



2021 South Dakota Legislature

House Bill 1223

Introduced by: **Representative Phil Jensen**

1 **An Act to prohibit certain social media censorship.**

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 **Section 1.** That a NEW SECTION be added:

4 **37-24A-1. Definitions.**

5 Terms used in this Act mean:

6 (1) "Algorithm," a set of instructions designed to perform a specific task;

7 (2) "Hate speech," a phrase concerning content that a person finds offensive based on
8 the person's personal moral code;

9 (3) "Obscene," content that to the average person, applying contemporary community
10 standards and taking the content as a whole, appeals to the prurient interest;
11 depicts or describes, in a patently offensive way, nudity, sex, or excretion; and
12 lacks serious literary, artistic, political or scientific value;

13 (4) "Political speech," speech relating to the state, government, body politic, public
14 administration, or government policymaking, including speech by the government
15 or candidates for office, and any speech relating to social issues. The term does
16 not include speech concerning the administration of or the law relating to the civil
17 aspects of government;

18 (5) "Social media website," a website or application that enables users to communicate
19 with each other by posting information, comments, messages, or images and;

20 (a) Is open to the public;

21 (b) Has more than seventy-five million users; and

22 (c) Has not been specifically affiliated with any one religion or political party
23 from its inception.

24 **Section 2.** That a NEW SECTION be added:

1 **37-24A-2. Civil action allowed.**

2 A social media website user, who is eighteen years of age or older, may bring a
3 civil action against the owner or operator of a social media website with users in this state
4 if the social media website intentionally:

- 5 (1) Censors a social media website user's religious or political speech; or
6 (2) Uses an algorithm to suppress religious or political speech.

7 **Section 3.** That a NEW SECTION be added:

8 **37-24A-3. Damages in civil action.**

9 In a civil action brought under this Act, a social media website user may be awarded
10 seventy-five thousand dollars for each purposeful censoring or suppression of the social
11 media user's speech, actual damages, equitable relief, attorney fees, costs, and
12 disbursements.

13 **Section 4.** That a NEW SECTION be added:

14 **37-24A-4. Invalid defense in civil action.**

15 An owner or operator of a social media website may not raise hate speech as a
16 defense in a civil action brought under this Act.

17 **Section 5.** That a NEW SECTION be added:

18 **37-24A-5. Valid defense in civil action.**

19 A social media website may not be found liable in a civil action under this Act if:
20 (1) The censored speech called for immediate acts of violence;
21 (2) The censored speech was obscene or pornographic in nature;
22 (3) The speech was censored due to an operational error;
23 (4) The speech was censored by court order;
24 (5) The censored speech came from an inauthentic source or involved false
25 impersonation;
26 (6) The censored speech enticed criminal conduct;
27 (7) The censored speech involved minors bullying minors; or
28 (8) The speech was censored by another social media website user.

29 **Section 6.** That a NEW SECTION be added:

1 **37-24A-6. Enforcement by attorney general.**

2 The attorney general may bring a civil action under this Act on behalf of a social
3 media website user who is at least eighteen years of age, who resides in this state and
4 whose religious or political speech has been censored by a social media website.

5 **Section 7.** That a NEW SECTION be added:

6 **37-24A-7. Venue.**

7 The venue for any civil action brought under this Act shall be in this state.