

1 A bill to be entitled

2 An act relating to technology transparency; creating
3 s. 106.072, F.S.; providing definitions; prohibiting a
4 social media platform from knowingly deplatforming a
5 candidate; providing fines for violations; authorizing
6 social media platforms to provide free advertising for
7 candidates under specified conditions; providing
8 enforcement mechanism; creating s. 287.137, F.S.;
9 providing definitions; providing requirements for
10 public contracts and economic incentives related to
11 entities that have been convicted or held civilly
12 liable for antitrust violations; prohibiting a public
13 entity from entering into any type contract with a
14 person or affiliate on the antitrust violator vendor
15 list; providing applicability; requiring certain
16 contract documents to contain a specified statement;
17 requiring the Department of Management Services to
18 maintain a list of people or affiliates disqualified
19 from the public contracting and purchasing process;
20 specifying requirements for publishing such list;
21 providing procedures for placing a person or affiliate
22 on the list; providing procedural and legal rights for
23 a person or affiliate to challenge placement on the
24 list; providing a procedure for placing a person
25 temporarily on an antitrust violator vendor list;

26 providing procedural and legal rights for a person to
27 challenge temporary placement on the list; specifying
28 conditions for removing certain entities and
29 affiliates from the list; authorizing a person, under
30 specified conditions, to retain rights or obligations
31 under existing contracts or binding agreements;
32 prohibiting a person who has been placed on antitrust
33 violator vendor list from receiving certain economic
34 incentives; providing exceptions; providing
35 enforcement authority; creating s. 501.2041, F.S.;
36 providing definitions; authorizing the Department of
37 Legal Affairs to bring specified actions against
38 social media platforms for failure to comply with
39 specified requirements and prohibitions; specifying
40 requirements that must be contained when notification
41 is given by a social platform for certain purposes;
42 providing an exception to notification requirements;
43 authorizing the department to investigate suspected
44 violations under the Deceptive and Unfair Trade
45 Practices Act; specifying circumstances under which a
46 private cause of action may be brought; specifying how
47 damages are to be calculated; providing construction
48 for violations of certain provisions of this act;
49 specifying powers of the Department of Legal Affairs
50 related to investigations related to acts of shadow

51 banning by social media platforms; granting the
 52 department specified subpoena powers; providing
 53 enforcement authority; amending s. 501.212, F.S.;
 54 conforming a provision to changes made by the act;
 55 providing a severability clause; providing an
 56 effective date.

57
 58 Be It Enacted by the Legislature of the State of Florida:

59
 60 Section 1. Section 106.072, Florida Statutes, is created
 61 to read:

62 106.072 Social media deplatforming of political
 63 candidates.-

64 (1) As used in this section, the term:

65 (a) "Candidate" has the same meaning as in s.
 66 106.011(3)(e).

67 (b) "Deplatform" has the same meaning as in s. 501.2041.

68 (c) "Social media platform" has the same meaning as in s.
 69 501.2041.

70 (2) A social media platform may not knowingly deplatform a
 71 candidate. Upon a finding of a violation of this section by the
 72 Elections Commission, in addition to the remedies provided in
 73 ss. 106.265 and 106.27, the social media platform may be fined
 74 \$100,000 per day for statewide candidates and \$10,000 per day
 75 for other candidates.

76 (3) A social media platform that knowingly provides free
 77 advertising for a candidate must inform the candidate of such
 78 in-kind contribution. Posts, content, material, and comments by
 79 candidates that are shown on the platform in the same or similar
 80 way as other user's posts, content, material, and comments is
 81 not considered free advertising.

82 (4) This section may only be enforced to the extent not
 83 inconsistent with federal law and 47 U.S.C. s. 230(e)(3), and
 84 notwithstanding any other provision of state law.

