

Representative Stephen H. Urquhart proposes the following substitute bill:

1 **AMENDMENTS RELATED TO PORNOGRAPHIC**

2 **AND HARMFUL MATERIALS**

3 2005 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: John Dougall**

6
7 **LONG TITLE**

8 **General Description:**

9 This bill addresses pornographic materials and material harmful to minors.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ requires the Division of Consumer Protection to make public service
- 13 announcements;
- 14 ▶ requires the attorney general to establish and maintain a database, called the adult
- 15 content registry, of certain Internet sites containing material harmful to minors;
- 16 ▶ defines terms;
- 17 ▶ subjects a person dealing in material harmful to minors to criminal liability for
- 18 certain distributions of material harmful to minors if the person negligently or
- 19 recklessly fails to determine the proper age of a minor;
- 20 ▶ increases criminal penalties for distributing and inducing acceptance of
- 21 pornographic materials;
- 22 ▶ requires a service provider to inquire concerning whether a minor has access to a
- 23 consumer's computer;
- 24 ▶ requires a service provider to prevent certain access to Internet material harmful to
- 25 minors, if requested by the consumer;



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

39 Monies Appropriated in this Bill:

40 This bill appropriates:

- 41 ▶ \$100,000 from the General Fund to the Division of Consumer Protection, for fiscal
- 42 year 2005-06 only, for public service announcements;
- 43 ▶ \$50,000 from the General Fund to the Division of Consumer Protection, for fiscal
- 44 year 2005-06 only, to conduct a research project; and
- 45 ▶ \$100,000 from the General Fund to the attorney general, for fiscal year 2005-06
- 46 only, to establish the adult content registry.

47 Other Special Clauses:

48 This bill provides an effective date.

49 Utah Code Sections Affected:

50 AMENDS:

- 51 **76-10-1204**, as last amended by Chapters 93 and 163, Laws of Utah 1990
- 52 **76-10-1205**, as last amended by Chapter 163, Laws of Utah 1990
- 53 **76-10-1206**, as last amended by Chapter 53, Laws of Utah 2000

54 ENACTS:

- 55 **13-2-9**, Utah Code Annotated 1953
- 56 **67-5-19**, Utah Code Annotated 1953

- 57 **76-10-1230**, Utah Code Annotated 1953
- 58 **76-10-1231**, Utah Code Annotated 1953
- 59 **76-10-1232**, Utah Code Annotated 1953
- 60 **76-10-1233**, Utah Code Annotated 1953



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

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

64 **13-2-9. Internet -- Consumer education.**

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

- 68 (a) material harmful to minors;
- 69 (b) steps a consumer may take to learn more about the dangers of using the Internet;
- 70 (c) information about how a service provider can help a consumer learn more about the
71 dangers of using the Internet, including the service provider's duties created by this bill; and
- 72 (d) how a consumer can monitor the Internet usage of family members.

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

- 75 (a) the person is a nonprofit organization; and
- 76 (b) the person agrees to spend private monies amounting to two times the amount of
77 monies provided by the Division of Consumer Protection during each fiscal year in accordance
78 with Subsection (1).

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

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

82 **67-5-19. Adult content registry.**

83 (1) As used in this section:

- 84 (a) "Consumer" means a consumer as defined in Section 76-10-1230.
- 85 (b) "Content provider" means a content provider as defined in Section 76-10-1230.
- 86 (c) "Hosting company" means a hosting company as defined in Section 76-10-1230.
- 87 (d) "Service provider" means a service provider as defined in Section 76-10-1230.

88 (e) "Properly rated" means properly rated as defined in Section 76-10-1230.
89 (2) The attorney general, in consultation with other entities as the attorney general
90 considers appropriate, shall:
91 (a) create a database, called the adult content registry, consisting of a list of content
92 providers' sites, that shall be based on a Uniform Resource Locator address, domain name, and
93 Internet Protocol address or a similar addressing system, that:
94 (i) are added to the database under Subsection (2)(b); and
95 (ii) provide material harmful to minors that is not properly rated;
96 (b) add a content provider site to the adult content registry only if the attorney general
97 determines that the content provider is providing content that contains material harmful to
98 minors that is not properly rated;
99 (c) when the attorney general determines that a content provider site should be placed
100 on the adult content registry, if the content provider lists e-mail contact information, the
101 attorney general shall notify the content provider and hosting company, if available, by e-mail:
102 (i) that the content provider is providing content that contains material harmful to
103 minors that is not properly rated;
104 (ii) that the attorney general will place the content provider site on the adult content
105 registry five business days after the notice is sent;
106 (iii) that the content provider can avoid being placed on the adult content registry if any
107 material harmful to minors is properly rated; and
108 (iv) of the steps necessary for the content provider or hosting company to apply to be
109 removed from the adult content registry;
110 (d) (i) if notification is required under Subsection (2)(c), place a content provider site
111 on the adult content registry five business days after the day on which the division makes the
112 required notification; or
113 (ii) if notification is not required under Subsection (2)(c), place a content provider site
114 on the adult content registry five business days after the day on which the attorney general
115 determines that the content provider should be placed on the adult content registry; and
116 (e) if requested by a content provider, remove a content provider from the adult content
117 registry within two business days from the day on which the attorney general determines that
118 the content provider no longer provides material harmful to minors that is not properly rated.

