

Jefferson Moss proposes the following substitute bill:

Artificial Intelligence Amendments

2025 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jefferson Moss

Senate Sponsor: Kirk A. Cullimore

LONG TITLE

General Description:

This bill enacts provisions relating to the regulation of mental health chatbots that use artificial intelligence technology.

Highlighted Provisions:

This bill:

- defines terms;
- establishes protections for users of mental health chatbots that use artificial intelligence technology;
- prohibits certain uses of personal information by a mental health chatbot;
- requires a mental health chatbot to make certain disclosures to users;
- provides enforcement authority to the Division of Consumer Protection;
- establishes requirements for creating and maintaining policies for mental health chatbots;
- creates rebuttable presumptions for suppliers who comply with policy requirements; and
- provides a severability clause.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

13-2-1, as last amended by Laws of Utah 2024, Chapter 132

ENACTS:

13-72a-101, Utah Code Annotated 1953

13-72a-201, Utah Code Annotated 1953

13-72a-202, Utah Code Annotated 1953

29 **13-72a-203**, Utah Code Annotated 1953
30 **13-72a-204**, Utah Code Annotated 1953
31 **13-72a-301**, Utah Code Annotated 1953
32 **58-60-118**, Utah Code Annotated 1953

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34 *Be it enacted by the Legislature of the state of Utah:*35 Section 1. Section **13-2-1** is amended to read:36 **13-2-1 . Consumer protection division established -- Functions.**37 (1) There is established within the Department of Commerce the Division of Consumer
38 Protection.

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

40 (a) Chapter 10a, Music Licensing Practices Act;

41 (b) Chapter 11, Utah Consumer Sales Practices Act;

42 (c) Chapter 15, Business Opportunity Disclosure Act;

43 (d) Chapter 20, New Motor Vehicle Warranties Act;

44 (e) Chapter 21, Credit Services Organizations Act;

45 (f) Chapter 22, Charitable Solicitations Act;

46 (g) Chapter 23, Health Spa Services Protection Act;

47 (h) Chapter 25a, Telephone and Facsimile Solicitation Act;

48 (i) Chapter 26, Telephone Fraud Prevention Act;

49 (j) Chapter 28, Prize Notices Regulation Act;

50 (k) Chapter 32a, Pawnshop, Secondhand Merchandise, and Catalytic Converter
51 Transaction Information Act;

52 (l) Chapter 34, Utah Postsecondary School and State Authorization Act;

53 (m) Chapter 41, Price Controls During Emergencies Act;

54 (n) Chapter 42, Uniform Debt-Management Services Act;

55 (o) Chapter 49, Immigration Consultants Registration Act;

56 (p) Chapter 51, Transportation Network Company Registration Act;

57 (q) Chapter 52, Residential Solar Energy Disclosure Act;

58 (r) Chapter 53, Residential, Vocational and Life Skills Program Act;

59 (s) Chapter 54, Ticket Website Sales Act;

60 (t) Chapter 56, Ticket Transferability Act;

61 (u) Chapter 57, Maintenance Funding Practices Act;

62 (v) Chapter 61, Utah Consumer Privacy Act;

- 63 ~~[(w) Chapter 63, Utah Social Media Regulation Act;]~~
 64 ~~[(x)]~~ (w) Chapter 64, Vehicle Value Protection Agreement Act;
 65 ~~[(y)]~~ (x) Chapter 65, Utah Commercial Email Act;
 66 ~~[(z)]~~ (y) Chapter 67, Online Dating Safety Act;
 67 ~~[(aa)]~~ (z) Chapter 68, Lawyer Referral Consultants Registration Act;
 68 ~~[(bb)]~~ (aa) Chapter 70, Automatic Renewal Contracts Act~~[-and]~~ ;
 69 ~~[(ee)]~~ (bb) Chapter 71, Utah Minor Protection in Social Media Act~~[-]~~ ; and
 70 (cc) Chapter 72a, Artificial Intelligence Applications Relating to Mental Health.
 71 (3) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
 72 division may make rules to establish:
 73 (a) a public list that identifies a person who:
 74 (i) violates a chapter described in Subsection (2);
 75 (ii) without proper legal justification, fails to comply with an order, subpoena,
 76 judgment, or other legal process issued by:
 77 (A) the division; or
 78 (B) a court of competent jurisdiction; or
 79 (iii) breaches a settlement agreement, stipulation, assurance of voluntary compliance,
 80 or similar instrument signed by the person and the division; and
 81 (b) a process by which a person may be removed from the list the division establishes as
 82 described in Subsection (3)(a).

