

## SB0152S03 compared with SB0152S02

~~text~~ shows text that was in SB0152S02 but was deleted in SB0152S03.

text shows text that was not in SB0152S02 but was inserted into SB0152S03.

**DISCLAIMER:** This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

Senator Michael K. McKell proposes the following substitute bill:

### SOCIAL MEDIA REGULATION AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Michael K. McKell**

House Sponsor: Jordan D. Teuscher

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#### LONG TITLE

##### General Description:


This bill enacts provisions related to the regulation of social media companies and social media platforms.

##### Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ enacts the Utah Social Media Regulation Act;
- ▶ requires a social media company to verify the age of a Utah resident seeking to maintain or open a social media account;
- ▶ requires a social media company to obtain the consent of a parent or guardian before a Utah resident under the age of 18 may maintain or open an account;
- ▶ prohibits a social media company from permitting a Utah resident to open an

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- account if that person does not meet age requirements under state or federal law;
- ▶ requires that for accounts held by a Utah minor, certain social media companies:
    - shall prohibit direct messaging with certain accounts;
    - may not show the minor's account in search results;
    - may not display advertising;
    - may not collect, share, or use personal information from the account, with certain exceptions;
    - may not target or suggest ads, accounts, or content; and
    - shall limit hours of access, subject to parental or guardian direction;
  - ▶ requires a social media company to provide a parent or guardian access to the content and interactions of an account held by a Utah resident under the age of 18;
  - ▶ directs the Division of Consumer Protection to receive and investigate complaints of violations of the requirements established under the act and impose administrative fines for violations;
  - ▶ authorizes the division to seek enforcement through an injunction, civil penalties, and other relief through the judicial process;
  - ▶ requires fines and civil penalties to be deposited into the Consumer Protection Education and Training Fund;
  - ▶ requires an annual report from the division;
  - ▶ authorizes a private right of action to collect attorney fees and damages from a social media company for harm incurred in relation to a violation of the requirements established by the act;
  - ▶ prohibits certain waivers; and
  - ▶ provides a severability clause. 

### **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

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**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

**13-63-102**, Utah Code Annotated 1953

**13-63-103**, Utah Code Annotated 1953

**13-63-104**, Utah Code Annotated 1953

**13-63-105**, Utah Code Annotated 1953

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

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

**13-63-203**, Utah Code Annotated 1953

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

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

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

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*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;

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- (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;

- (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 Social Media Regulation 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;

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- (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;

- (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 Social Media Regulation Act.

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

### CHAPTER 63. ~~§~~UTAH SOCIAL MEDIA REGULATION ACT

#### Part 1. ~~§~~General Requirements

##### **13-63-101. Definitions.**

As used in this chapter:

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

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

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

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

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(5) (a) "Interactive computer service" means an information service, information system, or information access software provider that:

- (i) provides or enables computer access by multiple users to a computer server; and
- (ii) provides access to the Internet.

(b) "Interactive computer service" includes:

- (i) a web service;
- (ii) a web system;
- (iii) a website;
- (iv) a web application; or
- (v) a web portal.

(6) "Minor" means an individual who is under the age of 18 and:

- (a) has not been emancipated as that term is defined in Section 80-7-102; or
- (b) has not been married.

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

(8) "Social media company" means a person or entity that:

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

(b) is an interactive computer service.

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

- (i) create a profile;
- (ii) upload posts;
- (iii) view the posts of other account holders; and
- (iv) interact with other account holders or users.

(b) "Social media platform" does not include an online service, website, or application:

(i) where the predominant or exclusive function is:

(A) electronic mail;

(B) direct messaging consisting of text, photos, or videos that are sent between devices by electronic means, where messages are:

(I) shared between the sender and the recipient;

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(II) only visible to the sender and the recipient; and

(III) are not posted publicly;

(C) a streaming service that:

(I) provides only licensed media in a continuous flow from the service, website, or application to the end user; and

(II) does not obtain a license to the media from a user or account holder by agreement to its terms of service;

(D) news, sports, entertainment, or other content that is preselected by the provider and not user generated, ~~fff~~and any chat, comment, or interactive functionality that is ~~false~~ provided ~~is~~ incidental to, directly related to, or dependent upon provision of the content;

(E) online shopping or e-commerce, if the interaction with other users or account holders is generally limited to:

(I) the ability to upload a post and comment on reviews;

(II) the ability to display lists or collections of goods for sale or wish lists; and

(III) other functions that are focused on online shopping or e-commerce rather than interaction between users or account holders;

(F) interactive ~~video~~gaming, virtual gaming, or ~~a gaming~~an online service, that allows ~~users to create~~the creation and ~~upload~~uploading of content for the purpose of interactive ~~virtual~~gaming, edutainment, or associated entertainment, and the communication related to that content;

(G) photo editing that has an associated photo hosting service, if the interaction with other users or account holders is generally limited to liking or commenting;

