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**Obscene Animal Abuse Material Amendments**

2026 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Evan J. Vickers**

House Sponsor:

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**LONG TITLE**

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**General Description:**

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This bill addresses obscene animal abuse material.

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**Highlighted Provisions:**

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This bill:

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- 8 ▶ separates animal sexual abuse from the current definition of pornographic and creates a
- 9 new definition of obscene animal abuse material;
- 10 ▶ creates a standalone criminal offense of distributing obscene animal abuse material;
- 11 ▶ adds animal crushing to the criminal offense of distributing obscene animal abuse
- 12 material;

13 ▶ ensures that obscene animal abuse material is treated the same throughout the code as

14 pornographic materials; and

15 ▶ makes technical and conforming changes.

16 **Money Appropriated in this Bill:**

17 None

18 **Other Special Clauses:**

19 None

20 **Utah Code Sections Affected:**

21 **AMENDS:**

22 **53G-10-103**, as last amended by Laws of Utah 2025, Chapter 173

23 **53H-4-213.1**, as renumbered and amended by Laws of Utah 2025, First Special Session,

24 Chapter 8

25 **53H-4-213.7**, as renumbered and amended by Laws of Utah 2025, First Special Session,

26 Chapter 8

27 **76-5c-101**, as renumbered and amended by Laws of Utah 2025, Chapter 173

28 **76-5c-102**, as renumbered and amended by Laws of Utah 2025, Chapter 173

29 **76-5c-103**, as renumbered and amended by Laws of Utah 2025, Chapter 173

30 **76-5c-104**, as renumbered and amended by Laws of Utah 2025, Chapter 173

31       **76-5c-106**, as renumbered and amended by Laws of Utah 2025, Chapter 173  
32       **76-5c-107**, as renumbered and amended by Laws of Utah 2025, Chapter 173  
33       **76-5c-109**, as renumbered and amended by Laws of Utah 2025, Chapter 173  
34       **76-5c-110**, as renumbered and amended by Laws of Utah 2025, Chapter 173  
35       **76-5c-203**, as enacted by Laws of Utah 2025, Chapter 173  
36       **76-5c-204**, as renumbered and amended by Laws of Utah 2025, Chapter 173  
37       **76-5c-208**, as renumbered and amended by Laws of Utah 2025, Chapter 173  
38       **76-5c-212**, as enacted by Laws of Utah 2025, Chapter 173  
39       **76-5c-213**, as enacted by Laws of Utah 2025, Chapter 173  
40       **76-5c-214**, as renumbered and amended by Laws of Utah 2025, Chapter 173  
41       **76-17-401**, as renumbered and amended by Laws of Utah 2025, Chapter 173  
42       **76-17-403**, as renumbered and amended by Laws of Utah 2025, Chapter 173  
43       **78B-6-2101**, as enacted by Laws of Utah 2017, Chapter 464  
44       **78B-6-2102**, as last amended by Laws of Utah 2025, Chapter 173  
45       **78B-6-2103**, as last amended by Laws of Utah 2024, Chapter 168  
46       **78B-6-2105**, as last amended by Laws of Utah 2025, Chapter 173

47       ENACTS:

48       **76-5c-215**, Utah Code Annotated 1953

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

51       Section 1. Section **53G-10-103** is amended to read:

52       **53G-10-103 . Sensitive instructional materials.**

53       (1) As used in this section:

54       (a)(i) "Instructional material" means a material, regardless of format, used:

55           (A) as or in place of textbooks to deliver curriculum within the state curriculum  
56           framework for courses of study by students; or  
57           (B) to support a student's learning in any school setting.

58       (ii) "Instructional material" includes reading materials, handouts, videos, digital  
59           materials, websites, online applications, and live presentations.

60       (iii) "Instructional material" does not mean exclusively library materials.

61       (b) "LEA governing board" means:

62           (i) for a school district, the local school board;  
63           (ii) for a charter school, the charter school governing board; or  
64           (iii) for the Utah Schools for the Deaf and the Blind, the state board.

65 (c) "Material" means the same as that term is defined in Section 76-5c-101.

66 (d) "Minor" means any person less than 18 years old.

67 (e) "Objective sensitive material" means an instructional material that constitutes

68 pornographic or indecent material, as that term is defined in Section 76-5c-208, under

69 the non-discretionary standards described in Subsections 76-5c-207(1)(a)(i)(A), (B),

70 or (C).

71 (f) "Public school" means:

72 (i) a district school;

73 (ii) a charter school; or

74 (iii) the Utah Schools for the Deaf and the Blind.

75 (g)(i) "School setting" means, for a public school:

76 (A) in a classroom;

77 (B) in a school library; or

78 (C) on school property.

79 (ii) "School setting" includes the following activities that an organization or

80 individual or organization outside of a public school conducts, if a public school

81 or an LEA sponsors or requires the activity:

82 (A) an assembly;

83 (B) a guest lecture;

84 (C) a live presentation; or

85 (D) an event.

86 (h)(i) "Sensitive material" means an instructional material that constitutes objective

87 sensitive material or subjective sensitive material.

88 (ii) "Sensitive material" does not include an instructional material:

89 (A) that an LEA selects under Section 53G-10-402;

90 (B) for a concurrent enrollment course that contains sensitive material and for

91 which a parent receives notice from the course provider of the material before

92 enrollment of the parent's child and gives the parent's consent by enrolling the

93 parent's child;

94 (C) for medical courses;

95 (D) for family and consumer science courses; or

96 (E) for another course the state board exempts in state board rule.

97 [({iii})] (i) "Subjective sensitive material" means an instructional material that constitutes

98 pornographic or indecent material, as that term is defined in Section 76-5c-208, under

99 the following factor-balancing standards:

100 [(A)] (i) material that is harmful to minors under Section 76-5c-101;

101 [(B)] (ii) material that is pornographic under Section 76-5c-101;[~~or~~]

102 [(C)] (iii) material that includes certain fondling or other erotic touching under

103 Subsection 76-5c-207(1)(a)(i)(D)[.] ; or

104 (iv) material that is obscene animal abuse material under Section 76-5c-101.

105 (2)(a) Sensitive materials are prohibited in the school setting.

106 (b) A public school or an LEA may not:

107 (i) adopt, use, distribute, provide a student access to, or maintain in the school setting,

108 sensitive materials; or

109 (ii) permit a speaker or presenter in the school setting to display or distribute

110 sensitive materials.

111 (c) In evaluating, selecting, or otherwise considering action related to a given

112 instructional material under this section, each public school and each LEA shall

113 prioritize protecting children from the harmful effects of illicit pornography over

114 other considerations in evaluating instructional material.

115 (d) If an instructional material constitutes objective sensitive material:

116 (i) a public school or an LEA is not required to engage in a review under a subjective

117 sensitive material standard; and

118 (ii) the outcome of a subjective sensitive material evaluation has no bearing on the

119 non-discretionary objective sensitive material conclusion.

120 (3)(a) Except as provided in Subsection (3)(b), the following individuals may initiate a

121 sensitive material review under this section:

122 (i) an employee of the relevant LEA;

123 (ii) a student who is enrolled in the relevant LEA;

124 (iii) a parent of a child who is enrolled in the relevant LEA; or

125 (iv) a member of the relevant LEA governing board.

126 (b)(i) As used in this Subsection (3)(b), "unsuccessful challenge" means an allegation

127 that a given instructional material constitutes sensitive material that the LEA

128 concludes to be erroneous, either on direct review or on appeal to the LEA

129 governing board, resulting in the retention of the given instructional material.

130 (ii) Notwithstanding Subsection (3)(a), after an individual makes three unsuccessful

131 challenges during a given academic year, the individual may not trigger a

132 sensitive material review under this section during the remainder of the given

133 academic year.

134 (4) Upon receipt of an allegation from an individual described in Subsection (3)(a), an LEA  
135 shall:

136 (a)(i) make an initial determination as to whether the allegation presents a plausible  
137 claim that the challenged instructional material constitutes sensitive material,  
138 including whether the allegation includes excerpts and other evidence to support  
139 the allegation; and  
140 (ii) if the LEA determines that the allegation presents a plausible claim that the  
141 challenged instructional material constitutes sensitive material under Subsection  
142 (4)(a)(i), immediately remove the challenged material from any school setting that  
143 provides student access to the challenged material until the LEA completes the  
144 LEA's full review of the challenged material under this section;

145 (b)(i) engage in a review of the allegations and the challenged instructional material  
146 using the objective sensitive material standards; and

147 (ii) if the LEA makes a determination that the challenged instructional material  
148 constitutes objective sensitive material, ensure that the material remains  
149 inaccessible to students in any school setting;

150 (c) only if the LEA makes a determination that the challenged instructional material  
151 does not constitute objective sensitive material:

152 (i) review the allegations and the challenged instructional material under the  
153 subjective material standards, ensuring that the review includes parents who are  
154 reflective of the members of the school's community when determining if an  
155 instructional material is subjective sensitive material;

156 (ii) allow student access to the challenged instructional material during the LEA's  
157 subjective sensitive material review if the student's parent gives consent regarding  
158 the specific challenged instructional material; and

159 (iii) if the LEA makes a determination that the challenged instructional material  
160 constitutes subjective sensitive material, ensure that the material is inaccessible to  
161 students in any school setting, including the termination of the parent consent  
162 option described in Subsection (4)(c)(ii); and

163 (d) communicate to the state board the allegation and the LEA's final determination  
164 regarding the allegation and the challenged instructional material.

165 (5)(a) An individual described in Subsection (3)(a) may appeal an LEA's decision  
166 regarding a sensitive material review, regardless of whether the LEA removed or

167 retained the challenged instructional material, to the LEA governing board.

168 (b) An LEA governing board shall vote in a public board meeting to decide the outcome  
169 of a sensitive material review appeal, clearly identifying:

170 (i) the board's rationale for the decision; and

171 (ii) the board's determination on each component of the statutory and any additional  
172 policy standards the board uses to reach the board's conclusions.

173 (6) An LEA governing board may not enact rules or policies that prevent the LEA  
174 governing board from:

175 (a) revisiting a previous decision;

176 (b) reviewing a recommendation of LEA personnel or a parent-related committee  
177 regarding a challenged instructional material; or

178 (c) reconsidering a challenged instructional material if the LEA governing board  
179 receives additional information regarding the material.

180 (7)(a) Except as provided in Subsection (7)(d), if the threshold described in Subsection  
181 (7)(b) is met, each LEA statewide shall remove the relevant instructional material  
182 from student access.