85 Section 2. Section 287.137, Florida Statutes, is created
 86 to read:

87 287.137 Antitrust violations; denial or revocation of the
 88 right to transact business with public entities; denial of
 89 economic benefits.—

90 (1) As used in this section, the term:

91 (a) "Affiliate" means:

92 1. A predecessor or successor of a person convicted of or
 93 held civilly liable for an antitrust violation; or

94 2. An entity under the control of any natural person who
 95 is active in the management of the entity and who has been
 96 convicted of, or held civilly liable for, an antitrust
 97 violation. The term includes those officers, directors,
 98 executives, partners, shareholders, employees, members, and
 99 agents who are active in the management of an affiliate. The
 100 ownership by one person of shares constituting a controlling

101 interest in another person, or a pooling of equipment or income
102 among persons when not for fair market value under an arm's
103 length agreement, is a prima facie case that one person controls
104 another person. The term also includes a person who knowingly
105 enters into a joint venture with a person who has violated an
106 antitrust law during the preceding 36 months.

107 (b) "Antitrust violation" means any state or federal
108 antitrust law as determined in a civil or criminal proceeding
109 brought by the Attorney General, a state attorney, a similar
110 body or agency of another state, the Federal Trade Commission,
111 or the United States Department of Justice.

112 (c) "Antitrust violator vendor list" means the list
113 required to be kept by the department pursuant to paragraph
114 (3) (b) .

115 (d) "Conviction or being held civilly liable" or
116 "convicted or held civilly liable" means a criminal finding of
117 guilt or conviction, with or without an adjudication of guilt,
118 being held civilly liable, or having a judgment levied for an
119 antitrust violation, in any federal or state trial court of
120 record relating to charges brought by indictment, information,
121 or complaint on or after July 1, 2021, as a result of a jury
122 verdict, nonjury trial, or entry of a plea of guilty or nolo
123 contendere or other order finding of liability.

124 (e) "Economic incentives" means state grants, cash grants,
125 tax exemptions, tax refunds, tax credits, state funds, and other

126 state incentives under chapter 288 or administered by Enterprise
127 Florida, Inc.

128 (f) "Person" means a natural person or an entity organized
129 under the laws of any state or of the United States which
130 operates as a social media platform, as defined in s. 501.2041,
131 with the legal power to enter into a binding contract and which
132 bids or applies to bid on contracts let by a public entity, or
133 which otherwise transacts or applies to transact business with a
134 public entity. The term "person" includes those officers,
135 directors, executives, partners, shareholders, employees,
136 members, and agents who are active in the management of an
137 entity.

138 (g) "Public entity" means the state and any of its
139 departments or agencies.

140 (2) (a) A person or affiliate who has been placed on the
141 antitrust violator vendor list following a conviction or being
142 held civilly liable for an antitrust violation may not submit a
143 bid, proposal, or reply for any new contract to provide any
144 goods or services to a public entity; may not submit a bid,
145 proposal, or reply for a new contract with a public entity for
146 the construction or repair of a public building or public work;
147 may not submit a bid, proposal, or reply on new leases of real
148 property to a public entity; may not be awarded or perform work
149 as a contractor, supplier, subcontractor, or consultant under a
150 new contract with a public entity; and may not transact new

151 business with a public entity.

152 (b) A public entity may not accept a bid, proposal, or
153 reply from, award a new contract to, or transact new business
154 with any person or affiliate on the antitrust violator vendor
155 list unless that person or affiliate has been removed from the
156 list pursuant to paragraph (3) (e).

157 (c) This subsection does not apply to contracts that were
158 awarded or business transactions that began before a person or
159 an affiliate was placed on the antitrust violator vendor list,
160 and in no event before July 1, 2021.

161 (3) (a) Beginning July 1, 2021, all invitations to bid,
162 requests for proposals, and invitations to negotiate, as defined
163 in s. 287.012, and any contract document described in s. 287.058
164 shall contain a statement informing persons of the provisions of
165 paragraph (2) (a).

166 (b) The department shall maintain an antitrust violator
167 vendor list of the names and addresses of the people or
168 affiliates who have been disqualified from the public
169 contracting and purchasing process under this section. The
170 department shall publish the initial antitrust violator vendor
171 list on January 1, 2022, and shall publish an updated version of
172 the list quarterly thereafter. The revised quarterly list shall
173 also be electronically posted. Notwithstanding this paragraph, a
174 person or affiliate disqualified from the public contracting and
175 purchasing process pursuant to this section is disqualified as

176 | of the date the final order is entered.

