
A BILL FOR AN ACT

RELATING TO SOCIAL MEDIA CENSORSHIP.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that social media
2 platforms represent an extraordinary advance in communication
3 technology for the people of Hawaii, and that the people of
4 Hawaii are increasingly reliant on social media platforms to
5 express their opinions. It is commonplace for users of social
6 media platforms to want control over their personal information
7 related to their social media accounts.

8 The legislature also finds that social media platforms have
9 transformed into the new public town square. Where free speech
10 and the exchange of ideas used to occur in the physical realm,
11 more and more often we see the important conversations of
12 consequence taking place in the virtual realm. Before people can
13 physically talk about ideas, they read about them first on
14 forums like Facebook, Twitter, Instagram, Reddit, and many other
15 video sharing sites like YouTube, TikTok, Rumble, and many
16 others like them. Social media platforms have become as
17 important for conveying public opinion as public utilities are



1 for supporting modern society. Social media platforms hold a
2 unique place in preserving first amendment protections for all
3 residents of Hawaii, and should be treated similarly to common
4 carriers.

5 Social media platforms that unfairly censor, shadow ban,
6 deplatform, or apply post-prioritization algorithms to Hawaii
7 candidates, Hawaii users, and Hawaii residents are not acting in
8 good faith. Hawaii has a substantial interest in protecting its
9 residents from inconsistent and unfair actions by social media
10 platforms, and Hawaii must vigorously enforce state law to
11 protect its residents.

12 The purpose of this Act is to prohibit social media and
13 other companies from censoring information posted on their
14 platforms.

15 SECTION 2. The Hawaii Revised Statutes is amended by
16 adding a new chapter to be appropriately designated and to read
17 as follows:

18 **"CHAPTER**

19 **ANTI-BIG-TECH CENSORSHIP ACT**

20 **PART I. GENERAL PROVISIONS**



1 § -1 **Definitions.** As used in this chapter, unless the
2 context indicates otherwise:

3 "Candidate" has the same meaning as in §11-302.

4 "Deplatform" means the action or practice by a social media
5 platform to permanently delete or ban a user or to temporarily
6 delete or ban a user from the social media platform for more
7 than fourteen days.

8 "Social media platform" means any information service,
9 system, internet search engine, or access software provider
10 that:

11 (1) Provides or enables computer access by multiple users
12 to a computer server, including an internet platform or social
13 media site;

14 (2) Operates as a sole proprietorship, partnership, limited
15 liability company, corporation, association, or other legal
16 entity;

17 (3) Does business in the state; and

18 (4) Satisfies at least one of the following thresholds:

19 (a) Has annual gross revenues in excess of \$100 million, as
20 adjusted in January of each odd-numbered year to reflect
21 any increase in the consumer price index.



1 (b) Has at least 100 million monthly individual platform
2 participants globally.

3 "User" means a person who resides or is domiciled in this
4 state and who has an account on a social media platform,
5 regardless of whether the person posts or has posted content or
6 material to the social media platform.

7 § -2 Social media deplatforming of political candidates.

8 (1) A social media platform may not willfully deplatform a
9 candidate for office who is known by the social media platform
10 to be a candidate, beginning on the date of qualification and
11 ending on the date of the election or the date the candidate
12 ceases to be a candidate. A social media platform must provide
13 each user a method by which the user may be identified as a
14 qualified candidate and which provides sufficient information to
15 allow the social media platform to confirm the user's
16 qualification by reviewing the website of the Office of
17 Elections or the website of the local supervisor of elections.

18 (2) Upon a finding of a violation of subsection (1) by the
19 Hawaii State Ethics commission, the social media platform may be
20 fined \$250,000 per day for a candidate for statewide office and
21 \$25,000 per day for a candidate for other offices.



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(3) 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.

(4) This section may only be enforced to the extent not inconsistent with federal law and 42 U.S.C. §230(e)(3), and notwithstanding any other provision of state law.

§ -3 Unlawful acts and practices by social media platforms. (a) As used in this section:

(1) "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.

