

HB0149S01 compared with HB0149

{Omitted text} shows text that was in HB0149 but was omitted in HB0149S01
inserted text shows text that was not in HB0149 but was inserted into HB0149S01

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1

Sexual Material Modifications

2026 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Nicholeen P. Peck

Senate Sponsor:

2

3 LONG TITLE

4 General Description:

5 This bill amends provisions relating to liability for obscenity, a child sex doll, or child
6 sexual abuse material.

7 Highlighted Provisions:

8 This bill:

- 9 ▶ defines terms;
- 10 ▶ exempts an individual from liability relating to child sexual abuse material when the individual
acts in the individual's capacity of representing a client or potential client;
- 12 ▶ provides that an individual has a cause of action if a person exposes the individual to or depicts
the individual in obscenity or child sexual abuse material;
- 14 ▶ provides that an individual has a cause of action if a person depicts or intends to depict the
individual's likeness as a minor on a child sex doll;
- 16 ▶ provides requirements for an individual bringing an action under provisions this bill enacts;
- 18 ▶ provides the relief a court may grant an individual bringing an action under the provisions this
bill enacts;

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20 ▶ provides that {a commercial entity} an online intermediary that provides access to the internet is
not liable under the provisions this bill enacts, if the entity did not create the content;

22 ▶ authorizes an individual to bring an action regardless of whether conduct has resulted in a
criminal conviction; and

24 ▶ makes technical changes.

25 **Money Appropriated in this Bill:**

26 None

27 **Other Special Clauses:**

28 None

29 **Utah Code Sections Affected:**

30 **AMENDS:**

31 **76-5b-201** , as last amended by Laws of Utah 2025, Chapters 173, 223 and 320

32 **78B-3-1001** , as enacted by Laws of Utah 2023, Chapter 262

33 **ENACTS:**

34 **78B-3-1004** , Utah Code Annotated 1953

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

37 Section 1. Section **76-5b-201** is amended to read:

38 **76-5b-201. Sexual exploitation of a minor -- Offenses.**

39 (1) Terms defined in Section 76-1-101.5 apply to this section.

40 (2) An actor commits sexual exploitation of a minor when the actor knowingly possesses, views,
accesses with the intent to view, or maintains access with the intent to view, child sexual abuse
material.

43 (3)

44 (a) A violation of Subsection (2) is a second degree felony.

45 (b) It is a separate offense under this section:

46 (i) for each minor depicted in the child sexual abuse material; and

47 (ii) for each time the same minor is depicted in different child sexual abuse material.

48 (4) For a charge of violating this section, it is an affirmative defense that:

49 (a) the defendant:

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- (i) did not solicit the child sexual abuse material from the minor depicted in the child sexual abuse material;
- 51 (ii) is not more than two years older than the minor depicted in the child sexual abuse material; and
- 53 (iii) upon request of a law enforcement agent or the minor depicted in the child sexual abuse material, removes from an electronic device or destroys the child sexual abuse material and all copies of the child sexual abuse material in the defendant's possession; and
- 57 (b) the child sexual abuse material does not depict an offense under Chapter 5, Part 4, Sexual Offenses, other than Section 76-5-417, 76-5-418, 76-5-419, or 76-5-420.
- 59 (5) In proving a violation of this section in relation to an identifiable minor, proof of the actual identity of the identifiable minor is not required.
- 61 (6) The following are not criminally or civilly liable under this section when acting in good faith compliance with Section 77-4-201 or 78B-3-1004:
 - 63 (a) an entity or an employee, director, officer, or agent of an entity when acting within the scope of employment, for the good faith performance of:
 - 65 (i) reporting or data preservation duties required under federal or state law; or
 - 66 (ii) implementing a policy of attempting to prevent the presence of child sexual abuse material on tangible or intangible property, or of detecting and reporting the presence of child sexual abuse material on the property;
 - 69 (b) a law enforcement officer, a civilian employee of a law enforcement agency, or an independent contractor who is contracted with a law enforcement agency, acting within the scope of a criminal investigation;
 - 72 (c) an employee of a court who may be required to view child sexual abuse material during the course of and within the scope of the employee's employment;
 - 74 (d) a juror who may be required to view child sexual abuse material during the course of the individual's service as a juror;
 - 76 (e) an attorney or agent or employee of an attorney who is required to view child sexual abuse material:
 - 78 (i) during[-] :
 - 79 (A) the course of a judicial process[-and] ; or
 - 80 (B) the representation of a client or potential client; or
 - 81 (ii) [-]while acting within the scope of employment or agency relationship;

