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SOCIAL MEDIA USAGE MODIFICATIONS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ken Ivory

Senate Sponsor: _____

LONG TITLE

General Description:

This bill establishes the Utah Digital Expression Act.

Highlighted Provisions:

This bill:

- ▶ authorizes the Division of Consumer Protection to administer and enforce the Utah Digital Expression Act;
- ▶ provides definitions;
- ▶ requires a social media company to publicly disclose information regarding its information management and its content moderation practices;
- ▶ requires a social media company to publish an acceptable use policy on prohibited material and content compliance;
- ▶ prohibits a social media company from taking certain adverse actions against a user in certain circumstances, including:
 - suspending, locking, or disabling a user account;
 - banning a user;
 - removing, demonetizing, or deprioritizing content; and
 - adding an assessment to user content, including fact or accuracy checks;
- ▶ establishes a complaint and enforcement process through the Division of Consumer Protection;
- ▶ requires a social media company to collect data for and publish a biannual



28 transparency report;

29 ▶ prohibits a social media company from censoring user expression, with certain
30 exceptions;

31 ▶ details the Division of Consumer Protection's investigative and enforcement powers
32 in enforcing the act;

33 ▶ permits a private right of action for enforcement of the act;

34 ▶ prohibits requirements of the act from being waived by a contract or choice-of-law
35 provision; and

36 ▶ provides for severability.

37 **Money Appropriated in this Bill:**

38 None

39 **Other Special Clauses:**

40 This bill provides a special effective date.

41 **Utah Code Sections Affected:**

42 AMENDS:

43 **13-2-1 (Superseded 12/31/23)**, as last amended by Laws of Utah 2022, Chapter 201

44 **13-2-1 (Effective 12/31/23)**, as last amended by Laws of Utah 2022, Chapters 201, 462

45 ENACTS:

46 **13-63-101**, Utah Code Annotated 1953

47 **13-63-201**, Utah Code Annotated 1953

48 **13-63-202**, Utah Code Annotated 1953

49 **13-63-301**, Utah Code Annotated 1953

50 **13-63-302**, Utah Code Annotated 1953

51 **13-63-401**, Utah Code Annotated 1953

52 **13-63-501**, Utah Code Annotated 1953

53 **13-63-502**, Utah Code Annotated 1953

54 **13-63-503**, Utah Code Annotated 1953

55 **13-63-504**, Utah Code Annotated 1953

56 **13-63-505**, Utah Code Annotated 1953

57 **13-63-601**, Utah Code Annotated 1953

58

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

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

61 **TITLE 13. COMMERCE AND TRADE**

62 **13-2-1 (Superseded 12/31/23). Consumer protection division established --**

63 **Functions.**

64 (1) There is established within the Department of Commerce the Division of Consumer
65 Protection.

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

67 (a) Chapter 5, Unfair Practices Act;

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

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

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

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

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

73 (g) Chapter 22, Charitable Solicitations Act;

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

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

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

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

78 (l) Chapter 32a, Pawnshop, Secondhand Merchandise, and Catalytic Converter

79 Transaction Information Act;

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

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

82 (o) Chapter 41, Price Controls During Emergencies Act;

83 (p) Chapter 42, Uniform Debt-Management Services Act;

84 (q) Chapter 49, Immigration Consultants Registration Act;

85 (r) Chapter 51, Transportation Network Company Registration Act;

86 (s) Chapter 52, Residential Solar Energy Disclosure Act;

87 (t) Chapter 53, Residential, Vocational and Life Skills Program Act;

88 (u) Chapter 54, Ticket Website Sales Act;

89 (v) Chapter 56, Ticket Transferability Act; [and]

90 (w) Chapter 57, Maintenance Funding Practices Act; and
91 (x) Chapter 63, Utah Digital Expression Act.

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

93 **13-2-1 (Effective 12/31/23). Consumer protection division established --**

94 **Functions.**

95 (1) There is established within the Department of Commerce the Division of Consumer
96 Protection.

