

HB 133 - AS INTRODUCED

2021 SESSION

21-0106
08/04

HOUSE BILL **133**

AN ACT creating a cause of action for censorship by social media websites.

SPONSORS: Rep. Plett, Hills. 6

COMMITTEE: Judiciary

ANALYSIS

This bill creates a private right of action by a social media website user in this state against a social media website.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears ~~[in brackets and struckthrough.]~~
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty One

AN ACT creating a cause of action for censorship by social media websites.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 Legislative Findings. The general court finds that:

2 I. The general court is generally opposed to online censorship unless the content is injurious
3 to children or promotes human trafficking; only then does the general court accept limited
4 censorship.

5 II. New Hampshire has a compelling interest in holding certain social media websites to
6 higher standards for having substantially created a digital public square.

7 III. New Hampshire has an interest in helping its citizens enjoy their free exercise rights in
8 certain semi-public forums commonly used for religious and political speech, regardless of which
9 political party or religious organization they ascribe to.

10 IV. New Hampshire has an interest in deterring the owners and operators of social media
11 websites that have substantially created a digital public square from maliciously interfering in
12 elections.

13 2 New Chapter; Indecent Deceptive Trade Practices and Social Media Censorship. Amend RSA
14 by inserting after chapter 359-R the following new chapter:

15 CHAPTER 359-S

16 INDECENT DECEPTIVE TRADE PRACTICES

17 AND SOCIAL MEDIA CENSORSHIP

18 359-S:1 Short Title. This chapter may be cited as the "Stop Social Media Censorship Act."

19 359-S:2 Purpose. The purpose of this chapter is to:

20 I. Promote fair dealings between consumers and the major social media websites.

21 II. Encourage the free flow of political and religious ideas and robust debate.

22 III. Hold major social media websites to a higher standard for having substantially created a
23 digital public square.

24 IV. Deter bad-faith, unfair dealing, fraud, breach of contract, unjust enrichment, and the
25 marginalization or oppression of competing worldviews.

26 V. Establish that:

27 (a) Without truth, there is no freedom;

28 (b) Freedom comes from the truth;

29 (c) The proliferation of truth is vital to the health of our constitutional republic;

1 (d) Social media censorship regarding religious and political ideology has the potential to
2 suppress the truth by preventing different doctrines and ideologies from competing and vying for
3 superiority.

4 VI. Deter the owner or operator of a social media website from engaging in false advertising.

5 VII. Deter the owner or operator of a social media website from maliciously interfering with
6 local, regional, and national elections.

7 359-S:3 Definitions. In this chapter:

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

9 II. "Hate speech" means a phrase concerning content that an individual finds offensive
10 based on his or her personal moral code.

11 III. "Material" shall have the same meaning as RSA 650:1, II.

12 IV. "Obscene" shall have the same meaning as RSA 650:1, IV.

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

16 VI. "Religious speech" means a set of unproven answers, truth claims, faith-based
17 assumptions, and naked assertions that attempt to explain such greater questions such as how the
18 world was created, what constitutes right and wrong actions by humans, and what happens after
19 death.

20 VII. "Shadowban" means the act of blocking or partially blocking a user or their content
21 from an online community such that it will not be readily apparent to the user that they have been
22 banned. The term also means "stealth banning," "ghost banning," or "comment ghosting."

23 VIII. "Social media website" means an Internet website or application that enables users to
24 communicate with each other by posting information, comments, messages, or images and that
25 meets all of the following requirements:

26 (a) Is open to the public;

27 (b) Has more than 75 million subscribers;

28 (c) From its inception has not been specifically affiliated with any one religion or
29 political party; and

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

32 359-S:4 Civil Action To Stop Social Media Censorship; Deceptive Trade Practice; Exceptions.

33 I. A social media user who contracts with the owner or operator of a social media website in
34 New Hampshire shall have a right of action against such owner or operator if the social media
35 website purposely:

36 (a) Deletes or censors the user's religious speech or political speech; and

1 (b) Uses an algorithm to disfavor, shadowban, or censor the user’s religious speech or
2 political speech.

3 II. A social media website user may be awarded all of the following damages under this
4 section:

5 (a) A minimum of \$75,000 in statutory damages per purposeful deletion or censoring of
6 the social media website user’s speech;

7 (b) Actual damages;

8 (c) If aggravating factors are present, punitive damages; and

9 (d) Other forms of equitable relief.

10 III. The prevailing party in a cause of action under this section may be awarded costs and
11 reasonable attorney fees.

12 IV. A social media website that restores from deletion or removes the censoring of a social
13 media website user’s speech in a reasonable amount of time may use that fact to mitigate any
14 damages.

15 V. A social media website shall not use the social media website user’s alleged hate speech
16 as a basis for justification or defense of the social media website’s actions at trial.

17 VI. The attorney general may also bring a civil cause of action under this section on behalf of
18 a social media website user who resides in New Hampshire and whose religious speech or political
19 speech has been censored by a social media website.

20 VII. An owner or operator of social media social website that has engaged in practices
21 described in paragraph I has engaged in an unfair and deceptive trade practice in violation of RSA
22 358-A:2 and shall be subject to the penalties for violating that section.

23 VIII. This section shall not apply to any of the following:

24 (a) A social media website that deletes or censors a social media website user’s speech or
25 that uses an algorithm to disfavor or censure speech that:

26 (1) Calls for immediate acts of violence;

27 (2) Calls for a user to harm themselves;

28 (3) Is obscene material or material harmful to minors;

29 (4) Is the result of operational error;

30 (5) Is the result of a court order;

31 (6) Comes from an inauthentic source or involves false impersonation;

32 (7) Entices criminal conduct; and

33 (8) Involves minors bullying minors;

34 (b) A social media website user’s censoring of another social media website user’s speech.

35 IX. Only users who are 18 years of age or older may seek enforcement of this section.

36 X. The venue for any civil action brought under section shall be in New Hampshire.

37 3 Effective Date. This act shall take effect upon its passage.