

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1035

(Delegate M. Fisher, *et al.*)

Ways and Means

Election Law - Websites - Reporting of Politically Biased Algorithms

This bill establishes reporting requirements for specified social networks or search engines that implement politically biased algorithms.

Fiscal Summary

State Effect: None. The bill can be implemented with existing resources.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary: The bill requires a “covered website” that implements a politically biased algorithm to file a report with the State Board of Elections (SBE) within seven days after implementing the algorithm. An additional report must be filed on every seventh day following the due date of the initial report, covering the immediately preceding seven days, if the covered website implemented a politically biased algorithm during that period.

“Covered website” means an online social network or search engine that has 50 million or more unique monthly U.S. visitors or users for a majority of months during the immediately preceding 12 months.

“Politically biased algorithm” means an algorithm that is designed to promote the success or defeat of a candidate, political party, or position on a question at an election by causing a user of a covered website to view campaign material or other content that (1) favors a

particular candidate, political party, or position on a question more frequently than campaign material or content that favors the opposing candidate, political party, or position on a question; or (2) disfavors a particular candidate, political party, or position on a question more frequently than campaign material or content that disfavors the opposing candidate, political party, or position on a question.

Each report must include (1) each candidate, political party, or question that the politically biased algorithm was designed to promote or defeat; (2) the dates that the algorithm was in use; (3) digital copies of the campaign material or other content that the politically biased algorithm caused users to view; (4) the number of users exposed to campaign material or other content generated by the politically biased algorithm; (5) any amount of money or other thing of value received by the covered website from another person to implement the politically biased algorithm; and (6) any other information SBE requires by regulation.

The bill authorizes SBE to assess a civil penalty on a covered website that fails to file a required report in an amount up to \$50,000 for each violation. Penalties are distributed to the Fair Campaign Financing Fund and are the joint and several liability of (1) the covered website and (2) the person exercising direction or control over the activities of the covered website.

SBE may adopt regulations to implement the bill.

Current Law/Background: Requirements applicable to political communications on online platforms were established in State law in 2018, under Chapters 833 and 834. A person who directly or indirectly requests placement of a “qualifying paid digital communication” on an online platform must expressly notify the online platform at the time the request for placement is made that the communication is a qualifying paid digital communication.

“Qualifying paid digital communication” is defined as any electronic communication that (1) is campaign material; (2) is placed or promoted for a fee on an online platform; (3) is disseminated to 500 or more individuals; and (4) does not propose a commercial transaction.

An online platform must maintain specified records for each qualifying paid digital communication a purchaser requests to disseminate through the online platform and for which the purchaser has provided notice of it being a qualifying paid digital communication. Certain records must be made available to the public (regarding those responsible for the qualifying paid digital communication and the amount paid for its placement) on the Internet, in a clearly identifiable location on the online platform’s website and searchable by purchaser, within 48 hours of the purchase of a qualifying paid digital communication. Other records must be made available to SBE on request (regarding

the content of the qualifying paid digital communication, the timing of the dissemination, the geographic and audience focus of the dissemination, and the exposure generated by the dissemination), within 48 hours after a qualifying paid digital communication is first disseminated.

A purchaser of a qualifying paid digital communication must provide the online platform with the information necessary in order for the online platform to maintain the required records, and an online platform may rely in good faith on the information provided by a purchaser. The records made available to and obtained by SBE are not subject to inspection under the Public Information Act.

An online platform must make reasonable efforts to (1) allow SBE to take specified actions, generally relating to implementation and enforcement of the requirements applicable to qualifying paid digital communications, and (2) in accordance with specified federal law, comply with any subpoena issued in connection with an investigation concerning the compliance of a purchaser of a qualifying paid digital communication with the bill's requirements or campaign material authority line requirements.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): State Board of Elections; Office of the Attorney General (Consumer Protection Division); Comptroller's Office; Department of Legislative Services

Fiscal Note History: First Reader - March 1, 2019
sb/hlb

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