

By the Committee on Governmental Oversight and Accountability

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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

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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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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:

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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

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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

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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

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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,

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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

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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

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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.

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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

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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

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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

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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 technology platform
389 or access software provider that does business in the state and
390 provides or enables computer access by multiple users in a
391 public digital forum for the primary purpose of connecting with
392 other users and creating and sharing user generated content over
393 the Internet. The Internet platform or social media site may be
394 a sole proprietorship, partnership, limited liability company,
395 corporation, association, or other legal entity that does
396 business in this state and that satisfies at least one of the
397 following thresholds:

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

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

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

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407 (2) A social media platform that fails to comply with any
408 of the provisions of this subsection commits an unfair or
409 deceptive act or practice as specified in s. 501.204.

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

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

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

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

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

424 2. In a way that violates this part.

425 (e) A social media platform must:

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

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

432 (f) A social media platform must:

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

435 2. Allow a user to opt out of post-prioritization and

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436 shadow banning algorithm categories to allow sequential or
437 chronological posts and content.

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

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

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

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

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465 enterprise is not a violation of this paragraph.

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

468 (a) Be in writing.

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

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

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

479 (4) Notwithstanding any other provisions of this section, a
480 social media platform is not required to notify a user if the
481 censored content or material is obscene as defined in s.
482 847.001.

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

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

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- 494 (a) Up to \$100,000 in statutory damages per proven claim.
495 (b) Actual damages.
496 (c) If aggravating factors are present, punitive damages.
497 (d) Other forms of equitable relief.
498 (e) If the user was deplatformed in violation of paragraph
499 (2) (b), costs and reasonable attorney fees.
500 (7) For purposes of bringing an action under subsection (2)
501 or subsection (6), each failure to comply with the individual
502 provisions of subsection (2) shall be treated as a separate
503 violation, act, or practice.
504 (8) In an investigation by the department into alleged
505 violations of this section, the department's investigative
506 powers include, but are not limited to, the ability to subpoena
507 any algorithm used by a social media platform related to any
508 alleged violation.
509 (9) This section may only be enforced to the extent not
510 inconsistent with federal law and 47 U.S.C. s. 230(e) (3), and
511 notwithstanding any other provision of state law.

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

514 501.212 Application.—This part does not apply to:

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

521 Section 5. If any provision of this act or the application
522 thereof to any person or circumstance is held invalid, the

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523 invalidity shall not affect other provisions or applications of
524 the act which can be given effect without the invalid provision
525 or application, and to this end the provisions of this act are
526 declared severable.

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

528