

Representative Jordan D. Teuscher proposes the following substitute bill:

SOCIAL MEDIA USAGE AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jordan D. Teuscher

Senate Sponsor: Kirk A. Cullimore

LONG TITLE

General Description:

This bill regulates interactive computer services and the use and design of social media platforms.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ enacts the Utah Social Media Regulation Act;
- ▶ provides that a contract entered into by a minor by means of an interactive computer service is invalid unless the minor's parent or legal guardian consents to the contract;
- ▶ prohibits a social media company from using a design or feature that the company knows causes a minor to have an addiction to a social media platform;
- ▶ grants the Division of Consumer Protection enforcement and auditing authority to enforce requirements under the act;
- ▶ authorizes a private right of action to collect attorney fees and damages from a social media company for harm incurred by a minor's use of the company's social media platform;
- ▶ creates a rebuttable presumption that harm and causation occurred in some



- 57 (f) Chapter 21, Credit Services Organizations Act;
- 58 (g) Chapter 22, Charitable Solicitations Act;
- 59 (h) Chapter 23, Health Spa Services Protection Act;
- 60 (i) Chapter 25a, Telephone and Facsimile Solicitation Act;
- 61 (j) Chapter 26, Telephone Fraud Prevention Act;
- 62 (k) Chapter 28, Prize Notices Regulation Act;
- 63 (l) Chapter 32a, Pawnshop, Secondhand Merchandise, and Catalytic Converter
- 64 Transaction Information Act;
- 65 (m) Chapter 34, Utah Postsecondary Proprietary School Act;
- 66 (n) Chapter 34a, Utah Postsecondary School State Authorization Act;
- 67 (o) Chapter 41, Price Controls During Emergencies Act;
- 68 (p) Chapter 42, Uniform Debt-Management Services Act;
- 69 (q) Chapter 49, Immigration Consultants Registration Act;
- 70 (r) Chapter 51, Transportation Network Company Registration Act;
- 71 (s) Chapter 52, Residential Solar Energy Disclosure Act;
- 72 (t) Chapter 53, Residential, Vocational and Life Skills Program Act;
- 73 (u) Chapter 54, Ticket Website Sales Act;
- 74 (v) Chapter 56, Ticket Transferability Act; [~~and~~]
- 75 (w) Chapter 57, Maintenance Funding Practices Act[-]; and
- 76 (x) Chapter 63, Utah Social Media Regulation Act.

77 Section 2. Section 13-2-1 (Effective 12/31/23) is amended to read:

78 **13-2-1 (Effective 12/31/23). Consumer protection division established --**

79 **Functions.**

- 80 (1) There is established within the Department of Commerce the Division of Consumer
- 81 Protection.
- 82 (2) The division shall administer and enforce the following:
- 83 (a) Chapter 5, Unfair Practices Act;
- 84 (b) Chapter 10a, Music Licensing Practices Act;
- 85 (c) Chapter 11, Utah Consumer Sales Practices Act;
- 86 (d) Chapter 15, Business Opportunity Disclosure Act;
- 87 (e) Chapter 20, New Motor Vehicle Warranties Act;

- 88 (f) Chapter 21, Credit Services Organizations Act;
- 89 (g) Chapter 22, Charitable Solicitations Act;
- 90 (h) Chapter 23, Health Spa Services Protection Act;
- 91 (i) Chapter 25a, Telephone and Facsimile Solicitation Act;
- 92 (j) Chapter 26, Telephone Fraud Prevention Act;
- 93 (k) Chapter 28, Prize Notices Regulation Act;
- 94 (l) Chapter 32a, Pawnshop, Secondhand Merchandise, and Catalytic Converter

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- 96 (m) Chapter 34, Utah Postsecondary Proprietary School Act;
- 97 (n) Chapter 34a, Utah Postsecondary School State Authorization Act;
- 98 (o) Chapter 41, Price Controls During Emergencies Act;
- 99 (p) Chapter 42, Uniform Debt-Management Services Act;
- 100 (q) Chapter 49, Immigration Consultants Registration Act;
- 101 (r) Chapter 51, Transportation Network Company Registration Act;
- 102 (s) Chapter 52, Residential Solar Energy Disclosure Act;
- 103 (t) Chapter 53, Residential, Vocational and Life Skills Program Act;
- 104 (u) Chapter 54, Ticket Website Sales Act;
- 105 (v) Chapter 56, Ticket Transferability Act;
- 106 (w) Chapter 57, Maintenance Funding Practices Act; [~~and~~]
- 107 (x) Chapter 61, Utah Consumer Privacy Act[-]; and
- 108 (y) Chapter 63, Utah Social Media Regulation Act.

109 Section 3. Section **13-63-101** is enacted to read:

110 **CHAPTER 63. UTAH SOCIAL MEDIA REGULATION ACT**

111 **Part 1. General Requirements**

112 **13-63-101. Definitions.**

113 As used in this chapter:

114 (1) "Account holder" means a person who has, or opens, an account or profile to use a
115 social media company's platform.

