

1-1 By: Hughes, et al. S.B. No. 5
 1-2 (In the Senate - Filed August 6, 2021; August 7, 2021, read
 1-3 first time and referred to Committee on State Affairs;
 1-4 August 10, 2021, reported favorably by the following vote: Yeas 6,
 1-5 Nays 3; August 10, 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 complaint procedures and disclosure requirements for,
 1-20 and to the censorship of users' expressions by, social media
 1-21 platforms.

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

1-23 SECTION 1. The legislature finds that:

1-24 (1) social media platforms are akin to common
 1-25 carriers, are affected with a public interest, are central public
 1-26 forums for public debate, and have enjoyed governmental support in
 1-27 the United States; and

1-28 (2) social media platforms with the largest number of
 1-29 users are common carriers by virtue of their market dominance.

1-30 SECTION 2. Subtitle C, Title 5, Business & Commerce Code, is
 1-31 amended by adding Chapter 120 to read as follows:

1-32 CHAPTER 120. SOCIAL MEDIA PLATFORMS

1-33 SUBCHAPTER A. GENERAL PROVISIONS

1-34 Sec. 120.001. DEFINITIONS. In this chapter:

1-35 (1) "Social media platform" means an Internet website
 1-36 or application that is open to the public, allows a user to create
 1-37 an account, and enables users to communicate with other users for
 1-38 the primary purpose of posting information, comments, messages, or
 1-39 images. The term does not include:

1-40 (A) an Internet service provider as defined by
 1-41 Section 324.055;

1-42 (B) electronic mail; or

1-43 (C) an online service, application, or website:

1-44 (i) that consists primarily of news,
 1-45 sports, entertainment, or other information or content that is not
 1-46 user generated but is preselected by the provider; and

1-47 (ii) for which any chat, comments, or
 1-48 interactive functionality is incidental to, directly related to, or
 1-49 dependent on the provision of the content described by Subparagraph
 1-50 (i).

1-51 (2) "User" means a person who posts, uploads,
 1-52 transmits, shares, or otherwise publishes or receives content
 1-53 through a social media platform. The term includes a person who has
 1-54 a social media platform account that the social media platform has
 1-55 disabled or locked.

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
 1-61 platform in this state.

2-1 (b) This chapter applies only to a social media platform
 2-2 that functionally has more than 50 million active users in the
 2-3 United States in a calendar month.

2-4 Sec. 120.003. CONSTRUCTION OF CHAPTER. This chapter may
 2-5 not be construed to limit or expand intellectual property law.

2-6 SUBCHAPTER B. DISCLOSURE REQUIREMENTS

2-7 Sec. 120.051. PUBLIC DISCLOSURES. (a) A social media
 2-8 platform shall, in accordance with this subchapter, publicly
 2-9 disclose accurate information regarding its content management,
 2-10 data management, and business practices, including specific
 2-11 information regarding the manner in which the social media
 2-12 platform:

- 2-13 (1) curates and targets content to users;
 2-14 (2) places and promotes content, services, and
 2-15 products, including its own content, services, and products;
 2-16 (3) moderates content;
 2-17 (4) uses search, ranking, or other algorithms or
 2-18 procedures that determine results on the platform; and
 2-19 (5) provides users' performance data on the use of the
 2-20 platform and its products and services.

2-21 (b) The disclosure required by Subsection (a) must be
 2-22 sufficient to enable users to make an informed choice regarding the
 2-23 purchase of or use of access to or services from the platform.

2-24 (c) A social media platform shall publish the disclosure
 2-25 required by Subsection (a) on an Internet website that is easily
 2-26 accessible by the public.

2-27 Sec. 120.052. ACCEPTABLE USE POLICY. (a) A social media
 2-28 platform shall publish an acceptable use policy in a location that
 2-29 is easily accessible to a user.

2-30 (b) A social media platform's acceptable use policy must:

- 2-31 (1) reasonably inform users about the types of content
 2-32 allowed on the social media platform;
 2-33 (2) explain the steps the social media platform will
 2-34 take to ensure content complies with the policy;
 2-35 (3) explain the means by which users can notify the
 2-36 social media platform of content that potentially violates the
 2-37 acceptable use policy, illegal content, or illegal activity, which
 2-38 includes:

2-39 (A) subject to Subsection (c), making available a
 2-40 live company representative to take user complaints through a
 2-41 toll-free telephone number that users may call during regular
 2-42 business hours;

2-43 (B) an e-mail address or relevant complaint
 2-44 intake mechanism to handle user complaints; and

2-45 (C) a complaint system described by Subchapter C;
 2-46 and

2-47 (4) include publication of a quarterly transparency
 2-48 report outlining actions taken to enforce the policy.

2-49 (c) The live company representative described by Subsection
 2-50 (b)(3)(A) must at a minimum be available eight hours a day, five
 2-51 days a week.

