

## **BILL ANALYSIS**

Senate Research Center

S.B. 12  
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### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Social media sites are the modern public square, and while almost all 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 speech selection by social media companies.

Under federal law, social media sites are expressly protected from liability for certain content moderation decisions. However, under the same section of federal law, states are expressly allowed to regulate websites so long as those regulations are consistent with the federal law.

S.B. 12 includes a legislative finding that the biggest social media sites are acting as common carriers of public speech. It then draws a critical distinction between censoring based on content versus censoring based on viewpoint. These sites need to moderate content like violent or overtly sexual posts. However, they cannot deny you participation based on your viewpoint, including your political preferences or religion.

Under this bill, a social media site of over 100 million users is prohibited from censoring a person or the content that person posts based on the person's viewpoint or on the viewpoint expressed in the post. If the site does block or restrict a user based on viewpoint, that user can file suit against the site to get back online and make the site pay their attorney's fees. Alternatively, the Office of the Attorney General can bring suit on behalf of a user or group of users.

As proposed, S.B. 12 amends current law relating to the censorship of users' expressions by an interactive computer service.

### **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 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.

SECTION 2. Amends Title 6, Civil Practice and Remedies Code, by adding Chapter 143A, as follows:

#### **CHAPTER 143A. DISCOURSE ON INTERACTIVE WEB-BASED PLATFORMS**

Sec. 143A.001. DEFINITIONS. Defines "censor," "expression," "interactive computer service," "receive," "unlawful expression," and "user."

Sec. 143A.002. CENSORSHIP PROHIBITED. (a) Prohibits 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 Texas.

(b) Provides that this section applies regardless of whether the viewpoint is expressed on the interactive computer service or elsewhere.

Sec. 143A.003. **APPLICABILITY OF CHAPTER.** (a) Provides that this chapter applies only to a user who resides in Texas, does business in Texas, or shares or receives expression in Texas.

(b) Provides that this chapter applies only to expression that is shared or received in Texas.

(c) Provides that this chapter applies only to an interactive computer service that functionally has more than 100 million active users in a calendar month.

Sec. 143A.004. **LIMITATION ON EFFECT OF CHAPTER.** Provides that this chapter does not subject an interactive computer service to damages or other legal remedies to the extent the interactive computer service is protected from those remedies under federal law.

Sec. 143A.005. **CONSTRUCTION OF CHAPTER.** Provides that this chapter does not prohibit an interactive computer service from censoring expression that the interactive computer service is specifically authorized to censor by federal law or from censoring unlawful expression.

Sec. 143A.006. **REMEDY.** (a) Provides that a user who successfully asserts a claim against an interactive computer service for a violation of this chapter against that user is entitled to recover declaratory relief under Chapter 37 (Declaratory Judgments), including costs and reasonable and necessary attorney's fees under Section 37.009 (Costs), and injunctive relief.

(b) Requires a court, if an interactive computer service fails to promptly comply with the court's order in an action brought under this section, to hold the interactive computer service in contempt and to use all lawful measures to secure immediate compliance, including daily penalties sufficient to secure immediate compliance.

Sec. 143A.007. **ACTION BY ATTORNEY GENERAL.** (a) Authorizes the attorney general to bring an action for declaratory relief to have determined any question of construction or validity arising under this chapter and to obtain a declaration of rights, status, or other legal relations with respect to this chapter. Authorizes the attorney general to recover costs and reasonable and necessary attorney's fees under Section 37.009 in connection with declaratory relief obtained under this subsection.

(b) Authorizes the attorney general to bring an action to enjoin a violation of this chapter. Authorizes the attorney general, if the injunction is granted, to recover costs and reasonable attorney's fees incurred in bringing the action and reasonable investigative costs incurred in relation to the action.

**SECTION 3.** (a) Provides that, because this Act has been enacted amid uncertainty about the application of the United States Constitution and relevant federal statutes, every provision, section, subsection, sentence, or clause of this Act, and every application of the provisions of this Act to any person, group of persons, or circumstances are severable from each other. Requires that the remaining application of a provision to other persons and circumstances, if any application of any provision of this Act is found by a court to be unconstitutional or invalid, on any ground for any reason whatsoever, be severed and prohibited from being affected. Provides that the legislature further declares that it would have passed this Act, each provision, section, subsection, sentence, or clause of this Act, and all constitutional applications of this Act

regardless of the fact that any provision, section, subsection, sentence, or clause of this Act or applications of this Act were to be declared unconstitutional by any court.

(b) Requires that the applications of a provision that do not present constitutional vagueness problems, if any provision of this Act is found by any court to be unconstitutionally vague, be severed and remain in force.

SECTION 4. Makes application of Chapter 143A, Civil Practice and Remedies Code, as added by this Act, prospective.

SECTION 5. Effective date: September 1, 2021.