116 (2) "Addiction" means use of a social media platform that:

117 (a) indicates the user's substantial preoccupation or obsession with, or the user's
118 substantial difficulty to cease or reduce use of, the social media platform; and

119 (b) causes physical, mental, emotional, developmental, or material harms to the user.

120 (3) "Director" means the director of the Division of Consumer Protection created in

121 Section [13-2-1](#).

122 (4) "Division" means the Division of Consumer Protection created in Section [13-2-1](#).

123 (5) "Educational entity" means a public school, an LEA, the Utah Schools for the Deaf
124 and Blind, a private school, a denominational school, a parochial school, a community college,
125 a state college, a state university, or a nonprofit private postsecondary educational institution.

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

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

129 (ii) provides access to the Internet.

130 (b) "Interactive computer service" includes:

131 (i) a web service;

132 (ii) a web system;

133 (iii) a website;

134 (iv) a web application; or

135 (v) a web portal.

136 (7) "Minor" means an individual who is under the age of 18 and has not been
137 emancipated as that term is defined in Section [80-7-102](#).

138 (8) "Post" means content that an account holder makes available on a social media
139 platform for other account holders or users to view.

140 (9) "Social media company" means any person or entity that:

141 (a) provides a social media platform that has at least 5,000,000 account holders
142 worldwide; and

143 (b) is an interactive computer service.

144 (10) (a) "Social media platform" means an online forum that a social media company
145 makes available for an account holder to:

146 (i) create a profile;

147 (ii) upload posts;

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

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

- 150 (b) "Social media platform" does not include an online service, website, or application:
- 151 (i) where the predominant or exclusive function is:
- 152 (A) electronic mail;
- 153 (B) direct messaging consisting of messages, photos, or videos that are sent between
- 154 devices by electronic means, where messages are:
- 155 (I) shared between the sender and the recipient;
- 156 (II) only visible to the sender and the recipient; and
- 157 (III) are not posted publicly;
- 158 (C) a streaming service that:
- 159 (I) provides only licensed media in a continuous flow from the service, website, or
- 160 application to the end user; and
- 161 (II) does not obtain a license to the media from a user or account holder by agreement
- 162 to its terms of service;
- 163 (D) news, sports, entertainment, or other content that is preselected by the provider and
- 164 not user generated, if any chat, comment, or interactive functionality that is also provided is
- 165 incidental to, directly related to, or dependent upon provision of the content;
- 166 (E) online shopping or e-commerce, if the interaction with other users or account
- 167 holders is generally limited to:
- 168 (I) the ability to post and comment on reviews;
- 169 (II) the ability to display lists or collections of goods for sale or wish lists; and
- 170 (III) other functions that are focused on online shopping or e-commerce rather than
- 171 interaction between users or account holders;
- 172 (F) an online service that allows users to create and upload content for the purpose of
- 173 interactive virtual gaming entertainment and communication related to that content;
- 174 (G) business to business software, including a teleconferencing or videoconferencing
- 175 service which allows reception and transmission of audio and video signals for real time
- 176 communication, if the software is not accessible to the general public;
- 177 (H) cloud storage;
- 178 (I) shared document collaboration;
- 179 (J) providing access to or interacting with data visualization platforms, libraries, or
- 180 hubs;

181 (K) to permit comments on a digital news website, if the news content is posted only
182 by the provider of the digital news website;

183 (L) for the purpose of providing or obtaining technical support for the social media
184 company's platform, products, or services; or

185 (M) academic or scholarly research;

186 (ii) where:

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

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

191 (iii) that is a classified ad service that only permits the sale of goods and prohibits the
192 solicitation of personal services; or

193 (iv) that is used by and under the direction of an educational entity, including:

194 (A) a learning management system;

195 (B) a student engagement program; and

196 (C) a subject or skill-specific program.

197 (11) "User" means a person who has access to view all, or some of, the posts on a
198 social media platform, but is not an account holder.

199 (12) (a) "Utah account holder" means a person who is a Utah resident and an account
200 holder.

201 (b) "Utah account holder" includes a Utah minor account holder.

202 (13) "Utah minor account holder" means a Utah account holder who is a minor.

203 (14) "Utah resident" means an individual who currently resides in Utah.

204 Section 4. Section **13-63-102** is enacted to read:

205 **13-63-102. Online contracts -- Consent for minors.**

206 (1) Beginning March 1, 2024, and notwithstanding the requirements of Title 15,
207 Chapter 2, Legal Capacity of Children, any contract entered into by means of an interactive
208 computer service between a person and a Utah resident who is a minor is unenforceable unless
209 a parent or legal guardian unambiguously indicates voluntary consent to the minor entering into
210 the contract.

211 (2) (a) A person seeking to contract with a minor by means of an interactive computer

212 service shall provide a means by which a parent or legal guardian may provide consent as
213 required under Subsection (1).

