

**Senator Curtis S. Bramble** proposes the following substitute bill:

**AMENDMENTS RELATED TO PORNOGRAPHIC**

**AND HARMFUL MATERIALS**

2005 GENERAL SESSION

STATE OF UTAH

**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;



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

**37 Monies Appropriated in this Bill:**

38           This bill appropriates:

- 39           ▶ \$100,000 from the General Fund to the Division of Consumer Protection, for fiscal
- 40 year 2005-06 only, for public service announcements;
- 41           ▶ \$50,000 from the General Fund to the Division of Consumer Protection, for fiscal
- 42 year 2005-06 only, to conduct a research project; and
- 43           ▶ \$100,000 from the General Fund to the attorney general, for fiscal year 2005-06
- 44 only, to establish the adult content registry.

**45 Other Special Clauses:**

46           This bill provides an effective date.

**47 Utah Code Sections Affected:**

48 AMENDS:

- 49           **76-10-1204**, as last amended by Chapters 93 and 163, Laws of Utah 1990
- 50           **76-10-1205**, as last amended by Chapter 163, Laws of Utah 1990
- 51           **76-10-1206**, as last amended by Chapter 53, Laws of Utah 2000

52 ENACTS:

- 53           **13-2-9**, Utah Code Annotated 1953
- 54           **67-5-19**, Utah Code Annotated 1953
- 55           **76-10-1230**, Utah Code Annotated 1953
- 56           **76-10-1231**, Utah Code Annotated 1953

57 76-10-1232, Utah Code Annotated 1953

58 76-10-1233, Utah Code Annotated 1953



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

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

62 **13-2-9. Internet -- Consumer education.**

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

66 (a) material harmful to minors;

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

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

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

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

73 (a) the person is a nonprofit organization; and

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

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

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

80 **67-5-19. Adult content registry.**

81 (1) As used in this section:

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

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

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

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

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

87 (2) The attorney general, in consultation with other entities as the attorney general

88 considers appropriate, shall:

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

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

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

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

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

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

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

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

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

108 (d) (i) if notification is required under Subsection (2)(c), place a content provider site  
109 on the adult content registry five business days after the day on which the division makes the  
110 required notification; or

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

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

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

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

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

122           **76-10-1204. Distributing pornographic material.**

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

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

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

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

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

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

132 or

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

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

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

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

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

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

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

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

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

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

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

152 (ii) incarceration, without suspension of sentence in any way, for a term of not less than  
153 30 days.

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

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

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

158 **76-10-1205. Inducing acceptance of pornographic material.**

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

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

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

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

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

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

174 (ii) incarceration, without suspension of sentence in any way, for a term of not less than  
175 30 days.

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

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

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

180 **76-10-1206. Dealing in material harmful to a minor.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

208 **76-10-1230. Definitions.**

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

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

- 212 (a) properly rating content;  
213 (b) providing an age verification mechanism designed to prevent a minor's access to  
214 material harmful to minors; or  
215 (c) any other reasonable measures feasible under available technology.  
216 (2) "Adult content registry" means the adult content registry created by Section  
217 67-5-19.  
218 (3) "Consumer" means a natural person residing in this state who subscribes to a  
219 service provided by a service provider for personal or residential use.  
220 (4) "Content provider" means a person that creates, collects, acquires, or organizes  
221 electronic data for electronic delivery to a consumer with the intent of making a profit.  
222 (5) (a) "Hosting company" means a person that provides services or facilities for  
223 storing or distributing content over the Internet without editorial or creative alteration of the  
224 content.  
225 (b) A hosting company may have policies concerning acceptable use without becoming  
226 a content provider under Subsection (4).  
227 (6) (a) "Internet service provider" means a person engaged in the business of providing  
228 a computer and communications facility through which a consumer may obtain access to the  
229 Internet.  
230 (b) "Internet service provider" does not include a common carrier if it provides only  
231 telecommunications service.  
232 (7) "Properly rated" means content using a labeling system to label material harmful to  
233 minors provided by the content provider in a way that:  
234 (a) accurately appries a consumer of the presence of material harmful to minors; and  
235 (b) allows the consumer the ability to control access to material harmful to minors  
236 based on the material's rating by use of reasonably priced commercially available software,  
237 including software in the public domain.  
238 (8) (a) Except as provided in Subsection (8)(b), "service provider" means:  
239 (i) an Internet service provider; or  
240 (ii) a person who otherwise provides an Internet access service to a consumer.  
241 (b) "Service provider" does not include a person who does not terminate a service in  
242 this state, but merely transmits data through:

- 243 (i) a wire;
- 244 (ii) a cable; or
- 245 (iii) an antenna.
- 246 (c) "Service provider," notwithstanding Subsection (8)(b), includes a person who meets
- 247 the requirements of Subsection (8)(a) and leases or rents a wire or cable for the transmission of
- 248 data.

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

250 **76-10-1231. Data service providers -- Internet content harmful to minors.**

251 (1) (a) Upon request by a consumer, a service provider shall filter content to prevent

252 the transmission of material harmful to minors to the consumer.

253 (b) A service provider complies with Subsection (1)(a) if it uses a generally accepted

254 and commercially reasonable method of filtering.

255 (2) At the time of a consumer's subscription to a service provider's service, or at the

256 time this section takes effect if the consumer subscribes to the service provider's service at the

257 time this section takes effect, the service provider shall notify the consumer in a conspicuous

258 manner that the consumer may request to have material harmful to minors blocked under

259 Subsection (1).

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

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

262 or

263 (ii) providing at the time of a consumer's request under Subsection (1), software for

264 contemporaneous installation on the consumer's computer that blocks, in an easy-to-enable and

265 commercially reasonable manner, receipt of material harmful to minors.

266 (b) (i) Except as provided in Subsection (3)(b)(ii), a service provider may not charge a

267 consumer for blocking material or providing software under this section, except that a service

268 provider may increase the cost to all subscribers to the service provider's services to recover the

269 cost of complying with this section.

270 (ii) A service provider with fewer than 7,500 subscribers may charge a consumer for

271 providing software under Subsection (3)(a)(ii) if the charge does not exceed the service

272 provider's cost for the software.

273 (4) If the attorney general determines that a service provider violates Subsection (1) or

274 (2), the attorney general shall:

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

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

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

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

282 (b) guilty of a class A misdemeanor if:

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

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

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

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

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

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

295 (ii) the public.

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

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

299 **76-10-1232. Data service providers -- Adult content registry.**

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

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

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

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

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

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

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

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

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

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

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

325 (ii) A service provider with fewer than 5,000 subscribers may charge a consumer for  
326 providing software under Subsection (2)(a)(ii) if the charge does not exceed the service  
327 provider's cost for the software.

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

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

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

335 (b) notify the service provider that the service provider has 30 days to comply with the

336 provision being violated or be subject to Subsection (4).

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

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

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

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

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

345 **76-10-1233. Content providers -- Material harmful to minors.**

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

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

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

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

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

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

359 Section 10. **Appropriation.**

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

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

365 (i) the dangers of using the Internet, especially Internet pornography;

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

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

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

370 (2) (a) There is appropriated for fiscal year 2005-06 only, \$100,000 from the General  
371 Fund to the attorney general to establish the Adult Content Registry created by this bill.

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

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

376 (b) It is the intent of the Legislature that the Division of Consumer Protection use the  
377 monies appropriated in Subsection (3)(a) to research the effectiveness of:

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

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

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

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

386 Section 11. **Effective date.**

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