

**Representative John Dougall** proposes the following substitute bill:

**AMENDMENTS RELATED TO PORNOGRAPHIC**

**AND HARMFUL MATERIALS**

2005 GENERAL SESSION

STATE OF UTAH

**Sponsor: John Dougall**

---

---

**LONG TITLE**

**General Description:**

This bill addresses pornographic materials and material harmful to minors.

**Highlighted Provisions:**

This bill:

- ▶ requires the Division of Consumer Protection to make public service announcements;
- ▶ requires the attorney general to establish and maintain a database, called the adult content registry, of certain Internet sites containing material harmful to minors;
- ▶ defines terms;
- ▶ subjects a person dealing in material harmful to minors to criminal liability for certain distributions of material harmful to minors if the person negligently or recklessly fails to determine the proper age of a minor;
- ▶ increases criminal penalties for distributing and inducing acceptance of pornographic materials;
- ▶ requires a service provider to inquire concerning whether a minor has access to a consumer's computer;
- ▶ requires a service provider to prevent certain access to Internet material harmful to minors, if requested by the consumer;



- 26           ▶ requires the Division of Consumer Protection to test the effectiveness of a service
- 27 provider's procedures to block material harmful to minors at least annually;
- 28           ▶ requires a service provider, under certain circumstances, to block material on the
- 29 adult content registry;
- 30           ▶ requires Internet content providers that create or host data in Utah to properly rate
- 31 the data;
- 32           ▶ allows the attorney general to seek a civil fine against a service provider that fails to
- 33 properly block material harmful to minors;
- 34           ▶ provides criminal penalties for certain violations of the provisions requiring a
- 35 service provider to block material harmful to minors;
- 36           ▶ provides a criminal penalty for a content provider's failure to properly rate content;
- 37 and
- 38           ▶ makes technical changes.

**39 Monies Appropriated in this Bill:**

40           This bill appropriates:

- 41           ▶ \$100,000 from the General Fund to the Division of Consumer Protection, for fiscal
- 42 year 2005-06 only, for public service announcements;
- 43           ▶ \$50,000 from the General Fund to the Division of Consumer Protection, for fiscal
- 44 year 2005-06 only, to conduct a research project; and
- 45           ▶ \$100,000 from the General Fund to the attorney general, for fiscal year 2005-06
- 46 only, to establish the adult content registry.

**47 Other Special Clauses:**

48           This bill provides an effective date.

**49 Utah Code Sections Affected:**

50 AMENDS:

- 51           **76-10-1204**, as last amended by Chapters 93 and 163, Laws of Utah 1990
- 52           **76-10-1205**, as last amended by Chapter 163, Laws of Utah 1990
- 53           **76-10-1206**, as last amended by Chapter 53, Laws of Utah 2000

54 ENACTS:

- 55           **13-2-9**, Utah Code Annotated 1953
- 56           **67-5-19**, Utah Code Annotated 1953

- 57            **76-10-1230**, Utah Code Annotated 1953
- 58            **76-10-1231**, Utah Code Annotated 1953
- 59            **76-10-1232**, Utah Code Annotated 1953
- 60            **76-10-1233**, Utah Code Annotated 1953



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

63            Section 1. Section **13-2-9** is enacted to read:

64            **13-2-9. Internet -- Consumer education.**

65            (1) The Division of Consumer Protection shall, subject to appropriation, contract with  
66 a person to make public service announcements advising consumers about the dangers of the  
67 Internet, especially:

- 68            (a) material harmful to minors;
- 69            (b) steps a consumer may take to learn more about the dangers of using the Internet;
- 70            (c) information about how a service provider can help a consumer learn more about the  
71 dangers of using the Internet, including the service provider's duties created by this bill; and
- 72            (d) how a consumer can monitor the Internet usage of family members.

73            (2) Monies appropriated under Subsection (1) shall be paid by the Division of  
74 Consumer Protection to a person only if:

- 75            (a) the person is a nonprofit organization; and
- 76            (b) the person agrees to spend private monies amounting to two times the amount of  
77 monies provided by the Division of Consumer Protection during each fiscal year in accordance  
78 with Subsection (1).

79            (3) In administering any monies appropriated for use under this section, the Division of  
80 Consumer Protection shall comply with Title 63, Chapter 56, Utah Procurement Code.

