

1-1 By: Cain, et al. (Senate Sponsor - Hughes) H.B. No. 20
 1-2 (In the Senate - Received from the House August 30, 2021;
 1-3 August 30, 2021, read first time and referred to Committee on State
 1-4 Affairs; August 30, 2021, reported favorably by the following
 1-5 vote: Yeas 7, Nays 2; August 30, 2021, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	X			
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 A BILL TO BE ENTITLED
 1-18 AN ACT

1-19 relating to censorship of or certain other interference with
 1-20 digital expression, including expression on social media platforms
 1-21 or through electronic mail messages.

1-22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-23 SECTION 1. The legislature finds that:

1-24 (1) each person in this state has a fundamental
 1-25 interest in the free exchange of ideas and information, including
 1-26 the freedom of others to share and receive ideas and information;

1-27 (2) this state has a fundamental interest in
 1-28 protecting the free exchange of ideas and information in this
 1-29 state;

1-30 (3) social media platforms function as common
 1-31 carriers, are affected with a public interest, are central public
 1-32 forums for public debate, and have enjoyed governmental support in
 1-33 the United States; and

1-34 (4) social media platforms with the largest number of
 1-35 users are common carriers by virtue of their market dominance.

1-36 SECTION 2. Subtitle C, Title 5, Business & Commerce Code, is
 1-37 amended by adding Chapter 120 to read as follows:

1-38 CHAPTER 120. SOCIAL MEDIA PLATFORMS

1-39 SUBCHAPTER A. GENERAL PROVISIONS

1-40 Sec. 120.001. DEFINITIONS. In this chapter:

1-41 (1) "Social media platform" means an Internet website
 1-42 or application that is open to the public, allows a user to create
 1-43 an account, and enables users to communicate with other users for
 1-44 the primary purpose of posting information, comments, messages, or
 1-45 images. The term does not include:

1-46 (A) an Internet service provider as defined by
 1-47 Section 324.055;

1-48 (B) electronic mail; or

1-49 (C) an online service, application, or website:

1-50 (i) that consists primarily of news,
 1-51 sports, entertainment, or other information or content that is not
 1-52 user generated but is preselected by the provider; and

1-53 (ii) for which any chat, comments, or
 1-54 interactive functionality is incidental to, directly related to, or
 1-55 dependent on the provision of the content described by Subparagraph
 1-56 (i).

1-57 (2) "User" means a person who posts, uploads,
 1-58 transmits, shares, or otherwise publishes or receives content
 1-59 through a social media platform. The term includes a person who has
 1-60 a social media platform account that the social media platform has
 1-61 disabled or locked.

2-1 Sec. 120.002. APPLICABILITY OF CHAPTER. (a) This chapter
2-2 applies only to a user who:

- 2-3 (1) resides in this state;
- 2-4 (2) does business in this state; or
- 2-5 (3) shares or receives content on a social media
2-6 platform in this state.

2-7 (b) This chapter applies only to a social media platform
2-8 that functionally has more than 50 million active users in the
2-9 United States in a calendar month.

2-10 Sec. 120.003. CONSTRUCTION OF CHAPTER. This chapter may
2-11 not be construed to limit or expand intellectual property law.

2-12 SUBCHAPTER B. DISCLOSURE REQUIREMENTS

2-13 Sec. 120.051. PUBLIC DISCLOSURES. (a) A social media
2-14 platform shall, in accordance with this subchapter, publicly
2-15 disclose accurate information regarding its content management,
2-16 data management, and business practices, including specific
2-17 information regarding the manner in which the social media
2-18 platform:

- 2-19 (1) curates and targets content to users;
- 2-20 (2) places and promotes content, services, and
2-21 products, including its own content, services, and products;
- 2-22 (3) moderates content;
- 2-23 (4) uses search, ranking, or other algorithms or
2-24 procedures that determine results on the platform; and
- 2-25 (5) provides users' performance data on the use of the
2-26 platform and its products and services.

2-27 (b) The disclosure required by Subsection (a) must be
2-28 sufficient to enable users to make an informed choice regarding the
2-29 purchase of or use of access to or services from the platform.

