

**FOR CONSIDERATION** By the Committee on Governmental Oversight and Accountability

585-03666-21

20217072pb

1                                   A bill to be entitled  
2       An act relating to social media platforms; creating s.  
3       106.072, F.S.; defining terms; prohibiting a social  
4       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 authority consistent with federal and  
9       state law; creating s. 287.137, F.S.; defining terms;  
10      providing requirements for public contracts and  
11      economic incentives related to entities that have been  
12      convicted or held civilly liable for antitrust  
13      violations; prohibiting a public entity from entering  
14      into any type of contract with a person or an  
15      affiliate on the antitrust violator vendor list;  
16      providing applicability; requiring certain contract  
17      documents to contain a specified statement; requiring  
18      the Department of Management Services to maintain a  
19      list of people or affiliates disqualified from the  
20      public contracting and purchasing process; specifying  
21      requirements for publishing such list; providing  
22      procedures for placing a person or an affiliate on the  
23      list; providing procedural and legal rights for a  
24      person or affiliate to challenge placement on the  
25      list; providing a procedure for temporarily placing a  
26      person on an antitrust violator vendor list; providing  
27      procedural and legal rights for a person to challenge  
28      temporary placement on the list; specifying conditions  
29      for removing certain entities and affiliates from the

585-03666-21

20217072pb

30 list; authorizing a person, under specified  
31 conditions, to retain rights or obligations under  
32 existing contracts or binding agreements; prohibiting  
33 a person who has been placed on the antitrust violator  
34 vendor list from receiving certain economic  
35 incentives; providing exceptions; providing  
36 enforcement authority consistent with federal and  
37 state law; creating s. 501.2041, F.S.; defining terms;  
38 providing that social media platforms that fail to  
39 comply with specified requirements and prohibitions  
40 commit an unfair or deceptive act or practice;  
41 requiring a notification given by a social media  
42 platform for censoring content or deplatforming a user  
43 to contain certain information; providing an exception  
44 to the notification requirements; authorizing the  
45 Department of Legal Affairs to investigate suspected  
46 violations under the Deceptive and Unfair Trade  
47 Practices Act and bring specified actions for such  
48 violations; specifying circumstances under which a  
49 private cause of action may be brought; specifying how  
50 damages are to be calculated; providing construction  
51 for violations of certain provisions of this act;  
52 granting the department specified subpoena powers;  
53 providing enforcement authority consistent with  
54 federal and state law; amending s. 501.212, F.S.;  
55 conforming a provision to changes made by the act;  
56 providing for severability; providing an effective  
57 date.

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585-03666-21

20217072pb

59 Be It Enacted by the Legislature of the State of Florida:

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

63 106.072 Social media deplatforming of political  
64 candidates.—

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

66 (a) "Candidate" has the same meaning as in s.

67 106.011(3)(e).

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

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

70 501.2041.

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

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

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

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

585-03666-21

20217072pb

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

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

92 (a) "Affiliate" means:

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

95 2. An entity under the control of any natural person who is  
96 active in the management of the entity and who has been  
97 convicted of or held civilly liable for an antitrust violation.

98 The term includes those officers, directors, executives,  
99 partners, shareholders, employees, members, and agents who are  
100 active in the management of an affiliate. The ownership by one  
101 person of shares constituting a controlling interest in another  
102 person, or a pooling of equipment or income among persons when  
103 not for fair market value under an arm's length agreement, is a  
104 prima facie case that one person controls another person. The  
105 term also includes a person who knowingly enters into a joint  
106 venture with a person who has violated an antitrust law during  
107 the preceding 36 months.

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

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

115 (3) (b).

116 (d) "Conviction or being held civilly liable" or "convicted

585-03666-21

20217072pb

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

125 (e) “Economic incentives” means state grants, cash grants,  
126 tax exemptions, tax refunds, tax credits, state funds, and other  
127 state incentives under chapter 288 or administered by Enterprise  
128 Florida, Inc.

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

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

140 (2) (a) A person or an 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

585-03666-21

20217072pb

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 or  
160 before July 1, 2021.

