Effective 5/5/2021

Part 22
Cause of Action to Protect Minors from Unfiltered Devices

(Contingently Effective)
78B-6-2201 Title.
This part is known as "Cause of Action to Protect Minors from Unfiltered Devices."

Enacted by Chapter 416, 2021 General Session
Revisor instructions Chapter 416, 2021 General Session

Contingently Effective - Repealed 1/1/2025
78B-6-2202 Definitions.
As used in this part:
(1) "Activate" means the process of powering on a device and associating it with a new user account.
(2) "Device" means a tablet or a smart phone sold in Utah and manufactured on or after January 1 of the year following the year this bill takes effect.
(3) "Filter" means software installed on a device that is capable of preventing the device from accessing or displaying material that is harmful to minors through the Internet or any applications owned and controlled by the manufacturer and installed on the device.
(4) "Harmful to minors" means the same as that term is defined in Section 76-10-1201.
(5) "Internet" means the same as that term is defined in Section 13-40-102.
(6)
(a) "Manufacturer" means a person that:
(i) is engaged in the business of manufacturing a device; and
(ii) has a commercial registered agent as that term is defined in Section 16-17-102.
(b) "Manufacturer" includes a registrant as that term is defined in Section 70-3a-103.
(7) "Minor" means an individual under the age of 18 who is not emancipated, married, or a member of the armed forces of the United States.
(8) "Smart phone" means the same as that term is defined in Section 63A-2-101.5.
(9) "Tablet" means a mobile device that:
(a) is equipped with a mobile operating system, touchscreen display, and rechargeable battery; and
(b) has the ability to support access to a cellular network.

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Revisor instructions Chapter 416, 2021 General Session

Contingently Effective - Repealed 1/1/2025
78B-6-2203 Filter required.
Beginning on January 1 of the year following the year this bill takes effect, a manufacturer shall manufacture a device that, when activated in the state, automatically enables a filter that:
(1) when enabled, prevents the user from accessing or downloading material that is harmful to minors on:
(a) mobile data networks;
(b) applications owned and controlled by the manufacturer;

(c) wired Internet networks; and
(d) wireless Internet networks;
(2) notifies the user of the device when the filter blocks the device from downloading an application or accessing a website;
(3) gives a user with a passcode the opportunity to unblock a filtered application or website; and
(4) reasonably precludes a user other than a user with a passcode the opportunity to deactivate, modify, or uninstall the filter.

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Revisor instructions Chapter 416, 2021 General Session

Contingently Effective - Repealed 1/1/2025
78B-6-2204 Liability.
(1) Beginning January 1 of the year following the year this bill takes effect, a manufacturer of a device is liable to a minor in the state if:
(a) the device is activated in the state;
(b) the device does not, upon activation in the state, enable a filter that complies with the requirements described in Section 78B-6-2203; and
(c) the minor accesses material that is harmful to minors on the device.
(2) Nothing in this part affects any private right of action existing under other law, including contract.
(3) Notwithstanding Subsection (1), this section does not apply to a manufacturer that makes a good faith effort to provide a device that, upon activation of the device in the state, automatically enables a generally accepted and commercially reasonable method of filtration in accordance with this part and industry standards.

Enacted by Chapter 416, 2021 General Session
Revisor instructions Chapter 416, 2021 General Session

Contingently Effective - Repealed 1/1/2025
78B-6-2205 Damages -- Class action.
(1) If a court finds that a manufacturer is liable under Section 78B-6-2204, the court may award the plaintiff actual damages.
(2) A class action may be brought under this part in accordance with Utah Rules of Civil Procedure, Rule 23.

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Revisor instructions Chapter 416, 2021 General Session

Contingently Effective - Repealed 1/1/2025
78B-6-2206 Civil action for enforcement -- Penalties.
(1)
(a) A manufacturer that is found liable under Section 78B-6-2204 shall be:
(i) liable for civil penalties not to exceed $10 per violation, plus filing fees and attorney fees, in addition to any other penalty established by law; and
(ii) enjoined from further violations.
(b) The civil penalty may be assessed and recovered in a civil action brought in any court of competent jurisdiction.