81            Section 2. Section **67-5-19** is enacted to read:

82            **67-5-19. Adult content registry.**

83            (1) As used in this section:

- 84            (a) "Consumer" means a consumer as defined in Section 76-10-1230.
- 85            (b) "Content provider" means a content provider as defined in Section 76-10-1230.
- 86            (c) "Hosting company" means a hosting company as defined in Section 76-10-1230.
- 87            (d) "Service provider" means a service provider as defined in Section 76-10-1230.

88 (e) "Properly rated" means properly rated as defined in Section 76-10-1230.  
89 (2) The attorney general, in consultation with other entities as the attorney general  
90 considers appropriate, shall:  
91 (a) create a database, called the adult content registry, consisting of a list of content  
92 providers' sites, that shall be based on a Uniform Resource Locator address, domain name, and  
93 Internet Protocol address or a similar addressing system, that:  
94 (i) are added to the database under Subsection (2)(b); and  
95 (ii) provide material harmful to minors that is not properly rated;  
96 (b) add a content provider site to the adult content registry only if the attorney general  
97 determines that the content provider is providing content that contains material harmful to  
98 minors that is not properly rated;  
99 (c) when the attorney general determines that a content provider site should be placed  
100 on the adult content registry, if the content provider lists e-mail contact information, the  
101 attorney general shall notify the content provider and hosting company, if available, by e-mail:  
102 (i) that the content provider is providing content that contains material harmful to  
103 minors that is not properly rated;  
104 (ii) that the attorney general will place the content provider site on the adult content  
105 registry within two business days of the notice;  
106 (iii) that the content provider can avoid being placed on the adult content registry if any  
107 material harmful to minors is properly rated; and  
108 (iv) of the steps necessary for the content provider or hosting company to apply to be  
109 removed from the adult content registry;  
110 (d) (i) if notification is required under Subsection (2)(c), place a content provider site  
111 on the adult content registry within two business days of the day on which the division makes  
112 the required notification; or  
113 (ii) if notification is not required under Subsection (2)(c), place a content provider site  
114 on the adult content registry within two business days of the day on which the attorney general  
115 determines that the content provider should be placed on the adult content registry; and  
116 (e) if requested by a content provider, remove a content provider from the adult content  
117 registry within two business days from the day on which the attorney general determines that  
118 the content provider no longer provides material harmful to minors that is not properly rated.

119           (3) The attorney general shall make the adult content registry available for public  
120 dissemination in a readily accessible electronic format.

121           (4) The attorney general shall establish a system for the reporting of material  
122 transmitted to a consumer in violation of Section 76-10-1232.

123           Section 3. Section **76-10-1204** is amended to read:

124           **76-10-1204. Distributing pornographic material.**

125           (1) A person is guilty of distributing pornographic material when he knowingly:

126           (a) sends or brings any pornographic material into the state with intent to distribute or  
127 exhibit it to others;

128           (b) prepares, publishes, prints, or possesses any pornographic material with intent to  
129 distribute or exhibit it to others;

130           (c) distributes or offers to distribute, exhibits or offers to exhibit any pornographic  
131 material to others;

132           (d) writes, creates, or solicits the publication or advertising of pornographic material;

133           (e) promotes the distribution or exhibition of material he represents to be pornographic;

134 or

135           (f) presents or directs a pornographic performance in any public place or any place  
136 exposed to public view or participates in that portion of the performance which makes it  
137 pornographic.

138           (2) Each distributing of pornographic material as defined in Subsection (1) is a separate  
139 offense.

140           (3) It is a separate offense under this section for:

141           (a) each day's exhibition of any pornographic motion picture film; and

142           (b) each day in which any pornographic publication is displayed or exhibited in a  
143 public place with intent to distribute or exhibit it to others.

144           ~~[(4) Each separate offense under this section is a class A misdemeanor punishable by:]~~

145           ~~[(a) a minimum mandatory fine of not less than \$100 plus \$10 for each article~~  
146 ~~exhibited up to the maximum allowed by law; and]~~

147           ~~[(b) incarceration, without suspension of sentence in any way, for a term of not less~~  
148 ~~than seven days, notwithstanding any provisions of Section 77-18-1.]~~

149           ~~[(5) If a defendant has already been convicted once under this section, each separate~~

150 further offense]

151 (4) (a) An offense under this section is a third degree felony punishable by:

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

153 exhibited up to the maximum allowed by law; and [by]

154 (ii) incarceration, without suspension of sentence in any way, for a term of not less than  
155 30 days.

