

Department of Legislative Services
 Maryland General Assembly
 2022 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 1368 (Delegate Cox, *et al.*)
 Economic Matters

Business Regulation - Social Media Websites - Censored Speech

This bill prohibits a social media website from disfavoring, censoring, or deleting a user’s religious or political speech and authorizes a user, or the Attorney General on behalf of a user, to bring a civil action against the owner or operator of a social media website for a violation. A violation of the prohibition is also subject to (1) enforcement under the Maryland Consumer Protection Act (MCPA) and (2) if a user is a candidate for elected office, fines imposed by the Secretary of State. The bill establishes requirements relating to a social media website’s rules and policies and to notice provided to a banned or suspended user.

Fiscal Summary

State Effect: General/special fund expenditures increase by \$198,100 in FY 2023; out-years reflect annualization and inflation. General/special fund revenues may increase, beginning in FY 2023.

(in dollars)	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027
GF/SF Rev.	-	-	-	-	-
GF/SF Exp.	\$198,100	\$239,500	\$246,200	\$252,600	\$259,200
Net Effect	-/(-)	-/(-)	-/(-)	-/(-)	-/(-)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: The bill’s imposition of existing penalty provisions does not have a material impact on local government finances or operations.

Small Business Effect: None.

Analysis

Bill Summary:

Prohibition and Cause of Action

The bill prohibits a social media website that operates in the State or has users who reside in the State from (1) taking actions to disfavor, censor, or delete a user's religious or political speech or (2) using an algorithm to disfavor, censor, or delete a user's religious or political speech. A civil action may be brought against the owner or operator of a social media website for a violation of the prohibition 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.

A user that brings a cause of action may be awarded (1) actual damages; (2) a monetary award of up to \$75,000; (3) if the social media website engaged in willful and wanton misconduct, punitive damages; and (4) any other equitable relief. 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 that fact to mitigate damages. The court may award court costs and reasonable attorney's fees to the prevailing party, and the venue for a civil action under the bill is in the county where the user resides or was the subject of an act prohibited by the bill.

"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 million 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.

The prohibition does not apply to (1) a social media website that disfavors, censors, or deletes certain types of users' speech specified in the bill, including certain speech relating to violence or obscenity; (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.

Enforcement under the Maryland Consumer Protection Act

The bill establishes that a violation of the bill's prohibition is also an unfair, abusive, or deceptive trade practice and subject to the enforcement and penalty provisions under MCPA.

Fines and Disclosure if a Social Media Website User Is Also a Candidate

If the account or speech of a user who is also a candidate for a public office or a political party office has been banned, suspended, disfavored, censored, or deleted by a social media website because of religious or political speech, the Secretary of State must 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. A social media website must disclose the basis for the ban, suspension, disfavoring, censorship, or deletion of a candidate's account or speech to the Secretary of State, including any political bias in an algorithm used by the social media website.

Social Media Website Rules and Policies

A social media website must publish the rules and policies relating to banning, suspending, disfavoring, censoring, and deleting the speech or accounts of a user. The rules and policies must be applied to users in a fair and consistent manner by a social media website.

Notice to Banned or Suspended User

Within 30 days after the banning or suspension of the account of a user, a social media website must notify the user in writing of (1) the basis for the ban or suspension and (2) any recourse for a user to restore an account that was banned or suspended.

Alleged Hate Speech

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 the bill.

Current Law: An unfair, abusive, or deceptive trade practice under MCPA includes, among other acts, any false, falsely disparaging, or misleading oral or written statement, visual description, or other representation of any kind which has the capacity, tendency, or effect of deceiving or misleading consumers. The prohibition against engaging in any unfair, abusive, or deceptive trade practice encompasses the offer for or actual sale, lease, rental, loan, or bailment of any consumer goods, consumer realty, or consumer services; the extension of consumer credit; the collection of consumer debt; or the offer for or actual purchase of consumer goods or consumer realty from a consumer by a merchant whose business includes paying off consumer debt in connection with the purchase of any consumer goods or consumer realty from a consumer.

The Consumer Protection Division within the Office of the Attorney General (OAG) is responsible for enforcing MCPA and investigating the complaints of aggrieved consumers.

The division may attempt to conciliate the matter, issue a cease and desist order, or file a civil action in court. A merchant who violates MCPA is subject to a fine of up to \$10,000 for each violation and up to \$25,000 for each repetition of the same violation. In addition to any civil penalties that may be imposed, any person who violates MCPA is guilty of a misdemeanor and, on conviction, is subject to a fine of up to \$1,000 and/or imprisonment for up to one year.

State Expenditures: General/special fund expenditures increase by \$198,066 in fiscal 2023, which accounts for the bill’s October 1, 2022 effective date. This estimate reflects the cost of hiring an assistant Attorney General and an administrative support position to handle enforcement of the bill. The estimate is based on OAG’s expectation of the workload that will be associated with enforcing the bill’s prohibition. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	2.0
Salaries and Fringe Benefits	\$183,380
Operating Expenses	<u>14,686</u>
Total FY 2023 State Expenditures	\$198,066

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

State Revenues: To the extent that penalties/fines are imposed and collected, and costs are recovered, in enforcement or civil actions undertaken under the bill, general/special fund revenues increase, beginning in fiscal 2023. The extent of any increase cannot be reliably estimated.

Additional Information

Prior Introductions: HB 1314 of 2021 was referred to the House Economic Matters Committee but was subsequently withdrawn.

Designated Cross File: None.

Information Source(s): Office of the Attorney General (Consumer Protection Division); Judiciary (Administrative Office of the Courts); State Board of Elections; State Ethics Commission; Department of Legislative Services

Fiscal Note History: First Reader - March 8, 2022
fnu2/jkb

Analysis by: Scott D. Kennedy

Direct Inquiries to:
(410) 946-5510
(301) 970-5510