

## SB0228S01 compared with SB0228

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inserted text shows text that was not in SB0228 but was inserted into SB0228S01.

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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: \_\_\_\_\_

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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

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

### **Money Appropriated in this Bill:**

None

### **Other Special Clauses:**

None

### **Utah Code Sections Affected:**

ENACTS:

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

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

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

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

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

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

**13-58-205**, Utah Code Annotated 1953

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

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

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

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

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

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

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

## CHAPTER 58. FREEDOM FROM BIASED MODERATION ACT

### Part 1. General Provisions

#### 13-58-101. Title.

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

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

#### 13-58-102. Definitions.

In this chapter:

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

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

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

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

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

(b) "Inequitable moderation practice" includes:

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

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

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

(i) provides or enables computer access by multiple users to a computer server;  
including a service or system that;

(ii) provides access to the Internet;

(iii) provides a platform; and

(iv) has at least 20,000,000 account holders or generates more than \$50,000,000 in total annual revenue worldwide.

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(b) "Interactive computer service" includes:

(i) a web service;

(ii) a web system;

(iii) a website;

(iv) a web application; or

(v) a web portal.

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

(b) "Moderation practice" includes:

(i) flagging a post;

(ii) removing a post;

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

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

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

(i) create a profile;

~~(a)~~(ii) upload posts;

~~(b)~~(iii) view the posts of other account holders; ~~for~~and

~~(c)~~(iv) interact with other account holders or users.

(b) "Platform" does not include:

(i) electronic mail; or

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

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

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

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

(10) "Social media corporation" means any domestic corporation or foreign corporation that is an interactive computer service.

(11) "Terms of use" means the terms to which an account holder must agree before an

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account holder can open or continue to use an account on a platform.

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

(b) "User" includes an account holder.

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

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

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

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

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

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

### **Part 2. Transparency**

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

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

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

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

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

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

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

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

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

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

A social media corporation may not:

- (1) employ inequitable moderation practices; or
- (2) communicate the information described in Section 13-58-201 in a method that includes any information not specifically related to the social media corporation's moderation practices.

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

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

- (1) A social media corporation shall provide written notice to an account holder no more than 24 hours after moderating the account holder's post or account.
- (2) The notice described in Subsection (1) shall include:
  - (a) a description of the post or account moderated;
  - (b) a description of the method the social media corporation used to moderate the post or account;
  - (c) a citation to the terms of use that the moderated post or account violated;
  - (d) information about the independent review board described in Section 13-58-204;
  - (e) information about the appeal process; and
  - (f) an appeal form.
- (3) The account holder shall have 30 days to submit an appeal form.
- (4) The social media corporation shall make the appeal form:
  - (a) simple to submit;
  - (b) contain an option for the account holder to submit up to five examples of similar content that the social media corporation has not moderated; and
  - (c) contain an option for the account holder to explain why the post or account should not have been moderated.

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

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

- (1) A moderator who was not involved in the original moderation decision shall review each appeal form.
- (2) The moderator shall provide to the account holder, in writing:
  - (a) an explanation of whether the post or account violates the social media

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corporation's terms of use;

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

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

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

(c) a conclusion stating whether:

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

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

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

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

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

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

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

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

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

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

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

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perspectives.

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

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

(5) The independent review board shall notify the social media corporation of the need to reverse an instance of moderation if the independent review board concludes by a simple majority that it is more likely than not that the social media corporation engaged in an inequitable moderation practice in moderating the post or account.

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

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

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

### **Part 3. Enforcement**

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

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

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

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

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

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

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



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

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

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

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

(i) written notice identifying each alleged violation; and

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

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

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

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

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

(B) no further violation will occur.

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

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

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

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

(i) actual damages to the consumer; and

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

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

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

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

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

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

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

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

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

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

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

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

(c) providing consumer and business education regarding:

(i) consumer rights under this chapter; and

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

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

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

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

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

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

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

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

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

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

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

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

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### **Part 4. Severability**

#### **13-58-401. Severability.**

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