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- (f) an employee of the Department of Health and Human Services who is required to view child sexual abuse material within the scope of the employee's employment;
- 84 (g) an employee, independent contractor, or designated interviewer of a Children's Justice Center, who is required to view child sexual abuse material within the scope of the employee's, independent contractor's, or designated interviewer's scope of employment or assignment; or
- 88 (h) an attorney who is required to view child sexual abuse material within the scope of the attorney's responsibility to represent the Department of Health and Human Services, including the divisions and offices within the Department of Health and Human Services.

92 Section 2. Section **78B-3-1001** is amended to read:

78B-3-1001. Definitions.

As used in this chapter:

- 95 (1) "Child sex doll" means the same as that term is defined in Section 76-5c-209.
- 96 (2) "Child sexual abuse material" means the same as that term is defined in Section 76-5b-103.
- 98 [(4)] (3) "Commercial entity" includes [corporations, limited liability companies, partnerships, limited partnerships, sole proprietorships, or other legally recognized entities] a corporation, limited liability company, partnership, sole proprietorship, or other legally recognized entity.
- 102 (4) "Cloud service provider" means a commercial entity that offers data storage, computing power, or other digital infrastructure resources to a person through the internet.
- 104 [(2)] (5) "Digitized identification card" means a data file available on any mobile device [which] that has connectivity to the [Internet] internet through a state-approved application that:
- 107 (a) [-]allows the mobile device to download the data file from a state agency or an authorized agent of a state agency that contains all of the data elements visible on the face and back of a license or identification card; and[-]
- 110 (b) displays the current status of the license or identification card.
- 111 [(3)] (6) "Distribute" means to issue, sell, give, provide, deliver, transfer, transmute, circulate, or disseminate by any means.
- 113 [(4)] (7) "Internet" means the international computer network of both federal and non-federal interoperable packet switched data networks.
- 115 (8) "Internet service provider" means a commercial entity that connects a person to the internet by providing or installing technology including cable, wireless, or fiber-optic technology.
- 118 [(5)] (9) "Material harmful to minors" [is defined as all of the following] means:

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119 (a) [any]material that the average person, applying contemporary community standards, would find, taking the material as a whole and with respect to minors, is designed to appeal to, or is designed to pander to, the prurient interest;

122 (b) material that exploits, is devoted to, or principally consists of descriptions of actual, simulated, or animated display or depiction of any of the following, in a manner patently offensive with respect to minors:

125 (i) pubic hair, anus, vulva, genitals, or nipple of the female breast;

126 (ii) touching, caressing, or fondling of nipples, breasts, buttocks, anuses, or genitals; or

128 (iii) sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, excretory functions, exhibitions, or any other sexual act; and

130 (c) the material taken as a whole lacks serious literary, artistic, political, or scientific value for minors.

132 [(6)] (10) "Minor" means [any person] an individual under 18 years old.

133 [(7)] (11) "News-gathering organization" means any of the following:

134 (a) an employee of a newspaper, news publication, or news source, printed or on an online or mobile platform, of current news and public interest, while operating as an employee as provided in this [subsection] Subsection (11), who can provide documentation of [sueh] the employment with the newspaper, news publication, or news source; or

139 (b) an employee of a radio broadcast station, television broadcast station, cable television operator, or wire service while operating as an employee as provided in this [subsection] Subsection (11), who can provide documentation of [sueh] the employment.

143 (12) "Obscenity" means a material or performance that:

144 (a) the average individual, applying contemporary community standards, finds that, taken as a whole, the material or performance appeals to prurient interest in sex;

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

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

149 [(8)] (13) "Publish" means to communicate or make information available to another [person] individual or entity on a publicly available [Internet]website.

