

1-1 By: Hughes S.B. No. 5
 1-2 (In the Senate - Filed July 8, 2021; July 8, 2021, read
 1-3 first time and referred to Committee on State Affairs;
 1-4 July 13, 2021, reported adversely, with favorable Committee
 1-5 Substitute by the following vote: Yeas 6, Nays 2; July 13, 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. 5 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 and to the censorship of users' expressions by, social media
 1-23 platforms.

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

1-25 SECTION 1. The legislature finds that:

1-26 (1) social media platforms are akin to common
 1-27 carriers, are affected with a public interest, are central public
 1-28 forums for public debate, and have enjoyed governmental support in
 1-29 the United States; and

1-30 (2) social media platforms with the largest number of
 1-31 users are common carriers by virtue of their market dominance.

1-32 SECTION 2. Subtitle C, Title 5, Business & Commerce Code, is
 1-33 amended by adding Chapter 120 to read as follows:

1-34 CHAPTER 120. SOCIAL MEDIA PLATFORMS

1-35 SUBCHAPTER A. GENERAL PROVISIONS

1-36 Sec. 120.001. DEFINITIONS. In this chapter:

1-37 (1) "Social media platform" means an Internet website
 1-38 or application that is open to the public, allows a user to create
 1-39 an account, and enables users to communicate with other users for
 1-40 the primary purpose of posting information, comments, messages, or
 1-41 images. The term does not include:

1-42 (A) an Internet service provider as defined by
 1-43 Section 324.055;

1-44 (B) electronic mail; or

1-45 (C) an online service, application, or website:

1-46 (i) that consists primarily of news,
 1-47 sports, entertainment, or other information or content that is not
 1-48 user generated but is preselected by the provider; and

1-49 (ii) for which any chat, comments, or
 1-50 interactive functionality is incidental to, directly related to, or
 1-51 dependent on the provision of the content described by Subparagraph
 1-52 (i).

1-53 (2) "User" means a person who posts, uploads,
 1-54 transmits, shares, or otherwise publishes or receives content
 1-55 through a social media platform.

1-56 Sec. 120.002. APPLICABILITY OF CHAPTER. (a) This chapter
 1-57 applies only to a user who:

1-58 (1) resides in this state;

1-59 (2) does business in this state; or

1-60 (3) shares or receives content on a social media

2-1 platform in this state.

2-2 (b) This chapter applies only to a social media platform
2-3 that functionally has more than 50 million active users in the
2-4 United States in a calendar month.

2-5 Sec. 120.003. CONSTRUCTION OF CHAPTER. This chapter may
2-6 not be construed to limit or expand intellectual property law.

2-7 SUBCHAPTER B. DISCLOSURE REQUIREMENTS

2-8 Sec. 120.051. PUBLIC DISCLOSURES. (a) A social media
2-9 platform shall, in accordance with this subchapter, publicly
2-10 disclose accurate information regarding its content management,
2-11 data management, and business practices, including specific
2-12 information regarding the manner in which the social media
2-13 platform:

2-14 (1) curates and targets content to users;

2-15 (2) places and promotes content, services, and
2-16 products, including its own content, services, and products;

2-17 (3) moderates content;

2-18 (4) uses search, ranking, or other algorithms or
2-19 procedures that determine results on the platform; and

2-20 (5) provides users' performance data on the use of the
2-21 platform and its products and services.

2-22 (b) The disclosure required by Subsection (a) must be
2-23 sufficient to enable users to make an informed choice regarding the
2-24 purchase of or use of access to or services from the platform.

2-25 (c) A social media platform shall publish the disclosure
2-26 required by Subsection (a) on an Internet website that is easily
2-27 accessible by the public.

2-28 Sec. 120.052. ACCEPTABLE USE POLICY. (a) A social media
2-29 platform shall publish an acceptable use policy in a location that
2-30 is easily accessible to a user.

2-31 (b) A social media platform's acceptable use policy must:

2-32 (1) reasonably inform users about the types of content
2-33 allowed on the social media platform;

2-34 (2) explain the steps the social media platform will
2-35 take to ensure content complies with the policy;

2-36 (3) explain the means by which users can notify the
2-37 social media platform of content that potentially violates the
2-38 acceptable use policy, illegal content, or illegal activity, which
2-39 includes:

2-40 (A) subject to Subsection (c), making available a
2-41 live company representative to take user complaints through a
2-42 toll-free telephone number that users may call during regular
2-43 business hours;

2-44 (B) an e-mail address or relevant complaint
2-45 intake mechanism to handle user complaints; and

2-46 (C) a complaint system described by Subchapter C;
2-47 and

2-48 (4) include publication of a quarterly transparency
2-49 report outlining actions taken to enforce the policy.

