

**SENATE, No. 3748**

**STATE OF NEW JERSEY**  
**219th LEGISLATURE**

INTRODUCED MAY 11, 2021

**Sponsored by:**

**Senator MICHAEL L. TESTA, JR.**

**District 1 (Atlantic, Cape May and Cumberland)**

**SYNOPSIS**

Establishes certain requirements for social media websites concerning content moderation practices; establishes cause of action against social media websites for violation of content moderation practices.

**CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT establishing a cause of action against social media websites  
2 for the censoring or banning of certain users and supplementing  
3 Title 56 of the Revised Statutes.

4  
5 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
6 *of New Jersey:*

7  
8 1. As used in P.L. , c. (C. ) (pending before the  
9 Legislature as this bill):

10 “Algorithm” means a mathematical set of rules that specify how  
11 a group of data that will assist in ranking search results and  
12 maintaining order or that is used in sorting or ranking content or  
13 material based on relevancy or other factors instead of using  
14 published time or chronological order of such content or material  
15 behavior.

16 “Anonymous content or user ban” means action by a social  
17 media website, through any means, whether the action is  
18 determined by a natural person or an algorithm, to limit or eliminate  
19 the exposure of a user or content or material posted by a user to  
20 other users of the social media website. “Anonymous content or  
21 user ban” includes acts of banning by a social media website that  
22 are not readily apparent to a user.

23 “Candidate” means an individual seeking election to a public  
24 office of the State, or of a county or municipality at any election.  
25 “Candidate” includes an individual who runs unopposed, loses an  
26 election, withdraws from an election, or raises or spends money, or  
27 both, to run for elected office but does not appear on the ballot.

28 “Censor” means any action taken by a social media website to  
29 delete, regulate, restrict, edit, alter, inhibit the publication or  
30 republication of, suspend a right to post, remove, or post an  
31 addendum to any content or material posted by a user. “Censor”  
32 includes actions to inhibit the ability of a user to be viewable by or  
33 to interact with another user of the social media website.

34 “Consumer Price Index” means the consumer price index for all  
35 urban consumers in the New York City and Philadelphia areas as  
36 reported by the federal Department of Labor or successor index.

37 “Office” means the New Jersey Office of the Attorney General in  
38 the Department of Law and Public Safety.

39 “Journalistic enterprise” means any entity:

40 a. publishing words, audio, or video online and making such  
41 published material available to Internet users;

42 b. operating a cable television channel providing content for  
43 cable television subscribers; or

44 c. operating under a broadcast license issued by the Federal  
45 Communications Commission.

46 “Obscene” means material that a reasonable person, applying  
47 contemporary community ethical standards, would find that, taken

1 as a whole, the dominant theme of the material appeals to prurient  
2 interests.

3 “Post prioritization” means action by a social media website to  
4 place, feature, or prioritize certain content or material ahead of  
5 others in a newsfeed, view, or Internet search results. “Post  
6 prioritization” does not include post prioritization of content and  
7 material based on payments by a third party, including other users,  
8 to the social media website.

9 “Selective suspension” means the action or practice by a social  
10 media website to permanently delete or ban a user or to temporarily  
11 delete or ban a user for more than 60 days.

12 “Social media website ” means any information service, system,  
13 Internet search engine, or access software provider that does  
14 business in the State of New Jersey, and provides or enables  
15 computer access by multiple users to a computer server, including  
16 an Internet website or a social media website, or both, which is a  
17 sole proprietorship, partnership, limited liability company,  
18 corporation, association, or other legal entity that is organized or  
19 operated for the profit or financial benefit of its shareholders or  
20 other owners, and that satisfies one or more of the following  
21 thresholds:

- 22 a. is open to the public;  
23 b. has annual gross revenues in excess of \$100 million, as  
24 adjusted in January of every odd-numbered year to reflect any  
25 increase in the Consumer Price Index; and  
26 c. has at least 100 million monthly users globally.

27 "User" means a person who has an account on a social media  
28 website, regardless of whether the person posts or has posted  
29 content or material to the social media website.

30  
31 2. It shall be an unlawful practice and violation of the New  
32 Jersey consumer fraud act, P.L.1960, c.39 (C.56:8-1 et seq.), if a  
33 social media website fails to comply with the requirements set forth  
34 in this section. A social media website shall:

- 35 a. publish the standards, including detailed definitions, it uses  
36 or has used for determining how to censor, selectively suspend, or  
37 implement anonymous content or user ban;  
38 b. apply censorship, selectively suspend, and anonymous  
39 content or user banning standards in a consistent manner among its  
40 users on the platform;  
41 c. notify users about any changes to user rules, terms, and  
42 agreements prior to implementing such changes;  
43 d. not censor a user's content or material or selectively suspend  
44 a user from the social media website without providing notification  
45 to the user who posted or attempted to post the content or material,  
46 or in a way that violates State deceptive and unfair trade practices;  
47 e. provide a mechanism for users to request the number of  
48 other users who were actually provided or shown the requesting