(2) "Censor" includes any section taken by a social media platform to delete, regulate, restrict, edit, alter, inhibit the publication or republication of, suspend a



1 right to post, remove, or post an addendum to any content
2 or material posted by a user. The term also includes
3 actions to inhibit the ability of a user to be viewable by
4 or to interact with another user of the social media
5 platform.

6 (3) "Journalistic enterprise" means any entity doing
7 business in Hawaii that:

8 (A) Publishes in excess of one hundred thousand words
9 available online, with at least fifty thousand paid
10 subscribers, or one hundred thousand monthly active
11 users;

12 (B) Publishes one hundred hours of audio or video
13 available online with at least one hundred million
14 viewers annually;

15 (C) Operates a cable channel that provides more than
16 forty hours of content per week to more than one
17 hundred thousand cable television subscribers; or

18 (D) Operates under a Broadcast license issued by the
19 Federal Communications Commission.

20 (4) "Post-prioritization" means action by a social media
21 platform to place, feature, or prioritize certain content



1 or material ahead of, below, or in a more or less prominent
2 position that others in a newsfeed, a feed, a view, or in
3 search results. The term does not include post-
4 prioritization of content and material of a third party,
5 including other users, based on payments by that third
6 party, to the social media platform.

7 (5) "Shadow ban" means action by a social media platform,
8 through any means, whether the action is determined by a
9 natural person or an algorithm, to limit or eliminate the
10 exposure of a user or content or material posted by a user
11 or other users of the social media platform. This term
12 includes acts of shadow banning by a social media platform
13 which are not readily apparent to a user.

14 (b) A social media platform that fails to comply with any
15 of the provisions of this section commits an unfair or deceptive
16 act.

17 (1) A social media platform must publish the standards,
18 including detailed definitions, it uses or has used for
19 determining how to censor, deplatform, and shadow ban.



1 (2) A social media platform must apply censorship,
2 deplatforming, and shadow banning standards in a consistent
3 manner among its users on the platform.

4 (3) A social media platform must inform each user about any
5 changes to its rules, terms, and agreements before
6 implementing the changes and may not make changes more than
7 once every thirty days.

8 (4) A social media platform may not censor or shadow ban a
9 user's content or material or deplatform a user from the
10 social media platform:

11 (A) Without notifying the user who posted or attempted
12 to post the content or material; or

13 (B) In a way that violates this section.

14 (5) A social media platform must:

15 (A) Provide a mechanism that allows a user to request
16 the number of other individual platform participants
17 who were provided or shown the user's content or
18 posts.

19 (B) Provide, upon request, a user with the number of
20 other individual platform participants who were
21 provided or shown content or posts.



1 (6) A social media platform must:

2 (A) Categorize algorithms used for post-prioritization
3 and shadow banning.

4 (B) Allow a user to opt out of post-prioritization and
5 shadow banning algorithm categories to allow
6 sequential or chronological post and content.

7 (7) A social media platform must provide users with an
8 annual notice on the use of algorithms for post-prioritization
9 and shadow banning and reoffer annually the opt-out opportunity
10 in subparagraph (b) (6) (B) .

11 (8) A social media platform may not apply or use post-
12 prioritization or shadow banning algorithms for content and
13 material posted by or about a user who is known by the social
14 media platform to be a candidate, beginning on the date of
15 qualification and ending on the date of the election or the date
16 the candidate ceases to be a candidate. Post-prioritization of
17 certain content or material from or about a candidate for office
18 based on payments to the social media platform by such candidate
19 for office or a third party is not a violation of this
20 paragraph. A social media platform must provide each user a
21 method by which the user may be identified as a qualified



1 candidate and which provides sufficient information to allow the
2 social media platform to confirm the user's qualification by
3 reviewing the website of the Office of Elections or the website
4 of the local supervisor of elections.

5 (9) A social media platform must allow a user to has been
6 deplatformed to access or retrieve all of the user's
7 information, content, material, and data for at least sixty days
8 after the user receives the notice required.

9 (10) A social media platform may not take any action to
10 censor, deplatform, or shadow ban a journalistic enterprise
11 based on the content of its publication or broadcast. Post-
12 prioritization of certain journalistic enterprise content based
13 on payments to the social media platform by such journalistic
14 enterprise is not a violation of this paragraph.