177 | (c)1. Upon receiving reasonable information from any
178 | source that a person was convicted or held civilly liable, the
179 | department shall investigate the information and determine
180 | whether good cause exists to place that person or an affiliate
181 | of that person on the antitrust violator vendor list. If good
182 | cause exists, the department shall notify the person or
183 | affiliate in writing of its intent to place the name of that
184 | person or affiliate on the antitrust violator vendor list, and
185 | of the person's or affiliate's right to a hearing, the procedure
186 | that must be followed, and the applicable time requirements. If
187 | the person or affiliate does not request a hearing, the
188 | department shall enter a final order placing the name of the
189 | person or affiliate on the antitrust violator vendor list. A
190 | person or affiliate may not be placed on the antitrust violator
191 | vendor list without receiving an individual notice of intent
192 | from the department.

193 | 2. Within 21 days after receipt of the notice of intent,
194 | the person or affiliate may file a petition for a formal hearing
195 | under ss. 120.569 and 120.57(1) to determine whether it is in
196 | the public interest for the person or affiliate to be placed on
197 | the antitrust violator vendor list. A person or affiliate may
198 | not file a petition for an informal hearing under s. 120.57(2).
199 | The procedures of chapter 120 shall apply to any formal hearing
200 | under this paragraph except, within 30 days after the formal

201 hearing or receipt of the hearing transcript, whichever is
202 later, the administrative law judge shall enter a final order
203 which shall consist of findings of fact, conclusions of law,
204 interpretation of agency rules, and any other information
205 required by law or rule to be contained in the final order. The
206 final order shall direct the department to place or not place
207 the person or affiliate on the antitrust violator vendor list.
208 The final order of the administrative law judge is final agency
209 action for purposes of s. 120.68.

210 3. In determining whether it is in the public interest to
211 place a person or affiliate on the antitrust violator vendor
212 list under this paragraph, the administrative law judge shall
213 consider the following factors:

214 a. Whether the person or affiliate committed an antitrust
215 violation.

216 b. The nature and details of the antitrust violation.

217 c. The degree of culpability of the person or affiliate
218 proposed to be placed on the antitrust violator vendor list.

219 d. Reinstatement or clemency in any jurisdiction in
220 relation to the antitrust violation at issue in the proceeding.

221 e. The needs of public entities for additional competition
222 in the procurement of goods and services in their respective
223 markets.

224 4. In any proceeding under this paragraph, the department
225 must prove that it is in the public interest for the person or

226 affiliate to whom it has given notice under this paragraph to be
227 placed on the antitrust violator vendor list. Proof that a
228 person was convicted or was held civilly liable, or that an
229 entity is an affiliate of a person constitutes a prima facie
230 case that it is in the public interest for the person or
231 affiliate to whom the department has given notice to be put on
232 the antitrust violator vendor list. Status as an affiliate must
233 be proven by clear and convincing evidence. If the
234 administrative law judge determines that the person was not
235 convicted or that the person was not civilly liable or is not an
236 affiliate of such person, that person or affiliate shall not be
237 placed on the antitrust violator vendor list.

238 5. Any person or affiliate who has been notified by the
239 department of its intent to place his or her name on the
240 antitrust violator vendor list may offer evidence on any
241 relevant issue. An affidavit alone does not constitute competent
242 substantial evidence that the person has not been convicted or
243 is not an affiliate of a person convicted or held civilly
244 liable. Upon establishment of a prima facie case that it is in
245 the public interest for the person or affiliate to whom the
246 department has given notice to be put on the antitrust violator
247 vendor list, the person or affiliate may prove by a
248 preponderance of the evidence that it would not be in the public
249 interest to put him or her on the antitrust violator vendor
250 list, based upon evidence addressing the factors in subparagraph

251 3.

252 (d)1. If a person has been charged or accused of any state
253 or federal antitrust law in a civil or criminal proceeding
254 brought by the Attorney General, a state attorney, the Federal
255 Trade Commission, or the United States Department of Justice on
256 or after July 1, 2021, the Attorney General may, by a finding of
257 probable cause that a person has likely violated the underlying
258 antitrust laws, temporarily place such person on the antitrust
259 violator vendor list until such proceeding has concluded.

