

Representative Jordan D. Teuscher proposes the following substitute bill:

SOCIAL MEDIA AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jordan D. Teuscher

Senate Sponsor: Kirk A. Cullimore

LONG TITLE

General Description:

This bill concerns harm to minors from social media.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ amends the criminal offense of electronic communication harassment and creates a civil cause of action to address certain conduct involving minors;
- ▶ enacts legislative findings regarding potential harms of excessive social media use by minors;
- ▶ allows a private right of action related to harms to minors from excessive social media use and establishes related provisions;
- ▶ establishes an affirmative defense for a social media company to defend against the private right of action;
- ▶ prohibits waivers of rights and protections; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:



26 This bill provides a special effective date.

27 **Utah Code Sections Affected:**

28 AMENDS:

29 **76-9-201**, as last amended by Laws of Utah 2023, Chapter 111

30 ENACTS:

31 **78B-3-1101**, Utah Code Annotated 1953

32 **78B-3-1102**, Utah Code Annotated 1953

33 **78B-3-1103**, Utah Code Annotated 1953

34 **78B-3-1104**, Utah Code Annotated 1953

35 **78B-3-1105**, Utah Code Annotated 1953

36 **78B-3-1106**, Utah Code Annotated 1953

37 REPEALS:

38 **13-63-101**, as enacted by Laws of Utah 2023, Chapters 477, 498

39 **13-63-102**, as enacted by Laws of Utah 2023, Chapter 498

40 **13-63-103**, as enacted by Laws of Utah 2023, Chapter 498

41 **13-63-104**, as enacted by Laws of Utah 2023, Chapter 498

42 **13-63-105**, as enacted by Laws of Utah 2023, Chapter 498

43 **13-63-201**, as enacted by Laws of Utah 2023, Chapter 498

44 **13-63-202**, as enacted by Laws of Utah 2023, Chapter 498

45 **13-63-203**, as enacted by Laws of Utah 2023, Chapter 498

46 **13-63-301**, as enacted by Laws of Utah 2023, Chapter 498

47 **13-63-401**, as enacted by Laws of Utah 2023, Chapter 477

48 **13-63-501**, as enacted by Laws of Utah 2023, Chapter 477

49 **13-63-601**, as enacted by Laws of Utah 2023, Chapters 477, 498

50 **13-63-701**, as enacted by Laws of Utah 2023, Chapters 477, 498

51

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

53 Section 1. Section **76-9-201** is amended to read:

54 **76-9-201. Electronic communication harassment -- Definitions -- Penalties.**

55 (1) As used in this section:

56 (a) (i) "Adult" means an individual 18 years old or older.

57 (ii) "Adult" does not include an individual who is 18 years old and enrolled in high
58 school.

59 (b) "Electronic communication" means a communication by electronic,
60 electro-mechanical, or electro-optical communication device for the transmission and reception
61 of audio, image, or text but does not include broadcast transmissions or similar
62 communications that are not targeted at a specific individual.

63 (c) "Electronic communication device" includes a telephone, a facsimile machine,
64 electronic mail, a pager, a computer, or another device or medium that can be used to
65 communicate electronically.

66 (d) (i) "Minor" means an individual who is younger than 18 years old.

67 (ii) "Minor" includes an individual who is 18 years old and enrolled in high school.

68 (e) "Minor victim" means a minor who is a victim of a violation of Subsection (4).

69 [~~(e)~~] (f) "Personal identifying information" means the same as that term is defined in
70 Section [76-6-1101](#).

