

Senator Michael K. McKell proposes the following substitute bill:

ELECTRONIC FREE SPEECH AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Michael K. McKell

House Sponsor: _____

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; and
 - notice to the account holder when the social media corporation uses a moderation practice with respect to 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 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 in which to deposit penalties and provides for distributions from the account; and



26 ▶ provides for severability if a provision is found to be invalid.

27 **Money Appropriated in this Bill:**

28 None

29 **Other Special Clauses:**

30 This bill provides a special effective date.

31 **Utah Code Sections Affected:**

32 AMENDS:

33 **13-2-1**, as last amended by Laws of Utah 2021, Chapter 266

34 ENACTS:

35 **13-61-101**, Utah Code Annotated 1953

36 **13-61-201**, Utah Code Annotated 1953

37 **13-61-202**, Utah Code Annotated 1953

38 **13-61-203**, Utah Code Annotated 1953

39 **13-61-301**, Utah Code Annotated 1953

40 **13-61-302**, Utah Code Annotated 1953

41 **13-61-303**, Utah Code Annotated 1953

42 **13-61-304**, Utah Code Annotated 1953

43 **13-61-401**, Utah Code Annotated 1953



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

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

47 **13-2-1. Consumer protection division established -- Functions.**

48 (1) There is established within the Department of Commerce the Division of Consumer
49 Protection.

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

51 (a) Chapter 5, Unfair Practices Act;

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

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

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

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

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

- 57 (g) Chapter 22, Charitable Solicitations Act;
- 58 (h) Chapter 23, Health Spa Services Protection Act;
- 59 (i) Chapter 25a, Telephone and Facsimile Solicitation Act;
- 60 (j) Chapter 26, Telephone Fraud Prevention Act;
- 61 (k) Chapter 28, Prize Notices Regulation Act;
- 62 (l) Chapter 32a, Pawnshop and Secondhand Merchandise Transaction Information Act;
- 63 (m) Chapter 34, Utah Postsecondary Proprietary School Act;
- 64 (n) Chapter 34a, Utah Postsecondary School State Authorization Act;
- 65 (o) Chapter 41, Price Controls During Emergencies Act;
- 66 (p) Chapter 42, Uniform Debt-Management Services Act;
- 67 (q) Chapter 49, Immigration Consultants Registration Act;
- 68 (r) Chapter 51, Transportation Network Company Registration Act;
- 69 (s) Chapter 52, Residential Solar Energy Disclosure Act;
- 70 (t) Chapter 53, Residential, Vocational and Life Skills Program Act;
- 71 (u) Chapter 54, Ticket Website Sales Act;
- 72 (v) Chapter 56, Ticket Transferability Act; [~~and~~]
- 73 (w) Chapter 57, Maintenance Funding Practices Act[-]; and
- 74 (x) Chapter 61, Internet Speech Moderation Act.

75 Section 2. Section 13-61-101 is enacted to read:

76 **CHAPTER 61. INTERNET SPEECH MODERATION ACT**

77 **Part 1. General Provisions**

78 **13-61-101. Definitions.**

79 In this chapter:

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

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

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

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

87 (5) (a) "Interactive computer service" means any information service, system, or access

88 software provider that:

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

90 (ii) provides access to the Internet.

91 (b) "Interactive computer service" includes:

92 (i) a web service;

93 (ii) a web system;

94 (iii) a website;

95 (iv) a web application; or

96 (v) a web portal.

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

99 (b) "Moderation practice" includes:

100 (i) flagging a post;

101 (ii) removing a post;

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

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

104 (7) (a) "Platform" means an internet-based forum that enables an account holder to:

105 (i) create a profile;

106 (ii) upload posts;

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

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

109 (b) "Platform" does not include:

110 (i) electronic mail;

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

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

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

116 (iii) an online service, website, or application whose primary purpose is related to
117 academic or scholarly research.

118 (8) "Post" means content that an account holder makes available on the account

119 holder's account for other account holders or users to view.

120 (9) (a) "Social media corporation" means any domestic corporation or foreign
121 corporation that:

122 (i) provides a platform;

123 (ii) is an interactive computer service; and

124 (iii) has at least 1,000,000 account holders.

