

CHAPTER 378

GOVERNMENT - STATE

HOUSE BILL 23-1306

BY REPRESENTATIVE(S) Herod and Soper, Amabile, English, Jodeh, Lindsay, Michaelson Jenet, Ricks, Titone, McCluskie;
also SENATOR(S) Gardner and Coleman, Priola.

AN ACT

CONCERNING THE USE OF SOCIAL MEDIA ADMINISTERED BY AN ELECTED OFFICIAL THAT IS NOT SUPPORTED BY GOVERNMENT RESOURCES, AND, IN CONNECTION THEREWITH, ALLOWING AN ELECTED OFFICIAL TO RESTRICT OR BAR AN INDIVIDUAL FROM USING THE SOCIAL MEDIA ADMINISTERED BY THE ELECTED OFFICIAL FOR ANY REASON INCLUDING ATTEMPTING TO CHILL THE SPEECH OF ANOTHER INDIVIDUAL.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **add** article 18.3 to title 24 as follows:

ARTICLE 18.3
Social Media Civility

24-18.3-101. Bullying, harassment, and intimidation - state elected official - social media - legislative declaration - definitions. (1) (a) THE GENERAL ASSEMBLY FINDS AND DECLARES THAT THE PRIVATE SOCIAL MEDIA ADMINISTERED BY A STATE ELECTED OFFICIAL OR DESIGNEE IS A PRIVATE ACCOUNT AND DOES NOT CREATE A PUBLIC FORUM;

(b) A STATE ELECTED OFFICIAL HAS NO DUTY TO CREATE OR MAINTAIN PRIVATE SOCIAL MEDIA AND NO STATE LAW, ORDINANCE, OR REGULATION COMPELS CREATION OR MAINTENANCE OF PRIVATE SOCIAL MEDIA BY A STATE ELECTED OFFICIAL; AND

(c) THEREFORE, THE GENERAL ASSEMBLY DETERMINES THAT IT IS APPROPRIATE TO ACKNOWLEDGE IN LAW THAT A STATE ELECTED OFFICIAL OR DESIGNEE HAS DISCRETION TO RESTRICT OR REMOVE A USER OF PRIVATE SOCIAL MEDIA THAT IS ADMINISTERED BY THE STATE ELECTED OFFICIAL OR DESIGNEE FOR ANY REASON,

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

INCLUDING BULLYING, HARASSMENT OR INTIMIDATION OF OTHER USERS OF THE PRIVATE SOCIAL MEDIA ADMINISTERED BY THE STATE ELECTED OFFICIAL OR DESIGNEE.

(2) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "BULLYING" MEANS INTENDING TO COERCE OR CAUSE ANY PHYSICAL, MENTAL, OR EMOTIONAL HARM TO ANY INDIVIDUAL BY WRITTEN EXPRESSION, AN ELECTRONIC ACT OR GESTURE, OR A PATTERN OF BEHAVIOR.

(b) "HARASSMENT" MEANS:

(I) DIRECTLY OR INDIRECTLY INITIATING COMMUNICATION WITH AN INDIVIDUAL OR DIRECTING LANGUAGE TOWARD ANOTHER INDIVIDUAL, ANONYMOUSLY OR OTHERWISE, BY DATA NETWORK, INSTANT MESSAGE, COMPUTER, COMPUTER NETWORK, COMPUTER SYSTEM, OR ANY OTHER INTERACTIVE ELECTRONIC MEDIUM IN A MANNER INTENDED TO ALARM OR CAUSE SUBSTANTIAL EMOTIONAL DISTRESS OR THREATEN BODILY INJURY OR PROPERTY DAMAGE; OR

(II) MAKING ANY OBSCENE COMMENT, SUGGESTION, REQUEST, OR PROPOSAL BY COMPUTER, COMPUTER NETWORK, COMPUTER SYSTEM, OR ANY OTHER ELECTRONIC MEDIUM.

(c) "INTIMIDATION" MEANS DIRECTLY OR INDIRECTLY INFLECTING OR THREATENING THE INFLECTION OF ANY INJURY, DAMAGE, HARM, OR LOSS UPON AN INDIVIDUAL.

