A bill to be entitled

An act relating to technology transparency; creating s. 106.072, F.S.; providing definitions; prohibiting a social media platform from knowingly deplatforming a candidate; providing fines for violations; authorizing social media platforms to provide fee advertising for candidates under specified conditions; providing enforcement mechanism; creating s. 287.137, F.S.; providing definitions; providing requirements for public contracts and economic incentives related to entities who have been convicted or held civilly liable for antitrust violations; prohibiting a public entity from entering into any type contract with a person or 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 affiliate on the list; providing procedural and legal rights for a person or affiliate to challenge placement on the list; providing a procedure for placing a person temporarily on an antitrust violator vendor list;

DRAFT

providing procedural and legal rights for a person to challenge temporary placement on 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 antitrust violator vendor list from receiving certain economic incentives; providing exceptions; providing enforcement methodology; creating s. 501.2041, F.S.; providing definitions; authorizing the Department of Legal Affairs to bring specified actions against social media platforms for failure to comply with specified requirements; specifying requirements that must be contained when notification is given by a social platform for certain purposes; providing an exception to notification requirements; authorizing the department to investigate suspected violations under the Deceptive and Unfair Trade Practices Act; specifying circumstances under which a private cause of action may be brought; specifying how damages are to be calculated; specifying powers of the Department of Legal Affairs related to investigations related to acts of shadow banning by social media platforms; providing construction for violations of certain provisions of this act; granting the department specified subpoena powers; providing enforcement

DRAFT

authority; amending s. 501.212, F.S.; conforming a provision to changes made by the act; providing a severability clause; 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. 501.172.

(c) "Social media platform" has the same meaning as in s. 501.172.

(2) A social media platform may not knowingly deplatform a candidate. Upon a finding of a violation of this section by the Elections Commission, 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 report such advertising as an in-kind contribution to the candidate under state election laws. Posts, content, material, and comments by candidates that are

DRAFT

shown on the platform in the same or similar way as other user's posts, content, material, and comments is 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, 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

DRAFT

under the laws of any state or of the United States who 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 "person" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of an entity.

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

(2)(a) A person or 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

DRAFT

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, and in no event before July 1, 2021.

(3)(a) Beginning July 1, 2021, all invitations to bid, requests for proposals, and invitations to negotiate, as defined in s. 287.012, and any contract document described in s. 287.058 shall 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 publish the initial antitrust violator vendor list on January 1, 2022, and shall publish an updated version of the list quarterly thereafter. The revised quarterly list shall also be electronically posted. Notwithstanding this paragraph, a person or 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

DRAFT

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 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 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, which shall consist of findings of fact, conclusions of law, interpretation of agency rules, and any other information

DRAFT

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 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 a person constitutes a prima facie

DRAFT

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 shall 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 so 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, 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 or affiliate to be temporarily placed on the antitrust violator vendor list. A person or 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.

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 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 that 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

DRAFT

interest. A person 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 which 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 and shall not be qualified to receive such economic incentives.

DRAFT

(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 accredited nonprofit workshop certified 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 specify how a group of data behaves 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. This term also includes actions to inhibit the ability

DRAFT

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, feed, view, or 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,

DRAFT

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 that 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 the state, and provides or enables computer access by multiple users to a computer server, including an Internet platform and/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 is organized or operated for the profit or financial benefit of its shareholders or other owners, that does business in the 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 users globally.

(h) "User" means a person who resides or is domiciled in the 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.

DRAFT

(2) A social media platform that fails to comply with any of the provisions of paragraphs (a)-(j) commits a violation of this section.

(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 users who were provided or shown the user's content or posts.

2. Provide, upon request, a user with the number of other users who were provided or shown content or posts.

DRAFT

(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 (2)(f)2.

(h) A social media company 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

DRAFT

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 of 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.

DRAFT

(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.

(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.

DRAFT

(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.

DRAFT