156 (b) This Subsection (4) supersedes Section 77-18-1.

157 Section 4. Section **76-10-1205** is amended to read:

158 **76-10-1205. Inducing acceptance of pornographic material.**

159 (1) A person is guilty of inducing acceptance of pornographic material when he  
160 knowingly:

161 (a) requires or demands as a condition to a sale, allocation, consignment, or delivery  
162 for resale of any newspaper, magazine, periodical, book, publication, or other merchandise that  
163 the purchaser or consignee receive any pornographic material or material reasonably believed  
164 by the purchaser or consignee to be pornographic; or

165 (b) denies, revokes, or threatens to deny or revoke a franchise, or to impose any  
166 penalty, financial or otherwise, because of the failure or refusal to accept pornographic material  
167 or material reasonably believed by the purchaser or consignee to be pornographic.

168 ~~[(2) A violation of this section is a class A misdemeanor punishable by a fine of not~~  
169 ~~less than \$500 and by incarceration, without suspension of sentence in any way, for a term of~~  
170 ~~not less than 14 days.]~~

171 (2) (a) An offense under this section is a third degree felony punishable by:

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

173 exhibited up to the maximum allowed by law; and

174 (ii) incarceration, without suspension of sentence in any way, for a term of not less than  
175 30 days.

176 (b) This Subsection (2) supersedes Section 77-18-1.

177 Section 5. Section **76-10-1206** is amended to read:

178 **76-10-1206. Dealing in material harmful to a minor.**

179 (1) A person is guilty of dealing in material harmful to minors when, knowing that a  
180 person is a minor, or having negligently or recklessly failed to [exercise reasonable care in

181 ~~ascertaining~~ determine the proper age of a minor, he:

182 (a) [~~intentionally~~] distributes or offers to distribute, exhibits or offers to exhibit to a  
183 minor any material harmful to minors;

184 (b) [~~intentionally~~] produces, presents, or directs any performance before a minor, that is  
185 harmful to minors; or

186 (c) [~~intentionally~~] participates in any performance before a minor, that is harmful to  
187 minors.

188 (2) (a) Each separate offense under this section is a third degree felony punishable by:

189 (i) a minimum mandatory fine of not less than \$300 plus \$10 for each article exhibited  
190 up to the maximum allowed by law; and [~~by~~]

191 (ii) incarceration, without suspension of sentence [~~in any way~~], for a term of not less  
192 than 14 days.

193 (b) This section supersedes Section 77-18-1.

194 (3) (a) If a defendant has already been convicted once under this section, each separate  
195 further offense is a second degree felony punishable by:

196 (i) a minimum mandatory fine of not less than \$5,000 plus \$10 for each article  
197 exhibited up to the maximum allowed by law; and [~~by~~]

198 (ii) incarceration, without suspension of sentence [~~in any way~~], for a term of not less  
199 than one year.

200 (b) This section supersedes Section 77-18-1.

201 Section 6. Section **76-10-1230** is enacted to read:

202 **76-10-1230. Definitions.**

203 As used in Sections 76-10-1231, 76-10-1232, and 76-10-1233:

204 (1) "Adult content registry" means the adult content registry created by Section  
205 67-5-19.

206 (2) "Consumer" means a natural person residing in this state who subscribes to a  
207 service provided by a service provider.

208 (3) "Content provider" means a person that creates, collects, acquires, or organizes  
209 electronic data for electronic delivery to a consumer.

210 (4) (a) "Hosting company" means a person that provides services or facilities for  
211 storing or distributing content over the Internet without editorial or creative alteration of the

212 content.

213 (b) A hosting company may have policies concerning the content it hosts without  
214 becoming a content provider under Subsection (3).

215 (5) (a) "Internet service provider" means a person engaged in the business of providing  
216 a computer and communications facility through which a consumer may obtain access to the  
217 Internet.

218 (b) "Internet service provider" does not include a common carrier if it provides only  
219 telecommunications service.