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

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

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

124 **76-10-1204. Distributing pornographic material.**

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

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

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

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

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

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

134 or

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

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

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

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

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

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

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

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

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

150 further offense]

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

152 (i) a minimum mandatory fine of not less than \$1,000 plus \$10 for each article

153 exhibited up to the maximum allowed by law; and [by]

154 (ii) incarceration, without suspension of sentence in any way, for a term of not less than
155 30 days.

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

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

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

160 **76-10-1205. Inducing acceptance of pornographic material.**

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

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

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

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

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

174 (i) a minimum mandatory fine of not less than \$1,000 plus \$10 for each article

175 exhibited up to the maximum allowed by law; and

176 (ii) incarceration, without suspension of sentence in any way, for a term of not less than
177 30 days.

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

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

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

182 **76-10-1206. Dealing in material harmful to a minor.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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) "Adult content registry" means the adult content registry created by Section
211 67-5-19.

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

214 (3) "Content provider" means a person that creates, collects, acquires, or organizes
215 electronic data for electronic delivery to a consumer.

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

219 (b) A hosting company may have policies concerning the content it hosts without
220 becoming a content provider under Subsection (3).

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

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

226 (6) "Properly rated" means content using a labeling system to label the material
227 provided by the content provider in a way that:

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

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

232 (7) (a) Except as provided in Subsection (7)(b), "service provider" means:

233 (i) an Internet service provider; or

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

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

237 (i) a wire;

238 (ii) a cable; or

239 (iii) an antenna.

240 (c) "Service provider," notwithstanding Subsection (7)(b), includes a person who meets
241 the requirements of Subsection (7)(a) and leases or rents a wire or cable for the transmission of
242 data.

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

244 **76-10-1231. Data service providers -- Internet content harmful to minors.**

245 (1) (a) Upon request by a consumer, a service provider shall filter content to prevent
246 the transmission of material harmful to minors to the consumer at no additional cost to the
247 consumer, except that a service provider may increase the cost to all subscribers to the service
248 provider's services to recover the cost of complying with this section.

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

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

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

257 (i) using a generally accepted and commercially reasonable method to prevent a
258 consumer's access under Subsection (1);

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

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

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

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

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

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

273 (5) After December 31, 2005, a service provider that violates Subsection (1) or (2) is:

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

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

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

278 or

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

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

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

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

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

289 (ii) the public.

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

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

293 **76-10-1232. Data service providers -- Adult content registry.**

294 (1) (a) A service provider may not transmit material from a content provider listed on
295 the adult content registry created by Section 67-5-19 to a consumer if the consumer notifies the
296 service provider that the consumer requests that the service provider prevent the consumer's
297 receipt of material from a content provider listed on the adult content registry created by
298 Section 67-5-19.

299 (b) At the time of a consumer's subscription to a service provider's service, or at the
300 time this section takes effect if the consumer subscribes to the service provider's service at the
301 time this section takes effect, the service provider shall notify the consumer that:

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

304 (ii) the consumer's request to have material harmful to minors blocked under

305 Subsection (1)(a) may result in blocking material that is not harmful to minors because of
306 limitations in technology.

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

308 (i) using a generally accepted and commercially reasonable method to prevent a
309 consumer's access under Subsection (1);

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

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

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

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

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

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

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

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

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

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

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

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

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

337 **76-10-1233. Content providers -- Internet content harmful to minors.**

338 (1) A content provider that is domiciled in Utah, or generates or hosts content in Utah,
339 shall properly rate, under Subsection 76-10-1231(1)(d), material harmful to minors.

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

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

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

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

349 (4) Beginning on September 1, 2005, if a content provider violates this section more
350 than 30 days after receiving the notice provided in Subsection (3), the content provider is guilty
351 of a third degree felony.

352 Section 10. **Appropriation.**

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

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

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

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

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

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

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

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

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

369 (i) existing technology for limiting access to material harmful to minors on the
370 Internet;

371 (ii) obstacles to consumer use of existing technology that limits access to material
372 harmful to minors on the Internet; and

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

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

377 Section 11. **Effective date.**

378 If approved by two-thirds of all the members elected to each house, this bill takes effect
379 upon approval by the governor, or the day following the constitutional time limit of Utah
380 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,
381 the date of veto override, except that Sections 76-10-1232 and 76-10-1233 take effect on May
382 1, 2006.

State Impact

This bill appropriates \$250,000 in one-time General Fund resources for FY 2006. In addition, the Attorney General anticipates an annual cost of \$70,000 per year to operate and maintain a database mandated by the bill, and the Department of Commerce will require \$50,000 annually to test the effectiveness of filtering technology.

Local governments may see cost increased costs associated with jailing individuals convicted of a felony as opposed to what, absent this bill, is usually Class A probation.

	<u>FY 2006</u> <u>Approp.</u>	<u>FY 2007</u> <u>Approp.</u>	<u>FY 2006</u> <u>Revenue</u>	<u>FY 2007</u> <u>Revenue</u>
General Fund	\$250,000	\$120,000	\$0	\$0
TOTAL	\$250,000	\$120,000	\$0	\$0

Individual and Business Impact

Private businesses may incur incremental costs associated with limiting access to material harmful to a minor. Internet users may face higher access charges to subsidize these costs.
