

1-1 By: Hughes, et al. S.B. No. 12
 1-2 (In the Senate - Filed March 1, 2021; March 3, 2021, read
 1-3 first time and referred to Committee on State Affairs;
 1-4 March 22, 2021, reported adversely, with favorable Committee
 1-5 Substitute by the following vote: Yeas 6, Nays 3; March 22, 2021,
 1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13		X		
1-14	X			
1-15		X		
1-16	X			
1-17		X		

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 12 By: Hughes

1-19 A BILL TO BE ENTITLED
 1-20 AN ACT

1-21 relating to complaint procedures and disclosure requirements for
 1-22 social media platforms and to the censorship of users' expressions
 1-23 by an interactive computer service.

1-24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-25 SECTION 1. The legislature finds that social media
 1-26 platforms are akin to common carriers, are affected with a public
 1-27 interest, are central public forums for public debate, and have
 1-28 enjoyed governmental support in the United States.

1-29 SECTION 2. Subtitle C, Title 5, Business & Commerce Code, is
 1-30 amended by adding Chapter 113 to read as follows:

1-31 CHAPTER 113. SOCIAL MEDIA PLATFORMS

1-32 SUBCHAPTER A. GENERAL PROVISIONS

1-33 Sec. 113.001. DEFINITIONS. In this chapter:

1-34 (1) "Social media platform" means an Internet website
 1-35 or application that is open to the public, allows a user to create
 1-36 an account, and enables users to communicate with other users for
 1-37 the primary purpose of posting information, comments, messages, or
 1-38 images. The term does not include:

1-39 (A) an Internet service provider as defined by
 1-40 Section 324.055;

1-41 (B) electronic mail; or

1-42 (C) an online service, application, or website:

1-43 (i) that consists primarily of news,
 1-44 sports, entertainment, or other information or content that is not
 1-45 user generated but is preselected by the provider; and

1-46 (ii) for which any chat, comments, or
 1-47 interactive functionality is incidental to, directly related to, or
 1-48 dependent on the provision of the content described by Subparagraph
 1-49 (i).

1-50 (2) "User" means a person who posts, uploads,
 1-51 transmits, shares, or otherwise publishes or receives content
 1-52 through a social media platform.

1-53 Sec. 113.002. APPLICABILITY OF CHAPTER. (a) This chapter
 1-54 applies only to a user who:

1-55 (1) resides in this state;

1-56 (2) does business in this state; or

1-57 (3) shares or receives content on a social media
 1-58 platform in this state.

1-59 (b) This chapter applies only to a social media platform
 1-60 that functionally has more than 100 million active users in a

2-1 calendar month.

2-2 SUBCHAPTER B. DISCLOSURE REQUIREMENTS

2-3 Sec. 113.051. PUBLIC DISCLOSURES. (a) A social media
2-4 platform shall, in accordance with this subchapter, publicly
2-5 disclose accurate information regarding its content management,
2-6 data management, and business practices, including specific
2-7 information regarding how the social media platform:

2-8 (1) curates and targets content to users;

2-9 (2) places and promotes content, services, and
2-10 products, including its own content, services, and products;

2-11 (3) moderates content;

2-12 (4) uses search, ranking, or other algorithms or
2-13 procedures that determine results on the platform; and

2-14 (5) provides users' performance data on the use of the
2-15 platform and its products and services.

2-16 (b) The disclosure required by Subsection (a) must be
2-17 sufficient to enable users to make an informed choice regarding the
2-18 purchase of or use of access to or services from the platform.

2-19 (c) A social media platform shall publish the disclosure
2-20 required by Subsection (a) on an Internet website that is easily
2-21 accessible by the public.

2-22 Sec. 113.052. ACCEPTABLE USE POLICY. (a) A social media
2-23 platform shall publish an acceptable use policy in a location that
2-24 is easily accessible to a user.

