

SUBJECT: Complaint procedures, disclosure requirements for social media platforms

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 8 ayes — Paddie, Harless, Hunter, P. King, Metcalf, Shaheen, Slawson, Smithee

5 nays — Hernandez, Deshotel, Howard, Lucio, Raymond

SENATE VOTE: On final passage, April 1 — 18-13 (Alvarado, Blanco, Eckhardt, Gutierrez, Hinojosa, Johnson, Lucio, Menéndez, Miles, Powell, West, Whitmire, Zaffirini)

WITNESSES: No public hearing.

DIGEST: SB 12 would establish complaint procedures and disclosure requirements for social media platforms regarding the management and removal of content. It would prohibit censorship by interactive web-based platforms based on viewpoints or a user's geographic location in the state.

The bill's provisions on social media platforms and interactive computer services would apply only to a platform or service that functionally had more than 100 million active users in a calendar month. "Social media platform" would mean a website or application that was open to the public, allowed a user to create an account, and enabled users to communicate with other users for the primary purpose of posting information, comments, messages, or images. "Interactive computer service" would mean an information service, system, or access software provider that provided or enabled computer access by multiple users to a service that provided a social media platform for users to engage in expressive activity. The term would not include an internet service provider.

Public disclosure. A social media platform would have to publicly disclose accurate information regarding its content management, data management, and business practices, including specific information

regarding how the platform:

- curates and targets content to users;
- places and promotes content, services, and products, including its own;
- 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.

The disclosure would have to be sufficient to enable users to make an informed choice regarding the purchase of or use of access to or services from the platform. The disclosure would have to be published on a website easily accessible to the public.

Acceptable use policy. A social media platform would have to publish an acceptable use policy in a location easily accessible to a user. The policy would have to:

- reasonably inform users about the types of content allowed on the platform;
- explain the steps the platform will take to ensure content complies with the policy;
- explain the means by which users can notify the platform of content that potentially violates the acceptable use policy, illegal content, or illegal activity, which includes a toll-free telephone number, an email address or complaint intake mechanism, a complaint system described by the bill, and publication of a quarterly transparency report.

Transparency report. The quarterly transparency report would include the total number of instances in which the platform was alerted to illegal content, illegal activity, or potentially policy-violating content and the number of instances in which the platform removed content, suspended or removed an account, or took other action as specified in the bill.

The transparency report would have to categorize information by the category of rule violated and whether the source of the alert included a government, a user, an internal automated detection tool, coordination with other social media platforms, or persons employed by or contracting with the platform.

The platform would have to publish the quarterly transparency report with an open license, in a machine-readable and open format, and in a location that was easily accessible to users.

Complaint procedures. SB 12 would require 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:

- illegal content or activity, or
- a decision made by the social media platform to remove content posted by the user.

A platform would have to make a good-faith effort to evaluate the legality of the content or activity within 24 hours of receiving notice of illegal content or illegal activity, subject to reasonable exceptions based on concerns about the legitimacy of the notice.

Content removal. If a social media platform removed content based on a violation of its acceptable use policy, the platform would have to:

- notify the user who provided the content of the removal and why it was removed;
- allow the user to appeal the decision; and
- provide written notice to the user who provided the content of the determination regarding a requested appeal, and in the case of a reversal of the decision to remove the content, the reason for the reversal.

A platform would not have to provide a notice to a user who could not be contacted after reasonable steps to make contact or if the platform knew that the potentially policy-violating content related to an ongoing law enforcement investigation.

Regarding an appeal by a user over removed content that the user believed was not potentially policy-violating content, the platform would have to, not later than the 14th day after the date the platform received the complaint:

- review the content;
- determine whether it adhered to the platform's acceptable use policy and take appropriate steps based on that determination; and
- notify the user regarding the determination.

Enforcement. SB 12 would authorize the attorney general to bring an action against a social media platform to enjoin a violation of the bill. If an injunction was granted in an action, the attorney general could recover costs, including reasonable attorney's fees and reasonable investigative costs.

Discourse on interactive platforms. SB 12 would prohibit 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 the state.

The prohibition would apply regardless of whether the viewpoint was expressed on the interactive computer service or elsewhere. It would apply only to a user who resided in, did business in, or shared or received expression in Texas, and only to expression that was shared or received in Texas.

The bill would not apply to censorship of an expression that was 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. It also would not apply to censorship of an expression that directly incited criminal activity or consisted 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.

SB 12 would not subject an interactive computer service to damages or other legal remedies to the extent the interactive computer service was protected from those remedies under federal law.

