

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

Senate Bill 369

BY SENATORS AZINGER, PHILLIPS, SMITH, SWOPE,

KARNES, GRADY, AND MARTIN

[Introduced February 19, 2021; referred
to the Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §55-19-1, relating to a civil action for social media censorship.

Be it enacted by the Legislature of West Virginia:

ARTICLE 19. SOCIAL MEDIA CENSORSHIP – CIVIL ACTION.

§55-19-1. Definitions.

1 (a) As used in this article:

2 (1) “Interactive computer service” means any information service, system, or access
3 software provider that provides or enables computer access by multiple users to a computer
4 server, including specifically a service or system that provides access to the internet and such
5 systems operated or services offered by libraries or educational institutions.

6 (2) “Social media site” means a website through which users are able to share and
7 generate content and find and connect with other users of common interests.

8 (b) If an interactive computer service provider restricts, censors, or suppresses information
9 that does not pertain to obscene, lewd, lascivious, filthy, excessively violent, harassing, or
10 otherwise objectionable subject matter, the interactive computer service provider is liable in a civil
11 action for damages to the person whose speech is restricted, censored, or suppressed, and to
12 any person who reasonably otherwise would have received the writing, speech, or publication.

13 This section only applies if the interactive computer service provider:

14 (1) Is immune from civil liability under federal law;

15 (2) Is not considered a publisher;

16 (3) Has over one million users; and

17 (4) Is a provider of a social media site.

18 (c) A person whose writing, speech, or publication is restricted, censored, or suppressed
19 under this section, or a person that reasonably otherwise would have received the writing, speech,
20 or publication, is entitled to civil damages including treble damages. The court also may award
21 punitive damages.

- 22 (d) An action for civil damages under this section may be brought:
- 23 (1) In the circuit court in the county of residence of the person being infringed, censored,
- 24 or suppressed; or
- 25 (2) In the circuit court of residence of the person who reasonably would have otherwise
- 26 received the writing, speech, or publication.
- 27 (e) The circuit court shall award attorney’s fees to a prevailing plaintiff.
- 28 (f) An interactive computer service provider is immune from civil liability under §55-19-1(b)
- 29 of this code if:
- 30 (1) Has taken voluntarily, in good faith to restrict access to, or availability of, material that
- 31 the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent,
- 32 harassing, or otherwise objectionable, regardless of whether the material is constitutionally
- 33 protected; or
- 34 (2) Has taken to enable or make available to information content providers or others the
- 35 technical means to restrict access to material described in §55-19-1(f)(2) of this code.
- 36 (g) An interactive computer service provider may state affirmatively in the provider’s terms
- 37 of service that the provider is a publisher. If the statement is agreed upon by the person that is
- 38 restricted, censored, or suppressed, and any person who reasonably would have otherwise
- 39 received the writing, speech, or publication, §55-19-1(b) of this code does not apply.
- 40 (h) Notwithstanding §55-19-1(b) of this code, an interactive computer service provider
- 41 may limit content to subject matter expressly stated in the provider’s terms of service.

NOTE: The purpose of this bill is to create the Social Media Censorship Act, creating a cause of action against interactive computer service providers who purposefully censor content that is not obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable subject matter.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.