

**AMENDMENTS RELATED TO PORNOGRAPHIC
AND HARMFUL MATERIALS**

2005 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: John Dougall

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LONG TITLE

General Description:

This bill addresses pornographic materials and material harmful to minors.

Highlighted Provisions:

This bill:

- ▶ requires the Division of Consumer Protection to make public service announcements;
- ▶ requires the attorney general to establish and maintain a database, called the adult content registry, of certain Internet sites containing material harmful to minors;
- ▶ defines terms;
- ▶ subjects a person dealing in material harmful to minors to criminal liability for certain distributions of material harmful to minors if the person negligently or recklessly fails to determine the proper age of a minor;
- ▶ increases criminal penalties for distributing and inducing acceptance of pornographic materials;
- ▶ requires a service provider to prevent certain access to Internet material harmful to minors, if requested by the consumer;
- ▶ requires the Division of Consumer Protection to test the effectiveness of a service

provider's procedures to block material harmful to minors at least annually;

- ▶ requires a service provider, under certain circumstances, to block material on the adult content registry;
 - ▶ requires Internet content providers that create or host data in Utah to properly rate the data;
 - ▶ allows the attorney general to seek a civil fine against a service provider that fails to properly block material harmful to minors;
 - ▶ provides criminal penalties for certain violations of the provisions requiring a service provider to block material harmful to minors;
 - ▶ provides a criminal penalty for a content provider's failure to properly rate content;
- and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

This bill appropriates:

- ▶ \$100,000 from the General Fund to the Division of Consumer Protection, for fiscal year 2005-06 only, for public service announcements;
- ▶ \$50,000 from the General Fund to the Division of Consumer Protection, for fiscal year 2005-06 only, to conduct a research project; and
- ▶ \$100,000 from the General Fund to the attorney general, for fiscal year 2005-06 only, to establish the adult content registry.

Other Special Clauses:

This bill provides an effective date.

Utah Code Sections Affected:

AMENDS:

76-10-1204, as last amended by Chapters 93 and 163, Laws of Utah 1990

76-10-1205, as last amended by Chapter 163, Laws of Utah 1990

76-10-1206, as last amended by Chapter 53, Laws of Utah 2000

ENACTS:

13-2-9, Utah Code Annotated 1953

67-5-19, Utah Code Annotated 1953

76-10-1230, Utah Code Annotated 1953

76-10-1231, Utah Code Annotated 1953

76-10-1232, Utah Code Annotated 1953

76-10-1233, Utah Code Annotated 1953

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

Section 1. Section 13-2-9 is enacted to read:

13-2-9. Internet -- Consumer education.

(1) The Division of Consumer Protection shall, subject to appropriation, contract with a person to make public service announcements advising consumers about the dangers of using the Internet, especially:

(a) material harmful to minors;

(b) steps a consumer may take to learn more about the dangers of using the Internet;

(c) information about how a service provider can help a consumer learn more about the dangers of using the Internet, including the service provider's duties created by this bill; and

(d) how a consumer can monitor the Internet usage of family members.

(2) Monies appropriated under Subsection (1) shall be paid by the Division of Consumer Protection to a person only if:

(a) the person is a nonprofit organization; and

(b) the person agrees to spend private monies amounting to two times the amount of monies provided by the Division of Consumer Protection during each fiscal year in accordance with Subsection (1).

(3) In administering any monies appropriated for use under this section, the Division of Consumer Protection shall comply with Title 63, Chapter 56, Utah Procurement Code.

Section 2. Section 67-5-19 is enacted to read:

67-5-19. Adult content registry.

(1) As used in this section:

(a) "Access restricted" means access restricted as defined in Section 76-10-1230.

(b) "Consumer" means a consumer as defined in Section 76-10-1230.

(c) "Content provider" means a content provider as defined in Section 76-10-1230.

(d) "Hosting company" means a hosting company as defined in Section 76-10-1230.

(e) "Service provider" means a service provider as defined in Section 76-10-1230.

