

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 2845

BY DELEGATES KEATON AND B. WARD

[Introduced March 02, 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 §55-7L-1, §55-7L-2, and §55-7L-3, all relating to permitting civil actions by a
 3 social media website user for censorship or suppression of social media user's speech;
 4 providing definitions; stating defenses to civil action; and authorizing the Attorney General
 5 to bring action on behalf of a social media user.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7L. PROHIBITION TO CERTAIN SOCIAL MEDIA CENSORSHIP ACT.

§55-7L-1. Definitions.

1 As used in this article:

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

3 (2) "Hate speech" a phrase concerning content that a person arbitrarily finds offensive
 4 based on his or her personal moral code;

5 (3) "Obscene" means content that to the average person, applying contemporary
 6 community standards, the dominant theme of the material taken as a whole appeals to prurient
 7 interest and lacks serious literary, artistic, political, or scientific value;

8 (4) "Political speech" means speech relating to the state, government, body politic, public
 9 administration, or government policymaking, including speech by the government or candidates
 10 for office, and any speech relating to social issues. The term does not include speech concerning
 11 the administration of or the law relating to the civil aspects of government; and

12 (5) "Social media website" means a website or application that enables users to
 13 communicate with each other by posting information, comments, messages, or images and:

14 (i) Is open to the public;

15 (ii) Has more than 75 million users; and

16 (iii) Has not been specifically affiliated with any one religion or political party from its
 17 inception.

§55-7L-2. Action for censoring or suppression of social media user's speech.

1 (a) A social media website user may bring a civil action against the owner or operator of
2 a social media website with users in this state if the social media website purposely:

3 (1) Censors a social media website user's religious or political speech; or

4 (2) Uses an algorithm to suppress religious or political speech.

5 (b) It is not a defense to a civil action under this article that the social media website user's
6 speech was hate speech.

7 (c) The civil action shall be for actual damages and other relief, including punitive damages
8 and injunctive relief. Actions brought under this section are not subject to statutory limits on
9 punitive damages, including those limits found in §55-7-29: *Provided*, That punitive damages may
10 not exceed \$75,000.

11 (d) The prevailing party may seek attorney fees and costs.

§55-7L-3. Defenses to civil action.

1 (a) A social media website is not liable under this article if the censored speech calls for
2 immediate acts of violence, is obscene or pornographic in nature, was censored as a result of
3 operational error, was censored as a result of a court order, came from an inauthentic source or
4 involved false impersonation, enticed criminal conduct, or involved minors.

5 (b) Only social media website users 18 years old or older have standing to enforce this
6 section.

7 (c) The Attorney General may bring a civil action under this article on behalf of a social
8 media website user who resides in this state whose religious or political speech has been
9 censored by a social media website.

NOTE: The purpose of this bill is to permit civil actions by a social media website user for censoring or suppression of social media user's speech.

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