

1 STATE OF OKLAHOMA

2 1st Session of the 59th Legislature (2023)

3 HOUSE BILL 2548

By: O'Donnell

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5
6 AS INTRODUCED

7 An Act relating to Social Media; creating the
8 Oklahoma Social Media Transparency Act of 2023;
9 defining terms; establishing industry requirements
10 for social media companies; requiring publication of
11 standards; requiring consistent application;
12 directing for notice; providing guidelines for
13 censorship or shadow bans; requiring that certain
14 information be provided to users; mandating that
15 users be provided post-prioritization and shadow ban
16 algorithm opt-outs; requiring annual notice;
17 prohibiting post-prioritization and shadow banning
18 algorithms used on political candidates; requiring
19 social media platforms to allow deplatformed users to
20 access certain information; prohibiting censorship,
21 deplatforming, or shadow banning of journalistic
22 enterprises; providing requirements of notifications;
23 Exempting social media platforms from requirements if
24 censored content is obscene; permitting investigation
by the attorney general; creating a private cause of
action; clarifying jurisdiction; clarifying attorney
general's powers; clarifying enforceability;
providing for severability; providing for
codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 3001 of Title 18, unless there
is created a duplication in numbering, reads as follows:

1 This act shall be known and may be cited as the "Oklahoma Social
2 Media Transparency Act of 2023".

3 SECTION 2. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 3002 of Title 18, unless there
5 is created a duplication in numbering, reads as follows:

6 As used in this act, the term:

7 1. "Algorithm" means a mathematical set of rules that specifies
8 how a group of data behaves and that will assist in ranking search
9 results and maintaining order or that is used in sorting or ranking
10 content or material based on relevancy or other factors instead of
11 using published time or chronological order of such content or
12 material;

13 2. "Censor" includes any action taken by a social media platform
14 to delete, regulate, restrict, edit, alter, inhibit the publication
15 or republication of, suspend a right to post, remove, or post an
16 addendum to any content or material posted by a user. The term also
17 includes actions to inhibit the ability of a user to be viewable by
18 or to interact with another user of the social media platform;

19 3. "Deplatform" means the action or practice by a social media
20 platform to permanently delete or ban a user or to temporarily
21 delete or ban a user from the social media platform for more than
22 fourteen (14) days;

23 4. "Journalistic enterprise" means an entity doing business in
24 Oklahoma that:

- 1 a. publishes in excess of one hundred thousand (100,000)
2 words available online with at least fifty thousand
3 paid subscribers or one hundred thousand monthly
4 active users,
5 b. publishes one hundred (100) hours of audio or video
6 available online with at least one hundred million
7 viewers annually,
8 c. operates a cable channel that provides more than forty
9 (40) hours of content per week to more than one
10 hundred thousand cable television subscribers, or
11 d. operates under a broadcast license issued by the
12 Federal Communications Commission;

13 5. "Post-prioritization" means action by a social media
14 platform to place, feature, or prioritize certain content or
15 material ahead of, below, or in a more or less prominent position
16 than others in a newsfeed, a feed, a view, or in search results.
17 The term does not include post-prioritization of content and
18 material of a third party including other users, based on payments
19 by that third party, to the social media platform;

20 6. "Shadow ban" means action by a social media platform;
21 through any means, whether the action is determined by a natural
22 person or an algorithm, to limit or eliminate the exposure of a user
23 or content or material posted by a user to other users of the social
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1 media platform. This term includes acts of shadow banning by a
2 social media platform which are not readily apparent to a user;

3 7. "Social media platform" means any information service,
4 system, Internet search engine, or access software provider that:

5 a. provides or enables computer access by multiple users
6 to a computer server, including an Internet platform
7 or a social media site,

8 b. operates as a sole proprietorship, partnership,
9 limited liability company, corporation, association,
10 or other legal entity,

11 c. does business in the state, and

12 d. satisfies at least one of the following thresholds:

13 (1) has annual gross revenues in excess of One
14 Hundred Million Dollars (\$100,000,000.00), as
15 adjusted in January of each odd-numbered year to
16 reflect any increase in the Consumer Price Index,
17 and

18 (2) has at least one hundred million monthly
19 individual platform participants globally,

20 8. "User" means a person who resides or is domiciled in this
21 state and who has an account on a social media platform, regardless
22 of whether the person posts or has posted content or material to the
23 social media platform.

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1 SECTION 3. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 3003 of Title 18, unless there
3 is created a duplication in numbering, reads as follows:

4 A social media platform that fails to comply with any of the
5 provisions of this section commits an unfair or deceptive act or
6 practice:

7 A. A social media platform must publish the standards,
8 including detailed definitions, it uses or has used for determining
9 which users to censor, deplatform, and shadow ban.

10 B. A social media platform must apply censorship,
11 deplatforming, and shadow banning standards in a consistent manner
12 among its users on the platform.

13 C. A social media platform must inform each user about any
14 changes to its user rules, terms, and agreements before implementing
15 the changes and may not make changes more than once every thirty
16 (30) days.

17 D. A social media platform may not censor or shadow ban a
18 user's content or material or deplatform a user from the social
19 media platform:

20 1. Without notifying the user who posted or attempted to post
21 the content or material; or

22 2. In a way that violates this act.

23 E. A social media platform must:

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1 1. Provide a mechanism that allows a user to request the number
2 of other individual platform participants who were provided or shown
3 the user's content or posts; and

4 2. Provide, upon request, a user with the number of other
5 individual platform participants who were provided or shown content
6 or posts.

7 F. A social media platform must:

8 1. Categorize algorithms used for post-prioritization and
9 shadow banning; and

10 2. Allow a user to opt out of post-prioritization and shadow
11 banning algorithm categories to allow sequential or chronological
12 posts and content.

