

REFERENCE TITLE: **social media; censorship; civil action**

State of Arizona
Senate
Fifty-fifth Legislature
First Regular Session
2021

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)

1 Be it enacted by the Legislature of the State of Arizona:

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

4 CHAPTER 7

5 SOCIAL MEDIA CENSORSHIP PROHIBITION

6 ARTICLE 1. GENERAL PROVISIONS

7 18-701. Definitions

8 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

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

11 2. "HARMFUL TO MINORS" HAS THE SAME MEANING PRESCRIBED IN SECTION
12 13-3501.

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

15 4. "OBSCENE MATERIAL" MEANS CONTENT THAT MEETS ANY OF THE
16 FOLLOWING:

17 (a) WHEN CONSIDERED OR TAKEN AS A WHOLE, THE AVERAGE INDIVIDUAL
18 APPLYING CONTEMPORARY COMMUNITY STANDARDS WOULD FIND APPEALS TO THE
19 PRURIENT INTEREST.

20 (b) DEPICTS OR DESCRIBES SEXUAL ACTIVITY IN A PATENTLY OFFENSIVE
21 WAY BY AUDIO OR VISUAL REPRESENTATIONS.

22 (c) WHEN CONSIDERED OR TAKEN AS A WHOLE, LACKS SERIOUS LITERARY,
23 ARTISTIC, POLITICAL OR SCIENTIFIC VALUE.

24 5. "POLITICAL SPEECH":

25 (a) MEANS SPEECH RELATING TO THIS STATE, A GOVERNMENT, A BODY
26 POLITIC OR A PUBLIC ADMINISTRATION AS THE SPEECH RELATES TO GOVERNMENTAL
27 POLICYMAKING.

28 (b) INCLUDES SPEECH BY THE GOVERNMENT OR A CANDIDATE FOR OFFICE AND
29 ANY DISCUSSION OF SOCIAL ISSUES.

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

34 7. "SHADOWBAN" MEANS:

35 (a) THE ACT OF BLOCKING OR PARTIALLY BLOCKING A USER OR THE USER'S
36 CONTENT FROM AN ONLINE COMMUNITY SO THAT IT IS NOT READILY APPARENT TO THE
37 USER THAT THE USER HAS BEEN BANNED.

38 (b) STEALTH BANNING, GHOST BANNING OR COMMENT GHOSTING.

39 8. "SOCIAL MEDIA WEBSITE" MEANS AN INTERNET WEBSITE OR APPLICATION
40 THAT ENABLES USERS TO COMMUNICATE WITH EACH OTHER BY POSTING INFORMATION,
41 COMMENTS, MESSAGES OR IMAGES AND THAT MEETS ALL OF THE FOLLOWING:

42 (a) IS OPEN TO THE PUBLIC.

43 (b) HAS MORE THAN SEVENTY-FIVE MILLION SUBSCRIBERS.

44 (c) FROM ITS INCEPTION HAS NOT BEEN SPECIFICALLY AFFILIATED WITH
45 ANY ONE RELIGION OR POLITICAL PARTY.

1 (d) PROVIDES A MEANS FOR THE WEBSITE'S USERS TO REPORT OBSCENE
2 MATERIALS AND HAS IN PLACE PROCEDURES FOR EVALUATING THOSE REPORTS AND
3 REMOVING OBSCENE MATERIAL.

4 18-702. Social media censorship prohibited; damages; costs;
5 enforcement; exceptions

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

8 1. DELETE OR CENSOR THE SOCIAL MEDIA WEBSITE USER'S RELIGIOUS
9 SPEECH OR POLITICAL SPEECH.

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

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

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

17 2. ACTUAL DAMAGES.

18 3. IF AGGRAVATING FACTORS ARE PRESENT, PUNITIVE DAMAGES.

19 4. OTHER FORMS OF EQUITABLE RELIEF.

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

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

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

29 F. THE ATTORNEY GENERAL MAY BRING A CIVIL CAUSE OF ACTION UNDER
30 THIS SECTION ON BEHALF OF A SOCIAL MEDIA WEBSITE USER WHO RESIDES IN THIS
31 STATE AND WHOSE RELIGIOUS SPEECH OR POLITICAL SPEECH WAS CENSORED BY A
32 SOCIAL MEDIA WEBSITE. ANY VIOLATION OF THIS ARTICLE IS AN UNLAWFUL
33 PRACTICE PURSUANT TO SECTION 44-1522. THE ATTORNEY GENERAL MAY
34 INVESTIGATE THE VIOLATION AND TAKE APPROPRIATE ACTION PURSUANT TO TITLE
35 44, CHAPTER 10, ARTICLE 7.

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

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

41 (a) CALLS FOR IMMEDIATE ACTS OF VIOLENCE.

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

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

45 (d) IS THE RESULT OF ALL OPERATIONAL ERROR.

- 1 (e) IS THE RESULT OF A COURT ORDER.
- 2 (f) COMES FROM AN INAUTHENTIC SOURCE OR INVOLVES FALSE
- 3 IMPERSONATION.
- 4 (g) ENTICES CRIMINAL CONDUCT.
- 5 (h) INVOLVES A MINOR BULLYING ANOTHER MINOR.
- 6 2. A SOCIAL MEDIA WEBSITE USER'S CENSORING OF ANOTHER SOCIAL MEDIA
- 7 WEBSITE USER'S RELIGIOUS SPEECH OR POLITICAL SPEECH.
- 8 H. ONLY A SOCIAL MEDIA WEBSITE USER WHO IS EIGHTEEN YEARS OF AGE OR
- 9 OLDER HAS STANDING TO SEEK ENFORCEMENT OF THIS SECTION.
- 10 I. THE VENUE FOR ANY CIVIL ACTION BROUGHT UNDER THIS SECTION SHALL
- 11 BE IN THIS STATE.

12 Sec. 2. Applicability
13 This act applies to the owner or operator of a social media website
14 that censors a social media website user's religious speech or political
15 speech beginning from and after the effective date of this act.

16 Sec. 3. Legislative findings
17 The Legislature finds that:

18 1. This state is generally opposed to online censorship unless the
19 content is injurious to children or promotes human trafficking; only then
20 is this state for limited censorship.

21 2. This state has a compelling interest in holding certain social
22 media websites to higher standards for having substantially created a
23 digital public square.

24 3. This state has an interest in helping its citizens enjoy their
25 free exercise rights in certain semipublic forums commonly used for
26 religious speech and political speech, regardless to which political party
27 or religious organization they ascribe.

28 4. This state has an interest in deterring the owners and operators
29 of social media websites that have substantially created a digital public
30 square from maliciously interfering in elections.

31 Sec. 4. Short title
32 This act may be cited as the "Stop Social Media Censorship Act".

33 Sec. 5. Emergency
34 This act is an emergency measure that is necessary to preserve the
35 public peace, health or safety and is operative immediately as provided by
36 law.