2-50 (c) The live company representative described by Subsection
2-51 (b)(3)(A) must at a minimum be available eight hours a day, five
2-52 days a week.

2-53 Sec. 120.053. QUARTERLY TRANSPARENCY REPORT. (a) As part
2-54 of a social media platform's acceptable use policy under Section
2-55 120.052, the social media platform shall publish a quarterly
2-56 transparency report that includes, with respect to the preceding
2-57 three-month period:

2-58 (1) the total number of instances in which the social
2-59 media platform was alerted to illegal content, illegal activity, or
2-60 potentially policy-violating content by:

2-61 (A) a user complaint;

2-62 (B) an employee of or person contracting with the
2-63 social media platform; or

2-64 (C) an internal automated detection tool;

2-65 (2) subject to Subsection (b), the number of instances
2-66 in which the social media platform took action with respect to
2-67 illegal content, illegal activity, or potentially policy-violating
2-68 content known to the platform due to the nature of the content as
2-69 illegal content, illegal activity, or potentially policy-violating

3-1 content, including:
3-2 (A) content removal;
3-3 (B) content demonetization;
3-4 (C) content deprioritization;
3-5 (D) the addition of an assessment to content;
3-6 (E) account suspension;
3-7 (F) account removal; or
3-8 (G) any other action taken in accordance with the
3-9 platform's acceptable use policy;
3-10 (3) the country of the user who provided the content
3-11 for each instance described by Subdivision (2);
3-12 (4) the number of coordinated campaigns, if
3-13 applicable;
3-14 (5) the number of instances in which a user appealed
3-15 the decision to remove the user's potentially policy-violating
3-16 content;
3-17 (6) the percentage of appeals described by Subdivision
3-18 (5) that resulted in the restoration of content; and
3-19 (7) a description of each tool, practice, action, or
3-20 technique used in enforcing the acceptable use policy.
3-21 (b) The information described by Subsection (a)(2) must be
3-22 categorized by:
3-23 (1) the rule violated; and
3-24 (2) the source for the alert of illegal content,
3-25 illegal activity, or potentially policy-violating content,
3-26 including:
3-27 (A) a government;
3-28 (B) a user;
3-29 (C) an internal automated detection tool;
3-30 (D) coordination with other social media
3-31 platforms; or
3-32 (E) persons employed by or contracting with the
3-33 platform.
3-34 (c) A social media platform shall publish the information
3-35 described by Subsection (a) with an open license, in a
3-36 machine-readable and open format, and in a location that is easily
3-37 accessible to users.

3-38 SUBCHAPTER C. COMPLAINT PROCEDURES
3-39 Sec. 120.101. COMPLAINT SYSTEM. A social media platform
3-40 shall provide an easily accessible complaint system to enable a
3-41 user to submit a complaint in good faith and track the status of the
3-42 complaint, including a complaint regarding:
3-43 (1) illegal content or activity; or
3-44 (2) a decision made by the social media platform to
3-45 remove content posted by the user.

3-46 Sec. 120.102. PROCESSING OF COMPLAINTS. A social media
3-47 platform that receives notice of illegal content or illegal
3-48 activity on the social media platform shall make a good faith effort
3-49 to evaluate the legality of the content or activity within 24 hours
3-50 of receiving the notice, subject to reasonable exceptions based on
3-51 concerns about the legitimacy of the notice.

3-52 Sec. 120.103. REMOVAL OF CONTENT; EXCEPTIONS. (a) Except
3-53 as provided by Subsection (b), if a social media platform removes
3-54 content based on a violation of the platform's acceptable use
3-55 policy under Section 120.052, the social media platform shall,
3-56 concurrently with the removal:
3-57 (1) notify the user who provided the content of the
3-58 removal and explain the reason the content was removed;
3-59 (2) allow the user to appeal the decision to remove the
3-60 content to the platform; and
3-61 (3) provide written notice to the user who provided
3-62 the content of:
3-63 (A) the determination regarding an appeal
3-64 requested under Subdivision (2); and
3-65 (B) in the case of a reversal of the social media
3-66 platform's decision to remove the content, the reason for the
3-67 reversal.
3-68 (b) A social media platform is not required to provide a
3-69 user with notice or an opportunity to appeal under Subsection (a) if

4-1 the social media platform:

4-2 (1) is unable to contact the user after taking
4-3 reasonable steps to make contact; or

4-4 (2) knows that the potentially policy-violating
4-5 content relates to an ongoing law enforcement investigation.