15 (c) For purposes of subsection (b) (4) (A), a notification
16 must:

17 (1) Be in writing;

18 (2) Be delivered via electronic mail or direct electronic
19 notification to the user within seven days after the
20 censoring action.



1 (3) Include a thorough rationale explaining the reason that
2 the social media platform censored the user.

3 (4) Include a precise and thorough explanation of how the
4 social media platform became aware of the censored content
5 or material, including a thorough explanation of the
6 algorithms used, if any, to identify or flag the user's
7 content or material as objectionable.

8 (d) Notwithstanding any other provisions of this section, a
9 social media platform is not required to notify a user if the
10 censored content or material is obscene.

11 (e) If the department, by its own inquiry or as a result of
12 a complaint, suspects that a violation of this section is
13 imminent, occurring, or has occurred, the department may
14 investigate the suspected violation in accordance with this
15 chapter. Based on the investigation, the department may bring a
16 civil or administrative action under this chapter.

17 (f) A user may only bring a private cause of action for
18 violations of sections (b) (2) or (b) (4) (A). In a private cause
19 of action brought under paragraph (b) (2) or (b) (4) (A), the court
20 may award the user:

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



1 (2) Actual damages.

2 (3) If aggravating factors are present, punitive damages.

3 (4) Other forms of equitable relief, including injunctive
4 relief.

5 (5) If the user was deplatformed in violation of (b) (2),
6 costs and reasonable attorneys' fees.

7 (g) For purposes of bringing an action in accordance with
8 (e) and (f), each failure to comply with the individual
9 provisions of subsection (b) shall be treated as a separate
10 violation, act, or practice. For purposes of bringing an action
11 in accordance with section (e) and (f), a social media platform
12 that censors, shadow bans, deplatforms, or applies post-
13 prioritization algorithms to candidates and users in the state
14 is conclusively presumed to be both engaged in substantial and
15 not isolated activities within the state and operating,
16 conducting, engaging in, or carrying on a business, and doing
17 business in this state, and is therefore subject to the
18 jurisdiction of the courts of the state.

19 (h) In an investigation by the department into alleged
20 violations of this section, the department's investigative
21 powers include, but are not limited to, the ability to subpoena



1 any algorithm used by a social media platform related to any
2 alleged violation.

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

6 SECTION 3. Chapter 480, Hawaii Revised Statutes, is amended
7 by amending §480-1 and adding a new section to be properly
8 designated and to read as follows:

9 **"[PART I. ANTITRUST PROVISIONS]**

10 **§480-1 Definitions.** As used in this chapter:

11 "Class action" includes the definition as provided in rule
12 23 of the Hawaii rules of civil procedure.

13 "Commodity" includes, but is not restricted to, goods,
14 merchandise, produce, choses in action, and any other article of
15 commerce. It also includes trade or business in service trades,
16 transportation, insurance, banking, lending, advertising,
17 bonding, and any other business.

18 "Consumer" means a natural person who, primarily for
19 personal, family, or household purposes, purchases, attempts to
20 purchase, or is solicited to purchase goods or services or who
21 commits money, property, or services in a personal investment.



1 "De facto class action" means an action that has not been
2 certified by the court but includes identical considerations as
3 provided in Hawaii rules of civil procedure rule 23 such as
4 common questions of law or fact, claims or defenses of the
5 representative parties are typical of the claims or defenses of
6 nonparties and, as a practical matter, the disposition of the
7 interest of the class or other members not parties to the
8 adjudications would substantially impair or impede their ability
9 to protect their interest.

10 "Person" or "persons" includes individuals, corporations,
11 firms, trusts, partnerships, limited partnerships, limited
12 liability partnerships, limited liability limited partnerships,
13 limited liability companies, and incorporated or unincorporated
14 associations, existing under or authorized by the laws of this
15 State, or any other state, or any foreign country.

16 "Purchase" or "buy" includes "contract to buy", "lease",
17 "contract to lease", "acquire a license", and "contract to
18 acquire a license".

19 "Purchaser" includes the equivalent terms of "purchase" and
20 "buy".



