

# SENATE AMENDMENTS

2<sup>nd</sup> Printing

By: Cain, White, Burrows, Metcalf, Shaheen,  
et al.

H.B. No. 20

A BILL TO BE ENTITLED

1 AN ACT

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

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

6 SECTION 1. The legislature finds that:

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

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

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

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

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

21 CHAPTER 120. SOCIAL MEDIA PLATFORMS

22 SUBCHAPTER A. GENERAL PROVISIONS

23 Sec. 120.001. DEFINITIONS. In this chapter:

24 (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) an e-mail address or relevant complaint  
12 intake mechanism to handle user complaints; and

13 (B) a complaint system described by Subchapter C;  
14 and

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

17 Sec. 120.053. BIENNIAL TRANSPARENCY REPORT. (a) As part of  
18 a social media platform's acceptable use policy under Section  
19 120.052, the social media platform shall publish a biannual  
20 transparency report that includes, with respect to the preceding  
21 six-month period:

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

25 (A) a user complaint;

26 (B) an employee of or person contracting with the  
27 social media platform; or

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

1 categorized by:

2 (1) the rule violated; and

3 (2) the source for the alert of illegal content,  
4 illegal activity, or potentially policy-violating content,  
5 including:

6 (A) a government;

7 (B) a user;

8 (C) an internal automated detection tool;

9 (D) coordination with other social media  
10 platforms; or

11 (E) persons employed by or contracting with the  
12 platform.

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

17 SUBCHAPTER C. COMPLAINT PROCEDURES

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

22 (1) illegal content or activity; or

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

25 Sec. 120.102. PROCESSING OF COMPLAINTS. A social media  
26 platform that receives notice of illegal content or illegal  
27 activity on the social media platform shall make a good faith effort

1 to evaluate the legality of the content or activity within 48 hours  
2 of receiving the notice, excluding hours during a Saturday or  
3 Sunday and subject to reasonable exceptions based on concerns about  
4 the legitimacy of the notice.

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

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

12 (2) allow the user to appeal the decision to remove the  
13 content to the platform; and

14 (3) provide written notice to the user who provided  
15 the content of:

16 (A) the determination regarding an appeal  
17 requested under Subdivision (2); and

18 (B) in the case of a reversal of the social media  
19 platform's decision to remove the content, the reason for the  
20 reversal.

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

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

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

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

8           (1) review the content;

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

11           (3) take appropriate steps based on the determination  
12 under Subdivision (2); and

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

15                           SUBCHAPTER D. ENFORCEMENT

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

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

23       SECTION 3. The heading to Chapter 321, Business & Commerce  
24 Code, is amended to read as follows:

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

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



1           (4-a) "Malicious computer code" means an unwanted  
2 computer program or other set of instructions inserted into a  
3 computer's memory, operating system, or program that:

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

8           (B) is intended to perform an unauthorized  
9 process that will adversely impact the confidentiality of  
10 information contained in or the integrity or availability of the  
11 computer's memory, operating system, or program.

12           SECTION 5. Subchapter B, Chapter 321, Business & Commerce  
13 Code, is amended by adding Section 321.054 to read as follows:

14           Sec. 321.054. IMPEDING ELECTRONIC MAIL MESSAGES  
15 PROHIBITED. An electronic mail service provider may not  
16 intentionally impede the transmission of another person's  
17 electronic mail message based on the content of the message unless:

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

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

25           SECTION 6. Section 321.105(a), Business & Commerce Code, is  
26 amended to read as follows:

27           (a) In lieu of actual damages, a person injured by a

1 violation of this chapter arising from the transmission of an  
2 unsolicited or commercial electronic mail message or by a violation  
3 of Section 321.054 may recover an amount equal to the lesser of:

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

6 (2) \$25,000 for each day the unlawful message is  
7 received or the message is unlawfully impeded, as applicable.

8 SECTION 7. Title 6, Civil Practice and Remedies Code, is  
9 amended by adding Chapter 143A to read as follows:

10 CHAPTER 143A. DISCOURSE ON SOCIAL MEDIA PLATFORMS

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

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

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

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

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

24 (5) "Unlawful expression" means an expression that is  
25 unlawful under the United States Constitution, federal law, the  
26 Texas Constitution, or the laws of this state, including expression  
27 that constitutes a tort under the laws of this state or the United

1 States.

2 (6) "User" means a person who posts, uploads,  
3 transmits, shares, or otherwise publishes or receives expression,  
4 through a social media platform. The term includes a person who has  
5 a social media platform account that the social media platform has  
6 disabled or locked.

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

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

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

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

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

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

24 (b) The waiver prohibition described by Subsection (a) is a  
25 public-policy limitation on contractual and other waivers of the  
26 highest importance and interest to this state, and this state is  
27 exercising and enforcing this limitation to the full extent

1 permitted by the United States Constitution and Texas Constitution.

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

4 (1) resides in this state;

5 (2) does business in this state; or

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

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

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

12 (d) This chapter applies to the maximum extent permitted by  
13 the United States Constitution and the laws of the United States but  
14 no further than the maximum extent permitted by the United States  
15 Constitution and the laws of the United States.

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

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

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

25 (2) is the subject of a referral or request from an  
26 organization with the purpose of preventing the sexual  
27 exploitation of children and protecting survivors of sexual abuse

1 from ongoing harassment;

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

6 (4) is unlawful expression.

