

By: Hughes, et al.

S.B. No. 5

A BILL TO BE ENTITLED

AN ACT

1
2 relating to complaint procedures and disclosure requirements for,
3 and to the censorship of users' expressions by, social media
4 platforms.

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

6 SECTION 1. The legislature finds that:

7 (1) social media platforms are akin to common
8 carriers, are affected with a public interest, are central public
9 forums for public debate, and have enjoyed governmental support in
10 the United States; and

11 (2) social media platforms with the largest number of
12 users are common carriers by virtue of their market dominance.

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

15 CHAPTER 120. SOCIAL MEDIA PLATFORMS

16 SUBCHAPTER A. GENERAL PROVISIONS

17 Sec. 120.001. DEFINITIONS. In this chapter:

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

23 (A) an Internet service provider as defined by
24 Section 324.055;

1 (B) electronic mail; or

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

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

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

10 (2) "User" means a person who posts, uploads,
11 transmits, shares, or otherwise publishes or receives content
12 through a social media platform. The term includes a person who has
13 a social media platform account that the social media platform has
14 disabled or locked.

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

17 (1) resides in this state;

18 (2) does business in this state; or

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

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

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

26 SUBCHAPTER B. DISCLOSURE REQUIREMENTS

27 Sec. 120.051. PUBLIC DISCLOSURES. (a) A social media

1 platform shall, in accordance with this subchapter, publicly
2 disclose accurate information regarding its content management,
3 data management, and business practices, including specific
4 information regarding the manner in which the social media
5 platform:

6 (1) curates and targets content to users;

7 (2) places and promotes content, services, and
8 products, including its own content, services, and products;

9 (3) moderates content;

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

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

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

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

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

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

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

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

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

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

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

11 (C) a complaint system described by Subchapter C;
12 and

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

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

18 Sec. 120.053. QUARTERLY TRANSPARENCY REPORT. (a) As part
19 of a social media platform's acceptable use policy under Section
20 120.052, the social media platform shall publish a quarterly
21 transparency report that includes, with respect to the preceding
22 three-month period:

23 (1) the total number of instances in which the social
24 media platform was alerted to illegal content, illegal activity, or
25 potentially policy-violating content by:

26 (A) a user complaint;

27 (B) an employee of or person contracting with the

1 social media platform; or
2 (C) an internal automated detection tool;
3 (2) subject to Subsection (b), the number of instances
4 in which the social media platform took action with respect to
5 illegal content, illegal activity, or potentially policy-violating
6 content known to the platform due to the nature of the content as
7 illegal content, illegal activity, or potentially policy-violating
8 content, including:
9 (A) content removal;
10 (B) content demonetization;
11 (C) content deprioritization;
12 (D) the addition of an assessment to content;
13 (E) account suspension;
14 (F) account removal; or
15 (G) any other action taken in accordance with the
16 platform's acceptable use policy;
17 (3) the country of the user who provided the content
18 for each instance described by Subdivision (2);
19 (4) the number of coordinated campaigns, if
20 applicable;
21 (5) the number of instances in which a user appealed
22 the decision to remove the user's potentially policy-violating
23 content;
24 (6) the percentage of appeals described by Subdivision
25 (5) that resulted in the restoration of content; and
26 (7) a description of each tool, practice, action, or
27 technique used in enforcing the acceptable use policy.

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

3 (1) the rule violated; and

4 (2) the source for the alert of illegal content,
5 illegal activity, or potentially policy-violating content,
6 including:

7 (A) a government;

8 (B) a user;

9 (C) an internal automated detection tool;

10 (D) coordination with other social media
11 platforms; or

12 (E) persons employed by or contracting with the
13 platform.

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

18 SUBCHAPTER C. COMPLAINT PROCEDURES

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

23 (1) illegal content or activity; or

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

26 Sec. 120.102. PROCESSING OF COMPLAINTS. A social media
27 platform that receives notice of illegal content or illegal

1 activity on the social media platform shall make a good faith effort
2 to evaluate the legality of the content or activity within 24 hours
3 of receiving the notice, subject to reasonable exceptions based on
4 concerns about the legitimacy of the notice.

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

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

12 (2) allow the user to appeal the decision to remove the
13 content to the platform; and

14 (3) provide written notice to the user who provided
15 the content of:

16 (A) the determination regarding an appeal
17 requested under Subdivision (2); and

18 (B) in the case of a reversal of the social media
19 platform's decision to remove the content, the reason for the
20 reversal.

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

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

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

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

7 (1) review the content;

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

10 (3) take appropriate steps based on the determination
11 under Subdivision (2); and

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

14 SUBCHAPTER D. ENFORCEMENT

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

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

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

24 CHAPTER 143A. DISCOURSE ON SOCIAL MEDIA PLATFORMS

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

26 (1) "Censor" means to block, ban, remove, deplatform,
27 demonetize, de-boost, restrict, deny equal access or visibility to,

1 or otherwise discriminate against expression.

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

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

6 (4) "Social media platform" has the meaning assigned
7 by Section 120.001, Business & Commerce Code.

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

11 (6) "User" means a person who posts, uploads,
12 transmits, shares, or otherwise publishes or receives expression,
13 through a social media platform. The term includes a person who has
14 a social media platform account that the social media platform has
15 disabled or locked.