(H) a professional creative network for showcasing and discovering artistic content, if the content is required to be non-pornographic;

(~~G~~)I) single-purpose community groups for public safety if:

(I) the interaction with other users or account holders is generally limited to that single purpose; and

(II) the community group has guidelines or policies against illegal content;

(~~H~~)J) providing career development opportunities, including professional networking, job skills, learning certifications, and job posting and application services;

(~~H~~)K) business to business software;

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(~~F~~L) a teleconferencing or videoconferencing service that allows reception and transmission of audio and video signals for real time communication;

(~~K~~M) cloud storage;

(~~L~~N) shared document collaboration;

(~~M~~O) cloud computing services, which may include cloud storage and shared document collaboration;

(~~N~~P) providing access to or interacting with data visualization platforms, libraries, or hubs;

(~~O~~Q) to permit comments on a digital news website, if the news content is posted only by the provider of the digital news website;

(~~P~~R) providing or obtaining technical support for a platform, product, or service;

(~~Q~~S) academic or scholarly research; or

(~~R~~T) genealogical research;

(ii) where:

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

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

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

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

(A) a learning management system;

(B) a student engagement program; and

(C) a subject or skill-specific program.

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

(11) (a) "Utah account holder" means a person who is a Utah resident and an account holder.

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

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

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



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

### **13-63-102. Age requirements for use of social media platform -- Parental consent -- Rulemaking authority of division.**

(1) Beginning March 1, 2024, a social media company may not permit a Utah resident who is a minor to be an account holder on the social media company's social media platform unless the Utah resident has the express consent of a parent or guardian.

(2) Notwithstanding any provision of this chapter, a social media company may not permit a Utah resident who is a minor to hold or open an account on a social media platform if the minor is ineligible to hold or open an account under any other provision of state or federal law.

(3) (a) Beginning March 1, 2024, a social media company shall verify the age of an existing or new Utah account holder and, if the existing or new account holder is a minor, confirm that a minor has consent as required under Subsection (1):

(i) for a new account, at the time the Utah resident opens the account; or

(ii) for a Utah account holder who has not provided age verification as required under this section, within 14 calendar days of the Utah account holder's attempt to access the account.

(b) If a Utah account holder fails to meet the verification requirements of this section within the required time period, the social media company shall deny access to the account:

(i) upon the expiration of the time period; and

(ii) until all verification requirements are met.

(4) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division, with consideration of stakeholder input, shall make rules to:

(a) establish processes or means by which a social media company may meet the age verification requirements of this chapter;

(b) establish acceptable forms or methods of identification, which may not be limited to a valid identification card issued by a government entity;

(c) establish requirements for providing confirmation of the receipt of any information provided by a person seeking to verify age under this chapter;

(d) establish processes or means to confirm that a parent or guardian has provided consent for the minor to open or use an account as required under this section;

(e) establish requirements for retaining, protecting, and securely disposing of any

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information obtained by a social media company or its agent as a result of compliance with the requirements of this chapter;

(f) require that information obtained by a social media company or its agent in order to comply with the requirements of this chapter are only retained for the purpose of compliance and may not be used for any other purpose;

(g) if the division permits an agent to process verification requirements required by this section, require that the agent have its principal place of business in the United States of America;

(h) require other applicable state agencies to comply with any rules promulgated under the authority of this section; and

(i) ensure that the rules are consistent with state and federal law, including Title 13, Chapter 61, Utah Consumer Privacy Act.

Section 5. Section **13-63-103** is enacted to read:

**13-63-103. Prohibition on data collection for certain accounts -- Prohibition on advertising -- Use of information -- Search results -- Directed content.**

Beginning March 1, 2024, a social media company, for a social media platform account held by a Utah minor account holder:

(1) shall prohibit direct messaging between the account and any other user that is not linked to the account through friending;

(2) may not show the account in search results for any user that is not linked to the account through friending;

(3) shall prohibit the display of any advertising in the account;

(4) shall not collect or use any personal information from the posts, content, messages, text, or usage activities of the account other than information that is necessary to comply with, and to verify compliance with, state or federal law, which information includes a parent or guardian's name, a birth date, and any other information required to be submitted under this section; and

(5) shall prohibit the use of targeted or suggested groups, services, products, posts, accounts, or users in the account.

Section 6. Section **13-63-104** is enacted to read:

**13-63-104. Parental access to social media account.**

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Beginning March 1, 2024, a social media company shall provide a parent or guardian who has given parental consent for a Utah minor account holder under Section 13-63-102 with a password or other means for the parent or guardian to access the account, which shall allow the parent or guardian to view:

(1) all posts the Utah minor account holder makes under the social media platform account; and

(2) all responses and messages sent to or by the Utah minor account holder in the social media platform account.