An interactive computer service would not be prohibited from:

- censoring expression that the interactive computer service was specifically authorized to censor by federal law; or
- censoring unlawful expression.

The bill could 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.

Remedies. A user could bring an action against an interactive computer service that violated the bill with respect to the user. A user that proved a violation would be entitled to recover declaratory relief, including costs and reasonable attorney's fees and injunctive relief.

A court would have to hold a service that failed to promptly comply with a court order in contempt and would have to use all lawful measures to secure immediate compliance with the order, including daily penalties sufficient to secure immediate compliance.

Attorney general. The attorney general could bring an action for declaratory relief to have determined any question of construction or validity arising under the prohibition on viewpoint censorship and to

obtain a declaration of rights, status, or other legal relations. The attorney general could recover costs and reasonable and necessary attorney's fees in connection with declaratory relief.

The attorney general could bring an action for injunctive relief and could recover costs and reasonable attorney's fees and reasonable investigative costs.

The bill would provide for the severability of its every provision, section, subsection, sentence, or clause of the bill, and of every application of its provisions to any person, group of persons, or circumstances, because of uncertainty about the application of the U.S. Constitution and relevant federal statutes. The Legislature would further declare that it would have passed the bill, each provision, section, subsection, sentence, or clause of the bill, and all constitutional applications of the bill, regardless of the fact that any provision, section, subsection, sentence, or clause of the bill or application of the bill were to be declared unconstitutional by any court. The bill would provide that if any provision was found by any court to be unconstitutionally vague, the applications of that provision that do not present constitutional vagueness problems must be severed and remain in force.

The bill would take effect September 1, 2021, and would apply only to an action taken on or after that date.

**SUPPORTERS
SAY:**

SB 12 would recognize that prominent social media sites have come to dominate public discourse in Texas and should be regulated to ensure that they are accountable for their actions when they remove content. The bill also would bring transparency to the companies' content moderation policies and actions. It would apply only to the largest social media platforms and interactive computer services with functionally more than 100 million active monthly users.

SB 12 would curtail big tech companies' ability to silence viewpoints on their platforms by prohibiting viewpoint censorship and allowing users who were wrongly censored to sue the company and, if successful,

recover costs and attorney fees. The bill also would require social media companies to implement an easily accessible complaint procedure for users to submit complaints regarding illegal content or the platform's allegedly wrongful removal of content.

Social media companies may believe they are acting as a referee on contentious issues when they are actually suppressing people's political speech. The bill would not penalize social media companies for appropriately blocking content that incited criminal activity or threatened violence against a federally protected class of persons. It also would allow for removal of content to prevent sexual exploitation of children.

While some say the companies are private businesses with the right to control the content on their platforms, they have essentially become the gatekeepers of free speech and have acted primarily to limit mostly conservative views. The bill would allow the public and the attorney general to serve as watchdogs over unwarranted content removal and viewpoint censorship.

Laws that Congress crafted when social media companies were in their infancy have shielded them from liability over their content, but as the companies' influence has grown, those laws have become outdated, making it important for Texas to act. While Texas cannot completely rein in the anti-competitive actions of these companies, SB 12 would hold social media platforms to basic standards of accountability by requiring them to publicly disclose how they target content to users, promote products and services, and use algorithms to determine results on their platform. They would have to publish an acceptable use policy concerning their content moderation policies, publish quarterly reports about the content they remove, and create an appeal process for content that had been taken down.

While some say SB 12 is unconstitutional and could be challenged in court, these big tech companies have become so central to the economy and Texans' way of life that they have functionally been acting as common carriers and, as such, can be prohibited by government from

discriminating against their customers. The bill is unlikely to lead to a rash of lawsuits being filed in Texas courts by social media users against the companies because the bill contains no cause of action for damages.

CRITICS
SAY:

SB 12 would run counter to the First Amendment by prohibiting a private business from controlling its own content based on dubious claims that social media platforms are censoring certain viewpoints. Social media companies' hosting of private speech does not transform them into a public forum or common carrier subject to First Amendment restraints.

Content moderation is at the core of the business models for these companies and the bill would create an incentive for companies to not remove content that may be objectionable, such as bullying, but not unlawful in order to avoid being accused of violating the bill. The companies take their responsibility seriously, removing harmful content in an unbiased manner while keeping their services open to a broad range of ideas. Requiring social media platforms to publicize their content moderation policies could make it easier for bad actors to circumvent those policies.

SB 12 would run counter to the state's efforts to persuade technology companies to locate here because of policies that are conducive to business and job creation.

NOTES:

The House companion bill, HB 2587 by Sanford, was considered by the House State Affairs Committee in a public hearing on April 8 and left pending.