

By: Hughes

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

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

12 CHAPTER 120. SOCIAL MEDIA PLATFORMS

13 SUBCHAPTER A. GENERAL PROVISIONS

14 Sec. 120.001. DEFINITIONS. In this chapter:

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

20 (A) an Internet service provider as defined by  
21 Section 324.055;

22 (B) electronic mail; or

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

24 (i) that consists primarily of news,

1 sports, entertainment, or other information or content that is not  
2 user generated but is preselected by the provider; and  
3 (ii) for which any chat, comments, or  
4 interactive functionality is incidental to, directly related to, or  
5 dependent on the provision of the content described by Subparagraph  
6 (i).

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

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

- 12 (1) resides in this state;  
13 (2) does business in this state; or  
14 (3) shares or receives content on a social media  
15 platform in this state.

16 (b) This chapter applies only to a social media platform  
17 that functionally has more than 65 million active users in the  
18 United States in a calendar month.

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

21 SUBCHAPTER B. DISCLOSURE REQUIREMENTS

22 Sec. 120.051. PUBLIC DISCLOSURES. (a) A social media  
23 platform shall, in accordance with this subchapter, publicly  
24 disclose accurate information regarding its content management,  
25 data management, and business practices, including specific  
26 information regarding how the social media platform:

- 27 (1) curates and targets content to users;

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

3           (3) moderates content;

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

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

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

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

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

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

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

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

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

26           (A) subject to Subsection (c), making available a  
27 live company representative to take user complaints through a

1 toll-free telephone number that users may call during regular  
2 business hours;

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

5 (C) a complaint system described by Subchapter C;  
6 and

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

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

11 Sec. 120.053. QUARTERLY TRANSPARENCY REPORT. (a) As part  
12 of a social media platform's acceptable use policy under Section  
13 120.052, the social media platform shall publish a quarterly  
14 transparency report that includes, with respect to the preceding  
15 three-month period:

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

19 (A) a user complaint;

20 (B) an employee of or person contracting with the  
21 social media platform; or

22 (C) an internal automated detection tool;

23 (2) subject to Subsection (b), the number of instances  
24 in which the social media platform took action with respect to  
25 illegal content, illegal activity, or potentially policy-violating  
26 content known to the platform due to the nature of the content as  
27 illegal content, illegal activity, or potentially policy-violating

1 content, including:

2 (A) content removal;

3 (B) content demonetization;

4 (C) content deprioritization;

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

6 (E) account suspension;

7 (F) account removal; or

8 (G) any other action taken in accordance with the

9 platform's acceptable use policy;

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

12 (4) the number of coordinated campaigns, if  
13 applicable;

14 (5) the number of instances in which a user appealed  
15 the decision to remove the user's potentially policy-violating  
16 content;

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

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

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

23 (1) category of rule violated; and

24 (2) the source of the alert of illegal content,  
25 illegal activity, or potentially policy-violating content,

26 including:

27 (A) a government;

1           (B) a user;

2           (C) an internal automated detection tool;

3           (D) coordination with other social media  
4 platforms; or

5           (E) persons employed by or contracting with the  
6 platform.

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

11                   SUBCHAPTER C. COMPLAINT PROCEDURES

12           Sec. 120.101. COMPLAINT SYSTEM. A social media platform  
13 shall provide an easily accessible complaint system to enable a  
14 user to submit a complaint in good faith and keep track of the  
15 status of the complaint, including a complaint regarding:

16                   (1) illegal content or activity; or

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

19           Sec. 120.102. PROCESSING OF COMPLAINTS. If a social media  
20 platform receives notice of illegal content or illegal activity on  
21 the social media platform, the social media platform shall make a  
22 good faith effort to evaluate the legality of the content or  
23 activity within 24 hours of receiving the notice, subject to  
24 reasonable exceptions based on concerns about the legitimacy of the  
25 notice.

26           Sec. 120.103. REMOVAL OF CONTENT; EXCEPTIONS. (a) Except  
27 as provided by Subsection (b), if a social media platform removes

1 content based on a violation of the platform's acceptable use  
2 policy under Section 120.052, the social media platform shall,  
3 concurrently with the removal:

4 (1) notify the user who provided the content of the  
5 removal and explain why the content was removed;

6 (2) allow the user to appeal the decision to remove the  
7 content to the platform; and

8 (3) provide written notice to the user who provided  
9 the content of:

10 (A) the determination regarding an appeal  
11 requested under Subdivision (2); and

12 (B) in the case of a reversal of the social media  
13 platform's decision to remove the content, the reason for the  
14 reversal.

