



State of Wisconsin
2021 - 2022 LEGISLATURE

LRB-3397/1
MCP:skw&wlj

2021 BILL

1 **AN ACT** *to create* 100.75 of the statutes; **relating to:** censorship on social media
2 platforms and providing a penalty.

Analysis by the Legislative Reference Bureau

This bill creates requirements and prohibitions for social media platforms in the regulation of users and user content. The bill defines “social media platform” as an Internet site or Internet-based software application, a primary purpose of which, from the perspective of a user, is to allow users to create personalized pages, accounts, profiles, or handles for the purpose of sharing information and content and communicating with other users and the public. A “social media platform” is limited to a platform that does business in this state and that either has annual gross revenues of more than \$100,000,000, or that has at least 20,000 global users who use the social media platform per month.

The bill prohibits a social media platform from using post prioritization (prioritizing certain content ahead of, below, or in a more or less prominent position than others in a newsfeed, feed, view, or search results) on content or material posted by or about a candidate for state or local office or an elected official who holds a state, local, or national office. The bill also prohibits a social media platform from knowingly censoring, deplatforming (deleting or banning from the social media platform for more than 60 days), or shadow banning (limiting or eliminating the exposure of a user, or content posted by a user, to other users of the social media platform) a candidate for state or local office or an elected official who holds a state, local, or national office. This prohibition applies only to official pages, accounts, profiles, or handles relating to a candidate’s campaign or an elected official’s office

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and does not apply to any personal pages, accounts, profiles, or handles. Nor does the prohibition apply to post prioritization that is based on payments to the social media platform by the affected candidate or elected official or by a third party. The bill requires a social media platform to provide users with a method to identify themselves as candidates or elected officials. The bill also provides that the prohibition on censorship does not apply to content or material that is obscene or that constitutes a credible threat to another person. In addition, the bill provides that an action by a social media platform employee creates a rebuttable presumption that the social media platform acted knowingly.

Under the bill, a social media platform must notify a user if the platform knowingly censors the user's content or knowingly deplatforms the user, unless the censored content is obscene or constitutes a credible threat. The bill also requires a social media platform 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.

Under the bill, a social media platform must publish the standards it uses for determining how to censor, deplatform, and shadow ban users on the platform. A social media platform must apply censorship, deplatforming, and shadow banning standards in a consistent manner among its users on the platform.

The bill also requires a social media platform to inform each user about any changes to its user rules, terms, and agreements before implementing the changes, and prohibits social media platforms from changing its user rules, terms, and agreements more than once every 30 days. A social media platform must also provide a mechanism for a user to request the number of other global users who were provided or shown the user's content or posts, and to provide that number to the user upon request.

In addition, the bill requires a social media platform to categorize algorithms used for post prioritization and shadow banning and to allow users to opt out of these categories. A social media platform must provide users with an annual notice on the use of algorithms for post prioritization and shadow banning and annually offer the opportunity to opt out of algorithm categories.

The bill allows a user to bring a private cause of action against a social media platform if the platform violates the requirements or prohibitions of the bill. The bill provides that, in a private cause of action brought by a user, a court may award statutory damages of not more than \$250,000 for each proven claim involving statewide candidates and elected officials, \$200,000 for each proven claim involving other candidates and elected officials, or \$100,000 for each proven claim involving other users; actual damages; punitive damages, if aggravating factors are present; other forms of equitable relief; and costs and attorney fees.

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:

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1 **SECTION 1.** 100.75 of the statutes is created to read:

2 **100.75 Censorship by social media platforms. (1) DEFINITIONS.** In this
3 section:

4 (a) “Algorithm” means a mathematical set of rules that specifies how a group
5 of data behaves that will assist in ranking search results and maintaining order or
6 that is used in sorting or ranking content or material on the basis of relevancy or
7 other factors instead of using published time or chronological order of such content
8 or material.

9 (b) “Candidate” has the meaning given in s. 11.0101 (1).

10 (c) “Censor” includes any action taken by a social media platform to delete,
11 regulate, restrict, edit, alter, inhibit the publication or republication of, suspend a
12 right to post, remove, or post an addendum to any content or material posted by a
13 user. “Censor” also includes actions to inhibit the ability of a user to be viewable by
14 or to interact with another user of the social media platform. “Censor” does not
15 include any action towards content or material that is viewed by a user if the action
16 is taken at the request of that user.

17 (d) “Deplatform” means to delete or ban a user from a social media platform for
18 more than 60 days.

19 (e) “Elected official” has the meaning given in s. 5.02 (3m).

20 (f) “Post prioritization” means an action by a social media platform to place,
21 feature, or prioritize certain content or material ahead of, below, or in a more or less
22 prominent position than other content in a newsfeed, feed, view, or search results.
23 “Post prioritization” does not include actions toward such content or material that
24 are based on payments by a 3rd party, including other users, to the social media

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1 platform. “Post prioritization” also does not include any action towards content or
2 material that is viewed by a user if the action is taken at the request of that user.

