
Wisconsin Legislative Council

AMENDMENT MEMO



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2021 Assembly Bill 589

**Assembly
Amendment 1**

2021 ASSEMBLY BILL 589

2021 Assembly Bill 589 generally prohibits a social media internet site with more than 150 million users¹ from taking any action to censor,² deplatform,³ or shadow ban⁴ a journalistic enterprise⁵ on the basis of the content of its publication or broadcast.⁶

In addition to criminal penalties that would apply to violations of the bill under s. 100.26, Stats., the bill creates a private cause of action to enforce the prohibition. Under the bill, a journalistic enterprise may bring a cause of action, in which a court may award damages of up to \$100,000 for each proven violation, in addition to other actual and punitive damages, other forms of equitable relief, court costs, and reasonable attorney fees.

The bill also requires a social media internet site to provide a mechanism by which a journalistic enterprise may request and obtain the number of other individual participants who were shown the journalistic enterprise's content or posts.

¹ More specifically, the bill defines "social media internet site" to mean an internet site or application that enables users to communicate with each other by posting information, comments, messages, or images and to which all of the following apply: (a) the site or application is available to the public; and (b) the site or application has more than 150 million users.

² Under the bill, "censor" includes any action taken by a social media internet site to delete, regulate, restrict, edit, alter, inhibit the publication or republication of, suspend a right to post, remove, or post an addendum to any content or material posted by a journalistic enterprise. "Censor" also includes actions to inhibit the ability of a journalistic enterprise to be viewable by or to interact with another user of the social media internet site.

³ The bill defines "deplatforming" to mean deleting or banning a journalistic enterprise from a social media internet site for more than 60 days.

⁴ The bill defines "shadowbanning" to mean limiting or eliminating the exposure of a journalistic enterprise, or content or material posted by a journalistic enterprise, to other users of the social media internet site through any means, regardless of whether the action is determined by an individual or an algorithm, and regardless of whether the action is readily apparent to a user.

⁵ Under the bill, a "journalistic enterprise" is an entity that does any of the following: (a) publishes more than 10,000 words that are available online with at least 5,000 paid subscribers or 10,000 monthly active users; (b) publishes more than 100 hours of audio or video that are available online with at least 100 million viewers annually; (c) operates a cable television channel that provides more than 40 hours of content per week to more than 100,000 cable television subscribers; or (d) operates under a broadcast license issued by the Federal Communications Commission.

⁶ The bill provides an exception for post prioritization of certain content based on payments made by the journalistic enterprise.

ASSEMBLY AMENDMENT 1

Assembly Amendment 1 creates an exception from the prohibition in the bill to allow a social media company to take otherwise prohibited actions with respect to obscene or pornographic content. For purposes of that exception, “obscene” means content to which all of the following apply:

- An average individual, applying contemporary community standards, would find that the content, taken as a whole, appeals to the prurient interest.
- The content depicts or describes sexual conduct in a patently offensive way.
- The content, taken as a whole, lacks serious literary, artistic, political, or scientific value.

BILL HISTORY

Representative Sortwell offered Assembly Amendment 1 on January 3, 2021. On January 5, 2021, the Assembly Committee on Constitution and Ethics voted to recommend adoption of the amendment and passage of the bill, as amended, both on votes of Ayes, 7; Noes, 2.

AH:jal