

Representative Brady Brammer proposes the following substitute bill:

ELECTRONIC FREE SPEECH AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Michael K. McKell

House Sponsor: Brady Brammer

Cosponsor: Curtis S. Bramble

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



- 25 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 This bill provides a special effective date.

36 **Utah Code Sections Affected:**

37 AMENDS:

38 **13-2-1**, as last amended by Laws of Utah 2020, Chapter 118

39 ENACTS:

40 **13-58-101**, Utah Code Annotated 1953

41 **13-58-102**, Utah Code Annotated 1953

42 **13-58-201**, Utah Code Annotated 1953

43 **13-58-202**, Utah Code Annotated 1953

44 **13-58-203**, Utah Code Annotated 1953

45 **13-58-204**, Utah Code Annotated 1953

46 **13-58-301**, Utah Code Annotated 1953

47 **13-58-302**, Utah Code Annotated 1953

48 **13-58-303**, Utah Code Annotated 1953

49 **13-58-304**, Utah Code Annotated 1953

50 **13-58-401**, Utah Code Annotated 1953

51

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

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

54 **13-2-1. Consumer protection division established -- Functions.**

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

56 Protection.

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

58 (a) Chapter 5, Unfair Practices Act;

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

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

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

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

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

64 (g) Chapter 22, Charitable Solicitations Act;

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

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

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

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

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

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

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

72 (o) Chapter 39, Child Protection Registry;

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

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

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

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

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

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

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

80 (w) Chapter 56, Ticket Transferability Act; and

81 (x) Chapter 57, Maintenance Funding Practices Act.

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

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

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

85 **Part 1. General Provisions**

86 **13-58-101. Title.**

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

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

89 **13-58-102. Definitions.**

90 In this chapter:

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

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

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

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

97 (ii) indicates an imminent terrorist threat;

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

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

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

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

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

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

107 (6) "Inequitable moderation practice" means:

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

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

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

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

114 (ii) provides access to the Internet.

115 (b) "Interactive computer service" includes:

116 (i) a web service;

117 (ii) a web system;

- 118 (iii) a website;
119 (iv) a web application; or
120 (v) a web portal.
121 (8) (a) "Moderation practice" means a method a social media corporation employs to
122 regulate a post.
123 (b) "Moderation practice" includes:
124 (i) flagging a post;
125 (ii) removing a post;
126 (iii) suspending an account holder's account; or
127 (iv) revoking an account holder's access to a platform.
128 (9) (a) "Platform" means an online forum that a social media corporation makes
129 available for an account holder to:
130 (i) create a profile;
131 (ii) upload posts;
132 (iii) view the posts of other account holders; and
133 (iv) interact with other account holders or users.
134 (b) "Platform" does not include:
135 (i) electronic mail; or
136 (ii) an online service, website, or application on which:
137 (A) the majority of the content that is posted or created is posted or created by the
138 provider of the online service, website, or application; and
139 (B) the ability to chat, comment, or interact with other users is directly related to the
140 provider's content.
141 (10) "Post" means content that an account holder makes available on the account
142 holder's account for other account holders or users to view.
143 (11) "Social media corporation" means any domestic corporation or foreign corporation
144 that provides a platform that has at least 20,000,000 account holders and is an interactive
145 computer service.
146 (12) "Terms of use" means the terms to which an account holder must agree before an
147 account holder can open or continue to use an account on a platform.
148 (13) (a) "User" means an individual who has access to view the post of an account

149 holder.

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

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

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

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

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

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

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

160 **Part 2. Transparency**

161 **13-58-201. Communication of moderation practices.**

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

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

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

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

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

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

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

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

177 **13-58-202. Prohibited moderation practices.**

178 A social media corporation may not:

179 (1) employ inequitable moderation practices; or

180 (2) communicate the information described in Section 13-58-201 in a method that
181 includes any information not specifically related to the social media corporation's moderation
182 practices.

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

184 **13-58-203. Notice requirement.**

185 (1) Except as provided in Subsection (5), a social media corporation shall provide
186 written notice to an account holder no more than 24 hours after moderating the account holder's
187 post or account.

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

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

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

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

193 (d) information about the appeal process; and

194 (e) an appeal form.

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

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

197 (a) simple to submit;

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

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

202 (5) (a) If the post or account that the social media corporation moderates is dangerous
203 exigent content, the social media corporation shall provide written notice to the attorney
204 general as soon as practicable, but no more than 24 hours after moderating the post or account.

205 (b) The written notice to the attorney general shall include:

206 (i) a description of the post or account moderated;

207 (ii) a description of the method the social media corporation used to moderate the post
208 or account; and

209 (iii) a description of why the social media corporation determined that the moderated
210 post or account qualifies as dangerous exigent content.

211 (c) If a social media corporation provides notice to the attorney general under this
212 section, the social media corporation is not required to notify the account holder that the social
213 media corporation has moderated the post or account.

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

215 **13-58-204. Appeal process.**

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

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

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

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

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

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

225 (c) a conclusion stating whether:

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

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

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

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

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

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

238 **Part 3. Enforcement**

239 **13-58-301. Investigative powers of the division.**

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

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

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

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

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

250 **13-58-302. Enforcement powers of the attorney general.**

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

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

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

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

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

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

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

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

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

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

266 (B) no further violation will occur.

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

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

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

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

273 (i) actual damages to the consumer; and
274 (ii) for each violation, a civil penalty not to exceed \$1,000 per consumer affected by
275 the violation.

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

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

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

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

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

283 **13-58-303. Protecting Internet Speech Restricted Account.**

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

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

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

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

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

294 (c) providing consumer and business education regarding:

295 (i) consumer rights under this chapter; and

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

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

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

300 **13-58-304. Attorney general report.**

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

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

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

304 chapter; and

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

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

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

310 (3) The attorney general and the division shall submit the report to the Business and
311 Labor Interim Committee before July 1, 2024.

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

313 **Part 4. Severability**

314 **13-58-401. Severability.**

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

318 Section 13. **Effective date.**

319 This bill takes effect on July 1, 2022.