13 G. A social media platform must provide users with an annual
14 notice on the use of algorithms for post-prioritization and shadow
15 banning and reoffer annually the opt-out opportunity in paragraph 2
16 of subsection F of this section.

17 H. A social media platform may not apply or use post-
18 prioritization or shadow banning algorithms for content and material
19 posted by or about a user who is known by the social media platform
20 to be a candidate, as defined as an individual running for public
21 office beginning on the date of qualification and ending on the date
22 of the election or the date the candidate ceases to be a candidate.
23 Post-prioritization of certain content or material from or about a
24 candidate for office based on payments to the social media platform

1 by such candidate for office or a third party is not a violation of
2 this subsection. A social media platform must provide each user a
3 method by which the user may be identified as a qualified candidate
4 and which provides sufficient information to allow the social media
5 platform to confirm the user's qualification by reviewing the
6 website of the Oklahoma State Election Board or the website of the
7 local supervisor of elections.

8 I. A social media platform must allow a user who has been
9 deplatformed to access or retrieve all of the user's information,
10 content, material, and data for at least sixty (60) days after the
11 user receives the notice required under paragraph 1 of subsection D
12 of this section.

13 J. A social media platform may not take any action to censor,
14 deplatform, or shadow ban a journalistic enterprise based on the
15 content of its publication or broadcast. Post-prioritization of
16 certain journalistic enterprise content based on payments to the
17 social media platform by such journalistic enterprise is not a
18 violation of this subsection. This subsection does not apply if the
19 content or material is obscene as defined in paragraph 1 of
20 subsection B of Section 1024 of Title 21 of the Oklahoma Statutes.

21 SECTION 4. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 3004 of Title 18, unless there
23 is created a duplication in numbering, reads as follows:

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1 For purposes of paragraph 1 of subsection D of Section 3 of this
2 act, a notification must:

3 1. Be in writing;

4 2. Be delivered via electronic mail or direct electronic
5 notification to the user within 7 days after the censoring action;

6 3. Include a thorough rationale explaining the reason that the
7 social media platform censored the user; and

8 4. Include a precise and thorough explanation of how the social
9 media platform became aware of the censored content or material,
10 including a thorough explanation of the algorithms used, if any, to
11 identify or flag the user's content or material as objectionable.

12 SECTION 5. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 3005 of Title 18, unless there
14 is created a duplication in numbering, reads as follows:

15 Notwithstanding any other provisions of this Act, a social media
16 platform is not required to notify a user if the censored content or
17 material is obscene as defined in paragraph 1 of subsection B of
18 Section 1029.1 of Title 21 of the Oklahoma Statutes.

19 SECTION 6. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 3006 of Title 18, unless there
21 is created a duplication in numbering, reads as follows:

22 If the Oklahoma Attorney General's Office, by its own inquiry or
23 as a result of a complaint, suspects that a violation of this act is
24 imminent, occurring, or has occurred, the department may investigate

1 the suspected violation in accordance with this section. Based on
2 its investigation, the department may bring a civil or
3 administrative action under this section.

4 SECTION 7. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 3007 of Title 18, unless there
6 is created a duplication in numbering, reads as follows:

7 A user may only bring a private cause of action for violations
8 of subsection B of Section 3 of this act or paragraph 1 of
9 subsection D of Section 3 of this act. In a private cause of action
10 brought under subsection B of Section 3 of this act or paragraph 1
11 of subsection D of Section 3 of this act, the court may award the
12 following remedies to the user:

- 13 1. Up to \$100,000 in statutory damages per proven claim;
- 14 2. Actual damages;
- 15 3. If aggravating factors are present, punitive damages;
- 16 4. Other forms of equitable relief, including injunctive
17 relief; or
- 18 5. If the user was deplatformed in violation of subsection B of
19 Section 3 of this act, costs and reasonable attorney fees.

20 SECTION 8. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 3008 of Title 18, unless there
22 is created a duplication in numbering, reads as follows:

23 For purposes of bringing an action in accordance with this Act,
24 each failure to comply with the individual provisions of Section 3

1 of this act shall be treated as a separate violation, act, or
2 practice. For purposes of bringing an action in accordance with this
3 Act, a social media platform that censors, shadow bans, deplatforms,
4 or applies post-prioritization algorithms to candidates and users in
5 the state is conclusively presumed to be both engaged in substantial
6 and not isolated activities within the state and operating,
7 conducting, engaging in, or carrying on a business, and doing
8 business in this state, and is therefore subject to the jurisdiction
9 of the courts of the state.

10 SECTION 9. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 3009 of Title 18, unless there
12 is created a duplication in numbering, reads as follows:

13 In an investigation by the Oklahoma Attorney General into
14 alleged violations of this section, the Oklahoma Attorney General's
15 investigative powers include, but are not limited to, the ability to
16 subpoena any algorithm used by a social media platform related to
17 any alleged violation.

18 SECTION 10. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 3010 of Title 18, unless there
20 is created a duplication in numbering, reads as follows:

21 This section may only be enforced to the extent not inconsistent
22 with federal law and 47 U.S.C. Section 230(e)(3), notwithstanding
23 any other provision of state law.

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1 SECTION 11. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 3011 of Title 18, unless there
3 is created a duplication in numbering, reads as follows:

4 If any provision of this act or the application thereof to any
5 person or circumstance is held invalid, the invalidity shall not
6 affect other provisions or applications of the act which can be
7 given effect without the invalid provision or application, and to
8 this end the provisions of this act are declared severable.

9 SECTION 12. This act shall become effective November 1, 2023.

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