

By: Toth

H.B. No. 3106

A BILL TO BE ENTITLED

AN ACT

relating to the censorship of users' expressions by an interactive computer service.

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

SECTION 1. The legislature finds that social media platforms are akin to common carriers, are affected with a public interest, are central public forums for public debate, and have enjoyed governmental support in the United States.

SECTION 2. Title 6, Civil Practice and Remedies Code, is amended by adding Chapter 143A to read as follows:

CHAPTER 143A. DISCOURSE ON INTERACTIVE WEB-BASED PLATFORMS

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

(1) "Censor" means to block, ban, remove, deplatform, demonetize, de-boost, restrict, deny equal access or visibility to, or otherwise discriminate against expression.

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

(3) "Interactive computer service" means an information service, system, or access software provider that provides or enables computer access by multiple users to a server, including a service, system, website, web application, or web portal that provides a social media platform for users to engage in expressive activity. The term does not include an Internet service provider as defined by Section 324.055, Business & Commerce Code.

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

3 (5) "Unlawful expression" means an expression that is
4 unlawful under the United States Constitution, federal law, the
5 Texas Constitution, or the laws of this state.

6 (6) "User" means a person who posts, uploads,
7 transmits, shares, or otherwise publishes or receives expression,
8 through an interactive computer service.

9 Sec. 143A.002. CENSORSHIP PROHIBITED. (a) An interactive
10 computer service may not censor a user, a user's expression, or a
11 user's ability to receive the expression of another person based
12 on:

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

14 (2) the viewpoint represented in the user's expression
15 or another person's expression; or

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

18 (b) This section applies regardless of whether the
19 viewpoint is expressed on the interactive computer service or
20 elsewhere.

21 Sec. 143A.003. APPLICABILITY OF CHAPTER. (a) This chapter
22 applies only to a user who:

23 (1) resides in this state;

24 (2) does business in this state; or

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

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

1 (c) This chapter applies only to an interactive computer
2 service that functionally has more than 100 million active users in
3 a calendar month.

4 Sec. 143A.004. LIMITATION ON EFFECT OF CHAPTER. This
5 chapter does not subject an interactive computer service to damages
6 or other legal remedies to the extent the interactive computer
7 service is protected from those remedies under federal law.

8 Sec. 143A.005. CONSTRUCTION OF CHAPTER. This chapter does
9 not prohibit an interactive computer service from:

10 (1) censoring expression that the interactive
11 computer service is specifically authorized to censor by federal
12 law; or

13 (2) censoring unlawful expression.

14 Sec. 143A.006. REMEDY. (a) A user who successfully asserts
15 a claim against an interactive computer service for a violation of
16 this chapter against that user is entitled to recover:

17 (1) declaratory relief under Chapter 37, including
18 costs and reasonable and necessary attorney's fees under Section
19 37.009; and

20 (2) injunctive relief.

21 (b) If an interactive computer service fails to promptly
22 comply with the court's order in an action brought under this
23 section, the court shall hold the interactive computer service in
24 contempt and shall use all lawful measures to secure immediate
25 compliance, including daily penalties sufficient to secure
26 immediate compliance.

27 Sec. 143A.007. ACTION BY ATTORNEY GENERAL. (a) The

1 attorney general may bring an action for declaratory relief to have
2 determined any question of construction or validity arising under
3 this chapter and to obtain a declaration of rights, status, or other
4 legal relations with respect to this chapter. The attorney general
5 may recover costs and reasonable and necessary attorney's fees
6 under Section 37.009 in connection with declaratory relief obtained
7 under this subsection.

8 (b) The attorney general may bring an action to enjoin a
9 violation of this chapter. If the injunction is granted, the
10 attorney general may recover costs and reasonable attorney's fees
11 incurred in bringing the action and reasonable investigative costs
12 incurred in relation to the action.

13 SECTION 3. (a) Because this Act has been enacted amid
14 uncertainty about the application of the United States Constitution
15 and relevant federal statutes, every provision, section,
16 subsection, sentence, or clause of this Act, and every application
17 of the provisions of this Act to any person, group of persons, or
18 circumstances are severable from each other. If any application of
19 any provision of this Act is found by a court to be unconstitutional
20 or invalid, on any ground for any reason whatsoever, the remaining
21 application of that provision to other persons and circumstances
22 shall be severed and may not be affected. The legislature further
23 declares that it would have passed this Act, each provision,
24 section, subsection, sentence, or clause of this Act, and all
25 constitutional applications of this Act regardless of the fact that
26 any provision, section, subsection, sentence, or clause of this Act
27 or applications of this Act were to be declared unconstitutional by

1 any court.

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

6 SECTION 4. Chapter 143A, Civil Practice and Remedies Code,
7 as added by this Act, applies only to an action taken on or after the
8 effective date of this Act.

9 SECTION 5. This Act takes effect September 1, 2021.