(2) The attorney general, in consultation with other entities as the attorney general considers appropriate, shall:

(a) create a database, called the adult content registry, consisting of a list of content providers' sites, that shall be based on a Uniform Resource Locator address, domain name, and Internet Protocol address or a similar addressing system, that:

(i) are added to the database under Subsection (2)(b); and

(ii) provide material harmful to minors that is not access restricted;

(b) add a content provider site to the adult content registry only if the attorney general determines that the content provider is providing content that contains material harmful to minors that is not access restricted;

(c) when the attorney general determines that a content provider site should be placed on the adult content registry, if the content provider lists e-mail contact information, the attorney general shall notify the content provider and hosting company, if available, by e-mail:

(i) that the content provider is providing content that contains material harmful to minors that is not access restricted;

(ii) that the attorney general will place the content provider site on the adult content registry five business days after the notice is sent;

(iii) that the content provider can avoid being placed on the adult content registry if any material harmful to minors is access restricted; and

(iv) of the steps necessary for the content provider or hosting company to apply to be removed from the adult content registry;

(d) (i) if notification is required under Subsection (2)(c), place a content provider site on

the adult content registry five business days after the day on which the division makes the required notification; or

(ii) if notification is not required under Subsection (2)(c), place a content provider site on the adult content registry five business days after the day on which the attorney general determines that the content provider should be placed on the adult content registry; and

(e) if requested by a content provider, remove a content provider from the adult content registry within two business days from the day on which the attorney general determines that the content provider no longer provides material harmful to minors that is not access restricted.

(3) The attorney general shall make the adult content registry available for public dissemination in a readily accessible access restricted electronic format.

(4) The attorney general shall establish a system for the reporting of material transmitted to a consumer in violation of Section 76-10-1232.

Section 3. Section **76-10-1204** is amended to read:

76-10-1204. Distributing pornographic material.

(1) A person is guilty of distributing pornographic material when he knowingly:

(a) sends or brings any pornographic material into the state with intent to distribute or exhibit it to others;

(b) prepares, publishes, prints, or possesses any pornographic material with intent to distribute or exhibit it to others;

(c) distributes or offers to distribute, exhibits or offers to exhibit any pornographic material to others;

(d) writes, creates, or solicits the publication or advertising of pornographic material;

(e) promotes the distribution or exhibition of material he represents to be pornographic;

or

(f) presents or directs a pornographic performance in any public place or any place exposed to public view or participates in that portion of the performance which makes it pornographic.

(2) Each distributing of pornographic material as defined in Subsection (1) is a separate

offense.

(3) It is a separate offense under this section for:

(a) each day's exhibition of any pornographic motion picture film; and

(b) each day in which any pornographic publication is displayed or exhibited in a public place with intent to distribute or exhibit it to others.

~~[(4) Each separate offense under this section is a class A misdemeanor punishable by:]~~

~~[(a) a minimum mandatory fine of not less than \$100 plus \$10 for each article exhibited up to the maximum allowed by law; and]~~

~~[(b) incarceration, without suspension of sentence in any way, for a term of not less than seven days, notwithstanding any provisions of Section 77-18-1.]~~

~~[(5) If a defendant has already been convicted once under this section, each separate further offense]~~

(4) (a) An offense under this section is a third degree felony punishable by:

(i) a minimum mandatory fine of not less than \$1,000 plus \$10 for each article exhibited up to the maximum allowed by law; and [by]

(ii) incarceration, without suspension of sentence in any way, for a term of not less than 30 days.

(b) This Subsection (4) supersedes Section 77-18-1.

(5) A service provider, as defined in Section 76-10-1230, complies with this section if it complies with Sections 76-10-1231 and 76-10-1232.

Section 4. Section **76-10-1205** is amended to read:

76-10-1205. Inducing acceptance of pornographic material.

(1) A person is guilty of inducing acceptance of pornographic material when he knowingly:

(a) requires or demands as a condition to a sale, allocation, consignment, or delivery for resale of any newspaper, magazine, periodical, book, publication, or other merchandise that the purchaser or consignee receive any pornographic material or material reasonably believed by the purchaser or consignee to be pornographic; or

(b) denies, revokes, or threatens to deny or revoke a franchise, or to impose any penalty, financial or otherwise, because of the failure or refusal to accept pornographic material or material reasonably believed by the purchaser or consignee to be pornographic.