125 (b) "Social media corporation" does not include an Internet service provider as that
126 term is defined in Section [76-10-1230](#).

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

129 (11) (a) "User" means an individual who has access to view a post of an account
130 holder.

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

132 (12) "Utah account holder" means a person that accesses the account in Utah.

133 (13) "Violation" means a social media corporation's application of a moderation
134 practice in a manner that:

135 (a) violates the social media corporation's terms of use; and

136 (b) is repeatedly used against the same Utah account holder.

137 Section 3. Section **13-61-201** is enacted to read:

138 **Part 2. Notice Requirements**

139 **13-61-201. Communication of moderation practices.**

140 (1) Beginning on July 1, 2023, and once every year following July 1, 2023, a social
141 media corporation shall clearly communicate to Utah account holders the social media
142 corporation's moderation practices before the Utah account holder continues to engage with the
143 social media corporation's platform.

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

146 (a) provides a summary of potential moderation practices to a Utah account holder;

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

149 (c) summarizes the steps the social media corporation takes to ensure a post or account

150 complies with the social media corporation's terms of use; and

151 (d) explains the methods users can use to notify the social media corporation of content
152 that may violate the social media corporation's terms of use.

153 (3) A social media corporation is not required to communicate information about the
154 social media corporation's moderation practices that the social media corporation reasonably
155 believes would permit a user to evade the social media corporation's moderation practices.

156 Section 4. Section **13-61-202** is enacted to read:

157 **13-61-202. Prohibited moderation practices.**

158 A social media corporation may not communicate the information described in Section
159 13-61-201 in a method that includes any information not specifically related to the information
160 described in Section 13-61-201.

161 Section 5. Section **13-61-203** is enacted to read:

162 **13-61-203. Notice requirement.**

163 (1) A social media corporation shall implement a system to provide notice to a Utah
164 account holder no more than 24 hours after moderating the Utah account holder's post or
165 account.

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

167 (a) a description of the post or account moderated; and

168 (b) a citation to the terms of use that the moderated post or account violated.

169 Section 6. Section **13-61-301** is enacted to read:

170 **Part 3. Role of the Division and the Attorney General**

171 **13-61-301. Investigative powers of the division.**

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

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

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

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

181 (3) The division shall administer the system described in Subsection (1) within existing
182 appropriations.

183 Section 7. Section **13-61-302** is enacted to read:

184 **13-61-302. Enforcement powers of the attorney general.**

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

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

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

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

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

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

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

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

198 (ii) provides the attorney general an express written statement that the social media
199 corporation cured the violation.

200 (c) The attorney general may initiate a civil action against a social media corporation
201 that fails to cure a violation after receiving the notice described in Subsection (4)(a).

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

203 (i) actual damages to the consumer; and

204 (ii) for each violation, a civil penalty not to exceed \$1,000 per Utah account holder
205 affected by the violation.

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

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

208 (b) the district court for the district in which resides a Utah account holder who is
209 affected by the violation.

210 (6) All civil penalties received from an action under this chapter shall be deposited into
211 the Protecting Internet Speech Restricted Account established in Section [13-61-303](#).

212 Section 8. Section **13-61-303** is enacted to read:

213 **13-61-303. Protecting Internet Speech Restricted Account.**

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

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

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

220 (a) investigation and administrative costs the division incurs in investigating consumer
221 complaints alleging violations of this chapter;

222 (b) recovery of costs and attorney fees the attorney general accrues in enforcing this
223 chapter; and

224 (c) providing consumer and business education regarding:

225 (i) consumer rights under this chapter; and

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

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

229 Section 9. Section **13-61-304** is enacted to read:

230 **13-61-304. Attorney general report.**

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

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

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

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

236 (b) summarizing the moderation practices engaged in by social media corporations,
237 including a list of alleged violations the attorney general and the division have received.

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

240 (3) The attorney general and the division shall submit the report to the Business and
241 Labor Interim Committee before July 1, 2025.

242 Section 10. Section **13-61-401** is enacted to read:

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Part 4. Severability

13-61-401. 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.

Section 11. Effective date.

This bill takes effect on July 1, 2023.