Section 7. Section **13-63-105** is enacted to read:

### **13-63-105. Limited hours of access for minors -- Parental access and options.**

(1) Beginning March 1, 2024, a social media company shall prohibit a Utah minor account holder from having access to the Utah minor account holder's account during the hours of 10:30 p.m. to 6:30 a.m., unless the access is modified according to another requirement of this section.

(2) Time of day under this section shall be calculated based on the Internet protocol address being used by the Utah minor account holder at the time of attempting access.

(3) A social media company shall provide options for a parent or guardian with access to an account under Section 13-63-104 to:

(a) change or eliminate the time-of-day restriction described in Subsection (1); and

(b) set a limit on the number of hours per day that a Utah minor account holder may use the account.

(4) A social media company shall not permit a Utah minor account holder to change or bypass restrictions on access as required by this section.

(5) Notwithstanding any provision of this section, a social media company shall permit a parent or guardian with access to an account under Section 13-63-104 to access the account without time restrictions.

Section 8. Section **13-63-201** is enacted to read:

### **Part 2. Enforcement of General Requirements by Division**

#### **13-63-201. Investigative powers of the division.**

(1) The division shall receive consumer complaints alleging a violation of Part 1, General Requirements.

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(2) A person may file a consumer complaint that alleges a violation under Part 1, General Requirements, with the division.

(3) The division shall investigate a consumer complaint to determine whether a violation of Part 1, General Requirements, occurred.

Section 9. Section **13-63-202** is enacted to read:

### **13-63-202. Enforcement powers of the division.**

(1) Except for a private right of action under Section 13-63-301, the division has the exclusive authority to administer and enforce the requirements of Part 1, General Requirements.

(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 part.

(3) (a) Subject to the ability to cure an alleged violation under Subsection (4):

(i) the division director may impose an administrative fine of up to \$2,500 for each violation of Part 1, General Requirements; and

(ii) the division may bring an action in a court of competent jurisdiction to enforce a provision of Part 1, General Requirements.

(b) In a court action by the division to enforce a provision of Part 1, General Requirements, the court may:

(i) declare that the act or practice violates a provision of Part 1, General Requirements;

(ii) issue an injunction for a violation of Part 1, General Requirements;

(iii) order disgorgement of any money received in violation of Part 1, General Requirements;

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

(v) impose a civil penalty of up to \$2,500 for each violation of Part 1, General Requirements;

(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 Part 1, General Requirements, the division shall provide the person with:

(i) written notice that identifies each alleged violation; and

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

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

(i) cures the noticed violation 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:

(A) the person has cured the violation; and

(B) no further violation will occur.

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

(i) fails to cure a violation after receiving the notice described in Subsection (4)(a); or

(ii) after curing a noticed violation and providing a written statement in accordance with Subsection (4)(b), commits another violation of the same provision.

(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 a violation of Part 1, General Requirements, is subject to a civil penalty of no more than \$5,000 for each violation.

(b) A civil penalty authorized under this section 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 10. Section **13-63-203** is enacted to read:

### **13-63-203. Division report.**

(1) The division shall compile an annual report:

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

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

(ii) any recommendations for changes to this chapter;

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(b) summarizing the consumer interactions that are protected and not protected by this chapter, including a list of alleged violations the division has received; and

(c) an accounting of:

(i) all administrative fines and civil penalties assessed during the year;

(ii) all administrative fines and civil penalties collected during the year; and

(iii) the use of funds from the Consumer Protection Education and Training Fund.

(2) The division may update or correct the report as new information becomes available.

(3) The division shall submit the report to the Business and Labor Interim Committee on or before the August meeting of each interim period.

Section 11. Section **13-63-301** is enacted to read:

### **Part 3. Private Right of Action for Violation of General Requirements** **13-63-301. Private right of action.**

(1) Beginning March 1, 2024, a person may bring an action against a person that does not comply with a requirement of Part 1, General Requirements.

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

(3) If a court finds that a person has violated a provision of Part 1, General Requirements, the person who brings an action under this section is entitled to:

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

(b) an amount equal to the greater of:

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

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

Section 12. Section **13-63-401** is enacted to read:

### **Part 4. Waiver Prohibited** **13-63-401. Waiver prohibited.**

A waiver or limitation, or a purported waiver or limitation, 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:

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- (1) a protection or requirement provided under this chapter;
- (2) the right to cooperate with the division or to file a complaint with the division; or
- (3) the right to a private right of action as provided under this chapter.

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

### Part 5. ~~§~~ Severability

#### **13-63-501. Severability.**

If any provision of this chapter or the application of any provision to any person or 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. The provisions of this chapter are severable.

Section 14. **Effective date.**

- (1) Except as provided in Subsection (2), this bill takes effect on May 3, 2023.
- (2) The actions affecting Section ~~§13-2-21~~13-2-1 (Effective 12/31/2023) take effect on December 31, 2023.