

By: Cain

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 quarterly transparency
16 report outlining actions taken to enforce the policy.

17 Sec. 120.053. QUARTERLY TRANSPARENCY REPORT. (a) As part
18 of a social media platform's acceptable use policy under Section
19 120.052, the social media platform shall publish a quarterly
20 transparency report that includes, with respect to the preceding
21 three-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 24 hours
2 of receiving the notice, subject to reasonable exceptions based on
3 concerns about the legitimacy of the notice.

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

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

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

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

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

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

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

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

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

27 Sec. 120.104. APPEAL PROCEDURES. If a social media

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

7 (1) review the content;

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

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

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

14 SUBCHAPTER D. ENFORCEMENT

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

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

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

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

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

27 Sec. 321.054. IMPEDING ELECTRONIC MAIL MESSAGES

1 PROHIBITED. An electronic mail service provider may not
2 intentionally impede the transmission of another person's
3 electronic mail message unless:

4 (1) the provider is authorized to block the
5 transmission under Section 321.114; or

6 (2) the message contains a computer virus, as defined
7 by Section 33.01, Penal Code, obscene material, material depicting
8 sexual conduct, or material that violates other law.

9 SECTION 5. Section 321.105(a), Business & Commerce Code, is
10 amended to read as follows:

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

15 (1) \$10 for each unlawful message or each message
16 unlawfully impeded, as applicable; or

17 (2) \$25,000 for each day the unlawful message is
18 received or the message is unlawfully impeded, as applicable.

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

21 CHAPTER 143A. DISCOURSE ON SOCIAL MEDIA PLATFORMS

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

23 (1) "Censor" means any action taken to edit, alter,
24 block, ban, delete, remove, deplatform, demonetize, de-boost,
25 regulate, restrict, inhibit the publication or reproduction of, or
26 deny equal access or visibility to expression, to suspend a right to
27 post, remove, or post an addendum to any content or material posted

1 by a user, or to otherwise discriminate against expression. The
2 term includes an action taken to inhibit a social media platform
3 user's ability to be viewed by or interact with another user of the
4 platform.

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

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

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

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

16 (6) "User" means a person who posts, uploads,
17 transmits, shares, or otherwise publishes or receives expression,
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. 143A.002. CENSORSHIP PROHIBITED. (a) A social media
22 platform may not censor a user, a user's expression, or a user's
23 ability to receive the expression of another person based on:

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

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

27 (3) a user's geographic location in this state or any

1 part of this state.

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

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

11 (b) The waiver prohibition described by Subsection (a) is a
12 public-policy limitation on contractual and other waivers of the
13 highest importance and interest to this state, and this state is
14 exercising and enforcing this limitation to the full extent
15 permitted by the United States Constitution and Texas Constitution.

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

18 (1) resides in this state;

19 (2) does business in this state; or

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

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

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

26 (d) This chapter applies to the maximum extent permitted by
27 the United States Constitution and the laws of the United States but

1 no further than the maximum extent permitted by the United States
2 Constitution and the laws of the United States.

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

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

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

12 (2) is the subject of a referral or request from an
13 organization with the purpose of preventing the sexual
14 exploitation of children and protecting survivors of sexual abuse
15 from ongoing harassment;

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

20 (4) is unlawful expression.

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

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

27 Sec. 143A.007. USER REMEDIES. (a) A user may bring an

1 action against a social media platform that violates this chapter
2 with respect to the user.

3 (b) If the user proves that the social media platform
4 violated this chapter with respect to the user, the user is entitled
5 to recover:

6 (1) declaratory relief under Chapter 37, including
7 costs and reasonable and necessary attorney's fees under Section
8 37.009; and

9 (2) injunctive relief.

10 (c) If a social media platform fails to promptly comply with
11 a court order in an action brought under this section, the court
12 shall hold the social media platform in contempt and shall use all
13 lawful measures to secure immediate compliance with the order,
14 including daily penalties sufficient to secure immediate
15 compliance.

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

21 (e) Nonmutual issue preclusion and nonmutual claim
22 preclusion are not defenses to an action brought under this
23 section.

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

27 (b) The attorney general may bring an action to enjoin a

1 violation or a potential violation of this chapter. If the
2 injunction is granted, the attorney general may recover costs and
3 reasonable attorney's fees incurred in bringing the action and
4 reasonable investigative costs incurred in relation to the action.

5 SECTION 7. (a) Mindful of *Leavitt v. Jane L.*, 518 U.S. 137
6 (1996), in which in the context of determining the severability of a
7 state statute the United States Supreme Court held that an explicit
8 statement of legislative intent is controlling, it is the intent of
9 the legislature that every provision, section, subsection,
10 sentence, clause, phrase, or word in this Act, and every
11 application of the provisions in this Act, are severable from each
12 other.

13 (b) If any application of any provision in this Act to any
14 person, group of persons, or circumstances is found by a court to be
15 invalid or unconstitutional, the remaining applications of that
16 provision to all other persons and circumstances shall be severed
17 and may not be affected. All constitutionally valid applications
18 of this Act shall be severed from any applications that a court
19 finds to be invalid, leaving the valid applications in force,
20 because it is the legislature's intent and priority that the valid
21 applications be allowed to stand alone.

22 (c) If any court declares or finds a provision of this Act
23 facially unconstitutional, when discrete applications of that
24 provision can be enforced against a person, group of persons, or
25 circumstances without violating the United States Constitution and
26 Texas Constitution, those applications shall be severed from all
27 remaining applications of the provision, and the provision shall be

1 interpreted as if the legislature had enacted a provision limited
2 to the persons, group of persons, or circumstances for which the
3 provision's application will not violate the United States
4 Constitution and Texas Constitution.

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

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

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

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

27 (2) is not a formal amendment of the language in a

1 statute; and

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

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

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