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~~text~~ shows text that was in HB0524 but was deleted in HB0524S01.

text shows text that was not in HB0524 but was inserted into HB0524S01.

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Representative Ken Ivory proposes the following substitute bill:

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

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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
 - 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 transparency report;
- ▶ prohibits a social media company from censoring user expression, with certain exceptions;
- ▶ details the Division of Consumer Protection's investigative and enforcement powers in enforcing the act;
- ▶ permits a private right of action for enforcement of the act;
- ▶ prohibits requirements of the act from being waived by a contract or choice-of-law provision; and
- ▶ provides for severability.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

13-2-1 (Superseded 12/31/23), as last amended by Laws of Utah 2022, Chapter 201

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

ENACTS:

13-63-101, Utah Code Annotated 1953

13-63-201, Utah Code Annotated 1953

13-63-202, Utah Code Annotated 1953

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13-63-301, Utah Code Annotated 1953

13-63-302, Utah Code Annotated 1953

13-63-401, Utah Code Annotated 1953

13-63-501, Utah Code Annotated 1953

13-63-502, Utah Code Annotated 1953

13-63-503, Utah Code Annotated 1953

13-63-504, Utah Code Annotated 1953

13-63-505, Utah Code Annotated 1953

13-63-601, Utah Code Annotated 1953

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

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 Section **13-2-1 (Superseded 12/31/23)** is amended to read:

TITLE 13. COMMERCE AND TRADE

13-2-1 (Superseded 12/31/23).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

Functions.

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

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

(a) Chapter 5, Unfair Practices Act;

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

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

(d) Chapter 15, Business Opportunity Disclosure Act;

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

(f) Chapter 21, Credit Services Organizations Act;

(g) Chapter 22, Charitable Solicitations Act;

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

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

(j) Chapter 26, Telephone Fraud Prevention Act;

(k) Chapter 28, Prize Notices Regulation Act;

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

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- (m) Chapter 34, Utah Postsecondary Proprietary School Act;
- (n) Chapter 34a, Utah Postsecondary School State Authorization Act;
- (o) Chapter 41, Price Controls During Emergencies Act;
- (p) Chapter 42, Uniform Debt-Management Services Act;
- (q) Chapter 49, Immigration Consultants Registration Act;
- (r) Chapter 51, Transportation Network Company Registration Act;
- (s) Chapter 52, Residential Solar Energy Disclosure Act;
- (t) Chapter 53, Residential, Vocational and Life Skills Program Act;
- (u) Chapter 54, Ticket Website Sales Act;
- (v) Chapter 56, Ticket Transferability Act; [~~and~~]
- (w) Chapter 57, Maintenance Funding Practices Act; and
- (x) Chapter 63, Utah Digital Expression Act.

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

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

Functions.

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

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

- (a) Chapter 5, Unfair Practices Act;
- (b) Chapter 10a, Music Licensing Practices Act;
- (c) Chapter 11, Utah Consumer Sales Practices Act;
- (d) Chapter 15, Business Opportunity Disclosure Act;
- (e) Chapter 20, New Motor Vehicle Warranties Act;
- (f) Chapter 21, Credit Services Organizations Act;
- (g) Chapter 22, Charitable Solicitations Act;
- (h) Chapter 23, Health Spa Services Protection Act;
- (i) Chapter 25a, Telephone and Facsimile Solicitation Act;
- (j) Chapter 26, Telephone Fraud Prevention Act;
- (k) Chapter 28, Prize Notices Regulation Act;
- (l) Chapter 32a, Pawnshop, Secondhand Merchandise, and Catalytic Converter Transaction Information Act;

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

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

CHAPTER 63. UTAH DIGITAL EXPRESSION ACT

Part 1. General Provisions

13-63-101. Definitions.

As used in this chapter:

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

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

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

(c) to remove content;

(d) to demonetize content;

(e) to deprioritize content;

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

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

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

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

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Section 13-2-1.

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

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

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

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

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

(ii) that is open to the public;

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

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

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

(i) an Internet service provider;

(ii) electronic mail; or

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

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

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

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

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

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

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

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

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

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

Part 2. Disclosure and Acceptable Use Policy

13-63-201. Public disclosures.

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

(a) curates and targets content to users;

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

(c) moderates content;

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

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

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

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

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

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

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

13-63-202. Acceptable use policy.

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

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

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

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

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

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

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

Part 3. Complaints and Reporting

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

(1) A social media platform shall:

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

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

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

(ii) illegal activity or illegal content; and

(iii) the social media platform's decision~~f~~:

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

~~— (B) } to take an adverse action.~~

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

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

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

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

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

(c) provide written notice to the user of:

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

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

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

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

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

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

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

(a) review the content that is subject to the adverse action;

(b) determine whether the content adheres to the platform's acceptable use policy;

(c) take appropriate steps based on the determination; and

(d) notify the user regarding the determination and steps taken under this Subsection

(5).

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

13-63-302. Biannual transparency report.

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

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

(i) a user complaint;

(ii) an employee of or a person contracting with the social media platform; or

(iii) an internal automated detection tool;

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

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(i) the rule violated;

(ii) the source for the alert of illegal content, illegal activity, or potentially policy-violating content, including:

(A) a government;

(B) a user;

(C) an internal automated detection tool;

(D) coordination with other social media platforms; or

(E) persons employed by or contracting with the platform; and

(iii) the country of the user who is responsible for the content;

(c) the number of coordinated efforts related to illegal content, illegal activity, or policy-violating content, if applicable;

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

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

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

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

(a) with an open license;

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

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

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

Part 4. Censorship Prohibited

13-63-401. Censorship ~~{prohibited}~~Prohibited.

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

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

~~(f,t)~~ (i) the user's particular viewpoint; or

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

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

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

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

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

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

(d) is unlawful expression; or

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

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

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

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

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

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

Part 5. Enforcement by Division

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

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

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

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

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chapter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) reasonable attorney fees;

(b) court costs; and

(c) investigative fees.

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

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

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

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

13-63-503. Private right of action.

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

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

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

(a) injunctive relief; and

(b) an amount equal to the greater of:

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

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

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

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

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

13-63-504. Waiver prohibited.

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

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

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

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

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

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

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

Part 6. Severability

13-63-601. Severability.

If any provision of this chapter or the application of any provision to any person or

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circumstance 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 15. **Effective date.**

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

(2) The actions affecting Section ~~13-2-11~~ 13-2-21 (Effective 12/31/23) take effect on December 31, 2023.