

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1144

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to protect free speech from racial, religious, and viewpoint discrimination by a social media platform or interactive computer service; and to provide a penalty.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1.**

**Definitions.**

As used in this chapter:

1. "Censor" means to block, ban, remove, deplatform, demonetize, deboost, restrict, deny equal access or visibility to, or otherwise discriminate against.
2. "Expression" means any words, music, sounds, still or moving images, numbers, or other perceivable communication.
3. "Free speech state" means any of the several states, or any territory, of the United States that protects expression from censorship, by social media platforms or interactive computer services, based on the viewpoint of users or of expression.
4. "Identifiable private information" means private information that, in the circumstances, reasonably may be expected to be associated with a user or could with reasonable effort be associated with a user.
5. "Interactive computer service" means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server. The term does not include an internet service provider.
6. "Private information" means information acquired by the interactive computer service or social media platform from any user who has not expressly given prior authorization for the release or disclosure of the specific information, including the information's specific content, specific form, and the persons to whom the information will be released or disclosed.
7. "Receive" means to read, hear, look at, access, gain access to, or otherwise receive.
8. "Share" means to speak, sing, publish, post, upload, transmit, communicate, or otherwise share.

9. "Social media platform" means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server and which allows a user to publish or share expression with persons other than the particular persons to whom the expression specifically is directed. The term does not include an internet service provider.
10. "Unlawful expression" means expression that is unlawful under the United States Constitution or federal law, or under the Constitution of North Dakota or laws of this state.
11. "User" means a person that shares or receives expression through an interactive computer service.

**Racial, religious, and viewpoint discrimination prohibited.**

1. A social media platform may not censor a user, a user's expression, a user's sharing of expression, or a user's receiving of expression from another person, based on:
  - a. The race, religion, or viewpoint of any user or other person; or
  - b. The viewpoint presented in any user's or other person's expression.
2. An interactive computer service may not censor a user, a user's expression, a user's sharing of expression, or a user's receiving of expression from another person, based on:
  - a. The race, religion, or viewpoint of any user or other person; or
  - b. The viewpoint presented in any user's or other person's expression.
3. This section applies whether the viewpoint is expressed on the social media platform, the interactive computer service, or elsewhere.

**Geographic discrimination prohibited.**

1. A social media platform may not censor a user, a user's expression, a user's sharing of expression, or a user's receiving of expression based on the user's residing in, doing business in, sharing expression, or receiving expression in this state or any part of the state.
2. An interactive computer service may not censor a user, a user's expression, a user's sharing of expression, or a user's receiving of expression based on the user's residing in, doing business in, sharing expression, or receiving expression in this state or any part of the state.

**Application.**

1. This chapter only protects:
  - a. A user residing in, doing business in, sharing expression in, or receiving expression in this state;
  - b. Expression, sharing expression, or receiving expression, to the extent the expression, sharing, or receiving occurs in this state;

- c. Expression, sharing expression, or receiving expression, to the extent the expression is shared with, or received from, any other free speech state; and
  - d. Expression, sharing expression, or receiving expression, to the extent the expression is shared with, or received from, any other of the several states, or any other of the territories, of the United States.
2. This chapter only applies to:
- a. A social media platform or interactive computer service that functionally has more than twenty million active users within any thirty-day period; and
  - b. A social media platform or interactive computer service that functionally has more than one hundred fifty million active users within a calendar month.
3. This chapter does not apply to:
- a. A social media platform or interactive computer service that has been available to users for less than twelve months; or
  - b. A social media platform or interactive computer service that is engaged primarily in its own expression and which allows users to comment its expression, as long as such commentary or the ability to comment is merely incidental to its expression.
4. This chapter does not:
- a. Subject a social media platform or interactive computer service to any remedy or cause of action from which the social media platform or interactive computer service is protected by federal law;
  - b. Prohibit a social media platform or interactive computer service from censoring any expression that it is specifically authorized to censor by federal law; or
  - c. Prohibit a social media platform or interactive computer service from censoring unlawful expression.

#### **Civil action - Remedies.**

A user residing in, doing business in, sharing expression in, or receiving expression in this state may bring a civil action in any court of this state against a social media platform or interactive computer service for a violation of this chapter against the user, and upon finding the defendant has violated or is violating the user's rights under this chapter, the court shall award:

- 1. Declaratory relief;
- 2. Injunctive relief;
- 3. Treble damages or, at the plaintiff's option, statutory damages of up to fifty thousand dollars; and
- 4. Costs and reasonable attorney's fees.

### **Aiding and abetting - Civil action - Remedies.**

A user residing in, doing business in, sharing expression in, or receiving expression in this state may bring a civil action in any court of this state against any person who aids or abets a violation of this chapter committed by a social media platform or interactive computer service against that user, and upon finding the defendant has aided or abetted or is aiding or abetting a violation of that user's rights under this chapter, the court shall award:

1. Declaratory relief;
2. Injunctive relief;
3. Treble damages or, at the plaintiff's option, statutory damages of up to fifty thousand dollars; and
4. Costs and reasonable attorney's fees.

### **Jurisdiction - Right to jury - Compliance.**

1. Notwithstanding any other provision of law, the courts of this state have personal jurisdiction over any defendant sued under this chapter to the maximum extent permitted by the Fourteenth Amendment to the United States Constitution.
2. The plaintiff in an action brought under this chapter has the right to a jury trial.
3. If a defendant in an action brought under this chapter fails to comply promptly with the court's order, the court shall hold the defendant in contempt and shall use all lawful measures to secure immediate compliance, including imposing daily penalties sufficient to secure immediate compliance.

### **Fiduciary duty.**

Any loss, release, or distribution by a social media platform or interactive computer service of identifiable private information that has been collected by the social media platform or interactive computer service is a breach of fiduciary duty and is subject to the usual legal or equitable remedies for the breach; but for each intentional or reckless loss, release, or distribution of identifiable private information, the monetary recovery must be tripled or, at the plaintiff's option, any defendant social media platform or interactive computer service shall pay presumptive damages or restitution in the amount of up to one million dollars."

Renumber accordingly