2-30 (c) A social media platform shall publish the disclosure
2-31 required by Subsection (a) on an Internet website that is easily
2-32 accessible by the public.

2-33 Sec. 120.052. ACCEPTABLE USE POLICY. (a) A social media
2-34 platform shall publish an acceptable use policy in a location that
2-35 is easily accessible to a user.

2-36 (b) A social media platform's acceptable use policy must:

- 2-37 (1) reasonably inform users about the types of content
2-38 allowed on the social media platform;
- 2-39 (2) explain the steps the social media platform will
2-40 take to ensure content complies with the policy;
- 2-41 (3) explain the means by which users can notify the
2-42 social media platform of content that potentially violates the
2-43 acceptable use policy, illegal content, or illegal activity, which
2-44 includes:

2-45 (A) an e-mail address or relevant complaint
2-46 intake mechanism to handle user complaints; and

2-47 (B) a complaint system described by Subchapter C;
2-48 and

2-49 (4) include publication of a biannual transparency
2-50 report outlining actions taken to enforce the policy.

2-51 Sec. 120.053. BIENNIAL TRANSPARENCY REPORT. (a) As part of
2-52 a social media platform's acceptable use policy under Section
2-53 120.052, the social media platform shall publish a biannual
2-54 transparency report that includes, with respect to the preceding
2-55 six-month period:

2-56 (1) the total number of instances in which the social
2-57 media platform was alerted to illegal content, illegal activity, or
2-58 potentially policy-violating content by:

- 2-59 (A) a user complaint;
- 2-60 (B) an employee of or person contracting with the
2-61 social media platform; or
- 2-62 (C) an internal automated detection tool;

2-63 (2) subject to Subsection (b), the number of instances
2-64 in which the social media platform took action with respect to
2-65 illegal content, illegal activity, or potentially policy-violating
2-66 content known to the platform due to the nature of the content as
2-67 illegal content, illegal activity, or potentially policy-violating
2-68 content, including:

2-69 (A) content removal;

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

3-36 SUBCHAPTER C. COMPLAINT PROCEDURES
 3-37 Sec. 120.101. COMPLAINT SYSTEM. A social media platform
 3-38 shall provide an easily accessible complaint system to enable a
 3-39 user to submit a complaint in good faith and track the status of the
 3-40 complaint, including a complaint regarding:
 3-41 (1) illegal content or activity; or
 3-42 (2) a decision made by the social media platform to
 3-43 remove content posted by the user.

3-44 Sec. 120.102. PROCESSING OF COMPLAINTS. A social media
 3-45 platform that receives notice of illegal content or illegal
 3-46 activity on the social media platform shall make a good faith effort
 3-47 to evaluate the legality of the content or activity within 48 hours
 3-48 of receiving the notice, excluding hours during a Saturday or
 3-49 Sunday and subject to reasonable exceptions based on concerns about
 3-50 the legitimacy of the notice.

3-51 Sec. 120.103. REMOVAL OF CONTENT; EXCEPTIONS. (a) Except
 3-52 as provided by Subsection (b), if a social media platform removes
 3-53 content based on a violation of the platform's acceptable use
 3-54 policy under Section 120.052, the social media platform shall,
 3-55 concurrently with the removal:
 3-56 (1) notify the user who provided the content of the
 3-57 removal and explain the reason the content was removed;
 3-58 (2) allow the user to appeal the decision to remove the
 3-59 content to the platform; and
 3-60 (3) provide written notice to the user who provided
 3-61 the content of:
 3-62 (A) the determination regarding an appeal
 3-63 requested under Subdivision (2); and
 3-64 (B) in the case of a reversal of the social media
 3-65 platform's decision to remove the content, the reason for the
 3-66 reversal.
 3-67 (b) A social media platform is not required to provide a
 3-68 user with notice or an opportunity to appeal under Subsection (a) if
 3-69 the social media platform:

4-1 (1) is unable to contact the user after taking
4-2 reasonable steps to make contact; or
4-3 (2) knows that the potentially policy-violating
4-4 content relates to an ongoing law enforcement investigation.