220 (6) "Properly rated" means content using a labeling system to label the material  
221 provided by the content provider in a way that:

222 (a) accurately apprises a consumer of the presence of material harmful to minors; and

223 (b) allows the consumer the ability to control access to the material based on the  
224 material's rating by use of commercially available software, including software in the public  
225 domain.

226 (7) (a) Except as provided in Subsection (7)(b), "service provider" means:

227 (i) an Internet service provider; or

228 (ii) a person who otherwise provides an Internet access service to a consumer.

229 (b) "Service provider" does not include a person who does not terminate a service in  
230 this state, but merely transmits data through:

231 (i) a wire;

232 (ii) a cable; or

233 (iii) an antenna.

234 (c) "Service provider," notwithstanding Subsection (7)(b), includes a person who meets  
235 the requirements of Subsection (7)(a) and leases or rents a wire or cable for the transmission of  
236 data.

237 Section 7. Section **76-10-1231** is enacted to read:

238 **76-10-1231. Data service providers -- Internet content harmful to minors.**

239 (1) (a) Upon request by a consumer, a service provider shall use filtering technology to  
240 prevent the transmission of material harmful to minors to the consumer at no additional cost to  
241 the consumer.

242 (b) A service provider complies with Subsection (1)(a) if it uses a generally accepted



243 and commercially reasonable method of filtering.

244 (2) At the time of a consumer's subscription to a service provider's service, or at the  
245 time this section takes effect if the consumer subscribes to the service provider's service at the  
246 time this section takes effect, the service provider shall notify the consumer in a conspicuous  
247 manner that the consumer may request to have material harmful to minors blocked under  
248 Subsection (1).

249 (3) (a) A service provider with fewer than 5,000 subscribers may comply with  
250 Subsection (1) by recommending software designed to block material harmful to minors that  
251 the consumer can purchase from the service provider and install on the consumer's computer.

252 (b) If a consumer requests software under Subsection (3)(a), the service provider shall  
253 provide the software to the consumer at the service provider's cost.

254 (c) The Division of Consumer Protection may extend the application of Subsection  
255 (3)(a) to a service provider with more than 5,000 customers if the division determines that  
256 substantial economic or technological barriers prevent the service provider from otherwise  
257 complying with Subsection (1).

258 (4) After December 31, 2005, a service provider that violates Subsection (1) or (2) is:

259 (a) subject to a civil fine of \$2,500 for each separate violation of Subsection (1) or (2),  
260 up to \$10,000 per day; and

261 (b) guilty of a class A misdemeanor if:

262 (i) the service provider knowingly or intentionally fails to comply with Subsection (1);

263 or

264 (ii) the service provider fails to provide the notice required by Subsection (2).

265 (5) A proceeding to impose a civil fine under Subsection (4)(a) may only be brought by  
266 the attorney general in a court of competent jurisdiction.

267 (6) (a) The Division of Consumer Protection within the Department of Commerce  
268 shall, in consultation with other entities as the Division of Consumer Protection considers  
269 appropriate, test the effectiveness of a service provider's system for blocking material harmful  
270 to minors under Subsection (1) at least annually.

271 (b) The results of testing by the Division of Consumer Protection under Subsection  
272 (3)(a) shall be made available to:

273 (i) the service provider that is the subject of the test; and

274 (ii) the public.  
275 (c) The Division of Consumer Protection shall make rules in accordance with Title 63,  
276 Chapter 46a, Utah Administrative Rulemaking Act, to fulfil its duties under this section.

277 Section 8. Section **76-10-1232** is enacted to read:

278 **76-10-1232. Data service providers -- Adult content registry.**

279 (1) (a) A service provider may not transmit material from a content provider listed on  
280 the adult content registry created by Section 67-5-19 to a consumer if the consumer notifies the  
281 service provider that the consumer requests that the service provider prevent the consumer's  
282 receipt of material from a content provider listed on the adult content registry created by  
283 Section 67-5-19.

284 (b) At the time of a consumer's subscription to a service provider's service, or at the  
285 time this section takes effect if the consumer subscribes to the service provider's service at the  
286 time this section takes effect, the service provider shall notify the consumer that:

287 (i) the consumer may request to have material on the adult content registry blocked  
288 under Subsection (1)(a); and

289 (ii) the consumer's request to have material harmful to minors blocked under  
290 Subsection (1)(a) may result in the service provider blocking material that is not harmful to  
291 minors because of limitations in technology.

