

By: Toth

H.B. No. 3105

A BILL TO BE ENTITLED

AN ACT

relating to unlawful acts and practices of social media platforms;
providing a civil penalty.

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

SECTION 1. Chapter 15, Business & Commerce Code, is amended
by adding Subchapter F to read as follows:

SUBCHAPTER F. ANTITRUST VIOLATOR LIST

Sec. 15.60. DEFINITIONS; ANTITRUST VIOLATOR LIST. (a) The
definitions provided under Section 113.001 apply to this
subchapter.

(b) The division shall create and maintain an antitrust
violator vendor list that contains the names and addresses of
persons who have violated state or federal antitrust laws. The
division shall publish the initial list on January 1, 2022, and
shall update and electronically republish the list quarterly.

Sec. 15.61. PLACEMENT ON ANTITRUST VIOLATOR LIST. (a) On
receiving reasonable information from any source that a person has
been convicted of or held liable for a state or federal antitrust
violation, the division shall conduct an investigation to determine
whether good cause exists to place that person or an affiliate of
that person on the antitrust violator vendor list.

(b) If the investigation by the division is for an antitrust
violation related to shadow banning by a social media platform
under Chapter 113, the division may subpoena the social media

1 platform for any algorithm related to its shadow banning and any
2 related documentation used within the previous 24 months related to
3 shadow banning.

4 (c) If the division finds good cause, the division shall
5 notify the person or affiliate in writing of:

6 (1) the intent to place the name of that person or
7 affiliate on the antitrust violator vendor list;

8 (2) the person's or affiliate's right to a hearing
9 under Section 15.63;

10 (3) the procedure that must be followed to obtain a
11 hearing; and

12 (4) the applicable time requirements.

13 (d) If the person or affiliate does not request a hearing
14 before the 21st day after the date of receiving notice under this
15 section, the division shall enter a final order placing the name of
16 the person or affiliate on the antitrust violator vendor list.

17 (e) A person or affiliate may not be placed on the antitrust
18 violator vendor list without receiving an individual notice of
19 intent from the division.

20 (f) Notwithstanding the publication dates of the antitrust
21 violator vendor list, a person or affiliate placed on the list is
22 disqualified from the public contracting and purchasing process
23 under this subchapter as of the date the final order is entered.

24 Sec. 15.62. TEMPORARY PLACEMENT ON ANTITRUST VIOLATOR LIST.

25 (a) If a person has been charged or accused of a violation of state
26 or federal antitrust laws in a civil or criminal proceeding brought
27 by the attorney general, a state attorney, or the United States

1 Department of Justice after September 1, 2021, the attorney general
2 may, on a finding of probable cause that a person has likely
3 violated the underlying antitrust laws, temporarily place the
4 person on the antitrust violator vendor list until formal
5 proceedings have concluded.

6 (b) If probable cause exists, the attorney general shall
7 notify the person in writing of:

8 (1) the intent to temporarily place the person on the
9 antitrust violator vendor list;

10 (2) the person's right to a hearing under Section
11 15.63;

12 (3) the procedure that must be followed to obtain a
13 hearing; and

14 (4) the applicable time requirements.

15 (c) If the person does not request a hearing before the 21st
16 day after the date of receiving notice under this section, the
17 attorney general shall enter a final order temporarily placing the
18 name of the person on the antitrust violator vendor list.

19 (d) A person may not be placed on the antitrust violator
20 vendor list without receiving an individual notice of intent from
21 the attorney general.

22 (e) If the person is found not guilty of or not liable for
23 violating state or federal antitrust laws, the attorney general
24 shall remove the person from the antitrust violator vendor list.

25 Sec. 15.63. HEARING. (a) Not later than the 21st day after
26 the date of receipt of the notice of intent, the person or affiliate
27 may file a petition for a formal hearing under Chapter 2003,

1 Government Code, to determine whether it is in the public interest
2 for that person or affiliate to be placed on the antitrust violator
3 vendor list.

4 (b) Notwithstanding the procedures adopted under Section
5 2003.050, Government Code, the administrative law judge shall enter
6 a final order not later than the 30th day after the date of the
7 formal hearing.

8 (c) The final order shall contain:

9 (1) findings of fact;

10 (2) conclusions of law;

11 (3) interpretation of agency rules; and

12 (4) any other information required by law or rule to be
13 contained in the final order.

14 (d) The final order shall direct the division to place or
15 not place the person or affiliate on the antitrust violator vendor
16 list.

17 (e) In determining whether it is in the public interest to
18 place a person or affiliate on the antitrust violator vendor list,
19 the administrative law judge shall consider the following factors:

20 (1) whether the person or affiliate committed an
21 antitrust violation;

22 (2) the nature and details of the antitrust violation;

23 (3) the degree of culpability of the person or
24 affiliate;

25 (4) whether the person or affiliate has been
26 reinstated or received clemency in any jurisdiction for the
27 antitrust violation at issue in the proceeding; and

1 (5) the needs of public entities for additional
2 competition in procuring goods and services in their respective
3 markets.

