

A State Statute Banning Fake News

1. The Ban. An information source shall not intentionally disseminate purported facts if:
 - a. The information source knows the purported facts are false or recklessly disregards the truth or falsity of those purported facts;
 - b. The purpose, in whole or in part, of disseminating such false facts is (i) to enhance the financial interests of the information source, (ii) to influence the outcome of a contested public election, or (iii) to promote the interests of a foreign government; and
 - c. The intentionally false facts cause material harm to public health, safety, national security, or the operation of an essential government function.

2. Exceptions. It shall not be a violation of this statute if:
 - a. The information source (i) identifies the purported facts that are false, (ii) discloses the purpose for disseminating those false facts, and (iii) identifies any employer, company, or other third-party providing compensation or other inducement for the information source to disseminate the false facts.

 - b. The false facts disseminated are:
 - i. A republication of information originally disseminated by a bona fide news organization (“BFNO”), and the information source can identify the BFNO;
 - ii. Communicated by a natural person as a comment in a forum sponsored, created or maintained by a BFNO;
 - iii. Substantially true;
 - iv. An accurate report on, or a fair summary of, an official action, public proceeding or meeting open to the public;
 - v. Made in the course of a judicial or legislative proceeding.

3. Definitions.
 - a. An *information source* is any one of the following:
 - i. Any entity, organization or individual with more than 5,000 followers on social media; or

- ii. Any entity, organization or individual whose individual communications through any medium have been received 12 or more times in the preceding calendar year by more than 5,000 individuals.
- b. *Intentionally disseminate* means to publish information in a manner which is reasonably calculated to reach an audience of 5,000 people or more, or which does, in fact, reach an audience of 5,000 people or more.
- c. *Facts* are statements that can be proven based on objective criteria to be either true or false. They are distinguished from expressions of opinions and value statements.
- d. A statement of fact is *false* if its substance or gist is contrary to the objectively verifiable facts, even if parts of the statement are accurate.
- e. A statement is *substantially true* if, when taken in context, the overall substance or gist of the message conveyed is true.
- f. *Reckless disregard* for the truth of a statement means a high degree of awareness that the statement is probably false or serious doubts as to the truth of a statement.
- g. *Essential government functions* are operations undertaken by a government entity for the benefit of the general public that are necessary to perform the services for which the government entity was established. Such functions include, without limitation, the operations of schools, fire departments, police departments, public utilities, and elections.
- h. *BFNO* means a Bona Fide News Organization. An organization or entity qualifies as a BFNO if it meets the following criteria:
 - i. One of its reasons for existing as an organization or entity is to report information to the public;
 - ii. It generates revenue, either directly or indirectly, by reporting information to the public;
 - iii. It employs one or more professional journalist;
 - iv. It maintains liability insurance against claims for defamation; and
 - v. It has and enforces a recognized code of journalistic ethics.

4. Enforcement.

- a. Any party that commits a violation of this statute shall be subject to either or both of the following:
 - i. A criminal penalty of up to \$1,000 per violation and up to 12 months in jail or both
 - ii. A civil penalty consisting of the greater of the actual damages established or \$25,000, payable to the plaintiff in a suit to enforce this statute.
- b. The following shall have standing to enforce this statute:
 - i. The Attorney General of the State;
 - ii. Any State agency harmed by the disseminated false facts;
 - iii. The District Attorney in any District in which the false facts were disseminated; or
 - iv. Any non-profit organization registered under and recognized by § 501(c)(3) of the Internal Revenue Code, whose stated charitable purpose includes protecting public health, safety, or the administration of government.
- c. In any civil litigation to enforce this statute, a prevailing plaintiff shall be awarded reasonable costs and attorneys' fees.