



State of Wisconsin
2021 - 2022 LEGISLATURE

LRB-2090/1
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2021 BILL

1 **AN ACT** *to create* 895.053 of the statutes; **relating to:** creating a civil cause of
2 action against the owner or operator of a social media Internet site that restricts
3 religious or political speech.

Analysis by the Legislative Reference Bureau

This bill creates a civil cause of action against the owner or operator of a social media Internet site that is available to the public and that has more than 150 million users, if the owner or operator of the site intentionally does any of the following:

1. Deletes or censors, or uses an algorithm to delete, censor, disfavor, or censure, the religious speech or political speech of a person that is a resident of this state, as defined in the bill, and that subscribes to or has an account with the social media Internet site (a user). The bill defines “religious speech” as “speech relating to a set of unproven answers, truth claims, faith-based assumptions, and naked assertions that attempt to explain such greater questions as how the world was created, what constitutes right and wrong actions by individuals, and what happens after death.” The bill defines “political speech” as “speech relating to the state, government, body politic, or public administration as it relates to governmental policy or policy making,” including speech by the government or a candidate for office and any discussion of social issues.

2. Fails to notify a user that the user’s religious speech or political speech has been deleted, censored, disfavored, or censored, or that the user has been deplatformed. The bill defines “deplatforming” as deleting or banning a user from the social media Internet site for more than 60 days.

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3. Fails to allow a user who has been deplatformed to access or retrieve all of the user's information, content, material, and data for at least 60 days after being deplatformed.

4. Fails to publish the standards, including detailed definitions, that it uses or has used for determining how to delete, censor, disfavor, and censure speech on the social media Internet site and how to deplatform and shadow ban users on the social media Internet site. The bill defines "shadow banning" as limiting or eliminating the exposure of a user, or content posted by a user, to other users of the social media Internet site.

5. Applies censorship, deplatforming, and shadow banning standards in a manner that is not consistent among its users on the social media Internet site.

6. Fails to inform each user about any changes to the social media Internet site's user rules, terms, and agreements.

7. Makes changes to its user rules, terms, and agreements more than once every 180 days.

8. Fails to provide a mechanism for a user to request the number of other users who were provided or shown the user's content or posts and provide that number to the user upon request.

The bill provides that it is not a defense to such an action that an owner or operator of the social media Internet site considered a user's religious speech or political speech to be related to content that is offensive on the basis of the owner's or operator's personal moral code.

In addition to a user's cause of action, the bill authorizes the attorney general or any district attorney to bring a civil cause of action on behalf of the user or on behalf of the state, or both, with respect to an owner's or operator's intentional censorship of a user's religious speech or political speech. Each party may bring a cause of action independently from or in conjunction with one another.

If a user, the attorney general, or a district attorney prevails in a civil action, the court may award all of the following relief:

1. Any economic and noneconomic damages suffered by the user, which are awarded to the user regardless of whether the user participated in the action.

2. Statutory damages in an amount of not less than \$75,000 for each intentional act described in items 1 to 8 above. Statutory damages related to intentional censorship are awarded to the state if the attorney general or a district attorney is a prevailing party. Statutory damages related to other intentional acts are awarded to the user if a prevailing party.

3. If aggravating factors are present, punitive damages. Any punitive damages are awarded to the state if the attorney general or a district attorney is a prevailing party.

4. Injunctive relief.

Regardless of who prevails in the civil action, the court may award the prevailing party costs and reasonable attorney fees but may not assess costs or attorney fees against the state.

The bill creates certain exceptions to liability for owners and operators of social media Internet sites. For example, an owner or operator is not liable for actions in

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relation to speech that calls for immediate acts of violence, that is obscene or pornographic in nature, or that entices criminal conduct.

For further information see the state fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 895.053 of the statutes is created to read:

2 **895.053 Social media censorship; action for. (1) DEFINITIONS.** In this
3 section:

4 (a) “Algorithm” means a set of instructions designed to perform a specific task.

5 (b) “Deplatform” means to delete or ban a user from a social media Internet site
6 for more than 60 days.

