HOUSE BILL 1368

By: Delegates Cox, Boteler, McComas, Morgan, Rose, Shoemaker, and Thiam
Introduced and read first time: February 11, 2022
Assigned to: Economic Matters

A BILL ENTITLED

AN ACT concerning

Business Regulation – Social Media Websites – Censored Speech

FOR the purpose of prohibiting a social media website from taking certain actions to censor the religious speech or political speech of a certain user; providing that the owner or operator of a social media website is subject to a certain cause of action for taking certain actions to censor the religious speech or political speech of a certain user; authorizing the Attorney General to bring a certain civil cause of action; providing that a violation of this Act is an unfair, abusive, or deceptive trade practice that is subject to certain penalties; requiring a social media website to publish certain rules and policies and provide certain notice related to the ban or suspension of a user; requiring the Secretary of State to impose certain fines on a social media website under certain circumstances; prohibiting a social media website from using a certain user’s alleged hate speech for a certain purpose; and generally relating to social media websites and censored speech.

BY adding to
Article – Business Regulation
Section 19–1001 through 19–1009 to be under the new subtitle “Subtitle 10. Speech Censored by Social Media Websites”
Annotated Code of Maryland
(2015 Replacement Volume and 2021 Supplement)

BY repealing and reenacting, without amendments,
Article – Criminal Law
Section 11–203(a)(1) and (5) and (b)
Annotated Code of Maryland
(2021 Replacement Volume and 2021 Supplement)

BY repealing and reenacting, without amendments,
Article – Election Law
Section 1–101(a) and (l)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.
Annotated Code of Maryland
(2017 Replacement Volume and 2021 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
That the Laws of Maryland read as follows:

Article – Business Regulation

Subtitle 10. Speech Censored by Social Media Websites.

19–1001.

(A) In this subtitle the following words have the meanings indicated.

(B) “Algorithm” means a process or set of rules to be followed in calculations or other problem-solving operations.

(C) “Hate speech” means words that an individual finds offensive based on their personal morals.

(D) “Obscene” has the meaning stated in § 11–203 of the Criminal Law Article.

(E) “Political speech” means words relating to the state, body politic, public administration, public policy making, or the government, including discussion of social issues or speech by government officials or entities or candidates for political office.

(F) “Religious speech” means words relating to a particular system of faith and worship.

(G) “Social media website” means an application, a program, software, or a website that allows users to communicate with each other by posting information, comments, messages, or images and that:

(1) is open to the public;
(2) has more than 75,000,000 users;
(3) has never been affiliated with a specific religion or political party;
(4) PROVIDES A METHOD FOR USERS TO REPORT OBSCENE MATERIAL AND HAS PROCEDURES FOR EVALUATING THOSE REPORTS AND REMOVING OBSCENE MATERIAL; AND

(5) REQUIRES A USER TO AGREE TO TERMS OF SERVICE OR ANY OTHER USER AGREEMENT ESTABLISHED BY THE SOCIAL MEDIA WEBSITE FOR REGISTRATION AND USE.

(H) “User” means a person that:

(1) USES A SOCIAL MEDIA WEBSITE; AND

(2) AGREED TO THE TERMS OF SERVICE OR OTHER USER AGREEMENT ESTABLISHED BY THE SOCIAL MEDIA WEBSITE.

19–1002.

(A) This subtitle applies to a social media website that operates in the State or has users who reside in the State.

(B) This subtitle does not apply to:

(1) A social media website that disfavors, censors, or deletes a user’s speech if the speech:

(I) CALLS FOR IMMEDIATE ACTS OF VIOLENCE OR CRIMINAL CONDUCT;

(II) CALLS FOR A USER TO SELF–HARM;

(III) IS OBSCENE OR PORNOGRAPHIC IN NATURE;

(IV) IS HARMFUL TO MINORS, INCLUDING SPEECH THAT BULLIES OR HARASSES A MINOR;

(V) COMES FROM AN INAUTHENTIC SOURCE OR INVOLVES IMPERSONATION;

(VI) DEPICTS EXCESSIVE VIOLENCE;

(VII) CONSTITUTES TRADEMARK OR COPYRIGHT INFRINGEMENT;

OR
(VIII) CONSTITUTES UNSOLICITED FRAUDULENT OR COMMERCIAL INFORMATION;

(2) SPEECH THAT A SOCIAL MEDIA WEBSITE IS REQUIRED TO DISFAVOR, CENSOR, OR DELETE UNDER A COURT ORDER;

(3) A SOCIAL MEDIA WEBSITE USER’S DISFAVORING, CENSORING, OR DELETING OF ANOTHER USER’S SPEECH; OR

(4) ACTIONS TAKEN BY A SOCIAL MEDIA WEBSITE TO DISFAVOR, CENSOR, OR DELETE SPEECH MADE BY OR DIRECTED TO A MINOR.

19–1003.

(A) A SOCIAL MEDIA WEBSITE MAY NOT:

(1) TAKE ACTIONS TO DISFAVOR, CENSOR, OR DELETE A USER’S RELIGIOUS OR POLITICAL SPEECH; OR

(2) USE AN ALGORITHM TO DISFAVOR, CENSOR, OR DELETE A USER’S RELIGIOUS OR POLITICAL SPEECH.

