

JAN 25 2023

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
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 section 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
13 or social media site;

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

20 \$100,000,000, as adjusted in January of each



1 odd-numbered year to reflect any increase in the
2 consumer price index; and

3 (B) Has at least one hundred million monthly
4 individual platform participants globally.

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

9 § -2 **Social media deplatforming of political candidates.**

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

20 (b) Upon a finding of a violation of subsection (a) by the
21 Hawaii state ethics commission, the social media platform may be



1 fined \$250,000 per day for a candidate for statewide office and
2 \$25,000 per day for a candidate for other offices.

3 (c) A social media platform that wilfully provides free
4 advertising for a candidate shall inform the candidate of the
5 in-kind contribution; provided that posts, content, material,
6 and comments by candidates that are shown on the platform in the
7 same or similar way as other users' posts, content, material,
8 and comments are not considered free advertising.

9 (d) This section shall only be enforced to the extent not
10 inconsistent with federal law and title 42 United States Code
11 section 230(e)(3), and notwithstanding any other provision of
12 state law.

13 § -3 **Unlawful acts and practices by social media**
14 **platforms.** (a) As used in this section:

15 "Algorithm" means a mathematical set of rules that
16 specifies how a group of data behaves and that will assist in
17 ranking search results and maintaining order or that is used in
18 sorting or ranking content or material based on relevancy or
19 other factors instead of using published time or chronological
20 order of such content or material.



1 "Censor" includes any section taken by a social media
2 platform to delete, regulate, restrict, edit, alter, inhibit the
3 publication or republication of, suspend a right to post,
4 remove, or post an addendum to any content or material posted by
5 a user. The term also includes actions to inhibit the ability
6 of a user to be viewable by or to interact with another user of
7 the social media platform.

8 "Journalistic enterprise" means any entity doing business
9 in Hawaii that:

- 10 (1) Publishes in excess of one hundred thousand words
11 available online, with at least fifty thousand paid
12 subscribers, or one hundred thousand monthly active
13 users;
- 14 (2) Publishes one hundred hours of audio or video
15 available online with at least one hundred million
16 viewers annually;
- 17 (3) Operates a cable channel that provides more than forty
18 hours of content per week to more than one hundred
19 thousand cable television subscribers; or
- 20 (4) Operates under a broadcast license issued by the
21 Federal Communications Commission.



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

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

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

19 (1) A social media platform shall publish the standards,
20 including detailed definitions, it uses or has used



1 for determining how to censor, deplatform, and shadow
2 ban;

3 (2) A social media platform shall apply censorship,
4 deplatforming, and shadow banning standards in a
5 consistent manner among its users on the platform;

6 (3) A social media platform shall inform each user about
7 any changes to its rules, terms, and agreements before
8 implementing the changes and shall not make changes
9 more than once every thirty days;

10 (4) A social media platform shall not censor or shadow ban
11 a user's content or material or deplatform a user from
12 the social media platform:

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

15 (B) In a way that violates this section;

16 (5) A social media platform shall:

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



- 1 (B) Provide, upon request, a user with the number of
2 other individual platform participants who were
3 provided or shown content or posts;
- 4 (6) A social media platform shall:
- 5 (A) Categorize algorithms used for
6 post-prioritization and shadow banning; and
- 7 (B) Allow a user to opt out of post-prioritization
8 and shadow banning algorithm categories to allow
9 sequential or chronological post and content;
- 10 (7) A social media platform shall provide users with an
11 annual notice on the use of algorithms for
12 post-prioritization and shadow banning and reoffer
13 annually the opt-out opportunity in subparagraph
14 (b) (6) (B);
- 15 (8) A social media platform shall not apply or use
16 post-prioritization or shadow banning algorithms for
17 content and material posted by or about a user who is
18 known by the social media platform to be a candidate,
19 beginning on the date of qualification and ending on
20 the date of the election or the date the candidate
21 ceases to be a candidate. Post-prioritization of



1 certain content or material from or about a candidate
2 for office based on payments to the social media
3 platform by a candidate for office or a third party is
4 not a violation of this paragraph. A social media
5 platform shall provide each user a method by which the
6 user may be identified as a qualified candidate and
7 that provides sufficient information to allow the
8 social media platform to confirm the user's
9 qualification by reviewing the website of the office
10 of elections or the website of the local supervisor of
11 elections;

12 (9) A social media platform shall allow a user who has
13 been deplatformed to access or retrieve all of the
14 user's information, content, material, and data for at
15 least sixty days after the user receives the notice
16 required; and

17 (10) A social media platform shall not take any action to
18 censor, deplatform, or shadow ban a journalistic
19 enterprise based on the content of its publication or
20 broadcast. Post-prioritization of certain
21 journalistic enterprise content based on payments to



1 the social media platform by a journalistic enterprise
2 is not a violation of this paragraph.

