

By: Cain

H.B. No. 20

A BILL TO BE ENTITLED

AN ACT

relating to complaint procedures and disclosure requirements for  
and censorship of users' expressions by social media platforms.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The legislature finds that:

(1) each person in this state has a fundamental  
interest in the free exchange of ideas and information, including  
the freedom of others to share and receive ideas and information;

(2) this state has a fundamental interest in  
protecting the free exchange of ideas and information in this  
state;

(3) social media platforms and interactive computer  
services function as common carriers, are affected with a public  
interest, are central public forums for public debate, and have  
enjoyed governmental support in the United States; and

(4) social media platforms and interactive computer  
services with the largest number of users are common carriers by  
virtue of their market dominance.

SECTION 2. Subtitle C, Title 5, Business & Commerce Code, is  
amended by adding Chapter 120 to read as follows:

CHAPTER 120. SOCIAL MEDIA PLATFORMS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 120.001. DEFINITIONS. In this chapter:

(1) "Social media platform" means an Internet website

1 or application that is open to the public, allows a user to create  
2 an account, and enables users to communicate with other users for  
3 the primary purpose of posting information, comments, messages, or  
4 images. The term does not include:

5 (A) an Internet service provider as defined by  
6 Section 324.055;

7 (B) electronic mail; or

8 (C) an online service, application, or website:

9 (i) that consists primarily of news,  
10 sports, entertainment, or other information or content that is not  
11 user generated but is preselected by the provider; and

12 (ii) for which any chat, comments, or  
13 interactive functionality is incidental to, directly related to, or  
14 dependent on the provision of the content described by Subparagraph  
15 (i).

16 (2) "User" means a person who posts, uploads,  
17 transmits, shares, or otherwise publishes or receives content  
18 through a social media platform.

19 Sec. 120.002. APPLICABILITY OF CHAPTER. (a) This chapter  
20 applies only to a user who:

21 (1) resides in this state;

22 (2) does business in this state; or

23 (3) shares or receives content on a social media  
24 platform in this state.

25 (b) This chapter applies only to a social media platform  
26 that functionally has more than 50 million active users in the  
27 United States in a calendar month.

1       Sec. 120.003. CONSTRUCTION OF CHAPTER. This chapter may  
2 not be construed to limit or expand intellectual property law.

3               SUBCHAPTER B. DISCLOSURE REQUIREMENTS

4       Sec. 120.051. PUBLIC DISCLOSURES. (a) A social media  
5 platform shall, in accordance with this subchapter, publicly  
6 disclose accurate information regarding its content management,  
7 data management, and business practices, including specific  
8 information regarding the manner in which the social media  
9 platform:

10               (1) curates and targets content to users;

11               (2) places and promotes content, services, and  
12 products, including its own content, services, and products;

13               (3) moderates content;

14               (4) uses search, ranking, or other algorithms or  
15 procedures that determine results on the platform; and

16               (5) provides users' performance data on the use of the  
17 platform and its products and services.

18               (b) The disclosure required by Subsection (a) must be  
19 sufficient to enable users to make an informed choice regarding the  
20 purchase of or use of access to or services from the platform.

21               (c) A social media platform shall publish the disclosure  
22 required by Subsection (a) on an Internet website that is easily  
23 accessible by the public.

24       Sec. 120.052. ACCEPTABLE USE POLICY. (a) A social media  
25 platform shall publish an acceptable use policy in a location that  
26 is easily accessible to a user.

27               (b) A social media platform's acceptable use policy must:

1           (1) reasonably inform users about the types of content  
2 allowed on the social media platform;

3           (2) explain the steps the social media platform will  
4 take to ensure content complies with the policy;

5           (3) explain the means by which users can notify the  
6 social media platform of content that potentially violates the  
7 acceptable use policy, illegal content, or illegal activity, which  
8 includes:

9                   (A) subject to Subsection (c), making available a  
10 live company representative to take user complaints through a  
11 toll-free telephone number that users may call during regular  
12 business hours;

13                   (B) an e-mail address or relevant complaint  
14 intake mechanism to handle user complaints; and

15                   (C) a complaint system described by Subchapter C;  
16 and

17           (4) include publication of a quarterly transparency  
18 report outlining actions taken to enforce the policy.

19           (c) The live company representative described by Subsection  
20 (b)(3)(A) must at a minimum be available eight hours a day, five  
21 days a week.