2-52 Sec. 120.053. QUARTERLY TRANSPARENCY REPORT. (a) As part
 2-53 of a social media platform's acceptable use policy under Section
 2-54 120.052, the social media platform shall publish a quarterly
 2-55 transparency report that includes, with respect to the preceding
 2-56 three-month period:

2-57 (1) the total number of instances in which the social
 2-58 media platform was alerted to illegal content, illegal activity, or
 2-59 potentially policy-violating content by:

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

2-63 (C) an internal automated detection tool;

2-64 (2) subject to Subsection (b), the number of instances
 2-65 in which the social media platform took action with respect to
 2-66 illegal content, illegal activity, or potentially policy-violating
 2-67 content known to the platform due to the nature of the content as
 2-68 illegal content, illegal activity, or potentially policy-violating
 2-69 content, including:

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

3-37 SUBCHAPTER C. COMPLAINT PROCEDURES
 3-38 Sec. 120.101. COMPLAINT SYSTEM. A social media platform
 3-39 shall provide an easily accessible complaint system to enable a
 3-40 user to submit a complaint in good faith and track the status of the
 3-41 complaint, including a complaint regarding:
 3-42 (1) illegal content or activity; or
 3-43 (2) a decision made by the social media platform to
 3-44 remove content posted by the user.

3-45 Sec. 120.102. PROCESSING OF COMPLAINTS. A social media
 3-46 platform that receives notice of illegal content or illegal
 3-47 activity on the social media platform shall make a good faith effort
 3-48 to evaluate the legality of the content or activity within 24 hours
 3-49 of receiving the notice, subject to reasonable exceptions based on
 3-50 concerns about 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 after the
4-10 date the platform receives the complaint:

- 4-11 (1) review the content;
- 4-12 (2) determine whether the content adheres to the
4-13 platform's acceptable use policy;
- 4-14 (3) take appropriate steps based on the determination
4-15 under Subdivision (2); and
- 4-16 (4) notify the user regarding the determination made
4-17 under Subdivision (2) and the steps taken under Subdivision (3).

4-18 SUBCHAPTER D. ENFORCEMENT

4-19 Sec. 120.151. ACTION BY ATTORNEY GENERAL. (a) The attorney
4-20 general may bring an action against a social media platform to
4-21 enjoin a violation of this chapter.

4-22 (b) If an injunction is granted in an action brought under
4-23 Subsection (a), the attorney general may recover costs incurred in
4-24 bringing the action, including reasonable attorney's fees and
4-25 reasonable investigative costs.

4-26 SECTION 3. Title 6, Civil Practice and Remedies Code, is
4-27 amended by adding Chapter 143A to read as follows:

4-28 CHAPTER 143A. DISCOURSE ON SOCIAL MEDIA PLATFORMS

4-29 Sec. 143A.001. DEFINITIONS. In this chapter:

4-30 (1) "Censor" means to block, ban, remove, deplatform,
4-31 demonetize, de-boost, restrict, deny equal access or visibility to,
4-32 or otherwise discriminate against expression.

4-33 (2) "Expression" means any word, music, sound, still
4-34 or moving image, number, or other perceivable communication.

4-35 (3) "Receive," with respect to an expression, means to
4-36 read, hear, look at, access, or gain access to the expression.

4-37 (4) "Social media platform" has the meaning assigned
4-38 by Section 120.001, Business & Commerce Code.

4-39 (5) "Unlawful expression" means an expression that is
4-40 unlawful under the United States Constitution, federal law, the
4-41 Texas Constitution, or the laws of this state.

4-42 (6) "User" means a person who posts, uploads,
4-43 transmits, shares, or otherwise publishes or receives expression,
4-44 through a social media platform. The term includes a person who has
4-45 a social media platform account that the social media platform has
4-46 disabled or locked.

4-47 Sec. 143A.002. CENSORSHIP PROHIBITED. (a) A social media
4-48 platform may not censor a user, a user's expression, or a user's
4-49 ability to receive the expression of another person based 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 social media platform or through any
4-57 other medium.

4-58 Sec. 143A.003. WAIVER PROHIBITED. (a) A waiver or
4-59 purported waiver of the protections provided by this chapter is
4-60 void as against public policy, and a court or arbitrator may not
4-61 enforce or give effect to the waiver, including in an action brought
4-62 under Section 143A.007, notwithstanding any contract or
4-63 choice-of-law provision in a contract.

4-64 (b) The waiver prohibition described by Subsection (a) is a
4-65 public-policy limitation on contracts of the highest importance and
4-66 interest to this state, and this state is exercising and enforcing
4-67 this limitation to the full extent permitted by the United States
4-68 Constitution and Texas Constitution.

4-69 Sec. 143A.004. APPLICABILITY OF CHAPTER. (a) This chapter

5-1 applies only to a user who:

5-2 (1) resides in this state;

5-3 (2) does business in this state; or

5-4 (3) shares or receives expression in this state.

5-5 (b) This chapter applies only to expression that is shared
5-6 or received in this state.

5-7 (c) This chapter applies only to a social media platform
5-8 that functionally has more than 50 million active users in the
5-9 United States in a calendar month.

5-10 (d) This chapter does not apply to censorship of an
5-11 expression that is the subject of a referral or request from an
5-12 organization with the purpose of preventing the sexual exploitation
5-13 of children and protecting survivors of childhood sexual abuse from
5-14 ongoing harassment.

