

**ELECTRONIC FREE SPEECH AMENDMENTS**

2021 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Michael K. McKell**

House Sponsor: Brady Brammer

Cosponsor:

Curtis S. Bramble

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**LONG TITLE**

**General Description:**

This bill enacts provisions with respect to the regulation of social media corporations.

**Highlighted Provisions:**

This bill:

▶ defines terms;

▶ requires social media corporations to, for Utah account holders, provide:

- clear information about the social media corporation's moderation practices;
- notice to the account holder or the attorney general when the social media

corporation uses a moderation practice with respect to a Utah account holder's account; and

- an opportunity for a Utah account holder to appeal certain moderation practices that the social media corporation employs on a Utah account holder's account or post;

▶ provides, if a social media corporation violates its terms of use with respect to moderation practices:

- a mechanism for a Utah account holder to make a complaint to the Division of Consumer Protection (division) and the attorney general;
- a mechanism for the division to investigate alleged violations; and
- an enforcement and penalty mechanism for the attorney general if the division

29 refers a violation to the attorney general;

30       ▶ creates a restricted account to deposit penalties and provides for the distributions  
31 from the account; and

32       ▶ provides for severability if a provision is found to be invalid.

33 **Money Appropriated in this Bill:**

34       None

35 **Other Special Clauses:**

36       This bill provides a special effective date.

37 **Utah Code Sections Affected:**

38 AMENDS:

39       **13-2-1**, as last amended by Laws of Utah 2020, Chapter 118

40 ENACTS:

41       **13-58-101**, Utah Code Annotated 1953

42       **13-58-102**, Utah Code Annotated 1953

43       **13-58-201**, Utah Code Annotated 1953

44       **13-58-202**, Utah Code Annotated 1953

45       **13-58-203**, Utah Code Annotated 1953

46       **13-58-204**, Utah Code Annotated 1953

47       **13-58-301**, Utah Code Annotated 1953

48       **13-58-302**, Utah Code Annotated 1953

49       **13-58-303**, Utah Code Annotated 1953

50       **13-58-304**, Utah Code Annotated 1953

51       **13-58-401**, Utah Code Annotated 1953

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

54       Section 1. Section **13-2-1** is amended to read:

55       **13-2-1. Consumer protection division established -- Functions.**

56       (1) There is established within the Department of Commerce the Division of Consumer

57 Protection.

58 (2) The division shall administer and enforce the following:

59 (a) Chapter 5, Unfair Practices Act;

60 (b) Chapter 10a, Music Licensing Practices Act;

61 (c) Chapter 11, Utah Consumer Sales Practices Act;

62 (d) Chapter 15, Business Opportunity Disclosure Act;

63 (e) Chapter 20, New Motor Vehicle Warranties Act;

64 (f) Chapter 21, Credit Services Organizations Act;

65 (g) Chapter 22, Charitable Solicitations Act;

66 (h) Chapter 23, Health Spa Services Protection Act;

67 (i) Chapter 25a, Telephone and Facsimile Solicitation Act;

68 (j) Chapter 26, Telephone Fraud Prevention Act;

69 (k) Chapter 28, Prize Notices Regulation Act;

70 (l) Chapter 32a, Pawnshop and Secondhand Merchandise Transaction Information Act;

71 (m) Chapter 34, Utah Postsecondary Proprietary School Act;

72 (n) Chapter 34a, Utah Postsecondary School State Authorization Act;

73 (o) Chapter 39, Child Protection Registry;

74 (p) Chapter 41, Price Controls During Emergencies Act;

75 (q) Chapter 42, Uniform Debt-Management Services Act;

76 (r) Chapter 49, Immigration Consultants Registration Act;

77 (s) Chapter 51, Transportation Network Company Registration Act;

78 (t) Chapter 52, Residential Solar Energy Disclosure Act;

79 (u) Chapter 53, Residential, Vocational and Life Skills Program Act;

80 (v) Chapter 54, Ticket Website Sales Act;

81 (w) Chapter 56, Ticket Transferability Act; ~~and~~

82 (x) Chapter 57, Maintenance Funding Practices Act~~[-];~~ and

83 (y) Chapter 58, Freedom from Biased Moderation Act.

