

**Senator Michael K. McKell** proposes the following substitute bill:

**ELECTRONIC FREE SPEECH AMENDMENTS**

2021 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Michael K. McKell**

House Sponsor: Brady Brammer

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**LONG TITLE**

**General Description:**

This bill amends 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 when the social media corporation uses a moderation practice with respect to a Utah account holder's account;
  - an opportunity for a Utah account holder to appeal a moderation practice that the social media corporation employs on a Utah account holder's account or post; and
  - an independent review board to review the social media corporation's moderation practices with respect to Utah account holders;
- ▶ 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;



- 26 • a mechanism for the division to investigate alleged violations; and
- 27 • an enforcement and penalty mechanism for the attorney general if the division
- 28 refers a violation to the attorney general;
- 29 ▶ creates a restricted account to deposit penalties and provides for the distributions
- 30 from the account; and
- 31 ▶ provides for severability if a provision is found to be invalid.

32 **Money Appropriated in this Bill:**

33 None

34 **Other Special Clauses:**

35 None

36 **Utah Code Sections Affected:**

37 ENACTS:

- 38 13-58-101, Utah Code Annotated 1953
- 39 13-58-102, Utah Code Annotated 1953
- 40 13-58-201, Utah Code Annotated 1953
- 41 13-58-202, Utah Code Annotated 1953
- 42 13-58-203, Utah Code Annotated 1953
- 43 13-58-204, Utah Code Annotated 1953
- 44 13-58-205, Utah Code Annotated 1953
- 45 13-58-301, Utah Code Annotated 1953
- 46 13-58-302, Utah Code Annotated 1953
- 47 13-58-303, Utah Code Annotated 1953
- 48 13-58-304, Utah Code Annotated 1953
- 49 13-58-401, Utah Code Annotated 1953



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

52 Section 1. Section 13-58-101 is enacted to read:

53 **CHAPTER 58. FREEDOM FROM BIASED MODERATION ACT**

54 **Part 1. General Provisions**

55 **13-58-101. Title.**

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

57 Section 2. Section 13-58-102 is enacted to read:

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

59 In this chapter:

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

62 (2) "Director" means the director of the division.

63 (3) "Division" means the Division of Consumer Protection in the Department of  
64 Commerce established in Section 13-2-1.

65 (4) "Flag" means the act of a social media corporation singling out a post because of  
66 the post's content.

67 (5) (a) "Inequitable moderation practice" means a moderation practice that results in a  
68 social media corporation removing, suppressing, or flagging an account holder's post or  
69 account because of the content of the post.

70 (b) "Inequitable moderation practice" includes:

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

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

74 (6) (a) "Interactive computer service" means any information service, system, or access  
75 software provider that:

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

77 (ii) provides access to the Internet

78 ~~(iii) provides a platform; and~~

79 ~~(iv) has at least 20,000,000 account holders]~~

80 (b) "Interactive computer service" includes:

81 (i) a web service;

82 (ii) a web system;

83 (iii) a website;

84 (iv) a web application; or

85 (v) a web portal.

86 (7) (a) "Moderation practice" means a method a social media corporation employs to  
87 regulate a post.

88 (b) "Moderation practice" includes:

89 (i) flagging a post;

90 (ii) removing a post;

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

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

93 (8) (a) "Platform" means an online forum that a social media corporation makes

94 available for an account holder to:

95 (i) create a profile;

96 (ii) upload posts;

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

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

99 (b) "Platform" does not include:

100 (i) electronic mail; or

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

102 (A) the majority of the content that is posted or created is posted or created by the

103 provider of the online service, website, or application; and

104 (B) the ability to chat, comment, or interact with other users is directly related to the  
105 provider's content.

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

108 (10) "Social media corporation" means any domestic corporation or foreign corporation  
109 that  $\hat{S}$  provides a platform that has at least 20,000,000 account holders and  $\leftarrow \hat{S}$  is an  
109a interactive computer service.

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

112 (12) (a) "User" means an individual who has access to view the post of an account  
113 holder.

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

115 (13) (a) "Utah resident" means a person who lives or operates in Utah and:

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

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

118 (b) "Utah resident" does not include a person who has a primary residence or principal

119 place of business in another state.

120 (14) "Violation" means a social media corporation's use of a moderation practice  
121 against an account holder that does not comply with the social media corporation's terms of  
122 use.