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

98 (a) Chapter 5, Unfair Practices Act;

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

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

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

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

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

104 (g) Chapter 22, Charitable Solicitations Act;

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

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

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

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

109 (l) Chapter 32a, Pawnshop, Secondhand Merchandise, and Catalytic Converter

110 Transaction Information Act;

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

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

113 (o) Chapter 41, Price Controls During Emergencies Act;

114 (p) Chapter 42, Uniform Debt-Management Services Act;

115 (q) Chapter 49, Immigration Consultants Registration Act;

116 (r) Chapter 51, Transportation Network Company Registration Act;

117 (s) Chapter 52, Residential Solar Energy Disclosure Act;

118 (t) Chapter 53, Residential, Vocational and Life Skills Program Act;

119 (u) Chapter 54, Ticket Website Sales Act;

120 (v) Chapter 56, Ticket Transferability Act;

- 121 (w) Chapter 57, Maintenance Funding Practices Act; ~~[and]~~
- 122 (x) Chapter 61, Utah Consumer Privacy Act; and
- 123 (y) Chapter 63, Utah Digital Expression Act.

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

125 **CHAPTER 63. UTAH DIGITAL EXPRESSION ACT**

126 **Part 1. General Provisions**

127 **13-63-101. Definitions.**

128 As used in this chapter:

129 (1) "Adverse action" means a social media platform's decision:

130 (a) to suspend, lock, or disable a user's account;

131 (b) to ban a user from the social media platform;

132 (c) to remove content;

133 (d) to demonetize content;

134 (e) to deprioritize content;

135 (f) to add an assessment to content, such as a fact check or other disclaimer regarding
136 the accuracy of the content; or

137 (g) to take any other action related to a user's account or content in accordance with the
138 social media platform's acceptable use policy.

139 (2) "Censor" means to block, ban, remove, deplatform, de-boost, restrict, deny equal
140 access or visibility to, or otherwise discriminate against expression.

141 (3) "Director" means the director of the Division of Consumer Protection created in
142 Section [13-2-1](#).

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

144 (5) "Expression" means any word, music, sound, still or moving image, number, or
145 other perceivable communication.

146 (6) "Receive" means, with respect to an expression, to read, hear, look at, access, or
147 gain access to the expression.

148 (7) (a) "Social media platform" means an Internet website or application:

149 (i) that has at least 50 million active users in a calendar month;

150 (ii) that is open to the public;

151 (iii) that allows users to create an account; and

152 (iv) whose primary purpose is to enable users to disseminate information to and
153 communicate with other users through the posting of comments, messages, video, images, or
154 other media.

155 (b) "Social media platform" does not include:

156 (i) an Internet service provider;

157 (ii) electronic mail; or

158 (iii) an online service, application, or website:

159 (A) that consists primarily of news, sports, entertainment, or other information content
160 that is not user generated but is preselected by the provider; and

161 (B) for which any chat, comment, or interactive functionality is incidental to, directly
162 related to, or dependent on the provider's content described in Subsection (7)(b)(iii)(A).

163 (8) "Unlawful expression" means an expression that is unlawful under state or federal
164 law, including expression that constitutes a tort under state or federal law.

165 (9) (a) "User" means a Utah resident who posts, uploads, transmits, shares, or
166 otherwise publishes or receives content through a social media platform.

167 (b) "User" includes a person who has a social media platform account that the social
168 media platform has disabled or locked.

169 (10) "Utah resident" means a person who resides or operates in Utah and:

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

171 (b) if the person is a business entity or organization, has a principal place of business or
172 principal location in Utah.

173 Section 4. Section 13-63-201 is enacted to read:

174 **Part 2. Disclosure and Acceptable Use Policy**

175 **13-63-201. Public disclosures.**

176 (1) In accordance with this section, a social media platform shall publicly disclose
177 accurate information regarding the social media platform's content management, data
178 management, and business practices, including specific information regarding the manner in
179 which the social media platform:

180 (a) curates and targets content to users;

181 (b) places and promotes content, services, and products, including the social media
182 platform's own content, services, and products;

- 183 (c) moderates content;
- 184 (d) uses search, ranking, or other algorithms or procedures that determine results on the
- 185 social media platform; and
- 186 (e) provides users with performance data on the use of the platform and the social
- 187 media platform's products and services.
- 188 (2) A social media platform is not required to include in a public disclosure trade
- 189 secrets and commercial or financial information that is protected from disclosure by federal
- 190 law.

