

2021 Regular Session

SENATE BILL NO. 196

BY SENATOR MORRIS

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

COMMERCIAL REGULATIONS. Provides relative to regulation of speech on social media. (gov sig)

1 AN ACT

2 To enact Chapter 15 of Title 45 of the Louisiana Revised Statutes of 1950, to be comprised
3 of R.S. 45:1701 through 1704, relative to social media; to provide relative to social
4 media speech; to provide certain definitions, prohibitions, procedures, and
5 requirements; to authorize certain actions and damages for violations; and to provide
6 for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. Chapter 15 of Title 45 of the Revised Statutes of 1950, to be comprised
9 of R.S. 45:1701 through 1704, is hereby enacted to read as follows:

10 **CHAPTER 15. STOP SOCIAL MEDIA CENSORSHIP ACT**

11 **§1701. Short title**

12 **This Chapter shall be known and may be cited as the "Stop Social Media**
13 **Censorship Act".**

14 **§1702. Definitions**

15 **As used in this Chapter:**

16 **(1) "Algorithm" means a set of instructions designed to perform a**
17 **specific task.**

1 (2) "Hate speech" means a phrase concerning content that an individual
2 finds offensive based on his moral code.

3 (3) "Obscene" means that an average person applying contemporary
4 community standards would find that, taken as a whole, the dominant theme of
5 the material appeals to prurient interests.

6 (4) "Political speech" means speech relating to the state, government,
7 body politic, or public administration as it relates to governmental
8 policymaking. The term includes speech by the government or candidates for
9 office and any discussion of social issues. The term does not include speech
10 concerning the administration, law, or civil aspects of government.

11 (5) "Religious speech" means a set of unproven answers, truth claims,
12 faith-based assumptions, and naked assertions that attempt to explain the
13 greater questions such as how the world was created, what constitutes right and
14 wrong actions by humans, and what happens after death.

15 (6)(a) "Social media website" means an internet website or application
16 that enables users to communicate with each other by posting information,
17 comments, messages or images that meet all of the following requirements:

18 (i) Is open to the public.

19 (ii) Has more than seventy-five million users with user profiles provided
20 by the website.

21 (iii) From its inception has not been specifically affiliated with any one
22 religion or political party.

23 (b) "Social media website" shall not include an internet service provider,
24 electronic mail, or any online service, application, or website consisting
25 primarily of news, sports, entertainment, or other information or content that
26 is not user generated, but is pre-selected or curated by the provider and for
27 which any chat, comment, or interactive functionality is incidental to, directly
28 related to, or dependent upon the provision of the content.

29 (7) "User" means a resident of this state who is a natural person eighteen

1 years of age or older.

2 (8) "User profile" means a collection of settings and information
3 associated with a user or subscriber who signs up for an account made available
4 by a social media website.

5 §1703. Violations; private actions; civil actions; damages; exceptions

6 A. The owner or operator of a social media website who contracts with
7 a social media website user in this state is subject to a private right of action by
8 the user if the social media website knowingly does the following:

9 (1) Deletes or censors the user's religious speech or political speech.

10 (2) Uses an algorithm to disfavor or censor the user's religious speech or
11 political speech.

12 B. A social media website user may be awarded all of the following
13 damages for a violation of this Section:

14 (1) Actual damages.

15 (2) In addition to actual damages, up to seventy-five thousand dollars in
16 statutory damages.

17 (3) If aggravating factors are present, punitive damages.

18 (4) Injunctive and other forms of equitable relief.

19 C. The prevailing party in a cause of action under this Section may be
20 awarded court costs and reasonable attorney fees.

21 D. A social media website that restores the deleted or removed speech of
22 the user in a reasonable amount of time may use that fact to mitigate any
23 damages.

24 E. A social media website shall not use the social media website's user's
25 alleged hate speech as a basis for justification or defense of the social media
26 website's actions at trial.

27 F. The attorney general may bring a civil cause of action pursuant to this
28 Section on behalf of a social media website user whose religious speech or
29 political speech has been censored by a social media website.

G. This Section shall not apply to any of the following:

(1) A social media website that deletes or censors a social media website user's speech or that uses an algorithm to disfavor or censure speech that includes any of the following:

(a) Calls for immediate acts of violence.

(b) Is obscene, lewd, lascivious, filthy, or pornographic in nature.

(c) Is the result of an operational error.

(d) Is the result of a court order.

(e) Is from an inauthentic source or involves false impersonation.

(f) Entices criminal conduct.

(g) Involves the bullying of minors.

(h) Constitutes trademark or copyright infringement.

(i) Is excessively violent.

(j) Constitutes harassing spam of a commercial nature and not of a religious or political nature.

