

DEVICE FILTER AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Susan Pulsipher

Senate Sponsor: _____

LONG TITLE

General Description:

This bill establishes filter requirements and enforcement mechanisms for tablets and smart phones activated in the state on or after January 1, 2022.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires a tablet or a smart phone (a device) manufactured on or after January 1, 2022, to, when activated in the state, automatically enable a filter capable of blocking material that is harmful to minors;
- ▶ requires the filter enabled at activation to:
 - prevent the user of the device from accessing material that is harmful to minors on the device;
 - enable certain users to deactivate the filter for the device or for specific content;
- and
- notify the user when content is filtered;
- ▶ provides a process for the attorney general or a member of the public to bring a civil action against a manufacturer that manufactures a device on or after January 1, 2022, if:
 - the device does not contain an enabled filter upon activation in the state; and
 - a minor accessed material that is harmful to minors on the device;



- 28 ▶ allows for a civil penalty of up to \$2,500 for each violation;
- 29 ▶ requires that a portion of any civil penalty recovery be provided to the Crime
- 30 Victims Reparations Fund;
- 31 ▶ provides a process for curing the violation and paying a reduced penalty; and
- 32 ▶ requires the Judicial Council to adjust the penalty every five years.

33 **Money Appropriated in this Bill:**

34 None

35 **Other Special Clauses:**

36 None

37 **Utah Code Sections Affected:**

38 ENACTS:

39 **78B-6-2201**, Utah Code Annotated 1953

40 **78B-6-2202**, Utah Code Annotated 1953

41 **78B-6-2203**, Utah Code Annotated 1953

42 **78B-6-2204**, Utah Code Annotated 1953

43 **78B-6-2205**, Utah Code Annotated 1953

44 **78B-6-2206**, Utah Code Annotated 1953



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

47 Section 1. Section **78B-6-2201** is enacted to read:

48 **Part 22. Cause of Action to Protect Minors from Unfiltered Devices**

49 **78B-6-2201. Title.**

50 This part is known as "Cause of Action to Protect Minors from Unfiltered Devices."

51 Section 2. Section **78B-6-2202** is enacted to read:

52 **78B-6-2202. Definitions.**

53 As used in this part:

54 (1) "Activate" means the process of powering on a device and associating it with a new
55 user account.

56 (2) "Device" means a tablet or a smart phone manufactured on or after January 1, 2022.

57 (3) "Filter" means software installed on a device that is capable of preventing the
58 device from accessing or displaying material that is harmful to minors through the Internet or

59 any applications owned and controlled by the manufacturer and installed on the device.

60 (4) "Harmful to minors" means the same as that term is defined in Section [76-10-1201](#).

61 (5) "Internet" means the same as that term is defined in Section [13-40-102](#).

62 (6) (a) "Manufacturer" means a person that:

63 (i) is engaged in the business of manufacturing a device; and

64 (ii) has a commercial registered agent as that term is defined in Section [16-17-102](#).

65 (b) "Manufacturer" includes a registrant as that term is defined in Section [70-3a-103](#).

66 (7) "Minor" means an individual under the age of 18 who is not emancipated, married,

67 or a member of the armed forces of the United States.

68 (8) (a) "Mobile carrier" means a wireless service provider that supplies cellular

69 connectivity services to smart phone and computer subscribers.

70 (b) "Mobile carrier" includes mobile virtual network operators.

71 (9) "Mobile data" means wireless data and Internet a mobile carrier provides to a

72 device.

73 (10) "Smart phone" means the same as that term is defined in Section [63A-2-101.5](#).

74 (11) "Tablet" means a mobile device that:

75 (a) is equipped with a mobile operating system, touchscreen display, and rechargeable

76 battery; and

77 (b) has the ability to support access to a cellular network.