71 (2) Except to the extent the person's conduct constitutes an offense under Section
72 [76-9-203](#), a person is guilty of electronic communication harassment and subject to prosecution
73 in the jurisdiction where the communication originated or was received if with intent to
74 intimidate, abuse, threaten, harass, frighten, or disrupt the electronic communications of
75 another, the person:

76 (a) (i) makes repeated contact by means of electronic communications, regardless of
77 whether a conversation ensues; or

78 (ii) after the recipient has requested or informed the person not to contact the recipient,
79 and the person repeatedly or continuously:

80 (A) contacts the electronic communication device of the recipient; or

81 (B) causes an electronic communication device of the recipient to ring or to receive
82 other notification of attempted contact by means of electronic communication;

83 (b) makes contact by means of electronic communication and insults, taunts, or
84 challenges the recipient of the communication or any person at the receiving location in a
85 manner likely to provoke a violent or disorderly response;

86 (c) makes contact by means of electronic communication and threatens to inflict injury,
87 physical harm, or damage to any person or the property of any person; or

88 (d) causes disruption, jamming, or overload of an electronic communication system
89 through excessive message traffic or other means utilizing an electronic communication device.

90 (3) A person is guilty of electronic communication harassment if the person:

91 (a) electronically publishes, posts, or otherwise discloses personal identifying
92 information of another individual in a public online site or forum with the intent to abuse,
93 threaten, or disrupt the other individual's electronic communication and without the other
94 individual's permission; or

95 (b) sends a communication by electronic mail, instant message, or other similar means,
96 if:

97 (i) the communication references personal identifying information of another
98 individual;

99 (ii) the person sends the communication:

100 (A) without the individual's consent; and

101 (B) with the intent to cause a recipient of the communication to reasonably believe that
102 the individual authorized or sent the communication; and

103 (iii) with the intent to:

104 (A) cause an individual physical, emotional, or economic injury or damage; or

105 (B) defraud an individual.

106 (4) A person is guilty of electronic communication harassment if:

107 (a) the person:

108 (i) is an adult;

109 (ii) electronically publishes, posts, or otherwise discloses in a public online site or
110 forum personal identifying information of a minor who is unrelated by blood, marriage, or
111 adoption to the person; and

112 (iii) ~~is~~ ~~knows that performing~~ knows of, but consciously disregards, a substantial and
112a unjustifiable risk that performing ~~the action described in Subsection (4)(a)(ii)~~ is
112b reasonably

113 likely to will ~~result~~ result in the minor being the victim of an offense described in Title 76, Chapter 5,
114 Offenses Against the Individual; and

115 (b) the minor described in Subsection (4)(a)(ii) is aware of the person's action
116 described in Subsection (4)(a)(ii).

117 ~~[(4)] (5) (a) [Electronic communication harassment]~~ Except as provided in Subsection
118 (5)(b), a violation of Subsection (2) or (3) is a class B misdemeanor.

119 (b) A second or subsequent [~~offense of electronic communication harassment~~]
120 violation of Subsection (2) or (3) is a class A misdemeanor.

121 (c) A violation of Subsection (4) is a class A misdemeanor.

122 [~~(5)~~] (6) (a) Except as provided under Subsection [~~(5)(b)~~] (6)(b), criminal prosecution
123 under this section does not affect an individual's right to bring a civil action for damages
124 suffered as a result of the commission of an offense under this section.

125 (b) This section does not create a civil cause of action based on electronic
126 communications made for legitimate business purposes.

127 (7) (a) A minor victim has a civil right of action against an actor who violates
128 Subsection (4).

129 (b) A minor victim who brings a successful civil action under Subsection (7)(a) is
130 entitled to recover from the actor:

- 131 (i) damages resulting from the violation of Subsection (4);
- 132 (ii) reasonable attorney fees; and
- 133 (iii) court costs.

134 Section 2. Section **78B-3-1101** is enacted to read:

135 **Part 11. Harm to Minors by Algorithmically Curated Social Media Service**
136 **78B-3-1101. Definitions.**

137 As used in this part:

138 (1) "Account holder" means a person who has, creates, or opens an account or profile
139 to use an algorithmically curated social media service.

140 (2) (a) "Adverse mental health outcome" means a condition affecting a minor's mental
141 health that is:

- 142 (i) diagnosable by a licensed mental health care provider; and
- 143 (ii) acknowledged by professional mental health experts as having a negative impact on
144 a minor's well-being.