(c) For purposes of assessing a penalty under Subsection (1), a manufacturer is considered to have committed a separate violation for each device manufactured on or after January 1 of the year following the year this bill takes effect, and activated in the state on which:
(i) a filter is not automatically enabled; and
(ii) a minor encounters material harmful to minors.
(d) The total civil penalty assessed in a civil action brought under this section may not exceed $500, regardless of how many separate violations the plaintiff establishes.
(2)
(a) A plaintiff shall prove and a court shall find, by clear and convincing evidence, that a manufacturer manufactured a device on or after January 1 of the year following the year this bill takes effect, that was activated in the state in violation of Section 78B-6-2203.
(b) The plaintiff shall prove all other elements by a preponderance of the evidence.
(3) The court shall specify the amount of each of the following for each violation:
(a) the civil penalty;
(b) filing fees; and
(c) attorney fees.
(4) In assessing the amount of a civil penalty for a violation of this chapter, the court shall consider the following:
(a) the nature and extent of the violation;
(b) the number and severity of the violations;
(c) the economic effect of the penalty on the violator;
(d) the good faith measures the violator took to comply with this part;
(e) the timing of the measures the violator took to comply with this part;
(f) the willfulness of the violator's misconduct;
(g) the deterrent effect that the imposition of the penalty would have on both the violator and the regulated community as a whole; and
(h) any other factor that the court determines justice requires.
(5) Actions pursuant to this part may be brought by the attorney general's office in the name of the people of the state or by a private individual in accordance with Subsection (6).
(6) A private individual may bring an action in the public interest to establish liability under Section 78B-6-2204 pursuant to this section and after satisfying the requirements of Subsections (7), (8), and (9), if:
(a) the individual has served on the alleged violator and the attorney general's office a notice of an alleged violation of Subsection 78B-6-2203(3);
(b) the attorney general's office has not provided a letter to the noticing party within 45 days after the day on which the attorney general's office receives the notice of an alleged violation indicating that:
(i) an action is currently being pursued or will be pursued by the attorney general's office regarding the violation; or
(ii) the attorney general believes that there is no merit to the action; and
(c) the alleged violator has not responded to the notice of alleged violation or returned the proof of compliance form provided in Subsection (11).
(7)
(a) The attorney for the noticing party, or the noticing party if the noticing party is not represented by an attorney, shall execute the notice of an alleged violation.
(b) The notice of an alleged violation shall:
(i) state that the individual executing the notice believes that there is a violation; and
(ii) provide factual information sufficient to establish the basis for the alleged violation.

(8)
(a) The attorney general shall review the notice of an alleged violation and may confer with the noticing party.
(b) The attorney general shall provide, within 45 days after the day on which the attorney general received the notice of an alleged violation, a letter to the noticing party and the alleged violator that states whether or not the attorney general finds merit in the action.
(9)
(a) An individual who serves a notice of an alleged violation described in Subsection (7) shall complete and provide to the alleged violator at the time the notice of the alleged violation is served, a notice of special compliance procedure and proof of compliance form pursuant to Subsection (11).
(b) The individual may file an action against the alleged violator, or recover from the alleged violator, if:
(i) the notice of alleged violation alleges that the alleged violator failed to manufacture a device that, when activated in the state, automatically enabled a filter as required under Section 78B-6-2203;
(ii) a minor encountered material harmful to minors on the device without the option to enable a filter; and
(iii) within 60 days after the day on which the alleged violator receives the notice of the alleged violation, the alleged violator has not:
(A) corrected the alleged violation and all similar violations known to the alleged violator;
(B) agreed to pay a penalty for the alleged violation in the amount of $10 per violation, up to $500, regardless of the number of separate violations alleged in the notice; and
(C) notified, in writing, the noticing party and the attorney general's office that the violation has been corrected.
(10)
(a) The written notice required in Subsection (9)(b)(iii)(C) shall be the notice of special compliance procedure and proof of compliance form specified in Subsection (11).
(b) The alleged violator shall deliver the civil penalty to the noticing party within 60 days after the day on which the alleged violator received the notice of the alleged violation.
(11) The notice required to be provided to an alleged violator pursuant to Subsection (9) shall be presented as follows:

"Date:
Name of Noticing Party or Attorney for Noticing Party:
Address:
Phone Number:
SPECIAL COMPLIANCE PROCEDURE
PROOF OF COMPLIANCE

You are receiving this form because the Noticing Party listed above has alleged that you are in violation of Utah Code Section 78B-6-2202.