83 Section 2. Section **13-72a-101** is enacted to read:

84 **CHAPTER 72a. ARTIFICIAL INTELLIGENCE APPLICATIONS RELATING TO**

85 **MENTAL HEALTH.**

86 **Part 1. General Provisions**

87 **13-72a-101 . Definitions.**

88 As used in this chapter:

- 89 (1) "Artificial intelligence" means the same as that term is defined in Section 13-72-101.
 90 (2) "Artificial intelligence technology" means the same as that term is defined in Section
 91 13-72-101.
 92 (3) "Confidential communications" means the same as that term is defined in Section
 93 58-60-102.
 94 (4) "Covered entity" means the same as that term is defined in 45 C.F.R. Sec. 160.103.

- 95 (5) "Division" means the Division of Consumer Protection created in Section 13-2-1.
- 96 (6) "Generative artificial intelligence" means an artificial ~~intelligence~~ **intelligence technology** ~~system~~ ←~~intelligence~~
 96a system that:
- 97 (a) is trained on data;
- 98 (b) ~~is~~ **is designed to simulate human conversation with a consumer through one or**
 98a **more of the following:**~~[interacts with a person using]~~
- 98b (i) ~~text~~ ~~input~~ ~~output~~ ~~;~~ ~~and~~
- 98c ~~audio~~ ~~input~~ ~~output~~ ~~;~~ ~~and~~ ~~or~~
- 98d ~~visual communication;~~ ~~and~~
- 99 (c) generates non-scripted outputs similar to outputs created by a human, with limited or
 100 no human oversight.
- 101 (7) "Health care provider" means the same as that term is defined in 45 C.F.R. Sec. 160.103.
- 102 (8) "Health plan" means the same as that term is defined in 45 C.F.R. Sec. 160.103.
- 103 (9) "Individually identifiable health information" means any information, whether oral or
 104 recorded in any form or medium, that relates to the physical or mental health or
 105 condition of an individual.
- 106 (10)(a) "Mental health chatbot" means an artificial intelligence technology that:
- 107 (i) uses generative artificial intelligence to engage in interactive conversations with a
 108 user of the mental health chatbot similar to the confidential communications that
 109 an individual would have with a licensed mental health therapist; and
- 110 (ii) a supplier represents, or a reasonable person would believe, can or will provide
 111 mental health therapy or help a user manage or treat mental health conditions.
- 112 (b) "Mental health chatbot" does not include artificial intelligence technology that only:
- 113 (i) provides scripted output, such as guided meditations or mindfulness exercises; or
- 114 (ii) analyzes an individual's input for the purpose of connecting the individual with a
 115 human mental health therapist.
- 116 (11) "Mental health therapist" means the same as that term is defined in Section 58-60-102.
- 117 (12) "Personal data" means the same as term is defined Section 63A-19-101.
- 118 (13) "Scientific research development" means research:
- 119 (a) conducted by a researcher affiliated with:
- 120 (i) an institution of higher education;
- 121 (ii) a research organization; or
- 122 (iii) a healthcare facility; and
- 123 (b) that is:

- 124 (i) approved by an institutional review board; and
 125 (ii) conducted in accordance with applicable ethics requirements for human subject
 126 research.

127 (14) "Supplier" means the same as that term is defined in Section 13-11-3.

128 (15) "Utah user" means an individual located in the state at the time the individual accesses
 129 or uses a mental health chatbot.

130 (16) "User input" means content provided to a mental health chatbot by a Utah user.

131 Section 3. Section **13-72a-201** is enacted to read:

132 **Part 2. Protections for Users of Mental Health Chatbots**

133 **13-72a-201 . Protection of personal information.**

134 (1) A supplier of a mental health chatbot may not sell to or share with any third party any:

135 (a) individually identifiable health information of a Utah user; or

136 (b) user input of a Utah user.

136a **Ĥ→ (2) Subsection (1) does not apply to individually identifiable health information:**

136b (a) **requested by a health care provider with the consent of the Utah user;**

136c (b) **provided to a health plan of a Utah user upon request of the Utah user; or**

136d (c) **shared in compliance with Subsection (3).**

136e (3)(a) **A supplier may share individually identifiable health information necessary to**
 136f **ensure the effective functionality of the mental health chatbot with another party with**
 136g **which the supplier has a contract related to such functionality.**

136h (b) **When sharing information under Subsection (3)(a), the supplier and the other**
 136i **entity shall comply with all applicable privacy and security provisions of 45 C.F.R.**
 136j **Part 160 and 45 C.F.R. Part 164, Subparts A and E, as if the supplier were a covered**
 136k **entity and the other entity were a business associate, as such terms are defined in 45**
 136l **C.F.R. 160.103.**