260 2. If probable cause exists, the Attorney General shall
261 notify the person in writing of its intent to temporarily place
262 the name of that person on the antitrust violator vendor list,
263 and of the person's right to a hearing, the procedure that must
264 be followed, and the applicable time requirements. If the person
265 does not request a hearing, the Attorney General shall enter a
266 final order temporarily placing the name of the person on the
267 antitrust violator vendor list. A person may not be placed on
268 the antitrust violator vendor list without receiving an
269 individual notice of intent from the Attorney General.

270 3. Within 21 days after receipt of the notice of intent,
271 the person may file a petition for a formal hearing pursuant to
272 ss. 120.569 and 120.57(1) to determine whether it is in the
273 public interest for the person to be temporarily placed on the
274 antitrust violator vendor list. A person may not file a petition
275 for an informal hearing under s. 120.57(2). The procedures of

276 chapter 120 shall apply to any formal hearing under this
277 paragraph.

278 4. In determining whether it is in the public interest to
279 place a person on the antitrust violator vendor list under this
280 paragraph, the administrative law judge shall consider the
281 following factors:

282 a. The likelihood the person committed the antitrust
283 violation.

284 b. The nature and details of the antitrust violation.

285 c. The degree of culpability of the person proposed to be
286 placed on the antitrust violator vendor list.

287 d. The needs of public entities for additional competition
288 in the procurement of goods and services in their respective
289 markets.

290 5. This paragraph does not apply to affiliates.

291 (e)1. A person or affiliate may be removed from the
292 antitrust violator vendor list subject to such terms and
293 conditions as may be prescribed by the administrative law judge
294 upon a determination that removal is in the public interest. In
295 determining whether removal would be in the public interest, the
296 administrative law judge must consider any relevant factors,
297 including, but not limited to, the factors identified in
298 subparagraph (c)3. Upon proof that a person was found not guilty
299 or not civilly liable, the antitrust violation case was
300 dismissed, the court entered a finding in the person's favor,

301 the person's conviction or determination of liability has been
302 reversed on appeal, or that the person has been pardoned, the
303 administrative law judge shall determine that removal of the
304 person or an affiliate of that person from the antitrust
305 violator vendor list is in the public interest. A person or
306 affiliate on the antitrust violator vendor list may petition for
307 removal from the list no sooner than 6 months after the date a
308 final order is entered pursuant to this section but may petition
309 for removal at any time if the petition is based upon a reversal
310 of the conviction or liability on appellate review or pardon.
311 The petition must be filed with the department, and the
312 proceeding must be conducted pursuant to the procedures and
313 requirements of this subsection.

314 2. If the petition for removal is denied, the person or
315 affiliate may not petition for another hearing on removal for a
316 period of 9 months after the date of denial, unless the petition
317 is based upon a reversal of the conviction on appellate review
318 or a pardon. The department may petition for removal before the
319 expiration of such period if, in its discretion, it determines
320 that removal would be in the public interest.

321 (4) The conviction of a person or a person held civilly
322 liable for an antitrust violation, or placement on the antitrust
323 violator vendor list, does not affect any rights or obligations
324 under any contract, franchise, or other binding agreement which
325 predates such conviction or placement on the antitrust violator

326 vendor list.

327 (5) A person who has been placed on the antitrust violator
 328 vendor list is not a qualified applicant for economic incentives
 329 under chapter 288, and such entity shall not be qualified to
 330 receive such economic incentives.

331 (6) This section does not apply to any activities
 332 regulated by the Public Service Commission or to the purchase of
 333 goods or services made by any public entity from the Department
 334 of Corrections, from the nonprofit corporation organized under
 335 chapter 946, or from any qualified nonprofit agency for the
 336 blind or any qualified nonprofit agency for other severely
 337 handicapped under ss. 413.032-413.037.

338 (7) This section may only be enforced to the extent not
 339 inconsistent with federal law and notwithstanding any other
 340 provision of state law.

341 Section 3. Section 501.2041, Florida Statutes, is created
 342 to read:

343 501.2041 Unlawful acts and practices by social media
 344 platforms.-

345 (1) As used in this section, the term:

346 (a) "Algorithm" means a mathematical set of rules that
 347 specifies how a group of data behaves that will assist in
 348 ranking search results and maintaining order or that is used in
 349 sorting or ranking content or material based on relevancy or
 350 other factors instead of using published time or chronological

351 order of such content or material.