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

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

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

22 Sec. 120.104. APPEAL PROCEDURES. If a social media  
23 platform receives a user complaint that the social media platform  
24 removed content provided by the user from the platform that the user  
25 believes was not potentially policy-violating content, the social  
26 media platform shall, not later than the 14th day after the date the  
27 platform receives the complaint:

1           (1) review the content;

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

4           (3) take appropriate steps based on the determination  
5 under Subdivision (2); and

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

8                           SUBCHAPTER D. ENFORCEMENT

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

12           (b) If an injunction is granted in an action brought under  
13 Subsection (a), the attorney general may recover costs incurred in  
14 bringing the action, including reasonable attorney's fees and  
15 reasonable investigative costs.

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

18                           CHAPTER 143A. DISCOURSE ON SOCIAL MEDIA PLATFORMS

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

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

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

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

27           (4) "Social media platform" has the meaning assigned



1 by Section 120.001, Business & Commerce Code.

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

5 (6) "User" means a person who posts, uploads,  
6 transmits, shares, or otherwise publishes or receives expression,  
7 through a social media platform.

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

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

12 (2) the viewpoint represented in the user's expression  
13 or another person's expression; or

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

16 (b) This section applies regardless of whether the  
17 viewpoint is expressed on the social media platform or elsewhere.

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

20 (1) resides in this state;

21 (2) does business in this state; or

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

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

25 (c) This chapter applies only to a social media platform  
26 that functionally has more than 65 million active users in the  
27 United States in a calendar month.

1       (d) This chapter does not apply to censorship of an  
2 expression that is the subject of a referral or request from an  
3 organization whose purpose is to prevent the sexual exploitation of  
4 children and protect survivors of childhood sexual abuse from  
5 ongoing harassment.

6       (e) This chapter does not apply to censorship of an  
7 expression that directly incites criminal activity or consists of  
8 specific threats of violence targeted against a person or group  
9 because of their race, color, disability, religion, national origin  
10 or ancestry, age, sex, or status as a peace officer or judge.

11       Sec. 143A.004. LIMITATION ON EFFECT OF CHAPTER. This  
12 chapter does not subject a social media platform to damages or other  
13 legal remedies to the extent the social media platform is protected  
14 from those remedies under federal law.

15       Sec. 143A.005. CONSTRUCTION OF CHAPTER. (a) This chapter  
16 does not prohibit a social media platform from:

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

19               (2) censoring unlawful expression.

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

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

26       Sec. 143A.006. USER REMEDIES. (a) A user may bring an  
27 action against a social media platform that violates this chapter

1 with respect to the user.

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

5 (1) declaratory relief under Chapter 37, including  
6 costs and reasonable and necessary attorney's fees under Section  
7 37.009; and

8 (2) injunctive relief.

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

15 Sec. 143A.007. ACTION BY ATTORNEY GENERAL. (a) Any person  
16 may notify the attorney general of a violation or potential  
17 violation of this chapter by a social media platform.

18 (b) The attorney general may bring an action to enjoin a  
19 violation or a potential violation of this chapter. If the  
20 injunction is granted, the attorney general may recover costs and  
21 reasonable attorney's fees incurred in bringing the action and  
22 reasonable investigative costs incurred in relation to the action.

23 SECTION 4. (a) Because this Act has been enacted amid  
24 uncertainty about the application of the United States Constitution  
25 and relevant federal statutes, every provision, section,  
26 subsection, sentence, or clause of this Act, and every application  
27 of the provisions of this Act to any person, group of persons, or

1 circumstances are severable from each other. If any application of  
2 any provision of this Act is found by a court to be unconstitutional  
3 or invalid, on any ground for any reason whatsoever, the remaining  
4 application of that provision to other persons and circumstances  
5 shall be severed and may not be affected. The legislature further  
6 declares that it would have passed this Act, each provision,  
7 section, subsection, sentence, or clause of this Act, and all  
8 constitutional applications of this Act regardless of the fact that  
9 any provision, section, subsection, sentence, or clause of this Act  
10 or applications of this Act were to be declared unconstitutional by  
11 any court.

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

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

19 (b) A person who was a user, as defined by Section 143A.001,  
20 Civil Practice and Remedies Code, as added by this Act, before the  
21 effective date of this Act may bring an action under Section  
22 143A.006, Civil Practice and Remedies Code, as added by this Act, to  
23 remedy censorship of the user's ability to publish or receive  
24 expression that occurred before the effective date of this Act if  
25 the censorship continues after this Act takes effect and violates  
26 Chapter 143A, Civil Practice and Remedies Code, as added by this  
27 Act.

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