CHAMBER ACTION Senate House

Representative Ingoglia offered the following:

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Amendment (with title amendment)

Remove everything after the enacting clause and insert: Section 1. The Legislature finds that:

- (1) Social media platforms represent an extraordinary advance in communication technology for Floridians.
- (2) Users should be afforded control over their personal information related to social media platforms.
- (3) Floridians increasingly rely on social media platforms to express their opinions.
- (4) Social media platforms have transformed into the new public town square.

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(5) Social media platforms have become as important for
conveying public opinion as public utilities are for supporting
modern society.
(6) Social media platforms hold a unique place in
preserving first amendment protections for all Floridians and
should be treated similarly to common carriers.
(7) Social media platforms that unfairly censor, shadow
ban, deplatform, or apply post-prioritization algorithms to
Florida candidates, Florida users, or Florida residents are not
acting in good faith.
(8) Social media platforms should not take any action in
bad faith to restrict access or availability to Floridians.
(9) Social media platforms have unfairly censored, shadow
banned, deplatformed, and applied post-prioritization algorithms
to Floridians.
(10) The state has a substantial interest in protecting
its residents from inconsistent and unfair actions by social
media platforms.
(11) The state must vigorously enforce state law to
protect Floridians.
Section 2. Section 106.072, Florida Statutes, is created
to read:
106.072 Social media deplatforming of political

candidates.-

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

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

- (b) "Deplatform" has the same meaning as in s. 501.2041.
- (c) "Social media platform" has the same meaning as in s. 501.2041.
 - (d) "User" has the same meaning as in s. 501.2041.
- (2) A social media platform may not willfully deplatform a candidate for office who is known by the social media platform to be a candidate, beginning on the date of qualification and ending on the date of the election or the date the candidate ceases to be a candidate. A social media platform must provide each user a method by which the user may be identified as a qualified candidate and which provides sufficient information to allow the social media platform to confirm the user's qualification by reviewing the website of the Division of Elections or the website of the local supervisor of elections.
- (3) Upon a finding of a violation of subsection (2) by the Florida Elections Commission, in addition to the remedies provided in ss. 106.265 and 106.27, the social media platform may be fined \$250,000 per day for a candidate for statewide office and \$25,000 per day for a candidate for other offices.
- (4) A social media platform that willfully provides free advertising for a candidate must inform the candidate of such in-kind contribution. Posts, content, material, and comments by candidates which are shown on the platform in the same or

similar	way	as	other	users'	posts	, content,	material,	and
comments	s are	e no	ot cons	sidered	free	advertisino	T.	

- (5) This section may only be enforced to the extent not inconsistent with federal law and 47 U.S.C. s. 230(e)(3), and notwithstanding any other provision of state law.
- Section 3. Section 287.137, Florida Statutes, is created to read:
- 287.137 Antitrust violations; denial or revocation of the right to transact business with public entities; denial of economic benefits.—
 - (1) As used in this section, the term:
 - (a) "Affiliate" means:
- 1. A predecessor or successor of a person convicted of or held civilly liable for an antitrust violation; or
- 2. An entity under the control of any natural person who is active in the management of the entity that has been convicted of or held civilly liable for an antitrust violation. The term includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm's length agreement, is a prima facie case that one person controls another person. The term also includes a person who knowingly enters into a joint

venture with a person who has violated an antitrust law during the preceding 36 months.

- (b) "Antitrust violation" means any failure to comply with a state or federal antitrust law as determined in a civil or criminal proceeding brought by the Attorney General, a state attorney, a similar body or agency of another state, the Federal Trade Commission, or the United States Department of Justice.
- (c) "Antitrust violator vendor list" means the list
 required to be kept by the department pursuant to paragraph
 (3)(b).
- "convicted or held civilly liable" means a criminal finding of responsibility or guilt or conviction, with or without an adjudication of guilt, being held civilly responsible or liable, or having a judgment levied for an antitrust violation in any federal or state trial court of record relating to charges brought by indictment, information, or complaint on or after July 1, 2021, as a result of a jury verdict, nonjury trial, or entry of a plea of guilty or nolo contendere or other finding of responsibility or liability.
- (e) "Economic incentives" means state grants, cash grants, tax exemptions, tax refunds, tax credits, state funds, and other state incentives under chapter 288 or administered by Enterprise Florida, Inc.

