By: Sanford H.B. No. 2587

Substitute the following for H.B. No. 2587:

By: _____ C.S.H.B. No. 2587

A BILL TO BE ENTITLED

AN ACT

relating to complaint procedures and disclosure requirements for social media platforms and to the censorship of users' expressions by an interactive computer service.

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

SECTION 1. The legislature finds that social media platforms are akin to common carriers, are affected with a public interest, are central public forums for public debate, and have enjoyed governmental support in the United States.

SECTION 2. Subtitle C, Title 5, Business & Commerce Code, is amended by adding Chapter 113 to read as follows:

CHAPTER 113. SOCIAL MEDIA PLATFORMS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 113.001. DEFINITIONS. In this chapter:

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

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

(B) electronic mail; or

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

(i) that consists primarily of news,

sports, entertainment, or other information or content that is not user-generated but is preselected by the provider; and

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

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

Sec. 113.002. APPLICABILITY OF CHAPTER. (a) This chapter applies only to a user who:

(1) resides in this state;

(2) does business in this state; or

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

(b) This chapter applies only to a social media platform that functionally has more than 100 million active users in a calendar month.

SUBCHAPTER B. DISCLOSURE REQUIREMENTS

Sec. 113.051. PUBLIC DISCLOSURES. (a) A social media platform shall, in accordance with this subchapter, publicly disclose accurate information regarding its content management, data management, and business practices, including specific information regarding how the social media platform:

(1) curates and targets content to users;

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

(3) moderates content;

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

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

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

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

Sec. 113.052. ACCEPTABLE USE POLICY. (a) A social media platform shall publish an acceptable use policy in a location that is easily accessible to a user.

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

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

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

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

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

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

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

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

(c) The live company representative described by Subsection (b)(3)(A) must be available eight hours a day, five days a week.

Sec. 113.053. QUARTERLY TRANSPARENCY REPORT. (a) As part of a social media platform's acceptable use policy under Section 113.052, the social media platform shall publish a quarterly transparency report that includes, with respect to the preceding three-month period:

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

(A) a user complaint;

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

(C) an internal automated detection tool;

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

(A) content removal;

(B) content demonetization;

(C) content deprioritization;

(D) the addition of an assessment to content;

(E) account suspension;

(F) account removal; or

(G) any other action taken in accordance with the platform's acceptable use policy;

(3) the country of the user who provided the content for each instance described by Subdivision (2);

(4) the number of coordinated campaigns, if applicable;

(5) the number of instances in which a user appealed the decision to remove the user's potentially policy-violating content;

(6) the percentage of appeals described by Subdivision (5) that resulted in the restoration of content; and

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

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

(1) category of rule violated; and

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

(A) a government;

(B) a user;

(C) an internal automated detection tool;

(D) coordination with other social media platforms; or

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

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

SUBCHAPTER C. COMPLAINT PROCEDURES

Sec. 113.101. COMPLAINT SYSTEM. A social media platform shall provide an easily accessible complaint system to enable a user to submit a complaint in good faith and keep track of the status of the complaint, including a complaint regarding:

(1) illegal content or activity; or

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

Sec. 113.102. PROCESSING OF COMPLAINTS. If a social media platform receives notice of illegal content or illegal activity on the social media platform, the social media platform shall make a good faith effort to evaluate the legality of the content or activity within 24 hours of receiving the notice, subject to reasonable exceptions based on concerns about the legitimacy of the notice.

Sec. 113.103. REMOVAL OF CONTENT; EXCEPTIONS. (a) Except as provided by Subsection (b), if a social media platform removes content based on a violation of the platform's acceptable use policy under Section 113.052, the social media platform shall,

concurrently with the removal:

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

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

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

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

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

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

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

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

Sec. 113.104. APPEAL PROCEDURES. If a social media platform receives a user complaint that the social media platform removed content provided by the user from the platform that the user believes was not potentially policy-violating content, the social media platform shall, not later than the 14th day after the date the platform receives the complaint:

(1) review the content;

(2) determine whether the content adheres to the

platform's acceptable use policy;

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

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

SUBCHAPTER D. ENFORCEMENT

Sec. 113.151. ACTION BY ATTORNEY GENERAL. (a) The attorney general may bring an action against a social media platform to enjoin a violation of this chapter.

