

1 **FREE EXPRESSION REGULATION AMENDMENTS**

2 2018 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Norman K. Thurston**

5 Senate Sponsor: Deidre M. Henderson

7 **LONG TITLE**

8 **General Description:**

9 This bill addresses local government regulation of expressive activity.

10 **Highlighted Provisions:**

11 This bill:

12 ▶ requires that a political subdivision ensure that any generally or individually
13 applicable time, place, or manner restriction on expressive activity on public
14 grounds complies with certain constitutional requirements;

15 ▶ requires that, if a political subdivision imposes a generally applicable time, place, or
16 manner restriction on expressive activity on public grounds, the political
17 subdivision must impose the restriction by ordinance or adopt the restriction in
18 accordance with a general ordinance;

19 ▶ prevents a political subdivision from prohibiting political activities on public
20 grounds; and

21 ▶ exempts compliance with Title 20A, Election Code, and certain property that a
22 political subdivision owns or leases.

23 **Money Appropriated in this Bill:**

24 None

25 **Other Special Clauses:**

26 This bill provides a special effective date.

27 **Utah Code Sections Affected:**

28 ENACTS:

29 **11-58-101**, Utah Code Annotated 1953

- 30 [11-58-102](#), Utah Code Annotated 1953
- 31 [11-58-103](#), Utah Code Annotated 1953
- 32 [11-58-104](#), Utah Code Annotated 1953
- 33 [11-58-105](#), Utah Code Annotated 1953

34

35 *Be it enacted by the Legislature of the state of Utah:*

36 Section 1. Section **11-58-101** is enacted to read:

37 **CHAPTER 58. EXPRESSIVE ACTIVITY REGULATION**
 38 **BY LOCAL GOVERNMENT ACT**

39 **11-58-101. Title.**

40 This chapter is known as the "Expressive Activity Regulation by Local Government
41 Act."

42 Section 2. Section **11-58-102** is enacted to read:

43 **11-58-102. Definitions.**

44 As used in this chapter:

45 (1) "Expressive activity" means:

46 (a) peacefully assembling, protesting, or speaking;

47 (b) distributing literature;

48 (c) carrying a sign; or

49 (d) signature gathering or circulating a petition.

50 (2) "Generally applicable time, place, and manner restriction" means a content-neutral
51 ordinance, policy, practice, or other action that:

52 (a) by its clear language and intent, restricts or infringes on expressive activity;

53 (b) applies generally to any person; and

54 (c) is not an individually applicable time, place, and manner restriction.

55 (3) (a) "Individually applicable time, place, and manner restriction" means a
56 content-neutral policy, practice, or other action:

57 (i) that restricts or infringes on expressive activity; and

- 58 (ii) that a political subdivision applies:
- 59 (A) on a case-by-case basis;
- 60 (B) to a specifically identified person or group of persons; and
- 61 (C) regarding a specifically identified place and time.
- 62 (b) "Individually applicable time, place, and manner restriction" includes a restriction
- 63 placed on expressive activity as a condition to obtain a permit.
- 64 (4) (a) "Political subdivision" means a county, city, town, or metro township.
- 65 (b) "Political subdivision" does not mean:
- 66 (i) a local district under Title 17B, Limited Purpose Local Government Entities - Local
- 67 Districts;
- 68 (ii) a special service district under Title 17D, Chapter 1, Special Service District Act;
- 69 or
- 70 (iii) a school district under Title 53G, Chapter 3, School District Creation and Change.
- 71 (5) (a) "Public building" means a building or permanent structure that is:
- 72 (i) owned, leased, or occupied by a political subdivision or a subunit of a political
- 73 subdivision;
- 74 (ii) open to public access in whole or in part; and
- 75 (iii) used for public education or political subdivision activities.
- 76 (b) "Public building" does not mean:
- 77 (i) a building owned or leased by a political subdivision or a subunit of a political
- 78 subdivision;
- 79 (A) that is closed to public access;
- 80 (B) where state or federal law restricts expressive activity; or
- 81 (C) when the building is used by a person, in whole or in part, for a private function; or
- 82 (ii) a public school.
- 83 (6) (a) "Public grounds" means the area outside a public building that is a traditional
- 84 public forum where members of the public may safely gather to engage in expressive activity.
- 85 (b) "Public grounds" includes sidewalks, streets, and parks.

86 (c) "Public grounds" does not include the interior of a public building.

87 Section 3. Section **11-58-103** is enacted to read:

88 **11-58-103. Exceptions.**

89 This chapter does not apply to:

90 (1) a restriction on expressive activity on public grounds that a political subdivision
91 imposes in order to comply with Title 20A, Election Code;

92 (2) property that a political subdivision owns or leases:

93 (a) that is closed to public access; or

94 (b) where state or federal law restricts expressive activity; or

95 (3) a limited or nonpublic forum.

96 Section 4. Section **11-58-104** is enacted to read:

97 **11-58-104. Time, place, and manner restrictions -- Generally applicable**
98 **restrictions by ordinance.**

99 (1) If a political subdivision imposes a generally applicable or individually applicable
100 time, place, and manner restriction on expressive activity on public grounds, the political
101 subdivision shall ensure that the restriction:

102 (a) is narrowly tailored to serve an important governmental interest, including public
103 access to the public building, public safety, and protection of public property;

104 (b) is unrelated to the suppression of a particular message or the content of the
105 expressive activity that the restriction addresses; and

106 (c) leaves open reasonable alternative means for the expressive activity.

107 (2) A political subdivision may not impose a generally applicable time, place, and
108 manner restriction on expressive activity on public grounds unless the political subdivision:

109 (a) imposes the restriction by ordinance; or

110 (b) (i) adopts an ordinance to guide the adoption, by policy or practice, of restrictions
111 on expressive activity on public grounds; and

112 (ii) adopts, by policy or practice, the restriction in accordance with the ordinance

113 described in Subsection (2)(b)(i) and with the constitutional safeguards described in Subsection

114 (1).

115 Section 5. Section **11-58-105** is enacted to read:

116 **11-58-105. Political activity outside a public building.**

117 (1) Except as provided in Section [11-58-103](#) and Subsection (2), a political subdivision
118 may not prohibit a political activity, including signature gathering or petition circulation, on
119 public grounds.

120 (2) A political subdivision may impose a time, place, and manner restriction on
121 political activities outside a public building in accordance with Section [11-58-104](#).

122 Section 6. **Effective date.**

123 This bill takes effect on May 14, 2019.