

## CHAPTER 2021-32

### Senate Bill No. 7072

An act relating to social media platforms; providing legislative findings; creating s. 106.072, F.S.; defining terms; prohibiting a social media platform from willfully deplatforming a candidate; providing fines for violations; authorizing social media platforms to provide free advertising for candidates under specified conditions; providing enforcement authority consistent with federal and state law; creating s. 287.137, F.S.; defining terms; providing requirements for public contracts and economic incentives related to entities that have been convicted or held civilly liable for antitrust violations; prohibiting a public entity from entering into any type of contract with a person or an affiliate on the antitrust violator vendor list; providing applicability; requiring certain contract documents to contain a specified statement; requiring the Department of Management Services to maintain a list of people or affiliates disqualified from the public contracting and purchasing process; specifying requirements for publishing such list; providing procedures for placing a person or an affiliate on the list; providing procedural and legal rights for a person or affiliate to challenge placement on the list; providing a procedure for temporarily placing a person on an antitrust violator vendor list; providing procedural and legal rights for a person to challenge temporary placement on the list; specifying conditions for removing certain entities and affiliates from the list; authorizing a person, under specified conditions, to retain rights or obligations under existing contracts or binding agreements; prohibiting a person who has been placed on the antitrust violator vendor list from receiving certain economic incentives; providing exceptions; providing enforcement authority consistent with federal and state law; creating s. 501.2041, F.S.; defining terms; providing that social media platforms that fail to comply with specified requirements and prohibitions commit an unfair or deceptive act or practice; requiring a notification given by a social media platform for censoring content or deplatforming a user to contain certain information; providing an exception to the notification requirements; authorizing the Department of Legal Affairs to investigate suspected violations under the Deceptive and Unfair Trade Practices Act and bring specified actions for such violations; specifying circumstances under which a private cause of action may be brought; specifying how damages are to be calculated; providing construction for violations of certain provisions of this act; granting the department specified subpoena powers; providing enforcement authority consistent with federal and state law; amending s. 501.212, F.S.; conforming a provision to changes made by the act; providing for severability; providing an effective date.

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

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.

(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.—

(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 are not considered free advertising.

(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).

(d) “Conviction or being held civilly liable” or “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 person or affiliate on the antitrust violator vendor list unless that person or affiliate has been removed from the list pursuant to paragraph (3)(e).

(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).

(b) The department shall maintain an antitrust violator 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 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 list, based upon evidence addressing the factors in subparagraph 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.

d. 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 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. 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.

(5) A person who has been placed on the antitrust violator 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:

(a) Any activity regulated by the Public Service Commission;

(b) The purchase of goods or services made by any public entity from the Department of Corrections, from the nonprofit corporation organized under chapter 946, or from any qualified nonprofit agency for the blind or other severely handicapped persons under ss. 413.032-413.037; or

(c) Any contract with a public entity to provide any goods or services for emergency response efforts related to a state of emergency declaration issued by the Governor.

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

Section 4. Section 501.2041, Florida Statutes, is created to read:

501.2041 Unlawful acts and practices by social media platforms.—

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

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

(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.

(e) “Post-prioritization” means action by a social media platform to place, feature, or prioritize certain content or 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:

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

b. Has at least 100 million monthly individual platform participants globally.

The term does not include any information service, system, Internet search engine, or access software provider operated by a company that owns and operates a theme park or entertainment complex as defined in s. 509.013.

(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:

1. Without notifying the user who posted or attempted to post the content or material; 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 the election or the date the candidate ceases to be a candidate. 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:

(a) Be in writing.

(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.

(5) If the department, by its own inquiry or as a result 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 private cause of action brought under paragraph (2)(b) or subparagraph (2)(d)1., the court may award the following remedies to the user:

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

(b) Actual damages.

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

(d) Other forms of equitable relief, including injunctive relief.

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

(7) For purposes of bringing an action in accordance with subsections (5) and (6), each failure to comply with the individual provisions of subsection (2) shall be treated as a separate violation, act, or practice. For purposes of bringing an action in accordance with subsections (5) and (6), a social media platform that censors, shadow bans, deplatforms, or applies post-prioritization algorithms to candidates and users in the state is conclusively presumed to be both engaged in substantial and not isolated activities within the state and operating, conducting, engaging in, or carrying on a business, and doing business in this state, and is therefore subject to the jurisdiction of the courts of the state.

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

(9) 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 5. Subsection (2) of section 501.212, Florida Statutes, is amended to read:

501.212 Application.—This part does not apply to:

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

Section 6. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.

Section 7. This act shall take effect July 1, 2021.

Approved by the Governor May 24, 2021.

Filed in Office Secretary of State May 24, 2021.