

1 CAUSE OF ACTION FOR MINORS INJURED BY PORNOGRAPHY

2 2017 GENERAL SESSION

3 STATE OF UTAH

4 Chief Sponsor: Todd Weiler

5 House Sponsor: Keven J. Stratton

7 LONG TITLE

8 General Description:

9 This bill amends the Judicial Code to provide for a cause of action for minors injured
10 by pornography.

11 Highlighted Provisions:

12 This bill:

- 13 ▶ enacts definitions;
- 14 ▶ provides exemptions;
- 15 ▶ establishes liability;
- 16 ▶ provides a safe harbor; and
- 17 ▶ addresses damages and class actions.

18 Money Appropriated in this Bill:

19 None

20 Other Special Clauses:

21 None

22 Utah Code Sections Affected:

23 ENACTS:

24 78B-6-2100, Utah Code Annotated 1953

25 78B-6-2101, Utah Code Annotated 1953

26 78B-6-2102, Utah Code Annotated 1953

27 78B-6-2103, Utah Code Annotated 1953

28 78B-6-2104, Utah Code Annotated 1953

29

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

31 Section 1. Section **78B-6-2100** is enacted to read:

32 **Part 21. Cause of Action for Minors Injured by Pornographic Material**

33 **78B-6-2100. Title.**

34 This part is known as "Cause of Action for Minors Injured by Pornographic Material."

35 Section 2. Section **78B-6-2101** is enacted to read:

36 **78B-6-2101. Definitions.**

37 As used in this part:

38 (1) "Minor" means an individual less than 18 years of age.

39 (2) "Pornographic material" means material that:

40 (a) the average person, applying contemporary community standards, finds that, taken
41 as a whole, appeals to prurient interest in sex;

42 (b) is patently offensive in the description or depiction of nudity, sexual conduct,
43 sexual excitement, sadomasochistic abuse, or excretion; and

44 (c) taken as a whole does not have serious literary, artistic, political, or scientific value.

45 Section 3. Section **78B-6-2102** is enacted to read:

46 **78B-6-2102. Exemptions.**

47 (1) If the conditions of Subsection (2) are met, this part does not apply to:

48 (a) the following, as defined in the Communications Act of 1934, as amended:

49 (i) an interactive computer service;

50 (ii) a telecommunications service, information service, or mobile service, including a
51 commercial mobile service; or

52 (iii) a multichannel video programming distributor;

53 (b) an Internet service provider;

54 (c) a provider of an electronic communications service;

55 (d) a distributor of Internet-based video services;

56 (e) a host company as defined in Section [76-10-1230](#); or

57 (f) a distributor of electronic or computerized game software that users manipulate

58 through interactive devices.

59 (2) This part does not apply to an entity described in Subsection (1) if:

60 (a) the distribution of pornographic material by the entity occurs only incidentally

61 through the entity's function of:

62 (i) transmitting or routing data from one person to another person;

63 (ii) providing a connection between one person and another person; or

64 (iii) providing data storage space or data caching to a person;

65 (b) the entity does not intentionally aid or abet in the distribution of the pornographic

66 material; and

67 (c) the entity does not knowingly receive from or through a person who distributes the

68 pornographic material a fee greater than the fee generally charged by the entity, as a specific

69 condition for permitting the person to distribute the pornographic material.

70 Section 4. Section **78B-6-2103** is enacted to read:

71 **78B-6-2103. Liability -- Safe harbor.**

72 (1) A person who predominately distributes or otherwise predominately provides

73 pornographic material to consumers is liable to a person if:

74 (a) at the time the pornographic material is viewed by the person, the person is a minor;

75 and

76 (b) the pornographic material is the proximate cause for the person being harmed

77 physically or psychologically, or by emotional or medical illnesses as a result of that

78 pornographic material.

79 (2) Nothing in this part affects any private right of action existing under other law,

80 including contract.

81 (3) Notwithstanding Subsection (1), a person who distributes or otherwise provides

82 pornographic material is not liable under this section if the person who distributes or otherwise

83 provides pornographic material:

84 (a) provides a warning that:

85 (i) is conspicuous;

86 (ii) appears before the pornographic material can be accessed; and
87 (iii) consists of a good faith effort to warn persons accessing the pornographic material
88 that the pornographic material may be harmful to minors; and

89 (b) makes a good faith effort to verify the age of a person accessing the pornographic
90 material.

91 (4) Subsection (3) may not be interpreted as exempting a person from complying with
92 Title 13, Chapter 39, Child Protection Registry.

93 Section 5. Section **78B-6-2104** is enacted to read:

94 **78B-6-2104. Damages -- Class action.**

95 (1) If a court finds that a person violates Section [78B-6-2103](#), the court may award the
96 plaintiff:

97 (a) actual damages; and

98 (b) punitive damages, if it is proven that the person targeted minors.

99 (2) A class action may be brought under this part in accordance with Utah Rules of
100 Civil Procedure, Rule 23.