352 (b) "Censor" includes any action taken by a social media
353 platform to delete, regulate, restrict, edit, alter, inhibit the
354 publication or republication of, suspend a right to post,
355 remove, or post an addendum to any content or material posted by
356 a user. The term also includes actions to inhibit the ability of
357 a user to be viewable by or to interact with another user of the
358 social media platform.

359 (c) "Deplatform" means the action or practice by a social
360 media platform to permanently delete or ban a user or to
361 temporarily delete or ban a user from the social media platform
362 for more than 60 days.

363 (d) "Journalistic enterprise" means an entity that:

364 1. Publishes in excess of 100,000 words available online
365 with at least 50,000 paid subscribers or 100,000 monthly active
366 users;

367 2. Publishes 100 hours of audio or video available online
368 with at least 100 million viewers annually;

369 3. Operates a cable channel that provides more than 40
370 hours of content per week to more than 100,000 cable television
371 subscribers; or

372 4. Operates under a broadcast license issued by the
373 Federal Communications Commission.

374 (e) "Post-prioritization" means action by a social media
375 platform to place, feature, or prioritize certain content or

376 material ahead of, below, or in a more or less prominent
377 position than others in a newsfeed, feed, view, or in search
378 results. The term does not include post-prioritization of
379 content and material based on payments by a third party,
380 including other users, to the social media platform.

381 (f) "Shadow ban" means action by a social media platform,
382 through any means, whether the action is determined by a natural
383 person or an algorithm, to limit or eliminate the exposure of a
384 user or content or material posted by a user to other users of
385 the social media platform. This term includes acts of shadow
386 banning by a social media platform that are not readily apparent
387 to a user.

388 (g) "Social media platform" means any information service,
389 system, Internet search engine, or access software provider that
390 does business in the state, and provides or enables computer
391 access by multiple users to a computer server, including an
392 Internet platform and/or a social media site. The Internet
393 platform or social media site may be a sole proprietorship,
394 partnership, limited liability company, corporation,
395 association, or other legal entity that does business in the
396 state and that satisfies at least one of the following
397 thresholds:

398 1. Has annual gross revenues in excess of \$100 million, as
399 adjusted in January of each odd-numbered year to reflect any
400 increase in the Consumer Price Index.

401 2. Has at least 100 million monthly individual platform
402 participants globally.

403 (h) "User" means a person who resides or is domiciled in
404 the state and who has an account on a social media platform,
405 regardless of whether the person posts or has posted content or
406 material to the social media platform.

407 (2) A social media platform that fails to comply with any
408 of the provisions of paragraphs (a)-(j) commits an unfair or
409 deceptive act or practice as specified in s. 501.204.

410 (a) A social media platform must publish the standards,
411 including detailed definitions, it uses or has used for
412 determining how to censor, deplatform, and shadow ban.

413 (b) A social media platform must apply censorship,
414 deplatforming, and shadow banning standards in a consistent
415 manner among its users on the platform.

416 (c) A social media platform must inform each user about
417 any changes to its user rules, terms, and agreements before
418 implementing the changes and may not make changes more than once
419 every 30 days.

420 (d) A social media platform may not censor a user's
421 content or material or deplatform a user from the social media
422 platform:

423 1. Without notifying the user who posted or attempted to
424 post the content or material; or

425 2. In a way that violates this part.

426 (e) A social media platform must:

427 1. Provide a mechanism that allows a user to request the
428 number of other individual platform participants who were
429 provided or shown the user's content or posts.

430 2. Provide, upon request, a user with the number of other
431 individual platform participants who were provided or shown
432 content or posts.

433 (f) A social media platform must:

434 1. Categorize algorithms used for post-prioritization and
435 shadow banning.

436 2. Allow a user to opt out of post-prioritization and
437 shadow banning algorithm categories to allow sequential or
438 chronological posts and content.