151 [(9)] (14) "Reasonable age verification methods" means verifying that the person seeking to access the material is 18 years old or older by using any of the following methods:

153 (a) use of a digitized information card as defined in this section;

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154 (b) verification through an independent, third-party age verification service that compares the personal
information entered by the individual who is seeking access to the material that is available from a
commercially available database, or aggregate of databases, that is regularly used by government
agencies and businesses for the purpose of age and identity verification; or

159 (c) [any] a commercially reasonable method that relies on public or private transactional data to verify
the age of the person attempting to access the material.

161 (15) "Search engine" means an internet service that enables an individual to search for information on
the internet by entering a search term.

163 [(10)] (16) "Substantial portion" means more than 33-1/3% of total material on a website, which meets
the definition of "material harmful to minors" as defined in this section.

165 [(14)] (17)

168 (a) "Transactional data" means a sequence of information that documents an exchange, agreement, or
transfer between an individual, commercial entity, or third party used for the purpose of satisfying a
request or event.

170 (b) "Transactional data" includes records from mortgage, education, and employment entities.

171 Section 3. Section 3 is enacted to read:

173 **78B-3-1004. Liability for obscenity, child sexual abuse material, and a child sex doll.**

173 (1) As used in this section, "online intermediary" means an internet service provider, an affiliate or
subsidiary of an internet service provider, a search engine, or a cloud service provider.

173 (1){(2)} An individual has a right of action against a person that publishes or distributes obscenity or
child sexual abuse material on the internet within the state, or possesses, purchases, or distributes a
child sex doll in the state if:

176 (a) the person is subject to personal jurisdiction in this state;

177 (b)

179 (i) the obscenity, child sexual abuse material, or child sex doll depicts the individual or the individual's
likeness;

179 (ii) the person displays the obscenity or child sexual abuse material in a manner that makes the
obscenity or child sexual abuse material accessible to the individual; or

181 (iii) the person possesses, purchases, or distributes a child sex doll in the state; and

182 (c)

182 (i) the individual bringing the action is a resident of this state; or

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183 (ii) the conduct described in Subsection {(1)(b)} (2)(b) occurs in this state.

184 (2){(3)} If an individual brings an action against a person in accordance with Subsection {(1)} (2), a court may award the individual:

186 (a) injunctive relief;

187 (b) nominal damages;

188 (c) actual damages;

189 (d) punitive damages; and

190 (e) reasonable attorney fees and court costs.

191 (3){(4)}

192 (a) Except as provided in Subsection {(3)(b)} (4)(b), an individual may not bring an action under this section against an {internet service provider, an affiliate or subsidiary of an internet service provider, a search engine, or a cloud service provider} online intermediary for providing access to or connection to or from a website or other content on the internet that contains obscenity or child sexual abuse material, if the {internet service provider, affiliate or subsidiary of an internet service provider, search engine, or cloud service provider} online intermediary is not responsible, in whole or in part, for the creation or development of the obscenity or child sexual abuse material, including through the use of an algorithm.

193 (b) An individual may bring a cause of action against {a cloud service provider} an online intermediary for a violation of Subsection (2) if:

194 (i) the online intermediary:

195 (i){(A)} {the cloud service provider} provides access to or connection to content on the internet that contains obscenity or child sexual abuse material; and

196 (B) does not state in the online intermediary's terms of service that a person may not use the online intermediary's service to provide access to obscenity or child sexual abuse material; and

197 (ii) the individual shows the {cloud service provider} online intermediary did not take reasonable precautions voluntary, good faith action to prevent the obscenity or child sexual abuse material from appearing in the content to which the {cloud service provider} online intermediary provides access.

198 (4){(5)} An individual with a claim under this section who satisfies the applicable standards for joinder or class action may combine the individual's claim with one or more individuals with a claim under this section into one action.

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208 (5){(6)} An individual may bring an action under this section regardless of whether the action that gives
rise to a cause of action under Subsection {(1)} (2) has resulted in a criminal conviction.

217 **Section 4. Effective date.**

Effective Date.

This bill takes effect on May 6, 2026.

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