

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

Senate Bill 633

BY SENATORS AZINGER, PHILLIPS, SMITH, AND GRADY

[Introduced March 12, 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 section,
 2 designated §3-8-12a, relating to the Social Media Integrity and Anti-Corruption in Elections
 3 Act; providing requirements for social media companies to prevent corruption and provide
 4 transparency of election-related content made available on social media websites;
 5 providing equal opportunities for all candidates and political parties to speak without policy
 6 or partisan-based censorship; setting forth definitions; providing for the protection of the
 7 integrity of elections by ensuring election-related content hosted, posted, and made
 8 available on social media websites is not monetized or otherwise used or manipulated for
 9 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.

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 or other things of value to advocate 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, they are responsible for overseeing the
 8 regulation of certain election speech, campaign finances, and other election-related activities in

9 the State of West Virginia. Such regulation has not taken into full consideration the availability of
10 online forums and social media platforms where West Virginia citizens and voters increasingly
11 seek, discuss, receive, and exchange election-related ideas, issues, and news, and get
12 information about candidates that appear on the ballot and parties, political parties, and other
13 election-specific matters. Similarly, online forums and social media platforms reportedly have
14 hundreds of millions of users from around the world, which has resulted in significant monetization
15 of user-specific content preferences which can include users' desires, policy positions, political
16 leanings, and affiliations. Social media platforms also have access to other election content which
17 has been and can be used for significant advertising value. To protect the integrity of elections
18 held in West Virginia, the Legislature finds it compellingly important in the interest of the state, its
19 citizens and voters, to prevent the potential for corruption, widespread intentional or accidental
20 misinformation, disinformation, and unequal treatment generated by social media platforms or
21 providers themselves. Therefore, because the Constitution of West Virginia places the authority
22 to oversee, administer, and regulate West Virginia elections to the Chief Elections Officer and
23 associated government agencies such as the State Election Commission, public elections are to
24 be funded and run by the government and its agents. This act is designed to keep the integrity of
25 elections held within West Virginia free from actual and perceived manipulation and corruption.
26 To that end, as detailed in this section, social media platforms desiring to disseminate election-
27 related information in West Virginia must ensure:

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

29 (2) The equal use opportunity 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 or organization, and the express approval of the Chief Elections Officer; and

34 (4) Compliance with the State's campaign finance laws when the platform's actions bestow

35 value for one candidate or political party over that of another candidate or political party.

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

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

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

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

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

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

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

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

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

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

- 61 (2) Voter registration requirements, processes, or procedures;
62 (3) In-person or absentee ballot voting requirements, processes, or procedures;
63 (4) “Get Out The Vote” or “GOTV” information;
64 (5) Polling place locations or hours;
65 (6) Voter identification requirements;
66 (7) Security and integrity of elections;
67 (8) Instructions for receiving, completing, or submitting a ballot; and
68 (9) Information about any candidate on a ballot.
- 69 (e) Prior approval by the Chief Elections Officer of election content delineated in
70 subsection (d) of this section shall be requested in writing and obtained by the social media
71 platform. Such written request may be made via electronic notification or certified mail.
- 72 (f) Social media platforms shall disseminate election content uniformly to each user
73 without regard to geography or user demographics, including data associated with the user’s
74 online activity, information gathered or received by the social media platform from any source, or
75 users’ perceived political preferences or party affiliation whether known, assumed, or predicted
76 by an algorithm or other manner.
- 77 (g) Social media platforms shall publicly report and provide written notice to the Chief
78 Election Officer of any increase in online visibility or other quantifiable assistance or attempt by
79 the social media platform to influence a user’s understanding or opinion regarding any candidate,
80 party, or political party, in the state of West Virginia. Such disclosure report shall be made within
81 48 hours of the online activity occurrence(s) in the same manner as reporting electioneering
82 communications according to §3-8-2b of this code, and without regard to the timeframe or
83 minimum expenditure threshold requirements prescribed therein.
- 84 (h) Social media platforms shall not engage in, use, or make available opportunities for
85 untraceable messaging of any election content under any circumstances.
- 86 (i) Social media platforms shall maintain records of all election content for no less than 10

87 years following the date of dissemination. All records of election content shall be maintained in a
88 publicly accessible database, which shall be made available either online without request, or upon
89 request to any requestor within 7 days of receipt of a written request at no cost to the requestor.

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

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

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

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

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

106 (3) Provide the candidate or party details of the appeal process and opportunity to respond
107 prior to implementation of the action by the platform. If the affected party does not appeal within
108 the period given by the platform as the execution date (as states above, the platform must give at
109 least five business days from notification), the platform may proceed with the action. Any
110 candidate or party who appeals within the designated time and disagrees with a social media
111 platform's decision under this section may file a written complaint with the State Election
112 Commission for further review under the procedures set forth in the West Virginia Code of State

113 Rules 153-21. The State Election Commission may affirm, modify, or overturn any decision made
114 pursuant to this section by the social media platform, and issue penalties pursuant to subsection
115 (o) of this section.

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

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

125 (2) Include the following information:

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

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

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

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

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

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

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

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

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

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

- 165 (1) Clearly obscene or pornographic in nature;
166 (2) Unlawful under any federal or state law; or
167 (3) An incontrovertible incitement, as determined by the State Election Commission, to
168 commit criminal conduct or violent acts against others.
- 169 (o) Investigations into alleged violations of this article shall be referred to the State Election
170 Commission and, if the commission finds that a social media platform violated the provisions of
171 this article, the commission may issue a fine of up to \$100,000 dollars per day, per violation, and
172 until the action is corrected. Monetary damages assessed under this section shall be calculated
173 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.