

## 2020 South Dakota Legislature

**Senate Bill 153****AMENDMENT 153A FOR THE INTRODUCED BILL**

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 **37-38-1. Definitions.**

5 Terms used in this chapter 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 arbitrarily finds offensive  
8 based on that person's personal moral code;  
9 (3) "Obscene," content that to the average person, applying contemporary community  
10 standards, the dominant theme of the material taken as a whole appeals to prurient  
11 interest, and lacks serious literary, artistic, political, or scientific value;  
12 (4) "Political speech," speech relating to the state, government, body politic, public  
13 administration, or government policymaking, including speech by the government  
14 or candidates for office, and any speech relating to social issues. The term does  
15 not include speech concerning the administration of or law relating to civil aspects  
16 of government;  
17 (5) "Social media website," a website or application that:  
18 (i) Enables users to communicate with other users by posting information,  
19 comments, messages, or images;  
20 (ii) Is open to the public;  
21 (iii) Has more than seventy-five million users; and  
22 (iv) 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           **37-38-2. Social media website censorship or suppression of religious speech**  
2 **prohibited--Exceptions--Hate speech not a defense.**

3           A social media website user may bring a civil action against the owner or operator  
4 of a social media website with users in this state if the social media website purposely:

- 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           A social media website may not be found liable under this section if the censored  
8 speech calls for immediate acts of violence, is obscene or pornographic in nature, was  
9 censored as a result of operational error, was censored as a result of a court order, came  
10 from an inauthentic source or involved false impersonation, enticed criminal conduct,  
11 involved minors bullying minors, or if the speech was censored by another social media  
12 website user.

13           It is not a defense to a civil action under this section that the social media website  
14 user's speech was hate speech.

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

16           **37-38-3. Award of damages to social media website user—Attorney's fees**  
17 **allowed.**

18           A social media website user may be awarded damages under § 37-38-2, including  
19 civil damages of seventy-five thousand dollars for each purposeful censoring or  
20 suppression of the social media user's speech, actual damages, forms of equitable relief,  
21 and attorney's fees.

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

23           **37-38-4. Standing to enforce.**

24           Only social media users age eighteen or older have standing to enforce this  
25 chapter.

26  
27 ~~**Section 5. That a NEW SECTION be added:**~~

28 ~~Attorney general may bring civil action on behalf of social media website user.~~

1 ~~The Attorney General may bring a civil action under § 37-38-2 on behalf of a social media~~  
2 ~~website user who resides in this state whose religious or political speech has been censored~~  
3 ~~by a social media website.~~

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

5 **37-38-6. Venue.**

6 The venue for any civil action brought under § 37-38-2 shall be in this state.