84 Section 2. Section **13-58-101** is enacted to read:

85 CHAPTER 58. FREEDOM FROM BIASED MODERATION ACT

86 Part 1. General Provisions

87 **13-58-101. Title.**

88 This chapter is known as the "Freedom from Biased Moderation Act."

89 Section 3. Section **13-58-102** is enacted to read:

90 **13-58-102. Definitions.**

91 In this chapter:

92 (1) "Account holder" means a Utah resident who has or opens an account to use a  
93 social media corporation's platform.

94 (2) (a) "Dangerous exigent content" means content that indicates the imminent threat or  
95 perpetration of a serious crime.

96 (b) "Dangerous exigent content" includes content that:

97 (i) indicates an imminent threat to a particular individual;

98 (ii) indicates an imminent terrorist threat;

99 (iii) indicates or depicts suicide or self-harm;

100 (iv) depicts the sexual exploitation of a minor; or

101 (v) indicates an imminent violation of a grievous sexual offense as that term is defined  
102 in Subsection [76-1-601](#)(8).

103 (3) "Director" means the director of the division.

104 (4) "Division" means the Division of Consumer Protection in the Department of  
105 Commerce established in Section [13-2-1](#).

106 (5) "Flag" means the act of a social media corporation singling out a post because of  
107 the post's content.

108 (6) "Inequitable moderation practice" means:

109 (a) an inconsistent application of a social media corporation's terms of use to justify a  
110 moderation practice; and

111 (b) moderating content that does not violate a social media corporation's terms of use.

112 (7) (a) "Interactive computer service" means any information service, system, or access

113 software provider that:

114 (i) provides or enables computer access by multiple users to a computer server; and

115 (ii) provides access to the Internet.

116 (b) "Interactive computer service" includes:

117 (i) a web service;

118 (ii) a web system;

119 (iii) a website;

120 (iv) a web application; or

121 (v) a web portal.

122 (8) (a) "Moderation practice" means a method a social media corporation employs to  
123 regulate a post.

124 (b) "Moderation practice" includes:

125 (i) flagging a post;

126 (ii) removing a post;

127 (iii) suspending an account holder's account; or

128 (iv) revoking an account holder's access to a platform.

129 (9) (a) "Platform" means an online forum that a social media corporation makes  
130 available for an account holder to:

131 (i) create a profile;

132 (ii) upload posts;

133 (iii) view the posts of other account holders; and

134 (iv) interact with other account holders or users.

135 (b) "Platform" does not include:

136 (i) electronic mail; or

137 (ii) an online service, website, or application on which:

138 (A) the majority of the content that is posted or created is posted or created by the  
139 provider of the online service, website, or application; and

140 (B) the ability to chat, comment, or interact with other users is directly related to the

141 provider's content.

142 (10) "Post" means content that an account holder makes available on the account  
143 holder's account for other account holders or users to view.

144 (11) "Social media corporation" means any domestic corporation or foreign corporation  
145 that provides a platform that has at least 20,000,000 account holders and is an interactive  
146 computer service.

147 (12) "Terms of use" means the terms to which an account holder must agree before an  
148 account holder can open or continue to use an account on a platform.

149 (13) (a) "User" means an individual who has access to view the post of an account  
150 holder.

151 (b) "User" includes an account holder.

152 (14) (a) "Utah resident" means a person who lives or operates in Utah and:

153 (i) if the person is an individual, has a primary residence in Utah; or

154 (ii) if the person is a business, has a principal place of business in Utah.

155 (b) "Utah resident" does not include a person who has a primary residence or principal  
156 place of business in another state.

157 (15) "Violation" means a social media corporation's use of a moderation practice  
158 against an account holder that does not comply with the social media corporation's terms of  
159 use.

160 Section 4. Section **13-58-201** is enacted to read:

161 **Part 2. Transparency**

162 **13-58-201. Communication of moderation practices.**

163 (1) Beginning on July 1, 2022, and once every year following July 1, 2022, a social  
164 media corporation shall clearly communicate to account holders the social media corporation's  
165 moderation practices before the account holder continues to engage with the social media  
166 corporation's platform.

