

Utah lawmakers taking aim at social media censorship in proposed legislation

Sen. Mike McKell's bill aims to make social media moderation practices more transparent.

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Spanish Fork Sen. Mike McKell swears his bill targeting social media platforms that censor posts by Utah account holders is not a reaction to so-called "cancel culture." He just wants some transparency in their decision-making.

"Our social media platforms have become a de facto public forum," said McKell, an attorney. "We've seen some of the big social media platforms pulling folks off, and this requires clear information from a social media platform about their moderation practices."

In addition to clearly defining how they moderate content, [SB228](#) requires those platforms to give notice when they remove content of an account holder who lives in Utah as well as give that individual an opportunity to appeal the decision. The bill also allows an aggrieved account holder to make a complaint to the Utah Division of Consumer Protection and the attorney general.

"How do we hold social media providers accountable?" asks McKell.

McKell has a point about the inconsistencies in the moderation of social media content. President Donald Trump was kicked off nearly every social media platform following the attack on the U.S. Capitol by a mob of his supporters, but many of his posts prior to that appeared to violate the terms of service but were allowed to remain.

"This bill is almost certainly unconstitutional," said Jason Groth of the ACLU of Utah. "The government cannot force social media platforms to distribute speech. Constitutionality aside, this bill is a waste of time because it is preempted by Section 230 of the Communications Decency Act. This federal law protects good-faith decisions to remove content regardless of whether it's constitutionally protected." Section 230 of the 1996 Telecommunications Act has been dubbed by some the "internet's most important law." The clause, [which has been attacked by both Republicans and Democrats](#), does not allow these social media platforms to be held liable for user-generated content, meaning they cannot face legal reprisals for what we say online. Critics say that provision is too broad. But others warn repealing Section 230 could lead these platforms to censor everything and anything that could bring a legal challenge, or even shutting down the services entirely.

"Look, I understand the frustration with regard to what is going on today and the concerns many of us have about censorship by big tech companies," said Carl Szabo, Vice President and General Counsel for [NetChoice](#), an organization favoring online freedom of expression. "If we believe in Supreme Court decisions like Hobby Lobby and Masterpiece Cakes, it's a little hard to square the circle saying private businesses must host speech they don't think is appropriate."

McKell's proposal does impose a \$1,000 fine per user for each violation if the attorney general decides to act.

This bill does not go as far in clamping down on how social media platforms operate as measures under consideration in some other states. [A proposal under consideration in Florida](#) would require social media platforms to give a 30-day notice to users who have their account suspended or disabled explaining why they were being punished. A bill also seeks a ban on social media censorship. In North Dakota, [lawmakers are considering legislation](#) allowing users to seek civil damages for users whose speech was "restricted, censored or suppressed."

McKell readily acknowledged this is an issue that should be taken up by Congress, but its reluctance to do so is why he felt he needed to act.

"Congress talks about it, but won't actually fix it," he said.

Sen. Jake Anderson, R-Lehi, agreed that Utah should step up regardless of the consequences.

"I fully understand this is probably going to get us sued. But, isn't that the point? We can't get Congress to get their crap together. We should not be scared of what the consequences in court ought to be.

When Congress is so dysfunctional, we've got to actually kick them in the butt to get something done," he said.