3 (c) For purposes of subsection (b)(4)(A), a notification
4 shall:

5 (1) Be in writing;

6 (2) Be delivered via electronic mail or direct electronic
7 notification to the user within seven days after the
8 censoring action;

9 (3) Include a thorough rationale explaining the reason
10 that the social media platform censored the user; and

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

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

19 (e) If the department, by its own inquiry or as a result
20 of a complaint, suspects that a violation of this section is
21 imminent, occurring, or has occurred, the department may



1 investigate the suspected violation in accordance with this
2 chapter. Based on the investigation, the department may bring a
3 civil or administrative action under this chapter.

4 (f) A user shall only bring a private cause of action for
5 violations of subsection (b) (2) or (b) (4) (A). In a private
6 cause of action brought under subsection (b) (2) or (b) (4) (A),
7 the court may award the user:

- 8 (1) Up to \$100,000 in statutory damages per proven claim;
- 9 (2) Actual damages;
- 10 (3) If aggravating factors are present, punitive damages;
- 11 (4) Other forms of equitable relief, including injunctive
12 relief; or
- 13 (5) If the user was deplatformed in violation of (b) (2),
14 costs and reasonable attorney's fees.

15 (g) For purposes of bringing an action in accordance with
16 subsections (e) and (f), each failure to comply with the
17 individual provisions of subsection (b) shall be treated as a
18 separate violation, act, or practice. For purposes of bringing
19 an action in accordance with section (e) and (f), a social media
20 platform that censors, shadow bans, deplatforms, or applies
21 post-prioritization algorithms to candidates and users in the



1 state is conclusively presumed to be both engaged in substantial
2 and not isolated activities within the state and operating,
3 conducting, engaging in, or carrying on a business, and doing
4 business in this State, and is therefore subject to the
5 jurisdiction of the courts of the State.

6 (h) In an investigation by the department into alleged
7 violations of this section, the department's investigative
8 powers include, but are not limited to, the ability to subpoena
9 any algorithm used by a social media platform related to any
10 alleged violation.

11 (i) This section shall only be enforced to the extent not
12 inconsistent with federal law and title 47 United States Code
13 section 230(e)(3), and notwithstanding any other provision of
14 state law."

15 SECTION 3. Chapter 480, Hawaii Revised Statutes, is
16 amended by adding five new definitions to be appropriately
17 inserted and to read as follows:

18 ""Affiliate" means:

19 (1) A predecessor or successor of a person convicted or
20 held civilly liable for an antitrust violation; or



1 (2) An entity under the control of any natural person who
2 is active in the management of the entity that has
3 been convicted of or held civilly liable for an
4 antitrust violation.

5 The term includes those officers, directors, executives,
6 partners, shareholders, employees, members, and agents who are
7 active in the management of an affiliate. The ownership by one
8 person of shares constituting a controlling interest in another
9 person, or a pooling of equipment or income among persons when
10 not for fair market value under an arm's length agreement, is a
11 prima facie case that one person controls another person.

12 The term also includes a person who knowingly enters into a
13 joint venture with a person who has violated an antitrust law
14 during the preceding thirty-six months.

15 "Antitrust violation" means any failure to comply with a
16 state or federal antitrust law as determined in a civil or
17 criminal proceeding brought by the attorney general, a state
18 attorney, a similar body or agency of another state, the federal
19 trade commission, or the United States Department of Justice.

20 "Antitrust violator vendor list" means the list required to
21 be kept by the department pursuant to §480- (e).



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

11 "Public entity" means the State and any of its departments
12 or agencies."