16 Sec. 143A.002. CENSORSHIP PROHIBITED. (a) A social media
17 platform may not censor a user, a user's expression, or a user's
18 ability to receive the expression of another person based on:

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

20 (2) the viewpoint represented in the user's expression
21 or another person's expression; or

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

24 (b) This section applies regardless of whether the
25 viewpoint is expressed on the social media platform or through any
26 other medium.

27 Sec. 143A.003. WAIVER PROHIBITED. (a) A waiver or

1 purported waiver of the protections provided by this chapter is
2 void as against public policy, and a court or arbitrator may not
3 enforce or give effect to the waiver, including in an action brought
4 under Section 143A.007, notwithstanding any contract or
5 choice-of-law provision in a contract.

6 (b) The waiver prohibition described by Subsection (a) is a
7 public-policy limitation on contracts of the highest importance and
8 interest to this state, and this state is exercising and enforcing
9 this limitation to the full extent permitted by the United States
10 Constitution and Texas Constitution.

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

13 (1) resides in this state;

14 (2) does business in this state; or

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

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

18 (c) This chapter applies only to a social media platform
19 that functionally has more than 50 million active users in the
20 United States in a calendar month.

21 (d) This chapter does not apply to censorship of an
22 expression that is the subject of a referral or request from an
23 organization with the purpose of preventing the sexual exploitation
24 of children and protecting survivors of childhood sexual abuse from
25 ongoing harassment.

26 (e) This chapter does not apply to censorship of an
27 expression that directly incites criminal activity or consists of

1 specific threats of violence targeted against a person or group
2 because of their race, color, disability, religion, national origin
3 or ancestry, age, sex, or status as a peace officer or judge.

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

8 Sec. 143A.006. CONSTRUCTION OF CHAPTER. (a) This chapter
9 does not prohibit a social media platform from:

10 (1) censoring expression that the social media
11 platform is specifically authorized to censor by federal law; or

12 (2) censoring unlawful expression.

13 (b) This chapter may not be construed to prohibit or
14 restrict a social media platform from authorizing or facilitating a
15 user's ability to censor specific expression at the request of that
16 user.

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

19 Sec. 143A.007. USER REMEDIES. (a) A user may bring an
20 action against a social media platform that violates this chapter
21 with respect to the user.

22 (b) If the user proves that the social media platform
23 violated this chapter with respect to the user, the user is entitled
24 to recover:

25 (1) declaratory relief under Chapter 37, including
26 costs and reasonable and necessary attorney's fees under Section
27 37.009; and

1 (2) injunctive relief.

2 (c) If a social media platform fails to promptly comply with
3 a court order in an action brought under this section, the court
4 shall hold the social media platform in contempt and shall use all
5 lawful measures to secure immediate compliance with the order,
6 including daily penalties sufficient to secure immediate
7 compliance.

8 Sec. 143A.008. ACTION BY ATTORNEY GENERAL. (a) Any person
9 may notify the attorney general of a violation or potential
10 violation of this chapter by a social media platform.

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

16 SECTION 4. (a) Mindful of *Leavitt v. Jane L.*, 518 U.S. 137
17 (1996), in which in the context of determining the severability of a
18 state statute the United States Supreme Court held that an explicit
19 statement of legislative intent is controlling, it is the intent of
20 the legislature that every provision, section, subsection,
21 sentence, clause, phrase, or word in this Act, and every
22 application of the provisions in this Act, are severable from each
23 other.

24 (b) If any application of any provision in this Act to any
25 person, group of persons, or circumstances is found by a court to be
26 invalid or unconstitutional, the remaining applications of that
27 provision to all other persons and circumstances shall be severed

1 and may not be affected. All constitutionally valid applications
2 of this Act shall be severed from any applications that a court
3 finds to be invalid, leaving the valid applications in force,
4 because it is the legislature's intent and priority that the valid
5 applications be allowed to stand alone.

6 (c) If any court declares or finds a provision of this Act
7 facially unconstitutional, when discrete applications of that
8 provision can be enforced against a person, group of persons, or
9 circumstances without violating the United States Constitution and
10 Texas Constitution, those applications shall be severed from all
11 remaining applications of the provision, and the provision shall be
12 interpreted as if the legislature had enacted a provision limited
13 to the persons, group of persons, or circumstances for which the
14 provision's application will not violate the United States
15 Constitution and Texas Constitution.

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

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

26 (f) No court may decline to enforce the severability
27 requirements of Subsections (a), (b), (c), (d), and (e) of this

1 section on the ground that severance would rewrite the statute or
2 involve the court in legislative or lawmaking activity. A court
3 that declines to enforce or enjoins a state official from enforcing
4 a statutory provision does not rewrite a statute, as the statute
5 continues to contain the same words as before the court's decision.
6 A judicial injunction or declaration of unconstitutionality:

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

11 (2) is not a formal amendment of the language in a
12 statute; and

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

16 SECTION 5. Chapter 143A, Civil Practice and Remedies Code,
17 as added by this Act, applies only to a cause of action that accrues
18 on or after the effective date of this Act.

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