A bill to be entitled
An act relating to social media platforms; creating s. 106.072, F.S.; defining terms; prohibiting a social media platform from knowingly 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. 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.

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

(3) A social media platform that knowingly 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.

(4) 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 2. 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 and who 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 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 guilt or conviction, with or without an adjudication of guilt, being held civilly 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 order finding of 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.

(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 people 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 final order is entered.

(c)1. Upon receiving reasonable information from any source that a person was convicted or held civilly liable, the department shall investigate the information and determine whether good cause exists to place that person or an affiliate of that person on the antitrust violator vendor list. If good cause exists, the department shall 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 an affiliate may not be placed on the antitrust violator vendor list without receiving an individual notice of intent from the department.

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 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 committed 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.

4. In any proceeding under this paragraph, the department must 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. If the
administrative law judge determines that the person was not
convicted or that the person was not civilly liable or is not 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. If a person has been charged or accused of any state
or federal antitrust law in a civil or criminal proceeding
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 may, by a finding of
probable cause that a person has likely violated the underlying
antitrust laws, temporarily place such person on the antitrust
violator vendor list until such proceeding has concluded.

2. If 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 not be placed on the antitrust violator vendor list without receiving an individual 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 committed 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.

5. 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 would be 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 would be in the public interest.

(4) The conviction of a person or a person 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 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 entity shall not be qualified to receive such economic incentives.

(6) This section does not apply to any activities regulated by the Public Service Commission or to 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 any qualified nonprofit agency for other severely handicapped persons under ss. 413.032-413.037.

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

Section 3. 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 60 days.

(d) “Journalistic enterprise” means an entity 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 based on payments by a third party,
including other users, 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
does business in this state and provides or enables computer
access by multiple users to a computer server, including an
Internet platform or a social media site. The Internet platform
or social media site may be a sole proprietorship, partnership,
limited liability company, corporation, association, or other
legal entity that does business in this state and that satisfies
at least one of the following thresholds:

1. 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.

2. 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 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 from the date of qualification and ending on the date of the election or the date such candidate for office ceases to be a candidate before the date of election. 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. Social media platforms must provide users with a method to identify themselves as qualified candidates and may confirm such qualification by reviewing the website of the Division of Elections of the Department of State.

(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 being deplatformed.

(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.
(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 30 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.

(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 damages 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.
(e) If the user was deplatformed in violation of paragraph 2(b), costs and reasonable attorney fees.
(7) For purposes of bringing an action under subsection (2) or subsection (6), each failure to comply with the individual provisions of subsection (2) shall be treated as a separate violation, act, or practice.
(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 4. 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 5. 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 6. This act shall take effect July 1, 2021.