

**Representative Ken Ivory** proposes the following substitute bill:

**SOCIAL MEDIA USAGE MODIFICATIONS**

2023 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Ken Ivory**

Senate Sponsor: \_\_\_\_\_

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**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;
- ▶ requires a social media company to have an easily accessible complaint and appeal process for complaint resolution;
- ▶ 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



- 26           • adding an assessment to user content, including fact or accuracy checks;
- 27           ▶ establishes a complaint and enforcement process through the Division of Consumer
- 28 Protection;
- 29           ▶ requires a social media company to collect data for and publish a biannual
- 30 transparency report;
- 31           ▶ prohibits a social media company from censoring user expression, with certain
- 32 exceptions;
- 33           ▶ details the Division of Consumer Protection's investigative and enforcement powers
- 34 in enforcing the act;
- 35           ▶ permits a private right of action for enforcement of the act;
- 36           ▶ prohibits requirements of the act from being waived by a contract or choice-of-law
- 37 provision; and
- 38           ▶ provides for severability.

39 **Money Appropriated in this Bill:**

40           None

41 **Other Special Clauses:**

42           This bill provides a special effective date.

43 **Utah Code Sections Affected:**

44 AMENDS:

45           **13-2-1 (Superseded 12/31/23)**, as last amended by Laws of Utah 2022, Chapter 201

46           **13-2-1 (Effective 12/31/23)**, as last amended by Laws of Utah 2022, Chapters 201, 462

47 ENACTS:

48           **13-63-101**, Utah Code Annotated 1953

49           **13-63-201**, Utah Code Annotated 1953

50           **13-63-202**, Utah Code Annotated 1953

51           **13-63-301**, Utah Code Annotated 1953

52           **13-63-302**, Utah Code Annotated 1953

53           **13-63-401**, Utah Code Annotated 1953

54           **13-63-501**, Utah Code Annotated 1953

55           **13-63-502**, Utah Code Annotated 1953

56           **13-63-503**, Utah Code Annotated 1953

- 57 [13-63-504](#), Utah Code Annotated 1953
- 58 [13-63-505](#), Utah Code Annotated 1953
- 59 [13-63-601](#), Utah Code Annotated 1953



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

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 Section **13-2-1 (Superseded 12/31/23)** is amended to read:

63 **TITLE 13. COMMERCE AND TRADE**

64 **13-2-1 (Superseded 12/31/23). Consumer protection division established --**

65 **Functions.**

66 (1) There is established within the Department of Commerce the Division of Consumer  
67 Protection.

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

- 69 (a) Chapter 5, Unfair Practices Act;
- 70 (b) Chapter 10a, Music Licensing Practices Act;
- 71 (c) Chapter 11, Utah Consumer Sales Practices Act;
- 72 (d) Chapter 15, Business Opportunity Disclosure Act;
- 73 (e) Chapter 20, New Motor Vehicle Warranties Act;
- 74 (f) Chapter 21, Credit Services Organizations Act;
- 75 (g) Chapter 22, Charitable Solicitations Act;
- 76 (h) Chapter 23, Health Spa Services Protection Act;
- 77 (i) Chapter 25a, Telephone and Facsimile Solicitation Act;
- 78 (j) Chapter 26, Telephone Fraud Prevention Act;
- 79 (k) Chapter 28, Prize Notices Regulation Act;
- 80 (l) Chapter 32a, Pawnshop, Secondhand Merchandise, and Catalytic Converter  
81 Transaction Information Act;
- 82 (m) Chapter 34, Utah Postsecondary Proprietary School Act;
- 83 (n) Chapter 34a, Utah Postsecondary School State Authorization Act;
- 84 (o) Chapter 41, Price Controls During Emergencies Act;
- 85 (p) Chapter 42, Uniform Debt-Management Services Act;
- 86 (q) Chapter 49, Immigration Consultants Registration Act;
- 87 (r) Chapter 51, Transportation Network Company Registration Act;

- 88 (s) Chapter 52, Residential Solar Energy Disclosure Act;
- 89 (t) Chapter 53, Residential, Vocational and Life Skills Program Act;
- 90 (u) Chapter 54, Ticket Website Sales Act;
- 91 (v) Chapter 56, Ticket Transferability Act; [~~and~~]
- 92 (w) Chapter 57, Maintenance Funding Practices Act; and
- 93 (x) Chapter 63, Utah Digital Expression Act.