2-25 (b) A social media platform's acceptable use policy must:

2-26 (1) reasonably inform users about the types of content
2-27 allowed on the social media platform;

2-28 (2) explain the steps the social media platform will
2-29 take to ensure content complies with the policy;

2-30 (3) explain the means by which users can notify the
2-31 social media platform of content that potentially violates the
2-32 acceptable use policy, illegal content, or illegal activity, which
2-33 includes:

2-34 (A) subject to Subsection (c), making available a
2-35 live company representative to take user complaints through a
2-36 toll-free telephone number that users may call during regular
2-37 business hours;

2-38 (B) an e-mail address or relevant complaint
2-39 intake mechanism to handle user complaints; and

2-40 (C) a complaint system described by Subchapter C;
2-41 and

2-42 (4) include publication of a quarterly transparency
2-43 report outlining actions taken to enforce the policy.

2-44 (c) The live company representative described by Subsection
2-45 (b)(3)(A) must be available eight hours a day, five days a week.

2-46 Sec. 113.053. QUARTERLY TRANSPARENCY REPORT. (a) As part
2-47 of a social media platform's acceptable use policy under Section
2-48 113.052, the social media platform shall publish a quarterly
2-49 transparency report that includes, with respect to the preceding
2-50 three-month period:

2-51 (1) the total number of instances in which the social
2-52 media platform was alerted to illegal content, illegal activity, or
2-53 potentially policy-violating content by:

2-54 (A) a user complaint;

2-55 (B) an employee of or person contracting with the
2-56 social media platform; or

2-57 (C) an internal automated detection tool;

2-58 (2) subject to Subsection (b), the number of instances
2-59 in which the social media platform took action with respect to
2-60 illegal content, illegal activity, or potentially policy-violating
2-61 content known to the platform due to the nature of the content as
2-62 illegal content, illegal activity, or potentially policy-violating
2-63 content, including:

2-64 (A) content removal;

2-65 (B) content demonetization;

2-66 (C) content deprioritization;

2-67 (D) the addition of an assessment to content;

2-68 (E) account suspension;

2-69 (F) account removal; or

3-1 (G) any other action taken in accordance with the
 3-2 platform's acceptable use policy;
 3-3 (3) the country of the user who provided the content
 3-4 for each instance described by Subdivision (2);
 3-5 (4) the number of coordinated campaigns, if
 3-6 applicable;
 3-7 (5) the number of instances in which a user appealed
 3-8 the decision to remove the user's potentially policy-violating
 3-9 content;
 3-10 (6) the percentage of appeals described by Subdivision
 3-11 (5) that resulted in the restoration of content; and
 3-12 (7) a description of each tool, practice, action, or
 3-13 technique used in enforcing the acceptable use policy.

3-14 (b) The information described by Subsection (a)(2) must be
 3-15 categorized by:

3-16 (1) category of rule violated; and
 3-17 (2) the source of the alert of illegal content,
 3-18 illegal activity, or potentially policy-violating content,
 3-19 including:

3-20 (A) a government;
 3-21 (B) a user;
 3-22 (C) an internal automated detection tool;
 3-23 (D) coordination with other social media
 3-24 platforms; or
 3-25 (E) persons employed by or contracting with the
 3-26 platform.

3-27 (c) A social media platform shall publish the information
 3-28 described by Subsection (a) with an open license, in a
 3-29 machine-readable and open format, and in a location that is easily
 3-30 accessible to users.

3-31 SUBCHAPTER C. COMPLAINT PROCEDURES

3-32 Sec. 113.101. COMPLAINT SYSTEM. A social media platform
 3-33 shall provide an easily accessible complaint system to enable a
 3-34 user to submit a complaint in good faith and keep track of the
 3-35 status of the complaint, including a complaint regarding:

3-36 (1) illegal content or activity; or
 3-37 (2) a decision made by the social media platform to
 3-38 remove content posted by the user.

3-39 Sec. 113.102. PROCESSING OF COMPLAINTS. If a social media
 3-40 platform receives notice of illegal content or illegal activity on
 3-41 the social media platform, the social media platform shall make a
 3-42 good faith effort to evaluate the legality of the content or
 3-43 activity within 24 hours of receiving the notice, subject to
 3-44 reasonable exceptions based on concerns about the legitimacy of the
 3-45 notice.

