) enact any policy which has a disparate impact, or which results in disparate treatment
130 of persons based upon political opinion, except for a violation of a provision of subsection (j) of
131 this section.

132 (h) More than 60 days from any primary, general, or special statewide or federal election,
133 a social media platform that terminates, suspends, or otherwise restricts access of a candidate,
134 issue advocacy organization, party, or political party, shall give contemporaneous written notice
135 to affected person or party and to the State Election Commission of the platform's intended action.

136 Such notice shall:

137 (1) Include the proposed grounds for termination, suspension, or other restriction;

138 (2) The anticipated action execution date, which cannot be sooner than five business days
139 from notification; and

140 (3) Provide a candidate, issue advocacy organization, party, or political party, details of
141 the appeal process and opportunity to respond prior to implementation of the action by the
142 platform. If the affected entity does not appeal within the period given by the platform as the
143 execution date, the platform may proceed with the action. Any a candidate, issue advocacy
144 organization, party, or political party who appeals within the designated time and disagrees with
145 a social media platform's decision under this section may file a written complaint with the State
146 Election Commission for further review under the procedures set forth in the West Virginia Code
147 of State Rules. The State Election Commission may affirm, modify, or overturn any decision made
148 pursuant to this section by the social media platform, and issue penalties pursuant to subsection
149 (k) of this section.

150 (i) Within 60 days of any primary, general, or special statewide or federal election, a social
151 media platform that intends to terminate, suspend, or otherwise restrict access of a candidate,
152 issue advocacy organization, party, or political party shall give prior written notice to affected party
153 and to the State Election Commission of the platform's intended action, which notice shall:

154 (1) Be sent via electronic notification and Certified Mail or other trackable mail service to
155 the affected candidate or candidates, issue advocacy organization, party or parties, or political
156 party or parties, and to the State Election Commission, in care of Secretary of State, no less than
157 two business days before the termination, suspension, or restriction such notification to be
158 effective as of the time and date of the earlier of the transmission of electronic notification or 5:00
159 p.m. on the date of the certified mail deposit;

160 (2) Include the following information:

161 (i) The specific user and the precise term(s) of service violated, and all evidence relied
162 upon in support of the violations;

163 (ii) The action execution date, which shall not be sooner than two business days from the
164 notification;

165 (iii) An online link to the social media platform's full user policy and any other relevant
166 policies, bylaws, or other documents affecting the user's alleged violation(s) or rights during the
167 appeal; and

168 (iv) All evidence relied upon by the social media platform in support of its planned action;

169 (3) Allow the candidate at least five business days from the receipt of the notice to appeal
170 the action simultaneously to the platform and to the State Election Commission in a secure, free,
171 and efficient online or other electronic manner;

172 (4) Include direct telephone and electronic mail contact information for at least one agent
173 of the social media platform who is directly involved with the appeal;

174 (5) If the affected candidate, issue advocacy organization, party, or political party, does
175 not appeal within the period given by the platform as the execution date, the platform may proceed
176 with the action. Any candidate, issue advocacy organization, party, or political party, who appeals
177 within the designated time and disagrees with a social media platform's decision under this
178 section may file a written complaint with the State Election Commission for further review under
179 the procedures set forth in the West Virginia Code of State Rules. Should the affected a candidate,

180 issue advocacy organization, party, or political party not appeal, such inaction will be taken into
181 consideration by The State Election Commission as to the appropriateness of the platform's
182 action: *Provided*, That the failure to appeal shall not be dispositive of the action, and the State
183 Election Commission may, *sua sponte*, take action or prevent action from being taken. The State
184 Election Commission may affirm, modify, or overturn any decision made pursuant to this section
185 by the social media platform, and issue penalties pursuant to subsection (k) of this section. Within
186 two business days of the earlier of the candidate's timely appeal or deadline of failure to respond,
187 the social media platform shall provide the candidate and the State Election Commission its final
188 decision in a written statement which either dismisses the social media platform's previously
189 planned action;

190 (6) All notices, responses, and decisions referenced in this section shall be provided by
191 electronic mail to the other party, and shall be deemed to have been provided upon proof of
192 transmission, which may include a read receipt or other reliable technical conformation according
193 to industry standards; and

194 (7) Any candidate, issue advocacy organization, party or any other person aggrieved by a
195 social media platform's violation of this section may file a verified complaint with the State Election
196 Commission for review under the procedures set forth in the West Virginia Code of State Rules.
197 The State Election Commission may affirm, modify, or overturn any decision made pursuant to
198 this section by the social media platform, and issue penalties pursuant to subsection (o) of this
199 section.

200 (j) This article shall not apply to a social media platform that terminates, suspends, or
201 otherwise restricts access of a candidate, issue advocacy organization, party or political party if
202 the content is:

203 (1) Clearly obscene or pornographic in nature;

204 (2) Unlawful under any federal or state law; or

205 (3) An incontrovertible incitement, as determined by the State Election Commission, to

206 commit criminal conduct or violent acts against others.

207 (k) Investigations into alleged violations of this article shall be referred to the State Election
208 Commission and, if the commission finds that a social media platform violated the provisions of
209 this article, the commission may issue a fine of up to \$100,000 dollars per day, per violation, and
210 until the action is corrected. Monetary damages assessed under this section shall be calculated
211 from the date of the first termination, suspension, or access restriction. Evidence of mitigation by
212 the social media platform of the user's complaint shall be taken into account in the computation
213 of any alleged damages to the user. The Secretary of State may utilize regular judicial processes
214 to seize assets of the social media company in order to secure judgments so ordered.