(B) A CIVIL ACTION AGAINST THE OWNER OR OPERATOR OF A SOCIAL MEDIA WEBSITE FOR A VIOLATION OF THIS SECTION MAY BE BROUGHT BY:

(1) A USER THAT WAS HARMED BY THE VIOLATION; OR

(2) THE ATTORNEY GENERAL ON BEHALF OF A USER THAT WAS HARMED BY THE VIOLATION.

19–1004.

(A) A USER THAT BRINGS A CAUSE OF ACTION UNDER THIS SUBTITLE MAY BE AWARDED:

(1) ACTUAL DAMAGES;

(2) A MONETARY AWARD NOT EXCEEDING $75,000;

(3) IF THE SOCIAL MEDIA WEBSITE ENGAGED IN WILLFUL AND WANTON MISCONDUCT, PUNITIVE DAMAGES; AND

(4) ANY OTHER EQUITABLE RELIEF.
(B) The court may award court costs and reasonable attorney’s fees to the prevailing party in a cause of action brought under this subtitle.

(C) A social media website that restores a user’s disfavored, censored, or deleted religious or political speech within a reasonable period of time may use this fact to mitigate damages under this section.

19–1005.

The venue for a civil action under this subtitle shall be in the county where the user of the social media website:

(1) resides; or

(2) was the subject of an act by a social media website prohibited under this subtitle.

19–1006.

A violation of § 19–1003(A) of this subtitle is:

(1) an unfair, abusive, or deceptive trade practice within the meaning of Title 13 of the Commercial Law Article; and

(2) subject to the enforcement and penalty provisions under Title 13 of the Commercial Law Article.

19–1007.

(A) (1) A social media website shall publish the rules and policies relating to banning, suspending, disfavoring, censoring, and deleting the speech or accounts of a user.

(2) The rules and policies in paragraph (1) of this subsection shall be applied to users in a fair and consistent manner by a social media website.

(B) Within 30 days after the banning or suspension of the account of a user, a social media website shall notify the user in writing of the following:
(1) THE BASIS FOR THE BAN OR SUSPENSION; AND

(2) ANY RECOURSE FOR A USER TO RESTORE AN ACCOUNT THAT WAS BANNED OR SUSPENDED.

19–1008.

(A) IF THE ACCOUNT OR SPEECH OF A USER WHO IS ALSO A CANDIDATE, AS DEFINED IN § 1–101 OF THE ELECTION LAW ARTICLE, HAS BEEN BANNED, SUSPENDED, DISFAVORED, CENSORED, OR DELETED BY A SOCIAL MEDIA WEBSITE BECAUSE OF RELIGIOUS OR POLITICAL SPEECH, THE SECRETARY OF STATE SHALL IMPOSE THE FOLLOWING FINES ON THE SOCIAL MEDIA WEBSITE:

(1) FOR A CANDIDATE SEEKING STATEWIDE OFFICE, $100,000 PER DAY FOR EACH DAY THAT THE VIOLATION CONTINUES; AND

(2) FOR A CANDIDATE SEEKING ANY OTHER OFFICE, $10,000 PER DAY FOR EACH DAY THAT THE VIOLATION CONTINUES.

(B) A SOCIAL MEDIA WEBSITE SHALL DISCLOSE THE BASIS FOR THE BAN, SUSPENSION, DISFAVORING, CENSORSHIP, OR DELETION UNDER SUBSECTION (A) OF THIS SECTION TO THE SECRETARY OF STATE, INCLUDING ANY POLITICAL BIAS IN AN ALGORITHM USED BY THE SOCIAL MEDIA WEBSITE.

19–1009.

A SOCIAL MEDIA WEBSITE MAY NOT USE A USER’S ALLEGED HATE SPEECH AS A BASIS FOR JUSTIFICATION OF OR DEFENSE TO ANY CIVIL ACTION OR FINE IMPOSED UNDER THIS SUBTITLE.

Article – Criminal Law

11–203.

(a) (1) In this section the following words have the meanings indicated.

(5) “Obscene” means:

(i) that the average adult applying contemporary community standards would find that the work, taken as a whole, appeals to the prurient interest;

(ii) that the work depicts sexual conduct specified in subsection (b) of this section in a way that is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material; and
(iii) that the work, taken as a whole, lacks serious artistic, educational, literary, political, or scientific value.

(b) (1) A person may not willfully or knowingly display or exhibit to a minor an item:

(i) the cover or content of which is principally made up of an obscene description or depiction of illicit sex; or

(ii) that consists of an obscene picture of a nude or partially nude figure.

(2) A person may not willfully or knowingly engage in the business of displaying, exhibiting, selling, showing, advertising for sale, or distributing to a minor an item:

(i) the cover or content of which is principally made up of an obscene description or depiction of illicit sex; or

(ii) that consists of an obscene picture of a nude or partially nude figure.

(3) If a newsstand or other place of business is frequented by minors, the owner, operator, franchisee, manager, or an employee with managerial responsibility may not openly and knowingly display at the place of business an item whose sale, display, exhibition, showing, or advertising is prohibited by paragraph (2) of this subsection.

Article – Election Law

(a) In this article the following words have the meanings indicated unless a different meaning is clearly intended from the context.

(l) (1) “Candidate” means an individual who files a certificate of candidacy for a public or party office.

(2) “Candidate” includes:

(i) an incumbent judge of the Court of Appeals or Court of Special Appeals at an election for continuance in office; and

(ii) an individual, prior to that individual filing a certificate of candidacy, if a campaign finance entity has been established on behalf of that individual.
SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2022.