183 (b) The requirement described in Subsection (7)(a) to remove a given material from  
184 student access applies if the following number of LEAs makes a determination that a  
185 given instructional material constitutes objective sensitive material:

186 (i) at least three school districts; or

187 (ii) at least two school districts and five charter schools.

188 (c) The state board shall:

189 (i) aggregate allegations and LEA determinations described in Subsection (4)(d); and

190 (ii) no later than 10 school days after the day on which the condition described in  
191 Subsection (7)(b) occurs, communicate to all LEAs the application of the  
192 requirement described in Subsection (7)(a) to remove the material from student  
193 access.

194 (d)(i) When the threshold described in Subsection (7)(b) is met for a given  
195 instructional material, in addition to making the communication described in  
196 Subsection (7)(c), the state board may:

197 (A) place the material on the agenda of a public board meeting within 60 days  
198 after the day on which the state board makes the communication to LEAs  
199 under Subsection (7)(c); and

200 (B) at the specified state board meeting, vote to overturn the application of the

201 requirement described in Subsection (7)(a) to remove a given material from  
202 student access statewide.

203 (ii) If the state board votes to overturn the application of the statewide removal  
204 requirement described in Subsection (7)(a) under Subsection (7)(d)(i):  
205 (A) the statewide removal requirement described in Subsection (7)(a) no longer  
206 applies;  
207 (B) an LEA may choose to return the given material to student access; and  
208 (C) nothing affects the findings of an LEA governing board regarding removal of  
209 the given material within the board's LEA.

210 (e) This Subsection (7) applies to sensitive materials that LEAs remove from student  
211 access, regardless of whether:  
212 (i) the sensitive material determinations occur in the same academic year; or  
213 (ii) a sensitive material determination occurred before July 1, 2024.

214 (8) The state board shall:

215 (a) in consultation with the Office of the Attorney General, provide guidance and  
216 training to support public schools in identifying instructional materials that meet the  
217 definition of sensitive materials under this section;

218 (b) establish a process through which an individual described in Subsection (3)(a) may  
219 report to the state board an allegation that an LEA is out of compliance with this  
220 section; and

221 (c) annually report to the Education Interim Committee, at or before the November  
222 interim meeting, on implementation and compliance with this section, including:  
223 (i) any policy the state board or an LEA adopts to implement or comply with this  
224 section;  
225 (ii) any rule the state board makes to implement or comply with this section; and  
226 (iii) any complaints an LEA or the state board receives regarding a violation of this  
227 section, including:  
228 (A) action taken in response to a complaint described in this Subsection (8)(c)(iii);  
229 (B) if an LEA retains an instructional material for which the LEA or the state  
230 board receives a complaint, the LEA's rationale for retaining the instructional  
231 material; and  
232 (C) compliance failures that the state board identifies through the reporting  
233 process described in Subsection (8)(b) and other investigations or research.

234 (9) The state shall defend, indemnify, and hold harmless a person acting under color of state

235 law to enforce this section for any claims or damages, including court costs and attorney  
236 fees, that:

237 (a) a person brings or incurs as a result of this section; and  
238 (b) is not covered by the person's insurance policies or any coverage agreement that the  
239 State Risk Management Fund issues.

240 (10) Subject to prioritization of the Audit Subcommittee created in Section 36-12-8, the  
241 Office of the Legislative Auditor General shall:

242 (a) conduct an audit of each school district's compliance with this section, ensuring the  
243 completion of all school district audits before November 2028; and  
244 (b) annually report to the Education Interim Committee regarding completed sensitive  
245 material audits under this Subsection (10).

246 Section 2. Section **53H-4-213.1** is amended to read:

247 **53H-4-213.1 . Educational telecommunications -- Definitions.**

248 (1) As used in Sections 53H-4-213.1 through 53H-4-213.7:

249 (a) "Digital resource" means a digital or online library resource, including a database.  
250 (b) "Digital resource provider" means an entity that offers a digital resource to customers  
251 for license or sale.  
252 (c) "Education Advisory Council" means the Utah Education Advisory Council created  
253 in Section 53H-4-213.6.  
254 (d) "Obscene animal abuse material" means the same as that term is defined in Section  
255 76-5c-101.

256 [(d)] (e) "Obscene or pornographic material" means material that:

257 (i) an average person, applying contemporary community standards, finds that, taken  
258 as a whole, appeals to prurient interest in sex;  
259 (ii) is patently offensive in the description or depiction of nudity, sexual conduct,  
260 sexual excitement, sadomasochistic abuse, or excretion; and  
261 (iii) taken as a whole does not have serious literary, artistic, political, or scientific  
262 value.

263 [(e)] (f) "Telehealth" means the electronic transfer, exchange, or management of related  
264 data for diagnosis, treatment, and consultation, and educational, public health, or  
265 other related purposes.

266 [(f)] (g) "Telehealth Advisory Council" means the Utah Telehealth Advisory Council  
267 created in Section 53H-4-213.5.

268 [(g)] (h) "Utah Education and Telehealth Network," or "UETN," means a consortium and

269 partnership between public and higher education, the Department of Health and  
270 Human Services, and health care providers, that is created in Section 53H-4-213.4.

271 (2) The Legislature finds and determines the following:

272 (a) the University of Utah's Dolores Dore' Eccles Broadcast Center is the statewide  
273 public broadcasting and telecommunications facility for education in Utah;  
274 (b) the center shall provide services to citizens of the state in cooperation with higher  
275 and public education, state and local government, and private industry;  
276 (c) distribution services provided through the center shall include KUED - TV, KUER -  
277 FM, and KUEN - TV;  
278 (d) KUED - TV and KUER - FM are licensed to the University of Utah;  
279 (e) the Utah Education and Telehealth Network's broadcast entity, KUEN - TV, is  
280 licensed to the Utah Board of Higher Education and, together with UETN, is operated  
281 on behalf of the state's systems of public and higher education;  
282 (f) all the entities referred to in Subsection (2)(c) are under the administrative  
283 supervision of the University of Utah, subject to the authority and governance of the  
284 Utah Board of Higher Education and  
285 (g) this section neither regulates nor restricts a privately owned company in the  
286 distribution or dissemination of educational programs.

287 Section 3. Section **53H-4-213.7** is amended to read:

288 **53H-4-213.7 . Educational telecommunications -- Digital resource standards.**

289 (1) A digital resource purchased or licensed by UETN and offered to students in public  
290 schools must have safety policies and technology protection measures that:  
291 (a) prohibit and prevent a public school student using the resource from sending,  
292 receiving, viewing, or downloading obscene or pornographic material or obscene  
293 animal abuse material; and  
294 (b) filter or block access to obscene or pornographic material or obscene animal abuse  
295 material.

296 (2)(a) Regardless of any contract provision to the contrary, if UETN discovers a digital  
297 resource does not meet the requirements described in Subsection (1), UETN:  
298 (i) shall notify the digital resource provider; and  
299 (ii) may withhold future payments pending the digital resource provider's compliance  
300 with Subsection (1).  
301 (b) A digital resource provider is in breach of contract if the digital resource provider  
302 fails to verify compliance with Subsection (1) within 90 days after the day on which

303           UETN provides the notice described in Subsection (2)(a)(i).

304           (c) A contract UETN enters into for a digital resource shall contain provisions that  
305           comply with this section.

306           (3) Before November 30 of each year, UETN shall submit a report to the Education Interim  
307           Committee detailing all instances of a digital resource provider's failure to comply with  
308           the provisions of this section.

309           Section 4. Section **76-5c-101** is amended to read:

310           **76-5c-101 . Definitions.**

311           As used in this chapter:

312           (1)(a) "Animal crushing" means actual conduct in which a living non-human mammal,  
313           bird, reptile, or amphibian is intentionally crushed, burned, drowned, suffocated,  
314           impaled, or otherwise subjected to serious bodily injury.

315           (b) "Animal crushing" does not include:

- 316           (i) normal veterinary, agricultural husbandry, or other animal management practice;
- 317           (ii) the slaughter of animals for food;
- 318           (iii) hunting, trapping, fishing, or a sporting activity not otherwise prohibited by state  
319           or federal law;
- 320           (iv) medical or scientific research; or
- 321           (v) conduct necessary to protect the life or property of an individual.

322           [(4)] (2) "Blinder rack" means an opaque cover that covers the lower 2/3 of a material so  
323           that the lower 2/3 of the material is concealed from view.

324           [(2)] (3) "Constructive awareness" means that:

- 325           (a) a reasonable inspection or observation by an individual under the circumstances  
326           would have disclosed the nature of the subject matter; and
- 327           (b) a failure to inspect or observe by the individual is either for the purpose of avoiding  
328           the disclosure or the individual is criminally negligent.

329           [(3)] (4) "Contemporary community standards" means those current standards in the  
330           vicinage where an offense alleged under this part has occurred, is occurring, or will  
331           occur.

332           [(4)] (5) "Criminally negligent" means the same as that term is defined in Section 76-2-103.

333           [(5)] (6) "Distribute" means to transfer possession of a material with or without  
334           consideration.

335           [(6)] (7) "Exhibit" means to show.

336           [(7)] (8)(a) "Harmful to minors" means that quality of any description or representation,

337 in whatsoever form, of nudity, sexual conduct, sexual excitement, [or]  
338 sadomasochistic abuse, sexual conduct with an animal, or animal crushing when it:  
339 (i) taken as a whole, appeals to the prurient interest in sex of minors;  
340 (ii) is patently offensive to prevailing standards in the adult community as a whole  
341 with respect to what is suitable material for minors; and  
342 (iii) taken as a whole, does not have serious value for minors.  
343 (b) Serious value includes only serious literary, artistic, political, or scientific value for  
344 minors.  
345 [(8)] (9) "Knowingly," regarding material or a performance, means an awareness, whether  
346 actual awareness or constructive awareness, of the character of the material or  
347 performance.  
348 [(9)] (10)(a) "Material" means anything printed or written or any picture, drawing,  
349 photograph, motion picture, or pictorial representation, or any statue or other figure,  
350 or any recording or transcription, or any mechanical, chemical, or electrical  
351 reproduction, or anything which is or may be used as a means of communication.  
352 (b) "Material" includes undeveloped photographs, molds, printing plates, and other  
353 latent representational objects.  
354 [(10)] (11) "Minor" means an individual younger than 18 years old.  
355 [(11)] (12) "Negligently" means simple negligence, the failure to exercise that degree of  
356 care that a reasonable and prudent person would exercise under like or similar  
357 circumstances.  
358 [(12)] (13) "Nudity" means:  
359 (a) the showing of the human male or female genitals, pubic area, or buttocks, with less  
360 than an opaque covering;  
361 (b) the showing of a female breast with less than an opaque covering, or any portion of  
362 the female breast below the top of the areola; or  
363 (c) the depiction of covered male genitals in a discernibly turgid state.  
364 (14) "Obscene animal abuse material" means material that:  
365 (a)(i) depicts animal crushing; or  
366 (ii) sexual conduct with an animal; and  
367 (b)(i) the average individual, applying contemporary community standards, finds  
368 that, taken as a whole, the depiction of animal crushing or sexual conduct with an  
369 animal appeals to prurient interest in sex;  
370 (ii) the depiction of animal crushing or sexual conduct with an animal is patently

offensive; and

(iii) taken as a whole, the depiction of animal crushing or sexual conduct with an animal does not have serious literary, artistic, political, or scientific value.