145 (b) "Adverse mental health outcome" includes depression, anxiety, suicidal thoughts or
146 behaviors, and self-harm thoughts or behaviors.

147 (3) "Algorithmically curated social media service" means a social media service that
148 drives user engagement primarily through the use of:

- 149 (a) a curation algorithm; and

- 150 (b) engagement driven design elements.
- 151 (4) "Content" means any information, visual depiction, or other material that appears
152 on or is available or enabled through a social media service.
- 153 (5) (a) "Curation algorithm" means a computational process or set of rules used by a
154 social media platform that determines, influences, or personalizes, designed to encourage
155 prolonged or frequent engagement:
- 156 (i) the content a user views;
157 (ii) the order in which content is displayed;
158 (iii) how prominently content is displayed; or
159 (iv) the manner in which content is displayed.
- 160 (b) "Curation algorithm" does not include the curation of:
- 161 (i) responses to specific user queries or user prompts requesting content related to
162 defined topics or interests selected by the user; or
- 163 (ii) content to ensure only age appropriate material is provided to a user based on the
164 user's age;
- 165 (iii) content that prevents a minor from viewing violent, bullying, threatening, or
166 harassing content; or
- 167 (iv) content to comply with any state or federal law restricting the display of material
168 harmful to minors.
- 169 (6) "Engagement driven design elements" means:
- 170 (a) autoplay features that continuously play content without requiring user interaction;
171 (b) scroll or pagination that loads additional content as long as the user continues
172 scrolling; or
- 173 (c) push notifications.
- 174 (7) "Excessive use" means the use of a social media service by a minor to an extent that
175 the use substantially interferes with the minor's normal functioning in:
- 176 (a) academic performance;
177 (b) sleep;
178 (c) in-person relationships;
179 (d) mental health; or
180 (e) physical health.

181 (8) "Minor" means an individual who is under 18 years old that:

182 (a) has not been emancipated as that term is defined in Section [80-7-102](#); or

183 (b) has not been married.

184 (9) "Parent" includes a legal guardian.

185 (10) "Push notification" means an automatic electronic message displayed on an
 186 account holder's device, when the user interface for the social media service is not actively
 187 open or visible on the device, that prompts the account holder to repeatedly check and engage
 188 with the social media service.

189 (11) "Resident" means the same as that term is defined in Section [53-3-102](#).

190 (12) "Social media company" means an entity that owns or operates a social media
 191 service.

192 (13) (a) "Social media service" means a public website or application that ~~is~~ **[includes as**
 193 **substantial functions]** ~~is~~ :

194 (i) ~~is~~ **[displaying] displays** ~~is~~ content that is primarily ~~is~~ **[user-generated] generated**
 194a **by account holders** ~~is~~ and not ~~is~~ **[produced]** ~~is~~ by the social
 195 media company;

196 (ii) ~~is~~ **[permitting] permits** ~~is~~ an individual to register as an account holder ~~is~~ **[**
 196a **establish an account, or]** and ~~is~~
 197 create a profile that is made visible to the general public or a set of other users defined by the
 198 account holder;

199 (iii) ~~is~~ **[connecting] connects** ~~is~~ account holders to allow ~~is~~ **users to interact socially**
 199a **with each other** ~~is~~ ~~is~~ **[social interaction]** ~~is~~ within the website or
 200 application; ~~is~~ **[and]** ~~is~~

201 (iv) ~~is~~ **makes available to each account holder a list or lists of other account holders**
 201a **with whom the account holder shares a connection within the system; and**

201b (v) ~~is~~ ~~is~~ **[allowing] allows** ~~is~~ account holders to post content viewable by other users.

202 (b) "Social media service" does not include:

203 (i) email;

204 (ii) cloud storage; or

205 (iii) document viewing, sharing, or collaboration services.

206 (14) "User" means an individual who accesses or uses an algorithmically curated social
 207 media service.

