

2021 Regular Session

HOUSE BILL NO. 602

BY REPRESENTATIVE AMEDEE

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

COMMERCIAL REGULATIONS: Provides relative to social media websites

1 AN ACT

2 To enact Chapter 30-D of Title 51 of the Louisiana Revised Statutes of 1950, to be
3 comprised of R.S. 51:2041 through 2043, relative to social media websites; to
4 provide definitions; to provide for violations; to provide for civil actions; to provide
5 for damages; to provide unfair trade practices; to provide for exceptions; to provide
6 legislative findings; to provide an effective date; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. Chapter 30-D of Title 51 of the Louisiana Revised Statutes of 1950,
9 comprised of R.S. 51:2041 through 2043, is hereby enacted to read as follows:

10 CHAPTER 30-D. SOCIAL MEDIA

11 §2041. Short title

12 This Chapter shall be known and may be cited as the "Social Media Free
13 Speech Act".

14 §2042. Definitions

15 As used in this Chapter, the following words have the meanings ascribed to
16 them:

17 (1) "Algorithm" means a set of instructions designed to perform a specific
18 task.

19 (2) "Descriptions or depictions of illicit sex or sexual immorality" includes
20 the depiction, display, description, exhibition or representation of:

1 (a) Ultimate sexual acts, normal or perverted, actual, simulated, or animated,
2 whether between human beings, animals, or an animal and a human being.

3 (b) Masturbation, excretory functions, or exhibition, actual, simulated, or
4 animated, of the genitals, pubic hair, anus, vulva, or female breast nipples.

5 (c) Sadoomasochistic abuse, meaning actual, simulated, or animated,
6 flagellation or torture by or upon a person who is nude or clad in undergarments or
7 in a costume which reveals the pubic hair, anus, vulva, genitals, or female breast
8 nipples, or the condition of being fettered, bound, or otherwise physically restrained,
9 on the part of one so clothed.

10 (d) Actual, simulated, or animated, touching, caressing, or fondling of, or
11 other similar physical contact with, a pubic area, anus, female breast nipple, covered
12 or exposed, whether alone or between humans, animals or a human and an animal,
13 of the same or opposite sex, in an act of apparent sexual stimulation or gratification.

14 (e) Actual, simulated, or animated, stimulation of the human genital organs
15 by any device whether or not the device is designed, manufactured, and marketed for
16 such purpose.

17 (3) "Hate speech" means a phrase concerning content that an individual finds
18 offensive based on his moral code.

19 (4) "Material harmful to minors" or "obscene material" means any digital
20 image, paper, magazine, book, newspaper, periodical, pamphlet, composition,
21 publication, photograph, drawing, picture, poster, motion picture film, video tape,
22 video game, figure, phonograph record, album, cassette, compact disc, wire or tape
23 recording, or other similar work or thing which exploits, is devoted to or principally
24 consists of, descriptions or depictions of illicit sex or sexual immorality for
25 commercial gain, and when the trier of fact determines that each of the following
26 applies:

27 (a) The material incites or appeals to or is designed to incite or appeal to the
28 prurient, shameful, or morbid interest of minors.

1 (b) The material is offensive to the average adult applying contemporary
2 community standards with respect to what is suitable for minors.

3 (c) The material taken as a whole lacks serious literary, artistic, political, or
4 scientific value for minors.

5 (5) "Minor" means any person under the age of eighteen years.

6 (6) "Political speech" means speech relating to the state, government, body
7 politic, or public administration as it relates to governmental policy-making, and the
8 term includes speech by the government or candidates for office and any discussion
9 of social issues.

10 (7) "Religious speech" means a set of unproven answers, truth claims,
11 faith-based assumptions, and naked assertions that attempt to explain such greater
12 questions such as how the world was created, what constitutes right and wrong
13 actions by humans, and what happens after death.

14 (8) "Shadowban" means the act of blocking or partially blocking a user or
15 his content from an online community such that it will not be readily apparent to the
16 user that he has been banned. The term also means stealth banning, ghost banning
17 or comment ghosting.

18 (9) "Social media website" means an internet website or application that
19 enables users to communicate with each other by posting information, comments,
20 messages, or images and that meets all of the following requirements:

21 (a) Is open to the public.

22 (b) Has more than seventy-five million subscribers.

23 (c) From its inception has not been specifically affiliated with any one
24 religion or political party.

25 (d) Provides a means for the website's users to report obscene materials and
26 has procedures in place for evaluating those reports and removing obscene material.

1 §2043. Civil action to stop social media censorship; deceptive trade practice;
2 exceptions

3 A. The owner or operator of a social media website who contracts with a
4 social media website user in this state is subject to a private right of action by the
5 user if the social media website purposely does either of the following:

6 (1) Deletes or censors the user's religious speech or political speech.

7 (2) Uses an algorithm to censor, disfavor, or shadowban the user's religious
8 speech or political speech.

9 B. A social media website user may be awarded all of the following damages
10 under this Section:

11 (1) Up to \$75,000 in statutory damages.

