

SECTION 1. The legislature finds that:

(a) although HB 20 clearly applies to social media platforms only in their role as common carriers in facilitating public forums for public debate, HB 20 has been misunderstood to apply more broadly and therefore requires clarification;

(b) an effective state remedy for social media censorship is essential (i) because the federal government has massively used the dominant social media platforms to abridge the freedom of speech, (ii) because 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, (iii) because 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 (iv) because 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;

(c) damages are necessary for violations of HB 20 because, even though private enforcement of it has never been enjoined, the firms subject to it have never complied with it.

SECTION 2. Section 1 of HB 20 is amended by deleting the word "and" at the end of paragraph (3), by substituting a semi-colon for the period at the end of paragraph (4), and by adding the following after paragraph (4):

(5) 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;

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

(7) since this statute was originally enacted, (i) abundant evidence has come to light that the federal government has massively used dominant social media platforms to abridge the freedom of speech, (ii) it has become clear that common carrier legislation like HB 20 is the only sort of legal mechanism that can promptly and effectively prevent federal censorship through the social media platforms, and (iii) this state has a compelling and even existential interest in adopting

this statute to prevent the federal threat to the freedom of speech.¹

SECTION 3. Sec.143A.005 of HB 20 is repealed and the following is substituted:

Sec.A143A.005. LIMITATIONS ON EFFECT OF CHAPTER.

(a) This chapter does not subject a social media platform to damages or other legal remedies to the extent the social media platform is protected from those remedies under federal law.²

(b) This chapter does not apply to a social media platform's newsfeed, its own webpage, or any other service that (i) is intended to convey a particularized message where the likelihood is great that such message would be understood by those who view it or (ii) is not regulable as a common carrier service, is not strongly analogous to a common carrier service, or does not primarily provide transmission of others' expression.³

(c) The term "Social media platform" shall not be interpreted to include an online service, application, or website:

¹ Section 2 is designed to force the Supreme Court to recognize that HB 20 rests on a compelling government interest.

² Subsection (a) preserves the current section 143A.005.

³ Subsection (b)(i) excludes coverage of expressive conduct by echoing the Supreme Court's language in *Texas v. Johnson* and *O'Brien*. Subsection (b)(ii) responds to Justice Kagan's misreading of the statute by disclaiming any coverage of non-common-carrier-type communications services, which she says may be covered.

(A) that primarily provides a banking, financial, transportation, sales, or other service that is not a communications service; and

(B) for which any chat, comments, or interactive communicative functionality is incidental to or dependent on the provision of the service described by Subparagraph (A).⁴

(d) The term “electronic mail” shall not be interpreted to mean merely email but shall be interpreted to include direct messaging and all other electronically conveyed mail;⁵

(e) But nothing in subsection (b), (c), (d), or any other part of this chapter shall be interpreted to permit a social media platform to discriminate in its carriage of others’ expression by disseminating its own commentary or expression in a manner that delays or otherwise diminishes the visibility of the expression of a user, or delays or otherwise denies equal access to it, or otherwise censors it, on the basis of viewpoint in violation of this chapter.⁶

⁴ Subsection (c) responds to Justice Kagan’s commercial examples, such as customer reviews on online-marketplaces like Etsy and friends’ financial exchanges payment service like Venmo. These services don’t really come within the statute because social media platforms are defined as “enabl[ing] users to communicate with other users for the *primary* purpose of posting information, comments, messages, or images.” The customer communications on Etsy and Venmo are merely ancillary to the commercial service, not for the “primary” purpose of posting information, etc. Nonetheless, for the sake of clarity, subsection (c) clarifies that that such communications are excluded. Its phrasing echoes the exclusion for non-common-carrier news services etc. in the statute’s definition of social media platforms.

⁵ Subsection (d) deals with Justice Kagan’s example of direct messaging. The statute’s definition of social media platforms excluded coverage of “electronic mail” and this term should have been understood to include direct messaging. Now it is clarified that the exclusion of “electronic mail” extends to direct mail, etc.

⁶ Subsection (e) addresses the risk that expression by social media platforms will appear in pop-up boxes or other mechanisms that impede the visibility of users’ speech.

SECTION 4. Subsection (b) of Sec.A143A.007 of HB 20 is repealed and in its place the following is adopted:

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

- (1) declaratory relief under Chapter 37, including costs and reasonable and necessary attorney's fees under Section 37.009;
- (2) injunctive relief;
- (3) damages consisting of either actual damages or, at the election of the plaintiff, statutory damages in the amount of \$100,000 for a censored user or \$1,000 for a user affected in the ability to receive the expression of another person; and
- (4) any costs and reasonable and necessary attorney's fees not included in subsection (1).