

BILL ANALYSIS

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C.S.S.B. 12
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Social media sites are the modern public square, and while almost all speech is protected from governmental censorship, private digital spaces that host public speech present a novel challenge. Although these sites are privately owned, the nearly universal adoption of a few sites has created a need for protection from speech selection by social media companies.

Under federal law, social media sites are expressly protected from liability for certain content moderation decisions. However, under the same section of federal law, states are expressly allowed to regulate websites so long as those regulations are consistent with the federal law.

S.B. 12 includes a legislative finding that the biggest social media sites are acting as common carriers of public speech. It then draws a critical distinction between censoring based on content versus censoring based on viewpoint. These sites need to moderate content like violent or overtly sexual posts. However, they cannot deny you participation based on your viewpoint, including your political preferences or religion.

Under this bill, a social media site of over 100 million users is prohibited from censoring a person or the content that person posts based on the person's viewpoint or on the viewpoint expressed in the post. If the site does block or restrict a user based on viewpoint, that user can file suit against the site to get back online and make the site pay their attorney's fees. Alternatively, the Office of the Attorney General can bring suit on behalf of a user or group of users.

(Original Author's/Sponsor's Statement of Intent)

C.S.S.B. 12 amends current law relating to complaint procedures and disclosure requirements for social media platforms and to the censorship of users' expressions by an interactive computer service.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Provides that 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. Amends Subtitle C, Title 5, Business & Commerce Code, by adding Chapter 113, as follows:

CHAPTER 113. SOCIAL MEDIA PLATFORMS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 113.001. DEFINITIONS. Defines "social media platform" and "user."

Sec. 113.002. APPLICABILITY OF CHAPTER. (a) Provides that this chapter applies only to a user who resides in Texas, does business in Texas, or shares or receives content on a social media platform in Texas.

(b) Provides that 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) Requires a social media platform, in accordance with this subchapter, to publicly disclose accurate information regarding its content management, data management, and business practices, including specific information regarding how the social media platform curates and targets content to users; places and promotes content, services, and products including its own content, services, and products; moderates content; uses search, ranking, or other algorithms or procedures that determine results on the platform; and provides users' performance data on the use of the platform and its products and services.

(b) Requires that the disclosure required by Subsection (a) 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) Requires a social media platform to 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) Requires a social media platform to publish an acceptable use policy in a location that is easily accessible to a user.

(b) Requires that a social media platform's acceptable user policy:

(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) Requires the live company representative described by Subsection (b)(3)(A) to be available eight hours a day, five days a week.

Sec. 113.053. QUARTERLY TRANSPARENCY REPORT. (a) Requires a social media platform, as part of the social media platform's acceptable use policy under Section 113.052, to 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) Requires that the information described by Subsection (a)(2) 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) Requires a social media platform to 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. Requires a social media platform to 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. Requires a social media platform, if the social media platform receives notice of illegal content or illegal activity on the social media platform, to 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) Requires a social media platform, except as provided by Subsection (b), if the social media platform removes content based on a violation of the platform's acceptable use policy under Section 113.052, concurrently with the removal to:

(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) Provides that 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. Requires a social media platform, not later than the 14th day after the date the platform receives a complaint, if the 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, to:

- (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) Authorizes the attorney general to bring an action against a social media platform to enjoin a violation of this chapter.

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

SECTION 3. Amends Title 6, Civil Practice and Remedies Code, by adding Chapter 143A, as follows:

CHAPTER 143A. DISCOURSE ON INTERACTIVE WEB-BASED PLATFORMS

Sec. 143A.001. DEFINITIONS. Defines "censor," "expression," "interactive computer service," "receive," "social media platform," "unlawful expression," and "user."

Sec. 143A.002. CENSORSHIP PROHIBITED. (a) Prohibits an interactive computer service from censoring a user, a user's expression, or a user's ability to receive the expression of another person based on the viewpoint of the user or another person, the viewpoint represented in the user's expression or another person's expression, or a user's geographic location in Texas or any part of Texas.

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

Sec. 143A.003. APPLICABILITY OF CHAPTER. (a) Provides that this chapter applies only to a user who resides in Texas, does business in Texas, or shares or receives expression in Texas.

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

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

Sec. 143A.004. LIMITATION ON EFFECT OF CHAPTER. Provides that 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. Provides that this chapter does not prohibit an interactive computer service from censoring expression that the interactive computer service is specifically authorized to censor by federal law or from censoring unlawful expression.

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

(b) Provides that, if the user proves that the interactive computer service violated this chapter with respect to the user, the user is entitled to recover declaratory relief under Chapter 37 (Declaratory Judgments), including costs and reasonable and necessary attorney's fees under Section 37.009 (Costs), and injunctive relief.

(c) Requires a court, if an interactive computer service fails to promptly comply with the court's order in an action brought under this section, to hold the interactive computer service in contempt and to 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) Authorizes the attorney general to 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. Authorizes the attorney general to recover costs and reasonable and necessary attorney's fees under Section 37.009 in connection with declaratory relief obtained under this subsection.

(b) Authorizes the attorney general to bring an action to enjoin a violation of this chapter. Authorizes the attorney general, if the injunction is granted, to 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) Provides that, 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. Requires that the remaining application of a provision to other persons and circumstances, 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, be severed and not be affected. Provides that 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) Provides that, 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. Makes application of Chapter 143A, Civil Practice and Remedies Code, as added by this Act, prospective.

SECTION 6. Effective date: September 1, 2021.