123 Section 3. Section **13-58-201** is enacted to read:

124 **Part 2. Transparency**

125 **13-58-201. Communication of moderation practices.**

126 (1) Beginning on July 1, 2021, and once every year following July 1, 2021, a social  
127 media corporation shall clearly communicate to account holders the social media corporation's  
128 moderation practices before the account holder continues to engage with the social media  
129 corporation's platform.

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

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

133 (b) informs an account holder about the social media corporation's terms of use  
134 regarding content that the social media corporation allows on the platform;

135 (c) explains the steps the social media corporation takes to ensure a post or account  
136 complies with the social media corporation's terms of use;

137 (d) explains the methods users can use to notify the social media corporation of content  
138 that may violate the terms of use; and

139 (e) includes information about the appeals process described in Section [13-58-204](#) and  
140 the independent review board described in Section [13-58-205](#).

141 Section 4. Section **13-58-202** is enacted to read:

142 **13-58-202. Prohibited moderation practices.**

143 A social media corporation may not:

144 (1) employ inequitable moderation practices; or

145 (2) communicate the information described in Section [13-58-201](#) in a method that  
146 includes any information not specifically related to the social media corporation's moderation  
147 practices.

148 Section 5. Section **13-58-203** is enacted to read:

149 **13-58-203. Notice requirement.**

150 (1) A social media corporation shall provide written notice to an account holder no  
151 more than 24 hours after moderating the account holder's post or account.

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

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

154 (b) a description of the method the social media corporation used to moderate the post  
155 or account;

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

157 (d) information about the independent review board described in Section [13-58-204](#);

158 (e) information about the appeal process; and

159 (f) an appeal form.

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

161 (4) The social media corporation shall make the appeal form:

162 (a) simple to submit;

163 (b) contain an option for the account holder to submit up to five examples of similar  
164 content that the social media corporation has not moderated; and

165 (c) contain an option for the account holder to explain why the post or account should  
166 not have been moderated.

167 Section 6. Section **13-58-204** is enacted to read:

168 **13-58-204. Appeal process.**

169 (1) A moderator who was not involved in the original moderation decision shall review  
170 each appeal form.

171 (2) The moderator shall provide to the account holder, in writing:

172 (a) an explanation of whether the post or account violates the social media  
173 corporation's terms of use;

174 (b) an explanation of why the social media corporation:

175 (i) treated the examples the account holder provided on the appeal form differently  
176 than the social media corporation treated the account holder's post or account; or

177 (ii) will moderate the examples the account holder provided; and

178 (c) a conclusion stating whether:

179 (i) the social media corporation engaged in an inequitable moderation practice in  
180 moderating the post or account;

181 (ii) there is a possibility that the social media corporation engaged in an inequitable  
182 moderation practice in moderating the post or account; or

183 (iii) the social media corporation acted properly in moderating the post or account.

184 (3) The moderator shall provide the written response no more than 30 days after the  
185 day on which the social media corporation receives the appeal form.

186 (4) No more than 24 hours after the moderator concludes the social media corporation  
187 engaged in an inequitable moderation practice in moderating the post or account, the social  
188 media corporation shall reinstate the moderated post or account in the post or account's original  
189 form.

190 (5) If the moderator concludes that there is a possibility that the social media  
191 corporation engaged in an inequitable moderation practice in moderating the post or account,  
192 the moderator shall refer the instance of moderation to the independent review board described  
193 in Section [13-58-205](#).

194 Section 7. Section **13-58-205** is enacted to read:

195 **13-58-205. Independent review board.**

196 (1) A social media corporation shall engage the services of an independent review  
197 board to review the social media corporation's content moderation decisions.

198 (2) A moderator conducting the appeal process described in Section [13-58-204](#) shall  
199 refer an instance of moderation to the independent review board if, during the appeal process,  
200 the moderator concludes that there is a possibility that the social media corporation engaged in  
201 an inequitable moderation practice in moderating the content.

202 (3) (a) The independent review board shall consist of at least 11 members who  
203 represent a diverse cross-section of political, religious, racial, generational, and social  
204 perspectives.

205 (b) The social media corporation shall provide on the social media corporation's  
206 platform biographies of all of the members of the independent review board.