7 (c) “Hate speech” means speech concerning content that a person finds
8 offensive on the basis of the person’s personal moral code.

9 (d) “Obscene” means that all of the following apply to content:

10 1. An average individual, applying contemporary community standards, would
11 find that the content, taken as a whole, appeals to the prurient interest.

12 2. The content depicts or describes sexual conduct in a patently offensive way.

13 3. The content, taken as a whole, lacks serious literary, artistic, political, or
14 scientific value.

15 (e) “Political speech” means speech relating to the state, government, body
16 politic, or public administration as it relates to governmental policy or policy making.

17 “Political speech” includes speech by the government or a candidate for office and any
18 discussion of social issues.

19 (f) “Religious speech” means speech relating to a set of unproven answers, truth
20 claims, faith-based assumptions, and naked assertions that attempt to explain such

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1 greater questions as how the world was created, what constitutes right and wrong
2 actions by individuals, and what happens after death.

3 (g) “Shadow ban” means to limit or eliminate the exposure of a user, or content
4 or material posted by a user, to other users of the social media Internet site through
5 any means, regardless of whether the action is determined by an individual or an
6 algorithm, and regardless of whether the action is readily apparent to a user.
7 “Shadow ban” does not include any action towards content or material that is viewed
8 by a user if the action is taken at the request of that user.

9 (h) “Social media Internet site” means an Internet site or application that
10 enables users to communicate with each other by posting information, comments,
11 messages, or images and to which all of the following apply:

- 12 1. The Internet site or application is available to the public.
- 13 2. The Internet site or application has more than 150 million users.

14 (i) “User” means a person that subscribes to or has an account with a social
15 media Internet site and to whom any of the following applies:

16 1. The person is an individual who is a U.S. citizen and has resided in this state
17 for at least 28 consecutive days before the deletion, censoring, disfavoring, or
18 censoring that is the basis of the person’s cause of action under sub. (2).

19 2. The person is not an individual and the person has its commercial domicile,
20 as defined in s. 71.22 (1g), in this state.

21 **(2) CAUSE OF ACTION.** Except as provided in sub. (6), a user of a social media
22 Internet site has a civil cause of action against the owner or operator of the social
23 media Internet site if the owner or operator intentionally does any of the following:

24 (a) Deletes or censors the user’s religious speech or political speech on the social
25 media Internet site.

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1 (b) Uses an algorithm to delete, censor, disfavor, or censure the user's religious
2 speech or political speech on the social media Internet site.

3 (c) Fails to notify a user that the user's religious speech or political speech has
4 been deleted, censored, disfavored, or censored, or that the user has been
5 deplatformed.

6 (d) Fails to allow a user who has been deplatformed to access or retrieve all of
7 the user's information, content, material, and data for at least 60 days after being
8 deplatformed.

9 (e) Fails to publish the standards, including detailed definitions, that it uses
10 or has used for determining how to delete, censor, disfavor, and censure the speech
11 of users on the social media Internet site and how to deplatform and shadow ban
12 users on the social media Internet site.

13 (f) Applies censorship, deplatforming, and shadow banning standards in a
14 manner that is not consistent among its users on the social media Internet site.

15 (g) Fails to inform each user about any changes to the social media Internet
16 site's user rules, terms, and agreements.

17 (h) Makes changes to its user rules, terms, and agreements more than once
18 every 180 days.

19 (i) Fails to provide a mechanism for a user to request the number of other users
20 who were provided or shown the user's content or posts and provide that number to
21 the user upon request.

22 **(3) UNAVAILABLE DEFENSE.** It is not a defense to an action brought under this
23 section that the owner or operator of a social media Internet site considered a user's
24 religious speech or political speech to be hate speech.

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1 **(4) ENFORCEMENT BY ATTORNEY GENERAL OR DISTRICT ATTORNEYS.** (a) If the owner
2 or operator of a social media Internet site intentionally censors a user's religious
3 speech or political speech as described under sub. (2) (a), in addition and
4 supplementary to the user's cause of action that exists under sub. (2), the attorney
5 general or any district attorney, on behalf of the user or on behalf of the state or both,
6 may commence and maintain an action with respect to the intentional censorship,
7 separately or in conjunction with an action brought under sub. (2) or under this
8 paragraph.