(d) "OBSCENE" MEANS A PATENTLY OFFENSIVE DESCRIPTION OF SEXUAL ACTS OR SOLICITATION TO COMMIT SEXUAL ACTS.

(e) "PRIVATE SOCIAL MEDIA" MEANS SOCIAL MEDIA THAT IS NOT SUPPORTED BY THE RESOURCES OF THE STATE GOVERNMENT AND IS NOT REQUIRED BY STATE LAW, ORDINANCE, OR REGULATION TO BE CREATED OR MAINTAINED BY A STATE ELECTED OFFICIAL.

(f) "SOCIAL MEDIA" MEANS ANY ELECTRONIC MEDIUM, INCLUDING AN INTERACTIVE COMPUTER SERVICE, TELEPHONE NETWORK, OR DATA NETWORK THAT ALLOWS USERS TO CREATE, SHARE, AND VIEW USER-GENERATED CONTENT INCLUDING VIDEOS, STILL PHOTOGRAPHS, BLOGS, VIDEO BLOGS, PODCASTS, INSTANT MESSAGES, ELECTRONIC MAIL, OR INTERNET WEBSITE PROFILES.

(g) "STATE ELECTED OFFICIAL" MEANS AN INDIVIDUAL SERVING IN AN ELECTED POSITION IN THE STATE GOVERNMENT.

(3) A STATE ELECTED OFFICIAL MAY PERMANENTLY OR TEMPORARILY RESTRICT OR BAR AN INDIVIDUAL FROM USING THE PRIVATE SOCIAL MEDIA THAT IS ADMINISTERED BY A STATE ELECTED OFFICIAL OR THEIR DESIGNEE FOR ANY REASON, INCLUDING BULLYING, HARASSMENT, OR INTIMIDATION, IN THE STATE ELECTED OFFICIAL'S SOLE DISCRETION.

(4) THIS SECTION IS NOT INTENDED TO INFRINGE UPON ANY RIGHT GUARANTEED

TO ANY INDIVIDUAL BY THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION OR SECTION 10 OF ARTICLE II OF THE COLORADO CONSTITUTION OR TO PREVENT THE EXPRESSION OF ANY RELIGIOUS, POLITICAL, OR PHILOSOPHICAL VIEWS.

SECTION 2. In Colorado Revised Statutes, **add** article 34 to title 29 as follows:

ARTICLE 34
Social Media Civility

29-34-101. Bullying, harassment, and intimidation - local elected official - social media - legislative declaration - definitions. (1) (a) THE GENERAL ASSEMBLY FINDS AND DECLARES THAT THE PRIVATE SOCIAL MEDIA ADMINISTERED BY A LOCAL ELECTED OFFICIAL OR DESIGNEE IS A PRIVATE ACCOUNT AND DOES NOT CREATE A PUBLIC FORUM;

(b) A LOCAL ELECTED OFFICIAL HAS NO DUTY TO CREATE OR MAINTAIN PRIVATE SOCIAL MEDIA AND NO STATE LAW, ORDINANCE, OR REGULATION COMPELS CREATION OR MAINTENANCE OF PRIVATE SOCIAL MEDIA BY A LOCAL ELECTED OFFICIAL; AND

(c) THEREFORE, THE GENERAL ASSEMBLY DETERMINES THAT IT IS APPROPRIATE TO ACKNOWLEDGE IN LAW THAT A LOCAL ELECTED OFFICIAL OR DESIGNEE HAS DISCRETION TO RESTRICT OR REMOVE A USER OF PRIVATE SOCIAL MEDIA THAT IS ADMINISTERED BY THE LOCAL ELECTED OFFICIAL OR DESIGNEE FOR ANY REASON, INCLUDING BULLYING, HARASSMENT, OR INTIMIDATION OF OTHER USERS OF THE PRIVATE SOCIAL MEDIA ADMINISTERED BY THE LOCAL ELECTED OFFICIAL OR DESIGNEE.

