

## SB0134S01 compared with SB0134

~~{deleted text}~~ shows text that was in SB0134 but was deleted in SB0134S01.

Inserted text shows text that was not in SB0134 but was inserted into SB0134S01.

**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:

### MATERIALS HARMFUL TO MINORS AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Todd Weiler**

House Sponsor: \_\_\_\_\_

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#### 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

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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;
- ▶ removes provisions requiring the Division of Consumer Protection to test an Internet service provider's filtering methods; and
- ▶ makes technical changes.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

AMENDS:

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

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

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

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

#### **76-10-1230. Definitions.**

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

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

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

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

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

(4) ~~[(a)]~~ "Internet service provider" means a person engaged in the business of providing ~~[a computer communications facility in Utah]~~ Internet access, with the intent of

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making a profit, [~~through which a consumer may obtain access to the Internet~~] to consumers in Utah.

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

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

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

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

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

(a) properly rating content; or

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

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

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

(i) a wire;

(ii) a cable; or

(iii) an antenna.

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

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

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

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

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

(2) (a) At the time of a consumer's subscription to a service provider's service, [~~or at~~

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~~the time this section takes effect if the consumer subscribes to the service provider's service at the time this section takes effect,]~~ the service provider shall notify the consumer in a conspicuous manner that the consumer may request to have material harmful to minors blocked under Subsection (1)(a).

(b) (i) A service provider shall ~~annually~~, before December 30, 2018, notify all of the service provider's consumers in a conspicuous manner that the consumer may request material harmful to minors be blocked under Subsection (1)(a).

(ii) A service provider may provide the notice described in Subsection (2)(b)(i):

(A) by electronic communication;

(B) with a consumer's bill; or

(C) in another conspicuous manner.

(c) Before December 31 ~~of each year~~, 2018, a service provider shall:

(i) notify the Division of Consumer Protection within the Department of Commerce that notice was sent under Subsection (2)(b); and

(ii) provide the Division of Consumer Protection within the Department of Commerce a copy of the notice that was sent under Subsection (2)(b).

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

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

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

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

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

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

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

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

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

(b) A service provider that intentionally or knowingly violates Subsection (2) is subject to a civil fine up to ~~[\$50]~~ \$10,000.

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

~~[(7)(a) The Division of Consumer Protection within the Department of Commerce shall, { with the technical assistance of the Department of Technology Services and} in consultation with other entities as the Division of Consumer Protection considers appropriate, test the effectiveness of a service provider's system for blocking material harmful to minors under Subsection (1) at least annually.]~~

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

~~[(i) the service provider that is the subject of the test, {} and]~~

~~[(ii) the public {}.] {} and~~

~~[(iii) the Legislature in an annual report to the Government Operations Interim Committee.]~~

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

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**Legislative Review Note**

**Office of Legislative Research and General Counsel**