137 **[(2) Subsection (1) does not apply to:]**

138 **[(a) individually identifiable health information:]**

139 **[(i) requested by a health care provider with consent of the Utah user; or]**

140 **[(ii) provided to a health plan of a Utah user upon request of the Utah user; or]**

141 **[(b) personal data provided by a supplier to an associated third party in the ordinary] ←Ĥ**

142 **Ĥ→ [course of business, provided that the supplier complies with the security and privacy**
 143 **] ←Ĥ**

~~provisions of 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A, C, and E, to the~~

~~same extent as is required of a covered entity.~~

Section 4. Section **13-72a-202** is enacted to read:

13-72a-202 . Restrictions on advertising.

(1) A supplier may not use a mental health chatbot to advertise a specific product or service to a Utah user in a conversation between the Utah user and the mental health chatbot unless the mental health chatbot:

(a) clearly and conspicuously identifies the advertisement as an advertisement; and

(b) clearly and conspicuously discloses to the Utah user any:

(i) sponsorship;

(ii) business affiliation; or

(iii) agreement that the supplier has with a third party to promote, advertise, or recommend the product or service.

(2) A supplier of a mental health chatbot may not use a Utah user's input to:

(a) determine whether to display an advertisement for a product or service to the Utah user, unless the advertisement is for the mental health chatbot itself;

(b) determine a product, service, or category of product or service, to advertise to the Utah user; or

(c) customize how an advertisement is presented to the Utah user.

(3) This section does not prohibit a mental health chatbot from recommending that a Utah user seek counseling, therapy, or other assistance from a licensed professional, including a specific licensed professional.

Section 5. Section **13-72a-203** is enacted to read:

13-72a-203 . Disclosure requirements.

(1) A supplier of a mental health chatbot shall cause the mental health chatbot to clearly and conspicuously disclose to a Utah user that the mental health chatbot is an artificial intelligence technology and not a human.

(2) The disclosure described in Subsection (1) shall be made:

(a) before the Utah user may access the features of the mental health chatbot;

(b) at the beginning of any interaction with the Utah user if the Utah user has not accessed the mental health chatbot within the previous seven days; and

(c) any time a Utah user asks or otherwise prompts the mental health chatbot about whether artificial intelligence is being used.

176 Section 6. Section **13-72a-204** is enacted to read:

177 **13-72a-204 . Violations -- Enforcement authority.**

- 178 (1) The division shall administer and enforce the provisions of this chapter in accordance
 179 with Chapter 2, Division of Consumer Protection.
- 180 (2) The attorney general shall:
- 181 (a) upon request, give legal advice to the division; and
 182 (b) act as counsel for the division in the exercise of the division's responsibilities under
 183 this chapter.
- 184 (3) In addition to the division's enforcement powers under Chapter 2, Division of Consumer
 185 Protection:
- 186 (a) the division director may impose an administrative fine of up to \$2,500 for each
 187 violation of this chapter; and
- 188 (b) the division may bring an action in a court of competent jurisdiction to enforce a
 189 provision of this chapter.
- 190 (4) In a court action by the division to enforce a provision of this chapter, the court may:
- 191 (a) declare that an act or practice violates a provision of this chapter;
 192 (b) issue an injunction for a violation of this part;
 193 (c) order disgorgement of money received in violation of this chapter;
 194 (d) order payment of disgorged money to an injured purchaser or consumer;
 195 (e) impose a fine of up to \$2,500 for each violation of this chapter; or
 196 (f) award other relief that the court determines reasonable and necessary.
- 197 (5) If a court awards judgment or injunctive relief to the division, the court shall award the
 198 division:
- 199 (a) reasonable attorney fees;
 200 (b) court costs; and
 201 (c) investigative fees.
- 202 (6) A court may impose a civil penalty of no more than \$5,000 for each violation of an
 203 administrative or court order issued for a violation of this chapter.
- 204 (7) The attorney general may bring a civil action on behalf of the division to collect a civil
 205 penalty imposed under this section.
- 206 (8) The division shall deposit all fines and civil penalties collected under this section into
 207 the Consumer Protection Education and Training Fund created in Section 13-2-8.

208 Section 7. Section **13-72a-301** is enacted to read:

209 **Part 3. Severability**

210 **13-72a-301 . Severability.**

211 (1) If any provision of this chapter or the application of any provision of this chapter to any
212 person or circumstance is held invalid by a final decision of a court of competent
213 jurisdiction, the remainder of this chapter shall be given effect without the invalid
214 provision or application.

215 (2) The provisions of this chapter are severable.