- 191 (3) A social media platform shall ensure that a public disclosure:
- 192 (a) is sufficient to enable users to make an informed choice regarding the purchase or
- 193 use of access to or services from the platform; and
- 194 (b) is made available on an Internet website that is easily accessible to the public.

195 Section 5. Section 13-63-202 is enacted to read:

196 **13-63-202. Acceptable use policy.**

197 (1) A social media platform shall publish an acceptable use policy in a location on the

198 social media platform that is easily accessible to a user.

199 (2) A social media platform shall ensure that an acceptable use policy:

200 (a) reasonably informs a user about the types of content that the social media platform

201 prohibits;

202 (b) explains the steps the social media platform takes to ensure content complies with

203 the policy;

204 (c) explains the process by which a user can submit a complaint under Section

205 13-63-301; and

206 (d) includes a copy of the biannual transparency report as described in Section

207 13-63-302, including a description of any adverse action the social media platform has taken to

208 enforce the policy.

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

210 **Part 3. Complaints and Reporting**

211 **13-63-301. Illegal activity or content -- Adverse actions -- Complaint system and**

212 **procedures - Appeals.**

213 (1) A social media platform shall:

214 (a) provide an easily accessible complaint system that enables a user to submit a
215 complaint about the social media platform; and

216 (b) track the status of the complaint, including a complaint regarding:

217 (i) content that potentially violates the social media platform's acceptable use policy;

218 (ii) illegal activity or illegal content; and

219 (iii) the social media platform's decision:

220 (A) to remove content posted by a user; and

221 (B) to take an adverse action.

222 (2) (a) If a social media platform receives a complaint of illegal content or illegal
223 activity, the social media platform shall, no later than two business days after the date on which
224 the social media platform receives the complaint, make a good faith effort to evaluate the
225 legality of the content or activity.

226 (b) If the social media platform determines that the alleged illegal content or illegal
227 activity suggests that the user who posted the content or conducted the activity poses an
228 imminent threat to themselves or others, the social media platform shall immediately notify the
229 appropriate law enforcement agency.

230 (3) Except as provided in Subsection (4), if a social media platform takes an adverse
231 action based on a violation of the platform's acceptable use policy under Section [13-63-202](#), the
232 social media platform shall, concurrently with the action:

233 (a) notify the user who posted the content of the removal and explain the reason for the
234 adverse action;

235 (b) allow the user to appeal the decision; and

236 (c) provide written notice to the user of:

237 (i) the determination regarding an appeal requested under Subsection (3)(b); and

238 (ii) in the case of a reversal of the social media platform's decision, the reason for the
239 reversal.

240 (4) A social media platform is not required to provide a user with notice or an
241 opportunity to appeal under Subsection (3) if the social media platform:

242 (a) is unable to contact the user after taking reasonable steps to make contact;

243 (b) reports the user's content or activity to a law enforcement agency; or

244 (c) knows the user's content relates to an ongoing law enforcement agency

245 investigation.

246 (5) If a social media platform receives a user complaint regarding an adverse action,
247 the social media platform shall, no later than 14 business days after the date on which the social
248 media platform receives the complaint:

- 249 (a) review the content that is subject to the adverse action;
- 250 (b) determine whether the content adheres to the platform's acceptable use policy;
- 251 (c) take appropriate steps based on the determination; and
- 252 (d) notify the user regarding the determination and steps taken under this Subsection

253 (5).

254 Section 7. Section **13-63-302** is enacted to read:

255 **13-63-302. Biannual transparency report.**

256 (1) A social media platform shall publish a biannual transparency report that includes,
257 with respect to the preceding six-month period:

258 (a) the total number of instances in which the social media platform was informed of
259 illegal content, illegal activity, or policy-violating content by means of:

- 260 (i) a user complaint;
- 261 (ii) an employee of or a person contracting with the social media platform; or
- 262 (iii) an internal automated detection tool;

263 (b) the number of instances in which the social media platform took adverse action
264 with respect to illegal content, illegal activity, or potentially policy-violating content, each
265 instance of which shall be categorized by:

- 266 (i) the rule violated;
- 267 (ii) the source for the alert of illegal content, illegal activity, or potentially
268 policy-violating content, including:

- 269 (A) a government;
- 270 (B) a user;
- 271 (C) an internal automated detection tool;
- 272 (D) coordination with other social media platforms; or
- 273 (E) persons employed by or contracting with the platform; and
- 274 (iii) the country of the user who is responsible for the content;

275 (c) the number of coordinated efforts related to illegal content, illegal activity, or

276 policy-violating content, if applicable;

277 (d) (i) the number of instances in which a user appealed an adverse action under
278 Section 13-63-301; and

279 (ii) the percentage of appeals that resulted in the social media platform restoring
280 content; and

281 (e) a description of each tool, practice, action, or technique the social media platform
282 uses to enforce the acceptable use policy.

283 (2) A social media platform shall publish each biannual transparency report:

284 (a) with an open license;

285 (b) in a machine-readable and open format; and

286 (c) in a location that is easily accessible to users.

287 Section 8. Section 13-63-401 is enacted to read:

288 **Part 4. Censorship**

289 **13-63-401. Censorship prohibited.**

290 (1) This section only applies to moderation and censorship decisions for which a social
291 media company is claiming protection from liability under 47 U.S.C. Sec, 230.

292 (2) Except as provided in Subsection (3), and to the extent that a social media platform
293 allows users to engage in expression regarding certain content, the social media platform may
294 not censor a user, a user's expression, or a user's ability to receive the expression of another
295 user based on:

296 (a) the user's particular viewpoint; or

297 (b) the user's particular viewpoint represented in the user's expression.

298 (3) A social media platform may censor expression that:

299 (a) the social media platform is specifically authorized to censor under state or federal
300 law;

301 (b) is the subject of a referral or request from an organization with the purpose of
302 preventing the sexual exploitation of children and protecting survivors of sexual abuse from
303 ongoing harassment;

304 (c) directly incites criminal activity or consists of direct threats of violence or illegal
305 activity targeted against a specific individual or group;

306 (d) is unlawful expression; or

307 (e) a court of competent jurisdiction has ordered the social media platform to remove.

308 (4) Nothing in this section shall prohibit a social media platform from prohibiting
309 entire categories of content.

310 (5) This section may not be construed to prohibit or restrict a social media platform
311 from authorizing or facilitating a user's ability to censor specific expression on the user's
312 platform or page at the request of that user.

313 (6) This section applies only to expression that is shared or received in this state.

314 (7) This section applies to the maximum extent permitted by the United States
315 Constitution and the laws of the United States, but no further than the maximum extent
316 permitted by the United States Constitution and the laws of the United States.

317 Section 9. Section **13-63-501** is enacted to read:

318 **Part 5. Enforcement**

319 **13-63-501. Investigative powers of the division.**

320 (1) The division shall receive consumer complaints alleging a failure to comply with a
321 requirement of this chapter.

322 (2) A person may file a consumer complaint with the division that alleges a person's
323 failure to comply with a requirement of this chapter.

324 (3) The division shall investigate a consumer complaint to determine whether a person
325 subject to the requirements of this chapter has failed to comply with a requirement of this
326 chapter.

327 Section 10. Section **13-63-502** is enacted to read:

328 **13-63-502. Enforcement powers of the division.**

329 (1) Except for a private right of action under Section [13-63-503](#), the division has the
330 exclusive authority to administer and enforce the requirements of this chapter.

331 (2) The attorney general, upon request, shall give legal advice to, and act as counsel
332 for, the division in the exercise of the division's responsibilities under this chapter.

333 (3) (a) Subject to the ability to cure an alleged failure to comply with a provision of this
334 chapter under Subsection (4):

335 (i) the division director may impose an administrative fine of up to \$2,500 for each
336 instance of a failure to comply with a provision of this chapter; and

337 (ii) the division may bring an action in a court of competent jurisdiction to enforce a

338 provision of this chapter.

339 (b) In a court action by the division to enforce a provision of this chapter, the court
340 may:

341 (i) declare that the act or practice violates a provision of this chapter;

342 (ii) issue an injunction against a person who has failed to comply with a provision of
343 this chapter;

344 (iii) order disgorgement of any money received as a result of failure to comply with a
345 provision of this chapter;

346 (iv) order payment of disgorged money to an injured purchaser or consumer;

347 (v) impose a civil penalty of up to \$2,500 for each instance of a failure to comply with
348 a provision of this chapter;

349 (vi) award actual damages to an injured purchaser or consumer; and

350 (vii) award any other relief that the court deems reasonable and necessary.