(2) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "BULLYING" MEANS INTENDING TO COERCE OR CAUSE ANY PHYSICAL, MENTAL, OR EMOTIONAL HARM TO ANY INDIVIDUAL BY WRITTEN EXPRESSION, AN ELECTRONIC ACT OR GESTURE, OR A PATTERN OF BEHAVIOR.

(b) "HARASSMENT" MEANS:

(I) DIRECTLY OR INDIRECTLY INITIATING COMMUNICATION WITH AN INDIVIDUAL OR DIRECTING LANGUAGE TOWARD ANOTHER INDIVIDUAL, ANONYMOUSLY OR OTHERWISE, BY DATA NETWORK, INSTANT MESSAGE, COMPUTER, COMPUTER NETWORK, COMPUTER SYSTEM, OR ANY OTHER INTERACTIVE ELECTRONIC MEDIUM IN A MANNER INTENDED TO ALARM OR CAUSE SUBSTANTIAL EMOTIONAL DISTRESS OR THREATEN BODILY INJURY OR PROPERTY DAMAGE; OR

(II) MAKING ANY OBSCENE COMMENT, SUGGESTION, REQUEST, OR PROPOSAL BY COMPUTER, COMPUTER NETWORK, COMPUTER SYSTEM, OR ANY OTHER ELECTRONIC MEDIUM.

(c) "INTIMIDATION" MEANS DIRECTLY OR INDIRECTLY INFLECTING OR THREATENING THE INFLECTION OF ANY INJURY, DAMAGE, HARM, OR LOSS UPON AN INDIVIDUAL.

(d) "LOCAL ELECTED OFFICIAL" MEANS AN INDIVIDUAL SERVING IN AN ELECTED POSITION IN THE STATE WHO IS NOT A STATE ELECTED OFFICIAL, AS DEFINED IN SECTION 24-18.3-101 (2)(g).

(e) "OBSCENE" MEANS A PATENTLY OFFENSIVE DESCRIPTION OF SEXUAL ACTS OR SOLICITATION TO COMMIT SEXUAL ACTS.

(f) "PRIVATE SOCIAL MEDIA" MEANS SOCIAL MEDIA THAT IS NOT SUPPORTED BY THE RESOURCES OF A LOCAL GOVERNMENT AND IS NOT REQUIRED BY STATE OR LOCAL LAW, ORDINANCE, OR REGULATION TO BE CREATED OR MAINTAINED BY A LOCAL ELECTED OFFICIAL.

(g) "SOCIAL MEDIA" MEANS ANY ELECTRONIC MEDIUM, INCLUDING AN INTERACTIVE COMPUTER SERVICE, TELEPHONE NETWORK, OR DATA NETWORK THAT ALLOWS USERS TO CREATE, SHARE, AND VIEW USER-GENERATED CONTENT INCLUDING VIDEOS, STILL PHOTOGRAPHS, BLOGS, VIDEO BLOGS, PODCASTS, INSTANT MESSAGES, ELECTRONIC MAIL, OR INTERNET WEBSITE PROFILES.

(3) A LOCAL ELECTED OFFICIAL MAY PERMANENTLY OR TEMPORARILY RESTRICT OR BAR AN INDIVIDUAL FROM USING THE PRIVATE SOCIAL MEDIA THAT IS ADMINISTERED BY THE LOCAL ELECTED OFFICIAL OR THEIR DESIGNEE FOR ANY REASON, INCLUDING BULLYING, HARASSMENT, OR INTIMIDATION, IN THE LOCAL ELECTED OFFICIAL'S SOLE DISCRETION.

(4) THIS SECTION IS NOT INTENDED TO INFRINGE UPON ANY RIGHT GUARANTEED TO ANY INDIVIDUAL BY THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION OR SECTION 10 OF ARTICLE II OF THE COLORADO CONSTITUTION OR TO PREVENT THE EXPRESSION OF ANY RELIGIOUS, POLITICAL, OR PHILOSOPHICAL VIEWS.

SECTION 3. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.

Approved: June 5, 2023