4 (f) In any proceeding under this section, the division must
5 prove that it is in the public interest for the person or affiliate
6 to be placed on the antitrust violator vendor list. Proof that a
7 person has been convicted, has been held liable, or is an affiliate
8 of a convicted or liable person constitutes prima facie evidence
9 that it is in the public interest for the person or affiliate to be
10 put on the antitrust violator vendor list. Status as an affiliate
11 must be proven by clear and convincing evidence. If the
12 administrative law judge determines that the person was not
13 convicted, was not held liable, or is not an affiliate of a
14 convicted or liable person, the administrative law judge may not
15 direct the person to be placed on the antitrust violator vendor
16 list.

17 (g) A person or affiliate who has petitioned for a hearing
18 under this section may offer evidence on any relevant issue. An
19 affidavit alone is not sufficient evidence that the person has not
20 been convicted, has not been held liable, or is not an affiliate of
21 a convicted or liable person. On establishment of a prima facie case
22 that it is in the public interest for the person or affiliate to be
23 put on the antitrust violator vendor list, that person or affiliate
24 may prove by a preponderance of the evidence that it would not be in
25 the public interest to put the person or affiliate on the antitrust
26 violator vendor list, based on the factors in Subsection (e).

27 (h) The final order of the administrative law judge is a

1 final agency determination.

2 Sec. 15.64. EFFECT OF PLACEMENT ON ANTITRUST VIOLATOR LIST.

3 (a) A person or affiliate who has been placed on the antitrust
4 violator vendor list after being convicted of or held liable for an
5 antitrust violation may not:

6 (1) submit a bid, proposal, or reply for a new contract
7 to provide goods or services to a public entity;

8 (2) submit a bid, proposal, or reply for a new contract
9 with a public entity for the construction or repair of a public
10 building or public work;

11 (3) submit a bid, proposal, or reply for a new lease
12 of real property to a public entity;

13 (4) be awarded or perform work as a contractor,
14 supplier, subcontractor, or consultant under a new contract with a
15 public entity; and

16 (5) transact any new business with a public entity.

17 (b) A public entity may not accept any bid, proposal, or
18 reply from, award any new contract to, or transact any new business
19 with a person or affiliate on the antitrust violator vendor list.

20 (c) This section does not apply to contracts that were
21 awarded or business transactions that began before the person or
22 affiliate was placed on the antitrust violator vendor list.

23 (d) All invitations to bid, requests for proposals, and
24 invitations to negotiate must contain a statement informing persons
25 of the restriction under Subsection (b).

26 (e) A person on the antitrust violator vendor list is not
27 qualified to receive any economic incentives from the state,

1 including state grants, cash grants, tax exemptions, tax refunds,
2 tax credits, state funds, or other state incentives.

3 (f) The conviction or liability of a person for an antitrust
4 violation, or placement on the antitrust violator vendor list, may
5 not affect any rights or obligations under any contract, franchise,
6 or other binding agreement that predates the conviction, holding of
7 liability, or placement on the antitrust violator vendor list.

8 Sec. 15.65. REMOVAL FROM ANTITRUST VIOLATOR LIST. (a) A
9 person may be removed from the antitrust violator vendor list
10 subject to terms and conditions that may be prescribed by the
11 administrative law judge on a determination that removal is in the
12 public interest.

13 (b) In determining whether removal is in the public
14 interest, the administrative law judge shall consider any relevant
15 factors, including the factors in Section 15.63(e).

16 (c) The administrative law judge shall determine that
17 removal of the person or affiliate from the antitrust violator
18 vendor list is in the public interest on a showing that:

- 19 (1) the person was found not guilty or not liable;
20 (2) the antitrust case was dismissed;
21 (3) the court entered a finding in the person's favor;
22 (4) the person's conviction or determination of
23 liability was reversed on appeal; or
24 (5) the person was pardoned.

25 (d) A person on the antitrust violator vendor list may not
26 petition for removal from the list before six months after the date
27 a final order is entered under this subchapter, unless the petition

1 is based on a reversal of or pardon for the conviction or holding of
2 liability, in which case the person may petition at any time.

3 (e) The petition must be filed with the division, and the
4 proceeding shall be conducted under the procedures and requirements
5 of this subchapter.

6 (f) If a petition is denied, the person or affiliate may not
7 petition for another hearing before nine months after the date of
8 denial, unless the petition is based on a reversal of or pardon for
9 the conviction or holding of liability.

10 (g) The division may petition for removal prior to the
11 expiration of the period under Subsection (f) if, in its
12 discretion, it determines that removal would be in the public
13 interest.