207 (4) When conducting a review of an instance of moderation, the independent review  
208 board shall determine whether a social media corporation engaged in an inequitable moderation  
209 practice in moderating the post or account.

210 (5) The independent review board shall notify the social media corporation of the need  
211 to reverse an instance of moderation if the independent review board concludes by a simple

212 majority that it is more likely than not that the social media corporation engaged in an  
213 inequitable moderation practice in moderating the post or account.

214 (6) The independent review board shall make a determination within 30 days after the  
215 day on which the independent review board receives a referral to review an instance of  
216 moderation.

217 (7) No more than 24 hours after the independent review board determines the social  
218 media corporation engaged in an inequitable moderation practice in moderating the post or  
219 account, the social media corporation shall reinstate the moderated post or account in the post  
220 or account's original form.

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

222 **Part 3. Enforcement**

223 **13-58-301. Investigative powers of the division.**

224 (1) The division shall establish and administer a system to receive consumer  
225 complaints regarding whether a social media corporation has committed a violation.

226 (2) (a) The division may investigate a consumer complaint to determine whether the  
227 social media corporation has committed a violation.

228 (b) If the results of the division's investigation give the director reasonable cause to  
229 believe that substantial evidence exists that a social media corporation identified in a consumer  
230 complaint has committed a violation, the director shall refer the matter to the attorney general.

231 (c) Upon request, the division shall provide consultation and assistance to the attorney  
232 general in enforcing this chapter.

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

234 **13-58-302. Enforcement powers of the attorney general.**

235 (1) Except as otherwise provided in this chapter, the attorney general has the exclusive  
236 authority to enforce this chapter.

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

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

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



243 (i) written notice identifying each alleged violation; and  
 244 (ii) an explanation of the basis for each allegation.  
 245 (b) The attorney general may not initiate an action if the social media corporation:  
 246 (i) cures the noticed violation within 30 days after the day on which the social media  
 247 corporation receives the written notice described in Subsection (4)(a); and  
 248 (ii) provides the attorney general an express written statement that:  
 249 (A) the social media corporation cured the violation; and  
 250 (B) no further violation will occur.  
 251 (c) The attorney general may initiate a civil action against a social media corporation  
 252 that:  
 253 (i) fails to cure a violation after receiving the notice described in Subsection (4)(a); or  
 254 (ii) after curing a noticed violation and providing a written statement in accordance  
 255 with Subsection (4)(b), commits another violation.  
 256 (d) In an action described in Subsection (4)(c), the attorney general may recover:  
 257 (i) actual damages to the consumer; and  
 258 (ii) for each violation, a civil penalty not to exceed \$1,000 per consumer affected by  
 259 the violation.  
 260 (5) The attorney general shall bring an action under this chapter in:  
 261 (a) the district court located in Salt Lake City; or  
 262 (b) the district court for the district in which resides a consumer who is affected by the  
 263 violation.  
 264 (6) All civil penalties received from an action under this chapter shall be deposited into  
 265 the Protecting Internet Speech Restricted Account established in Section [13-58-303](#).  
 266 Section 10. Section **13-58-303** is enacted to read:  
 267 **13-58-303. Protecting Internet Speech Restricted Account.**  
 268 (1) There is created within the General Fund a restricted account known as the  
 269 "Protecting Internet Speech Restricted Account."  
 270 (2) The account shall be funded by money received through civil enforcement actions  
 271 under this chapter.  
 272 (3) Upon appropriation, the division or the attorney general may use money deposited  
 273 into the account for:

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

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

278 (c) providing consumer and business education regarding:

279 (i) consumer rights under this chapter; and

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

281 (4) If the balance of the account exceeds \$1,000,000 at the close of any fiscal year, the

282 Division of Finance shall transfer the amount that exceeds \$1,000,000 into the General Fund.

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

284 **13-58-304. Attorney general report.**

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

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

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

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

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

292 (2) The attorney general and the division may update the report as new information  
293 becomes available.

294 (3) The attorney general and the division shall submit the report to the Business and  
295 Labor Interim Committee before July 1, 2023.

296 Section 12. Section **13-58-401** is enacted to read:

297 **Part 4. Severability**

298 **13-58-401. Severability.**

299 If any provision of this chapter or the application of any provision to any person is held  
300 invalid by a final decision of a court of competent jurisdiction, the remainder of this chapter  
301 shall be given effect without the invalid provision or application.