

**CAUSE OF ACTION FOR MINORS INJURED BY
PORNOGRAPHY**

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd Weiler

House Sponsor: Keven J. Stratton

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ enacts definitions;
- ▶ provides exemptions;
- ▶ establishes liability;
- ▶ provides a safe harbor; and
- ▶ addresses damages and class actions.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

78B-6-2100, Utah Code Annotated 1953

78B-6-2101, Utah Code Annotated 1953

78B-6-2102, Utah Code Annotated 1953



28 78B-6-2103, Utah Code Annotated 1953

29 78B-6-2104, Utah Code Annotated 1953



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

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

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

34 **78B-6-2100. Title.**

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

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

37 **78B-6-2101. Definitions.**

38 As used in this part:

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

40 (2) (a) "Pornographic material" means material with the quality of a description or
41 representation, in whatsoever form, of nudity, sexual conduct, sexual excitement, or
42 sadomasochistic abuse when the material:

43 (i) taken as a whole, appeals to the prurient interest in sex of minors;

44 (ii) is patently offensive to prevailing standards in the adult community as a whole with
45 respect to what is suitable material for minors; and

46 (iii) taken as a whole, does not have serious value for minors.

47 (b) Serious value includes only serious literary, artistic, political, or scientific value for
48 minors.

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

50 **78B-6-2102. Exemptions.**

51 (1) This part does not apply to an Internet service provider or interactive computer
52 service, as defined in 47 U.S.C. Sec. 230(f)(2), a provider of an electronic communications
53 service as defined in 18 U.S.C. Sec. 2510, a telecommunications service, information service,
54 or mobile service as defined in 47 U.S.C. Sec. 153, including a commercial mobile service as
55 defined in 47 U.S.C. Sec. 332(d), or a cable operator as defined in 47 U.S.C. Sec. 522, if:

56 (a) the distribution of pornographic material by the provider occurs only incidentally
57 through the provider's function of:

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

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

60 (b) the provider does not intentionally aid or abet in the distribution of the

61 pornographic material; and

62 (c) the provider does not knowingly receive from or through a person who distributes

63 the pornographic material a fee greater than the fee generally charged by the provider, as a

64 specific condition for permitting the person to distribute the pornographic material.

65 (2) This part does not apply to a hosting company, as defined in Section [76-10-1230](#),

66 if:

67 (a) the distribution of pornographic material by the hosting company occurs only

68 incidentally through the hosting company's function of providing data storage space or data

69 caching to a person;

70 (b) the hosting company does not intentionally engage, aid, or abet in the distribution

71 of the pornographic material; and

72 (c) the hosting company does not knowingly receive from or through a person who

73 distributes the pornographic material a fee greater than the fee generally charged by the

74 provider, as a specific condition for permitting the person to distribute, store, or cache the

75 pornographic material.

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

77 **78B-6-2103. Liability -- Safe harbor.**

78 (1) A person who produces pornographic material, distributes pornographic material,

79 or otherwise provides pornographic material to another person is liable to the person if:

80 (a) at the time the pornographic material is produced, distributed, or otherwise

81 provided, the person is a minor; and

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

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

84 pornographic material.

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

86 including contract.

87 (3) Notwithstanding Subsection (1), a person who produces, distributes, or otherwise

88 provides pornographic material is not liable under this section if the person who produces,

89 distributes, or otherwise provides pornographic material:

- 90 (a) provides a warning that:
- 91 (i) is conspicuous;
- 92 (ii) appears before the pornographic material can be accessed; and
- 93 (iii) is similar to one of the following:
- 94 (A) "Using pornography may impair sexual function with partners.";
- 95 (B) "Using pornography can cause escalating sexual preferences to more extreme
- 96 content.";
- 97 (C) "Using pornography has been shown to reduce sexual and relationship
- 98 satisfaction.";
- 99 (D) "Using pornography may become compulsive."; or
- 100 (E) "Some jurisdictions recognize pornography as a public health hazard."; and
- 101 (b) makes good faith efforts to prevent minors from accessing the pornographic
- 102 material.

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

104 **78B-6-2104. Damages -- Class action.**

- 105 (1) If a court finds that a person violates Section [78B-6-2103](#), the court may award the
- 106 plaintiff:
- 107 (a) actual damages;
- 108 (b) punitive damages, if it is proven that the person targeted minors; and
- 109 (c) attorney fees and costs.
- 110 (2) A class action may be brought under this part in accordance with Utah Rules of
- 111 Civil Procedure, Rule 23.

Legislative Review Note
Office of Legislative Research and General Counsel