4-5 Sec. 120.104. APPEAL PROCEDURES. If a social media
4-6 platform receives a user complaint on the social media platform's
4-7 removal from the platform of content provided by the user that the
4-8 user believes was not potentially policy-violating content, the
4-9 social media platform shall, not later than the 14th day, excluding
4-10 Saturdays and Sundays, after the date the platform receives the
4-11 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. The heading to Chapter 321, Business & Commerce
4-28 Code, is amended to read as follows:

4-29 CHAPTER 321. REGULATION OF [~~CERTAIN~~] ELECTRONIC MAIL

4-30 SECTION 4. Section 321.001, Business & Commerce Code, is
4-31 amended by adding Subdivision (4-a) to read as follows:

4-32 (4-a) "Malicious computer code" means an unwanted
4-33 computer program or other set of instructions inserted into a
4-34 computer's memory, operating system, or program that:

4-35 (A) is specifically constructed with the ability
4-36 to replicate itself or to affect the other programs or files in the
4-37 computer by attaching a copy of the unwanted program or other set of
4-38 instructions to one or more computer programs or files; or

4-39 (B) is intended to perform an unauthorized
4-40 process that will adversely impact the confidentiality of
4-41 information contained in or the integrity or availability of the
4-42 computer's memory, operating system, or program.

4-43 SECTION 5. Subchapter B, Chapter 321, Business & Commerce
4-44 Code, is amended by adding Section 321.054 to read as follows:

4-45 Sec. 321.054. IMPEDING ELECTRONIC MAIL MESSAGES
4-46 PROHIBITED. An electronic mail service provider may not
4-47 intentionally impede the transmission of another person's
4-48 electronic mail message based on the content of the message unless:

4-49 (1) the provider is authorized to block the
4-50 transmission under Section 321.114 or other applicable state or
4-51 federal law; or

4-52 (2) the provider has a good faith, reasonable belief
4-53 that the message contains malicious computer code, obscene
4-54 material, material depicting sexual conduct, or material that
4-55 violates other law.

4-56 SECTION 6. Section 321.105(a), Business & Commerce Code, is
4-57 amended to read as follows:

4-58 (a) In lieu of actual damages, a person injured by a
4-59 violation of this chapter arising from the transmission of an
4-60 unsolicited or commercial electronic mail message or by a violation
4-61 of Section 321.054 may recover an amount equal to the lesser of:

4-62 (1) \$10 for each unlawful message or each message
4-63 unlawfully impeded, as applicable; or

4-64 (2) \$25,000 for each day the unlawful message is
4-65 received or the message is unlawfully impeded, as applicable.

4-66 SECTION 7. Title 6, Civil Practice and Remedies Code, is
4-67 amended by adding Chapter 143A to read as follows:

4-68 CHAPTER 143A. DISCOURSE ON SOCIAL MEDIA PLATFORMS

4-69 Sec. 143A.001. DEFINITIONS. In this chapter:

5-1 (1) "Censor" means any action taken to edit, alter,
5-2 block, ban, delete, remove, deplatform, demonetize, de-boost,
5-3 regulate, restrict, inhibit the publication or reproduction of, or
5-4 deny equal access or visibility to expression, to suspend a right to
5-5 post, remove, or post an addendum to any content or material posted
5-6 by a user, or to otherwise discriminate against expression.

5-7 (2) "Expression" means any word, music, sound, still
5-8 or moving image, number, or other perceivable communication.

5-9 (3) "Receive," with respect to an expression, means to
5-10 read, hear, look at, access, or gain access to the expression.

5-11 (4) "Social media platform" has the meaning assigned
5-12 by Section 120.001, Business & Commerce Code.

5-13 (5) "Unlawful expression" means an expression that is
5-14 unlawful under the United States Constitution, federal law, the
5-15 Texas Constitution, or the laws of this state, including expression
5-16 that constitutes a tort under the laws of this state or the United
5-17 States.

5-18 (6) "User" means a person who posts, uploads,
5-19 transmits, shares, or otherwise publishes or receives expression,
5-20 through a social media platform. The term includes a person who has
5-21 a social media platform account that the social media platform has
5-22 disabled or locked.