22           Sec. 120.053. QUARTERLY TRANSPARENCY REPORT. (a) As part  
23 of a social media platform's acceptable use policy under Section  
24 120.052, the social media platform shall publish a quarterly  
25 transparency report that includes, with respect to the preceding  
26 three-month period:

27           (1) the total number of instances in which the social

1 media platform was alerted to illegal content, illegal activity, or  
2 potentially policy-violating content by:

3 (A) a user complaint;  
4 (B) an employee of or person contracting with the  
5 social media platform; or

6 (C) an internal automated detection tool;

7 (2) subject to Subsection (b), the number of instances  
8 in which the social media platform took action with respect to  
9 illegal content, illegal activity, or potentially policy-violating  
10 content known to the platform due to the nature of the content as  
11 illegal content, illegal activity, or potentially policy-violating  
12 content, including:

13 (A) content removal;

14 (B) content demonetization;

15 (C) content deprioritization;

16 (D) the addition of an assessment to content;

17 (E) account suspension;

18 (F) account removal; or

19 (G) any other action taken in accordance with the  
20 platform's acceptable use policy;

21 (3) the country of the user who provided the content  
22 for each instance described by Subdivision (2);

23 (4) the number of coordinated campaigns, if  
24 applicable;

25 (5) the number of instances in which a user appealed  
26 the decision to remove the user's potentially policy-violating  
27 content;

1           (6) the percentage of appeals described by Subdivision  
2 (5) that resulted in the restoration of content; and

3           (7) a description of each tool, practice, action, or  
4 technique used in enforcing the acceptable use policy.

5           (b) The information described by Subsection (a)(2) must be  
6 categorized by:

7                   (1) the rule violated; and

8                   (2) the source for the alert of illegal content,  
9 illegal activity, or potentially policy-violating content,  
10 including:

11                           (A) a government;

12                           (B) a user;

13                           (C) an internal automated detection tool;

14                           (D) coordination with other social media  
15 platforms; or

16                           (E) persons employed by or contracting with the  
17 platform.

18           (c) A social media platform shall publish the information  
19 described by Subsection (a) with an open license, in a  
20 machine-readable and open format, and in a location that is easily  
21 accessible to users.

22                           SUBCHAPTER C. COMPLAINT PROCEDURES

23           Sec. 120.101. COMPLAINT SYSTEM. A social media platform  
24 shall provide an easily accessible complaint system to enable a  
25 user to submit a complaint in good faith and track the status of the  
26 complaint, including a complaint regarding:

27                   (1) illegal content or activity; or

1           (2) a decision made by the social media platform to  
2 remove content posted by the user.

3           Sec. 120.102. PROCESSING OF COMPLAINTS. A social media  
4 platform that receives notice of illegal content or illegal  
5 activity on the social media platform shall make a good faith effort  
6 to evaluate the legality of the content or activity within 24 hours  
7 of receiving the notice, subject to reasonable exceptions based on  
8 concerns about the legitimacy of the notice.

9           Sec. 120.103. REMOVAL OF CONTENT; EXCEPTIONS. (a) Except  
10 as provided by Subsection (b), if a social media platform removes  
11 content based on a violation of the platform's acceptable use  
12 policy under Section 120.052, the social media platform shall,  
13 concurrently with the removal:

14           (1) notify the user who provided the content of the  
15 removal and explain the reason the content was removed;

16           (2) allow the user to appeal the decision to remove the  
17 content to the platform; and

18           (3) provide written notice to the user who provided  
19 the content of:

20           (A) the determination regarding an appeal  
21 requested under Subdivision (2); and

22           (B) in the case of a reversal of the social media  
23 platform's decision to remove the content, the reason for the  
24 reversal.

25           (b) A social media platform is not required to provide a  
26 user with notice or an opportunity to appeal under Subsection (a) if  
27 the social media platform:

1           (1) is unable to contact the user after taking  
2 reasonable steps to make contact; or

3           (2) knows that the potentially policy-violating  
4 content relates to an ongoing law enforcement investigation.

5           Sec. 120.104. APPEAL PROCEDURES. If a social media  
6 platform receives a user complaint on the social media platform's  
7 removal from the platform of content provided by the user that the  
8 user believes was not potentially policy-violating content, the  
9 social media platform shall, not later than the 14th day after the  
10 date the platform receives the complaint:

11           (1) review the content;

12           (2) determine whether the content adheres to the  
13 platform's acceptable use policy;

14           (3) take appropriate steps based on the determination  
15 under Subdivision (2); and

16           (4) notify the user regarding the determination made  
17 under Subdivision (2) and the steps taken under Subdivision (3).

