

## **BILL ANALYSIS**

Senate Research Center  
89R3518 SRA-D

S.B. 1626  
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As Filed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Over the last two decades, social media platforms have evolved into the modern public square that citizens rely on to receive their news and express their political beliefs with others. In light of the nearly universal adoption of a few social media platforms and their practice of regularly censoring certain viewpoints, the legislature passed H.B. 20 in the second special session of the 87th Legislature to protect citizens from speech selection by social media companies.

H.B. 20 gave Texans the right to sue for an injunction if their viewpoints have been censored by social media platforms. However, very few Texans have actually used this law to sue because the law only offers an injunction as a remedy, so someone who sues has no hope of recouping their costs for the lawsuit.

S.B. 1626 would allow for statutory damages if a Texan decides to sue a social media platform for censoring their viewpoint, making it more possible for everyday Texans to take action and protect their right to free speech. The bill allows users to recover either actual damages or statutory damages—\$100,000 if their own speech is censored or \$1,000 if they are blocked from receiving others' speech.

While major platforms have eased overt censorship in response to political shifts, nothing prevents them from reinstating these practices when it serves their interests. Texans need strong legal protections now to deter future censorship before it becomes an issue again.

S.B. 1626 also clarifies the definition of a social media platform and the application of Section 143A.005 of the Civil Practice and Remedies Code.

As proposed, S.B. 1626 amends current law relating to censorship of or certain other interference with digital expression, including expression on social media platforms or through electronic mail messages.

### **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:

- (1) 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, the legislation has been misunderstood to apply more broadly and therefore requires clarification;
- (2) an effective state remedy for social media censorship is essential for certain reasons;
- (3) 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;

(4) 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;

(5) states have a structurally essential role, dating back to the Sedition Act of 1798, of protecting individuals from federal censorship; and

(6) 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 this state has a compelling and even existential interest in adopting this law to prevent the federal threat to the freedom of speech.

SECTION 2. Amends Section 120.001(1), Business & Commerce Code, as follows:

(1) Provides that the term "social media platform" does not include:

(A) makes no changes to this paragraph;

(B) electronic mail, including direct messaging or other electronically conveyed mail; or

(C) an online service, application, or website:

(i) that meets certain criteria, including primarily providing banking, financial, transportation, sales, or another service that is not a communications service; and

(ii) makes a conforming change to this subparagraph.

Makes nonsubstantive changes to this subdivision.

SECTION 3. Amends Section 143A.005, Civil Practice and Remedies Code, as follows:

Sec. 143A.005. New heading: LIMITATION ON EFFECT OF CHAPTER; INTERPRETATION OF CHAPTER. (a) Creates this subsection from existing text and makes no further changes.

(b) Provides that Chapter 143A (Discourse on Social Media Platforms) does not apply 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.

(c) Provides that nothing in this chapter is authorized to 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 this chapter.

SECTION 4. Amends Section 143A.007(b), Civil Practice and Remedies Code, as follows:

(b) Provides that, if the user proves that the social media platform violated this chapter with respect to the user, the user is entitled to recover:

(1)-(2) makes nonsubstantive changes to these subdivisions;

(3) 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 Section 143A.002 or \$1,000 if the user's ability to receive another person's expression was censored in violation of Section 143A.002; and

(4) reasonable and necessary attorney's fees.

SECTION 5. Makes application of Section 143A.007(b), Civil Practice and Remedies Code, as amended by this Act, prospective.

SECTION 6. Effective date: September 1, 2025.