214 (b) A person seeking to contract with a Utah resident who is a minor meets the
215 requirements of this section by:

216 (i) if the person does not have reason to know the age of the Utah resident seeking to
217 enter into the contract, providing a means for the Utah resident to indicate that they are a
218 minor; and

219 (ii) if the person has reason to know that the Utah resident seeking to enter the contract
220 is a minor, or if the Utah resident indicates that they are a minor, providing a means for the
221 minor's parent or guardian to indicate that they are the parent or guardian of the minor and that
222 they consent to the minor entering into the contract.

223 (c) A person is not required to obtain proof of age or proof of parent or guardian status
224 in order to comply with the requirements of this section.

225 Section 5. Section **13-63-201** is enacted to read:

226 **Part 2. Private Right of Action**

227 **13-63-201. Private right of action for harm to a minor -- Rebuttable presumption**
228 **of harm and causation.**

229 (1) Beginning March 1, 2024, a person may bring an action under this section against a
230 social media company to recover damages incurred after March 1, 2024, by a Utah minor
231 account holder for any addiction, financial, physical, or emotional harm suffered as a
232 consequence of using or having an account on the social media company's social media
233 platform.

234 (2) A suit filed under the authority of this section shall be filed in the district court for
235 the district in which the minor resides.

236 (3) Notwithstanding Subsection (4), if a court finds that a person has violated a
237 provision of this chapter, the minor seeking relief under this section is entitled to:

238 (a) an award of reasonable attorney fees and court costs; and

239 (b) an amount equal to the greater of:

240 (i) \$2,500 per each incident of violation; or

241 (ii) actual damages for financial, physical, and emotional harm incurred by the person
242 bringing the action, if the court determines that the harm is a direct consequence of the

243 violation or violations.

244 (4) If a minor seeking recovery of damages under this section is under the age of 16,
245 there shall be a rebuttable presumption that the harm actually occurred and that the harm was
246 caused as a consequence of using or having an account on the social media company's social
247 media platform.

248 Section 6. Section 13-63-301 is enacted to read:

249 **Part 3. Social Media Design Regulations**

250 **13-63-301. Social media platform design regulations -- Enforcement and auditing**
251 **authority -- Penalties.**

252 (1) (a) The division shall administer and enforce the provisions of this section.

253 (b) The division may audit the records of a social media company in order to determine
254 compliance with the requirements of this section or to investigate a complaint, including a
255 random sample of a social media company's records and other audit methods.

256 (2) A social media company shall not use a practice, design, or feature on the
257 company's social media platform that the social media company knows, or which by the
258 exercise of reasonable care should know, causes a Utah minor account holder to have an
259 addiction to the social media platform.

260 (3) (a) Subject to Subsection (3)(b), a social media company that violates this section is
261 subject to:

262 (i) a civil penalty of \$250,000 for each practice, design, or feature that causes
263 addiction; and

264 (ii) a civil penalty of \$2,500 for each Utah minor account holder shown to have an
265 addiction to the social media platform.

266 (b) A social media company shall not be subject to a civil penalty for violating this
267 section if the social media company, as an affirmative defense, demonstrates that the social
268 media company:

269 (i) instituted and maintained a program of at least quarterly audits of the social media
270 company's practices, designs, and features to detect practices, designs, or features that have the
271 potential to cause or contribute to the addiction of a child user; and

272 (ii) corrected, within 30 days of the completion of an audit described in Subsection
273 (3)(b)(i), any practice, design, or feature discovered by the audit to present more than a de

274 minimus risk of violating this section.

275 (c) In a court action by the division to enforce this section, the court may, in addition to
276 a civil penalty:

277 (i) declare that the act or practice violates a provision of this section;

278 (ii) issue an injunction for a violation of this section;

279 (iii) award actual damages to an injured purchaser or consumer; and

280 (iv) award any other relief that the court deems reasonable and necessary.

281 (4) Nothing in this section may be construed to impose liability for a social media
282 company for any of the following:

283 (a) content that is generated by an account holder, or uploaded to or shared on the
284 platform by an account holder, that may be encountered by another account holder;

285 (b) passively displaying content that is created entirely by a third party;

286 (c) information or content for which the social media company was not, in whole or in
287 part, responsible for creating or developing; or

288 (d) any conduct by a social media company involving a Utah account holder who is a
289 minor that would otherwise be protected by federal or Utah law.

290 (5) If a court of competent jurisdiction grants judgment or injunctive relief to the
291 division, the court shall award the division:

292 (a) reasonable attorney fees;

293 (b) court costs; and

294 (c) investigative fees.

295 (6) Nothing in this section may be construed to negate or limit a cause of action that
296 may have existed or exists against a social media company under the law as it existed before
297 the effective date of this section.

298 Section 7. Section **13-63-401** is enacted to read:

299 **Part 4. Severability**

300 **13-63-401. Severability.**

301 If any provision of this chapter or the application of any provision to any person or
302 circumstance is held invalid by a final decision of a court of competent jurisdiction, the
303 remainder of this chapter shall be given effect without the invalid provision or application. The
304 provisions of this chapter are severable.

305 Section 8. **Effective date.**

306 This bill takes effect on May 3, 2023, with the exception of Section [13-2-1](#) (Effective
307 12/31/23) which takes effect on December 31, 2023.