215 (l) The secretary of state is authorized to promulgate rules to implement the provisions of
216 this section.

CHAPTER 55. ACTIONS, SUITS AND ARBITRATION; JUDICIAL SALE.

ARTICLE 7. ACTIONS FOR INJURIES.

§55-7-32. Social media website speech; illegal actions; criminal penalties; cause of action; civil penalties.

1 (a) This act may be cited as the "Stop Social Media Censorship Act."

2 (b) As used in this section, the term:

3 (1) "Algorithm" means a set of instructions designed to perform a specific task.

4 (2) "Unprotected speech" means speech indicative of an intent to attempt to injure,
5 intimidate or interfere with, or oppress or threaten any other person in the free exercise or
6 enjoyment of any right or privilege secured to him or her by the Constitution or laws of the State
7 of West Virginia or by the Constitution or laws of the United States, because of such other person's
8 race, color, religion, ancestry, national origin, political affiliation or sex,

9 (3) "Obscene" means matter which the average person applying contemporary community
10 standards would find

11 (A) taken as a whole, appeals to the prurient interest and
12 (B) taken as a whole, lacks serious literary, artistic, political or scientific value, and which
13 either:
14 (i) Depicts or describes sexual acts in such manner; or
15 (ii) Depicts or describes nudity or sexual acts of persons below the age of eighteen.
16 (4) "Political speech" means speech relating to the state government, body politic, or public
17 administration as it relates to governmental policymaking. The term includes speech by the
18 government or a candidate for office and any discussion of social issues. The term does not
19 include speech concerning the administration, law, or civil aspects of government.
20 (5) "Religious speech" means a set of unproven answers, truth claims, faith-based
21 assumptions, and naked assertions that attempt to explain such greater questions as how the
22 world was created, what constitutes right and wrong actions by humans, and what happens after
23 death.
24 (6) "Social media website" means an Internet website or application that facilitates or
25 enables users to communicate with each other by posting information, comments, messages, or
26 images and that meets all of the following requirements:
27 (A) Is open to the public.
28 (B) Has more than 1 million subscribers.
29 (C) From its inception, has not been specifically affiliated with any one religion or political
30 party.
31 (c) (1) It is illegal for the owner or operator of a social media website who contracts with a
32 social media website user in this state to purposely:
33 (A) Delete or censor the user's religious speech or
34 (B) Political speech; or
35 (C) Use an algorithm to disfavor or censor the user's religious speech or political speech.

36 (2) Any social media website violating the provisions of this subsection is guilty of a felony
37 and shall be fined not less than \$75,000 nor more than \$100,000 for each such occurrence.

38 (d) (1) The owner or operator of a social media website who contracts with a social media
39 website user in this state is subject to a private right of action by such user if the social media
40 website purposely:

41 (A) Deletes or censors the user's religious speech or

42 (B) Political speech; or

43 (C) Uses an algorithm to disfavor or censure the user's religious speech or political
44 speech.

45 (2) A social media website user may be awarded all of the following damages under this
46 section:

47 (A) A minimum of \$75,000 in statutory damages per purposeful deletion or censoring of
48 the social media website user's speech;

49 (B) Actual damages;

50 (C) If aggravating factors are present, punitive damages; and,

51 (D) Other forms of legal or equitable relief.

52 (3) If an individual or business user's social media website account is disabled or
53 suspended by the social media website, the owner or operator of the website must provide
54 electronic notice to the user within 3 days after taking such action. The notice must be in writing
55 and must explain in detail why the user's account was suspended or disabled.

56 (4) The prevailing party in a cause of action under this section may be awarded costs and
57 reasonable attorney fees.

58 (5) A social media website that

59 (A) restores from deletion or removes the censoring of a social media website user's
60 speech, or

61 (B) which increases the number of interactions, shares, views, click-throughs, or other like
62 metrics, in a manner consistent with that which other similar content received from other users
63 with similar size and scope of readership, followers, or subscribers received; and

64 (C) does this within a reasonable amount of time;
65 may then use those facts as evidence to mitigate any damages.

66 (6) A social media website may not use the social media website user's alleged
67 unprotected speech as a basis for justification or defense of the social media website's actions at
68 trial.

69 (7) The Attorney General may also bring a civil cause of action under this section on behalf
70 of a social media website user or users who resides in this state and whose religious speech or
71 political speech has been censored, suppressed, or otherwise limited by a social media website:
72 Provided, That evidence of mitigation by the social media platform of the user's complaint shall
73 be taken into account in the computation of any alleged damages to the user.

74 (d) This section does not apply to any of the following:

75 (1) A social media website that deletes or censors a social media website user's speech
76 or that uses an algorithm to disfavor, limit, or censor speech that:

77 (A) Calls for immediate acts of violence;

78 (B) Is obscene or pornographic in nature;

79 (C) Is the result of operational error;

80 (D) Is the result of a court order;

81 (E) Comes from an inauthentic source or involves false personation;

82 (F) Entices criminal conduct; or

83 (G) Involves minors bullying minors.

84 (2) A social media website user's censoring of another social media website user's
85 speech.

86 (e) Only users who are 18 years of age or older, or, the parents and legal guardians of
87 persons under 18 years of age, have standing to seek enforcement of the civil provisions of this
88 section.