

FREE EXPRESSION REGULATION AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Norman K. Thurston

Senate Sponsor: Deidre M. Henderson

LONG TITLE

Committee Note:

The Political Subdivisions Interim Committee recommended this bill.

General Description:

This bill addresses local government regulation of expressive activity.

Highlighted Provisions:

This bill:

- ▶ requires that a political subdivision ensure that any generally or individually applicable time, place, or manner restriction on expressive activity on public grounds complies with certain constitutional requirements;
- ▶ requires that, if a political subdivision imposes a generally applicable time, place, or manner restriction on expressive activity on public grounds, the political subdivision must impose the restriction by ordinance or adopt the restriction in accordance with a general ordinance;
- ▶ prevents a political subdivision from prohibiting political activities on public grounds; and
- ▶ exempts compliance with Title 20A, Election Code, and certain property that a political subdivision owns or leases.

Money Appropriated in this Bill:

None

Other Special Clauses:



28 This bill provides a special effective date.

29 **Utah Code Sections Affected:**

30 ENACTS:

31 **11-58-101**, Utah Code Annotated 1953

32 **11-58-102**, Utah Code Annotated 1953

33 **11-58-103**, Utah Code Annotated 1953

34 **11-58-104**, Utah Code Annotated 1953

35 **11-58-105**, Utah Code Annotated 1953



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

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

39 **CHAPTER 58. EXPRESSIVE ACTIVITY REGULATION**
40 **BY LOCAL GOVERNMENT ACT**

41 **11-58-101. Title.**

42 This chapter is known as the "Expressive Activity Regulation by Local Government
43 Act."

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

45 **11-58-102. Definitions.**

46 As used in this chapter:

47 (1) "Expressive activity" means:

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

49 (b) distributing literature;

50 (c) carrying a sign; or

51 (d) signature gathering or circulating a petition.

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

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

55 (b) applies generally to any person; and

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

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

59 (i) that restricts or infringes on expressive activity; and
60 (ii) that a political subdivision applies:
61 (A) on a case-by-case basis;
62 (B) to a specifically identified person or group of persons; and
63 (C) regarding a specifically identified place and time.
64 (b) "Individually applicable time, place, and manner restriction" includes a restriction
65 placed on expressive activity as a condition to obtain a permit.
66 (4) (a) "Political subdivision" means a county, city, town, or metro township.
67 (b) "Political subdivision" does not mean:
68 (i) a local district under Title 17B, Limited Purpose Local Government Entities - Local
69 Districts;
70 (ii) a special service district under Title 17D, Chapter 1, Special Service District Act;
71 or
72 (iii) a school district under Title 53A, Chapter 2, School Districts.
73 (5) (a) "Public building" means a building or permanent structure that is:
74 (i) owned, leased, or occupied by a political subdivision or a subunit of a political
75 subdivision;
76 (ii) open to public access in whole or in part; and
77 (iii) used for public education or political subdivision activities.
78 (b) "Public building" does not mean:
79 (i) a building owned or leased by a political subdivision or a subunit of a political
80 subdivision:
81 (A) that is closed to public access;
82 (B) where state or federal law restricts expressive activity; or
83 (C) when the building is used by a person, in whole or in part, for a private function; or
84 (ii) a public school.
85 (6) (a) "Public grounds" means the area outside a public building that is a traditional
86 public forum where members of the public may safely gather to engage in expressive activity.
87 (b) "Public grounds" includes sidewalks, streets, and parks.
88 (c) "Public grounds" does not include the interior of a public building.
89 Section 3. Section **11-58-103** is enacted to read:

90 **11-58-103. Exceptions.**

91 This chapter does not apply to:

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

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

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

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

97 (3) a limited or nonpublic forum.

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

99 **11-58-104. Time, place, and manner restrictions -- Generally applicable**
100 **restrictions by ordinance.**

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

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

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

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

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

111 (a) imposes the restriction by ordinance; or

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

114 (ii) adopts, by policy or practice, the restriction in accordance with the ordinance
115 described in Subsection (2)(b)(i) and with the constitutional safeguards described in Subsection

116 (1).

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

118 **11-58-105. Political activity outside a public building.**

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

121 public grounds.

122 (2) A political subdivision may impose a time, place, and manner restriction on

123 political activities outside a public building in accordance with Section [11-58-104](#).

124 Section 6. **Effective date.**

125 This bill takes effect on May 14, 2019.

Legislative Review Note
Office of Legislative Research and General Counsel