208 (15) (a) "Utah account holder" means a person who is a Utah resident and an account
 209 holder.

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

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

212 Section 3. Section **78B-3-1102** is enacted to read:

213 **78B-3-1102. Legislative Findings.**

214 The Legislature finds that:

215 (1) social media services utilize curation algorithms and engagement driven design
216 elements to maximize user engagement;

217 (2) minors are particularly vulnerable to manipulation by the use of curation algorithms
218 and engagement driven design elements;

219 (3) a minor's excessive use of an algorithmically curated social media service is likely
220 to cause adverse mental health outcomes in minors, regardless of the content being viewed;

221 (4) the risk of an adverse mental health outcome resulting from the excessive use of an
222 algorithmically curated social media service increases when a minor uses the service for more
223 than three hours per day, or during regular sleeping hours;

224 (5) algorithmically curated social media services are designed without sufficient tools
225 to allow adequate parental oversight, exposing minors to risks that could be mitigated with
226 additional parental control;

227 (6) protecting minors from the risks associated with the use of algorithmically curated
228 social media services requires intervention at a societal level, informed by expertise in
229 technology, psychology, and youth mental health;

230 (7) the state has a long-established role and responsibility in implementing protections
231 and regulations to safeguard the health and welfare of minors;

232 (8) the state has enacted safeguards around products and activities that pose risks to
233 minors, including regulations on motor vehicles, medications, and products and services
234 targeted to children;

235 (9) any adverse mental health outcomes for minors that are linked to the excessive use
236 of algorithmically curated social media services are a serious public health concern for the
237 state; and

238 (10) the state has a compelling interest to protect minors in the state against adverse
239 mental health outcomes.

240 Section 4. Section **78B-3-1103** is enacted to read:

241 **78B-3-1103. Private right of action.**

242 (1) A Utah minor account holder or a Utah minor account holder's parent may bring a

243 cause of action against a social media company in court for an adverse mental health outcome
244 arising, in whole or in part, from the minor's excessive use of the social media company's
245 algorithmically curated social media service.

246 (2) To recover damages in a cause of action brought under this section, a person
247 bringing the cause ~~S~~→ **of** ←~~S~~ action must demonstrate:

248 (a) that the Utah minor account holder has been diagnosed by a licensed mental health
249 care provider with an adverse mental health outcome; and

250 (b) that the adverse mental health outcome was caused by the Utah minor account
251 holder's excessive use of an algorithmically curated social media service.

252 (3) Except as provided in Subsection (4), a person who brings an action described in
253 Subsection (1), is entitled to a rebuttable presumption that:

254 (a) the Utah minor account holder's adverse mental health outcome was caused, in
255 whole or in part, by the Utah minor account holder's excessive use of the algorithmically
256 curated social media service; and

257 (b) the Utah minor account holder's excessive use of the algorithmically curated social
258 media service was caused, in whole or in part, by the algorithmically curated social media
259 service's curation algorithm and engagement driven design elements.

260 (4) A social media company that complies with the provisions of Section [78B-11-1104](#)
261 is entitled to a rebuttable presumption that:

262 (a) the Utah minor account holder's adverse mental health outcome was not caused, in
263 whole or in part, by the Utah minor account holder's excessive use of the algorithmically
264 curated social media service; and

265 (b) the Utah minor account holder's excessive use of the algorithmically curated social
266 media service was not caused, in whole or in part, by the algorithmically curated social media
267 service's curation algorithm and engagement driven design elements.

268 (5) If a court or fact finder finds that a Utah minor account holder suffered any adverse
269 mental health outcome as a result of the Utah minor account holder's use of a social media
270 company's algorithmically curated social media service, the person seeking relief is entitled to:

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

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

273 (i) \$10,000 for each adverse mental health outcome incidence; or

274 (ii) the amount of actual damages.

275 (6) A social media company may not be held liable under this part:

276 (a) based on the content of material posted by users of the algorithmically curated

277 social media service; or

278 (b) for declining to restrict access to or modify user posts based solely on the content of

279 those posts.