167 (2) A social media corporation shall ensure that the corporation's communication of  
168 moderation practices:

169 (a) provides a complete list of potential moderation practices to all account holders;

170 (b) informs an account holder about the social media corporation's terms of use

171 regarding content that the social media corporation allows on the platform;

172 (c) explains the steps the social media corporation takes to ensure a post or account

173 complies with the social media corporation's terms of use;

174 (d) explains the methods users can use to notify the social media corporation of content

175 that may violate the terms of use; and

176 (e) includes information about the appeals process described in Section [13-58-204](#).

177 Section 5. Section **13-58-202** is enacted to read:

178 **13-58-202. Prohibited moderation practices.**

179 A social media corporation may not:

180 (1) employ inequitable moderation practices; or

181 (2) communicate the information described in Section [13-58-201](#) in a method that

182 includes any information not specifically related to the social media corporation's moderation

183 practices.

184 Section 6. Section **13-58-203** is enacted to read:

185 **13-58-203. Notice requirement.**

186 (1) Except as provided in Subsection (5), a social media corporation shall provide

187 written notice to an account holder no more than 24 hours after moderating the account holder's

188 post or account.

189 (2) The notice described in Subsection (1) shall include:

190 (a) a description of the post or account moderated;

191 (b) a description of the method the social media corporation used to moderate the post

192 or account;

193 (c) a citation to the terms of use that the moderated post or account violated;

194 (d) information about the appeal process; and

195 (e) an appeal form.

196 (3) The account holder shall have 30 days to submit an appeal form.

- 197           (4) The social media corporation shall make the appeal form:  
198           (a) simple to submit;  
199           (b) contain an option for the account holder to submit up to five examples of similar  
200 content that the social media corporation has not moderated; and  
201           (c) contain an option for the account holder to explain why the post or account should  
202 not have been moderated.
- 203           (5) (a) If the post or account that the social media corporation moderates is dangerous  
204 exigent content, the social media corporation shall provide written notice to the attorney  
205 general as soon as practicable, but no more than 24 hours after moderating the post or account.
- 206           (b) The written notice to the attorney general shall include:  
207           (i) a description of the post or account moderated;  
208           (ii) a description of the method the social media corporation used to moderate the post  
209 or account; and  
210           (iii) a description of why the social media corporation determined that the moderated  
211 post or account qualifies as dangerous exigent content.
- 212           (c) If a social media corporation provides notice to the attorney general under this  
213 section, the social media corporation is not required to notify the account holder that the social  
214 media corporation has moderated the post or account.

215           Section 7. Section **13-58-204** is enacted to read:

216           **13-58-204. Appeal process.**

- 217           (1) A moderator who was not involved in the original moderation decision shall review  
218 each appeal form.
- 219           (2) The moderator shall provide to the account holder, in writing:  
220           (a) an explanation of whether the post or account violates the social media  
221 corporation's terms of use;  
222           (b) an explanation of why the social media corporation:  
223           (i) treated the examples the account holder provided on the appeal form differently  
224 than the social media corporation treated the account holder's post or account; or



- 225 (ii) will moderate the examples the account holder provided; and
- 226 (c) a conclusion stating whether:
- 227 (i) the social media corporation engaged in an inequitable moderation practice in
- 228 moderating the post or account;
- 229 (ii) there is a possibility that the social media corporation engaged in an inequitable
- 230 moderation practice in moderating the post or account; or
- 231 (iii) the social media corporation acted properly in moderating the post or account.
- 232 (3) The moderator shall provide the written response no more than 30 days after the
- 233 day on which the social media corporation receives the appeal form.
- 234 (4) No more than 24 hours after the moderator concludes the social media corporation
- 235 engaged in an inequitable moderation practice in moderating the post or account, the social
- 236 media corporation shall reinstate the moderated post or account in the post or account's original
- 237 form.