[(13)] [(15)] "Performance" means any physical human bodily activity, whether engaged in alone or with other individuals, including singing, speaking, dancing, acting, simulating, or pantomiming.

[14] (16) "Pornographic" means:

- (a) the average individual, applying contemporary community standards, finds that, taken as a whole, the material or performance appeals to prurient interest in sex;
- (b) the material or performance is patently offensive in the description or depiction of nudity, sexual conduct, sexual excitement, sadomasochistic abuse, or excretion; and
- (c) taken as a whole the material or performance does not have serious literary, artistic, political, or scientific value.

[(15)] (17) "Public place" includes a place to which admission is gained by payment of a membership or admission fee, however designated, notwithstanding its being designated a private club or by words of like import.

[~~(16)~~] (18) "Sadomasochistic abuse" means:

- (a) flagellation or torture by or upon a person who is nude or clad in undergarments, a mask, or in a revealing or bizarre costume; or
- (b) the condition of being fettered, bound, or otherwise physically restrained on the part of an individual clothed as described in Subsection (14)(a).

[17] (19) "Sexual conduct" means acts of masturbation, sexual intercourse, or any touching of an individual's clothed or unclothed genitals, pubic area, buttocks, or, if the individual is a female, breast, whether alone or between members of the same or opposite sex [or between humans and animals] in an act of apparent or actual sexual stimulation or gratification.

(20)(a) "Sexual conduct with an animal" means an act of sexual intercourse, or any

touching of an individual's clothed or unclothed genitals, pubic area, buttocks, or, if the individual is a female, breast, between a human and an animal in an act of apparent or actual sexual stimulation or gratification.

(b) "Sexual conduct with an animal" includes a violation of bestiality as described in Section 76-13-213.

[18] (21) "Sexual excitement" means a condition of human male or female genitals when in a state of sexual stimulation or arousal, or the sensual experiences of humans

405 engaging in or witnessing sexual conduct or nudity.

406 Section 5. Section **76-5c-102** is amended to read:

407 **76-5c-102 . Evidence related to a material's or performance's literary, artistic,**  
408 **political, or scientific value.**

409 (1) In a prosecution under this chapter, where circumstances of production, presentation,  
410 sale, dissemination, distribution, exhibition, or publicity indicate that the matter is being  
411 commercially exploited by the actor for the sake of the matter's prurient appeal, this  
412 evidence is probative with respect to the nature of the matter and can justify the  
413 conclusion that, in the context in which the matter is used, the matter has no serious  
414 literary, artistic, political, or scientific value.

415 (2) In a prosecution under this chapter neither the prosecution or the defense is required to  
416 introduce expert witness testimony to testify as to whether a material or performance is  
417 or is not harmful to adults or minors or is or is not pornographic or obscene animal  
418 abuse material, or as to any element of the definition of pornographic or obscene animal  
419 abuse material, including contemporary community standards.

420 Section 6. Section **76-5c-103** is amended to read:

421 **76-5c-103 . Relation to other state and local laws.**

422 (1)(a) A county, city, or other political subdivision has the right to regulate obscene  
423 animal abuse material, pornographic [materials] material, or [materials] material  
424 harmful to minors as this chapter does not proscribe or limit the regulation of obscene  
425 animal abuse material, pornographic [materials] material, or [materials] material  
426 harmful to minors by a county, city, or other political subdivision.

427 (b) Without limitation, a political subdivision may further regulate obscene animal abuse  
428 material, pornographic [materials] material, or [materials] material harmful to minors  
429 by ordinances relating to:

430 (i) zoning;

431 (ii) licensing;

432 (iii) public nuisances;

433 (iv) a specific type of business such as adult bookstores or drive-in movies; or

434 (v) use of blinder racks.

435 (2) This chapter does not preclude the application of other laws of this state to obscene  
436 animal abuse material, pornographic[ materials] material, or [materials] material harmful  
437 to minors and, without limitation, this chapter is not in derogation of Subsection  
438 76-9-1301(2) and Section 76-9-1306.

439 (3)(a) The commission of a crime under this chapter offends public decency under  
440 Subsection 76-9-1301(2).

441 (b) It is the intent of this chapter to give the broadest meaning permissible under the  
442 United States Constitution and the Utah Constitution to the words "offends public  
443 decency" in Subsection 76-9-1301(2).

444 Section 7. Section **76-5c-104** is amended to read:

445 **76-5c-104 . Injunctive relief -- Jurisdiction -- Consent to be sued.**

446 (1)(a) Subject to Subsections (1)(b), (c), (d), and (e), a district court has full power,  
447 authority, and jurisdiction, upon application by any county attorney or city attorney  
448 within the county attorney's or city attorney's respective jurisdictions or the attorney  
449 general, to issue any and all proper restraining orders, preliminary and permanent  
450 injunctions, and any other writs and processes appropriate to carry out and enforce  
451 the provisions of this chapter.

452 (b) No restraining order or injunction, however, shall issue except upon notice to the  
453 person sought to be enjoined.

454 (c) The person sought to be enjoined is entitled to a trial of the issues commencing  
455 within three days after the day on which the answer to the complaint is filed and a  
456 decision by the court is required to be rendered within two days after the conclusion  
457 of the trial.

458 (d) If a final order or judgment of injunction is entered against the person sought to be  
459 enjoined, this final order or judgment shall contain a provision directing the person to  
460 surrender to the sheriff of the county in which the action was brought any  
461 pornographic material in the person's possession which is subject to the injunction.

462 (e) The sheriff receiving the material described in Subsection (1)(d) shall be directed to  
463 seize and destroy the material.

464 (2) Any person not qualified to do business in the state who sends or brings any obscene  
465 animal abuse material or pornographic material into the state with the intent to distribute  
466 or exhibit the obscene animal abuse material or pornographic material to others in this  
467 state consents that the person may be sued in any proceedings commenced under this  
468 section.

469 Section 8. Section **76-5c-106** is amended to read:

470 **76-5c-106 . Corporate defendants -- Summons -- Subpoena duces tecum.**

471 (1)(a) The attendance in court by a corporation for purposes of commencing or  
472 prosecuting a criminal action against the corporation under this chapter may be

473 accomplished by the issuance and service of a summons issued by a magistrate if the  
474 magistrate finds probable cause that material in the possession of the corporation is  
475 obscene animal abuse material, pornographic, or harmful to minors, which finding  
476 shall be upon affidavit describing with specificity the material alleged to be obscene  
477 animal abuse material, pornographic, or harmful to minors or by another manner or  
478 means the magistrate finds necessary.

479 (b) Where practical, the material alleged to be obscene animal abuse material,  
480 pornographic, or harmful to minors shall be attached to the affidavit described in  
481 Subsection (1)(a) to provide the magistrate with the opportunity to examine the  
482 material.

483 (c) The summons must be served upon the corporation by delivery of the summons to an  
484 officer, director, managing or general agent, or cashier, or assistant cashier of the  
485 corporation.

486 (2) The production of material alleged to be obscene animal abuse material, pornographic,  
487 or harmful to minors in any proceedings under this chapter against a corporation may be  
488 compelled by the issuance and service of a subpoena duces tecum.

489 (3) This section does not prohibit or limit the use of a subpoena duces tecum in proceedings  
490 against individuals under this chapter.

491 Section 9. Section **76-5c-107** is amended to read:

492 **76-5c-107 . Search and seizure -- Affidavit -- Issuance of warrant -- Hearing  
493 upon claim that material seized not pornographic or harmful to minors -- Procedures  
494 cumulative.**

495 (1)(a) An affidavit for a search warrant shall be filed with a magistrate describing with  
496 specificity the material sought to be seized.

497 (b) Where practical, the material alleged to be obscene animal abuse material,  
498 pornographic, or harmful to minors shall be attached to the affidavit for a search  
499 warrant described in Subsection (1)(a) to provide the magistrate with the opportunity  
500 to examine the material.

501 (2)(a) Upon the filing of an affidavit for a search warrant under Subsection (1), the  
502 magistrate shall determine, by examination of the material sought to be seized if  
503 attached, by examination of the affidavit describing the material, or by another  
504 manner or means that the magistrate finds necessary, whether probable cause exists  
505 to believe that the material is obscene animal abuse material, pornographic, or  
506 harmful to minors and whether probable cause exists for the immediate issuance of a

507 search warrant.

508 (b) Upon making the determination that probable cause exists under Subsection (2)(a),  
509 the magistrate shall issue a search warrant ordering the seizure of the material  
510 described in the affidavit for a search warrant according to the provisions of the Utah  
511 Rules of Criminal Procedure.

512 (3)(a) If a search warrant is issued under Subsection (2) and the material alleged to be  
513 obscene animal abuse material, pornographic, or harmful to minors is seized under  
514 the provisions of this section, any person claiming to be in possession of this material  
515 or claiming ownership of the material at the time of the material's seizure may file a  
516 notice in writing with the magistrate within 10 days after the day on which the  
517 material was seized, to assert that the material is not obscene animal abuse material,  
518 pornographic, or harmful to minors.

519 (b) The magistrate shall set a hearing within seven days after the filing of the notice  
520 described in Subsection (3)(a), or at another time with the consent of the claimant, at  
521 which evidence may be presented regarding whether there is probable cause to  
522 believe that the material seized is obscene animal abuse material, pornographic, or  
523 harmful to minors.

524 (c)(i) At the conclusion of the hearing described in Subsection (3)(b), the magistrate  
525 shall make a further determination of whether probable cause exists to believe that  
526 the material is obscene animal abuse material, pornographic, or harmful to minors.  
527 (ii) The magistrate's determination described in Subsection (3)(c)(i) shall be rendered  
528 by the court within two days after the day on which the hearing described in  
529 Subsection (3)(b) concludes.

