WEST virginia legislature

2021 regular session

Introduced

House Bill 2913

By Delegates Ferrell, Linville, Foster, Hamrick, Burkhammer, Queen, Summers, Mandt, Keaton, Reynolds, and Wamsley

[Introduced March 04, 2021; Referred to the Committee on the Judiciary]

A BILL to amend and reenact the Code of West Virginia, 1931, as amended, adding thereto a new section designated §3-8-12a, relating to the Social Media Integrity and Anti-Corruption in Elections Act; providing requirements for social media companies to prevent corruption and provide transparency of election-related content made available on social media websites; providing equal opportunities for all candidates and political parties to speak without policy or partisan-based censorship; setting forth definitions; providing for the protection of 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; and providing civil penalties.

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

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.

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

(b) The Legislature finds that the state of West Virginia has a compelling interest in ensuring transparency in financial expenditures or other things of value to advocate for the election or defeat of candidates or political parties to prevent corruption or the appearance of corruption in elections. The Secretary of State is the Chief Elections Officer of the State of West Virginia, and along with the State Election Commission, they are responsible for overseeing the regulation of certain election speech, campaign finances, and other election-related activities in the State of West Virginia. Such regulation has not taken into full consideration the availability of online forums and social media platforms where West Virginia citizens and voters increasingly seek, discuss, receive, and exchange election-related ideas, issues, and news, and get information about candidates that appear on the ballot and parties, political parties, and other election-specific matters. Similarly, online forums and social media platforms reportedly have hundreds of millions of users from around the world, which has resulted in significant monetization of user-specific content preferences which can include users’ desires, policy positions, political leanings, and affiliations. Social media platforms also have access to other election content which has been and can be used for significant advertising value. To protect the integrity of elections held in West Virginia, the Legislature finds it compellingly important in the interest of the state, its citizens and voters, to prevent the potential for corruption, widespread intentional or accidental misinformation, disinformation, and unequal treatment generated by social media platforms or providers themselves. Therefore, because the Constitution of West Virginia places the authority to oversee, administer, and regulate West Virginia elections to the Chief Elections Officer and associated government agencies such as the State Election Commission, public elections are to be funded and run by the government and its agents. This act is designed to keep the integrity of elections held within West Virginia free from actual and perceived manipulation and corruption. To that end, as detailed in this section, social media platforms desiring to disseminate election-related information in West Virginia must ensure:

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

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

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

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

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

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

(2) “Chief Elections Officer” means the West Virginia Secretary of State;

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

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

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

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

(7) “Political Party” shall have the meaning prescribed in §3-1-8 the code.

(d) A social media platform shall not publish, promote, or otherwise disseminate election content to a user without first receiving prior express approval by the Chief Elections Officer under the process set forth in subsection (e) of this section, which election content includes, but is not limited to, the following:

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

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

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

(4) “Get Out The Vote” or “GOTV” information;

(5) Polling place locations or hours;

(6) Voter identification requirements;

(7) Security and integrity of elections;

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

(9) Information about any candidate on a ballot.

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

(f) Social media platforms shall disseminate election content uniformly to each user without regard to geography or user demographics, including data associated with the user’s online activity, information gathered or received by the social media platform from any source, or users’ perceived political preferences or party affiliation whether known, assumed, or predicted by an algorithm or other manner.

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

(h) Social media platforms shall not engage in, use, or make available opportunities for untraceable messaging of any election content under any circumstances.

(i) Social media platforms shall maintain records of all election content for no less than 10 years following the date of dissemination. All records of election content shall be maintained in a publicly accessible database, which shall be made available either online without request, or upon request to any requestor within 7 days of receipt of a written request at no cost to the requestor.

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

(k) Social media platforms shall not use any algorithm or manual determination to modify the visibility or availability of election content to any user based on any factor except that the user’s physical residence is located in the state of West Virginia. This prohibition does not apply to paid election advertisements or content created which is regulated and publicly disclosed according to §3-8-1 *et seq*. of this code.

(l) More than 60 days from any primary, general, or special statewide or federal election, a social media platform that terminates, suspends, or otherwise restricts access of a candidate, party, or political party, shall give contemporaneous written notice to affected person or party and to the State Election Commission of the platform’s intended action. Such notice shall:

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

(2) the anticipated action execution date (cannot be sooner than five business days from notification); and

(3) provide the candidate or party details of the appeal process and opportunity to respond prior to implementation of the action by the platform. If the affected party does not appeal within the period given by the platform as the execution date (as states above, the platform must give at least five business days from notification), the platform may proceed with the action. Any candidate or party who appeals within the designated time and disagrees with a social media platform’s decision under this section may file a written complaint with the State Election Commission for further review under the procedures set forth in the West Virginia Code of State Rules 153-21. The State Election Commission may affirm, modify, or overturn any decision made pursuant to this section by the social media platform, and issue penalties pursuant to subsection (o) of this section.

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

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

(2) Include the following information:

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

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

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

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

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

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

(5) If the affected party does not appeal within the period given by the platform as the execution date (as stated above, the platform must give at least two business days from notification), the platform may proceed with the action. Any candidate or party who appeals within the designated time and disagrees with a social media platform’s decision under this section may file a written complaint with the State Election Commission for further review under the procedures set forth in the West Virginia Code of State Rules 153-21. Should the affected party not appeal, such inaction will be taken into consideration by The State Election Commission as to the appropriateness of the platform’s action: *Provided*, That the failure to appeal shall not be dispositive of the action, and the State Election Commission may, *sua sponte*, take action or prevent action from being taken. The State Election Commission may affirm, modify, or overturn any decision made pursuant to this section by the social media platform, and issue penalties pursuant to subsection (o) of this section. Within two business days of the earlier of the candidate’s timely appeal or deadline of failure to respond, the social media platform shall provide the candidate and the State Election Commission its final decision in a written statement which either dismisses the social media platform’s previously planned action;

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

(7) Any candidate or other person aggrieved by a social media platform’s violation of this section may file a verified complaint with the State Election Commission for review under the procedures set forth in the West Virginia Code of State Rules 153-21. The State Election Commission may affirm, modify, or overturn any decision made pursuant to this section by the social media platform, and issue penalties pursuant to subsection (o) of this section.

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

(1) Clearly obscene or pornographic in nature;

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

(3) An incontrovertible incitement, as determined by the State Election Commission, to commit criminal conduct or violent acts against others.

(o) Investigations into alleged violations of this article shall be referred to the State Election Commission and, if the commission finds that a social media platform violated the provisions of this article, the commission may issue a fine of up to $100,000 dollars per day, per violation, and until the action is corrected. Monetary damages assessed under this section shall be calculated from the date of the first termination, suspension, or access restriction.

NOTE: The purpose of this bill is to create the Social Media Integrity and Anti-Corruption in Elections Act. The bill provides requirements for social media companies to prevent corruption and provide transparency of election-related content made available on social media websites and provides equal opportunities for all candidates and political parties to speak without policy or partisan-based censorship. The bill sets forth definitions. The bill provides for the protection of 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, and provides for civil penalties.

Strike-through indicates language that would be stricken and underscore indicates new language that would be added.