- 1 user's content or posts and provide users with the number of other  
2 users who were actually provided or shown that content or posts  
3 upon request;
- 4 f. categorize algorithms used for post prioritization and  
5 anonymous content or user banning and allow users to opt-out of  
6 post prioritization and anonymous content or user banning  
7 algorithm categories to allow sequential or chronological posts and  
8 content;
- 9 g. provide users with an annual notice on the use of algorithms  
10 used for post prioritization and anonymous content or user banning  
11 and reoffer annually the opt-out opportunity provided in subsection  
12 f. of this section;
- 13 h. not apply or use post prioritization or anonymous content or  
14 user banning algorithms for content and material posted by or about  
15 a user who is known by the social media website to be a candidate  
16 for office from the date of qualification through the date of the  
17 election or the date the candidate ceases to be a candidate before the  
18 date of election. Post prioritization of certain content or material  
19 from or about a candidate based on payments to the social media  
20 website by the candidate for office or a third party shall not be a  
21 violation of this paragraph;
- 22 i. provide users with a method to identify themselves as  
23 qualified candidates and may confirm the candidate's qualification  
24 by reviewing the New Jersey Department of State's Division of  
25 Elections website;
- 26 j. allow a user who has been selectively suspended to access or  
27 retrieve all of the user's information, content, material, and data for  
28 at least 60 days following the date of being selectively suspended;  
29 and
- 30 k. provide journalistic enterprises with a method to identify  
31 themselves as such; and
- 32 l. not knowingly take any action to censor, selectively  
33 suspend, or anonymous content or user ban a journalistic enterprise  
34 based on the content of its publication or broadcast. Post  
35 prioritization of certain journalistic enterprise content based on  
36 payments to the social media website by such journalistic enterprise  
37 is not a violation of this section.
- 38
- 39 3. a. A social media website shall notify a user prior to  
40 censoring the user's content or material. The notification shall:
- 41 (1) be in writing;
- 42 (2) be delivered via electronic mail or direct electronic  
43 notification to the user within 30 days of the censoring action;
- 44 (3) include a thorough rationale explaining why the social media  
45 website will be censoring the user; and
- 46 (4) include a precise and thorough explanation of how the social  
47 media website became aware of the censored content or material,

1 including a thorough explanation of the algorithms used, if any, to  
2 identify or flag the user's content or material as objectionable.

3 b. Notwithstanding any other provisions of P.L. , c. (C. )  
4 (pending before the Legislature as this bill), a social media website  
5 shall not be required to notify a user if the censored content or  
6 material is obscene.

7  
8 4. In addition to the relief provided under the New Jersey  
9 consumer fraud act, P.L.1960, c.39 (C.56:8-1 et seq.), a user may  
10 bring a private cause of action against a social media website for a  
11 violation of subsection b. or d., or both, of section 2 of P.L. , c.  
12 (C. ) (pending before the Legislature as this bill). In a private  
13 cause of action brought against a social media website pursuant to  
14 this section, the court may award all of the following damages to  
15 the user:

- 16 a. up to \$100,000 in statutory damages per proven claim;  
17 b. actual damages;  
18 c. punitive damages if aggravating factors are present;  
19 d. other forms of equitable relief; and  
20 e. costs and reasonable attorney fees, if the user was selectively  
21 suspended in violation of subsection b. of section 2 of P.L. , c.  
22 (C. ) (pending before the Legislature as this bill).

23  
24 5. As provided for in subsection h. of section 2 of P.L. , c.  
25 (C. ) (pending before the Legislature as this bill), a social media  
26 website shall not knowingly apply or use post prioritization or  
27 anonymous content or user banning algorithms for content and  
28 material posted by or about a user who is known by the social  
29 media website to be a candidate. Upon a finding of a violation of  
30 subsection h. of section 2 of P.L. , c. (C. ) (pending before  
31 the Legislature as this bill) by the office, the social media website  
32 may be fined by the Attorney General in the amount of \$100,000  
33 per day for Statewide candidates and \$10,000 per day for other  
34 candidates for any unlawful selective suspension. A social media  
35 website that knowingly provides free advertising for a candidate  
36 shall report the advertising as an in-kind contribution to the  
37 candidate under State election laws. Posts, content, material, and  
38 comments by candidates that are shown on the platform in the same  
39 or similar way as other user's posts, content, material, and  
40 comments shall not be considered free advertising.

41  
42 6. In an investigation by the office into acts of anonymous  
43 content or user banning by a social media website, the office has the  
44 power to subpoena the social media website for any algorithm  
45 related to anonymous content or user banning and any related  
46 documentation used within the previous 24 months related to  
47 anonymous content or user banning.

1       7. Nothing in P.L.     , c.     (C.     ) (pending before the  
2 Legislature as this bill) shall be construed to be inconsistent with  
3 federal law, to the extent authorized under 47 U.S.C. s.230(e)(3),  
4 and notwithstanding any other provision of State or local law.

5

6       8. This act shall take effect immediately.

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8

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STATEMENT

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11       This bill establishes a cause of action against social media  
12 websites for the censoring or banning of certain users.

13       This bill authorizes the Office of the New Jersey Attorney  
14 General to bring an action under the New Jersey consumer fraud act  
15 against a social media website if the social media website fails to  
16 comply with the requirements set forth in the bill. Among other  
17 requirements enumerated in the bill, a social media website is to  
18 publish the standards it uses or has used for determining how to  
19 censor, “selectively suspend,” and implement an “anonymous  
20 content or user ban,” as these terms are defined in the bill, users and  
21 apply censorship, selective suspensions, and anonymous content or  
22 user banning standards in a consistent manner among its users on  
23 the platform.

24       Additionally, social media websites are not to be permitted to  
25 apply or use post prioritization or anonymous content or user  
26 banning algorithms for content and material posted by or about a  
27 user who is known by the social media website to be a candidate for  
28 office or a journalistic enterprise, as those terms are defined in the  
29 bill.

30       Finally, the bill establishes causes of actions along with setting  
31 damages for violations of the bill, in accordance with federal, State,  
32 and local laws.