SB 1428

Introduced by
Senators Townsend, Borrelli; Representatives Bolick, Cook, Fillmore

AN ACT

AMENDING TITLE 18, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 7; RELATING TO INFORMATION TECHNOLOGY.

(TEXT OF BILL BEGINS ON NEXT PAGE)
Be it enacted by the Legislature of the State of Arizona:

Section 1. Title 18, Arizona Revised Statutes, is amended by adding chapter 7, to read:

CHAPTER 7
SOCIAL MEDIA CENSORSHIP PROHIBITION
ARTICLE 1. GENERAL PROVISIONS

18-701. Definitions
IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1. "ALGORITHM" MEANS A SET OF INSTRUCTIONS DESIGNED TO PERFORM A SPECIFIC TASK.

2. "HARMFUL TO MINORS" HAS THE SAME MEANING PRESCRIBED IN SECTION 13-3501.

3. "HATE SPEECH" MEANS A PHRASE CONCERNING CONTENT THAT AN INDIVIDUAL FINDS OFFENSIVE BASED ON THE INDIVIDUAL'S PERSONAL MORAL CODE.

4. "OBSCENE MATERIAL" MEANS CONTENT THAT MEETS ANY OF THE FOLLOWING:
   (a) WHEN CONSIDERED OR TAKEN AS A WHOLE, THE AVERAGE INDIVIDUAL APPLYING CONTEMPORARY COMMUNITY STANDARDS WOULD FIND APPEALS TO THE PRURIENT INTEREST.
   (b) DEPICTS OR DESCRIBES SEXUAL ACTIVITY IN A PATENTLY OFFENSIVE WAY BY AUDIO OR VISUAL REPRESENTATIONS.
   (c) WHEN CONSIDERED OR TAKEN AS A WHOLE, LACKS SERIOUS LITERARY, ARTISTIC, POLITICAL OR SCIENTIFIC VALUE.

5. "POLITICAL SPEECH":
   (a) MEANS SPEECH RELATING TO THIS STATE, A GOVERNMENT, A BODY POLITIC OR A PUBLIC ADMINISTRATION AS THE SPEECH RELATES TO GOVERNMENTAL POLICYMAKING.
   (b) INCLUDES SPEECH BY THE GOVERNMENT OR A CANDIDATE FOR OFFICE AND ANY DISCUSSION OF SOCIAL ISSUES.

6. "RELIGIOUS SPEECH" MEANS AN EXPRESSION OF A SINCERE AND MEANINGFUL BELIEF THAT ATTEMPTS TO EXPLAIN SUCH GREATER QUESTIONS AS HOW THE WORLD WAS CREATED, WHAT CONSTITUTES RIGHT AND WRONG ACTIONS BY HUMANS AND WHAT HAPPENS AFTER DEATH.

7. "SHADOWBAN" MEANS:
   (a) THE ACT OF BLOCKING OR PARTIALLY BLOCKING A USER OR THE USER'S CONTENT FROM AN ONLINE COMMUNITY SO THAT IT IS NOT READILY APPARENT TO THE USER THAT THE USER HAS BEEN BANNED.
   (b) STEALTH BANNING, GHOST BANNING OR COMMENT GHOSTING.

8. "SOCIAL MEDIA WEBSITE" MEANS AN INTERNET WEBSITE OR APPLICATION THAT ENABLES USERS TO COMMUNICATE WITH EACH OTHER BY POSTING INFORMATION, COMMENTS, MESSAGES OR IMAGES AND THAT MEETS ALL OF THE FOLLOWING:
   (a) IS OPEN TO THE PUBLIC.
   (b) HAS MORE THAN SEVENTY-FIVE MILLION SUBSCRIBERS.
   (c) FROM ITS INCEPTION HAS NOT BEEN SPECIFICALLY AFFILIATED WITH ANY ONE RELIGION OR POLITICAL PARTY.
(d) PROVIDES A MEANS FOR THE WEBSITE’S USERS TO REPORT OBSCENE MATERIALS AND HAS IN PLACE PROCEDURES FOR EVALUATING THOSE REPORTS AND REMOVING OBSCENE MATERIAL.

18-702. Social media censorship prohibited; damages; costs; enforcement; exceptions

A. THE OWNER OR OPERATOR OF A SOCIAL MEDIA WEBSITE THAT CONTRACTS WITH A SOCIAL MEDIA WEBSITE USER IN THIS STATE MAY NOT PURPOSELY:

1. DELETE OR CENSOR THE SOCIAL MEDIA WEBSITE USER’S RELIGIOUS SPEECH OR POLITICAL SPEECH.

2. USE AN ALGORITHM TO DISFAVOR, SHADOWBAN OR CENSOR THE SOCIAL MEDIA WEBSITE USER’S RELIGIOUS SPEECH OR POLITICAL SPEECH.