(2) A social media website user's censoring of another social media website user's speech.

(3) A website that merely permits members of the general public to post comments on content published by the owner of the website.

§1704. Legislative findings

A. This state has a compelling interest in holding certain social media websites to a higher standard when such websites have substantially created a digital public square.

B. The state has an interest in protecting and assisting residents in their exercise of rights of religious and political speech.

C. Nothing in this Chapter shall be construed to limit or expand any law pertaining to intellectual property.

Section 2. This Act shall become effective upon signature by the governor or, if not signed by the governor, upon expiration of the time for bills to become law without signature

1 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
 2 vetoed by the governor and subsequently approved by the legislature, this Act shall become
 3 effective on the day following such approval.

The original instrument was prepared by Beth O'Quin. The following digest, which does not constitute a part of the legislative instrument, was prepared by Leonore Heavey.

DIGEST

SB 196 Reengrossed

2021 Regular Session

Morris

Proposed law creates the "Stop Social Media Censorship Act".

Proposed law defines the following terms:

- (1) An "algorithm" means a set of instructions designed to perform specific tasks.
- (2) "Hate speech" means a phrase that has content that an individual finds offensive based on his moral code.
- (3) "Obscene" means that an average person applying contemporary community standards would find the dominant theme of the material appeals to prurient interests.
- (4) "Political speech" means speech related to state, government, body politic, or public administration as it relates to governmental policymaking. Includes speech by the government or candidates for office and any discussion of social issues. The term does not include speech that concerns the administration, law, or civil aspects of government.
- (5) "Religious speech" means a set of unproven answers, truth claims, faith-based assumptions, and naked assertions that attempt to explain the greater questions on how the world was created, what constitutes right and wrong actions by humans, and what happens after death.
- (6) "Social media website" means an internet website or application that enables a user to communicate with others by posting information, comments, messages, or images that were open to the public, has more than 75 million users with user profiles provided by the website, and from its inception, was not specifically affiliated with any one religion or political party. "Social media website" does not include an internet service provider, electronic mail, or any online service, application, or website consisting primarily of news, sports, entertainment, or other information or content that is not user generated.
- (7) "User" means a resident of this state who is a natural person eighteen years of age or older.
- (8) "User profile" means a collection of settings and information associated with a user or subscriber who signs up for an account made available by a social media website.

Proposed law provides the owner or operator of the social media website who contracts with a user in this state is subject to a private right of action by the user if the social media website knowingly deletes or censors the user's rights of religious speech or political speech, or uses an algorithm to disfavor or censor a user's religious or political speech.

Proposed law provides a social media website user may be awarded actual damages, plus up

to \$75,000 in statutory damages, punitive damages if aggravating factors are shown, and other forms of relief.

Proposed law provides the prevailing party in a cause of action may be awarded court costs and reasonable attorney fees.

Proposed law provides a social media website that restores the deleted or removed speech within a reasonable amount of time may use that fact to mitigate any damages.

Proposed law provides a social media website cannot use the social media website's user's alleged hate speech as the basis for the justification or defense of the social media website's actions at trial.

Proposed law provides the attorney general may bring a civil cause of action on behalf of a social media website user whose religious speech or political speech was censored by a social media website.

Proposed law provides the social media user does not have a civil cause of action if the social media website deletes or censors a social media website user's speech or uses an algorithm to disfavor or censor speech that calls for immediate acts of violence, is obscene, lewd, lascivious, filthy, or pornographic in nature, is the result of an operational error, is the result of a court order, is from an inauthentic source or involves false impersonation, entices criminal conduct, or involves the bullying of minors, constitutes trademark or copyright infringement, is excessively violent, constitutes harassing spam or a commercial nature, is one user censoring another user's speech, or if the website merely permits the public to comment on the site owner's content.

Proposed law provides the state has a compelling interest in holding certain social media websites to a higher standard that substantially created a digital public square.

Proposed law provides the state has an interest in protecting and assisting residents in their rights of religious and political speech.

Proposed law shall not be construed to limit or expand any law pertaining to intellectual property.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Adds R.S. 45:1701-1704)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Commerce, Consumer Protection, and International Affairs to the original bill

1. Makes technical changes.

Senate Floor Amendments to engrossed bill

1. Adds exceptions to the definition of "social media website."
2. Adds a definition of "user profile."
3. Adds exceptions to the provisions of proposed law for social media websites that censor or delete speech that infringes on a trademark or copyright infringement, that is excessively violent, or that is harassing spam of a commercial nature.

4. Adds an exception to the provisions of proposed law for websites that permit the public to comment on the site owner's content.
5. Provides that proposed law does limit or expand any law pertaining to intellectual property.
6. Makes technical changes.