~~[(2) A violation of this section is a class A misdemeanor punishable by a fine of not less than \$500 and by incarceration, without suspension of sentence in any way, for a term of not less than 14 days.]~~

(2) (a) An offense under this section is a third degree felony punishable by:

(i) a minimum mandatory fine of not less than \$1,000 plus \$10 for each article exhibited up to the maximum allowed by law; and

(ii) incarceration, without suspension of sentence in any way, for a term of not less than 30 days.

(b) This Subsection (2) supersedes Section 77-18-1.

(3) A service provider, as defined in Section 76-10-1230, complies with this section if it complies with Sections 76-10-1231 and 76-10-1232.

Section 5. Section **76-10-1206** is amended to read:

76-10-1206. Dealing in material harmful to a minor.

(1) A person is guilty of dealing in material harmful to minors when, knowing that a person is a minor, or having negligently or recklessly failed to ~~[exercise reasonable care in ascertaining]~~ determine the proper age of a minor, he:

(a) intentionally distributes or offers to distribute, exhibits or offers to exhibit to a minor any material harmful to minors;

(b) intentionally produces, presents, or directs any performance before a minor, that is harmful to minors; or

(c) intentionally participates in any performance before a minor, that is harmful to minors.

(2) (a) Each separate offense under this section is a third degree felony punishable by:

(i) a minimum mandatory fine of not less than \$300 plus \$10 for each article exhibited up to the maximum allowed by law; and [by]

(ii) incarceration, without suspension of sentence [~~in any way~~], for a term of not less than 14 days.

(b) This section supersedes Section 77-18-1.

(3) (a) If a defendant has already been convicted once under this section, each separate further offense is a second degree felony punishable by:

(i) a minimum mandatory fine of not less than \$5,000 plus \$10 for each article exhibited up to the maximum allowed by law; and [~~by~~]

(ii) incarceration, without suspension of sentence [~~in any way~~], for a term of not less than one year.

(b) This section supersedes Section 77-18-1.

(4) (a) A service provider, as defined in Section 76-10-1230, complies with this section if it complies with Sections 76-10-1231 and 76-10-1232.

(b) A content provider, as defined in Section 76-10-1230, complies with this section if it complies with Section 76-10-1233.

Section 6. Section **76-10-1230** is enacted to read:

76-10-1230. Definitions.

As used in Sections 76-10-1231, 76-10-1232, and 76-10-1233:

(1) "Access restricted" means that a content provider limits access to material harmful to minors by:

(a) properly rating content;

(b) providing an age verification mechanism designed to prevent a minor's access to material harmful to minors, including requiring use of a credit card, adult access code, or digital certificate verifying age; or

(c) any other reasonable measures feasible under available technology.

(2) "Adult content registry" means the adult content registry created by Section 67-5-19.

(3) "Consumer" means a natural person residing in this state who subscribes to a service provided by a service provider for personal or residential use.

(4) "Content provider" means a person that creates, collects, acquires, or organizes

electronic data for electronic delivery to a consumer with the intent of making a profit.

(5) (a) "Hosting company" means a person that provides services or facilities for storing or distributing content over the Internet without editorial or creative alteration of the content.

(b) A hosting company may have policies concerning acceptable use without becoming a content provider under Subsection (4).

(6) (a) "Internet service provider" means a person engaged in the business of providing a computer and communications facility through which a consumer may obtain access to the Internet.

(b) "Internet service provider" does not include a common carrier if it provides only telecommunications service.

(7) "Properly rated" means content using a labeling system to label material harmful to minors provided by the content provider in a way that:

(a) accurately appraises a consumer of the presence of material harmful to minors; and

(b) allows the consumer the ability to control access to material harmful to minors based on the material's rating by use of reasonably priced commercially available software, including software in the public domain.

(8) (a) Except as provided in Subsection (8)(b), "service provider" means:

(i) an Internet service provider; or

(ii) a person who otherwise provides an Internet access service to a consumer.

