

BILL ANALYSIS

S.B. 12
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State Affairs
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Social media sites are seen by many as the modern public square. While most 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 censorship or discriminatory enforcement of content regulations. S.B. 12 seeks to regulate social media platforms, including by imposing disclosure requirements and requirements to provide certain user complaint procedures. The bill also seeks to regulate interactive computer services, in part by prohibiting the censorship of users' expression. These measures apply to social media platforms and interactive computer services with functionally more than 100 million active monthly users.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

S.B. 12 sets out complaint procedures and disclosure requirements for social media platforms with respect to the management and removal of content and sets out provisions relating to the censorship of users' expression by an interactive computer service.

Regulation of Social Media Platforms

S.B. 12 amends the Business & Commerce Code to require a social media platform to publicly disclose accurate information regarding its content management, data management, and business practices, including specific information regarding how the social media platform does the following:

- 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.

The disclosure 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. A social media platform must publish its disclosure on a website that is easily accessible by the public.

S.B. 12 requires a social media platform to publish an acceptable use policy in a location that is easily accessible to a user and requires the policy to do the following:

- 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 illegal content, illegal activity, or content that potentially violates the acceptable use policy, including the following means:
 - making available for eight hours a day, five days a week, a live company representative to take user complaints through a toll-free telephone number that users may call during regular business hours;
 - an email address or relevant complaint intake mechanism; and
 - a user complaint system; and
- include publication of a quarterly transparency report outlining actions taken to enforce the policy.

S.B. 12 requires a social media platform, as part of its acceptable use policy, to publish a quarterly transparency report that includes, with respect to the preceding three-month period, the following information:

- the total number of instances in which the platform was alerted to illegal content, illegal activity, or potentially policy-violating content by a user complaint, an employee or contractor of the platform, or an internal automated detection tool;
- the number of instances, categorized as prescribed by the bill, in which the platform took certain actions 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 the following:
 - content removal;
 - content demonetization
 - content deprioritization
 - the addition of an assessment to content;
 - account suspension;
 - account removal; or
 - any other action taken in accordance with the platform's acceptable use policy;
- the country of the user who provided the content for each such instance;
- the number of coordinated campaigns, if applicable;
- the number of instances in which a user appealed the decision to remove the user's potentially policy-violating content;
- the percentage of those user appeals that resulted in the restoration of content; and
- a description of each tool, practice, action, or technique used in enforcing the acceptable use policy.

As regards the reported instances in which the 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, the bill requires those instances to be categorized by the following:

- the category of rule violated; and
- the source of the alert of illegal content, illegal activity, or potentially policy-violating content, including:
 - 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 bill requires the platform to publish the information contained in the quarterly report with an open license, in a machine-readable and open format, and in a location that is easily accessible to users.

S.B. 12 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 illegal content or activity or a decision made by the platform to remove content posted by the user. If a platform receives notice of illegal content or illegal activity on the platform, the platform must 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.

S.B. 12 requires a social media platform that removes content based on a violation of the platform's acceptable use policy to take the following actions concurrently with the removal:

- notify the user who provided the content of the removal and explain why the content was removed;
- allow the user to appeal the decision to remove the content; 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 platform's decision to remove the content, the reason for the reversal.

A social media platform is not required to provide a user with notice or an opportunity to appeal if the platform is unable to contact the user after taking reasonable steps to do so or knows that the potentially policy-violating content relates to an ongoing law enforcement investigation.

S.B. 12 requires a social media platform that receives a user complaint that the platform removed content provided by the user that the user believes was not potentially policy-violating content to do the following, not later than the 14th day after the date the platform receives the complaint:

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

S.B. 12 authorizes the attorney general to bring an action against a social media platform to enjoin a violation of the bill's applicable provisions and, if an injunction is granted, to recover costs incurred, including reasonable attorney's fees and reasonable investigative costs.

Discourse on Interactive Web-Based Platforms

S.B. 12 amends the Civil Practice and Remedies Code to 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 any of the following:

- 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.

The bill specifies that this prohibition is applicable only to expression that is shared or received in Texas and is applicable regardless of whether the viewpoint in question is expressed on the service or elsewhere.

S.B. 12 excludes the following from the bill's prohibition of censorship:

- 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; or
- 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.

S.B. 12 authorizes a user to bring an action against an interactive computer service that violates the bill's applicable provisions with respect to the user. The bill entitles such a user who proves that the service was in violation to injunctive relief and to declaratory relief, including costs and reasonable and necessary attorney's fees. If the service fails to promptly comply with a court

order in such an action, the court is required to hold the service in contempt and use all lawful measures to secure immediate compliance with the order, including daily penalties.

S.B. 12 authorizes the attorney general to bring the following actions to enforce the bill's provisions relating to discourse on interactive web-based platforms:

- an action for declaratory relief to have determined any question of construction or validity arising under those provisions and to obtain a declaration of rights, status, or other legal relations with respect to those provisions; and
- an action to enjoin a violation of those provisions.

The bill provides for the recovery of costs and attorney's fees in such actions in which the attorney general prevails as follows:

- costs and reasonable and necessary attorney's fees in an action for declaratory relief; and
- costs, reasonable attorney's fees, and reasonable related investigative costs in an action to enjoin a violation.

S.B. 12 provides that its provisions relating to discourse on interactive web-based platforms do not prohibit an interactive computer service from censoring expression that the service is specifically authorized to censor by federal law or from censoring unlawful expression. The bill provides that such provisions 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. The bill also expressly does not subject an interactive computer service to damages or other legal remedies to the extent the service is protected from those remedies under federal law.

S.B. 12 defines, among other terms, "censor," "expression," and "interactive computer service" as follows:

- "censor" means to block, ban, remove, deplatform, demonetize, de-boost, restrict, deny equal access or visibility to, or otherwise discriminate against expression;
- "expression" means any word, music, sound, still or moving image, number, or other perceivable communication; and
- "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, excluding an Internet service provider.

General Provisions

S.B. 12 restricts the application of its provisions to a user who resides in Texas, does business in Texas, or shares or receives expression or social media platform content in Texas and to a social media platform or interactive computer service, as applicable, that functionally has more than 100 million active users in a calendar month.

S.B. 12 defines "social media platform" for purposes of its provisions as a 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 expressly does not include the following:

- an Internet service provider;
- email; or
- an online service, application, or website that consists primarily of news, sports, entertainment, or other information or content that is not user generated but is preselected by the provider and for which any chat, comments, or interactive functionality is incidental to, directly related to, or dependent on the provision of the content.

The bill defines "user" as a person who posts, uploads, transmits, shares, or otherwise publishes or receives content through a social media platform or expression through an interactive computer service, as applicable.

S.B. 12 states legislative findings 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.

S.B. 12 provides 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 United States Constitution and relevant federal statutes. The legislature further declares 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 provides that if any provision is 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.

EFFECTIVE DATE

September 1, 2021.