280 (7) Nothing in this part shall displace any other available remedies or rights authorized

281 under the laws of this state or the United States.

282 Section 5. Section **78B-3-1104** is enacted to read:

283 **78B-3-1104. Affirmative defense.**

284 (1) A person is not entitled to the rebuttable presumption described in Subsection

285 78B-11-1103(3), and a social media company is entitled to the rebuttable presumption

286 described in Subsection 78B-11-1103(4), if the social media company demonstrates to the

287 court that the social media company:

288 (a) limits a Utah minor account holder's use of the algorithmically curated social media
289 service to no more than three hours in a 24 hour period across all devices;

290 (b) restricts a Utah minor account holder from accessing the algorithmically curated
291 social media service between the hours of 10:30 p.m. and 6:30 a.m.;

292 (c) requires the parent or legal guardian of the minor to consent to a Utah minor
293 account holder's use of the algorithmically curated social media service; and

294 (d) disables engagement driven design elements for a Utah minor account holder's
295 account.

296 (2) A social media company may utilize settings that are enabled at the device level to
297 impose the requirements described in Subsection (1).

298 (3) Notwithstanding Subsection (2), a social media company remains liable to ensure
299 that the Utah minor account holder's account is subject to the restrictions of Subsection (1).

300 Section 6. Section **78B-3-1105** is enacted to read:

301 **78B-3-1105. Waiver prohibited.**

302 A waiver or limitation, or a purported waiver or limitation, of any of the following is
303 void as unlawful, is against public policy, and a court or arbitrator may not enforce or give

304 effect to the waiver, notwithstanding any contract or choice-of-law provision in a contract:

- 305 (1) a protection or requirement provided under this chapter;
- 306 (2) the right to cooperate with or file a complaint with a government agency;
- 307 (3) the right to a private right of action as provided under this chapter; or
- 308 (4) the right to recover actual damages, statutory damages, civil penalties, costs, or fees
- 309 as allowed by this chapter.

310 Section 7. Section **78B-3-1106** is enacted to read:

311 **78B-3-1106. Severability.**

312 (1) If any provision of this chapter or the application of any provision to any person or

313 circumstance is held invalid by a final decision of a court of competent jurisdiction, the

314 remainder of this chapter shall be given effect without the invalid provision or application.

315 (2) The provisions of this chapter are severable.

316 Section 8. **Repealer.**

317 This bill repeals:

318 Section **13-63-101, Definitions.**

319 Section **13-63-102, Age requirements for use of social media platform -- Parental**

320 **consent -- Rulemaking authority of division.**

321 Section **13-63-103, Prohibition on data collection for certain accounts --**

322 **Prohibition on advertising -- Use of information -- Search results -- Directed content.**

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

324 Section **13-63-105, Limited hours of access for minors -- Parental access and**

325 **options.**

326 Section **13-63-201, Investigative powers of the division.**

327 Section **13-63-202, Enforcement powers of the division.**

328 Section **13-63-203, Division report.**

329 Section **13-63-301, Private right of action.**

330 Section **13-63-401, Social media platform design regulations -- Enforcement and**

331 **auditing authority -- Penalties.**

332 Section **13-63-501, Private right of action for harm to a minor -- Rebuttable**

333 **presumption of harm and causation.**

334 Section **13-63-601, Waiver prohibited.**

335 Section **13-63-701, Severability.**

336 Section 9. **Effective date.**

337 (1) Except as provided in Subsection (2), this bill takes effect on May 1, 2024.

338 (2) The actions affecting the following sections take effect on October 1, 2024:

339 (a) Section [78B-3-1101](#);

340 (b) Section [78B-3-1102](#);

341 (c) Section [78B-3-1103](#);

342 (d) Section [78B-3-1104](#);

343 (e) Section [78B-3-1105](#); and

344 (f) Section [78B-3-1106](#).