

JAN 17 2020

A BILL FOR AN ACT

RELATING TO OFFENSES AGAINST THE INTERNET.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature recognizes that the State has a
2 compelling interest in holding certain social media platforms to
3 higher standards because they have essentially created digital
4 public squares. The legislature also finds that the State has
5 an interest in helping its residents to exercise their rights of
6 religious and political speech in certain semi-public forums
7 regardless of their religious or political affiliations. The
8 legislature also finds that the State has an interest in
9 deterring the owners and operators of social media platforms
10 that have essentially created digital public squares from unduly
11 interfering in elections.

12 Accordingly, the purpose of this Act is to:

- 13 (1) Level the playing field between consumers and the
14 major social media platforms;
- 15 (2) Encourage the free flow of religious and political
16 ideas and robust debate;



- 1 (3) Hold major social media platforms to a higher standard
2 for having essentially created digital public squares;
- 3 (4) Deter bad faith, unfair dealing, fraud, breach of
4 contract, unjust enrichment, and the marginalization
5 or oppression of competing worldviews;
- 6 (5) Support the principles that:
- 7 (A) Without truth, there is no freedom;
- 8 (B) Freedom comes from the truth;
- 9 (C) The proliferation of truth is vital to the health
10 of our constitutional republic; and
- 11 (D) Social media censorship regarding religious and
12 political ideology has the potential to suppress
13 the truth by preventing different doctrines and
14 ideologies from competing and vying for
15 superiority;
- 16 (6) Deter an owner or operator of a social media platform
17 from engaging in false advertising; and
- 18 (7) Deter an owner or operator of a social media platform
19 from unduly interfering with local, regional, and
20 national elections.



1 SECTION 2. The Hawaii Revised Statutes is amended by
2 adding a new chapter to title 26 to be appropriately designated
3 and to read as follows:

4 "CHAPTER

5 UNFAIR SOCIAL MEDIA CENSORSHIP

6 § -1 **Short title.** This chapter may be cited and
7 referred to as the "Stop Social Media Censorship Act."

8 § -2 **Definitions.** As used in this chapter:

9 "Algorithm" means a set of instructions designed to perform
10 a specific task.

11 "Hate speech" means a phrase concerning content that an
12 individual finds offensive based upon the individual's personal
13 moral code.

14 "Political speech" means speech relating to a state,
15 government, body politic, or public administration as it relates
16 to governmental policy-making, and the term includes speech by
17 the government or a candidate for office and any discussion of
18 social issues.

19 "Pornographic" shall have the same meaning as in section
20 712-1210.



1 "Religious speech" means a set of unproven answers, truth
2 claims, faith-based assumptions, and assertions that attempt to
3 explain questions such as how the world was created, what
4 constitutes right and wrong actions by humans, and what happens
5 after death.

6 "Shadowban" means the act of blocking or partially blocking
7 a user or the user's content from an online community such that
8 it will not be readily apparent to the user that the user has
9 been banned. The term also means stealth banning, ghost banning
10 or comment ghosting.

11 "Social media platform" means an Internet website or
12 application that enables users to communicate with each other by
13 posting information, comments, messages, or images and:

- 14 (1) Is open to the public;
- 15 (2) Has more than seventy-five million subscribers;
- 16 (3) Has not been since its inception specifically
17 affiliated with any one religion or political party;
18 and
- 19 (4) Provides a means for the platform's users to report
20 obscene materials and has in place procedures for



1 evaluating those reports and removing obscene
2 material.

3 § -3 **Civil actions against social media censorship;**
4 **deceptive trade practices; exceptions.** (a) The owner or
5 operator of a social media platform who contracts with a social
6 media platform user in this State shall be subject to a private
7 right of action by the user if the social media platform
8 intentionally:

9 (1) Deletes or censors the user's religious speech or
10 political speech; and

11 (2) Uses an algorithm to disfavor, shadowban, or censure
12 the user's religious speech or political speech.

13 (b) Under this section, a social media platform user may
14 be awarded all of the following damages:

15 (1) A minimum of \$75,000 in damages per each intentional
16 deletion or censoring of the social media platform
17 user's speech;

18 (2) Actual damages;

19 (3) Punitive damages, provided that aggravating factors
20 are present; and

21 (4) Any other form of equitable relief.



1 (c) The prevailing party in a cause of action under this
2 section may be awarded costs and reasonable attorney fees.

3 (d) A social media platform may mitigate damages by
4 restoring deleted speech or removing the censoring of a social
5 media platform user's speech in a reasonable amount of time.

6 (e) At a trial, a social media platform shall not use the
7 social media platform user's alleged hate speech as a basis for
8 justifying or defending the social media platform's acts of
9 deleting or censoring the speech.

10 (f) The attorney general may bring a civil cause of action
11 under this section on behalf of a social media platform user who
12 resides in this State and whose religious speech or political
13 speech has been censored by a social media platform.

14 (g) An owner or operator of social media social platform
15 that engages in any of the practices described in subsection (a)
16 commits a deceptive trade practice in violation of section
17 481A-3 and shall be subject to the actions for relief that are
18 set forth under section 481A-4.

19 (h) This section shall not apply to the following:



- 1 (1) A social media platform that deletes or censors a
2 social media platform user's speech or that uses an
3 algorithm to disfavor or censure speech if the speech:
4 (A) Calls for immediate acts of violence;
5 (B) Calls for a user to harm themselves;
6 (C) Is pornographic material or material harmful to
7 minors;
8 (D) Is the result of operational error;
9 (E) Is the result of a court order;
10 (F) Comes from an inauthentic source or involves
11 false impersonation;
12 (G) Entices criminal conduct; or
13 (H) Involves minors bullying minors; or
14 (2) A social media platform user's censoring of another
15 social media platform user's speech.
16 (i) No person shall have standing to seek enforcement
17 under this section unless the person is a user who was eighteen
18 years of age or older at the time of the social media platform's
19 alleged acts of deletion or censorship.
20 (j) The venue for any civil action brought under section
21 shall be in the circuit courts of this State."



1 SECTION 3. This Act shall take effect upon its approval.

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INTRODUCED BY:

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[Signature]



S.B. NO. 2765

Report Title:

Media Censorship; Unfair and Deceptive Trade Practice

Description:

Authorizes a user of a social media platform to bring a cause of action against the social media platform for deleting or censoring the user's speech.

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