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

95 **13-2-1 (Effective 12/31/23). Consumer protection division established --**

96 **Functions.**

- 97 (1) There is established within the Department of Commerce the Division of Consumer
- 98 Protection.
- 99 (2) The division shall administer and enforce the following:
  - 100 (a) Chapter 5, Unfair Practices Act;
  - 101 (b) Chapter 10a, Music Licensing Practices Act;
  - 102 (c) Chapter 11, Utah Consumer Sales Practices Act;
  - 103 (d) Chapter 15, Business Opportunity Disclosure Act;
  - 104 (e) Chapter 20, New Motor Vehicle Warranties Act;
  - 105 (f) Chapter 21, Credit Services Organizations Act;
  - 106 (g) Chapter 22, Charitable Solicitations Act;
  - 107 (h) Chapter 23, Health Spa Services Protection Act;
  - 108 (i) Chapter 25a, Telephone and Facsimile Solicitation Act;
  - 109 (j) Chapter 26, Telephone Fraud Prevention Act;
  - 110 (k) Chapter 28, Prize Notices Regulation Act;
  - 111 (l) Chapter 32a, Pawnshop, Secondhand Merchandise, and Catalytic Converter
  - 112 Transaction Information Act;
  - 113 (m) Chapter 34, Utah Postsecondary Proprietary School Act;
  - 114 (n) Chapter 34a, Utah Postsecondary School State Authorization Act;
  - 115 (o) Chapter 41, Price Controls During Emergencies Act;
  - 116 (p) Chapter 42, Uniform Debt-Management Services Act;
  - 117 (q) Chapter 49, Immigration Consultants Registration Act;
  - 118 (r) Chapter 51, Transportation Network Company Registration Act;

- 119 (s) Chapter 52, Residential Solar Energy Disclosure Act;
- 120 (t) Chapter 53, Residential, Vocational and Life Skills Program Act;
- 121 (u) Chapter 54, Ticket Website Sales Act;
- 122 (v) Chapter 56, Ticket Transferability Act;
- 123 (w) Chapter 57, Maintenance Funding Practices Act; [~~and~~]
- 124 (x) Chapter 61, Utah Consumer Privacy Act; and
- 125 (y) Chapter 63, Utah Digital Expression Act.

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

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

128 **Part 1. General Provisions**

129 **13-63-101. Definitions.**

130 As used in this chapter:

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

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

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

134 (c) to remove content;

135 (d) to demonetize content;

136 (e) to deprioritize content;

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

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

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

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

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

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

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

150 (7) (a) "Social media platform" means an Internet website or application:  
151 (i) that has at least 50 million active users in a calendar month;  
152 (ii) that is open to the public;  
153 (iii) that allows users to create an account; and  
154 (iv) whose primary purpose is to enable users to disseminate information to and  
155 communicate with other users through the posting of comments, messages, video, images, or  
156 other media.

157 (b) "Social media platform" does not include:  
158 (i) an Internet service provider;  
159 (ii) electronic mail; or  
160 (iii) an online service, application, or website:  
161 (A) that consists primarily of news, sports, entertainment, or other information content  
162 that is not user generated but is preselected by the provider; and  
163 (B) for which any chat, comment, or interactive functionality is incidental to, directly  
164 related to, or dependent on the provider's content described in Subsection (7)(b)(iii)(A).

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

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

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

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

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

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

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

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

177 **13-63-201. Public disclosures.**

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

181 which the social media platform:

182 (a) curates and targets content to users;

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

185 (c) moderates content;

186 (d) uses search, ranking, or other algorithms or procedures that determine results on the  
187 social media platform; and

188 (e) provides users with performance data on the use of the platform and the social  
189 media platform's products and services.