161 (3) (a) Beginning July 1, 2021, all invitations to bid,  
162 requests for proposals, and invitations to negotiate, as those  
163 terms are defined in s. 287.012, and any contract document  
164 described in s. 287.058 must contain a statement informing  
165 persons of the provisions of 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 electronically publish the initial antitrust  
171 violator vendor list on January 1, 2022, and shall update and  
172 electronically publish the list quarterly thereafter.  
173 Notwithstanding this paragraph, a person or an affiliate  
174 disqualified from the public contracting and purchasing process

585-03666-21

20217072pb

175 pursuant to this section is disqualified as of the date the  
176 final order is entered.

177 (c)1. Upon receiving reasonable information from any source  
178 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 of  
185 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 an affiliate may not be placed on the antitrust  
191 violator vendor list without receiving an individual notice of  
192 intent 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 an 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 that shall consist of findings of fact, conclusions of law,

585-03666-21

20217072pb

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 an 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 such 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



585-03666-21

20217072pb

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 may 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

585-03666-21

20217072pb

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.

585-03666-21

20217072pb

291 (e)1. A person or an 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 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 an  
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

585-03666-21

20217072pb

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 that  
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 regulated  
332 by the Public Service Commission or to the purchase of goods or  
333 services made by any public entity from the Department of  
334 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 persons 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 and that will assist in  
348 ranking search results and maintaining order or that is used in

585-03666-21

20217072pb

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 Federal  
373 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, a feed, a view, or in search

585-03666-21

20217072pb

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 which are not readily  
387 apparent 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 this state and provides or enables computer  
391 access by multiple users to a computer server, including an  
392 Internet platform or a social media site. The Internet platform  
393 or social media site may be a sole proprietorship, partnership,  
394 limited liability company, corporation, association, or other  
395 legal entity that does business in this state and that satisfies  
396 at least one of the following thresholds:

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

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

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

406 (2) A social media platform that fails to comply with any

585-03666-21

20217072pb

407 of the provisions of this subsection commits an unfair or  
408 deceptive act or practice as specified in s. 501.204.

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

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

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

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

421 1. Without notifying the user who posted or attempted to  
422 post the content or material; or

423 2. In a way that violates this part.

424 (e) A social media platform must:

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

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

431 (f) A social media platform must:

432 1. Categorize algorithms used for post-prioritization and  
433 shadow banning.

434 2. Allow a user to opt out of post-prioritization and  
435 shadow banning algorithm categories to allow sequential or

585-03666-21

20217072pb

436 chronological posts and content.

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

441 (h) A social media platform may not apply or use post-  
442 prioritization or shadow banning algorithms for content and  
443 material posted by or about a user who is known by the social  
444 media platform to be a candidate as defined in s. 106.011(3)(e),  
445 beginning from the date of qualification and ending on the date  
446 of the election or the date such candidate for office ceases to  
447 be a candidate before the date of election. Post-prioritization  
448 of certain content or material from or about a candidate for  
449 office based on payments to the social media platform by such  
450 candidate for office or a third party is not a violation of this  
451 paragraph. Social media platforms must provide users with a  
452 method to identify themselves as qualified candidates and may  
453 confirm such qualification by reviewing the website of the  
454 Division of Elections of the Department of State.

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

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



585-03666-21

20217072pb

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

467 (a) Be in writing.

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

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

473 (d) Include a precise and thorough explanation of how the  
474 social media platform became aware of the censored content or  
475 material, including a thorough explanation of the algorithms  
476 used, if any, to identify or flag the user's content or material  
477 as objectionable.

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

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

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

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

585-03666-21

20217072pb

494 (b) Actual damages.

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

496 (d) Other forms of equitable relief.

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

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

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

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

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

513 501.212 Application.—This part does not apply to:

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

520 Section 5. If any provision of this act or the application  
521 thereof to any person or circumstance is held invalid, the  
522 invalidity shall not affect other provisions or applications of

585-03666-21

20217072pb

523 the act which can be given effect without the invalid provision  
524 or application, and to this end the provisions of this act are  
525 declared severable.

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