439 (g) A social media platform must provide users with an
440 annual notice on the use of algorithms for post-prioritization
441 and shadow banning and reoffer annually the opt-out opportunity
442 in subparagraph (2) (f)2.

443 (h) A social media company may not apply or use post-
444 prioritization or shadow banning algorithms for content and
445 material posted by or about a user who is known by the social
446 media platform to be a candidate as defined in s. 106.011(3) (e),
447 beginning from the date of qualification and ending on the date
448 of the election or the date such candidate for office ceases to
449 be a candidate before the date of election. Post-prioritization
450 of certain content or material from or about a candidate for

451 office based on payments to the social media platform by such
452 candidate for office or a third party is not a violation of this
453 paragraph. Social media platforms must provide users with a
454 method to identify themselves as qualified candidates, and may
455 confirm such qualification by reviewing the website of the
456 Division of Elections of the Department of State.

457 (i) A social media platform must allow a user who has been
458 deplatformed to access or retrieve all of the user's
459 information, content, material, and data for at least 60 days
460 after being deplatformed.

461 (j) A social media platform may not take any action to
462 ensor, deplatform, or shadow ban a journalistic enterprise
463 based on the content of its publication or broadcast. Post-
464 prioritization of certain journalistic enterprise content based
465 on payments to the social media platform by such journalistic
466 enterprise is not a violation of this paragraph.

467 (3) For purposes of subparagraph (2) (d)1., a notification
468 must:

469 (a) Be in writing.

470 (b) Be delivered via electronic mail or direct electronic
471 notification to the user within 30 days after the censoring
472 action.

473 (c) Include a thorough rationale explaining the reason
474 that the social media platform censored the user.

475 (d) Include a precise and thorough explanation of how the

476 social media platform became aware of the censored content or
477 material, including a thorough explanation of the algorithms
478 used, if any, to identify or flag the user's content or material
479 as objectionable.

480 (4) Notwithstanding any other provisions of this section,
481 a social media platform is not required to notify a user if the
482 censored content or material is obscene as defined in s.
483 847.001.

484 (5) If the department, by its own inquiry or as a result
485 of a complaint, suspects that a violation of this section is
486 imminent, occurring, or has occurred, the department may
487 investigate the suspected violation in accordance with this
488 part. Based on its investigation, the department may bring a
489 civil or administrative action under this part.

490 (6) A user may only bring a private cause of action for
491 violations of paragraph (2) (b) or subparagraph (2) (d)1. In a
492 private cause of action brought under paragraph (2) (b) or
493 subparagraph (2) (d)1., the court may award the following damages
494 to the user:

495 (a) Up to \$100,000 in statutory damages per proven claim.

496 (b) Actual damages.

497 (c) If aggravating factors are present, punitive damages.

498 (d) Other forms of equitable relief.

499 (e) If the user was deplatformed in violation of paragraph
500 (2) (b), costs and reasonable attorney fees.

501 (7) For purposes of bringing an action under subsection
502 (2) or subsection (6), each failure to comply with the
503 individual provisions of subsection (2) shall be treated as a
504 separate violation, act, or practice.

505 (8) In an investigation by the department into alleged
506 violations of this section, the department's investigative
507 powers include, but are not limited to, the ability to subpoena
508 any algorithm used by a social media platform related to any
509 alleged violation.

510 (9) This section may only be enforced to the extent not
511 inconsistent with federal law and 47 U.S.C. s. 230(e)(3), and
512 notwithstanding any other provision of state law.

513 Section 4. Subsection (2) of section 501.212, Florida
514 Statutes, is amended to read:

515 501.212 Application.—This part does not apply to:

516 (2) Except as provided in s. 501.2041, a publisher,
517 broadcaster, printer, or other person engaged in the
518 dissemination of information or the reproduction of printed or
519 pictorial matter, insofar as the information or matter has been
520 disseminated or reproduced on behalf of others without actual
521 knowledge that it violated this part.

522 Section 5. If any provision of this act or the application
523 thereof to any person or circumstance is held invalid, the
524 invalidity shall not affect other provisions or applications of
525 the act which can be given effect without the invalid provision

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526 | or application, and to this end the provisions of this act are
527 | declared severable.

528 | Section 6. This act shall take effect July 1, 2021.