14 SECTION 2. Subtitle C, Title 5, Business & Commerce Code, is
15 amended by adding Chapter 113 to read as follows:

16 CHAPTER 113. UNLAWFUL ACTS AND PRACTICES OF SOCIAL MEDIA PLATFORMS

17 SUBCHAPTER A. GENERAL PROVISIONS

18 Sec. 113.001. DEFINITIONS. In this chapter:

19 (1) "Affiliate" means:

20 (A) a person who controls, is controlled by, or
21 is under common control with another person; or

22 (B) a predecessor or successor of a person
23 described by Paragraph (A).

24 (2) "Algorithm" means a mathematical set of rules that
25 specify how a group of data behaves or is organized.

26 (3) "Antitrust violation" includes violations of both
27 state and federal antitrust law.

1 (4) "Candidate" has the meaning assigned by Section
2 251.001, Election Code.

3 (5) "Censor" includes action by a social media
4 platform to delete, regulate, restrict, edit, alter, remove,
5 inhibit publication of, or post an addendum to any content posted by
6 a user.

7 (6) "Deplatform" means the permanent removal or ban of
8 a user or suspension of the user's ability to post by a social media
9 platform, or a temporary removal, ban, or suspension of not less
10 than 60 days.

11 (7) "Division" means the antitrust division of the
12 Office of Attorney General.

13 (8) "Post-prioritization" means the placement or
14 ordering of content to feature some content over others, and does
15 not include prioritization based on monetary payments.

16 (9) "Shadow ban" means action by a social media
17 platform to limit or eliminate the exposure of a user or content
18 posted by a user to other users, and includes action that is not
19 apparent to a user.

20 (10) "Social media platform" means an information
21 service, system, internet search engine, or access software
22 provider that provides or enables computer access to a computer
23 server by multiple users, and includes a platform operated by a
24 for-profit entity that:

25 (A) has annual gross revenues in excess of \$100
26 million; or

27 (B) has at least 100 million monthly users

1 globally.

2 (11) "User" means a person who has an account on a
3 social media platform, regardless of whether the person posts or
4 has posted content.

5 Sec. 113.002. APPLICABILITY. (a) This chapter does not
6 apply to the purchase of goods or services made by any public entity
7 from the Texas Department of Criminal Justice.

8 (b) A provision of this chapter may be enforced
9 notwithstanding any state or local law and only to the extent not
10 inconsistent with federal law, including 47 U.S.C. Section
11 230(e)(3).

12 SUBCHAPTER B. SOCIAL MEDIA PLATFORMS DUTIES

13 Sec. 113.051. GENERAL DUTIES. (a) A social media platform
14 shall publish the standards it uses for determining how to censor,
15 deplatform, and shadow ban users, including definitions of any
16 necessary terms.

17 (b) A social media platform shall apply censorship,
18 deplatforming, and shadow banning standards in a consistent manner
19 among all users of the platform.

20 (c) A social media platform must inform users of the
21 platform of any changes to the platform's user rules, terms, and
22 agreements before implementing the changes.

23 (d) A social media platform shall provide:

24 (1) a mechanism to allow a user of the platform to
25 request the number of other users who viewed the user's content; and

26 (2) a user of the platform with the number of other
27 users who viewed the user's content when a request is made using the

1 mechanism described by Subdivision (1).

2 (e) A social media platform shall:

3 (1) categorize algorithms used for
4 post-prioritization and shadow banning based on the type of content
5 and user distinctions made by the algorithms; and

6 (2) allow a user to elect to not use
7 post-prioritization and shadow banning algorithm categories and
8 instead view all content in chronological order based on when
9 content was posted.

10 (f) A social media platform shall annually provide users
11 with notice on the use of algorithms for post-prioritization and
12 shadow banning and provide users with an opportunity to make the
13 election under Subsection (e)(2).

14 (g) A social media platform shall allow a deplatformed user
15 to access or retrieve all of the user's information, content, and
16 data for a period of not less than 60 days after the date the user is
17 deplatformed.

18 Sec. 113.052. JOURNALISTIC ENTERPRISE DUTIES. (a) In this
19 section, "journalistic enterprise" means an entity that:

20 (1) publishes not less than 100,000 words available
21 online with not less than 50,000 paid subscribers or 100,000
22 monthly active users;

23 (2) publishes not less than 100 hours of audio or video
24 online with not less than 100 million yearly viewers;

25 (3) operates a cable channel providing not less than
26 40 hours of content each week to not less than 100,000 cable
27 television subscribers; or

1 (4) operates under a broadcast license issued by the
2 Federal Communications Commission.

3 (b) A social media platform may not knowingly take action to
4 cancel, deplatform, or shadow ban a user who is a journalistic
5 enterprise based on the content of a publication or broadcast of the
6 journalistic enterprise. Each social media platform shall develop a
7 method for users of the platform to identify themselves as a
8 journalistic enterprise.