5-23 Sec. 143A.002. CENSORSHIP PROHIBITED. (a) A social media
5-24 platform may not censor a user, a user's expression, or a user's
5-25 ability to receive the expression of another person based on:

5-26 (1) the viewpoint of the user or another person;

5-27 (2) the viewpoint represented in the user's expression
5-28 or another person's expression; or

5-29 (3) a user's geographic location in this state or any
5-30 part of this state.

5-31 (b) This section applies regardless of whether the
5-32 viewpoint is expressed on a social media platform or through any
5-33 other medium.

5-34 Sec. 143A.003. WAIVER PROHIBITED. (a) A waiver or
5-35 purported waiver of the protections provided by this chapter is
5-36 void as unlawful and against public policy, and a court or
5-37 arbitrator may not enforce or give effect to the waiver, including
5-38 in an action brought under Section 143A.007, notwithstanding any
5-39 contract or choice-of-law provision in a contract.

5-40 (b) The waiver prohibition described by Subsection (a) is a
5-41 public-policy limitation on contractual and other waivers of the
5-42 highest importance and interest to this state, and this state is
5-43 exercising and enforcing this limitation to the full extent
5-44 permitted by the United States Constitution and Texas Constitution.

5-45 Sec. 143A.004. APPLICABILITY OF CHAPTER. (a) This chapter
5-46 applies only to a user who:

5-47 (1) resides in this state;

5-48 (2) does business in this state; or

5-49 (3) shares or receives expression in this state.

5-50 (b) This chapter applies only to expression that is shared
5-51 or received in this state.

5-52 (c) This chapter applies only to a social media platform
5-53 that functionally has more than 50 million active users in the
5-54 United States in a calendar month.

5-55 (d) This chapter applies to the maximum extent permitted by
5-56 the United States Constitution and the laws of the United States but
5-57 no further than the maximum extent permitted by the United States
5-58 Constitution and the laws of the United States.

5-59 Sec. 143A.005. LIMITATION ON EFFECT OF CHAPTER. This
5-60 chapter does not subject a social media platform to damages or other
5-61 legal remedies to the extent the social media platform is protected
5-62 from those remedies under federal law.

5-63 Sec. 143A.006. CONSTRUCTION OF CHAPTER. (a) This chapter
5-64 does not prohibit a social media platform from censoring expression
5-65 that:

5-66 (1) the social media platform is specifically
5-67 authorized to censor by federal law;

5-68 (2) is the subject of a referral or request from an
5-69 organization with the purpose of preventing the sexual

6-1 exploitation of children and protecting survivors of sexual abuse
 6-2 from ongoing harassment;

6-3 (3) directly incites criminal activity or consists of
 6-4 specific threats of violence targeted against a person or group
 6-5 because of their race, color, disability, religion, national origin
 6-6 or ancestry, age, sex, or status as a peace officer or judge; or

6-7 (4) is unlawful expression.

6-8 (b) This chapter may not be construed to prohibit or
 6-9 restrict a social media platform from authorizing or facilitating a
 6-10 user's ability to censor specific expression on the user's platform
 6-11 or page at the request of that user.

6-12 (c) This chapter may not be construed to limit or expand
 6-13 intellectual property law.

6-14 Sec. 143A.007. USER REMEDIES. (a) A user may bring an
 6-15 action against a social media platform that violates this chapter
 6-16 with respect to the user.

6-17 (b) If the user proves that the social media platform
 6-18 violated this chapter with respect to the user, the user is entitled
 6-19 to recover:

6-20 (1) declaratory relief under Chapter 37, including
 6-21 costs and reasonable and necessary attorney's fees under Section
 6-22 37.009; and

6-23 (2) injunctive relief.

6-24 (c) If a social media platform fails to promptly comply with
 6-25 a court order in an action brought under this section, the court
 6-26 shall hold the social media platform in contempt and shall use all
 6-27 lawful measures to secure immediate compliance with the order,
 6-28 including daily penalties sufficient to secure immediate
 6-29 compliance.

6-30 (d) A user may bring an action under this section regardless
 6-31 of whether another court has enjoined the attorney general from
 6-32 enforcing this chapter or declared any provision of this chapter
 6-33 unconstitutional unless that court decision is binding on the court
 6-34 in which the action is brought.