530 (d) If at the hearing described in Subsection (3)(b) the magistrate finds that no probable  
531 cause exists to believe that the material is obscene animal abuse material,  
532 pornographic, or harmful to minors, the material shall be returned to the person from  
533 whom it was seized.

534 (e) If the material seized is a film, and the claimant demonstrates that no other copy of  
535 the film is available to the claimant, the court shall allow the film to be copied at the  
536 claimant's expense pending the hearing described in Subsection (3)(b).

537 (4) If a motion to suppress the evidence is granted on the grounds of an unlawful seizure,  
538 the property shall be restored unless it is subject to confiscation as contraband, in which  
539 case the property may not be returned.

540 (5)(a) Procedures under this section for the seizure of allegedly obscene animal abuse

541 material, pornographic material, or material harmful to minors are cumulative of all  
542 other lawful means of obtaining evidence as provided by the laws of this state.

543 (b) This section does not prevent the obtaining of allegedly obscene animal abuse  
544 material, pornographic material, or material harmful to minors by purchase, subpoena  
545 duces tecum, or under injunction proceedings as authorized by this act or by any  
546 other provision of law of the state.

547 Section 10. Section **76-5c-109** is amended to read:

548 **76-5c-109 . Affirmative defenses.**

549 (1) It is an affirmative defense to a prosecution under this chapter that the distribution of  
550 obscene animal abuse material or pornographic material is restricted to institutions or  
551 persons having scientific, educational, governmental, or other similar justification for  
552 possessing obscene animal abuse material or pornographic material.

553 (2) It is not a defense to a prosecution under this chapter that the actor is a motion picture  
554 projectionist, usher, ticket-taker, bookstore employee, or otherwise is required to violate  
555 this chapter incident to the actor's employment.

556 Section 11. Section **76-5c-110** is amended to read:

557 **76-5c-110 . Exemptions to chapter.**

558 (1) This chapter does not apply to the Department of Corrections or any treatment program  
559 by or under contract with the Department of Corrections when the use of material that is  
560 pornographic or obscene animal abuse material is limited to the assessment or treatment  
561 of an offender as defined in Section 64-13-1.

562 (2) A woman breast feeding, including breast feeding in any location where the woman  
563 otherwise may rightfully be, does not under any circumstance constitute a violation of  
564 this chapter, irrespective of whether the woman's breast is covered during or incidental  
565 to feeding.

566 Section 12. Section **76-5c-203** is amended to read:

567 **76-5c-203 . Aiding or abetting a minor in distributing pornographic material or**  
568 **obscene animal abuse material.**

569 (1) Terms defined in Sections 76-1-101.5, 76-5c-101, and 76-5c-201 apply to this section.

570 (2) An actor commits aiding or abetting a minor in distributing pornographic material or  
571 obscene animal abuse material if the actor:

572 (a) is 18 years old or older; and

573 (b) knowingly solicits, requests, commands, encourages, or intentionally aids a minor in:  
574 (i) sending or bringing pornographic material or obscene animal abuse material into

575 the state with intent to distribute or exhibit the [pornographic] material to another  
576 individual;

577 (ii) preparing, publishing, printing, or possessing pornographic material or obscene  
578 animal abuse material with intent to distribute or exhibit the [pornographic]  
579 material to another individual;

580 (iii) distributing or offering to distribute, or exhibiting or offering to exhibit,  
581 pornographic material or obscene animal abuse material to another individual;

582 (iv) writing, creating, or soliciting the publication or advertising of pornographic  
583 material or obscene animal abuse material;

584 (v) promoting the distribution or exhibition of obscene animal abuse material or  
585 material the minor represents to be pornographic or obscene animal abuse material;  
586 or

587 (vi) presenting or directing a pornographic performance in a public place or a place  
588 exposed to public view or participates in that portion of the performance which  
589 makes the performance pornographic.

590 (3) A violation of Subsection (2) is a third degree felony subject to:

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

593 (b) incarceration, without suspension of sentence in any way, for a term of not less than  
594 30 days.

595 (4)(a) Each act of distributing pornographic material or obscene animal abuse material  
596 described in Subsection (2) is a separate offense.

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

598 (i) each day's exhibition of any pornographic motion picture film or obscene animal  
599 abuse material motion picture film; and

600 (ii) each day in which any pornographic publication or obscene animal abuse material  
601 publication is displayed or exhibited in a public place with intent to distribute or  
602 exhibit the publication to another individual.

603 (5)(a) This section does not apply to an [Internet] internet service provider if:

604 (i) the distribution of pornographic material or obscene animal abuse material by the [  
605 Internet] internet service provider occurs only incidentally through the [Internet]  
606 internet service provider's function of:

607 (A) transmitting or routing data from one person to another person; or

608 (B) providing a connection between one person and another person;

609 (ii) the [Internet] internet service provider does not intentionally aid or abet in the  
610 distribution of the pornographic material or obscene animal abuse material; and  
611 (iii) the [Internet] internet service provider does not knowingly receive funds from or  
612 through a person who distributes the pornographic material or obscene animal  
613 abuse material in exchange for permitting the person to distribute the  
614 pornographic material or obscene animal abuse material.

615 (b) This section does not apply to a hosting company if:

616 (i) the distribution of pornographic material or obscene animal abuse material by the  
617 hosting company occurs only incidentally through the hosting company's function  
618 of providing data storage space or data caching to a person;  
619 (ii) the hosting company does not intentionally engage, aid, or abet in the distribution  
620 of the pornographic material or obscene animal abuse material; and  
621 (iii) the hosting company does not knowingly receive funds from or through a person  
622 who distributes the pornographic material or obscene animal abuse material in  
623 exchange for permitting the person to distribute, store, or cache the pornographic  
624 material or obscene animal abuse material.

625 (6) Subsection (3) supersedes Section 77-18-105.

626 Section 13. Section **76-5c-204** is amended to read:

627 **76-5c-204 . Inducing acceptance of pornographic material or obscene animal  
628 abuse material.**

629 (1) Terms defined in Sections 76-1-101.5, 76-5c-101, and 76-5c-201 apply to this section.

630 (2) An actor commits [-]inducing acceptance of pornographic material or obscene animal  
631 abuse material if the actor knowingly:

632 (a) requires or demands as a condition to a sale, allocation, consignment, or delivery for  
633 resale of any newspaper, magazine, periodical, book, publication, or other  
634 merchandise that the purchaser or consignee receive any pornographic material or  
635 obscene animal abuse material or material reasonably believed by the purchaser or  
636 consignee to be pornographic or obscene animal abuse material; or  
637 (b) denies, revokes, or threatens to deny or revoke a franchise, or to impose any penalty,  
638 financial or otherwise, because of the failure or refusal to accept pornographic  
639 material or obscene animal abuse material or material reasonably believed by the  
640 purchaser or consignee to be pornographic or obscene animal abuse material.

641 (3) A violation of Subsection (2) is a third degree felony subject to:

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

643 up to the maximum allowed by law; and

644 (b) incarceration, without suspension of sentence in any way, for a term of not less than

645 30 days.

646 (4)(a) This section does not apply to an [Internet] internet service provider if:

647 (i) the distribution of pornographic material or obscene animal abuse material by the [

648 Internet] internet service provider occurs only incidentally through the [Internet-]

649 internet service provider's function of:

650 (A) transmitting or routing data from one person to another person; or

651 (B) providing a connection between one person and another person;

652 (ii) the [Internet] internet service provider does not intentionally aid or abet in the

653 distribution of the pornographic material or obscene animal abuse material; and

654 (iii) the [Internet] internet service provider does not knowingly receive funds from or

655 through a person who distributes the pornographic material or obscene animal

656 abuse material in exchange for permitting the person to distribute the

657 pornographic material or obscene animal abuse material.

658 (b) This section does not apply to a hosting company if:

659 (i) the distribution of pornographic material or obscene animal abuse material by the

660 hosting company occurs only incidentally through the hosting company's function

661 of providing data storage space or data caching to a person;

662 (ii) the hosting company does not intentionally engage, aid, or abet in the distribution

663 of the pornographic material or obscene animal abuse material; and

664 (iii) the hosting company does not knowingly receive funds from or through a person

665 who distributes the pornographic material or obscene animal abuse material in

666 exchange for permitting the person to distribute, store, or cache the pornographic

667 material or obscene animal abuse material.

668 (5) Subsection (3) supersedes Section 77-18-105.

669 Section 14. Section **76-5c-208** is amended to read:

670 **76-5c-208 . Pornographic or indecent material on school property.**

671 (1)(a) As used in this section:

672 (i) "Description or depiction of illicit sex or sexual immorality" means the same as

673 that term is defined in Section 76-5c-207.

674 (ii) "Nude or partially denuded figure" means the same as that term is defined in

675 Section 76-5c-207.

676 (iii) "Pornographic or indecent material" means any material that:

677 (A) is harmful to minors;

678 (B) is pornographic;

679 (C) is a description of or depiction of illicit sex or sexual immorality;[~~or~~]

680 (D) contains a nude or partially denuded figure[~~;~~] ; or

681 (E) is obscene animal abuse material.

682 (iv) "School property" means property, including land and improvements, that a

683 school district or charter school owns, leases, or occupies.

684 (b) Terms defined in Sections 76-1-101.5, 76-5c-101, and 76-5c-201 apply to this

685 section.

686 (2) Under circumstances not amounting to an offense listed in Subsection (4), an actor

687 commits pornographic or indecent material on school property if:

688 (a) ~~[e]reating, viewing, or accessing pornographic or indecent material on school~~

689 ~~property if the actor willfully or knowingly ] the actor intentionally or knowingly~~

690 creates, views, or otherwise gains access to pornographic or indecent material; and

691 (b) ~~[w]hile] the actor is present on school property when creating, viewing, or otherwise~~

692 ~~gaining access to the material described in Subsection (2)(a).~~

693 (3)(a) Except as provided in Subsection (3)(b), a violation of Subsection (2) is a class A

694 misdemeanor if the actor is 18 years old or older.

695 (b) A violation of Subsection (2) is a class B misdemeanor if the actor is younger than

696 18 years old.

697 (4) The offenses referred to in Subsection (2) are:

698 (a) distributing pornographic material as described in Section 76-5c-202;

699 (b) aiding or abetting a minor in distributing pornographic material or obscene animal

700 abuse material as described in Section 76-5c-203;

701 (c) inducing acceptance of pornographic material or obscene animal abuse material as

702 described in Section 76-5c-204;

703 (d) distributing material harmful to minors as described in Section 76-5c-205;

704 (e) aiding or abetting a minor in distributing material harmful to minors as described in

705 Section 76-5c-206;[~~or~~]

706 (f) indecent public display in the presence of a minor as described in Section 76-5c-207[~~;~~] ;

707 or

708 (g) distributing obscene animal abuse material as described in Section 76-5c-215.