13 SECTION 4. Chapter 480, Hawaii Revised Statutes, is
14 amended by adding a new section to be appropriately designated
15 and to read as follows:

16 "§480- Antitrust violations; denial or revocation of
17 the right to transact between public entities; denial of
18 economic benefits. (a) A person or an affiliate who has been
19 placed on the antitrust violator vendor list following a
20 conviction or being held civilly liable for an antitrust
21 violation shall not submit a bid, proposal, or reply for any new



1 contract to provide any goods or services to a public entity;
2 shall not submit a bud, proposal, or reply for a new contract
3 with a public entity for the construction or repair of a public
4 building or public work; may not submit a bid, proposal, or
5 reply on new leases of real property to a public entity; shall
6 not be awarded or perform work as a contractor, supplier,
7 subcontractor, or consultant under a new contract with a public
8 entity; and shall not transact new business with a public
9 entity.

10 (b) A public entity shall not accept a bid, proposal, or
11 reply from, award a new contract to, or transact new business
12 with any person or affiliate on the antitrust violator vendor
13 list unless that person or affiliate has been removed from the
14 list pursuant to subsection (e).

15 (c) This section does not apply to contracts that were
16 awarded or business transaction that began before a person or an
17 affiliate was placed on the antitrust violator vendor list or
18 before July 1, 2023, whichever date occurs later.

19 (d) Beginning on July 1, 2023, all invitations to bid,
20 requests for proposals, and invitations to negotiate, and any



1 contract document shall contain a statement informing persons of
2 the provisions of subsection (a).

3 (e) The department shall maintain an antitrust violator
4 vendor list of the names and addresses of the persons or
5 affiliates who have been disqualified from the public
6 contracting and purchasing process under this section. The
7 department shall electronically publish the initial antitrust
8 violator vendor list on January 1, 2024, and shall update and
9 electronically publish the list quarterly thereafter.

10 Notwithstanding this subsection, a person or an affiliate
11 disqualified from the public contracting and purchasing process
12 pursuant to this section is disqualified as of the date the
13 department enters the final order.

14 (f) After receiving notice of a judgment, sentence, or
15 order from any source that a person was convicted or held
16 civilly liable for an antitrust violation and after the
17 department has investigated the information and verified both
18 the judgment, sentence, or order and the identity of the person
19 named in the documentation, the department shall immediately
20 notify the person or affiliate in writing of its intent to place
21 the name of that person or affiliate on the antitrust violator



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

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

16 (h) In determining whether it is in the public interest to
17 place a person or affiliate on the antitrust violator vendor
18 list under this subsection, the following factors shall be
19 considered:

20 (1) Whether the person or affiliate was convicted or held
21 civilly liable for an antitrust violation;



- 1 (2) The nature and details of the antitrust violation;
2 (3) The degree of culpability of the person or affiliate
3 proposed to be placed on the antitrust violator vendor
4 list;
5 (4) Reinstatement or clemency in any jurisdiction in
6 relation to the antitrust violation at issue in the
7 proceeding;
8 (5) The needs of the public entities for additional
9 competition in the procurement of goods and services
10 in their respective markets; and
11 (6) The effect of the antitrust violations on residents of
12 Hawaii.
13 (i) After the person or affiliate requests a formal
14 hearing, the department shall have the burden to prove that it
15 is in the public interest for the person or affiliate to whom it
16 has given notice under this section to be placed on the
17 antitrust violator vendor list. Proof that a person was
18 convicted or was held civilly liable or that an entity is an
19 affiliate of the person constitutes a prima facie case that it
20 is in the public interest for the person or affiliate to whom
21 the department has given notice to be put on the antitrust



1 violator vendor list. Status as an affiliate shall be proven by
2 clear and convincing evidence.

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

17 (k) Upon receipt of an information or indictment from any
18 source that a person has been charged with or accused of
19 violating any state or federal antitrust law in a civil or
20 criminal proceeding, including a civil investigative demand,
21 brought by the attorney general, a state attorney, the federal



1 trade commission, or the United States Department of Justice on
2 or after July 1, 2023, the attorney general shall determine
3 whether there is probable cause that a person has likely
4 violated the underlying antitrust laws, which justifies
5 temporary placement of the person on the antitrust violator
6 vendor list until the proceeding has concluded.

