

## **BILL ANALYSIS**

S.B. 1626  
By: Hughes  
State Affairs  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

The bill sponsor has informed the committee that social media platforms have increasingly become a crucial part of modern society, serving as a medium for sharing information, connecting with others, and expressing personal opinions, and that with this enhanced power and control, big tech companies have been unafraid to censor certain viewpoints, which infringes on individual civil liberties. The 87th Texas Legislature enacted legislation addressing censorship of or certain other interference with digital expression and discourse on social media platforms. This legislation afforded users the right to bring an action against a social media platform that violates the protections afforded by the legislature and authorized a user who prevails to recover declaratory and injunctive relief. S.B. 1626 seeks to build on those efforts and strengthen the rights of social media users by allowing a user who prevails in such an action to also recover attorney's fees and either actual damages or certain statutory damages. The bill also makes certain other revisions to the existing statutes relating to social media platforms.

### **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. 1626 includes the following legislative findings:

- although H.B. 20, as passed by the 87th Legislature, 2nd Called Session, 2021, clearly applies to social media platforms only in their role as common carriers in facilitating public forums for public debate, it has been misunderstood to apply more broadly and therefore requires clarification;
- an effective state remedy for social media censorship is essential because:
  - the federal government has massively used the dominant social media platforms to abridge the freedom of speech;
  - the combination of qualified immunity impeding damages for past censorship and doctrinal limits on injunctions against the breadth of future censorship leaves Texans and other Americans without adequate judicial remedies for federal censorship;
  - dominant common carriers, especially when given exaggerated dominance by federal privilege, pressure, and coordination, must be available to persons of all points of view, without discrimination; and

- the public square, which is now mainly on the Internet and is enabled by the dominant social media platforms, must be available to persons of all points of view, without discrimination;
- damages are necessary for violations of H.B. 20 because, even though private enforcement of the legislation has never been enjoined, the platforms subject to the legislation have never complied with it;
- the First Amendment to the U.S. Constitution bars the federal government from "abridging" the freedom of speech or of the press, not merely coercing or otherwise "prohibiting" it;
- states have a structurally essential role, dating back to the federal Sedition Act of 1798, of protecting individuals from federal censorship; and
- since H.B. 20 was originally enacted:
  - abundant evidence has come to light that the federal government has massively used dominant social media platforms to abridge the freedom of speech;
  - it has become clear that common carrier legislation like H.B. 20 is the only sort of legal mechanism that can promptly and effectively prevent federal censorship through the social media platforms; and
  - the state has a compelling and even existential interest in adopting this law to prevent the federal threat to the freedom of speech.

S.B. 1626 amends the Business & Commerce Code to revise the definition of "social media platform" under statutory provisions governing such platforms, as follows:

- specifies that, for purposes of the current exclusion of electronic mail from that definition, such mail includes direct messaging or other electronically conveyed mail; and
- excludes from the definition an online service, application, or website:
  - that primarily provides banking, financial, transportation, or sales services, services related to the playing or creation of video games, or another service that is not a communications service; and
  - for which any chat, comments, or interactive functionality is incidental to, directly related to, or dependent on the provision of such a service.

S.B. 1626 amends the Civil Practice and Remedies Code to revise statutory provisions relating to discourse on social media platforms by doing the following:

- changing the threshold that triggers application of those provisions to a social media platform from the platform functionally having more than 50 million active users in the United States in a calendar month to the platform functionally having more than 65 million such users in a calendar month;
- making those provisions inapplicable to a social media platform's newsfeed, the platform's own homepage, or any other service that is:
  - intended to convey a particularized message where the likelihood is great that such a message would be understood by the viewer;
  - not a common carrier service;
  - not strongly analogous to a common carrier service; or
  - not primarily providing transmission of users' expression;
- establishing that nothing in those provisions may be interpreted to permit a social media platform to discriminate in the carriage of users' expression by disseminating the platform's own commentary or expression in a manner that delays or otherwise diminishes the visibility of a user's expression, or delays or otherwise denies equal access to a user's expression, or otherwise censors a user's expression, on the basis of viewpoint in violation of those provisions; and
- expanding the types of relief to which a user who proves that a social media platform violated those provisions is entitled to include the following:
  - reasonable and necessary attorney's fees; and
  - either actual damages or, at the election of the user, statutory damages in the amount of:

- \$100,000 if the user or the user's expression was censored in violation of the applicable statutory provisions relating to the prohibition of censorship; or
- \$1,000 if the user's ability to receive another person's expression was censored in violation of those same statutory provisions.

These bill provisions expanding the relief to which certain users are entitled apply only to a cause of action that accrues on or after the bill's effective date. A cause of action that accrued before the bill's effective date is governed by the law as it existed immediately before the bill's effective date, and that law is continued in effect for that purpose.

**EFFECTIVE DATE**

September 1, 2025.