18                           SUBCHAPTER D. ENFORCEMENT

19           Sec. 120.151. ACTION BY ATTORNEY GENERAL. (a) The attorney  
20 general may bring an action against a social media platform to  
21 enjoin a violation of this chapter.

22           (b) If an injunction is granted in an action brought under  
23 Subsection (a), the attorney general may recover costs incurred in  
24 bringing the action, including reasonable attorney's fees and  
25 reasonable investigative costs.

26           SECTION 3. Title 6, Civil Practice and Remedies Code, is  
27 amended by adding Chapter 143A to read as follows:



1           CHAPTER 143A. DISCOURSE ON SOCIAL MEDIA PLATFORMS

2           Sec. 143A.001. DEFINITIONS. In this chapter:

3           (1) "Censor" means any action taken to edit, alter,  
4 block, ban, delete, remove, deplatform, demonetize, de-boost,  
5 regulate, restrict, inhibit the publication or reproduction of, or  
6 deny equal access or visibility to expression, to suspend a right to  
7 post, remove, or post an addendum to any content or material posted  
8 by a user, or to otherwise discriminate against expression. The  
9 term includes an action taken to inhibit a social media platform or  
10 interactive computer service user's ability to be viewed by or  
11 interact with another user of the platform or service.

12           (2) "Expression" means any word, music, sound, still  
13 or moving image, number, or other perceivable communication.

14           (3) "Interactive computer service" means an  
15 information service, system, or access software provider that  
16 provides or enables computer access by multiple users to a computer  
17 server. The term does not include an Internet service provider as  
18 defined by Section 324.055, Business & Commerce Code.

19           (4) "Receive," with respect to an expression, means to  
20 read, hear, look at, access, or gain access to the expression.

21           (5) "Social media platform" means an Internet search  
22 engine, Internet website, Internet system, access software  
23 provider, or application that is open to the public, allows a user  
24 of the platform to create an account, and enables a user to  
25 communicate with other users for the primary purpose of posting  
26 information, comments, messages, or images. The term does not  
27 include:

1           (A) an Internet service provider as defined by  
2 Section 324.055, Business & Commerce Code;

3           (B) electronic mail; or

4           (C) an online service or application or Internet  
5 website:

6           (i) that consists primarily of news,  
7 sports, entertainment, or other information or content that is not  
8 user generated but is preselected by the provider; and

9           (ii) for which any chat, comments, or  
10 interactive functionality is incidental to, directly related to, or  
11 dependent on the provision of the content described by Subparagraph  
12 (i).

13           (6) "Unlawful expression" means an expression that is  
14 unlawful under the United States Constitution, federal law, the  
15 Texas Constitution, or the laws of this state, including expression  
16 that constitutes a tort under the laws of this state or the United  
17 States.

18           (7) "User" means a person who posts, uploads,  
19 transmits, shares, or otherwise publishes or receives expression,  
20 through a social media platform or interactive computer service.

21           Sec. 143A.002. CENSORSHIP PROHIBITED. (a) A social media  
22 platform or interactive computer service may not censor a user, a  
23 user's expression, or a user's ability to receive the expression of  
24 another person based on:

25           (1) the viewpoint of the user or another person;

26           (2) the viewpoint represented in the user's expression  
27 or another person's expression; or

1           (3) a user's geographic location in this state or any  
2 part of this state.

3           (b) This section applies regardless of whether the  
4 viewpoint is expressed on a social media platform or interactive  
5 computer service or through any other medium.

6           Sec. 143A.003. WAIVER PROHIBITED. (a) A waiver or  
7 purported waiver of the protections provided by this chapter is  
8 void as unlawful and against public policy, and a court or  
9 arbitrator may not enforce or give effect to the waiver, including  
10 in an action brought under Section 143A.007, notwithstanding any  
11 contract or choice-of-law provision in a contract.

12           (b) The waiver prohibition described by Subsection (a) is a  
13 public-policy limitation on contractual and other waivers of the  
14 highest importance and interest to this state, and this state is  
15 exercising and enforcing this limitation to the full extent  
16 permitted by the United States Constitution and Texas Constitution.