1 "Sale" or "sell" includes "contract to sell", "lease",
2 "contract to lease", "license", and "contract to license".

3 "Seller" includes the equivalent terms of "sale" and
4 "sell".

5 "Affiliate" means:

6 (a) A predecessor or successor of a person convicted or
7 held civilly liable for an antitrust violation; or

8 (b) An entity under the control of any natural person who
9 is active in the management of the entity that has been
10 convicted of or held civilly liable for an antitrust violation.

11 The term includes those officers, directors, executives,
12 partners, shareholders, employees, members, and agents who are
13 active in the management of an affiliate. The ownership by one
14 person of shares constituting a controlling interest in another
15 person, or a pooling of equipment or income among persons when
16 not for fair market value under an arm's length agreement, is a
17 prima facie case that one person controls another person. The
18 term also includes a person who knowingly enters into a joint
19 venture with a person who has violated an antitrust law during
20 the preceding thirty-six months.



1 "Antitrust violation" means any failure to comply with a
2 state or federal antitrust law as determined in a civil or
3 criminal proceeding brought by the Attorney General, a state
4 attorney, a similar body or agency of another state, the Federal
5 Trade Commission, or the United States Department of Justice.

6 "Antitrust violator vendor list" means the list required to
7 be kept by the department pursuant to §480- (b) (2) below.

8 "Conviction or being held civilly liable" or "convicted or
9 held civilly liable" means a criminal finding of responsibility
10 or guilt or conviction, with or without an adjudication of
11 guilt, being held civilly responsible or liable, or having a
12 judgment levied for an antitrust violation in any federal or
13 state trial court of record relating to charges brought by
14 indictment, information, or complaint on or after July 1, 2023,
15 as a result of jury verdict, nonjury trial, or entry of a plea
16 of guilty or nolo contendere or other finding of responsibility
17 or liability.

18 "Public entity" means the state and any of its departments
19 or agencies."

20 "§480- Antitrust violations; denial or revocation of the
21 right to transact between public entities; denial of economic



1 benefits. (a)(1) A person or an affiliate who has been placed on
2 the antitrust violator vendor list following a conviction or
3 being held civilly liable for an antitrust violation may not
4 submit a bid, proposal, or reply for any new contract to provide
5 any goods or services to a public entity; may not submit a bud,
6 proposal, or reply for a new contract with a public entity for
7 the construction or repair of a public building or public work;
8 may not submit a bid, proposal, or reply on new leases of real
9 property to a public entity; may not be awarded or perform work
10 as a contractor, supplier, subcontractor, or consultant under a
11 new contract with a public entity; and may not transact new
12 business with a public entity.

13 (2) A public entity may not accept a bid, proposal, or
14 reply from, award a new contract to, or transact new business
15 with any person or affiliate on the antitrust violator vendor
16 list unless that person or affiliate has been removed from the
17 list pursuant to paragraph (b)(2) below.

18 (3) This subsection does not apply to contracts that were
19 awarded or business transaction that began before a person or an
20 affiliate was placed on the antitrust violator vendor list or
21 before July 1, 2023, whichever date occurs later.



1 (b) (1) Beginning on July 1, 2023, all invitations to bid,
2 requests for proposals, and invitations to negotiate, and
3 any contract document must contain a statement informing
4 persons of the provisions of paragraph (a) (1).

5 (2) The department shall maintain an antitrust violator
6 vendor list of the names and addresses of the persons or
7 affiliates who have been disqualified from the public
8 contracting and purchasing process under this section. The
9 department shall electronically publish the initial
10 antitrust violator vendor list on January 1, 2024, and
11 shall update and electronically publish the list quarterly
12 thereafter. Notwithstanding this paragraph, a person or an
13 affiliate disqualified from the public contracting and
14 purchasing process pursuant to this section is disqualified
15 as of the date the department enters the final order.