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

- (g) "Public entity" means the state and any of its departments or agencies.
- (2) (a) A person or an affiliate who has been placed on the antitrust violator vendor list following a conviction or being held civilly liable for an antitrust violation may not submit a bid, proposal, or reply for any new contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply for a new contract with a public entity for the construction or repair of a public building or public work; may not submit a bid, proposal, or reply on new leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a new contract with a public entity; and may not transact new business with a public entity.
- (b) A public entity may not accept a bid, proposal, or reply from, award a new contract to, or transact new business

with	any	per	rson	or affi	lia [·]	te on	the	anti	trust	violator	venc	<u>dor</u>
list	unle	ess	that	person	or	affi	liate	has	been	removed	from	the
list	purs	suar	nt to	paragr	aph	(3) (≘).					

- (c) This subsection does not apply to contracts that were awarded or business transactions that began before a person or an affiliate was placed on the antitrust violator vendor list or before July 1, 2021, whichever date occurs later.
- (3) (a) Beginning July 1, 2021, all invitations to bid, requests for proposals, and invitations to negotiate, as those terms are defined in s. 287.012, and any contract document described in s. 287.058 must contain a statement informing persons of the provisions of paragraph (2) (a).
- vendor list of the names and addresses of the persons or affiliates who have been disqualified from the public contracting and purchasing process under this section. The department shall electronically publish the initial antitrust violator vendor list on January 1, 2022, and shall update and electronically publish the list quarterly thereafter.

 Notwithstanding this paragraph, a person or an affiliate disqualified from the public contracting and purchasing process pursuant to this section is disqualified as of the date the department enters the final order.
- (c)1. After receiving notice of a judgment, sentence, or order from any source that a person was convicted or held

civilly liable for an antitrust violation and after the department has investigated the information and verified both the judgment, sentence, or order and the identity of the person named in the documentation, the department must immediately notify the person or affiliate in writing of its intent to place the name of that person or affiliate on the antitrust violator vendor list and of the person's or affiliate's right to a hearing, the procedure that must be followed, and the applicable time requirements. If the person or affiliate does not request a hearing, the department shall enter a final order placing the name of the person or affiliate on the antitrust violator vendor list. A person or affiliate may be placed on the antitrust violator vendor list only after the department has provided the person or affiliate with a notice of intent.

2. Within 21 days after receipt of the notice of intent, the person or affiliate may file a petition for a formal hearing under ss. 120.569 and 120.57(1) to determine whether good cause has been shown by the department and whether it is in the public interest for the person or affiliate to be placed on the antitrust violator vendor list. A person or an affiliate may not file a petition for an informal hearing under s. 120.57(2). The procedures of chapter 120 shall apply to any formal hearing under this paragraph except, within 30 days after the formal hearing or receipt of the hearing transcript, whichever is later, the administrative law judge shall enter a final order

Bill No. SB 7072 (2021)

Amendment No.

that shall consist of findings of fact, conclusions of law,
interpretation of agency rules, and any other information
required by law or rule to be contained in the final order. The
final order shall direct the department to place or not place
the person or affiliate on the antitrust violator vendor list.
The final order of the administrative law judge is final agency
action for purposes of s. 120.68.

- 3. In determining whether it is in the public interest to place a person or an affiliate on the antitrust violator vendor list under this paragraph, the administrative law judge shall consider the following factors:
- a. Whether the person or affiliate was convicted or held civilly liable for an antitrust violation.
 - b. The nature and details of the antitrust violation.
- c. The degree of culpability of the person or affiliate proposed to be placed on the antitrust violator vendor list.
- d. Reinstatement or clemency in any jurisdiction in relation to the antitrust violation at issue in the proceeding.
- e. The needs of public entities for additional competition in the procurement of goods and services in their respective markets.
 - f. The effect of the antitrust violations on Floridians.
- 4. After the person or affiliate requests a formal hearing, the burden shifts to the department to prove that it is in the public interest for the person or affiliate to whom it

has given notice under this paragraph to be placed on the antitrust violator vendor list. Proof that a person was convicted or was held civilly liable or that an entity is an affiliate of such person constitutes a prima facie case that it is in the public interest for the person or affiliate to whom the department has given notice to be put on the antitrust violator vendor list. Status as an affiliate must be proven by clear and convincing evidence. Unless the administrative law judge determines that the person was convicted or that the person was civilly liable or is an affiliate of such person, that person or affiliate may not be placed on the antitrust violator vendor list.