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

(1) you have not actually taken the corrective steps that you have certified in this form;
(2) the Noticing Party has not received this form at the address shown above, accurately completed by you, postmarked within 50 days after you receive this notice; and
(3) the Noticing Party does not receive the required $10 penalty payment for each violation alleged, with a total payment not to exceed $500 regardless of the number of separate

violations alleged in the notice, from you at the address shown above postmarked within 60 days of your receiving this notice.

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

This notice of alleged violation is for failure to provide an activated filter to protect minors against exposure to materials considered harmful to minors. [provide complete description of violation(s), including when and where observed and the serial number(s) of the device(s) involved]

Date:

Name of Noticing Party or Attorney for Noticing Party:

Address:

Phone Number:

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

Certification of Compliance

Accurate completion of this form will demonstrate you are now in compliance with Utah Code Section 78B-6-2203, for the alleged violation listed above. You must complete and submit the form below to the Noticing Party at the address shown above, with a copy to the Utah Attorney General's Office, postmarked within 50 days of you receiving this notice.

I hereby agree to pay, within 60 days of receipt of this notice, a penalty of $10 for each violation alleged to the Noticing Party only and certify that I have complied by (check only one of the following):

[ ] Providing the party at the address shown above with information about how to enable a filter.

[ ] Providing the party at the address shown above with information about how to exchange a device that did not have a filter automatically enable upon activation for a replacement device of the same model that will automatically enable the filter upon activation in the state.

CERTIFICATION

My statements on this form, and on any attachments to it, are true, complete, and correct to the best of my knowledge and belief and are made in good faith. I have carefully read the instructions to complete this form.

Signature of alleged violator or authorized representative:

Date:

Name and title of signatory:".

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

(13) An alleged violator shall satisfy the conditions set forth in Subsection (11) only one time per device.

(14)

(a) Notwithstanding an alleged violator's compliance with Subsection (10), the attorney general may file an action pursuant to Subsection (5) against the alleged violator.

(b) In any action, a court shall reduce the amount of any civil penalty for a violation to reflect any payment made by the alleged violator to a private individual in accordance with Subsection (10) for the same alleged violation.

(15) Payments shall be made as follows:

(a) a civil penalty ordered by the court shall be paid to the plaintiff as directed by the court; and

(b) a penalty paid in accordance with the special compliance procedure in Subsection (11) shall be made directly to the noticing party.

(16)

(a) The Utah Office for Victims of Crimes shall receive 50% of any penalty paid in accordance with this section.

(b) Funds received shall be deposited into the Crime Victim Reparations Fund created in Section 63M-7-526.

(c) The penalty amount upon which the 50% is calculated may not include attorney fees or costs awarded by the court.

(d) If the penalty is paid to a noticing party in accordance with Subsection (11), the noticing party shall remit the amount required by this Subsection (16) along with a copy of the Special Compliance Procedure document.

(e) If a civil penalty is ordered by the court, the plaintiff shall remit the amount required by this Subsection (16) along with a copy of the court order.

(17) The attorney general's office shall provide to the Utah Office for Victims of Crime a copy of all notices of alleged violations to which the attorney general's office did not respond with a letter of merit in accordance with Subsection (8).

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

(19) The Utah Office for Victims of Crime shall:

(a) maintain a record of documents and payments submitted pursuant to Subsections (16), (17), and (18); and

(b) create and provide to the Legislature in odd-numbered years beginning after November of the year following the year this bill takes effect a report containing the following for the previous two years:

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

(ii) the number of court orders received; and

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

(20) This section does not apply to a manufacturer who makes a good faith effort to install and enable upon activation in the state a generally accepted and commercially reasonable method of filtration in accordance with this part and industry standards.

(21)

(a) Beginning May 1 of the year following the year this bill takes effect, and at each five-year interval, the Judicial Council shall adjust the dollar amount of the civil penalty provided in Subsection (1) based on the change in the annual Consumer Price Index for the most recent five-year period ending on December 31 of the previous year and rounded to the nearest five dollars.

(b) The attorney general shall publish the dollar amount of the civil penalty together with the date of the next scheduled adjustment.

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