190 (2) A social media platform is not required to include in a public disclosure trade  
191 secrets and commercial or financial information that is protected from disclosure by federal  
192 law.

193 (3) A social media platform shall ensure that a public disclosure:

194 (a) is sufficient to enable users to make an informed choice regarding the purchase or  
195 use of access to or services from the platform; and

196 (b) is made available on an Internet website that is easily accessible to the public.

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

198 **13-63-202. Acceptable use policy.**

199 (1) A social media platform shall publish an acceptable use policy in a location on the  
200 social media platform that is easily accessible to a user.

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

202 (a) reasonably informs a user about the types of content that the social media platform  
203 prohibits;

204 (b) explains the steps the social media platform takes to ensure content complies with  
205 the policy;

206 (c) explains the process by which a user can submit a complaint under Section  
207 13-63-301; and

208 (d) includes a copy of the biannual transparency report as described in Section  
209 13-63-302, including a description of any adverse action the social media platform has taken to  
210 enforce the policy.

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

212 **Part 3. Complaints and Reporting**

213 **13-63-301. Illegal activity or content -- Adverse actions -- Complaint system and**  
214 **procedures - Appeals.**

215 (1) A social media platform shall:

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

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

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

220 (ii) illegal activity or illegal content; and

221 (iii) the social media platform's decision 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 Prohibited**

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

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

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

298 (b) Censorship based on viewpoint shall be considered an action taken in bad faith.

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

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

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

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

307 (d) is unlawful expression; or

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

309 (4) Nothing in this section shall prohibit a social media platform from prohibiting  
310 entire categories of content, provided that the prohibition of the category does not constitute  
311 viewpoint discrimination.

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

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

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

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

320 **Part 5. Enforcement by Division**

321 **13-63-501. Investigative powers of the division.**

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

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

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

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

330 **13-63-502. Enforcement powers of the division.**

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

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

335 (3) (a) Subject to the ability to cure an alleged failure to comply with a provision of this

336 chapter under Subsection (4):

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

339 (ii) the division may bring an action in a court of competent jurisdiction to enforce a  
340 provision of this chapter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

373 (a) reasonable attorney fees;

374 (b) court costs; and

375 (c) investigative fees.

376 (6) (a) A person who violates an administrative or court order issued for failure to  
377 comply with a provision of this chapter is subject to a civil penalty of no more than \$5,000 for  
378 each incident of noncompliance.

379 (b) A civil penalty authorized under this chapter may be imposed in any civil action  
380 brought by the division, or by the attorney general on behalf of the division.

381 (7) All money received for the payment of a fine or civil penalty imposed under this  
382 section shall be deposited into the Consumer Protection Education and Training Fund  
383 established in Section [13-2-8](#).

384 Section 11. Section **13-63-503** is enacted to read:

385 **13-63-503. Private right of action.**

386 (1) A user may bring an action against a person that does not comply with the  
387 requirements of this chapter.

388 (2) A suit filed under the authority of this section shall be filed in the district court for  
389 the district in which a user bringing the action resides.

390 (3) If a court finds that a person has failed to comply with a provision of this chapter,  
391 the user who brings an action under this section is entitled to:

392 (a) injunctive relief; and

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

394 (i) \$2,500 per each incident of noncompliance; or

395 (ii) declaratory relief, including costs of court and reasonable and necessary attorney  
396 fees, if the user proves that the social media platform failed to comply with a provision of this  
397 chapter.

398 (4) A user may bring an action under this section regardless of whether another court  
399 has enjoined the division or the attorney general from enforcing this chapter or declared any  
400 provision of this chapter unconstitutional, unless that court decision is binding on the court in  
401 which the action is brought.

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

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

405 **13-63-504. Waiver prohibited.**

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

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

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

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

413 **13-63-505. Limitation of effect of chapter -- Damages and remedies.**

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

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

418 **Part 6. Severability**

419 **13-63-601. Severability.**

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

423 Section 15. **Effective date.**

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

425 (2) The actions affecting Section [13-2-21](#) (Effective 12/31/23) take effect on December  
426 31, 2023.