

HOUSE BILL NO. 1144

Introduced by

Representatives Kading, Bellew, Jones, B. Koppelman, Schatz, Toman

1 A BILL ~~for an Act to permit civil actions against social media sites for censoring speech.~~for an
2 Act to protect free speech from racial, religious, and viewpoint discrimination by a social media
3 platform or interactive computer service; and to provide a penalty.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 ~~SECTION 1.~~

6 ~~Social media site censorship - Civil action.~~

7 ~~1. As used in this section:~~

8 ~~a. "Interactive computer service" means any information service, system, or access~~
9 ~~software provider that provides or enables computer access by multiple users to~~
10 ~~a computer server, including specifically a service or system that provides access~~
11 ~~to the internet and such systems operated or services offered by libraries or~~
12 ~~educational institutions.~~

13 ~~b. "Social media site" means a website through which users are able to share and~~
14 ~~generate content and find and connect with other users of common interests.~~

15 ~~2. If an interactive computer service provider restricts, censors, or suppresses~~
16 ~~information that does not pertain to obscene, lewd, lascivious, filthy, excessively~~
17 ~~violent, harassing, or otherwise objectionable subject matter, the interactive computer~~
18 ~~service provider is liable in a civil action for damages to the person whose speech is~~
19 ~~restricted, censored, or suppressed, and to any person who reasonably otherwise~~
20 ~~would have received the writing, speech, or publication. This section only applies if the~~
21 ~~interactive computer service provider:~~

22 ~~a. Is immune from civil liability under federal law;~~

23 ~~b. Is not considered a publisher;~~

24 ~~c. Has over one million users; and~~

- 1 ~~_____ d. Is a provider of a social media site.~~
- 2 ~~_____ 3. A person whose writing, speech, or publication is restricted, censored, or suppressed~~
3 ~~under this section, or a person that reasonably otherwise would have received the~~
4 ~~writing, speech, or publication, is entitled to civil damages including treble damages for~~
5 ~~compensatory, consequential, and incidental damages. The court also may award~~
6 ~~punitive damages.~~
- 7 ~~_____ 4. An action for civil damages under this section may be brought in the district court in~~
8 ~~the county where the person being infringed, censored, or suppressed, or the person~~
9 ~~who reasonably would have otherwise received the writing, speech, or publication,~~
10 ~~resides.~~
- 11 ~~_____ 5. The district court shall award attorney's fees to a prevailing plaintiff.~~
- 12 ~~_____ 6. Immune from civil liability in subsection 2 means an action by an interactive computer~~
13 ~~service provider:~~
- 14 ~~_____ a. Taken voluntarily in good faith to restrict access to or availability of material that~~
15 ~~the provider or user considers to be obscene, lewd, lascivious, filthy, excessively~~
16 ~~violent, harassing, or otherwise objectionable, regardless whether the material is~~
17 ~~constitutionally protected; or~~
- 18 ~~_____ b. Taken to enable or make available to information content providers or others the~~
19 ~~technical means to restrict access to material described in subdivision a.~~
- 20 ~~_____ 7. An interactive computer service provider may state affirmatively in the provider's terms~~
21 ~~of service that the provider is a publisher. If the statement is agreed upon by the~~
22 ~~person that is restricted, censored, or suppressed, and any person who reasonably~~
23 ~~would have otherwise received the writing, speech, or publication, subsection 2 does~~
24 ~~not apply.~~
- 25 ~~_____ 8. Notwithstanding subsection 2, an interactive computer service provider may limit~~
26 ~~content to subject matter expressly stated in the provider's terms of service.~~

SECTION 1.

Definitions.

As used in this chapter:

1. "Censor" means to block, ban, remove, deplatform, demonetize, deboost, restrict, deny equal access or visibility to, or otherwise discriminate against.

- 1 2. "Expression" means any words, music, sounds, still or moving images, numbers, or
2 other perceivable communication.
- 3 3. "Free speech state" means any of the several states, or any territory, of the United
4 States that protects expression from censorship, by social media platforms or
5 interactive computer services, based on the viewpoint of users or of expression.
- 6 4. "Identifiable private information" means private information that, in the circumstances,
7 reasonably may be expected to be associated with a user or could with reasonable
8 effort be associated with a user.
- 9 5. "Interactive computer service" means any information service, system, or access
10 software provider that provides or enables computer access by multiple users to a
11 computer server. The term does not include an internet service provider.
- 12 6. "Private information" means information acquired by the interactive computer service
13 or social media platform from any user who has not expressly given prior authorization
14 for the release or disclosure of the specific information, including the information's
15 specific content, specific form, and the persons to whom the information will be
16 released or disclosed.
- 17 7. "Receive" means to read, hear, look at, access, gain access to, or otherwise receive.
- 18 8. "Share" means to speak, sing, publish, post, upload, transmit, communicate, or
19 otherwise share.
- 20 9. "Social media platform" means any information service, system, or access software
21 provider that provides or enables computer access by multiple users to a computer
22 server and which allows a user to publish or share expression with persons other than
23 the particular persons to whom the expression specifically is directed. The term does
24 not include an internet service provider.
- 25 10. "Unlawful expression" means expression that is unlawful under the United States
26 Constitution or federal law, or under the Constitution of North Dakota or laws of this
27 state.
- 28 11. "User" means a person that shares or receives expression through an interactive
29 computer service.