709 (5) This section does not:

710 (a) prohibit disciplinary action for actions that violate this section; or

711 (b) apply to school or law enforcement personnel when the school or law enforcement  
712 personnel views or otherwise gains access to pornographic or indecent material while  
713 on school property for the limited purpose of:  
714 (i) investigating a violation of this section; or  
715 (ii) enforcing this section.

716 Section 15. Section **76-5c-212** is amended to read:

717 **76-5c-212 . Fee owner or intermediate lessor allowing real property to be used  
718 for illicit pornographic purposes.**

719 (1)(a) As used in this section, "allow" means a failure to exercise the option to void the  
720 lease or other title described in Section 76-5c-105 within 10 days after the day on  
721 which the fee owner or lessor receives notice in writing from the county attorney of  
722 the county where the property is situated, or if situated in a city of the first or second  
723 class, from the city attorney of that city, that the property is being used for a purpose  
724 prohibited under this chapter.

725 (b) Terms defined in Sections 76-1-101.5, 76-5c-101, and 76-5c-201 apply to this  
726 section.

727 (2) An actor commits fee owner or intermediate lessor allowing real property to be used for  
728 illicit pornographic purposes if:

729 (a) the actor is a fee owner or intermediate lessor of real property;

730 (b) the actor knowingly allows the real property described in Subsection (2)(a) to be  
731 used by a tenant or occupant, or a tenant's or occupant's employee, for the purpose of  
732 distributing or exhibiting pornographic materials or obscene animal abuse materials,  
733 or for pornographic performances; and

734 (c) the tenant or occupant, or the tenant's or occupant's employee, has been convicted of  
735 a previous violation of this chapter for an offense that occurred on the property and  
736 all avenues of direct appeal from the conviction have been exhausted or abandoned.

737 (3) A violation of Subsection (2) is a class A misdemeanor.

738 (4) Any fine assessed for a conviction under this section becomes a lien upon the real  
739 property described in Subsection (2)(a), if the fine is not paid within 30 days after the  
740 day on which the judgment is entered.

741 Section 16. Section **76-5c-213** is amended to read:

742 **76-5c-213 . Tenant or occupant failing to exit real property after using the  
743 property for obscene animal abuse material or pornographic purposes.**

744 (1) Terms defined in Sections 76-1-101.5, 76-5c-101, and 76-5c-201 apply to this section.

745 (2) An actor commits tenant or occupant failing to exit real property after using the property  
746 for obscene animal abuse material or pornographic purposes if the actor:  
747 (a) is a tenant or occupant of real property;  
748 (b) received notice in writing that the fee owner or intermediate lessor of the real  
749 property is exercising the option to void the lease or other title described in Section  
750 76-5c-105; and  
751 (c) does not permanently exit the premises within 10 days after the day on which the  
752 actor received the notice described in Subsection (2)(b).

753 (3) A violation of Subsection (2) is a class A misdemeanor.

754 Section 17. Section **76-5c-214** is amended to read:

755 **76-5c-214 . Conspiracy to commit a obscene animal abuse material or**  
756 **pornographic or harmful materials violation.**

757 (1) Terms defined in Sections 76-1-101.5, 76-5c-101, and 76-5c-201 apply to this section.  
758 (2) An actor commits conspiracy to commit a pornographic or harmful materials violation if  
759 the actor conspires with two or more persons to commit a violation of this chapter.  
760 (3)(a) Except as provided in Subsection (3)(b), a violation of Subsection (2) is a third  
761 degree felony subject to:  
762 (i) a minimum mandatory fine of not less than \$1,000; and  
763 (ii) incarceration, without suspension of the sentence in any way, for a term of not  
764 less than 60 days.  
765 (b) A violation of Subsection (2) is a second degree felony if the actor has previously  
766 been convicted of a violation of Subsection (2) and is subject to:  
767 (i) a minimum mandatory fine of not less than \$5,000; and  
768 (ii) incarceration, without suspension of the sentence in any way, for a term of not  
769 less than one year.  
770 (4) Subsection (3) supersedes Section 77-18-105.

771 Section 18. Section **76-5c-215** is enacted to read:

772 **76-5c-215 . Distributing obscene animal abuse material.**

773 (1) Terms defined in Sections 76-1-101.5, 76-5c-101, and 76-5c-201 apply to this section.  
774 (2) An actor commits distributing obscene animal abuse material if the actor:  
775 (a) sends or brings obscene animal abuse material into the state with intent to distribute  
776 or exhibit the obscene animal abuse material to another individual;  
777 (b) prepares, publishes, prints, or possesses obscene animal abuse material with intent to  
778 distribute or exhibit the obscene animal abuse material to another individual;

779 (c) distributes or offers to distribute, or exhibits or offers to exhibit, obscene animal  
780 abuse material to another individual;  
781 (d) writes, creates, or solicits the publication or advertising of obscene animal abuse  
782 material; or  
783 (e) promotes the distribution or exhibition of obscene animal abuse material or material  
784 that the actor represents to be obscene animal abuse material.

785 (3)(a) A violation of Subsection (2) is a third degree felony if the actor is 18 years old or  
786 older and is subject to:

787 (i) a minimum mandatory fine of not less than \$1,000, plus \$10 for each article  
788 exhibited up to the maximum allowed by law; and  
789 (ii) incarceration, without suspension of sentence in any way, for a term of not less  
790 than 30 days.

791 (b) A violation of Subsection (2) is a class A misdemeanor if the actor is 16 or 17 years  
792 old.

793 (c) A violation of Subsection (2) is a class B misdemeanor if the actor is younger than  
794 16 years old.

795 (4) It is a separate offense under this section for:

796 (a) each day in which a publication containing obscene animal abuse material is  
797 displayed or exhibited in a public place with intent to distribute or exhibit the  
798 publication to another individual; or  
799 (b) each act of distributing of obscene animal abuse material described in Subsection (2).

800 (5)(a) This section does not apply to an internet service provider if:

801 (i) the distribution of obscene animal abuse material by the internet service provider  
802 occurs only incidentally through the internet service provider's function of:  
803 (A) transmitting or routing data from one person to another person; or  
804 (B) providing a connection between one person and another person;  
805 (ii) the internet service provider does not intentionally aid or abet in the distribution  
806 of the obscene animal abuse material; and  
807 (iii) the internet service provider does not knowingly receive funds from or through a  
808 person who distributes the obscene animal abuse material in exchange for  
809 permitting the person to distribute the obscene animal abuse material.

810 (b) This section does not apply to a hosting company if:

811 (i) the distribution of obscene animal abuse material by the hosting company occurs  
812 only incidentally through the hosting company's function of providing data storage

813                   space or data caching to a person;

814                   (ii) the hosting company does not intentionally engage, aid, or abet in the distribution  
815                   of the obscene animal abuse material; and

816                   (iii) the hosting company does not knowingly receive funds from or through a person  
817                   who distributes the obscene animal abuse material in exchange for permitting the  
818                   person to distribute, store, or cache the obscene animal abuse material.

819                   Section 19. Section **76-17-401** is amended to read:

820                   **76-17-401 . Definitions.**

821                   As used in this part:

822                   (1)(a) "Enterprise" means an individual, sole proprietorship, partnership, corporation,  
823                   business trust, association, or other legal entity, and a union or group of individuals  
824                   associated in fact although not a legal entity.

825                   (b) "Enterprise" includes illicit as well as licit entities.

826                   (2) "Pattern of unlawful activity" means engaging in conduct that constitutes the  
827                   commission of at least three episodes of unlawful activity, which episodes are not  
828                   isolated, but have the same or similar purposes, results, participants, victims, or methods  
829                   of commission, or otherwise are interrelated by distinguishing characteristics. Taken  
830                   together, the episodes shall demonstrate continuing unlawful conduct and be related  
831                   either to each other or to the enterprise. At least one of the episodes comprising a  
832                   pattern of unlawful activity shall have occurred after July 31, 1981. The most recent act  
833                   constituting part of a pattern of unlawful activity as defined by this part shall have  
834                   occurred within five years of the commission of the next preceding act alleged as part of  
835                   the pattern.

836                   (3) "Person" includes an individual or entity capable of holding a legal or beneficial interest  
837                   in property, including state, county, and local governmental entities.

838                   (4) "Unlawful activity" means to directly engage in conduct or to solicit, request, command,  
839                   encourage, or intentionally aid another person to engage in conduct that would constitute  
840                   an offense described by the following crimes or categories of crimes, or to attempt or  
841                   conspire to engage in an act that would constitute any of those offenses, regardless of  
842                   whether the act is in fact charged or indicted by an authority or is classified as a  
843                   misdemeanor or a felony:

844                   (a) an act prohibited by the criminal provisions under Title 13, Chapter 10, Unauthorized  
845                   Recording Practices Act;

846                   (b) an act prohibited by the criminal provisions under Title 19, Environmental Quality

Code, Sections 19-1-101 through 19-7-109;

- (c) taking, destroying, or possessing wildlife or parts of wildlife for the primary purpose of sale, trade, or other pecuniary gain under Title 23A, Wildlife Resources Act, or Section 23A-5-311;
- (d) false claims for medical benefits, kickbacks, or other acts prohibited under Title 26B, Chapter 3, Part 11, Utah False Claims Act, Sections 26B-3-1101 through 26B-3-1112;
- (e) an act prohibited by the criminal provisions under Title 32B, Chapter 4, Criminal Offenses and Procedure Act;
- (f) unlawful marking of pistol or revolver under Section 53-5a-105;
- (g) alteration of number or mark on pistol or revolver under Section 53-5a-106;
- (h) an act prohibited by the criminal provisions under Title 57, Chapter 11, Utah Uniform Land Sales Practices Act;
- (i) an act prohibited by the criminal provisions under Title 58, Chapter 37, Utah Controlled Substances Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act, Title 58, Chapter 37c, Utah Controlled Substance Precursor Act, or Title 58, Chapter 37d, Clandestine Drug Lab Act;
- (j) an act prohibited by the criminal provisions under Title 61, Chapter 1, Utah Uniform Securities Act;
- (k) an act prohibited by the criminal provisions under Title 63G, Chapter 6a, Utah Procurement Code;
- (l) assault under Section 76-5-102;
- (m) aggravated assault under Section 76-5-103;
- (n) a threat of terrorism under Section 76-5-107.3;
- (o) a criminal homicide offense under Section 76-5-201;
- (p) kidnapping under Section 76-5-301;
- (q) aggravated kidnapping under Section 76-5-302;
- (r) human trafficking for labor under Section 76-5-308;
- (s) human trafficking for sexual exploitation under Section 76-5-308.1;
- (t) human smuggling under Section 76-5-308.3;
- (u) human trafficking of a child under Section 76-5-308.5;
- (v) benefiting from trafficking and human smuggling under Section 76-5-309;
- (w) aggravated human trafficking under Section 76-5-310;
- (x) sexual exploitation of a minor under Section 76-5b-201;
- (y) aggravated sexual exploitation of a minor under Section 76-5b-201.1;

