

JAN 22 2021

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# A BILL FOR AN ACT

RELATING TO OFFENSES AGAINST THE INTERNET.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1       SECTION 1. The legislature recognizes that the State has a  
2       compelling interest in holding certain social media platforms to  
3       heightened standards because they have essentially created  
4       digital public squares. The legislature also finds that the  
5       State has an interest in helping its residents to exercise their  
6       rights of religious and political speech in certain semi-public  
7       forums regardless of their religious or political affiliations.  
8       The legislature also finds that the State has an interest in  
9       detering the owners and operators of social media platforms  
10      that have essentially created digital public squares from unduly  
11      interfering in elections.

12      Accordingly, the purpose of this Act is to:

- 13      (1) Level the playing field between consumers and the  
14           major social media platforms;  
15      (2) Encourage the free flow of religious and political  
16           ideas and robust debate;



1 (3) Hold major social media platforms to a heightened  
2 standard for having essentially created digital public  
3 squares;

4 (4) Deter bad faith, unfair dealing, fraud, breach of  
5 contract, unjust enrichment, and the marginalization  
6 or oppression of competing worldviews;

7 (5) Support the principles that:

8 (A) Without truth, there is no freedom;

9 (B) Freedom comes from the truth;

10 (C) The proliferation of truth is vital to the health  
11 of our constitutional republic; and

12 (D) Social media censorship regarding religious and  
13 political ideology has the potential to suppress  
14 the truth by preventing different doctrines and  
15 ideologies from competing and vying for  
16 superiority;

17 (6) Deter an owner or operator of a social media platform  
18 from engaging in false advertising; and

19 (7) Deter an owner or operator of a social media platform  
20 from unduly interfering with local, regional, and  
21 national elections.



SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to title 26 to be appropriately designated and to read as follows:

**"CHAPTER**

**UNFAIR SOCIAL MEDIA CENSORSHIP**

**§ -1 Short title.** This chapter may be cited and referred to as the "Stop Social Media Censorship Act".

**§ -2 Definitions.** As used in this chapter:

"Algorithm" means a set of instructions designed to perform a specific task.

"Hate speech" means a phrase concerning content that an individual finds offensive based upon the individual's personal moral code.

"Political speech" means speech relating to a state, government, body politic, or public administration as it relates to governmental policy-making, and the term includes speech by the government or a candidate for office and any discussion of social issues.

"Pornographic" shall have the same meaning as in section 712-1210.



1 "Religious speech" means a set of unproven answers, truth  
2 claims, faith-based assumptions, and assertions that attempt to  
3 explain questions such as how the world was created, what  
4 constitutes right and wrong actions by humans, and what happens  
5 after death.

6 "Shadowban" means the act of blocking or partially blocking  
7 a user or the user's content from an online community such that  
8 it will not be readily apparent to the user that the user has  
9 been banned. The term also means stealth banning, ghost  
10 banning, or comment ghosting.

11 "Social media platform" means an Internet website or  
12 application that enables users to communicate with each other by  
13 posting information, comments, messages, or images and:

- 14 (1) Is open to the public;  
15 (2) Has more than seventy-five million subscribers;  
16 (3) Has not been since its inception specifically  
17 affiliated with any one religion or political party;  
18 and  
19 (4) Provides a means for the platform's users to report  
20 obscene materials and has in place procedures for



1           evaluating those reports and removing obscene  
2           material.

3           **§ -3 Civil actions against social media censorship;**  
4           **deceptive trade practices; exceptions.** (a) The owner or  
5           operator of a social media platform who contracts with a social  
6           media platform user in the State shall be subject to a private  
7           right of action by the user if the social media platform  
8           intentionally:

9           (1) Deletes or censors the user's religious speech or  
10           political speech; and

11           (2) Uses an algorithm to disfavor, shadowban, or censure  
12           the user's religious speech or political speech.

13           (b) Under this section, a social media platform user may  
14           be awarded all of the following damages:

15           (1) A minimum of \$75,000 in damages per each intentional  
16           deletion or censoring of the social media platform  
17           user's speech;

18           (2) Actual damages;

19           (3) Punitive damages; provided that aggravating factors  
20           are present; and

21           (4) Any other form of equitable relief.



1 (c) The prevailing party in a cause of action under this  
2 section may be awarded costs and reasonable attorney fees.

3 (d) A social media platform may mitigate damages by  
4 restoring deleted speech or removing the censoring of a social  
5 media platform user's speech in a reasonable amount of time.

6 (e) At a trial, a social media platform shall not use the  
7 social media platform user's alleged hate speech as a basis for  
8 justifying or defending the social media platform's acts of  
9 deleting or censoring the speech.

10 (f) The attorney general may bring a civil cause of action  
11 under this section on behalf of a social media platform user who  
12 resides in the State and whose religious speech or political  
13 speech has been censored by a social media platform.

14 (g) An owner or operator of social media social platform  
15 that engages in any of the practices described in subsection (a)  
16 commits a deceptive trade practice in violation of section  
17 481A-3 and shall be subject to the actions for relief that are  
18 set forth under section 481A-4.

19 (h) This section shall not apply to the following:



(1) A social media platform that deletes or censors a social media platform user's speech or that uses an algorithm to disfavor or censure speech if the speech:

(A) Calls for immediate acts of violence;

(B) Calls for a user to harm themselves;

(C) Is pornographic 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 platform user's censoring of another social media platform user's speech.

(i) No person shall have standing to seek enforcement under this section unless the person is a user who was eighteen years of age or older at the time of the social media platform's alleged acts of deletion or censorship.

(j) The venue for any civil action brought under section shall be in the circuit courts of the State."

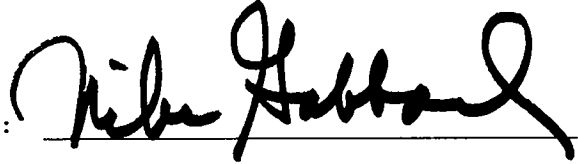


# S.B. NO. 357

1       SECTION 3.   This Act shall take effect upon its approval.

2

INTRODUCED BY:

A handwritten signature in black ink, appearing to read "Mike Hubbard", is written over a horizontal line.



# S.B. NO. 357

**Report Title:**

Media Censorship; Unfair and Deceptive Trade Practice

**Description:**

Authorizes a user of a social media platform to bring a cause of action against the social media platform for deleting or censoring the user's speech.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