9 (c) The prohibition described by Subsection (b) does not
10 apply to the post-prioritization of a journalistic enterprise's
11 content based on payments to a platform by the journalistic
12 enterprise for the post-prioritization.

13 Sec. 113.053. NOTIFICATION OF CENSORSHIP OR DEPLATFORMING.

14 (a) A social media platform may not censor or deplatform a user
15 without providing notification to the user who posted or attempted
16 to post the content.

17 (b) Notice under this section must:

18 (1) be in writing;

19 (2) be delivered by electronic mail or direct
20 electronic notification to the user not more than 30 days after the
21 censoring or deplatforming action;

22 (3) include a thorough explanation of why the social
23 media platform censored or deplatformed the user; and

24 (4) include a precise and thorough explanation of how
25 the social media platform became aware of the content, including an
26 explanation of any algorithm used to identify the user's content as
27 objectionable.

1 (c) Notwithstanding this section, a social media platform
2 is not required to notify a user if the censored content is obscene,
3 as that term is defined in Section 43.21, Penal Code.

4 SUBCHAPTER C. CERTAIN RESTRICTIONS RELATED TO CANDIDATES

5 Sec. 113.101. POST-PRIORITIZATION AND SHADOW BANNING OF
6 CERTAIN CONTENT PROHIBITED; EXCEPTION. (a) A social media platform
7 may not apply or use a post-prioritization or shadow banning
8 algorithm on content posted by or about a user of the social media
9 platform who is a state or local candidate. Each social media
10 platform shall develop a method for users of the platform to
11 identify themselves as a state or local candidate in an election and
12 protocols to confirm the user's candidacy in that election.

13 (b) The prohibition described by Subsection (a) applies
14 only during the period beginning on the date an individual's
15 candidacy in an election begins and ending on the date of the
16 election or the date the individual's candidacy in that election
17 ends.

18 (c) The prohibition described by Subsection (a) does not
19 apply to a social media platform's post-prioritization of content
20 based on a user's payment to the social media platform for the
21 post-prioritization.

22 Sec. 113.102. DEPLATFORMING PROHIBITED; CIVIL PENALTY. (a)
23 Notwithstanding any state or local law and only to the extent
24 permitted under federal law, a social media platform may not
25 knowingly deplatform a state or local candidate.

26 (b) A social media platform that violates this section is
27 liable for a civil penalty of not more than \$100,000 for the

1 deplatforming of a state candidate and not more than \$10,000 for the
2 deplatforming of a local candidate. Each day of a continuing
3 violation constitutes a separate ground for recovery.

4 (c) On request of a deplatformed state or local candidate,
5 the attorney general may bring an action in a district court to
6 collect a civil penalty under this section. The attorney general
7 and the candidate may recover reasonable expenses incurred in
8 obtaining relief under this section, including court costs,
9 attorney's fees, investigation costs, witness fees, and deposition
10 expenses.

11 Sec. 113.103. REPORTING REQUIREMENTS. (a) Notwithstanding
12 any state or local law and only to the extent permitted under
13 federal law, a social media platform that provides free advertising
14 to a state or local candidate shall submit to the Texas Ethics
15 Commission, on a form prescribed by the commission, a report that
16 lists the estimated cash value of the free advertising as an in-kind
17 contribution to the candidate.

18 (b) For purposes of Subsection (a), a post, comment, or
19 other content posted by or about a state or local candidate on the
20 social media platform that is shown in the same or a similar manner
21 to other posts, comments, or content is not considered free
22 advertising.

23 SUBCHAPTER D. GENERAL ENFORCEMENT

24 Sec. 113.151. DECEPTIVE TRADE PRACTICE. A violation of
25 this chapter is a deceptive trade practice under Subchapter E,
26 Chapter 17, and is actionable under that subchapter.

27 Sec. 113.152. PRIVATE ENFORCEMENT. A user may bring a

1 private cause of action against a social media platform for a
2 violation of Section 113.051(b) or 113.053. In an action brought
3 under this section, the court may award to the user:

4 (1) not more than \$100,000 in statutory damages for
5 each claim;

6 (2) actual damages;

7 (3) punitive damages, if there are aggravating factors
8 present;

9 (4) other forms of equitable relief; and

10 (5) if the user was deplatformed in violation of
11 Section 113.051(b), costs and reasonable attorney's fees.

12 SECTION 3. Chapter 113, Business & Commerce Code, as added
13 by this Act, applies only to an action taken by a social media
14 platform on and after the effective date of this Act.

15 SECTION 4. This Act takes effect immediately if it receives
16 a vote of two-thirds of all the members elected to each house, as
17 provided by Section 39, Article III, Texas Constitution. If this
18 Act does not receive the vote necessary for immediate effect, this
19 Act takes effect September 1, 2021.