

HOUSE BILL 1314

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1lr2457

By: **Delegate Adams**

Introduced and read first time: February 8, 2021

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Business Regulation – Social Media Websites – Censored Speech**

3 FOR the purpose of prohibiting a social media website from taking certain actions to censor
4 the religious speech or political speech of a certain user; providing that the owner or
5 operator of a social media website is subject to a certain cause of action for taking
6 certain actions to censor the religious speech or political speech of a certain user;
7 authorizing the Attorney General to bring a certain civil cause of action under certain
8 circumstances; authorizing a certain user that brings a certain cause of action to be
9 awarded certain damages; authorizing a court to award certain court costs and
10 attorney's fees to the prevailing party of a certain action; providing that a social
11 media website may mitigate damages by taking certain actions; prohibiting a social
12 media website from using a certain user's alleged hate speech for a certain purpose;
13 providing for the venue of a civil action under this Act; providing that a violation of
14 this Act is an unfair, abusive, or deceptive trade practice that is subject to certain
15 penalties; providing for the application of this Act; defining certain terms; and
16 generally relating to social media websites and censored speech.

17 BY adding to

18 Article – Business Regulation

19 Section 19–1001 through 19–1006 to be under the new subtitle “Subtitle 10. Speech
20 Censored by Social Media Websites – Cause of Action”

21 Annotated Code of Maryland

22 (2015 Replacement Volume and 2020 Supplement)

23 BY repealing and reenacting, without amendments,

24 Article – Criminal Law

25 Section 11–203(a)(1) and (5) and (b)

26 Annotated Code of Maryland

27 (2012 Replacement Volume and 2020 Supplement)

28 Preamble

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



WHEREAS, The Maryland General Assembly is generally opposed to online censorship unless the content is injurious to children or promotes human trafficking; and

WHEREAS, The State has a compelling interest in holding social media websites to higher standards for having created a digital public square; and

WHEREAS, The State has a compelling interest in deterring social media websites from maliciously interfering with religious and political speech in digital public squares; and

WHEREAS, The State has a compelling interest in protecting the constitutional right of free speech of its citizens in public forums, including religious and political speech, regardless of a person's religious affiliation or political party; now, therefore,

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 – CAUSE OF ACTION.

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, PROGRAM, SOFTWARE, OR 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.

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; OR

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

(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 CONDUCT, 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.

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

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.

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.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2021.