(b) "Service provider" does not include a person who does not terminate a service in this state, but merely transmits data through:

(i) a wire;

(ii) a cable; or

(iii) an antenna.

(c) "Service provider," notwithstanding Subsection (8)(b), includes a person who meets the requirements of Subsection (8)(a) and leases or rents a wire or cable for the transmission of data.

Section 7. Section **76-10-1231** is enacted to read:

76-10-1231. Data service providers -- Internet content harmful to minors.

(1) (a) Upon request by a consumer, a service provider shall filter content to prevent the transmission of material harmful to minors to the consumer.

(b) A service provider complies with Subsection (1)(a) if it uses a generally accepted and commercially reasonable method of filtering.

(2) At the time of a consumer's subscription to a service provider's service, or at the time this section takes effect if the consumer subscribes to the service provider's service at the time this section takes effect, the service provider shall notify the consumer in a conspicuous manner that the consumer may request to have material harmful to minors blocked under Subsection (1).

(3) (a) A service provider may comply with Subsection (1) by:

(i) providing in-network filtering to prevent receipt of material harmful to minors; or

(ii) providing software for contemporaneous installation on the consumer's computer that blocks, in an easy-to-enable and commercially reasonable manner, receipt of material harmful to minors.

(b) (i) Except as provided in Subsection (3)(b)(ii), a service provider may not charge a consumer for blocking material or providing software under this section, except that a service provider may increase the cost to all subscribers to the service provider's services to recover the cost of complying with this section.

(ii) A service provider with fewer than 7,500 subscribers may charge a consumer for providing software under Subsection (3)(a)(ii) if the charge does not exceed the service provider's cost for the software.

(4) If the attorney general determines that a service provider violates Subsection (1) or (2), the attorney general shall:

(a) notify the service provider that the service provider is in violation of Subsection (1) or (2); and

(b) notify the service provider that the service provider has 30 days to comply with the provision being violated or be subject to Subsection (5).

(5) A service provider that violates Subsection (1) or (2) is:

(a) subject to a civil fine of \$2,500 for each separate violation of Subsection (1) or (2), up to \$10,000 per day; and

(b) guilty of a class A misdemeanor if:

(i) the service provider knowingly or intentionally fails to comply with Subsection (1); or

(ii) the service provider fails to provide the notice required by Subsection (2).

(6) A proceeding to impose a civil fine under Subsection (5)(a) may only be brought by the attorney general in a court of competent jurisdiction.

(7) (a) The Division of Consumer Protection within the Department of Commerce shall, in consultation with other entities as the Division of Consumer Protection considers appropriate, test the effectiveness of a service provider's system for blocking material harmful to minors under Subsection (1) at least annually.

(b) The results of testing by the Division of Consumer Protection under Subsection (7)(a) shall be made available to:

(i) the service provider that is the subject of the test; and

(ii) the public.

(c) The Division of Consumer Protection shall make rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, to fulfil its duties under this section.

Section 8. Section **76-10-1232** is enacted to read:

76-10-1232. Data service providers -- Adult content registry.

(1) (a) Upon request by a consumer, a service provider may not transmit material from a content provider site listed on the adult content registry created by Section 67-5-19 to a consumer.

(b) A service provider complies with Subsection (1)(a) if it uses a generally accepted and commercially reasonable method of filtering.

(c) At the time of a consumer's subscription to a service provider's service, or at the time this section takes effect if the consumer subscribes to the service provider's service at the time this section takes effect, the service provider shall notify the consumer in a conspicuous manner that:

(i) the consumer may request to have material on the adult content registry blocked under Subsection (1)(a); and

(ii) the consumer's request to have material harmful to minors blocked under Subsection (1)(a) may also result in blocking material that is not harmful to minors.

(2) (a) A service provider may comply with Subsection (1) by:

(i) providing in-network filtering to prevent receipt of material harmful to minors;

(ii) providing software for contemporaneous installation on the consumer's computer that blocks, in an easy-to-enable and commercially reasonable manner, receipt of material harmful to minors; or

(iii) complying with any federal law in effect that requires the blocking of content from a registry of sites containing material harmful to minors.