9 (b) In an action under this section, the user who has the cause of action under
10 sub. (2), the attorney general, or any district attorney may intervene in the action as
11 a matter of right.

12 **(5) REMEDIES.** (a) If a user, or the attorney general or district attorney under
13 sub. (4), prevails in a civil action under this section, the court may award appropriate
14 relief, including all of the following:

15 1. Any economic and noneconomic damages suffered by the user, which the
16 court shall award to the user regardless of whether the user participated in the
17 action.

18 2. Statutory damages in an amount of not less than \$75,000 for each intentional
19 act described under sub. (2). If the attorney general or district attorney under sub.
20 (4) is a prevailing party, the court shall award statutory damages related to
21 intentional censorship to the state. If the user is a prevailing party, the court shall
22 award any other statutory damages to the user.

23 3. If aggravating factors are present, punitive damages. If the attorney general
24 or district attorney under sub. (4) is a prevailing party, the court shall award any
25 punitive damages to the state.

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1 4. Injunctive relief.

2 (b) The court may award a prevailing party, including the state, in a civil action
3 under this section costs and, notwithstanding s. 814.04 (1), reasonable attorney fees.
4 The court may not assess costs or attorney fees under this paragraph against the
5 state.

6 (c) The owner or operator of a social media Internet site may mitigate damages
7 available under par. (a) by doing any of the following within a reasonable amount of
8 time:

9 1. Restoring from deletion or disfavor or removing the censoring or censoring
10 of a user's religious speech or political speech.

11 2. Notifying a user that the user's religious speech or political speech has been
12 deleted, censored, disfavored, or censured, or that the user has been deplatformed.

13 3. Allowing a user who has been deplatformed to access or retrieve all of the
14 user's information, content, material, and data.

15 4. Publishing the standards, including detailed definitions, that it uses or has
16 used for determining how to delete, censor, disfavor, and censure speech on the social
17 media Internet site and how to deplatform and shadow ban users on the social media
18 Internet site.

19 5. Taking actions to apply censorship, deplatforming, and shadow banning
20 standards in a manner that is consistent among its users on the social media Internet
21 site, and to reverse any previous actions that were taken in a manner that was
22 inconsistent among users.

23 6. Informing each user about any changes to the social media Internet site's
24 user rules, terms, and agreements.

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1 7. Reversing any changes to its user rules, terms, and agreements that were
2 made more frequently than once every 180 days.

3 8. Providing a mechanism for a user to request the number of other users who
4 were provided or shown the user's content or posts and provide that number to the
5 user upon request.

6 **(6) EXCEPTIONS.** This section does not apply to any of the following:

7 (a) The owner or operator of a social media Internet site that takes an action
8 under sub. (2) in relation to a user's speech on the social media Internet site to which
9 any of the following applies:

10 1. The speech calls for immediate acts of violence.

11 2. The speech is obscene or pornographic in nature.

12 3. The speech is the result of a court order or the sharing of the speech violates
13 a court order.

14 4. The speech comes from an inauthentic source or involves false personation.

15 5. The speech entices criminal conduct.

16 6. The speech involves bullying minors.

17 7. The speech involves financial fraud.

18 (b) The owner or operator of a social media Internet site that is affiliated with
19 a particular religion and that deletes or censors a user's religious speech, or that uses
20 an algorithm to delete, censor, disfavor, or censure a user's religious speech, on the
21 social media Internet site.

22 (c) The owner or operator of a social media Internet site that is affiliated with
23 a particular political party and that deletes or censors a user's political speech, or
24 that uses an algorithm to delete, censor, disfavor, or censure a user's political speech,
25 on the social media Internet site.

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1 (d) The deleting or censoring by a user of another user's speech.

2 **SECTION 2. Initial applicability.**

3 (1) This act first applies to an action by the owner or operator of a social media
4 Internet site that occurs on the effective date of this subsection.

5 **SECTION 3. Effective date.**

6 (1) This act takes effect on the 30th day after the day of publication.

7 (END)