17           Sec. 143A.004. APPLICABILITY OF CHAPTER. (a) This chapter  
18 applies only to a user who:

19                   (1) resides in this state;

20                   (2) does business in this state; or

21                   (3) shares or receives expression in this state.

22           (b) This chapter applies only to expression that is shared  
23 or received in this state.

24           (c) This chapter applies only to a social media platform or  
25 interactive computer service that functionally has more than 50  
26 million active users in the United States in a calendar month.

27           (d) This chapter applies to the maximum extent permitted by

1 the United States Constitution and the laws of the United States but  
2 no further than the maximum extent permitted by the United States  
3 Constitution and the laws of the United States.

4 Sec. 143A.005. LIMITATION ON EFFECT OF CHAPTER. This  
5 chapter does not subject a social media platform or interactive  
6 computer service to damages or other legal remedies to the extent  
7 the social media platform or interactive computer service is  
8 protected from those remedies under federal law.

9 Sec. 143A.006. CONSTRUCTION OF CHAPTER. (a) This chapter  
10 does not prohibit a social media platform or interactive computer  
11 service from:

12 (1) censoring expression that the social media  
13 platform or interactive computer service is specifically  
14 authorized to censor by federal law; or

15 (2) censoring unlawful expression, including  
16 expression that unlawfully harasses individuals or unlawfully  
17 incites violence.

18 (b) This chapter may not be construed to prohibit or  
19 restrict a social media platform or interactive computer service  
20 from authorizing or facilitating a user's ability to censor  
21 specific expression on the user's platform or page at the request of  
22 that user.

23 (c) This chapter may not be construed to expand or limit  
24 intellectual property law.

25 Sec. 143A.007. USER REMEDIES. (a) A user may bring an  
26 action against a social media platform or interactive computer  
27 service that violates this chapter with respect to the user.

1        (b) If the user proves that the social media platform or  
2 interactive computer service violated this chapter with respect to  
3 the user, the user is entitled to recover:

4            (1) declaratory relief under Chapter 37, including  
5 costs and reasonable and necessary attorney's fees under Section  
6 37.009; and

7            (2) injunctive relief.

8        (c) If a social media platform or interactive computer  
9 service fails to promptly comply with a court order in an action  
10 brought under this section, the court shall hold the social media  
11 platform or interactive computer service in contempt and shall use  
12 all lawful measures to secure immediate compliance with the order,  
13 including daily penalties sufficient to secure immediate  
14 compliance.

15        (d) A user may bring an action under this section regardless  
16 of whether another court has enjoined the attorney general from  
17 enforcing this chapter or declared any provision of this chapter  
18 unconstitutional unless that court decision is binding on the court  
19 in which the action is brought.

20        (e) Nonmutual issue preclusion and nonmutual claim  
21 preclusion are not defenses to an action brought under this  
22 section.

23        Sec. 143A.008. ACTION BY ATTORNEY GENERAL. (a) Any person  
24 may notify the attorney general of a violation or potential  
25 violation of this chapter by a social media platform or interactive  
26 computer service.

27        (b) The attorney general may bring an action to enjoin a

1 violation or a potential violation of this chapter. If the  
2 injunction is granted, the attorney general may recover costs and  
3 reasonable attorney's fees incurred in bringing the action and  
4 reasonable investigative costs incurred in relation to the action.

5 Sec. 143A.009. SEVERABILITY. (a) Mindful of *Leavitt v.*  
6 *Jane L.*, 518 U.S. 137 (1996), in which in the context of determining  
7 the severability of a state statute the United States Supreme Court  
8 held that an explicit statement of legislative intent is  
9 controlling, it is the intent of the legislature that every  
10 provision, section, subsection, sentence, clause, phrase, or word  
11 in this chapter, and every application of the provisions in this  
12 chapter, is severable from each other.

13 (b) If any application of any provision in this chapter to  
14 any person, group of persons, or circumstances is found by a court  
15 to be invalid or unconstitutional, the remaining applications of  
16 that provision to all other persons and circumstances shall be  
17 severed and may not be affected. All constitutionally valid  
18 applications of this chapter shall be severed from any applications  
19 that a court finds to be invalid, leaving the valid applications in  
20 force, because it is the legislature's intent and priority that the  
21 valid applications be allowed to stand alone. Even if a reviewing  
22 court finds that a substantial amount of the provision's  
23 applications are unconstitutional, judged in relation to the  
24 provision's plainly legitimate sweep, the applications that do not  
25 violate the United States Constitution and Texas Constitution shall  
26 be severed from the remaining applications and shall remain in  
27 force, and the provision shall be interpreted, as a matter of state

1 law, as if the provision contained explicit language limiting its  
2 application to the persons, group of persons, or circumstances for  
3 which the statute's application does not violate the United States  
4 Constitution and Texas Constitution.

