

MAINE STATE LEGISLATURE

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130th MAINE LEGISLATURE

FIRST SPECIAL SESSION-2021

Legislative Document

No. 1609

H.P. 1198

House of Representatives, April 27, 2021

An Act To Stop Social Media Censorship

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative SAMPSON of Alfred.
Cosponsored by Senator MIRAMANT of Knox and
Representative: DRINKWATER of Milford, Senator: KEIM of Oxford.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 10 MRSA c. 1056** is enacted to read:

3 **CHAPTER 1056**

4 **SOCIAL MEDIA DECEPTIVE TRADE PRACTICES**

5 **§9555. Short title**

6 This Act may be known and cited as "the Stop Social Media Censorship Act."

7 **§9556. Definitions**

8 As used in this chapter, unless the context otherwise indicates, the following terms
9 have the following meanings.

10 **1. Algorithm.** "Algorithm" means a set of electronic instructions designed to perform
11 a specific task.

12 **2. Harassing spam.** "Harassing spam" means an unsolicited commercial message
13 directed indiscriminately to users of a social media website.

14 **3. Hate speech.** "Hate speech" means a phrase communicating content that an
15 individual finds offensive based on the individual's personal moral code.

16 **4. Lascivious matter.** "Lascivious matter" means matter that is overtly sexual in
17 nature.

18 **5. Obscene matter.** "Obscene matter" has the same meaning as in Title 17, section
19 2911, subsection 1, paragraph D.

20 **6. Political speech.** "Political speech" means speech relating to the State, government
21 or public administration as it relates to governmental policy making, including discussion
22 of social issues and speech by government officials or candidates for office.

23 **7. Religious speech.** "Religious speech" means speech that is faith-based assumptions
24 and assertions.

25 **8. Shadowban.** "Shadowban" means the act of blocking or partially blocking a social
26 media website user or the social media website user's content from an online community
27 such that it will not be readily apparent to the social media website user that the social
28 media website user has been blocked. Shadowbanning is also referred to as stealth banning,
29 ghost banning or comment ghosting.

30 **9. Social media website.** "Social media website" means an Internet website or
31 application that enables users to communicate with one another by posting information,
32 comments, messages or images and that:

33 A. Is open to the public;

34 B. Has more than 75,000,000 subscribers;

35 C. From its inception, has not been specifically affiliated with one religion or political
36 party; and

1 D. Provides a means for the social media website's users to report obscene matter and
2 has in place procedures for evaluating those reports and removing obscene matter.

3 **§9557. Civil actions; deceptive trade practices**

4 **1. Private right of action.** A user of a social media website may bring a private action
5 in Superior Court against an owner or operator of a social media website that contracts with
6 the social media website user in this State if the social media website purposely:

7 A. Deletes or censors the social media website user's religious speech or political
8 speech; or

9 B. Uses an algorithm to disfavor, shadowban or censor the social media website user's
10 religious speech or political speech.

11 **2. Relief.** A social media website user may be awarded the following relief under this
12 section:

13 A. Up to \$75,000 in statutory damages for each purposeful deletion or censoring of
14 the social media website user's religious speech or political speech;

15 B. Actual damages;

16 C. If aggravating factors are present, punitive damages; and

17 D. Other forms of equitable relief.

18 **3. Court costs and attorney's fees.** The prevailing party in an action under this
19 section may be awarded court costs and reasonable attorney's fees.

20 **4. Reduction of damages.** If a social media website restores from deletion or removes
21 the censoring of a social media website user's religious speech or political speech in a
22 reasonable amount of time, a court may consider reducing damages awarded under
23 subsection 2.

24 **5. Defenses.** A social media website may not use a social media website user's alleged
25 hate speech as a basis for justification or defense of the social media website's actions in
26 violation of subsection 1.

27 **6. Attorney General.** The Attorney General may bring a civil action under this
28 chapter on behalf of a social media website user who resides in this State and whose
29 religious speech or political speech has been censored by a social media website.

30 **7. Unfair and deceptive trade practice.** An owner or operator of a social media
31 website that has engaged in practices described in subsection 1 has engaged in an unfair
32 trade practice in violation of Title 5, chapter 10 and a deceptive trade practice in violation
33 of chapter 206 and is subject to the penalties for violating those chapters in addition to relief
34 and court costs and attorney's fees as described in subsections 2 and 3.

35 **8. Exclusions.** This chapter does not apply to the following:

36 A. A social media website that deletes or censors a social media website user's speech
37 or that uses an algorithm to disfavor, shadowban or censor speech:

38 (1) That calls for immediate acts of violence;

39 (2) That calls for a user to self-harm;

40 (3) That is obscene matter or lascivious matter or material harmful to minors;

- 1 (4) As the result of operational error;
- 2 (5) As the result of a court order;
- 3 (6) That comes from an inauthentic source or involves false impersonation;
- 4 (7) That entices criminal conduct;
- 5 (8) That involves minors bullying minors;
- 6 (9) That constitutes copyright or trademark infringement;
- 7 (10) That is excessively violent; or
- 8 (11) That is harassing spam; or

9 B. The censoring of a social media website user's speech by another social media
10 website user.

11 9. Cause of action. Social media website users under 18 years of age do not have a
12 cause of action under this chapter.

13 10. Venue. A social media website user or the Attorney General may bring an action
14 under this chapter in Superior Court.

15 **§9558. Legislative findings**

16 The Legislature finds that:

17 1. Federal Communications Decency Act. While Section 230 of the federal
18 Communications Decency Act of 1996 protects online service providers who host 3rd-party
19 content, it does not protect against deceptive trade practices, bad faith transactions, unfair
20 dealing and fraudulent inducements;

21 2. No preemption. State laws consistent with Section 230 of the federal
22 Communications Decency Act of 1996 are not preempted by Section 230;

23 3. Social media website standards. This State has a compelling interest in holding
24 certain social media websites that have created a digital semi-public square to higher
25 standards, especially when those websites have engaged in fraud, false advertising and
26 deceptive trade practices;

27 4. Social media website practices. Some social media websites have engaged in
28 fraud, false advertising and deceptive trade practices at great expense to the health, safety,
29 and welfare of consumers in this State, while making it difficult for others to compete with
30 those websites;

31 5. Compelling interest of State. The State has a compelling interest in helping its
32 citizens enjoy their free exercise of their rights in certain semi-public forums commonly
33 used for religious and political speech, regardless of the political or religious affiliation
34 they ascribe to; and

35 6. Protection of freedom of religion and speech. This Act is necessary to ensure the
36 continued free practice by the citizens of Maine of religion and speech as guaranteed under
37 the First Amendment to the United States Constitution and under the Constitution of Maine,
38 Article I, Sections 3 and 4, respectively.

SUMMARY

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This bill creates a private right of action for users of social media websites whose religious or political speech has been subject to deletion, censorship or other disfavor by the social media website. The bill also provides that the Attorney General may bring a civil action on behalf of a social media website user who resides in this State and whose religious or political speech has been censored by the social media website and makes violation an unfair and deceptive trade practice.