**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 6 TO CHAPTER 5, TITLE 39 SO AS TO STOP CERTAIN SOCIAL MEDIA CENSORSHIP, TO PROVIDE PENALTIES, AND TO PROVIDE EXCEPTIONS.

Whereas, the Communications Decency Act was created to protect decent speech, not deceptive trade practices; and

Whereas, repealing Section 230 of the Communications Decency Act at the federal level is unnecessary because it already includes a state law exemption and the Stop Social Media Censorship Act was crafted to fall squarely in the state law exemption of Section 230 to cure abuses of Section 230 to protect the consumers of this State; and

Whereas, contract law is a state law issue, and when a citizen of this State signs up to use certain social media websites, they are entering into a contract; and

Whereas, the General Assembly is generally opposed to online censorship unless the content is injurious to children or promotes human trafficking; only then is the State for limited censorship; and

Whereas, this State has a compelling interest in holding certain social media websites to higher standards for having substantially created a digital public square through fraud, false advertising, and deceptive trade practices; and

Whereas, major social media websites have engaged in the greatest bait and switch of all time by marketing themselves as free, fair, and open to all ideas to induce subscribers only to then prove otherwise at great expense to consumers and election integrity; and

Whereas, breach of contract, false advertising, bad faith, unfair dealing, fraudulent inducement, and deceptive trade practices are not protected forms of speech for purpose of the first amendment of the United States Constitution or the Constitution of this State; and

Whereas, the major social media websites have already reached critical mass, and they did so through fraud, false advertising, and deceptive trade practices at great expense to the health, safety, and welfare of consumers of this State, while making it difficult for others to compete with them; and

Whereas, this State has an interest in helping its citizens enjoy their free exercise rights in certain semipublic forums commonly used for religious and political speech, regardless of which political party or religious organization they ascribe to; and

Whereas, the State has an interest in deterring the owners and operators of social media websites that have substantially created a digital public square from maliciously interfering in elections; and

Whereas, this act is not intended to apply to a website that merely deletes comments posted by members of the general public in response to material published by the owner of the website. Now, therefore,

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 5, Title 39 of the 1976 Code is amended by adding:

“Article 6

Stop Social Media Censorship Act

Section 39‑5‑610. This article may be cited as the ‘Stop Social Media Censorship Act’.

Section 39‑5‑620. The purpose of this article is to:

(1) create a statute that parallels the spirit of 47 U.S.C. Section 230 that falls within the state law exemption under 47 U.S.C. Section 230(e)(3), creating a civil right of action that will deter the following:

(a) deceptive trade practices;

(b) false advertising;

(c) breach of contract;

(d) bad faith;

(e) unfair dealing;

(f) fraudulent inducement; and

(g) the stifling of political and religious speech in the modern‑day digital public square cultivated by social media websites that have achieved critical mass through fraud; and

(2) to empower the Secretary of State to stop certain businesses engaging in commerce in this State from interfering in election integrity.

Section 39‑5‑630. As used in this article:

(1) ‘Algorithm’ means a set of instructions designed to perform a specific task.

(2) ‘Harmful to minors’ has the same meaning as defined in Section 16‑15‑375.

(3) ‘Hate speech’ means a phrase concerning content that an individual finds offensive based on his personal moral code.

(4) ‘Obscene material’ has the same meaning as described in Section 16‑15‑305.

(5) ‘Political speech’ means speech relating to the state, government, body politic, or public administration as it relates to governmental policy‑making, and the term includes speech by the government or candidates for office and any discussion of social issues.

(6) ‘Religious speech’ means a set of unproven answers, truth claims, faith‑based assumptions, and naked assertions that attempt to explain such greater questions such as how the world was created, what constitutes right and wrong actions by humans, and what happens after death.

(7) ‘Shadowban’ means the act of blocking or partially blocking a user or their content from an online community so that it will not be readily apparent to the user that they have been banned. The term also means stealth banning, ghost banning, or comment ghosting.

(8) ‘Social media website’ means an Internet website or application that enables users to communicate with each other by posting information, comments, messages, or images and that meets all of the following requirements:

(a) is open to the public;

(b) has more than seventy‑five million subscribers with personal user profiles provided by the website;

(c) from its inception, has not been specifically affiliated with any one religion or political party;

(d) provides a means for the website’s users to report obscene materials and has in place procedures for evaluating those reports and removing obscene material; and

(e) allows for subscribers to sign up for a personal user profile page or account where beliefs and preferences can be expressed by the user.

The term does not include a website that merely permits members of the general public to post comments on content published by the owner of the website.

(9) ‘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. Such accounts

often associate characteristics with a user or subscriber, which may help in ascertaining the interactive behavior of the user along with their personal preferences and beliefs.

Section 39‑5‑640. (A) The owner or operator of a social media website who contracts with a social media website user in this State is subject to a private right of action by a user if the social media website purposely:

(1) deletes or censors the user’s religious speech or political speech; and

(2) uses an algorithm to disfavor, shadowban, or censure the user’s religious speech or political speech.

(B) A social media website user may be awarded all of the following damages under this section:

(1) a minimum of seventy‑five thousand dollars in statutory damages for each purposeful deletion or censoring of the social media website user’s speech;

(2) actual damages;

(3) punitive damages, if aggravating factors are present; and

(4) other forms of equitable relief.

(C) The prevailing party in a cause of action pursuant to this section may be awarded costs and reasonable attorney fees.

(D) A social media website that restores from deletion or removes the censoring of a social media website user’s speech in a reasonable amount of time may use that fact to mitigate any damages.

(E) A social media website may not successfully use the social media website user’s alleged hate speech as a basis for justification or defense of the social media website’s actions at trial.

(F) The Attorney General also may bring a civil cause of action pursuant to this section on behalf of a social media website user who resides in this State and whose religious speech or political speech has been censored by a social media website.

(G) An owner or operator of a social media website that has engaged in practices described in subsection (A) has engaged in an unfair and deceptive trade practice in violation of Section 39‑5‑20 and is subjected to the penalties under that section.

(H) It is unlawful for a social media website to ban or restrict a user for any period of time or to disallow a user from participating in the social media website including, but not limited to, commenting, posting, or sharing. This subsection applies to personal and commercial pages.

(I) This section does not apply to:

(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:

(a) calls for immediate acts of violence;

(b) calls for a user to harm himself;

(c) is obscene material or material harmful to minors;

(d) is the result of operational error;

(e) is the result of a court order;

(f) comes from an inauthentic source or involves false impersonation;

(g) entices criminal conduct; or

(h) involves minors bullying minors; or

(2) a social media website user’s censoring of another social media website user’s speech.

(J) Only users who are eighteen years of age or older have standing to seek enforcement of this section.

(K) The venue for any civil action brought pursuant to this section is this State.

Section 39‑5‑650. The Secretary of State may:

(1) issue a fine in one of the following amounts if the Secretary of State finds that the social media website has engaged in deplatforming or shadowbanning a political candidate seeking office in this State in violation of this article:

(a) if the candidate is seeking statewide office, up to $100,000 per day of the violation;

(b) for all other candidates, up to $10,000 per day of the violation; and

(2) disclose a social media company’s algorithmic bias for or against a political candidate seeking statewide office as a campaign contribution.

Section 39‑5‑660. If any section in this article or any part of any section is declared invalid or unconstitutional, the declaration shall not affect the validity or constitutionality of the remaining portions.”

SECTION 2. This act takes effect upon approval by the Governor.

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