5 (c) If any court declares or finds a provision of this  
6 chapter facially unconstitutional, when discrete applications of  
7 that provision can be enforced against a person, group of persons,  
8 or circumstances without violating the United States Constitution  
9 and Texas Constitution, those applications shall be severed from  
10 all remaining applications of the provision, and the provision  
11 shall be interpreted by every state and federal court, as a matter  
12 of state law, as if the provision contained explicit language  
13 limiting its application to the persons, group of persons, or  
14 circumstances for which the provision's application will not  
15 violate the United States Constitution and Texas Constitution.

16 (d) The legislature further declares that it would have  
17 enacted this chapter, and each constitutional provision, section,  
18 subsection, sentence, clause, phrase, or word, and all  
19 constitutional applications of this chapter, irrespective of the  
20 fact that any discrete provision, section, subsection, sentence,  
21 clause, phrase, or word, or applications of this chapter, were to be  
22 declared unconstitutional or severed from the remainder of the  
23 chapter's provisions and applications.

24 (e) If any provision of this chapter is found by any court to  
25 be unconstitutionally vague, the applications of that provision  
26 that do not present constitutional vagueness problems shall be  
27 severed and remain in force.

1       (f) No court may decline to enforce the severability  
2 requirements of Subsections (a), (b), (c), (d), and (e) on the  
3 ground that severance would rewrite the statute or involve the  
4 court in legislative or lawmaking activity. A court that declines  
5 to enforce or enjoins a state official from enforcing a statutory  
6 provision is never rewriting the statute, as the statute continues  
7 to contain the exact same words as it did before the court's  
8 decision. A judicial injunction or declaration of  
9 unconstitutionality:

10       (1) is nothing more than an edict prohibiting  
11 enforcement that may subsequently be vacated by a later court if  
12 that court has a different understanding of the requirements of the  
13 Texas Constitution or United States Constitution;

14       (2) is not a formal amendment of the language in a  
15 statute; and

16       (3) no more rewrites a statute than a decision by the  
17 executive not to enforce a duly enacted statute in a limited and  
18 defined set of circumstances.

19       SECTION 4. (a) Because this Act has been enacted amid  
20 uncertainty about the application of the United States Constitution  
21 and relevant federal statutes, every provision, section,  
22 subsection, sentence, or clause of this Act, and every application  
23 of the provisions of this Act to any person, group of persons, or  
24 circumstances, is severable from each other. If any application of  
25 any provision of this Act is found by a court to be unconstitutional  
26 or invalid, on any ground for any reason whatsoever, the remaining  
27 application of that provision to other persons and circumstances



1 shall be severed and may not be affected. The legislature further  
2 declares that it would have passed this Act, each provision,  
3 section, subsection, sentence, or clause of this Act, and all  
4 constitutional applications of this Act regardless of the fact that  
5 any provision, section, subsection, sentence, or clause of this Act  
6 or applications of this Act were to be declared unconstitutional by  
7 any court.

8 (b) If any provision of this Act is found by any court to be  
9 unconstitutionally vague, the applications of that provision that  
10 do not present constitutional vagueness problems shall be severed  
11 and remain in force.

12 SECTION 5. (a) Chapter 143A, Civil Practice and Remedies  
13 Code, as added by this Act, applies only to an action taken on or  
14 after the effective date of this Act.

15 (b) A person who was a user, as defined by Section 143A.001,  
16 Civil Practice and Remedies Code, as added by this Act, before the  
17 effective date of this Act may bring an action under Section  
18 143A.007, Civil Practice and Remedies Code, as added by this Act, to  
19 remedy censorship of the user's ability to publish or receive  
20 expression that occurred before the effective date of this Act if  
21 the censorship continues after this Act takes effect and violates  
22 Chapter 143A, Civil Practice and Remedies Code, as added by this  
23 Act.

24 SECTION 6. This Act takes effect on the 91st day after the  
25 last day of the legislative session.