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

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

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

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

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

22 (2) injunctive relief.

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

1 compliance.

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

7 (e) Nonmutual issue preclusion and nonmutual claim  
8 preclusion are not defenses to an action brought under this  
9 section.

10 Sec. 143A.008. ACTION BY ATTORNEY GENERAL. (a) Any person  
11 may notify the attorney general of a violation or potential  
12 violation of this chapter by a social media platform.

13 (b) The attorney general may bring an action to enjoin a  
14 violation or a potential violation of this chapter. If the  
15 injunction is granted, the attorney general may recover costs and  
16 reasonable attorney's fees incurred in bringing the action and  
17 reasonable investigative costs incurred in relation to the action.

18 SECTION 8. (a) Mindful of *Leavitt v. Jane L.*, 518 U.S. 137  
19 (1996), in which in the context of determining the severability of a  
20 state statute the United States Supreme Court held that an explicit  
21 statement of legislative intent is controlling, it is the intent of  
22 the legislature that every provision, section, subsection,  
23 sentence, clause, phrase, or word in this Act, and every  
24 application of the provisions in this Act, are severable from each  
25 other.

26 (b) If any application of any provision in this Act to any  
27 person, group of persons, or circumstances is found by a court to be

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

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

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

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

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

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

13           (2) is not a formal amendment of the language in a  
14 statute; and

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

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

21           SECTION 10. This Act takes effect on the 91st day after the  
22 last day of the legislative session.



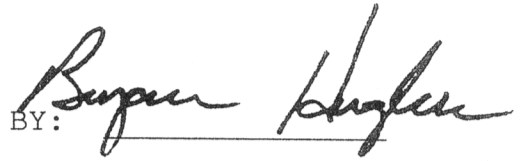
ADOPTED

V V

AUG 31 2021

FLOOR AMENDMENT NO. 1

BY:



*Lately Saw*  
Secretary of the Senate

1 Amend H.B. No. 20 (senate committee report) in SECTION 7 of  
2 the bill, by striking added Section 143A.001(1), Civil Practice  
3 and Remedies Code (page 5, lines 1-6), and substituting the  
4 following:

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

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 87TH LEGISLATURE 2nd CALLED SESSION 2021**

**September 1, 2021**

**TO:** Honorable Dade Phelan, Speaker of the House, House of Representatives

**FROM:** Jerry McGinty, Director, Legislative Budget Board

**IN RE: HB20** by Cain (Relating to censorship of or certain other interference with digital expression, including expression on social media platforms or through electronic mail messages.), **As Passed 2nd House**

**No significant fiscal implication to the State is anticipated.**

Based on information provided by the Office of the Attorney General, it is assumed that duties and responsibilities associated with implementing the provisions of the bill could be accomplished utilizing existing resources.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 212 Office of Court Admin, 302 Office of the Attorney General

**LBB Staff:** JMc, LBO, CMA, DA

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 87TH LEGISLATURE 2nd CALLED SESSION 2021**

**August 30, 2021**

**TO:** Honorable Bryan Hughes, Chair, Senate Committee on State Affairs

**FROM:** Jerry McGinty, Director, Legislative Budget Board

**IN RE: HB20** by Cain (Relating to censorship of or certain other interference with digital expression, including expression on social media platforms or through electronic mail messages.), **As Engrossed**

**No significant fiscal implication to the State is anticipated.**

Based on information provided by the Office of the Attorney General, it is assumed that duties and responsibilities associated with implementing the provisions of the bill could be accomplished utilizing existing resources.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 212 Office of Court Admin, 302 Office of the Attorney General

**LBB Staff:** JMc, LBO, CMA, DA

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 87TH LEGISLATURE 2nd CALLED SESSION 2021**

**August 24, 2021**

**TO:** Honorable Trent Ashby, Chair, House Committee on Constitutional Rights & Remedies, Select

**FROM:** Jerry McGinty, Director, Legislative Budget Board

**IN RE:** HB20 by Cain (relating to censorship of or certain other interference with digital expression, including expression on social media platforms or through electronic mail messages.), **Committee Report 1st House, Substituted**

**No significant fiscal implication to the State is anticipated.**

Based on information provided by the Office of the Attorney General, it is assumed that duties and responsibilities associated with implementing the provisions of the bill could be accomplished utilizing existing resources.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 212 Office of Court Admin, 302 Office of the Attorney General

**LBB Staff:** JMc, LBO, CMA, DA

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 87TH LEGISLATURE 2nd CALLED SESSION 2021**

**August 22, 2021**

**TO:** Honorable Trent Ashby, Chair, House Committee on Constitutional Rights & Remedies, Select

**FROM:** Jerry McGinty, Director, Legislative Budget Board

**IN RE: HB20** by Cain (Relating to censorship of or certain other interference with digital expression, including expression on social media platforms or through electronic mail messages.), **As Introduced**

**No significant fiscal implication to the State is anticipated.**

Based on information provided by the Office of the Attorney General, it is assumed that duties and responsibilities associated with implementing the provisions of the bill could be accomplished utilizing existing resources.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 212 Office of Court Admin, 302 Office of the Attorney General

**LBB Staff:** JMc, LBO, CMA, DA