6-35 (e) Nonmutual issue preclusion and nonmutual claim
 6-36 preclusion are not defenses to an action brought under this
 6-37 section.

6-38 Sec. 143A.008. ACTION BY ATTORNEY GENERAL. (a) Any person
 6-39 may notify the attorney general of a violation or potential
 6-40 violation of this chapter by a social media platform.

6-41 (b) The attorney general may bring an action to enjoin a
 6-42 violation or a potential violation of this chapter. If the
 6-43 injunction is granted, the attorney general may recover costs and
 6-44 reasonable attorney's fees incurred in bringing the action and
 6-45 reasonable investigative costs incurred in relation to the action.

6-46 SECTION 8. (a) Mindful of *Leavitt v. Jane L.*, 518 U.S. 137
 6-47 (1996), in which in the context of determining the severability of a
 6-48 state statute the United States Supreme Court held that an explicit
 6-49 statement of legislative intent is controlling, it is the intent of
 6-50 the legislature that every provision, section, subsection,
 6-51 sentence, clause, phrase, or word in this Act, and every
 6-52 application of the provisions in this Act, are severable from each
 6-53 other.

6-54 (b) If any application of any provision in this Act to any
 6-55 person, group of persons, or circumstances is found by a court to be
 6-56 invalid or unconstitutional, the remaining applications of that
 6-57 provision to all other persons and circumstances shall be severed
 6-58 and may not be affected. All constitutionally valid applications
 6-59 of this Act shall be severed from any applications that a court
 6-60 finds to be invalid, leaving the valid applications in force,
 6-61 because it is the legislature's intent and priority that the valid
 6-62 applications be allowed to stand alone.

6-63 (c) If any court declares or finds a provision of this Act
 6-64 facially unconstitutional, when discrete applications of that
 6-65 provision can be enforced against a person, group of persons, or
 6-66 circumstances without violating the United States Constitution and
 6-67 Texas Constitution, those applications shall be severed from all
 6-68 remaining applications of the provision, and the provision shall be
 6-69 interpreted as if the legislature had enacted a provision limited

7-1 to the persons, group of persons, or circumstances for which the
7-2 provision's application will not violate the United States
7-3 Constitution and Texas Constitution.

7-4 (d) The legislature further declares that it would have
7-5 enacted this Act, and each provision, section, subsection,
7-6 sentence, clause, phrase, or word, and all constitutional
7-7 applications of this Act, irrespective of the fact that any
7-8 provision, section, subsection, sentence, clause, phrase, or word,
7-9 or applications of this Act, were to be declared unconstitutional.

7-10 (e) If any provision of this Act is found by any court to be
7-11 unconstitutionally vague, the applications of that provision that
7-12 do not present constitutional vagueness problems shall be severed
7-13 and remain in force.

7-14 (f) No court may decline to enforce the severability
7-15 requirements of Subsections (a), (b), (c), (d), and (e) of this
7-16 section on the ground that severance would rewrite the statute or
7-17 involve the court in legislative or lawmaking activity. A court
7-18 that declines to enforce or enjoins a state official from enforcing
7-19 a statutory provision does not rewrite a statute, as the statute
7-20 continues to contain the same words as before the court's decision.
7-21 A judicial injunction or declaration of unconstitutionality:

7-22 (1) is nothing more than an edict prohibiting
7-23 enforcement that may subsequently be vacated by a later court if
7-24 that court has a different understanding of the requirements of the
7-25 Texas Constitution or United States Constitution;

7-26 (2) is not a formal amendment of the language in a
7-27 statute; and

7-28 (3) no more rewrites a statute than a decision by the
7-29 executive not to enforce a duly enacted statute in a limited and
7-30 defined set of circumstances.

7-31 SECTION 9. Chapter 143A, Civil Practice and Remedies Code,
7-32 as added by this Act, applies only to a cause of action that accrues
7-33 on or after the effective date of this Act.

7-34 SECTION 10. This Act takes effect on the 91st day after the
7-35 last day of the legislative session.

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