

By: Hughes

S.B. No. 90

A BILL TO BE ENTITLED

AN ACT

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

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

SECTION 1. The legislature finds that:

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

(2) this state has a fundamental interest in protecting the free exchange of ideas and information in this state;

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

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

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

CHAPTER 120. SOCIAL MEDIA PLATFORMS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 120.001. DEFINITIONS. In this chapter:

(1) "Social media platform" means an Internet website

1 or application that is open to the public, allows a user to create
2 an account, and enables users to communicate with other users for
3 the primary purpose of posting information, comments, messages, or
4 images. The term does not include:

5 (A) an Internet service provider as defined by
6 Section 324.055;

7 (B) electronic mail; or

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

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

12 (ii) for which any chat, comments, or
13 interactive functionality is incidental to, directly related to, or
14 dependent on the provision of the content described by Subparagraph
15 (i).

16 (2) "User" means a person who posts, uploads,
17 transmits, shares, or otherwise publishes or receives content
18 through a social media platform. The term includes a person who has
19 a social media platform account that the social media platform has
20 disabled or locked.

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

23 (1) resides in this state;

24 (2) does business in this state; or

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

27 (b) This chapter applies only to a social media platform

1 that functionally has more than 50 million active users in the
2 United States in a calendar month.

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

5 SUBCHAPTER B. DISCLOSURE REQUIREMENTS

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

12 (1) curates and targets content to users;

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

15 (3) moderates content;

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

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

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

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

26 Sec. 120.052. ACCEPTABLE USE POLICY. (a) A social media
27 platform shall publish an acceptable use policy in a location that

1 is easily accessible to a user.

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

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

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

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

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

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

17 (C) a complaint system described by Subchapter C;
18 and

19 (4) include publication of a biannual transparency
20 report outlining actions taken to enforce the policy.

21 Sec. 120.053. BIANNUAL TRANSPARENCY REPORT. (a) As part of
22 a social media platform's acceptable use policy under Section
23 120.052, the social media platform shall publish a biannual
24 transparency report that includes, with respect to the preceding
25 six-month period:

26 (1) the total number of instances in which the social
27 media platform was alerted to illegal content, illegal activity, or

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

1 (5) that resulted in the restoration of content; and

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

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

6 (1) the rule violated; and

7 (2) the source for the alert of illegal content,
8 illegal activity, or potentially policy-violating content,
9 including:

10 (A) a government;

11 (B) a user;

12 (C) an internal automated detection tool;

13 (D) coordination with other social media
14 platforms; or

15 (E) persons employed by or contracting with the
16 platform.

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

21 SUBCHAPTER C. COMPLAINT PROCEDURES

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

26 (1) illegal content or activity; or

27 (2) a decision made by the social media platform to

1 remove content posted by the user.

2 Sec. 120.102. PROCESSING OF COMPLAINTS. A social media
3 platform that receives notice of illegal content or illegal
4 activity on the social media platform shall make a good faith effort
5 to evaluate the legality of the content or activity within 48 hours
6 of receiving the notice, excluding hours during a Saturday or
7 Sunday and subject to reasonable exceptions based on concerns about
8 the legitimacy of the notice.

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

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

16 (2) allow the user to appeal the decision to remove the
17 content to the platform; and

18 (3) provide written notice to the user who provided
19 the content of:

20 (A) the determination regarding an appeal
21 requested under Subdivision (2); and

22 (B) in the case of a reversal of the social media
23 platform's decision to remove the content, the reason for the
24 reversal.

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

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

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

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

12 (1) review the content;

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

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

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

19 SUBCHAPTER D. ENFORCEMENT

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

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

27 SECTION 3. The heading to Chapter [321](#), Business & Commerce

1 Code, is amended to read as follows:

2 CHAPTER 321. REGULATION OF [~~CERTAIN~~] ELECTRONIC MAIL

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

5 Sec. 321.054. IMPEDING ELECTRONIC MAIL MESSAGES
6 PROHIBITED. (a) In this section, "computer virus" means an
7 unwanted computer program or other set of instructions inserted
8 into a computer's memory, operating system, or program that:

9 (1) is specifically constructed with the ability to
10 replicate itself or to affect the other programs or files in the
11 computer by attaching a copy of the unwanted program or other set of
12 instructions to one or more computer programs or files; or

13 (2) is intended to perform an unauthorized process
14 that will adversely impact the confidentiality of information
15 contained in or the integrity or availability of the computer's
16 memory, operating system, or program.

17 (b) An electronic mail service provider may not
18 intentionally impede the transmission of another person's
19 electronic mail message based on the content of the message unless:

20 (1) the provider is authorized to block the
21 transmission under Section 321.114 or other applicable state or
22 federal law; or

23 (2) the provider has a good faith, reasonable belief
24 that the message contains a computer virus, obscene material,
25 material depicting sexual conduct, or material that violates other
26 law.