3-46 Sec. 113.103. REMOVAL OF CONTENT; EXCEPTIONS. (a) Except
 3-47 as provided by Subsection (b), if a social media platform removes
 3-48 content based on a violation of the platform's acceptable use
 3-49 policy under Section 113.052, the social media platform shall,
 3-50 concurrently with the removal:

3-51 (1) notify the user who provided the content of the
 3-52 removal and explain why the content was removed;
 3-53 (2) allow the user to appeal the decision to remove the
 3-54 content to the platform; and
 3-55 (3) provide written notice to the user who provided
 3-56 the content of:

3-57 (A) the determination regarding an appeal
 3-58 requested under Subdivision (2); and
 3-59 (B) in the case of a reversal of the social media
 3-60 platform's decision to remove the content, the reason for the
 3-61 reversal.

3-62 (b) A social media platform is not required to provide a
 3-63 user with notice or an opportunity to appeal under Subsection (a) if
 3-64 the social media platform:

3-65 (1) is unable to contact the user after taking
 3-66 reasonable steps to make contact; or
 3-67 (2) knows that the potentially policy-violating
 3-68 content relates to an ongoing law enforcement investigation.

3-69 Sec. 113.104. APPEAL PROCEDURES. If a social media

4-1 platform receives a user complaint that the social media platform
4-2 removed content provided by the user from the platform that the user
4-3 believes was not potentially policy-violating content, the social
4-4 media platform shall, not later than the 14th day after the date the
4-5 platform receives the complaint:
4-6 (1) review the content;
4-7 (2) determine whether the content adheres to the
4-8 platform's acceptable use policy;
4-9 (3) take appropriate steps based on the determination
4-10 under Subdivision (2); and
4-11 (4) notify the user regarding the determination made
4-12 under Subdivision (2) and the steps taken under Subdivision (3).

4-13 SUBCHAPTER D. ENFORCEMENT

4-14 Sec. 113.151. ACTION BY ATTORNEY GENERAL. (a) The attorney
4-15 general may bring an action against a social media platform to
4-16 enjoin a violation of this chapter.

4-17 (b) If an injunction is granted in an action brought under
4-18 Subsection (a), the attorney general may recover costs incurred in
4-19 bringing the action, including reasonable attorney's fees and
4-20 reasonable investigative costs.

4-21 SECTION 3. Title 6, Civil Practice and Remedies Code, is
4-22 amended by adding Chapter 143A to read as follows:

4-23 CHAPTER 143A. DISCOURSE ON INTERACTIVE WEB-BASED PLATFORMS

4-24 Sec. 143A.001. DEFINITIONS. In this chapter:

4-25 (1) "Censor" means to block, ban, remove, deplatform,
4-26 demonetize, de-boost, restrict, deny equal access or visibility to,
4-27 or otherwise discriminate against expression.

4-28 (2) "Expression" means any word, music, sound, still
4-29 or moving image, number, or other perceivable communication.

4-30 (3) "Interactive computer service" means an
4-31 information service, system, or access software provider that
4-32 provides or enables computer access by multiple users to a server
4-33 that provides a social media platform for users to engage in
4-34 expressive activity. The term does not include an Internet service
4-35 provider as defined by Section 324.055, Business & Commerce Code.

4-36 (4) "Receive," with respect to an expression, means to
4-37 read, hear, look at, access, or gain access to the expression.

4-38 (5) "Social media platform" has the meaning assigned
4-39 by Section 113.001, Business & Commerce Code.

4-40 (6) "Unlawful expression" means an expression that is
4-41 unlawful under the United States Constitution, federal law, the
4-42 Texas Constitution, or the laws of this state.

4-43 (7) "User" means a person who posts, uploads,
4-44 transmits, shares, or otherwise publishes or receives expression,
4-45 through an interactive computer service.

4-46 Sec. 143A.002. CENSORSHIP PROHIBITED. (a) An interactive
4-47 computer service may not censor a user, a user's expression, or a
4-48 user's ability to receive the expression of another person based
4-49 on:

4-50 (1) the viewpoint of the user or another person;

4-51 (2) the viewpoint represented in the user's expression
4-52 or another person's expression; or

4-53 (3) a user's geographic location in this state or any
4-54 part of this state.