- 881 (z) sexual extortion under Section 76-5b-204;
- 882 (aa) arson under Section 76-6-102;
- 883 (bb) aggravated arson under Section 76-6-103;
- 884 (cc) causing a catastrophe under Section 76-6-105;
- 885 (dd) burglary under Section 76-6-202;
- 886 (ee) aggravated burglary under Section 76-6-203;
- 887 (ff) burglary of a vehicle under Section 76-6-204;
- 888 (gg) manufacture or possession of an instrument for burglary or theft under Section
- 889 76-6-205;
- 890 (hh) robbery under Section 76-6-301;
- 891 (ii) aggravated robbery under Section 76-6-302;
- 892 (jj) theft under Section 76-6-404;
- 893 (kk) theft by deception under Section 76-6-405;
- 894 (ll) theft by extortion under Section 76-6-406;
- 895 (mm) receiving stolen property under Section 76-6-408;
- 896 (nn) theft of services under Section 76-6-409;
- 897 (oo) forgery under Section 76-6-501;
- 898 (pp) unlawful use of financial transaction card under Section 76-6-506.2;
- 899 (qq) unlawful acquisition, possession, or transfer of financial transaction card under
- 900 Section 76-6-506.3;
- 901 (rr) financial transaction card offenses under Section 76-6-506.6;
- 902 (ss) deceptive business practices under Section 76-6-507;
- 903 (tt) bribery or receiving bribe by person in the business of selection, appraisal, or
- 904 criticism of goods under Section 76-6-508;
- 905 (uu) bribery of a labor official under Section 76-6-509;
- 906 (vv) defrauding creditors under Section 76-6-511;
- 907 (ww) acceptance of deposit by insolvent financial institution under Section 76-6-512;
- 908 (xx) unlawful dealing with property by fiduciary under Section 76-6-513;
- 909 (yy) unlawful influence of a contest under Section 76-6-514;
- 910 (zz) making a false credit report under Section 76-6-517;
- 911 (aaa) criminal simulation under Section 76-6-518;
- 912 (bbb) criminal usury under Section 76-6-520;
- 913 (ccc) insurance fraud under Section 76-6-521;
- 914 (ddd) retail theft under Section 76-6-602;

915 (eee) computer crimes under Section 76-6-703;  
916 (fff) identity fraud under Section 76-6-1102;  
917 (ggg) mortgage fraud under Section 76-6-1203;  
918 (hhh) sale of a child under Section 76-7-203;  
919 (iii) bribery or offering a bribe under Section 76-8-103;  
920 (jjj) threat to influence official or political action under Section 76-8-104;  
921 (kkk) receiving bribe or bribery by public servant under Section 76-8-105;  
922 (lll) receiving bribe for endorsement of person as a public servant under Section  
923 76-8-106;  
924 (mmm) bribery for endorsement of person as public servant under Section 76-8-106.1;  
925 (nnn) official misconduct based on unauthorized act or failure of duty under Section  
926 76-8-201;  
927 (ooo) official misconduct concerning inside information under Section 76-8-202;  
928 (ppp) obstruction of justice in a criminal investigation or proceeding under Section  
929 76-8-306;  
930 (qqq) acceptance of bribe or bribery to prevent criminal prosecution under Section  
931 76-8-308;  
932 (rrr) harboring or concealing offender who has escaped from official custody under  
933 Section 76-8-309.2;  
934 (sss) making a false or inconsistent material statement under Section 76-8-502;  
935 (ttt) making a false or inconsistent statement under Section 76-8-503;  
936 (uuu) making a written false statement under Section 76-8-504;  
937 (vvv) tampering with a witness under Section 76-8-508;  
938 (www) retaliation against a witness, victim, or informant under Section 76-8-508.3;  
939 (xxx) receiving or soliciting a bribe as a witness under Section 76-8-508.7;  
940 (yyy) extortion or bribery to dismiss a criminal proceeding under Section 76-8-509;  
941 (zzz) tampering with evidence under Section 76-8-510.5;  
942 (aaaa) falsification or alteration of a government record under Section 76-8-511, if the  
943 record is a record described in Title 20A, Election Code, or Title 36, Chapter 11,  
944 Lobbyist Disclosure and Regulation Act;  
945 (bbbb) public assistance fraud by an applicant for public assistance under Section  
946 76-8-1203.1;  
947 (cccc) public assistance fraud by a recipient of public assistance under Section  
948 76-8-1203.3;

949 (dddd) public assistance fraud by a provider under Section 76-8-1203.5;  
950 (eeee) fraudulently misappropriating public assistance funds under Section 76-8-1203.7;  
951 (ffff) false statement to obtain or increase unemployment compensation under Section  
952 76-8-1301;  
953 (gggg) false statement to prevent or reduce unemployment compensation or liability  
954 under Section 76-8-1302;  
955 (hhhh) unlawful failure to comply with Employment Security Act requirements under  
956 Section 76-8-1303;  
957 (iiii) unlawful use or disclosure of employment information under Section 76-8-1304;  
958 (jjjj) intentionally or knowingly causing one animal to fight with another under  
959 Subsection 76-13-202(2)(d) or (3), or Section 76-13-205 or 76-13-206 concerning  
960 dog fighting;  
961 (kkkk) soliciting, recruiting, enticing, or intimidating a minor to join a criminal street  
962 gang under Section 76-9-803;  
963 (llll) aggravated soliciting, recruiting, enticing, or intimidating a minor to join a criminal  
964 street gang under Section 76-9-803.1;  
965 (mmmm) intimidating a minor to remain in a criminal street gang under Section  
966 76-9-803.2;  
967 (nnnn) aggravated intimidating a minor to remain in a criminal street gang under Section  
968 76-9-803.3;  
969 (oooo) unlawful conduct involving an explosive, chemical, or incendiary device under  
970 Section 76-15-210;  
971 (pppp) unlawful conduct involving an explosive, chemical, or incendiary part under  
972 Section 76-15-211;  
973 (qqqq) unlawful delivery or mailing of an explosive, chemical, or incendiary device  
974 under Section 76-15-209;  
975 (rrrr) forging or counterfeiting trademarks, trade name, or trade device under Section  
976 76-16-302;  
977 (ssss) selling goods under counterfeited trademark, trade name, or trade devices under  
978 Section 76-16-303;  
979 (tttt) sales in containers bearing registered trademark of substituted articles under  
980 Section 76-16-304;  
981 (uuuu) selling or dealing with article bearing registered trademark or service mark with  
982 intent to defraud under Section 76-16-306;

983 (vvvv) participating in gambling under Section 76-9-1402;  
984 (wwww) permitting gambling under Section 76-9-1403;  
985 (xxxx) online gambling prohibition under Section 76-9-1404;  
986 (yyyy) gambling promotion under Section 76-9-1405;  
987 (zzzz) gambling fraud under Section 76-9-1406;  
988 (aaaaa) possessing a gambling device or record under Section 76-9-1407;  
989 (bbbb) obtaining a benefit from a confidence game under Section 76-9-1410;  
990 (cccc) distributing pornographic material under Section 76-5c-202;  
991 (dddd) aiding or abetting a minor in distributing pornographic material under Section  
992 76-5c-203;  
993 (eeee) inducing acceptance of pornographic material under Section 76-5c-204;  
994 (fffff) distributing material harmful to minors under Section 76-5c-205;  
995 (gggg) aiding or abetting a minor in distributing material harmful to minors under  
996 Section 76-5c-206;  
997 (hhhhh) distributing obscene animal abuse material under Section 76-5c-215;  
998 [hhhhh] (iiii) distribution of a pornographic file for exhibition under Section 76-5c-305;  
999 [iiiii] (jjjj) indecent public display in the presence of a minor under Section 76-5c-207;  
1000 [jjjj] (kkkk) engaging in prostitution under Section 76-5d-202;  
1001 [kkkkk] (llll) aiding prostitution under Section 76-5d-206;  
1002 [HHH] (mmmm) exploiting prostitution under Section 76-5d-207;  
1003 [mmmmmm] (nnnn) aggravated exploitation of prostitution under Section 76-5d-208;  
1004 [nnnnn] (oooo) communications fraud under Section 76-6-525;  
1005 [oooooooo] (ppppp) possession of a dangerous weapon with criminal intent under Section  
1006 76-11-208;  
1007 [ppppp] (qqqqq) an act prohibited by the criminal provisions of Chapter 9, Part 16,  
1008 Money Laundering and Currency Transaction Reporting;  
1009 [qqqqq] (rrrr) vehicle compartment for contraband under Section 76-9-1902 or  
1010 76-9-1903;  
1011 [rrrr] (sssss) an act prohibited by the criminal provisions of the laws governing  
1012 taxation in this state; or  
1013 [sssss] (ttttt) an act illegal under the laws of the United States and enumerated in 18  
1014 U.S.C. Secs. 1961(1)(B), (C), and (D).