238 Section 8. Section **13-58-301** is enacted to read:

239 **Part 3. Enforcement**

240 **13-58-301. Investigative powers of the division.**

- 241 (1) The division shall establish and administer a system to receive consumer
- 242 complaints regarding whether a social media corporation has committed a violation.
- 243 (2) (a) The division may investigate a consumer complaint to determine whether the
- 244 social media corporation has committed a violation.
- 245 (b) If the results of the division's investigation give the director reasonable cause to
- 246 believe that substantial evidence exists that a social media corporation identified in a consumer
- 247 complaint has committed a violation, the director shall refer the matter to the attorney general.
- 248 (c) Upon request, the division shall provide consultation and assistance to the attorney
- 249 general in enforcing this chapter.

250 Section 9. Section **13-58-302** is enacted to read:

251 **13-58-302. Enforcement powers of the attorney general.**

- 252 (1) Except as otherwise provided in this chapter, the attorney general has the exclusive

253 authority to enforce this chapter.

254 (2) Nothing in this chapter creates a private right of action.

255 (3) Upon referral from the division, the attorney general may initiate an enforcement  
256 action against a social media corporation that commits a violation.

257 (4) (a) At least 30 days before the day on which the attorney general initiates an  
258 enforcement action against a social media corporation, the attorney general shall provide the  
259 social media corporation:

260 (i) written notice identifying each alleged violation; and

261 (ii) an explanation of the basis for each allegation.

262 (b) The attorney general may not initiate an action if the social media corporation:

263 (i) cures the noticed violation within 30 days after the day on which the social media  
264 corporation receives the written notice described in Subsection (4)(a); and

265 (ii) provides the attorney general an express written statement that:

266 (A) the social media corporation cured the violation; and

267 (B) no further violation will occur.

268 (c) The attorney general may initiate a civil action against a social media corporation  
269 that:

270 (i) fails to cure a violation after receiving the notice described in Subsection (4)(a); or

271 (ii) after curing a noticed violation and providing a written statement in accordance  
272 with Subsection (4)(b), commits another violation.

273 (d) In an action described in Subsection (4)(c), the attorney general may recover:

274 (i) actual damages to the consumer; and

275 (ii) for each violation, a civil penalty not to exceed \$1,000 per consumer affected by  
276 the violation.

277 (5) The attorney general shall bring an action under this chapter in:

278 (a) the district court located in Salt Lake City; or

279 (b) the district court for the district in which resides a consumer who is affected by the  
280 violation.

281 (6) All civil penalties received from an action under this chapter shall be deposited into  
282 the Protecting Internet Speech Restricted Account established in Section 13-58-303.

283 Section 10. Section 13-58-303 is enacted to read:

284 **13-58-303. Protecting Internet Speech Restricted Account.**

285 (1) There is created within the General Fund a restricted account known as the  
286 "Protecting Internet Speech Restricted Account."

287 (2) The account shall be funded by money received through civil enforcement actions  
288 under this chapter.

289 (3) Upon appropriation, the division or the attorney general may use money deposited  
290 into the account for:

291 (a) investigation and administrative costs incurred by the division in investigating  
292 consumer complaints alleging violations of this chapter;

293 (b) recovery of costs and attorney fees accrued by the attorney general in enforcing this  
294 chapter; and

295 (c) providing consumer and business education regarding:

296 (i) consumer rights under this chapter; and

297 (ii) compliance with the provisions of this chapter for social media corporations.

298 (4) If the balance of the account exceeds \$1,000,000 at the close of any fiscal year, the  
299 Division of Finance shall transfer the amount that exceeds \$1,000,000 into the General Fund.

300 Section 11. Section 13-58-304 is enacted to read:

301 **13-58-304. Attorney general report.**

302 (1) The attorney general and the division shall compile a report:

303 (a) evaluating the liability and enforcement provisions of this chapter, including:

304 (i) the effectiveness of the attorney general's and the division's efforts to enforce this  
305 chapter; and

306 (ii) any recommendations for changes to this chapter; and

307 (b) summarizing the moderation practices protected and not protected by this chapter,  
308 including a list of alleged violations the attorney general and the division have received.