216 Section 8. Section **58-60-118** is enacted to read:

217 **58-60-118 . Mental health chatbots -- Affirmative defense.**

218 (1) As used in this section:

219 (a) "Mental health chatbot" means the same as that term is defined in Section 13-72a-101.

220 (b) "Supplier" means the same as that term is defined in Section 13-11-3.

221 (2) It is an affirmative defense to liability in an action brought under Subsection 58-1-501(1)
222 or Subsection 58-1-501(2) if the supplier demonstrates that the supplier:

223 (a) created, maintained, and implemented a policy that meets the requirements of
224 Subsection (3);

225 (b) maintains documentation regarding the development and implementation of the
226 mental health chatbot that describes:

227 (i) foundation models used in development;

228 (ii) training data used;

229 (iii) compliance with federal health privacy regulations;

230 (iv) user data collection and sharing practices; and

231 (v) ongoing efforts to ensure accuracy, reliability, fairness, and safety;

232 (c) filed the policy with the division as described in Subsection (4); and

233 (d) complied with all requirements of the filed policy at the time of the alleged violation.

234 (3) A policy described in Subsection (2)(a) must:

235 (a) be in writing;

236 (b) clearly state:

237 (i) the intended purposes of the mental health chatbot; and

238 (ii) the abilities and limitations of the mental health chatbot; and

239 (c) describe the procedures by which the supplier:

240 (i) ensures that licensed mental health therapists are involved in the development and
241 review process;

242 (ii) ensures the mental health chatbot is developed and monitored in a manner
243 consistent with clinical best practices;

- 244 (iii) conducts testing, prior to making the mental health chatbot publicly available and
245 regularly thereafter, to ensure that the output of the mental health chatbot poses no
246 greater risk to a user than that posed to an individual in therapy with a licensed
247 mental health therapist;
- 248 (iv) identifies reasonably foreseeable adverse outcomes to, and potentially harmful
249 interactions with, users that could result from using the mental health chatbot;
- 250 (v) provides a mechanism for a user to report any potentially harmful interactions
251 from use of the mental health chatbot;
- 252 (vi) implements protocols to assess and respond to risk of harm to users or other
253 individuals;
- 254 (vii) details actions taken to prevent or mitigate any such adverse outcomes or
255 potentially harmful interactions;
- 256 (viii) implements protocols to respond in real time to acute risk of physical harm;
- 257 (ix) reasonably ensures regular, objective reviews of safety, accuracy, and efficacy,
258 which may include internal or external audits;
- 259 (x) provides users any necessary instructions on the safe use of the mental health
260 chatbot;
- 261 (xi) ensures users understand they are interacting with artificial intelligence;
- 262 (xii) ensures users understand the intended purpose, capabilities, and limitations of
263 the mental health chatbot;
- 264 (xiii) prioritizes user mental health and safety over engagement metrics or profit;
- 265 (xiv) implements measures to prevent discriminatory treatment of users; and
- 266 (xv) ensures compliance with the security and privacy provisions of 45 C.F.R. Part
267 160 and 45 C.F.R. Part 164, Subparts A, C, and E, as if the supplier were a
268 covered entity, and applicable consumer protection requirements, including
269 Sections 13-72a-201, 13-72a-202, and 13-72a-203.
- 270 (4) To file a policy with the division under this section, a supplier of a mental health
271 chatbot:
- 272 (a) shall provide to the division:
- 273 (i) the name and address of the supplier;
- 274 (ii) the name of the mental health chatbot supplied by the supplier;
- 275 (iii) the written policy described in Subsection (3); and
- 276 (iv) a fee set in accordance with Section 63J-1-504;
- 277 (b) shall file in a manner established by the division; and

- 278 (c) may provide to the division:
- 279 (i) any revisions to a policy filed under this section; or
- 280 (ii) any other documentation the supplier elects to provide.
- 281 (5) The division:
- 282 (a) shall provide a means for a supplier of a mental health chatbot to file under this
- 283 section; and
- 284 (b) may impose an annual filing fee set in accordance with Section 63J-1-504.
- 285 (6) The affirmative defense described in this section applies only in an administrative or
- 286 civil action alleging a violation of:
- 287 (a) Subsection 58-1-501(1); or
- 288 (b) Subsection 58-1-501(2).
- 289 (7) Nothing in this section shall be construed to:
- 290 (a) bar the division from bringing an action under Subsection 58-1-501(1) or Subsection
- 291 58-1-501(2) against the supplier of a mental health chatbot; or
- 292 (b) recognize a mental health chatbot as a licensed mental health therapist.
- 293 **Section 9. Effective Date.**
- 294 This bill takes effect on May 7, 2025.