

**WARNING LABELS AMENDMENTS**

2020 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Brady Brammer**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill creates a cause of action that may be brought against a person who distributes pornography without a visible warning.

**Highlighted Provisions:**

This bill:

- ▶ allows the attorney general or a member of the public to bring an action against a person who distributes pornography without a visible warning;
- ▶ requires an individual person to first notify the attorney general before bringing an action;
- ▶ allows for a civil penalty of up to \$2,500 for each violation;
- ▶ requires that a portion of any recovery be provided to the Crime Victims Reparations Fund;
- ▶ provides a process for curing the violation and paying a reduced penalty; and
- ▶ requires the Judicial Council to adjust the penalty every five years.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:



28 [78B-6-2104](#), as enacted by Laws of Utah 2017, Chapter 464

29 ENACTS:

30 [78B-6-2105](#), Utah Code Annotated 1953



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

32 Section 1. Section [78B-6-2104](#) is amended to read:

33 **[78B-6-2104. Damages -- Class action.](#)**

34 (1) If a court finds that a person [~~violates~~] is violating Section [78B-6-2103](#), the court  
35 may award the plaintiff:

36 (a) actual damages; and

37 (b) punitive damages, if it is proven that the person targeted minors.

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

40 Section 2. Section [78B-6-2105](#) is enacted to read:

41 **[78B-6-2105. Civil action for enforcement -- Penalties.](#)**

42 (1) A person may not distribute material the state considers harmful to minors as  
43 defined in Section [76-10-1201](#) without first giving a clear and reasonable warning of the  
44 harmful impact of exposing minors to the material. The warning of the harm shall be  
45 prominently displayed in the following form:

46 STATE OF UTAH WARNING

47 Exposing minors to pornography is known to the state of Utah to cause negative impacts to  
48 brain development, emotional development, and the ability to maintain intimate relationships.

49 Such exposure may lead to harmful and addictive sexual behavior, low self-esteem, and the  
50 improper objectification of and sexual violence towards others, among numerous other harms.

51 (2) (a) For print publications, the warning in Subsection (1) shall be placed in clear,  
52 readable type on the cover of each publication which includes material as defined in Section  
53 [76-10-1201](#).

54 (b) For digital publications, the warning in Subsection (1) shall be displayed for at least  
55 15 seconds prior to the display of any video or each image which includes material as defined  
56 in Section [76-10-1201](#).

57 (3) A person who violates Section [78B-6-2103](#) shall be liable for a civil penalty not to  
58

59 exceed \$2,500 per violation, plus filing fees and attorney fees, in addition to any other penalty  
60 established by law, and enjoined from further violations. The civil penalty may be assessed and  
61 recovered in a civil action brought in any court of competent jurisdiction. Each violation shall  
62 be the sale or display of potentially harmful content without the warning required in Subsection  
63 (1), in accordance with Subsection (2). The court, in ordering payment, shall specify each  
64 amount for the civil penalty, filing fees, and attorney fees.

65 (4) In assessing the amount of a civil penalty for a violation of this chapter, the court  
66 shall consider all of the following:

67 (a) the nature and extent of the violation;

68 (b) the number and severity of the violations;

69 (c) the economic effect of the penalty on the violator;

70 (d) whether the violator took good faith measures to comply with this chapter and  
71 when those measures were taken;

72 (e) the willfulness of the violator's misconduct;

73 (f) the deterrent effect that the imposition of the penalty would have on both the  
74 violator and the regulated community as a whole; and

75 (g) any other factor that the court determines justice requires.

76 (5) Actions pursuant to this section may be brought by the attorney general's office in  
77 the name of the people of the state or by a private person in accordance with Subsection (6).

78 (6) A private person may bring an action in the public interest pursuant to this section  
79 if:

80 (a) the person has served notice of an alleged violation of Section [78B-6-2103](#) on the  
81 alleged violator and the attorney general's office;

82 (b) the attorney general's office has not provided a letter to the noticing party within 60  
83 days of receipt of the notice of an alleged violation indicating that:

84 (i) an action is currently being pursued or will be pursued by the attorney general's  
85 office regarding the violation; or

86 (ii) the attorney general believes that there is no merit to the action; and

87 (c) the alleged violator has not responded to the notice of alleged violation or returned  
88 the proof of compliance form provided in Subsection (12).

89 (7) If a lawsuit is commenced, the plaintiff may include additional violations in the

90 claim that are discovered through the discovery process.

91 (8) Notice of the alleged violation shall be executed by the attorney for the noticing  
92 party, or by the noticing party, if the noticing party is not represented by an attorney, and  
93 include a notice of alleged violation. The notice of alleged violation shall:

94 (a) state that the person executing the notice believes that there is a violation; and

95 (b) provide factual information sufficient to establish the basis for the alleged violation.

96 (9) A person who serves a notice of alleged violation identified in Subsection (8) shall  
97 complete and provide to the alleged violator at the time the notice of alleged violation is  
98 served, a notice of special compliance procedure and proof of compliance form pursuant to  
99 Subsection (12). The person may file an action against the alleged violator, or recover from the  
100 alleged violator if:

101 (a) the notice of alleged violation alleges that the alleged violator failed to provide a  
102 clear and reasonable warning as required under Subsection (1); and

103 (b) within 14 days after receipt of the notice of alleged violation, the alleged violator  
104 has not:

105 (i) corrected the alleged violation and all similar violations known to the alleged  
106 violator;

107 (ii) agreed to pay a penalty for the alleged violation in the amount of \$500 per  
108 violation; and

109 (iii) notified, in writing, the noticing party that the violation has been corrected.