(b) A service provider may block material from the adult content registry by domain name or Internet Protocol address.

(c) (i) A service provider may not charge a consumer for blocking material or providing software under this section, except that a service provider may increase the cost to all subscribers to the service provider's services to recover the cost of complying with this section.

(ii) A service provider with fewer than 7,500 subscribers may charge a consumer for providing software under Subsection (2)(a)(ii) if the charge does not exceed the service provider's cost for the software.

(d) A service provider shall coordinate the service provider's list of content providers on the adult content registry with the attorney general's list of content providers on the adult content registry at least weekly.

(3) If the attorney general determines that the service provider violates Subsection (1) or (2), the attorney general shall:

(a) notify the service provider that the service provider is in violation of Subsection (1) or (2); and

(b) notify the service provider that the service provider has 30 days to comply with the provision being violated or be subject to Subsection (4).

(4) A service provider that violates Subsection (1) or (2) is:

(a) subject to a civil fine of \$2,500 for each separate violation of Subsection (1) or (2), up to \$10,000 per day; and

(b) guilty of a class A misdemeanor if the service provider knowingly or intentionally fails to comply with Subsection (1) or (2).

(5) A proceeding to impose a civil fine under Subsection (4)(a) may only be brought by the attorney general in a court of competent jurisdiction.

Section 9. Section **76-10-1233** is enacted to read:

76-10-1233. Content providers -- Material harmful to minors.

(1) A content provider that is domiciled in Utah, or generates or hosts content in Utah, shall restrict access to material harmful to minors.

(2) The Division of Consumer Protection shall make rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, to establish acceptable rating methods to be implemented by a content provider under Subsection (1).

(3) If the attorney general determines that a content provider violates Subsection (1), the attorney general shall:

(a) notify the content provider that the content provider is in violation of Subsection (1); and

(b) notify the content provider that the content provider has 30 days to comply with Subsection (1) or be subject to Subsection (4).

(4) If a content provider violates this section more than 30 days after receiving the notice provided in Subsection (3), the content provider is guilty of a third degree felony.

Section 10. **Appropriation.**

(1) (a) There is appropriated for fiscal year 2005-06 only, \$100,000 from the General Fund to the Division of Consumer Protection for public service announcements advising consumers about the dangers of using the Internet.

(b) It is the intent of the Legislature that the money appropriated in Subsection (1)(a) shall be used to publicize in various forms of media:

(i) the dangers of using the Internet, especially Internet pornography;
(ii) steps a consumer may take to learn more about the dangers of using the Internet;
(iii) information about how a service provider can help a consumer learn more about the dangers of using the Internet, including the service provider's duties created by this bill; and
(iv) how a consumer can monitor the Internet usage of family members.

(2) (a) There is appropriated for fiscal year 2005-06 only, \$30,000 from the General Fund, and for fiscal year 2005-06 ongoing, \$70,000 from the General Fund, to the attorney general to establish and maintain the Adult Content Registry created by this bill.

(b) It is the intent of the Legislature that the attorney general use existing technologies and systems to the extent possible in establishing the Adult Content Registry.

(3) (a) There is appropriated for fiscal year 2005-06, \$50,000 from the General Fund to the Division of Consumer Protection.

(b) It is the intent of the Legislature that the Division of Consumer Protection use the monies appropriated for fiscal year 2005-06 in Subsection (3)(a) to research the effectiveness of:

(i) existing and emerging technologies for limiting access to material harmful to minors on the Internet;

(ii) obstacles to consumers limiting access to material harmful to minors on the Internet;
and

(iii) methods of educating the public about the dangers of using the Internet.

(c) The Division of Consumer Protection shall report the findings of the research for which monies under Subsection (3)(a) are appropriated to the Utah Technology Commission before December 1, 2005.

Section 11. Effective date.

If approved by two-thirds of all the members elected to each house, this bill takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override, except that Section 76-10-1231 takes effect on January 1, 2006, and Sections 76-10-1232 and 76-10-1233 take effect on May 1, 2006.