16 (c) (1) After receiving notice of a judgment, sentence, or
17 order from any source that a person was convicted or held
18 civilly liable for an antitrust violation and after the
19 department has investigated the information and verified
20 both the judgment, sentence, or order and the identity of
21 the person named in the documentation, the department must



1 immediately notify the person or affiliate in writing of
2 its intent to place the name of that person or affiliate on
3 the antitrust violator vendor list and of the person's or
4 affiliate's right to a hearing, the procedure that must be
5 followed, and the applicable time requirements. If the
6 person or affiliate does not request a hearing, the
7 department shall enter a final order placing the name of
8 the person or affiliate on the antitrust violator vendor
9 list. A person or affiliate may be placed on the antitrust
10 violator vendor list only after the department has provided
11 the person or affiliate with a notice of intent.

12 (2) Within twenty-one days after receipt of the notice of
13 intent, the person or affiliate may file a petition for a
14 formal hearing to determine whether good cause has been
15 shown by the department and whether it is in the public
16 interest for the person to be placed on the antitrust
17 violator vendor list. A person or an affiliate may not file
18 a petition for an informal hearing.

19 (3) In determining whether it is in the public interest to
20 place a person or affiliate on the antitrust violator



1 vendor list under this paragraph, the following factors
2 shall be considered:

3 (a) Whether the person or affiliate was convicted or
4 held civilly liable for an antitrust violation.

5 (b) The nature and details of the antitrust violation.

6 (c) The degree of culpability of the person or
7 affiliate proposed to be placed on the antitrust
8 violator vendor list.

9 (d) Reinstatement or clemency in any jurisdiction in
10 relation to the antitrust violation at issue in the
11 proceeding.

12 (e) The needs of the public entities for additional
13 competition in the procurement of goods and services
14 in their respective markets.

15 (f) The effect of the antitrust violations on
16 residents of Hawaii.

17 (4) After the person or affiliate requests a formal
18 hearing, the burden shifts to the department to prove that it is
19 in the public interest for the person or affiliate to whom it
20 has given notice under this paragraph to be placed on the
21 antitrust violator vendor list. Proof that a person was



1 convicted or was held civilly liable or that an entity is an
2 affiliate of such person constitutes a prima facie case that it
3 is in the public interest for the person or affiliate to whom
4 the department has given notice to be put on the antitrust
5 violator vendor list. Status as an affiliate must be proven by
6 clear and convincing evidence.

7 (5) Any person or affiliate who has been notified by the
8 department of its intent to place his or her name on the
9 antitrust violator vendor list may offer evidence on any
10 relevant issue. An affidavit alone does not constitute competent
11 substantial evidence that the person has not been convicted or
12 is not an affiliate of a person convicted or held civilly
13 liable. Upon establishment of a prima facie case that it is in
14 the public interest for the person or affiliate to whom the
15 department has given notice to be put on the antitrust violator
16 vendor list, the person or affiliate may prove by a
17 preponderance of the evidence that it would not be in the public
18 interest to put him or her on the antitrust violator vendor
19 list, based on evidence addressing the factors in subparagraph
20 (3).



1 (d) (1) Upon receipt of an information or indictment from
2 any source that a person has been charged with or accused
3 of violating any state or federal antitrust law in a civil
4 or criminal proceeding, including a civil investigative
5 demand, brought by the Attorney General, a state attorney,
6 the Federal Trade Commission, or the United States
7 Department of Justice on or after July 1, 2023, the
8 Attorney General must determine whether there is probable
9 cause that a person has likely violated the underlying
10 antitrust laws, which justifies temporary placement of such
11 person on the antitrust violator vendor list until such
12 proceeding has concluded.

13 (2) If the Attorney General determines probable cause
14 exists, the Attorney General shall notify the person in
15 writing of its intent to temporarily place the name of that
16 person on the antitrust violator vendor list, and of the
17 person's right to a hearing, the procedure that must be
18 followed, and the applicable time requirements. If the
19 person does not request a hearing, the Attorney General
20 shall enter a final order temporarily placing the name of
21 the person on the antitrust violator vendor list. A person



1 may be placed on the antitrust violator vendor list only
2 after being provided with a notice of intent from the
3 Attorney General.

4 (3) Within twenty-one days after receipt of the notice of
5 intent, the person may file a petition for a formal hearing
6 to determine whether it is in the public interest for the
7 person to be temporarily placed on the antitrust violator
8 vendor list. A person may not file a petition for an
9 informal hearing.