4-6 Sec. 120.104. APPEAL PROCEDURES. If a social media
4-7 platform receives a user complaint on the social media platform's
4-8 removal from the platform of content provided by the user that the
4-9 user believes was not potentially policy-violating content, the
4-10 social media platform shall, not later than the 14th day after the
4-11 date the platform receives the complaint:

4-12 (1) review the content;

4-13 (2) determine whether the content adheres to the
4-14 platform's acceptable use policy;

4-15 (3) take appropriate steps based on the determination
4-16 under Subdivision (2); and

4-17 (4) notify the user regarding the determination made
4-18 under Subdivision (2) and the steps taken under Subdivision (3).

4-19 SUBCHAPTER D. ENFORCEMENT

4-20 Sec. 120.151. ACTION BY ATTORNEY GENERAL. (a) The attorney
4-21 general may bring an action against a social media platform to
4-22 enjoin a violation of this chapter.

4-23 (b) If an injunction is granted in an action brought under
4-24 Subsection (a), the attorney general may recover costs incurred in
4-25 bringing the action, including reasonable attorney's fees and
4-26 reasonable investigative costs.

4-27 SECTION 3. Title 6, Civil Practice and Remedies Code, is
4-28 amended by adding Chapter 143A to read as follows:

4-29 CHAPTER 143A. DISCOURSE ON SOCIAL MEDIA PLATFORMS

4-30 Sec. 143A.001. DEFINITIONS. In this chapter:

4-31 (1) "Censor" means to block, ban, remove, deplatform,
4-32 demonetize, de-boost, restrict, deny equal access or visibility to,
4-33 or otherwise discriminate against expression.

4-34 (2) "Expression" means any word, music, sound, still
4-35 or moving image, number, or other perceivable communication.

4-36 (3) "Receive," with respect to an expression, means to
4-37 read, hear, look at, access, or gain access to the expression.

4-38 (4) "Social media platform" has the meaning assigned
4-39 by Section 120.001, Business & Commerce Code.

4-40 (5) "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 (6) "User" means a person who posts, uploads,
4-44 transmits, shares, or otherwise publishes or receives expression,
4-45 through a social media platform.

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

4-49 (1) the viewpoint of the user or another person;

4-50 (2) the viewpoint represented in the user's expression
4-51 or another person's expression; or

4-52 (3) a user's geographic location in this state or any
4-53 part of this state.

4-54 (b) This section applies regardless of whether the
4-55 viewpoint is expressed on the social media platform or through any
4-56 other medium.

4-57 Sec. 143A.003. WAIVER PROHIBITED. (a) A waiver or
4-58 purported waiver of the protections provided by this chapter is
4-59 void as against public policy, and a court or arbitrator may not
4-60 enforce or give effect to the waiver, including in an action brought
4-61 under Section 143A.007, notwithstanding any contract or
4-62 choice-of-law provision in a contract.

4-63 (b) The waiver prohibition described by Subsection (a) is a
4-64 public-policy limitation on contracts of the highest importance and
4-65 interest to this state, and this state is exercising and enforcing
4-66 this limitation to the full extent permitted by the United States
4-67 Constitution and Texas Constitution.

4-68 Sec. 143A.004. APPLICABILITY OF CHAPTER. (a) This chapter
4-69 applies only to a user who:

- 5-1 (1) resides in this state;
 5-2 (2) does business in this state; or
 5-3 (3) shares or receives expression in this state.

5-4 (b) This chapter applies only to expression that is shared
 5-5 or received in this state.

5-6 (c) This chapter applies only to a social media platform
 5-7 that functionally has more than 50 million active users in the
 5-8 United States in a calendar month.

5-9 (d) This chapter does not apply to censorship of an
 5-10 expression that is the subject of a referral or request from an
 5-11 organization with the purpose of preventing the sexual exploitation
 5-12 of children and protecting survivors of childhood sexual abuse from
 5-13 ongoing harassment.

5-14 (e) This chapter does not apply to censorship of an
 5-15 expression that directly incites criminal activity or consists of
 5-16 specific threats of violence targeted against a person or group
 5-17 because of their race, color, disability, religion, national origin
 5-18 or ancestry, age, sex, or status as a peace officer or judge.

5-19 Sec. 143A.005. LIMITATION ON EFFECT OF CHAPTER. This
 5-20 chapter does not subject a social media platform to damages or other
 5-21 legal remedies to the extent the social media platform is protected
 5-22 from those remedies under federal law.

5-23 Sec. 143A.006. CONSTRUCTION OF CHAPTER. (a) This chapter
 5-24 does not prohibit a social media platform from:

5-25 (1) censoring expression that the social media
 5-26 platform is specifically authorized to censor by federal law; or
 5-27 (2) censoring unlawful expression.

5-28 (b) This chapter may not be construed to prohibit or
 5-29 restrict a social media platform from authorizing or facilitating a
 5-30 user's ability to censor specific expression at the request of that
 5-31 user.

5-32 (c) This chapter may not be construed to limit or expand
 5-33 intellectual property law.

