

SB0185S01 compared with SB0185

~~{deleted text}~~ shows text that was in SB0185 but was deleted in SB0185S01.

Inserted text shows text that was not in SB0185 but was inserted into SB0185S01.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

Senator Todd Weiler proposes the following substitute bill:

CAUSE OF ACTION FOR MINORS INJURED BY{

}=PORNOGRAPHY

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd Weiler

House Sponsor: _____

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

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

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Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

78B-6-2100, Utah Code Annotated 1953

78B-6-2101, Utah Code Annotated 1953

78B-6-2102, Utah Code Annotated 1953

78B-6-2103, Utah Code Annotated 1953

78B-6-2104, Utah Code Annotated 1953

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

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

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

78B-6-2100. Title.

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

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

78B-6-2101. Definitions.

As used in this part:

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

(2) ~~{(a)}~~ "Pornographic material" means material ~~{with the quality of a}~~ that:

(a) the average person, applying contemporary community standards, finds that, taken as a whole, appeals to prurient interest in sex;

(b) is patently offensive in the description or ~~{representation, in whatsoever form,}~~ depiction of nudity, sexual conduct, sexual excitement, ~~{or}~~ sadomasochistic abuse ~~{when the material,}~~ , or excretion; and

~~{(i)}~~ (c) taken as a whole ~~{, appeals to the prurient interest in sex of minors;~~

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

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

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

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

78B-6-2102. Exemptions.

(1) ~~{This}~~ If the conditions of Subsection (2) are met, this part does not apply to ~~an Internet service provider or~~:

(a) the following, as defined in the Communications Act of 1934, as amended:

(i) an interactive computer service, ~~as defined in 47 U.S.C. Sec. 230(f)(2), a provider of an electronic communications service as defined in 18 U.S.C. Sec. 2510,~~

(ii) a telecommunications service, information service, or mobile service ~~as defined in 47 U.S.C. Sec. 153~~, including a commercial mobile service; or

(iii) a multichannel video programming distributor;

(b) an Internet service provider;

(c) a provider of an electronic communications service;

(d) a distributor of Internet-based video services;

(e) a host company as defined in ~~47 U.S.C. Sec. 332(d), or a cable operator as defined in 47 U.S.C. Sec. 522, if:~~

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

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

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

~~(b) the provider does not intentionally aid or abet in the distribution of the pornographic material; and~~

~~(c) the provider does not knowingly receive from or through a person who distributes the pornographic material a fee greater than the fee generally charged by the provider, as a specific condition for permitting the person to distribute the pornographic material;~~ Section 76-10-1230; or

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

(2) This part does not apply to ~~a hosting company, as defined~~ an entity described in ~~{Section 76-10-1230,}~~ Subsection (1) if:

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(a) the distribution of pornographic material by the ~~{hosting company}~~entity occurs only incidentally through the ~~{hosting company's function of}~~entity's function of:

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

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

~~(iii) providing data storage space or data caching to a person;~~

(b) the ~~{hosting company}~~entity does not intentionally ~~{engage,}~~aid~~{,}~~ or abet in the distribution of the pornographic material; and

(c) the ~~{hosting company}~~entity does not knowingly receive from or through a person who distributes the pornographic material a fee greater than the fee generally charged by the ~~{provider}~~entity, as a specific condition for permitting the person to distribute~~{, store, or cache}~~ the pornographic material.

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

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

(1) A person who ~~{produces pornographic material, distributes pornographic material, or otherwise}~~predominately distributes or otherwise predominately provides pornographic material to another person is liable to the person if:

(a) at the time the pornographic material is ~~{produced, distributed, or otherwise provided}~~viewed by the person, the person is a minor; and

(b) the pornographic material is the proximate cause for the person being harmed physically or psychologically, or by emotional or medical illnesses as a result of that pornographic material.

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

(3) Notwithstanding Subsection (1), a person who ~~{produces,}~~distributes~~{,}~~ or otherwise provides pornographic material is not liable under this section if the person who ~~{produces,}~~distributes~~{,}~~ or otherwise provides pornographic material:

(a) provides a warning that:

(i) is conspicuous;

(ii) appears before the pornographic material can be accessed; and

(iii) {is similar to one of the following:

~~—— (A) "Using pornography may impair sexual function with partners.";~~

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~~— (B) "Using pornography can cause escalating sexual preferences to more extreme content.";~~

~~— (C) "Using pornography has been shown to reduce sexual and relationship satisfaction.";~~

~~— (D) "Using pornography may become compulsive."; or~~

~~— (E) "Some jurisdictions recognize pornography as a public health hazard.";~~ consists of a good faith effort to warn persons accessing the pornographic material that the pornographic material may be harmful to minors; and

(b) makes a good faith ~~efforts~~ effort to ~~prevent minors from~~ verify the age of a person accessing the pornographic material.

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

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

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

(1) If a court finds that a person violates Section 78B-6-2103, the court may award the plaintiff:

(a) actual damages; ~~and~~

(b) punitive damages, if it is proven that the person targeted minors ~~;~~ and

~~— (c) ~~;~~~~

(2) In an action brought under this part, the court may award the prevailing party attorney fees and costs.

(~~2~~)³ A class action may be brought under this part in accordance with Utah Rules of Civil Procedure, Rule 23.

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Legislative Review Note

Office of Legislative Research and General Counsel