110 (10) The written notice required in Subsection (9)(b)(iii) shall be the notice of special  
111 compliance procedure and proof of compliance form specified in Subsection (12). The alleged  
112 violator shall deliver the civil penalty to the noticing party within 30 days of receipt of the  
113 notice of alleged violation.

114 (11) The attorney general shall review the notice of alleged violation and may confer  
115 with the noticing party. If the attorney general believes there is no merit to the action, the  
116 attorney general shall, within 45 days of receipt of the notice of alleged violation, provide a  
117 letter to the noticing party and the alleged violator stating that the attorney general believes  
118 there is no merit to the action.

119 (12) The notice required to be provided to an alleged violator pursuant to Subsection  
120 (9) shall be presented as follows:

121 Date:  
 122 Name of Noticing Party or attorney for Noticing Party:  
 123 Address:  
 124 Phone number:

125 SPECIAL COMPLIANCE PROCEDURE  
 126 PROOF OF COMPLIANCE

127 You are receiving this form because the Noticing Party listed above has alleged that you are in  
 128 violation of Utah Code Section [78B-6-2103](#).

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

- 131 (1) you have not actually taken the corrective steps that you have certified in this form;
- 132 (2) the Noticing Party has not received this form at the address shown above, accurately  
 133 completed by you, postmarked within 14 days of your receiving this notice; and
- 134 (3) the Noticing Party does not receive the required \$500 penalty payment for each violation  
 135 alleged from you at the address shown above postmarked within 30 days of your receiving this  
 136 notice.

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

139 This notice of alleged violation is for failure to warn against an exposure to minors of materials  
 140 considered harmful to minors. (provide complete description of violation, including when and  
 141 where observed)

142 Date:  
 143 Name of Noticing Party or attorney for Noticing Party:  
 144 Address:  
 145 Phone number:

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

148 Certification of Compliance  
 149 Accurate completion of this form will demonstrate that you are now in compliance with Utah  
 150 Code Section [78B-6-2103](#), for the alleged violation listed above. You must complete and  
 151 submit the form below to the Noticing Party at the address shown above, postmarked within 14

152 days of you receiving this notice.  
153 I hereby agree to pay, within 30 days of receipt of this notice, a penalty of \$500 for each  
154 violation alleged to the Noticing Party only and certify that I have complied with by (check  
155 only one of the following):

156 [ ] Posting a warning or warnings, and attaching a copy of that warning and a photograph  
157 accurately showing its placement on the print or digital publication.

158 [ ] Eliminating the alleged exposure, and attaching a statement accurately describing how the  
159 alleged exposure has been eliminated.

160 CERTIFICATION

161 My statements on this form, and on any attachments to it, are true, complete, and correct to the  
162 best of my knowledge and belief and are made in good faith. I have carefully read the  
163 instructions to complete this form. I understand that if I make a false statement on this form, I  
164 may be subject to additional penalties under Utah Code Section [76-10-1206](#).

165 Signature of alleged violator or authorized representative:

166 Date:

167 Name and title of signatory:

168 (13) An alleged violator may satisfy the conditions set forth in Subsection (12) only  
169 one time for a specific violation.

170 (14) Notwithstanding Subsection (12), the attorney general may file an action pursuant  
171 to Subsection (5) against an alleged violator. In any action, the amount of any civil penalty for  
172 a violation shall be reduced to reflect any payment made by the alleged violator to a private  
173 person in accordance with Subsection (12) for the same alleged violation.

174 (15) Payments shall be made in accordance with this section.

175 (a) A civil penalty ordered by the court shall be paid to the plaintiff as directed by the  
176 court.

177 (b) A penalty paid in accordance with the special compliance procedure in Subsection  
178 (12) shall be made directly to the noticing party.

179 (16) The Utah Office for Victims of Crime shall receive 50% of any penalty paid in  
180 accordance with this section. Funds received shall be deposited in the Crime Victim  
181 Reparations Fund created in Section [51-9-404](#). The penalty amount upon which the 50% is  
182 calculated may not include attorney fees or costs awarded by the court.

183 (a) If the penalty is paid to a noticing party in accordance with Subsection (12), the  
184 noticing party shall remit the required amount along with a copy of the Special Compliance  
185 Procedure document.

186 (b) If a civil penalty is ordered by the court, the plaintiff shall remit the required  
187 amount along with a copy of the court order.

188 (17) The attorney general's office shall provide to the Utah Office for Victims of Crime  
189 a copy of all notices of alleged violations to which the attorney general's office did not respond  
190 with a letter of no merit in accordance with Subsection (11).

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

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

194 (a) maintain a record of documents and payments submitted pursuant to Subsections  
195 (16), (17), and (18);

196 (b) create and provide to the Legislature in odd-numbered years beginning November  
197 2021, a report containing the following for the previous two years:

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

200 (ii) the number of court orders received; and

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

202 (20) Beginning May 1, 2025, and at each five-year interval, the dollar amount of the  
203 civil penalty provided in Subsection (3) shall be adjusted by the Judicial Council based on the  
204 change in the annual Consumer Price Index for the most recent five-year period ending on  
205 December 31 of the previous year, and rounded to the nearest five dollars. The attorney general  
206 shall publish the dollar amount of the civil penalty together with the date of the next scheduled  
207 adjustment.