B. THE OWNER OR OPERATOR OF A SOCIAL MEDIA WEBSITE THAT VIOLATES SUBSECTION A OF THIS SECTION IS LIABLE FOR DAMAGES AS FOLLOWS:

1. AT LEAST $75,000 IN DAMAGES FOR EACH SEPARATE DELETION OR CENSORING OF THE SOCIAL MEDIA WEBSITE USER’S RELIGIOUS SPEECH OR POLITICAL SPEECH.

2. ACTUAL DAMAGES.

3. IF AGGRAVATING FACTORS ARE PRESENT, PUNITIVE DAMAGES.

4. OTHER FORMS OF EQUITABLE RELIEF.

C. A COURT MAY AWARD THE PREVAILING PARTY IN A CAUSE OF ACTION UNDER THIS SECTION REASONABLE ATTORNEY FEES AND COSTS.

D. A SOCIAL MEDIA WEBSITE THAT RESTORES FROM DELETION OR REMOVES THE CENSORING OF THE SOCIAL MEDIA WEBSITE USER’S RELIGIOUS SPEECH OR POLITICAL SPEECH WITHIN A REASONABLE AMOUNT OF TIME MAY USE THAT FACT TO SEEK MITIGATION OF ANY DAMAGES AWARDED BY THE COURT.

E. A SOCIAL MEDIA WEBSITE MAY NOT USE THE SOCIAL MEDIA WEBSITE USER’S ALLEGED HATE SPEECH AS A BASIS FOR JUSTIFICATION OR DEFENSE OF THE SOCIAL MEDIA WEBSITE’S ACTIONS AT TRIAL.

F. THE ATTORNEY GENERAL MAY BRING A CIVIL CAUSE OF ACTION UNDER THIS SECTION ON BEHALF OF A SOCIAL MEDIA WEBSITE USER WHO RESIDES IN THIS STATE AND WHOSE RELIGIOUS SPEECH OR POLITICAL SPEECH WAS CENSORED BY A SOCIAL MEDIA WEBSITE. ANY VIOLATION OF THIS ARTICLE IS AN UNLAWFUL PRACTICE PURSUANT TO SECTION 44-1522. THE ATTORNEY GENERAL MAY INVESTIGATE THE VIOLATION AND TAKE APPROPRIATE ACTION PURSUANT TO TITLE 44, CHAPTER 10, ARTICLE 7.

G. THIS SECTION DOES NOT APPLY TO EITHER OF THE FOLLOWING:

1. A SOCIAL MEDIA WEBSITE THAT DELETES OR CENSORS A SOCIAL MEDIA WEBSITE USER’S RELIGIOUS SPEECH OR POLITICAL SPEECH OR THAT USES AN ALGORITHM TO DISFAVOR, SHADOWBAN OR CENSOR SPEECH THAT MEETS ANY OF THE FOLLOWING:

   (a) CALLS FOR IMMEDIATE ACTS OF VIOLENCE.

   (b) CALLS FOR A SOCIAL MEDIA WEBSITE USER TO HARM HIMSELF OR HERSELF.

   (c) IS OBSCENE MATERIAL OR IS MATERIAL HARMFUL TO MINORS.

   (d) IS THE RESULT OF ALL OPERATIONAL ERROR.
(e) IS THE RESULT OF A COURT ORDER.
(f) COMES FROM AN INAUTHENTIC SOURCE OR INVOLVES FALSE
IMPERSONATION.
(g) ENTICES CRIMINAL CONDUCT.
(h) INVOLVES A MINOR BULLYING ANOTHER MINOR.
2. A SOCIAL MEDIA WEBSITE USER’S CENSORING OF ANOTHER SOCIAL MEDIA
WEBSITE USER’S RELIGIOUS SPEECH OR POLITICAL SPEECH.
H. ONLY A SOCIAL MEDIA WEBSITE USER WHO IS EIGHTEEN YEARS OF AGE OR
OLDER HAS STANDING TO SEEK ENFORCEMENT OF THIS SECTION.
I. THE VENUE FOR ANY CIVIL ACTION Brought under this section shall
BE IN THIS STATE.
Sec. 2. Applicability
This act applies to the owner or operator of a social media website
that censors a social media website user’s religious speech or political
speech beginning from and after the effective date of this act.
Sec. 3. Legislative findings
The Legislature finds that:
1. This state is generally opposed to online censorship unless the
content is injurious to children or promotes human trafficking; only then
is this state for limited censorship.
2. This state has a compelling interest in holding certain social
media websites to higher standards for having substantially created a
digital public square.
3. This state has an interest in helping its citizens enjoy their
free exercise rights in certain semipublic forums commonly used for
religious speech and political speech, regardless to which political party
or religious organization they ascribe.
4. This state has an interest in deterring the owners and operators
of social media websites that have substantially created a digital public
square from maliciously interfering in elections.
Sec. 4. Short title
This act may be cited as the “Stop Social Media Censorship Act”.
Sec. 5. Emergency
This act is an emergency measure that is necessary to preserve the
public peace, health or safety and is operative immediately as provided by
law.