5-34 Sec. 143A.007. USER REMEDIES. (a) A user may bring an
 5-35 action against a social media platform that violates this chapter
 5-36 with respect to the user.

5-37 (b) If the user proves that the social media platform
 5-38 violated this chapter with respect to the user, the user is entitled
 5-39 to recover:

5-40 (1) declaratory relief under Chapter 37, including
 5-41 costs and reasonable and necessary attorney's fees under Section
 5-42 37.009; and

5-43 (2) injunctive relief.

5-44 (c) If a social media platform fails to promptly comply with
 5-45 a court order in an action brought under this section, the court
 5-46 shall hold the social media platform in contempt and shall use all
 5-47 lawful measures to secure immediate compliance with the order,
 5-48 including daily penalties sufficient to secure immediate
 5-49 compliance.

5-50 Sec. 143A.008. ACTION BY ATTORNEY GENERAL. (a) Any person
 5-51 may notify the attorney general of a violation or potential
 5-52 violation of this chapter by a social media platform.

5-53 (b) The attorney general may bring an action to enjoin a
 5-54 violation or a potential violation of this chapter. If the
 5-55 injunction is granted, the attorney general may recover costs and
 5-56 reasonable attorney's fees incurred in bringing the action and
 5-57 reasonable investigative costs incurred in relation to the action.

5-58 SECTION 4. (a) Mindful of *Leavitt v. Jane L.*, 518 U.S. 137
 5-59 (1996), in which in the context of determining the severability of a
 5-60 state statute the United States Supreme Court held that an explicit
 5-61 statement of legislative intent is controlling, it is the intent of
 5-62 the legislature that every provision, section, subsection,
 5-63 sentence, clause, phrase, or word in this Act, and every
 5-64 application of the provisions in this Act, are severable from each
 5-65 other.

5-66 (b) If any application of any provision in this Act to any
 5-67 person, group of persons, or circumstances is found by a court to be
 5-68 invalid or unconstitutional, the remaining applications of that
 5-69 provision to all other persons and circumstances shall be severed

6-1 and may not be affected. All constitutionally valid applications
 6-2 of this Act shall be severed from any applications that a court
 6-3 finds to be invalid, leaving the valid applications in force,
 6-4 because it is the legislature's intent and priority that the valid
 6-5 applications be allowed to stand alone.

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

6-16 (d) The legislature further declares that it would have
 6-17 enacted this Act, and each provision, section, subsection,
 6-18 sentence, clause, phrase, or word, and all constitutional
 6-19 applications of this Act, irrespective of the fact that any
 6-20 provision, section, subsection, sentence, clause, phrase, or word,
 6-21 or applications of this Act, were to be declared unconstitutional.

6-22 (e) If any provision of this Act is found by any court to be
 6-23 unconstitutionally vague, the applications of that provision that
 6-24 do not present constitutional vagueness problems shall be severed
 6-25 and remain in force.

6-26 (f) No court may decline to enforce the severability
 6-27 requirements of Subsections (a), (b), (c), (d), and (e) of this
 6-28 section on the ground that severance would rewrite the statute or
 6-29 involve the court in legislative or lawmaking activity. A court
 6-30 that declines to enforce or enjoins a state official from enforcing
 6-31 a statutory provision does not rewrite a statute, as the statute
 6-32 continues to contain the same words as before the court's decision.
 6-33 A judicial injunction or declaration of unconstitutionality:

6-34 (1) is nothing more than an edict prohibiting
 6-35 enforcement that may subsequently be vacated by a later court if
 6-36 that court has a different understanding of the requirements of the
 6-37 Texas Constitution or United States Constitution;

6-38 (2) is not a formal amendment of the language in a
 6-39 statute; and

6-40 (3) no more rewrites a statute than a decision by the
 6-41 executive not to enforce a duly enacted statute in a limited and
 6-42 defined set of circumstances.

6-43 SECTION 5. (a) Chapter 143A, Civil Practice and Remedies
 6-44 Code, as added by this Act, applies only to an action taken on or
 6-45 after the effective date of this Act.

6-46 (b) A person who was a user, as defined by Section 143A.001,
 6-47 Civil Practice and Remedies Code, as added by this Act, before the
 6-48 effective date of this Act may bring an action under Section
 6-49 143A.007, Civil Practice and Remedies Code, as added by this Act, to
 6-50 remedy censorship of the user's ability to publish or receive
 6-51 expression that occurred before the effective date of this Act if
 6-52 the censorship continues after this Act takes effect and violates
 6-53 Chapter 143A, Civil Practice and Remedies Code, as added by this
 6-54 Act.

6-55 SECTION 6. This Act takes effect on the 91st day after the
 6-56 last day of the legislative session.

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