5. Any person or affiliate who has been notified by the department of its intent to place his or her name on the antitrust violator vendor list may offer evidence on any relevant issue. An affidavit alone does not constitute competent substantial evidence that the person has not been convicted or is not an affiliate of a person convicted or held civilly liable. Upon establishment of a prima facie case that it is in the public interest for the person or affiliate to whom the department has given notice to be put on the antitrust violator vendor list, the person or affiliate may prove by a preponderance of the evidence that it would not be in the public interest to put him or her on the antitrust violator vendor

237 <u>list, based upon evidence addressing the factors in subparagraph</u>
238 3.

- (d) 1. Upon receipt of an information or indictment from any source that a person has been charged with or accused of violating any state or federal antitrust law in a civil or criminal proceeding, including a civil investigative demand, brought by the Attorney General, a state attorney, the Federal Trade Commission, or the United States Department of Justice on or after July 1, 2021, the Attorney General must determine whether there is probable cause that a person has likely violated the underlying antitrust laws, which justifies temporary placement of such person on the antitrust violator vendor list until such proceeding has concluded.
- 2. If the Attorney General determines probable cause exists, the Attorney General shall notify the person in writing of its intent to temporarily place the name of that person on the antitrust violator vendor list, and of the person's right to a hearing, the procedure that must be followed, and the applicable time requirements. If the person does not request a hearing, the Attorney General shall enter a final order temporarily placing the name of the person on the antitrust violator vendor list. A person may be placed on the antitrust violator vendor list only after being provided with a notice of intent from the Attorney General.

3. Within 21 days after receipt of the notice of intent,
the person may file a petition for a formal hearing pursuant to
ss. 120.569 and 120.57(1) to determine whether it is in the
public interest for the person to be temporarily placed on the
antitrust violator vendor list. A person may not file a petition
for an informal hearing under s. 120.57(2). The procedures of
chapter 120 shall apply to any formal hearing under this
paragraph.

- 4. In determining whether it is in the public interest to place a person on the antitrust violator vendor list under this paragraph, the administrative law judge shall consider the following factors:
- a. The likelihood the person will be convicted or held civilly liable for the antitrust violation.
 - b. The nature and details of the antitrust violation.
- c. The degree of culpability of the person proposed to be placed on the antitrust violator vendor list.
- <u>d.</u> The needs of public entities for additional competition in the procurement of goods and services in their respective markets.
 - e. The effect of the antitrust violations on Floridians.
- 5. The Attorney General has the burden to prove that it is in the public interest for the person to whom it has given notice under this paragraph to be temporarily placed on the antitrust violator vendor list. Unless the administrative law

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judge determines that it is in the public interest to

temporarily place a person on the antitrust violator vendor

list, that person shall not be placed on the antitrust violator vendor list.

- 6. This paragraph does not apply to affiliates.
- (e)1. A person or an affiliate may be removed from the antitrust violator vendor list subject to such terms and conditions as may be prescribed by the administrative law judge upon a determination that removal is in the public interest. In determining whether removal is in the public interest, the administrative law judge must consider any relevant factors, including, but not limited to, the factors identified in subparagraph (c) 3. Upon proof that a person was found not guilty or not civilly liable, the antitrust violation case was dismissed, the court entered a finding in the person's favor, the person's conviction or determination of liability has been reversed on appeal, or the person has been pardoned, the administrative law judge shall determine that removal of the person or an affiliate of that person from the antitrust violator vendor list is in the public interest. A person or an affiliate on the antitrust violator vendor list may petition for removal from the list no sooner than 6 months after the date a final order is entered pursuant to this section but may petition for removal at any time if the petition is based upon a reversal of the conviction or liability on appellate review or pardon.

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The petition must be filed with the department, and the proceeding must be conducted pursuant to the procedures and requirements of this subsection.

- 2. If the petition for removal is denied, the person or affiliate may not petition for another hearing on removal for a period of 9 months after the date of denial unless the petition is based upon a reversal of the conviction on appellate review or a pardon. The department may petition for removal before the expiration of such period if, in its discretion, it determines that removal is in the public interest.
- (4) The conviction of a person or a person being held civilly liable for an antitrust violation, or placement on the antitrust violator vendor list, does not affect any rights or obligations under any contract, franchise, or other binding agreement that predates such conviction, finding of civil liability, or placement on the antitrust violator vendor list.
- vendor list is not a qualified applicant for economic incentives under chapter 288, and such person shall not be qualified to receive such economic incentives. This subsection does not apply to economic incentives that are awarded before a person is placed on the antitrust violator vendor list or before July 1, 2021.
 - (6) This section does not apply to:

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335	(a) Any activity regulated by the Public Service
336	Commission;
337	(b) The purchase of goods or services made by any public
338	entity from the Department of Corrections, from the nonprofit
339	corporation organized under chapter 946, or from any qualified
340	nonprofit agency for the blind or other severely handicapped
341	persons under ss. 413.032-413.037; or
342	(c) Any contract with a public entity to provide any goods
343	or services for emergency response efforts related to a state of
344	emergency declaration issued by the Governor.
345	(7) This section may only be enforced to the extent not
346	inconsistent with federal law and notwithstanding any other
347	provision of state law.
348	Section 4. Section 501.2041, Florida Statutes, is created
349	to read:
350	501.2041 Unlawful acts and practices by social media
351	<pre>platforms</pre>
352	(1) As used in this section, the term:
353	(a) "Algorithm" means a mathematical set of rules that
354	specifies how a group of data behaves and that will assist in
355	ranking search results and maintaining order or that is used in
356	sorting or ranking content or material based on relevancy or

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order of such content or material.

other factors instead of using published time or chronological

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

- (c) "Deplatform" means the action or practice by a social media platform to permanently delete or ban a user or to temporarily delete or ban a user from the social media platform for more than 14 days.
- (d) "Journalistic enterprise" means an entity doing business in Florida that:
- 1. Publishes in excess of 100,000 words available online with at least 50,000 paid subscribers or 100,000 monthly active users;
- 2. Publishes 100 hours of audio or video available online with at least 100 million viewers annually;
- 3. Operates a cable channel that provides more than 40 hours of content per week to more than 100,000 cable television subscribers; or
- 4. Operates under a broadcast license issued by the Federal Communications Commission.
- 382 <u>(e) "Post-prioritization" means action by a social media</u>
 383 <u>platform to place, feature, or prioritize certain content or</u>

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

- (f) "Shadow ban" means action by a social media platform, through any means, whether the action is determined by a natural person or an algorithm, to limit or eliminate the exposure of a user or content or material posted by a user to other users of the social media platform. This term includes acts of shadow banning by a social media platform which are not readily apparent to a user.
- (g) "Social media platform" means any information service,
 system, Internet search engine, or access software provider
 that:
- 1. Provides or enables computer access by multiple users
 to a computer server, including an Internet platform or a social
 media site;
- 2. Operates as a sole proprietorship, partnership, limited
 liability company, corporation, association, or other legal
 entity;
 - 3. Does business in the state; and
 - 4. Satisfies at least one of the following thresholds:

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a.	Has	annual	gross	revenues	in ex	cess	of S	\$100	mill	ion,	as
adjusted	lin	January	of eac	ch odd-nu	mbered	l year	to	refl	ect	any	
				Price Ind						<u> </u>	

- b. Has at least 100 million monthly individual platform participants globally.
- (h) "User" means a person who resides or is domiciled in this state and who has an account on a social media platform, regardless of whether the person posts or has posted content or material to the social media platform.
- (2) A social media platform that fails to comply with any of the provisions of this subsection commits an unfair or deceptive act or practice as specified in s. 501.204.
- (a) A social media platform must publish the standards, including detailed definitions, it uses or has used for determining how to censor, deplatform, and shadow ban.
- (b) A social media platform must apply censorship, deplatforming, and shadow banning standards in a consistent manner among its users on the platform.
- (c) A social media platform must inform each user about any changes to its user rules, terms, and agreements before implementing the changes and may not make changes more than once every 30 days.
- (d) A social media platform may not censor or shadow ban a user's content or material or deplatform a user from the social media platform:

433		<u>1.</u>	Without	notifying	, the	user	who	posted	or	attempted	to
434	post	the	content	or materi	.al;	or					

- 2. In a way that violates this part.
- (e) A social media platform must:
- 1. Provide a mechanism that allows a user to request the number of other individual platform participants who were provided or shown the user's content or posts.
- 2. Provide, upon request, a user with the number of other individual platform participants who were provided or shown content or posts.
 - (f) A social media platform must:
- 1. Categorize algorithms used for post-prioritization and shadow banning.
- 2. Allow a user to opt out of post-prioritization and shadow banning algorithm categories to allow sequential or chronological posts and content.
- (g) A social media platform must provide users with an annual notice on the use of algorithms for post-prioritization and shadow banning and reoffer annually the opt-out opportunity in subparagraph (f) 2.
- (h) A social media platform may not apply or use post-prioritization or shadow banning algorithms for content and material posted by or about a user who is known by the social media platform to be a candidate as defined in s. 106.011(3)(e), beginning on the date of qualification and ending on the date of

Post-prioritization of certain content or material from or about a candidate for office based on payments to the social media platform by such candidate for office or a third party is not a violation of this paragraph. A social media platform must provide each user a method by which the user may be identified as a qualified candidate and which provides sufficient information to allow the social media platform to confirm the user's qualification by reviewing the website of the Division of Elections or the website of the local supervisor of elections.

