

# **WEST VIRGINIA LEGISLATURE**

## **2022 REGULAR SESSION**

**Introduced**

### **House Bill 4395**

BY DELEGATES LINVILLE, FERRELL, KEATON, CLARK,  
TONEY, MAZZOCCHI, STEELE, PHILLIPS, HAMRICK,  
BARNHART, AND G. WARD

[Introduced January 25, 2022; 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 section,  
2 designated §3-8-12a, relating to requirements imposed on social media companies to  
3 prevent corruption and provide transparency of election-related content made available  
4 on social media websites; equal opportunities for all candidates and political parties to  
5 speak without policy or partisan-based censorship; and to uphold the integrity of elections  
6 by ensuring election-related content hosted, posted, and made available on social media  
7 websites is not monetized or otherwise used or manipulated for nefarious purposes.

*Be it enacted by the Legislature of West Virginia:*

## **ARTICLE 8. REGULATION AND CONTROL OF ELECTIONS.**

### **§3-8-12a. 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 and provision of things of value that advocate for the election or defeat of  
5 candidates in West Virginia. Narrowly-tailored restrictions on election-related content have long  
6 been allowed under First Amendment jurisprudence including the "equal opportunity" provisions  
7 applied to the newspaper and print industries, and the "equal time" provisions applied to the  
8 television broadcast industry and enforced by the Federal Communications Commission. With the  
9 rise of social media platforms over the last decade as major providers of election-related content,  
10 there is an unmet need for legislation ensuring transparency and equity. To that end, social media  
11 platforms that disseminate election-related information in West Virginia must ensure that, in a

12     limited time frame near a Federal Election, there is:

13           (1) Compliance with the State's campaign finance laws when the platform's actions bestow  
14       value for one candidate or political party over that of another candidate or political party; and,

15           (2) An equal opportunity for all candidates appearing on West Virginia ballots to appear in  
16       the social media platform.

17           (c) Terms used in this section are defined as follows:

18           (1) "Candidate" means a person who has been nominated for a position on a ballot in a  
19       federal election recognizing that federal, state, and local candidates may all appear on a ballot in  
20       a federal election.

21           (3) "Chief Elections Officer" means the West Virginia Secretary of State.

22           (4) "Election Content" includes posts, comments, messages, or images, and hyperlinks  
23       created or promoted by a social media platform without user engagement, to any of the foregoing  
24       where the data conveys information to a social media platform user about candidates or parties  
25       associated with a federal or statewide primary, general, or special election.

26           (5) "Political Party" shall have the meaning prescribed in W.Va. Code §3-1-8.

27           (6) "Social media platform" means a user-specific, web-based technology intended to  
28       create virtual connection through the internet, which includes any online information service  
29       provider, internet search engine, access software provider, internet website, or application that  
30       enables users within the State of West Virginia to create, publish, and view content online for no  
31       cost to the user.

32           (7) "Untraceable messaging" means the transmission of digital content created or  
33       promoted by the social media platform which is not retrievable or re-viewable by users,  
34       researchers, or any other person or entity, after the message has been first viewed.

35           (d) Between (1) 60 days from any primary, general, or special statewide or federal election,  
36       and (2) the date the election is certified, a social media platform shall ensure the accuracy of  
37       published Election Content which includes but is not limited to the following:

38           (1) Official dates or deadlines, such as election dates, early voting periods, and deadlines;  
39           (2) Voter registration requirements, processes, or procedures;  
40           (3) In-person or absentee ballot voting requirements, processes, or procedures;  
41           (4) "Get Out The Vote" or "GOTV" information;  
42           (5) Polling place locations or hours;  
43           (6) Voter identification requirements;  
44           (7) Security and integrity of elections;  
45           (8) Instructions for receiving, completing, or submitting a ballot; and  
46           (9) Information about any candidate on a ballot.

47           (e) Social media platforms shall provide a campaign finance report to the Chief Election  
48           Officer of any increase in online visibility or other quantifiable assistance or attempt by the social  
49           media platform to influence a user's understanding or opinion regarding any candidate, party, or  
50           political party, in the State of West Virginia. Such disclosure report shall be made within 48 hours  
51           of the online activity in the same manner as reporting other types of electioneering  
52           communications according to §3-8-2b of this code, and without regard to the timeframe or  
53           minimum expenditure threshold requirements prescribed therein.

54           (f) Social media platforms shall not engage in, use, or make available opportunities for  
55           untraceable messaging of any election content.

56           (g) Between (1) 60 days from any primary, general, or special statewide or federal election,  
57           and (2) the date the election is certified, a social media platform that terminates, suspends, or  
58           otherwise restricts access of a candidate, party, or political party, shall give contemporaneous  
59           written notice to affected person or party and to the State Election Commission of the platform's  
60           intended action. Such notice shall: (i) Include the proposed grounds for termination, suspension  
61           or other restriction; (ii) the anticipated action execution date (cannot be sooner than five business  
62           days from notification); and (iii) provide the candidate or party details of the appeal process and  
63           opportunity to respond prior to implementation of the action by the platform. If the affected party

64     does not appeal within the period given by the platform as the execution date (as states above,  
65     the platform must give at least five business days from notification), the platform may proceed  
66     with the action. Any candidate or party who appeals within the designated time and disagrees  
67     with a social media platform's decision under this section may file a written complaint with the  
68     State Election Commission for further review under the procedures set forth in the West Virginia  
69     Code of State Rules 153-21. The State Election Commission may affirm, modify, or overturn any  
70     decision made pursuant to this section by the social media platform, and issue penalties pursuant  
71     to section (i) of this article.

72                 (h) This article shall not apply to a social media platform that terminates, suspends, or  
73     otherwise restricts access of a candidate or party if the content is:

74                     (1) Clearly obscene or pornographic in nature;  
75                     (2) Illegal under federal or West Virginia law; or  
76                     (3) An incontrovertible incitement, as determined by the State Election Commission, to  
77     commit criminal conduct or violent acts against others.

78                     (i) Investigations into alleged violations of this article shall be referred to the State Election  
79     Commission and, if the State Election Commission finds that a social media platform violated the  
80     provisions of this article, the State Election Commission may: (i) Issue a fine of up to \$100,000  
81     per day, per violation, and until the action is corrected; and (ii) request that the Attorney General  
82     seek injunctive relief to enforce the provisions of this article . Monetary damages assessed under  
83     this section shall be calculated from the date of the first termination, suspension, or access  
84     restriction, and shall be collectible by the Attorney General.

85                     (j) The Attorney General and Secretary of State may promulgate rules and regulations as  
86     necessary to further the purposes of this article.

NOTE: The purpose of this bill is to establish the Social Media Integrity and Anti-Corruption in Elections Act. The bill sets forth requirements imposed on social media companies to prevent corruption and provide transparency of election-related content made available on social media websites. The bill provides for equal opportunities for all candidates and

political parties to speak without policy- or partisan-based censorship. Finally, the bill seeks to uphold the integrity of elections by ensuring election-related content hosted, posted, and made available on social media websites is not monetized or otherwise used or manipulated for nefarious purposes.

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