351 (4) (a) At least 30 days before the day on which the division initiates an enforcement
352 action against a person that is subject to the requirements of this chapter, the division shall
353 provide the person with:

354 (i) written notice that identifies each alleged failure to comply with a requirement of
355 this chapter; and

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

357 (b) Except as provided under Subsection (4)(c), the division may not initiate an action
358 if the person:

359 (i) cures the noticed failure to comply within 30 days after the day on which the person
360 receives the notice described in Subsection (4)(a); and

361 (ii) provides the division with a written statement that the person:

362 (A) is now in compliance with the applicable provision of this chapter; and

363 (B) will remain in compliance with the applicable provision.

364 (c) The division may initiate a civil action against a person that:

365 (i) fails to remedy the person's failure to comply with a requirement of this chapter
366 after receiving the notice described in Subsection (4)(a); or

367 (ii) after coming into compliance and providing a written statement in accordance with
368 Subsection (4)(b), fails to comply with the same provision again.

- 369 (5) If a court of competent jurisdiction grants judgment or injunctive relief to the
370 division, the court shall award the division:
- 371 (a) reasonable attorney fees;
372 (b) court costs; and
373 (c) investigative fees.
- 374 (6) (a) A person who violates an administrative or court order issued for failure to
375 comply with a provision of this chapter is subject to a civil penalty of no more than \$5,000 for
376 each incident of noncompliance.
- 377 (b) A civil penalty authorized under this chapter may be imposed in any civil action
378 brought by the division, or by the attorney general on behalf of the division.
- 379 (7) All money received for the payment of a fine or civil penalty imposed under this
380 section shall be deposited into the Consumer Protection Education and Training Fund
381 established in Section 13-2-8.
- 382 Section 11. Section **13-63-503** is enacted to read:
- 383 **13-63-503. Private right of action.**
- 384 (1) A user may bring an action against a person that does not comply with the
385 requirements of this chapter.
- 386 (2) A suit filed under the authority of this section shall be filed in the district court for
387 the district in which a user bringing the action resides.
- 388 (3) If a court finds that a person has failed to comply with a provision of this chapter,
389 the user who brings an action under this section is entitled to:
- 390 (a) injunctive relief; and
391 (b) an amount equal to the greater of:
392 (i) \$2,500 per each incident of noncompliance; or
393 (ii) declaratory relief, including costs of court and reasonable and necessary attorney
394 fees, if the user proves that the social media platform failed to comply with a provision of this
395 chapter.
- 396 (4) A user may bring an action under this section regardless of whether another court
397 has enjoined the division or the attorney general from enforcing this chapter or declared any
398 provision of this chapter unconstitutional, unless that court decision is binding on the court in
399 which the action is brought.

400 (5) Nonmutual issue preclusion and nonmutual claim preclusion are not defenses to an
401 action brought under this section.

402 Section 12. Section **13-63-504** is enacted to read:

403 **13-63-504. Waiver prohibited.**

404 A waiver or purported waiver of any of the following is void as unlawful, is against
405 public policy, and a court or arbitrator may not enforce or give effect to the waiver,
406 notwithstanding any contract or choice-of-law provision in a contract:

407 (1) a waiver of any protection or requirement provided under this chapter; and

408 (2) a waiver of the right to cooperate with the division or to file a complaint with the
409 division.

410 Section 13. Section **13-63-505** is enacted to read:

411 **13-63-505. Limitation of effect of chapter -- Damages and remedies.**

412 This chapter does not subject a social media platform to damages or other legal
413 remedies to the extent that the social media platform is protected from those remedies under
414 federal law.

415 Section 14. Section **13-63-601** is enacted to read:

416 **Part 6. Severability**

417 **13-63-601. Severability.**

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

421 Section 15. **Effective date.**

422 (1) Except as provided in Subsection (2), this bill takes effect on May 3, 2023.

423 (2) The actions affecting Section [13-2-1](#) (Effective 12/31/23) take effect on December
424 31, 2023.