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 platform through any
5 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 platform” means an Internet site or Internet-based software
10 application, a primary purpose of which, from the perspective of a user, is to allow
11 users to create personalized pages, accounts, profiles, or handles for the purpose of
12 sharing information and content and communicating with other users and the
13 public. A “social media platform” may be a sole proprietorship, partnership, limited
14 liability company, corporation, association, or other legal entity. A “social media
15 platform” means a platform that does business in this state and that satisfies at least
16 one of the following thresholds:

17 1. Has annual gross revenues in excess of \$100,000,000, as adjusted in January
18 of each odd-numbered year to reflect any increase in the Consumer Price Index.

19 2. Has at least 20,000 global users who use the social media platform per
20 month.

21 (i) “User” means a person who has an account on a social media platform,
22 regardless of whether the person posts or has posted content or material to the social
23 media platform, and who, unless modified by the term “global,” resides or is
24 domiciled in this state.

25 **(2) REQUIREMENTS.** A social media platform shall do all of the following:

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1 (a) Publish the standards, including detailed definitions, that it uses or has
2 used for determining how to censor, deplatform, and shadow ban users on the
3 platform.

4 (b) Apply censorship, deplatforming, and shadow banning standards in a
5 consistent manner among its users on the platform.

6 (c) Inform each user about any changes to its user rules, terms, and agreements
7 before implementing the changes.

8 (d) Provide a mechanism for a user to request the number of other global users
9 who were provided or shown the user's content or posts and provide that number to
10 the user upon request.

11 (e) Categorize algorithms used for post prioritization and shadow banning and
12 allow users to opt out of post prioritization and shadow banning algorithm
13 categories, including to allow users to view posts and content sequentially or
14 chronologically.

15 (f) Provide users with an annual notice on the use of algorithms for post
16 prioritization and shadow banning and annually offer the opt-out opportunity under
17 par. (e).

18 (g) Allow a user who has been deplatformed to access or retrieve all of the user's
19 information, content, material, and data for at least 60 days after being
20 deplatformed.

21 (h) Provide users with a method to self-identify as candidates or elected
22 officials. A social media platform may confirm an identification as a candidate by
23 reviewing the Internet site of the elections commission.

24 **(3) PROHIBITIONS.** A social media platform may not do any of the following:

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1 (a) Knowingly censor a user's content or material or knowingly deplatform a
2 user from the social media platform without notifying the user who posted or
3 attempted to post the content or material, except that a social media platform is not
4 required to notify a user if the censored content or material constitutes obscene
5 material, as defined in s. 944.21 (2) (c), or a credible threat, as defined in s. 947.013
6 (1) (b). An action by a social media platform employee creates a rebuttable
7 presumption that the social media platform acted knowingly under this paragraph.
8 A notification under this paragraph shall comply with all of the following
9 requirements:

10 1. The notice shall be in writing.

11 2. The notice shall be delivered by electronic mail or direct electronic
12 notification to the user within 30 days after the censoring action.

13 3. The notice shall include a thorough explanation of the reason that the social
14 media platform censored the user.

15 4. The notice shall include a precise and thorough explanation of how the social
16 media platform became aware of the censored content or material, including a
17 thorough explanation of the algorithms used, if any, to identify or flag the user's
18 content or material as objectionable.

19 (b) Knowingly censor a user's content or material or knowingly deplatform a
20 user from the social media platform in a way that violates this section. An action by
21 a social media platform employee creates a rebuttable presumption that the social
22 media platform acted knowingly under this paragraph.

23 (c) Make changes to its user rules, terms, and agreements more than once every
24 30 days.

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1 (d) Apply or use post prioritization on content or material posted by or about,
2 or knowingly take any action to censor, deplatform, or shadow ban, a user who is
3 known by the social media platform to be a candidate or elected official, except that
4 a social media platform is not prohibited from censoring content or material that
5 constitutes obscene material, as defined in s. 944.21 (2) (c), or a credible threat, as
6 defined in s. 947.013 (1) (b). This prohibition applies only to official pages, accounts,
7 profiles, or handles relating to a candidate's campaign or an elected official's office
8 and does not apply to any personal pages, accounts, profiles, or handles. For a
9 candidate, this prohibition shall begin from the date of qualification as a candidate
10 and end on the date of the election or the date the candidate ceases to be a candidate
11 before the date of election. An action by a social media platform employee creates
12 a rebuttable presumption that the social media platform acted knowingly under this
13 paragraph. Post prioritization of certain content or material from or about a
14 candidate or elected official based on payments to the social media platform by such
15 candidate or elected official or by a 3rd party is not a violation of this paragraph.

16 **(4) PRIVATE CAUSE OF ACTION.** (a) A user may bring a private cause of action for
17 violations of sub. (2) or (3).

18 (b) In a private cause of action brought under this subsection, the court may
19 award any of the following damages to the user:

20 1. Statutory damages of not more than \$250,000 for each proven claim
21 involving statewide candidates and elected officials; not more than \$200,000 for each
22 proven claim involving other candidates and elected officials; and not more than
23 \$100,000 for each proven claim involving a user that is not a candidate or elected
24 official.

25 2. Actual damages.