7 (l) If the attorney general determines probable cause
8 exists, the attorney general shall notify the person in writing
9 of its intent to temporarily place the name of that person on
10 the antitrust violator vendor list, and of the person's right to
11 a hearing, the procedure to be followed, and the applicable time
12 requirements. If the person does not request a hearing, the
13 attorney general shall enter a final order temporarily placing
14 the name of the person on the antitrust violator vendor list. A
15 person may be placed on the antitrust violator vendor list only
16 after being provided with a notice of intent from the attorney
17 general.

18 (m) Within twenty-one days after receipt of the notice of
19 intent, the person may file a petition for a formal hearing to
20 determine whether it is in the public interest for the person to



1 be temporarily placed on the antitrust violator vendor list. A
2 person shall not file a petition for an informal hearing.

3 (n) In determining whether it is in the public interest to
4 place a person on the antitrust violator vendor list under this
5 section, the following factors shall be considered:

6 (1) The likelihood the person will be convicted or held
7 civilly liable for the antitrust violation;

8 (2) The nature and details of the antitrust violation;

9 (3) The degree of culpability of the person proposed to be
10 placed on the antitrust violator vendor list;

11 (4) The needs of the public entities for additional
12 competition in the procurement of goods and services
13 in their respective markets; and

14 (5) The effect of the antitrust violations on residents of
15 Hawaii.

16 (o) The attorney general has the burden to prove that it
17 is in the public interest for the person to whom it has given
18 notice under this section to be temporarily placed on the
19 antitrust violator vendor list.

20 (p) This section does not apply to affiliates.



1 (q) A person or an affiliate may be removed from the
2 antitrust violator vendor list subject to terms and conditions
3 as may be prescribed upon a determination that removal is in the
4 public interest. Upon proof that a person was found not guilty
5 or not civilly liable, the antitrust violation case was
6 dismissed, the court entered a finding in the person's favor,
7 the person's conviction or determination of liability has been
8 reversed on appeal, or the person has been pardoned, it shall be
9 determined that the removal of the person or affiliate of that
10 person from the antitrust violator vendor list is in the public
11 interest. A person or an affiliate on the antitrust violator
12 vendor list may petition for removal from the list no sooner
13 than six months after the date a final order is entered pursuant
14 to this section but may petition for removal at any time if the
15 petition is based upon a reversal of the conviction or liability
16 on appellate review or pardon. The petition shall be filed with
17 the department, and the proceeding shall be conducted pursuant
18 to the procedures and requirements of this section.

19 (r) If the petition for removal is denied, the person or
20 affiliate shall not petition for another hearing on removal for
21 a period of nine months after the date of denial unless the



1 petition is based upon a reversal of the conviction on appellate
2 review or a pardon. The department may petition for removal
3 before the expiration of the time period if, in its discretion,
4 it determines that removal is in the public interest.

5 (s) The conviction of a person or person being held
6 civilly liable for an antitrust violation, or placement on the
7 antitrust violator vendor list, does not affect any rights or
8 obligations under any contract, franchise, or other binding
9 agreement that predates the conviction, finding of civil
10 liability, or placement on the antitrust violator vendor list.

11 (t) A person who has been placed on the antitrust violator
12 vendor list is not a qualified applicant for economic
13 incentives, and the person shall not be qualified to receive any
14 economic incentives. This subsection does not apply to economic
15 incentives that are awarded before a person is placed on the
16 antitrust violator vendor list on or before July 1, 2023.

17 (u) This section does not apply to:

18 (1) Any activity regulated by the public utilities
19 commission;

20 (2) The purchase of goods or services made by any public
21 entity from the department of corrections or from any



1 qualified nonprofit agency for the blind or other
2 severely handicapped persons; or
3 (3) Any contract with a public entity to provide any goods
4 or services for emergency response efforts related to
5 a state of emergency declaration issued by the
6 governor.

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

10 SECTION 5. This Act does not affect rights and duties that
11 matured, penalties that were incurred, and proceedings that were
12 begun before its effective date.

13 SECTION 6. If any provision of this Act, or the
14 application thereof to any person or circumstance, is held
15 invalid, the invalidity does not affect other provisions or
16 applications of the Act that can be given effect without the
17 invalid provision or application, and to this end the provisions
18 of this Act are severable.

19 SECTION 7. New statutory material is underscored.

20 SECTION 8. This Act shall take effect upon its approval.

21



S.B. NO. 1432

INTRODUCED BY: 



S.B. NO. 1432

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.