10 (4) In determining whether it is in the public interest to
11 place a person on the antitrust violator vendor list under
12 this paragraph, the following factors shall be considered:

13 (A) The likelihood the person will be convicted or
14 held civilly liable for the antitrust violation.

15 (B) The nature and details of the antitrust violation.

16 (C) The degree of culpability of the person proposed
17 to be placed on the antitrust violator vendor list.

18 (D) The needs of the public entities for additional
19 competition in the procurement of goods and services
20 in their respective markets.



1 (E) The effect of the antitrust violations on
2 residents of Hawaii.

3 (5) The Attorney General has the burden to prove that it is
4 in the public interest for the person to whom it has given
5 notice under this paragraph to be temporarily placed on the
6 antitrust violator vendor list.

7 (6) This paragraph does not apply to affiliates.

8 (a) (1) A person or an affiliate may be removed from the
9 antitrust violator vendor list subject to such terms and
10 conditions as may be prescribed upon a determination that
11 removal is in the public interest. Upon proof that a person
12 was found not guilty or not civilly liable, the antitrust
13 violation case was dismissed, the court entered a finding
14 in the person's favor, the person's conviction or
15 determination of liability has been reversed on appeal, or
16 the person has been pardoned, it shall be determined that
17 the removal of the person or affiliate of that person from
18 the antitrust violator vendor list is in the public
19 interest. A person or an affiliate on the antitrust
20 violation vendor list may petition for removal from the list
21 no sooner than six months after the date a final order is



1 entered pursuant to this section but may petition for
2 removal at any time if the petition is based upon a
3 reversal of the conviction or liability on appellate review
4 or pardon. The petition must be filed with the department,
5 and the proceeding must be conducted pursuant to the
6 procedures and requirements of this section.

7 (2) If the petition for removal is denied, the person or
8 affiliate may not petition for another hearing on removal
9 for a period of nine months after the date of denial unless
10 the petition is based upon a reversal of the conviction on
11 appellate review or a pardon. The department may petition
12 for removal before the expiration of such a period if, in
13 its discretion, it determines that removal is in the public
14 interest.

15 (e) The conviction of a person or person being held civilly
16 liable for an antitrust violation, or placement on the antitrust
17 violator vendor list, does not affect any rights or obligations
18 under any contract, franchise, or other binding agreement that
19 predates such conviction, finding of civil liability, or
20 placement on the antitrust violator vendor list.



1 (f) A person who has been placed on the antitrust violator
2 vendor list is not a qualified applicant for economic
3 incentives, and such person shall not be qualified to receive
4 such economic incentives. This subsection does not apply to
5 economic incentives that are awarded before a person is placed
6 on the antitrust violator vendor list on or before July 1, 2023.

7 (g) This section does not apply to:

8 (1) Any activity regulated by the Public Service
9 Commission;

10 (2) The purchase of goods or services made by any
11 public entity from the Department of Corrections or
12 from any qualified nonprofit agency for the blind or
13 other severely handicapped persons; or

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

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

21 SECTION 4. New statutory material is underscored.



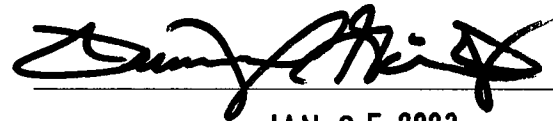
1 SECTION 5. This Act does not affect rights and duties that
2 matured, penalties that were incurred, and proceedings that were
3 begun before its effective date.

4 SECTION 6. If any provision of this Act, or the
5 application thereof to any person or circumstance, is held
6 invalid, the invalidity does not affect other provisions or
7 applications of the Act that can be given effect without the
8 invalid provision or application, and to this end the provisions
9 of this Act are severable.

10 SECTION 7. This Act shall take effect upon its approval.

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INTRODUCED BY:



JAN 25 2023



H.B. NO. 1333

Report Title:

Social Media Platforms; Censorship; Safeguards.

Description:

Prohibits social media platforms from engaging in censorship of candidates for elected office and other users.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