- (i) A social media platform must allow a user who has been deplatformed to access or retrieve all of the user's information, content, material, and data for at least 60 days after the user receives the notice required under subparagraph (d)1.
- (j) A social media platform may not take any action to censor, deplatform, or shadow ban a journalistic enterprise based on the content of its publication or broadcast. Post-prioritization of certain journalistic enterprise content based on payments to the social media platform by such journalistic enterprise is not a violation of this paragraph. This paragraph does not apply if the content or material is obscene as defined in s. 847.001.
- (3) For purposes of subparagraph (2) (d) 1., a notification must:

183	(a)	Ве	in	writing.
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- (b) Be delivered via electronic mail or direct electronic notification to the user within 7 days after the censoring action.
- (c) Include a thorough rationale explaining the reason that the social media platform censored the user.
- (d) Include a precise and thorough explanation of how the social media platform became aware of the censored content or material, including a thorough explanation of the algorithms used, if any, to identify or flag the user's content or material as objectionable.
- (4) Notwithstanding any other provisions of this section, a social media platform is not required to notify a user if the censored content or material is obscene as defined in s. 847.001.
- of a complaint, suspects that a violation of this section is imminent, occurring, or has occurred, the department may investigate the suspected violation in accordance with this part. Based on its investigation, the department may bring a civil or administrative action under this part. For the purpose of bringing an action pursuant to this section, ss. 501.211 and 501.212 do not apply.
- (6) A user may only bring a private cause of action for violations of paragraph (2)(b) or subparagraph (2)(d)1. In a

508	private cause of action brought under paragraph (2)(b) or
509	subparagraph (2)(d)1., the court may award the following
510	remedies to the user:
511	(a) Up to \$100,000 in statutory damages per proven claim.
512	(b) Actual damages.
513	(c) If aggravating factors are present, punitive damages.
514	(d) Other forms of equitable relief, including injunctive
515	relief.
516	(e) If the user was deplatformed in violation of paragraph
517	(2) (b), costs and reasonable attorney fees.
518	(7) For purposes of bringing an action in accordance with
519	subsections (5) and (6), each failure to comply with the
520	individual provisions of subsection (2) shall be treated as a
521	separate violation, act, or practice. For purposes of bringing
522	an action in accordance with subsections (5) and (6), a social
523	media platform that censors, shadow bans, deplatforms, or
524	applies post-prioritization algorithms to candidates and users
525	in the state is conclusively presumed to be both engaged in
526	substantial and not isolated activities within the state and
527	operating, conducting, engaging in, or carrying on a business,
528	and doing business in this state, and is therefore subject to
529	the jurisdiction of the courts of the state.
530	(8) In an investigation by the department into alleged
531	violations of this section, the department's investigative

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powers include, but are not limited to, the ability to subpoena

533	any algorithm used by a social media platform related to any
534	alleged violation.
535	(9) This section may only be enforced to the extent not
536	inconsistent with federal law and 47 U.S.C. s. 230(e)(3), and
537	notwithstanding any other provision of state law.
538	Section 5. Subsection (2) of section 501.212, Florida
539	Statutes, is amended to read:
540	501.212 Application.—This part does not apply to:
541	(2) Except as provided in s. 501.2041, a publisher,
542	broadcaster, printer, or other person engaged in the
543	dissemination of information or the reproduction of printed or
544	pictorial matter, insofar as the information or matter has been
545	disseminated or reproduced on behalf of others without actual
546	knowledge that it violated this part.
547	Section 6. If any provision of this act or the application
548	thereof to any person or circumstance is held invalid, the
549	invalidity shall not affect other provisions or applications of
550	the act which can be given effect without the invalid provision
551	or application, and to this end the provisions of this act are
552	declared severable.
553	Section 7. This act shall take effect July 1, 2021.
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Remove lines 2-4 and insert:

TITLE AMENDMENT

HOUSE AMENDMENT

Bill No. SB 7072 (2021)

Amendment No.

558	An act relating to social media platforms; providing
559	legislative findings; creating s. 106.072, F.S.; defining
560	terms; prohibiting a social media platform from willfully
561	deplatforming a

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