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

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

CHAPTER 143A. DISCOURSE ON INTERACTIVE WEB-BASED PLATFORMS

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

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

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

(3) "Interactive computer service" means an information service, system, or access software provider that provides or enables computer access by multiple users to a server that provides a social media platform for users to engage in expressive activity. The term does not include an Internet service

provider as defined by Section 324.055, Business & Commerce Code.

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

(5) "Social media platform" has the meaning assigned by Section 113.001, Business & Commerce Code.

(6) "Unlawful expression" means an expression that is unlawful under the United States Constitution, federal law, the Texas Constitution, or the laws of this state.

(7) "User" means a person who posts, uploads, transmits, shares, or otherwise publishes or receives expression, through an interactive computer service.

Sec. 143A.002. CENSORSHIP PROHIBITED. (a) An interactive computer service may not censor a user, a user's expression, or a user's ability to receive the expression of another person based on:

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

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

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

(b) This section applies regardless of whether the viewpoint is expressed on the interactive computer service or elsewhere.

Sec. 143A.003. APPLICABILITY OF CHAPTER. (a) This chapter applies only to a user who:

(1) resides in this state;

(2) does business in this state; or

(3) shares or receives expression in this state.

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

(c) This chapter applies only to an interactive computer service that functionally has more than 100 million active users in a calendar month.

(d) This chapter does not apply to censorship of an expression that is the subject of a referral or request from an organization whose purpose is to prevent the sexual exploitation of children and protect survivors of childhood sexual abuse from ongoing harassment.

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

Sec. 143A.004. LIMITATION ON EFFECT OF CHAPTER. This chapter does not subject an interactive computer service to damages or other legal remedies to the extent the interactive computer service is protected from those remedies under federal law.

Sec. 143A.005. CONSTRUCTION OF CHAPTER. (a) This chapter does not prohibit an interactive computer service from:

(1) censoring expression that the interactive computer service is specifically authorized to censor by federal law; or

(2) censoring unlawful expression.

(b) This chapter may not be construed to prohibit or

restrict an interactive computer service from authorizing or facilitating a user's ability to censor specific expression at the request of that user.

Sec. 143A.006. USER REMEDIES. (a) A user may bring an action against an interactive computer service that violates this chapter with respect to the user.

(b) If the user proves that the interactive computer service violated this chapter with respect to the user, the user is entitled to recover:

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

(2) injunctive relief.

(c) If an interactive computer service fails to promptly comply with a court order in an action brought under this section, the court shall hold the interactive computer service in contempt and shall use all lawful measures to secure immediate compliance with the order, including daily penalties sufficient to secure immediate compliance.

Sec. 143A.007. ACTION BY ATTORNEY GENERAL. (a) The attorney general may bring an action for declaratory relief to have determined any question of construction or validity arising under this chapter and to obtain a declaration of rights, status, or other legal relations with respect to this chapter. The attorney general may recover costs and reasonable and necessary attorney's fees under Section 37.009 in connection with declaratory relief obtained under this subsection.

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

SECTION 4. (a) Because this Act has been enacted amid uncertainty about the application of the United States Constitution and relevant federal statutes, every provision, section, subsection, sentence, or clause of this Act, and every application of the provisions of this Act to any person, group of persons, or circumstances are severable from each other. If any application of any provision of this Act is found by a court to be unconstitutional or invalid, on any ground for any reason whatsoever, the remaining application of that provision to other persons and circumstances shall be severed and may not be affected. The legislature further declares that it would have passed this Act, each provision, section, subsection, sentence, or clause of this Act, and all constitutional applications of this Act regardless of the fact that any provision, section, subsection, sentence, or clause of this Act or applications of this Act were to be declared unconstitutional by any court.

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

SECTION 5. Chapter 143A, Civil Practice and Remedies Code, as added by this Act, applies only to an action taken on or after the

effective date of this Act.

SECTION 6. This Act takes effect September 1, 2021.