

MATERIALS HARMFUL TO MINORS AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd Weiler

House Sponsor: _____

LONG TITLE

General Description:

This bill amends the Utah Criminal Code regarding an Internet service provider's responsibility to offer content filtering methods for material harmful to minors.

Highlighted Provisions:

This bill:

- ▶ amends the definition of Internet service provider;
- ▶ requires an Internet service provider to annually notify consumers and the Division of Consumer Protection of the ability to block material harmful to minors;
- ▶ provides a civil fine for failure to comply with the preceding paragraph;
- ▶ requires the Division of Consumer Protection to annually report to the Government Operations Interim Committee;
- ▶ allows certain Internet service providers to engage a third party to assist with filtering methods;
- ▶ increases the cap on the civil fine that may be imposed on an Internet service provider that knowingly fails to filter material harmful to minors; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None



28 **Utah Code Sections Affected:**

29 AMENDS:

30 **76-10-1230**, as last amended by Laws of Utah 2008, Chapter 297

31 **76-10-1231**, as last amended by Laws of Utah 2008, Chapters 297 and 382



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

34 Section 1. Section **76-10-1230** is amended to read:

35 **76-10-1230. Definitions.**

36 As used in Sections **76-10-1231** and **76-10-1233**:

37 (1) "Consumer" means ~~[a natural person]~~ an individual residing in this state who
38 subscribes to a service provided by a service provider for personal or residential use.

39 (2) "Content provider" means a person domiciled in Utah or that generates or hosts
40 content in Utah, and that creates, collects, acquires, or organizes electronic data for electronic
41 delivery to a consumer with the intent of making a profit.

42 (3) (a) "Hosting company" means a person that provides services or facilities for
43 storing or distributing content over the Internet without editorial or creative alteration of the
44 content.

45 (b) A hosting company may have policies concerning acceptable use without becoming
46 a content provider under Subsection (2).

47 (4) ~~[(a)]~~ "Internet service provider" means a person engaged in the business of
48 providing ~~[a computer communications facility in Utah]~~ Internet access, with the intent of
49 making a profit, ~~[through which a consumer may obtain access to the Internet]~~ to consumers in
50 Utah.

51 ~~[(b) "Internet service provider" does not include a common carrier if it provides only~~
52 ~~telecommunications service.]~~

53 (5) "Properly rated" means content using a labeling system to label material harmful to
54 minors provided by the content provider in a way that:

55 (a) accurately appraises a consumer of the presence of material harmful to minors; and

56 (b) allows the consumer the ability to control access to material harmful to minors
57 based on the material's rating by use of reasonably priced commercially available software,
58 including software in the public domain.

59 (6) "Restrict" means to limit access to material harmful to minors by:

60 (a) properly rating content; or

61 (b) any other reasonable measures feasible under available technology.

62 (7) (a) Except as provided in Subsection (7)(b), "service provider" means an Internet
63 service provider.

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

66 (i) a wire;

67 (ii) a cable; or

68 (iii) an antenna.

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

72 Section 2. Section **76-10-1231** is amended to read:

73 **76-10-1231. Data service providers -- Internet content harmful to minors.**

74 (1) (a) Upon request by a consumer, a service provider shall filter content to prevent
75 the transmission of material harmful to minors to the consumer.

76 (b) A service provider complies with Subsection (1)(a) if ~~[it uses a]~~ the service
77 provider makes a good faith effort to apply a generally accepted and commercially reasonable
78 method of filtering.

79 (2) (a) At the time of a consumer's subscription to a service provider's service, ~~[or at~~
80 ~~the time this section takes effect if the consumer subscribes to the service provider's service at~~
81 ~~the time this section takes effect,]~~ the service provider shall notify the consumer in a
82 conspicuous manner that the consumer may request to have material harmful to minors blocked
83 under Subsection (1)(a).

84 (b) A service provider shall annually notify all of the service provider's consumers in a
85 conspicuous manner that the consumer may request material harmful to minors be blocked
86 under Subsection (1)(a).

87 (c) Before December 31 of each year, a service provider shall notify the Division of
88 Consumer Protection within the Department of Commerce that notice was sent under
89 Subsection (2)(b).

90 (d) The Division of Consumer Protection within the Department of Commerce shall
91 report all violations of Subsections (2)(b) and (c) to the attorney general.

92 (3) (a) A service provider may comply with Subsection (1)(a) by~~[(i)]~~ providing
93 in-network filtering to prevent receipt of material harmful to minors, provided that the filtering
94 does not affect or interfere with access to Internet content for consumers who do not request
95 filtering under Subsection (1)~~[(a)]~~.

96 ~~[(ii) providing software,]~~

97 (b) A service provider with fewer than 500 consumers may comply with Subsection
98 (1)(a) by engaging a third party to provide [software, or referring users to a third party that
99 provides filtering software, by providing a clear and conspicuous hyperlink or written
100 statement, for installation on the consumer's computer that blocks, in an easy-to-enable and
101 commercially reasonable manner,] a commercially reasonable method of filtering to block the
102 receipt of material harmful to minors.

103 ~~[(b)]~~ (c) A service provider may charge a consumer a commercially reasonable fee for
104 providing filtering under this Subsection (3)~~[(a)]~~.

105 (4) If the attorney general determines that a service provider violates Subsection (1) or
106 (2), the attorney general shall:

107 (a) notify the service provider that the service provider is in violation of Subsection (1)
108 or (2); and

109 (b) notify the service provider that the service provider has ~~[30]~~ 90 days to comply with
110 the provision being violated or be subject to Subsection (5).

111 (5) (a) A service provider that intentionally or knowingly violates Subsection (1)~~[(a)]~~
112 ~~[(2)]~~(a) is subject to a civil fine of \$2,500 for each separate violation of Subsection (1)~~[(a)]~~
113 ~~[(2)]~~(a), up to ~~[\$10,000]~~ \$15,000 per day.

114 (b) A service provider that intentionally or knowingly violates Subsection (2) is subject
115 to a civil fine up to \$50,000.

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

118 (7) (a) The Division of Consumer Protection within the Department of Commerce
119 shall, with the technical assistance of the Department of Technology Services and in
120 consultation with other entities as the Division of Consumer Protection considers appropriate,

121 test the effectiveness of a service provider's system for blocking material harmful to minors
122 under Subsection (1) at least annually.

123 (b) The [~~results of testing by the~~] Division of Consumer Protection shall make the
124 results of testing under Subsection (7)(a) [~~shall be made~~] available to:

125 (i) the service provider that is the subject of the test; [~~and~~]

126 (ii) the public[-]; and

127 (iii) the Legislature in an annual report to the Government Operations Interim
128 Committee.

129 (c) The Division of Consumer Protection shall make rules in accordance with Title
130 63G, Chapter 3, Utah Administrative Rulemaking Act, to [~~fulfil~~] fulfill its duties under this
131 section.

Legislative Review Note
Office of Legislative Research and General Counsel