1015 Section 20. Section **76-17-403** is amended to read:

1016 **76-17-403 . Remedies of person injured by a pattern of unlawful activity --**

1017     **Double damages -- Costs, including attorney fees -- Arbitration -- Agency -- Burden of**  
1018     **proof -- Actions by attorney general or county attorney -- Dismissal -- Statute of**  
1019     **limitations -- Authorized orders of a court.**

1020     (1)(a) A person injured in the person's person, business, or property by a person engaged  
1021         in conduct forbidden by Section 76-17-407 may bring an action in a court with  
1022         jurisdiction under Title 78A, Judiciary and Judicial Administration, to recover twice  
1023         the damages that the person sustains, regardless of whether:  
1024             (i) the injury is separate or distinct from the injury suffered as a result of the acts or  
1025                 conduct constituting the pattern of unlawful conduct alleged as part of the cause of  
1026                 action; or  
1027             (ii) the conduct has been adjudged criminal by a court of the state or of the United  
1028                 States.  
1029     (2) A party who prevails on a cause of action brought under this section recovers the cost of  
1030         the suit, including reasonable attorney fees.  
1031     (3) All actions arising under this section that are grounded in fraud are subject to arbitration  
1032         under Title 78B, Chapter 11, Utah Uniform Arbitration Act.  
1033     (4)(a) In all actions under this section, a principal is liable for actual damages for harm  
1034         caused by an agent acting within the scope of either the agent's employment or  
1035         apparent authority.  
1036         (b) A principal is liable for double damages only if the pattern of unlawful activity  
1037         alleged and proven as part of the cause of action was authorized, solicited, requested,  
1038         commanded, undertaken, performed, or recklessly tolerated by the board of directors  
1039         or a high managerial agent acting within the scope of the agent's employment.  
1040     (5) In all actions arising under this section, the burden of proof is clear and convincing  
1041         evidence.  
1042     (6) The attorney general, county attorney, or, if within a prosecution district, the district  
1043         attorney may maintain an action under this section on behalf of the state, the county, or  
1044         any person injured by a person engaged in conduct forbidden by Section 76-17-407, to  
1045         prevent, restrain, or remedy injury as defined in this section and may recover the  
1046         damages and costs allowed by this section.  
1047     (7) In all actions under this section, the elements of each claim or cause of action shall be  
1048         stated with particularity against each defendant.  
1049     (8) If an action, claim, or counterclaim brought or asserted by a private party under this  
1050         section is dismissed before trial or disposed of on summary judgment, or if it is

1051       determined at trial that there is no liability, the prevailing party shall recover from the  
1052       party who brought the action or asserted the claim or counterclaim the amount of the  
1053       prevailing party's reasonable expenses incurred because of the defense against the  
1054       action, claim, or counterclaim, including a reasonable attorney fee.

1055       (9)(a) An action or proceeding brought under this section shall be commenced within  
1056       three years after the conduct prohibited by Section 76-17-407 terminates or the cause  
1057       of action accrues, whichever is later.

1058       (b) Subsection (9)(a) supersedes any limitation to the contrary.

1059       (10)(a) In any action brought under this section, the court may prevent, restrain, or  
1060       remedy injury as defined by this section by issuing appropriate orders after making  
1061       provisions for the rights of innocent persons.

1062       (b) Before liability is determined in any action brought under this section, the court may:  
1063           (i) issue restraining orders and injunctions;  
1064           (ii) require satisfactory performance bonds or any other bond the court considers  
1065            appropriate and necessary in connection with any property or requirement  
1066            imposed upon a party by the court; and  
1067           (iii) enter any other order the court considers necessary and proper.

1068       (c) After a determination of liability, the court may, in addition to granting the relief  
1069        allowed in Subsection (1), do any one or all of the following:

1070           (i) order a person to divest the person's self of any interest in or any control, direct or  
1071            indirect, of an enterprise;  
1072           (ii) impose reasonable restrictions on the future activities or investments of a person,  
1073            including prohibiting a person from engaging in the same type of endeavor as the  
1074            enterprise engaged in, to the extent the Utah Constitution and the Constitution of  
1075            the United States permit; or  
1076           (iii) order the dissolution or reorganization of an enterprise.

1077       (d)(i) However, if an action is brought to obtain any relief provided by this section,  
1078        and if the conduct prohibited by Section 76-17-407 has for its pattern of unlawful  
1079        activity acts or conduct illegal under Section 76-5c-202, 76-5c-203, 76-5c-204,  
1080        76-5c-205, 76-5c-206, 76-5c-215, or 76-5c-305, the court may not enter an order  
1081        that would amount to a prior restraint on the exercise of an affected party's rights  
1082        under the First Amendment to the Constitution of the United States, or Article I,  
1083        Sec. 15 of the Utah Constitution.

1084       (ii) The court shall, upon the request of an affected party, and upon the notice to all

1085 parties, before the issuance of an order provided for in this subsection, and at any  
1086 later time, hold hearings as necessary to determine whether any materials at issue  
1087 are obscene or pornographic and to determine if there is probable cause to believe  
1088 that any act or conduct alleged violates Section 76-5c-202, 76-5c-203, 76-5c-204,  
1089 76-5c-205, 76-5c-206, 76-5c-215, or 76-5c-305.

1090 (iii) In making the court's findings, the court shall be guided by the same  
1091 considerations required of a court making similar findings in criminal cases  
1092 brought under Section 76-5c-202, 76-5c-203, 76-5c-204, 76-5c-205, 76-5c-206,  
1093 76-5c-215, or 76-5c-305, including, but not limited to, the definitions in Sections  
1094 76-5c-101 and 76-5c-301, and the exemptions in Section 76-5c-302.

1095 Section 21. Section **78B-6-2101** is amended to read:

1096 **78B-6-2101 . Definitions.**

1097 As used in this part:

1098 (1) "Minor" means an individual less than 18 years [of age] old.  
1099 (2) "Obscene animal abuse material" means the same as that term is defined in Section  
1100 76-5c-101.

1101 [(2)] (3) "Pornographic material" means material that:

1102 (a) the average person, applying contemporary community standards, finds that, taken as  
1103 a whole, appeals to prurient interest in sex;  
1104 (b) is patently offensive in the description or depiction of nudity, sexual conduct, sexual  
1105 excitement, sadomasochistic abuse, or excretion; and  
1106 (c) taken as a whole does not have serious literary, artistic, political, or scientific value.

1107 Section 22. Section **78B-6-2102** is amended to read:

1108 **78B-6-2102 . Exemptions.**

1109 (1) If the conditions of Subsection (2) are met, this part does not apply to:  
1110 (a) the following, as defined in the Communications Act of 1934, as amended:  
1111 (i) an interactive computer service;  
1112 (ii) a telecommunications service, information service, or mobile service, including a  
1113 commercial mobile service; or  
1114 (iii) a multichannel video programming distributor;  
1115 (b) an [Internet] internet service provider;  
1116 (c) a provider of an electronic communications service;  
1117 (d) a distributor of [Internet] internet-based video services;  
1118 (e) a hosting company as defined in Section 76-5c-401; or

1119 (f) a distributor of electronic or computerized game software that users manipulate  
1120 through interactive devices.

1121 (2) This part does not apply to an entity described in Subsection (1) if:

1122 (a) the distribution of obscene animal abuse material or pornographic material by the  
1123 entity occurs only incidentally through the entity's function of:  
1124 (i) transmitting or routing data from one person to another person;  
1125 (ii) providing a connection between one person and another person; or  
1126 (iii) providing data storage space or data caching to a person; and  
1127 (b) the entity does not intentionally aid or abet in the distribution of the obscene animal  
1128 abuse material or pornographic material.

1129 Section 23. Section **78B-6-2103** is amended to read:

1130 **78B-6-2103 . Liability -- Safe harbor.**

1131 (1) A person who is not exempt under Section 78B-6-2102, and who distributes or  
1132 otherwise provides obscene animal abuse material or pornographic material to  
1133 consumers is liable to a person if:  
1134 (a) at the time the obscene animal abuse material or pornographic material is viewed by  
1135 the person, the person is a minor; and  
1136 (b) the obscene animal abuse material or pornographic material is the proximate cause  
1137 for the person being harmed physically or psychologically, or by emotional or  
1138 medical illnesses as a result of [that] the obscene animal abuse material or  
1139 pornographic material.

1140 (2) Nothing in this part affects any private right of action existing under other law,  
1141 including contract.

1142 (3) Notwithstanding Subsection (1), a person who distributes or otherwise provides obscene  
1143 animal abuse material or pornographic material is not liable under this section if the  
1144 person who distributes or otherwise provides obscene animal abuse material or  
1145 pornographic material:  
1146 (a) provides a warning that:  
1147 (i) is conspicuous;  
1148 (ii) appears before the obscene animal abuse material or pornographic material can be  
1149 accessed; and  
1150 (iii) consists of a good faith effort to warn persons accessing the obscene animal  
1151 abuse material or pornographic material that the [pornographic]material may be  
1152 harmful to minors; and

1153 (b) makes a good faith effort to verify the age of a person accessing the obscene animal  
1154 abuse material or pornographic material.

1155 (4) Subsection (3) may not be interpreted as exempting a person from complying with Title  
1156 13, Chapter 39, Child Protection Registry.

1157 (5)(a)(i) Notwithstanding Section 78B-6-2105, a person who is not exempt under  
1158 Section 78B-6-2102, and who distributes or otherwise provides [obscene] obscene  
1159 animal abuse material or pornographic material to consumers without a warning  
1160 label or without the metadata described in Subsection 78B-6-2105(3)(b) is not  
1161 liable if the person demonstrates reasonable efforts to determine the location of  
1162 recipients of [obscene] obscene animal abuse material or pornographic material  
1163 within the state and the placement of warning labels on material that enters the  
1164 state. Reasonable efforts shall result in a compliance rate that exceeds 75% of the  
1165 content believed to enter the state within the shorter of six months prior to any  
1166 claim, or from May 12, 2020, to the time of the claim.

1167 (ii) [-]Proof of reasonable efforts to comply with Subsection (5)(a)(i) shall remove  
1168 liability only for the type of compliance for which reasonable efforts have been  
1169 proven.

1170 (b) The use of virtual private networks or similar technology by the consumer to hide the  
1171 consumer's location may not be included in a compliance rate calculation.

1172 (6) Notwithstanding Section 78B-6-2105, a video game without a warning label is not  
1173 liable if it has a rating of the Entertainment Software Rating Board or equivalent, as long  
1174 as it also explicitly provides notice of the content as part of the rating.

1175 Section 24. Section **78B-6-2105** is amended to read:

1176 **78B-6-2105 . Civil action for enforcement -- Penalties.**

1177 (1) A person who distributes or otherwise provides obscene animal abuse material or  
1178 pornographic material to consumers may not distribute any obscene material or  
1179 performance as defined in Section 76-5c-101 without first giving a clear and reasonable  
1180 warning of the harmful impact of exposing minors to the material or performance.

1181 (2) The warning of the harm shall be prominently displayed in the following form:

1182 STATE OF UTAH WARNING

1183 Exposing minors to obscene material may damage or negatively impact minors.

1184 (3)(a) For print publications created after May 12, 2020, the warning in Subsection (2)  
1185 shall be placed in clear, readable type on the cover of each publication which  
1186 includes material as defined in Section 76-5c-101.