4-55 (b) This section applies regardless of whether the
4-56 viewpoint is expressed on the interactive computer service or
4-57 elsewhere.

4-58 Sec. 143A.003. APPLICABILITY OF CHAPTER. (a) This chapter
4-59 applies only to a user who:

4-60 (1) resides in this state;

4-61 (2) does business in this state; or

4-62 (3) shares or receives expression in this state.

4-63 (b) This chapter applies only to expression that is shared
4-64 or received in this state.

4-65 (c) This chapter applies only to an interactive computer
4-66 service that functionally has more than 100 million active users in
4-67 a calendar month.

4-68 Sec. 143A.004. LIMITATION ON EFFECT OF CHAPTER. This
4-69 chapter does not subject an interactive computer service to damages

5-1 or other legal remedies to the extent the interactive computer
5-2 service is protected from those remedies under federal law.

5-3 Sec. 143A.005. CONSTRUCTION OF CHAPTER. This chapter does
5-4 not prohibit an interactive computer service from:

5-5 (1) censoring expression that the interactive
5-6 computer service is specifically authorized to censor by federal
5-7 law; or

5-8 (2) censoring unlawful expression.

5-9 Sec. 143A.006. USER REMEDIES. (a) A user may bring an
5-10 action against an interactive computer service that violates this
5-11 chapter with respect to the user.

5-12 (b) If the user proves that the interactive computer service
5-13 violated this chapter with respect to the user, the user is entitled
5-14 to recover:

5-15 (1) declaratory relief under Chapter 37, including
5-16 costs and reasonable and necessary attorney's fees under Section
5-17 37.009; and

5-18 (2) injunctive relief.

5-19 (c) If an interactive computer service fails to promptly
5-20 comply with a court order in an action brought under this section,
5-21 the court shall hold the interactive computer service in contempt
5-22 and shall use all lawful measures to secure immediate compliance
5-23 with the order, including daily penalties sufficient to secure
5-24 immediate compliance.

5-25 Sec. 143A.007. ACTION BY ATTORNEY GENERAL. (a) The
5-26 attorney general may bring an action for declaratory relief to have
5-27 determined any question of construction or validity arising under
5-28 this chapter and to obtain a declaration of rights, status, or other
5-29 legal relations with respect to this chapter. The attorney general
5-30 may recover costs and reasonable and necessary attorney's fees
5-31 under Section 37.009 in connection with declaratory relief obtained
5-32 under this subsection.

5-33 (b) The attorney general may bring an action to enjoin a
5-34 violation of this chapter. If the injunction is granted, the
5-35 attorney general may recover costs and reasonable attorney's fees
5-36 incurred in bringing the action and reasonable investigative costs
5-37 incurred in relation to the action.

5-38 SECTION 4. (a) Because this Act has been enacted amid
5-39 uncertainty about the application of the United States Constitution
5-40 and relevant federal statutes, every provision, section,
5-41 subsection, sentence, or clause of this Act, and every application
5-42 of the provisions of this Act to any person, group of persons, or
5-43 circumstances are severable from each other. If any application of
5-44 any provision of this Act is found by a court to be unconstitutional
5-45 or invalid, on any ground for any reason whatsoever, the remaining
5-46 application of that provision to other persons and circumstances
5-47 shall be severed and may not be affected. The legislature further
5-48 declares that it would have passed this Act, each provision,
5-49 section, subsection, sentence, or clause of this Act, and all
5-50 constitutional applications of this Act regardless of the fact that
5-51 any provision, section, subsection, sentence, or clause of this Act
5-52 or applications of this Act were to be declared unconstitutional by
5-53 any court.

5-54 (b) If any provision of this Act is found by any court to be
5-55 unconstitutionally vague, the applications of that provision that
5-56 do not present constitutional vagueness problems shall be severed
5-57 and remain in force.

5-58 SECTION 5. Chapter 143A, Civil Practice and Remedies Code,
5-59 as added by this Act, applies only to an action taken on or after the
5-60 effective date of this Act.

5-61 SECTION 6. This Act takes effect September 1, 2021.

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