5-15 (e) This chapter does not apply to censorship of an
5-16 expression that directly incites criminal activity or consists of
5-17 specific threats of violence targeted against a person or group
5-18 because of their race, color, disability, religion, national origin
5-19 or ancestry, age, sex, or status as a peace officer or judge.

5-20 Sec. 143A.005. LIMITATION ON EFFECT OF CHAPTER. This
5-21 chapter does not subject a social media platform to damages or other
5-22 legal remedies to the extent the social media platform is protected
5-23 from those remedies under federal law.

5-24 Sec. 143A.006. CONSTRUCTION OF CHAPTER. (a) This chapter
5-25 does not prohibit a social media platform from:

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

5-28 (2) censoring unlawful expression.

5-29 (b) This chapter may not be construed to prohibit or
5-30 restrict a social media platform from authorizing or facilitating a
5-31 user's ability to censor specific expression at the request of that
5-32 user.

5-33 (c) This chapter may not be construed to limit or expand
5-34 intellectual property law.

5-35 Sec. 143A.007. USER REMEDIES. (a) A user may bring an
5-36 action against a social media platform that violates this chapter
5-37 with respect to the user.

5-38 (b) If the user proves that the social media platform
5-39 violated this chapter with respect to the user, the user is entitled
5-40 to recover:

5-41 (1) declaratory relief under Chapter 37, including
5-42 costs and reasonable and necessary attorney's fees under Section
5-43 37.009; and

5-44 (2) injunctive relief.

5-45 (c) If a social media platform fails to promptly comply with
5-46 a court order in an action brought under this section, the court
5-47 shall hold the social media platform in contempt and shall use all
5-48 lawful measures to secure immediate compliance with the order,
5-49 including daily penalties sufficient to secure immediate
5-50 compliance.

5-51 Sec. 143A.008. ACTION BY ATTORNEY GENERAL. (a) Any person
5-52 may notify the attorney general of a violation or potential
5-53 violation of this chapter by a social media platform.

5-54 (b) The attorney general may bring an action to enjoin a
5-55 violation or a potential violation of this chapter. If the
5-56 injunction is granted, the attorney general may recover costs and
5-57 reasonable attorney's fees incurred in bringing the action and
5-58 reasonable investigative costs incurred in relation to the action.

5-59 SECTION 4. (a) Mindful of *Leavitt v. Jane L.*, 518 U.S. 137
5-60 (1996), in which in the context of determining the severability of a
5-61 state statute the United States Supreme Court held that an explicit
5-62 statement of legislative intent is controlling, it is the intent of
5-63 the legislature that every provision, section, subsection,
5-64 sentence, clause, phrase, or word in this Act, and every
5-65 application of the provisions in this Act, are severable from each
5-66 other.

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

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

6-7 (c) If any court declares or finds a provision of this Act
6-8 facially unconstitutional, when discrete applications of that
6-9 provision can be enforced against a person, group of persons, or
6-10 circumstances without violating the United States Constitution and
6-11 Texas Constitution, those applications shall be severed from all
6-12 remaining applications of the provision, and the provision shall be
6-13 interpreted as if the legislature had enacted a provision limited
6-14 to the persons, group of persons, or circumstances for which the
6-15 provision's application will not violate the United States
6-16 Constitution and Texas Constitution.

6-17 (d) The legislature further declares that it would have
6-18 enacted this Act, and each provision, section, subsection,
6-19 sentence, clause, phrase, or word, and all constitutional
6-20 applications of this Act, irrespective of the fact that any
6-21 provision, section, subsection, sentence, clause, phrase, or word,
6-22 or applications of this Act, were to be declared unconstitutional.

6-23 (e) If any provision of this Act is found by any court to be
6-24 unconstitutionally vague, the applications of that provision that
6-25 do not present constitutional vagueness problems shall be severed
6-26 and remain in force.

6-27 (f) No court may decline to enforce the severability
6-28 requirements of Subsections (a), (b), (c), (d), and (e) of this
6-29 section on the ground that severance would rewrite the statute or
6-30 involve the court in legislative or lawmaking activity. A court
6-31 that declines to enforce or enjoins a state official from enforcing
6-32 a statutory provision does not rewrite a statute, as the statute
6-33 continues to contain the same words as before the court's decision.
6-34 A judicial injunction or declaration of unconstitutionality:

6-35 (1) is nothing more than an edict prohibiting
6-36 enforcement that may subsequently be vacated by a later court if
6-37 that court has a different understanding of the requirements of the
6-38 Texas Constitution or United States Constitution;

6-39 (2) is not a formal amendment of the language in a
6-40 statute; and

6-41 (3) no more rewrites a statute than a decision by the
6-42 executive not to enforce a duly enacted statute in a limited and
6-43 defined set of circumstances.

6-44 SECTION 5. Chapter 143A, Civil Practice and Remedies Code,
6-45 as added by this Act, applies only to a cause of action that accrues
6-46 on or after the effective date of this Act.

6-47 SECTION 6. This Act takes effect on the 91st day after the
6-48 last day of the legislative session.

6-49

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