292 (2) (a) (i) A service provider that uses a generally accepted and commercially  
293 reasonable method to prevent a consumer's access under Subsection (1) is not guilty of  
294 violating this section.

295 (ii) A service provider shall block material from the adult content registry by domain  
296 name.

297 (b) A service provider may not charge a consumer for blocking material under this  
298 section.

299 (c) A service provider shall coordinate the service provider's list of content providers  
300 on the adult content registry with the attorney general's list of content providers on the adult  
301 content registry at least weekly.

302 (3) A service provider that violates Subsection (1) or (2) is:

303 (a) subject to a civil fine of \$2,500 for each separate violation of Subsection (1) or (2),  
304 up to \$10,000 per day; and

305 (b) guilty of a class A misdemeanor if the service provider knowingly or intentionally  
306 fails to comply with Subsection (1) or (2).

307 (4) A proceeding to impose a civil fine under Subsection (4)(a) may only be brought by  
308 the attorney general in a court of competent jurisdiction.

309 Section 9. Section **76-10-1233** is enacted to read:

310 **76-10-1233. Content providers -- Internet content harmful to minors.**

311 (1) A content provider that generates or hosts content in Utah shall properly rate, under  
312 Subsection 76-10-1231(1)(d), material harmful to minors that is generated or hosted in Utah.

313 (2) The Division of Consumer Protection shall make rules in accordance with Title 63,  
314 Chapter 46a, Utah Administrative Rulemaking Act, to establish acceptable rating methods to  
315 be implemented by a content provider under Subsection (1).

316 (3) If the attorney general determines that a content provider violates Subsection (1),  
317 the attorney general shall:

318 (a) notify the content provider that the content provider is in violation of Subsection  
319 (1); and

320 (b) notify the content provider that the content provider has 30 days to comply with  
321 Subsection (1) or be subject to Subsection (4).

322 (4) Beginning on September 1, 2005, if a content provider violates this section more  
323 than 30 days after receiving the notice provided in Subsection (3), the content provider is guilty  
324 of a third degree felony.

325 Section 10. **Appropriation.**

326 (1) (a) There is appropriated for fiscal year 2005-06 only, \$100,000 from the General  
327 Fund to the Division of Consumer Protection for public service announcements advising  
328 consumers about the dangers of the Internet.

329 (b) It is the intent of the Legislature that the money appropriated in Subsection (1)(a)  
330 shall be used to publicize in various forms of media:

331 (i) the dangers of using the Internet, especially Internet pornography;

332 (ii) steps a consumer may take to learn more about the dangers of using the Internet;

333 (iii) information about how a service provider can help a consumer learn more about  
334 the dangers of using the Internet, including the service provider's duties created by this bill; and

335 (iv) how a consumer can monitor the Internet usage of family members.

336 (2) There is appropriated for fiscal year 2005-06 only, \$100,000 from the General Fund  
337 to the attorney general to establish the Adult Content Registry created by this bill.

338 (3) (a) There is appropriated for fiscal year 2005-06 only, \$50,000 from the General  
339 Fund to the Division of Consumer Protection to conduct a research project.

340 (b) It is the intent of the Legislature that the Division of Consumer Protection use the  
341 monies appropriated in Subsection (3)(a) to research the effectiveness of:

342 (i) existing technology for limiting access to material harmful to minors on the  
343 Internet;

344 (ii) obstacles to consumer use of existing technology that limits access to material  
345 harmful to minors on the Internet; and

346 (iii) methods of educating the public about the dangers of using the Internet.

347 (c) The Division of Consumer Protection shall report the findings of the research for  
348 which monies under Subsection (3)(a) are appropriated to the Utah Technology Commission  
349 before December 1, 2005.

350 Section 11. **Effective date.**

351 If approved by two-thirds of all the members elected to each house, this bill takes effect  
352 upon approval by the governor, or the day following the constitutional time limit of Utah  
353 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,  
354 the date of veto override, except that Section 76-10-1232 takes effect on July 1, 2007.

---

**Legislative Review Note**  
**as of 2-21-05 7:26 PM**

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

**Office of Legislative Research and General Counsel**