12 (2) Actual damages.

13 (3) If aggravating factors are present, punitive damages.

14 (4) Other forms of equitable relief.

15 C. The prevailing party in a cause of action under this Section may be
16 awarded costs and reasonable attorney fees.

17 D. A social media website that restores from deletion or removes the
18 censoring of a social media website user's speech in a reasonable amount of time
19 may use that fact to mitigate any damages.

20 E. A social media website may not use the social media website user's
21 alleged hate speech as a basis for justification or defense of the social media
22 website's actions at trial.

23 F. The attorney general may also bring a civil cause of action pursuant to this
24 Section on behalf of a social media website user who resides in this state and whose
25 religious speech or political speech has been censored by a social media website.

26 G. An owner or operator of social media social website that has engaged in
27 practices described in Subsection A of this Section has engaged in an unfair and
28 deceptive trade practice in violation of RS 51:1401 et seq. and is subject to the
29 penalties provided for in that Chapter.

1 H. This Section does not apply to any of the following:

2 (1) A social media website that deletes or censors a social media website
3 user's speech or that uses an algorithm to disfavor or censor speech that:

4 (a) Calls for immediate acts of violence.

5 (b) Calls for a user to harm themselves.

6 (c) Is obscene material or material harmful to minors.

7 (d) Is the result of operational error.

8 (e) Is the result of a court order.

9 (f) Comes from an inauthentic source or involves false impersonation.

10 (g) Entices criminal conduct.

11 (h) Involves the bullying of minors.

12 (i) Constitutes trademark and copyright infringement.

13 (j) Is excessively violent.

14 (k) Constitutes harassing spam that is commercial, not political or religious,

15 in nature.

16 (2) A social media website user's censoring of another social media website
17 user's speech.

18 I. Only users who are eighteen years of age or older have standing to seek
19 enforcement of this Section.

20 J. The venue for any civil action brought pursuant to this Section shall be in
21 this state.

22 Section 2. The legislature of Louisiana hereby finds and declares the
23 following:

24 (1) The Communications Decency Act was created to protect decent speech,
25 not deceptive trade practices.

26 (2) Repealing Section 230 of the Communications Decency Act at the
27 federal level is unnecessary because it already includes a state-law exemption and
28 the Social Media Free Speech Act was crafted to fall squarely in the state law

1 exemption of Section 230 to cure abuses of Section 230 to protect the consumers of
2 this state.

3 (3) Contract law is a state-law issue, and when a citizen of this state signs up
4 to use certain social media websites, they are entering into a contract.

5 (4) This state has a compelling interest in holding certain social media
6 websites to higher standards for having substantially created a digital public square
7 through fraud, false advertising, and deceptive trade practices.

8 (5) Major social media websites have engaged in the greatest bait and switch
9 of all times by marketing themselves as free, fair, and open to all ideas to induce
10 subscribers only to then prove otherwise at great expense to consumers and election
11 integrity.

12 (6) Breach of contract, false advertising, bad faith, unfair dealing, fraudulent
13 inducement, and deceptive trade practices are not protected forms of speech for
14 purpose of the first amendment of the United States Constitution or the Constitution
15 of this state.

16 (7) The major social media websites have already reached critical mass, and
17 they did it through fraud, false advertising, and deceptive trade practices at great
18 expense to the health, safety, and welfare of consumers of this state, while making
19 it difficult for others to compete with them.

20 (8) The state has an interest in helping its citizens enjoy their free exercise
21 rights in certain semi-public forums commonly used for religious and political
22 speech, regardless of which political party or religious organization they ascribe to.

23 (9) This state is generally opposed to online censorship unless the content
24 is injurious to children or promotes human trafficking; only then does this state
25 accept limited censorship.

26 Section 3. This Act shall become effective upon signature by the governor
27 or, if not signed by the governor, upon expiration of the time for bills to become law
28 without signature by the governor, as provided by Article III, Section 18 of the

1 Constitution of Louisiana. If vetoed by the governor and subsequently approved by
2 the legislature, this Act shall become effective on the day following such approval.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 602 Original

2021 Regular Session

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Abstract: ABSTRACT

Proposed law defines "algorithm", "descriptions or depictions of illicit sex or sexual immorality", "hate speech", "Material harmful to minors" or "obscene material", "minor", "political speech", "religious speech", "shadowban", and "social media website".

Proposed law creates a civil action for a social media website user, if the website engages in certain types of censorship.

Proposed law allows a user who prevails in the civil action to be awarded damages and lists the available damages for various types of violations.

Proposed law allows the social media website to mitigate damages by restoring a deletion or removing the censor.

Proposed law does not allow for a defense of "hate speech" for justification of removal or censoring.

Proposed law allows the attorney general to bring a civil action on behalf of a resident.

Proposed law provides that a violation of proposed law constitutes an unfair trade practice and subjects a violator to the penalties provided for in present law.

Proposed law provides a list of exemptions.

Proposed law provides legislative findings.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Adds R.S. 51:2041-2043)