1187 (b) For digital publications:

1188 (i) the warning in Subsection (2) shall be displayed in searchable text format and for  
1189 at least five seconds prior to the display of any video or each image which  
1190 includes material as defined in Section 76-5c-101; or

1191 (ii) if the website complies with Subsection 78B-6-2103(3), it is not required to  
1192 display the warning in Subsection (2) prior to each video or image contained on  
1193 the website.

1194 (4) A person who violates this section shall be liable for a civil penalty not to exceed  
1195 \$2,500 per violation, plus filing fees and attorney fees, in addition to any other penalty  
1196 established by law, and enjoined from further violations.

1197 (5) The civil penalty may be assessed and recovered in a civil action brought in any court of  
1198 competent jurisdiction.

1199 (6) Each of the following violations shall create a separate liability per violation:

1200 (a) the sale or display of potentially harmful content without the warning required in  
1201 Subsection (2), in accordance with Subsection (3); or

1202 (b) the absence of the following searchable text within the website's metadata -  
1203 `utahobscenitywarning`.

1204 (7) The determination by a court as to whether a person is distributing material the state  
1205 considers to be obscene material or performance as defined in Section 78B-6-1203 shall  
1206 be proven by clear and convincing evidence. All other elements of proof shall be proven  
1207 by a preponderance of the evidence.

1208 (8) The court, in ordering payment, shall specify each amount for the civil penalty, filing  
1209 fees, and attorney fees.

1210 (9) In assessing the amount of a civil penalty for a violation of this chapter, the court shall  
1211 consider all of the following:

1212 (a) the nature and extent of the violation;

1213 (b) the number and severity of the violations;

1214 (c) the economic effect of the penalty on the violator;

1215 (d) whether the violator took good faith measures to comply with this chapter and when  
1216 those measures were taken;

1217 (e) the willfulness of the violator's misconduct;

1218 (f) the deterrent effect that the imposition of the penalty would have on both the violator  
1219 and the regulated community as a whole; and

1220 (g) any other factor that the court determines justice requires.

1221 (10) Actions pursuant to this section may be brought by the attorney general's office in the  
1222 name of the people of the state or by a private person in accordance with Subsection (11).

1223 (11) A private person may bring an action in the public interest pursuant to this section if:  
1224 (a) the person has served notice of an alleged violation of Section 78B-6-2103 on the  
1225 alleged violator and the attorney general's office;  
1226 (b) the attorney general's office has not provided a letter to the noticing party within 60  
1227 days of receipt of the notice of an alleged violation indicating that:  
1228 (i) an action is currently being pursued or will be pursued by the attorney general's  
1229 office regarding the violation; or  
1230 (ii) the attorney general believes that there is no merit to the action; and  
1231 (c) the alleged violator has not responded to the notice of alleged violation or returned  
1232 the proof of compliance form provided in Subsection (17).

1233 (12) If a lawsuit is commenced, the plaintiff may include additional violations in the claim  
1234 that are discovered through the discovery process.

1235 (13) Notice of the alleged violation shall be executed by the attorney for the noticing party,  
1236 or by the noticing party, if the noticing party is not represented by an attorney, and  
1237 include a notice of alleged violation. The notice of alleged violation shall:  
1238 (a) state that the person executing the notice believes that there is a violation; and  
1239 (b) provide factual information sufficient to establish the basis for the alleged violation.

1240 (14) A person who serves a notice of alleged violation identified in Subsection (13) shall  
1241 complete and provide to the alleged violator at the time the notice of alleged violation is  
1242 served, a notice of special compliance procedure and proof of compliance form pursuant  
1243 to Subsection (17). The person may file an action against the alleged violator, or recover  
1244 from the alleged violator if:  
1245 (a) the notice of alleged violation alleges that the alleged violator failed to provide a  
1246 clear and reasonable warning as required under Subsection (1); and  
1247 (b) within 14 days after receipt of the notice of alleged violation, the alleged violator has  
1248 not:  
1249 (i) corrected the alleged violation and all similar violations known to the alleged  
1250 violator;  
1251 (ii) agreed to pay a penalty for the alleged violation in the amount of \$500 per  
1252 violation; and  
1253 (iii) notified, in writing, the noticing party that the violation has been corrected.

1254 (15) The written notice required in Subsection (14)(b)(iii) shall be the notice of special

1255 compliance procedure and proof of compliance form specified in Subsection (17). The  
1256 alleged violator shall deliver the civil penalty to the noticing party within 30 days of  
1257 receipt of the notice of alleged violation.

1258 (16) The attorney general shall review the notice of alleged violation and may confer with  
1259 the noticing party. If the attorney general believes there is no merit to the action, the  
1260 attorney general shall, within 45 days of receipt of the notice of alleged violation,  
1261 provide a letter to the noticing party and the alleged violator stating that the attorney  
1262 general believes there is no merit to the action.

1263 (17) The notice required to be provided to an alleged violator pursuant to Subsection (14) shall  
1264 be presented as follows:

1265 Date:

1266 Name of Noticing Party or attorney for Noticing Party:

1267 Address:

1268 Phone number:

1269 **SPECIAL COMPLIANCE PROCEDURE**

1270 **PROOF OF COMPLIANCE**

1271 You are receiving this form because the Noticing Party listed above has alleged that you  
1272 are in violation of Utah Code Section 78B-6-2103.

1273 The Noticing Party may bring legal proceedings against you for the alleged violation  
1274 checked below if:

- 1275 (1) you have not actually taken the corrective steps that you have certified in this form;
- 1276 (2) the Noticing Party has not received this form at the address shown above, accurately  
1277 completed by you, postmarked within 14 days of your receiving this notice; and
- 1278 (3) the Noticing Party does not receive the required \$500 penalty payment for each  
1279 violation alleged from you at the address shown above postmarked within 30 days of your  
1280 receiving this notice.

1281 **PART 1: TO BE COMPLETED BY THE NOTICING PARTY OR ATTORNEY FOR**  
1282 **THE NOTICING PARTY**

1283 This notice of alleged violation is for failure to warn against an exposure to minors of  
1284 materials considered harmful to minors. (provide complete description of violation, including  
1285 when and where observed)

1286 Date:

1287 Name of Noticing Party or attorney for Noticing Party:

1288 Address:

1289 Phone number:

1290 PART 2: TO BE COMPLETED BY THE ALLEGED VIOLATOR OR AUTHORIZED  
1291 REPRESENTATIVE

1292 Certification of Compliance

1293 Accurate completion of this form will demonstrate that you are now in compliance with  
1294 Utah Code Section 78B-6-2103, for the alleged violation listed above. You must complete and  
1295 submit the form below to the Noticing Party at the address shown above, postmarked within 14  
1296 days of you receiving this notice.

1297 I hereby agree to pay, within 30 days of receipt of this notice, a penalty of \$500 for each  
1298 violation alleged to the Noticing Party only and certify that I have complied with by (check  
1299 only one of the following):

1300 [ ] Posting a warning or warnings, and attaching a copy of that warning and a  
1301 photograph accurately showing its placement on the print or digital publication.

1302 [ ] Eliminating the alleged exposure, and attaching a statement accurately describing  
1303 how the alleged exposure has been eliminated.

1304 CERTIFICATION

1305 My statements on this form, and on any attachments to it, are true, complete, and correct  
1306 to the best of my knowledge and belief and are made in good faith. I have carefully read the  
1307 instructions to complete this form. I understand that if I make a false statement on this form, I  
1308 may be subject to additional penalties under Utah Code Sections 76-5c-205 and 76-5c-206.

1309 Signature of alleged violator or authorized representative:

1310 Date:

1311 Name and title of signatory:

1312 (18) An alleged violator may satisfy the conditions set forth in Subsection (17) only one  
1313 time for a specific violation.

1314 (19) Notwithstanding Subsection (17), the attorney general may file an action pursuant to  
1315 Subsection (10) against an alleged violator. In any action, the amount of any civil  
1316 penalty for a violation shall be reduced to reflect any payment made by the alleged  
1317 violator to a private person in accordance with Subsection (17) for the same alleged  
1318 violation.

1319 (20) Payments shall be made in accordance with this section.

1320 (a) A civil penalty ordered by the court shall be paid to the plaintiff as directed by the  
1321 court.

1322 (b) A penalty paid in accordance with the special compliance procedure in Subsection

1323 (17) shall be made directly to the noticing party.

1324 (21) The Utah Office for Victims of Crime shall receive 50% of any penalty paid in  
1325 accordance with this section. Funds received shall be deposited into the Crime Victim  
1326 Reparations Fund created in Section 63M-7-526. The penalty amount upon which the  
1327 50% is calculated may not include attorney fees or costs awarded by the court.

1328 (a) If the penalty is paid to a noticing party in accordance with Subsection (17), the  
1329 noticing party shall remit the required amount along with a copy of the Special  
1330 Compliance Procedure document.

1331 (b) If a civil penalty is ordered by the court, the plaintiff shall remit the required amount  
1332 along with a copy of the court order.

1333 (22) The attorney general's office shall provide to the Utah Office for Victims of Crime a  
1334 copy of all notices of alleged violations to which the attorney general's office did not  
1335 respond with a letter of no merit in accordance with Subsection (16).

1336 (23) The court shall provide to the Utah Office for Victims of Crime a copy of the court's  
1337 order for payment.

1338 (24) The Utah Office for Victims of Crime shall:

1339 (a) maintain a record of documents and payments submitted pursuant to Subsections (21),  
1340 (22), and (23);

1341 (b) create and provide to the Legislature in odd-numbered years beginning November  
1342 2021, a report containing the following for the previous two years:

1343 (i) the number of notices of alleged violations received from the attorney general's  
1344 office;

1345 (ii) the number of court orders received; and

1346 (iii) the total amount received and deposited into the Crime Victim Reparations Fund.

1347 (25) This section does not apply to:

1348 (a) a person portrayed in [obscene or] obscene animal abuse material or pornographic  
1349 material that is created, duplicated, or distributed without the person's knowledge or  
1350 consent; or

1351 (b) a person who is coerced or blackmailed into distributing [obscene or] obscene animal  
1352 abuse material or pornographic material.

1353 (26) Beginning May 1, 2025, and at each five-year interval, the dollar amount of the civil  
1354 penalty provided in Subsection (4) shall be adjusted by the Judicial Council based on the  
1355 change in the annual Consumer Price Index for the most recent five-year period ending  
1356 on December 31 of the previous year, and rounded to the nearest five dollars. The

1357 attorney general shall publish the dollar amount of the civil penalty together with the  
1358 date of the next scheduled adjustment.

1359       **Section 25. Effective Date.**

1360       This bill takes effect on May 6, 2026.