1 **Racial, religious, and viewpoint discrimination prohibited.**

2 1. A social media platform may not censor a user, a user's expression, a user's sharing of
3 expression, or a user's receiving of expression from another person, based on:

4 a. The race, religion, or viewpoint of any user or other person; or

5 b. The viewpoint presented in any user's or other person's expression.

6 2. An interactive computer service may not censor a user, a user's expression, a user's
7 sharing of expression, or a user's receiving of expression from another person, based
8 on:

9 a. The race, religion, or viewpoint of any user or other person; or

10 b. The viewpoint presented in any user's or other person's expression.

11 3. This section applies whether the viewpoint is expressed on the social media platform,
12 the interactive computer service, or elsewhere.

13 **Geographic discrimination prohibited.**

14 1. A social media platform may not censor a user, a user's expression, a user's sharing of
15 expression, or a user's receiving of expression based on the user's residing in, doing
16 business in, sharing expression, or receiving expression in this state or any part of the
17 state.

18 2. An interactive computer service may not censor a user, a user's expression, a user's
19 sharing of expression, or a user's receiving of expression based on the user's residing
20 in, doing business in, sharing expression, or receiving expression in this state or any
21 part of the state.

22 **Application.**

23 1. This chapter only protects:

24 a. A user residing in, doing business in, sharing expression in, or receiving
25 expression in this state;

26 b. Expression, sharing expression, or receiving expression, to the extent the
27 expression, sharing, or receiving occurs in this state;

28 c. Expression, sharing expression, or receiving expression, to the extent the
29 expression is shared with, or received from, any other free speech state; and

1 d. Expression, sharing expression, or receiving expression, to the extent the
2 expression is shared with, or received from, any other of the several states, or
3 any other of the territories, of the United States.

4 2. This chapter only applies to:

5 a. A social media platform or interactive computer service that functionally has more
6 than twenty million active users within any thirty-day period; and

7 b. A social media platform or interactive computer service that functionally has more
8 than one hundred fifty million active users within a calendar month.

9 3. This chapter does not apply to:

10 a. A social media platform or interactive computer service that has been available to
11 users for less than twelve months; or

12 b. A social media platform or interactive computer service that is engaged primarily
13 in its own expression and which allows users to comment its expression, as long
14 as such commentary or the ability to comment is merely incidental to its
15 expression.

16 4. This chapter does not:

17 a. Subject a social media platform or interactive computer service to any remedy or
18 cause of action from which the social media platform or interactive computer
19 service is protected by federal law;

20 b. Prohibit a social media platform or interactive computer service from censoring
21 any expression that it is specifically authorized to censor by federal law; or

22 c. Prohibit a social media platform or interactive computer service from censoring
23 unlawful expression.

24 **Civil action - Remedies.**

25 A user residing in, doing business in, sharing expression in, or receiving expression in this
26 state may bring a civil action in any court of this state against a social media platform or
27 interactive computer service for a violation of this chapter against the user, and upon finding the
28 defendant has violated or is violating the user's rights under this chapter, the court shall award:

29 1. Declaratory relief;

30 2. Injunctive relief;

1 3. Treble damages or, at the plaintiff's option, statutory damages of up to fifty thousand
2 dollars; and

3 4. Costs and reasonable attorney's fees.

4 **Aiding and abetting - Civil action - Remedies.**

5 A user residing in, doing business in, sharing expression in, or receiving expression in this
6 state may bring a civil action in any court of this state against any person who aids or abets a
7 violation of this chapter committed by a social media platform or interactive computer service
8 against that user, and upon finding the defendant has aided or abetted or is aiding or abetting a
9 violation of that user's rights under this chapter, the court shall award:

10 1. Declaratory relief;

11 2. Injunctive relief;

12 3. Treble damages or, at the plaintiff's option, statutory damages of up to fifty thousand
13 dollars; and

14 4. Costs and reasonable attorney's fees.

15 **Jurisdiction - Right to jury - Compliance.**

16 1. Notwithstanding any other provision of law, the courts of this state have personal
17 jurisdiction over any defendant sued under this chapter to the maximum extent
18 permitted by the Fourteenth Amendment to the United States Constitution.

19 2. The plaintiff in an action brought under this chapter has the right to a jury trial.

20 3. If a defendant in an action brought under this chapter fails to comply promptly with the
21 court's order, the court shall hold the defendant in contempt and shall use all lawful
22 measures to secure immediate compliance, including imposing daily penalties
23 sufficient to secure immediate compliance.

24 **Fiduciary duty.**

25 Any loss, release, or distribution by a social media platform or interactive computer service
26 of identifiable private information that has been collected by the social media platform or
27 interactive computer service is a breach of fiduciary duty and is subject to the usual legal or
28 equitable remedies for the breach; but for each intentional or reckless loss, release, or
29 distribution of identifiable private information, the monetary recovery must be tripled or, at the
30 plaintiff's option, any defendant social media platform or interactive computer service shall pay
31 presumptive damages or restitution in the amount of up to one million dollars.