27 SECTION 5. Section 321.105(a), Business & Commerce Code, is

1 amended to read as follows:

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

6 (1) \$10 for each unlawful message or each message
7 unlawfully impeded, as applicable; or

8 (2) \$25,000 for each day the unlawful message is
9 received or the message is unlawfully impeded, as applicable.

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

12 CHAPTER 143A. DISCOURSE ON SOCIAL MEDIA PLATFORMS

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

14 (1) "Censor" means any action taken to edit, alter,
15 block, ban, delete, remove, deplatform, demonetize, de-boost,
16 regulate, restrict, inhibit the publication or reproduction of, or
17 deny equal access or visibility to expression, to suspend a right to
18 post, remove, or post an addendum to any content or material posted
19 by a user, or to otherwise discriminate against expression. The
20 term includes an action taken to inhibit a social media platform
21 user's ability to be viewed by or interact with another user of the
22 platform.

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, including expression
5 that constitutes a tort under the laws of this state or the United
6 States.

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

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

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

16 (2) the viewpoint represented in the user's expression
17 or another person's expression; or

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

20 (b) This section applies regardless of whether the
21 viewpoint is expressed on a social media platform or through any
22 other medium.

23 Sec. 143A.003. WAIVER PROHIBITED. (a) A waiver or
24 purported waiver of the protections provided by this chapter is
25 void as unlawful and against public policy, and a court or
26 arbitrator may not enforce or give effect to the waiver, including
27 in an action brought under Section 143A.007, notwithstanding any

1 contract or choice-of-law provision in a contract.

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

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

9 (1) resides in this state;

10 (2) does business in this state; or

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

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

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

17 (d) This chapter applies to the maximum extent permitted by
18 the United States Constitution and the laws of the United States but
19 no further than the maximum extent permitted by the United States
20 Constitution and the laws of the United States.

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

25 Sec. 143A.006. CONSTRUCTION OF CHAPTER. (a) This chapter
26 does not prohibit a social media platform from censoring expression
27 that:

1 (1) the social media platform is specifically
2 authorized to censor by federal law;

3 (2) is the subject of a referral or request from an
4 organization with the purpose of preventing the sexual
5 exploitation of children and protecting survivors of sexual abuse
6 from ongoing harassment;

7 (3) 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; or

11 (4) is unlawful expression.

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

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

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

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

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

27 (2) injunctive relief.

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

7 (d) A user may bring an action under this section regardless
8 of whether another court has enjoined the attorney general from
9 enforcing this chapter or declared any provision of this chapter
10 unconstitutional unless that court decision is binding on the court
11 in which the action is brought.

12 (e) Nonmutual issue preclusion and nonmutual claim
13 preclusion are not defenses to an action brought under this
14 section.

15 Sec. 143A.008. 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 7. (a) Mindful of *Leavitt v. Jane L.*, 518 U.S. 137
24 (1996), in which in the context of determining the severability of a
25 state statute the United States Supreme Court held that an explicit
26 statement of legislative intent is controlling, it is the intent of
27 the legislature that every provision, section, subsection,

1 sentence, clause, phrase, or word in this Act, and every
2 application of the provisions in this Act, are severable from each
3 other.

4 (b) If any application of any provision in this Act to any
5 person, group of persons, or circumstances is found by a court to be
6 invalid or unconstitutional, the remaining applications of that
7 provision to all other persons and circumstances shall be severed
8 and may not be affected. All constitutionally valid applications
9 of this Act shall be severed from any applications that a court
10 finds to be invalid, leaving the valid applications in force,
11 because it is the legislature's intent and priority that the valid
12 applications be allowed to stand alone.

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

23 (d) The legislature further declares that it would have
24 enacted this Act, and each provision, section, subsection,
25 sentence, clause, phrase, or word, and all constitutional
26 applications of this Act, irrespective of the fact that any
27 provision, section, subsection, sentence, clause, phrase, or word,

1 or applications of this Act, were to be declared unconstitutional.

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

6 (f) No court may decline to enforce the severability
7 requirements of Subsections (a), (b), (c), (d), and (e) of this
8 section on the ground that severance would rewrite the statute or
9 involve the court in legislative or lawmaking activity. A court
10 that declines to enforce or enjoins a state official from enforcing
11 a statutory provision does not rewrite a statute, as the statute
12 continues to contain the same words as before the court's decision.
13 A judicial injunction or declaration of unconstitutionality:

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

18 (2) is not a formal amendment of the language in a
19 statute; and

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

23 SECTION 8. Chapter 143A, Civil Practice and Remedies Code,
24 as added by this Act, applies only to a cause of action that accrues
25 on or after the effective date of this Act.

26 SECTION 9. This Act takes effect on the 91st day after the
27 last day of the legislative session.