78 Section 3. Section **78B-6-2203** is enacted to read:

79 **78B-6-2203. Filter required.**

80 Beginning on January 1, 2022, a manufacturer shall manufacture a device that, when

81 activated in the state, automatically enables a filter that:

82 (1) when enabled, prevents the user from accessing or downloading material that is

83 harmful to minors on:

84 (a) mobile data networks;

85 (b) applications owned and controlled by the manufacturer;

86 (c) wired Internet networks; and

87 (d) wireless Internet networks;

88 (2) notifies the user of the device when the filter blocks the device from downloading

89 an application or accessing a website;

90 (3) gives a user with a passcode the opportunity to unblock a filtered application or
91 website; and

92 (4) reasonably precludes a user other than a user with a passcode the opportunity to
93 deactivate, modify, or uninstall the filter.

94 Section 4. Section **78B-6-2204** is enacted to read:

95 **78B-6-2204. Liability.**

96 (1) Beginning January 1, 2022, a manufacturer of a device is liable to a minor in the
97 state if:

98 (a) the device is activated in the state;

99 (b) the device does not, upon activation in the state, enable a filter that complies with
100 the requirements described in Section [78B-6-2203](#); and

101 (c) the minor accesses material that is harmful to minors on the device.

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

104 (3) Notwithstanding Subsection (1), this section does not apply to a manufacturer that
105 makes a good faith effort to install and provide a device that, upon activation of the device in
106 the state, automatically enables a generally accepted and commercially reasonable method of
107 filtration in accordance with this part and industry standards.

108 Section 5. Section **78B-6-2205** is enacted to read:

109 **78B-6-2205. Damages -- Class action.**

110 (1) If a court finds that a manufacturer is liable under Section [78B-6-2204](#), the court
111 may award the plaintiff:

112 (a) actual damages; and

113 (b) punitive damages, if the plaintiff proves that the manufacturer targeted minors.

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

116 Section 6. Section **78B-6-2206** is enacted to read:

117 **78B-6-2206. Civil action for enforcement -- Penalties.**

118 (1) (a) A manufacturer that is found liable under Section [78B-6-2204](#) shall be:

119 (i) liable for civil penalties not to exceed \$2,500 per violation, plus filing fees and
120 attorney fees, in addition to any other penalty established by law; and

- 121 (ii) enjoined from further violations.
- 122 (b) The civil penalty may be assessed and recovered in a civil action brought in any
123 court of competent jurisdiction.
- 124 (c) For purposes of assessing a penalty under Subsection (1), a manufacturer is
125 considered to have committed a separate violation for each device manufactured on or after
126 January 1, 2022, and activated in the state on which:
- 127 (i) a filter is not automatically enabled; and
- 128 (ii) a minor encounters material harmful to minors.
- 129 (2) (a) A plaintiff shall prove and a court shall find, by clear and convincing evidence,
130 that a manufacturer manufactured a device on or after January 1, 2022, that was activated in the
131 state in violation of Section [78B-6-2203](#).
- 132 (b) The plaintiff shall prove all other elements by a preponderance of the evidence.
- 133 (3) The court shall specify the amount of each of the following for each violation:
- 134 (a) the civil penalty;
- 135 (b) filing fees; and
- 136 (c) attorney fees.
- 137 (4) In assessing the amount of a civil penalty for a violation of this chapter, the court
138 shall consider the following:
- 139 (a) the nature and extent of the violation;
- 140 (b) the number and severity of the violations;
- 141 (c) the economic effect of the penalty on the violator;
- 142 (d) the good faith measures the violator took to comply with this part;
- 143 (e) the timing of the measures the violator took to comply with this part;
- 144 (f) the willfulness of the violator's misconduct;
- 145 (g) the deterrent effect that the imposition of the penalty would have on both the
146 violator and the regulated community as a whole; and
- 147 (h) any other factor that the court determines justice requires.
- 148 (5) Actions pursuant to this part may be brought by the attorney general's office in the
149 name of the people of the state or by a private individual in accordance with Subsection (6).
- 150 (6) A private individual may bring an action in the public interest to establish liability
151 under Section [78B-6-2204](#) pursuant to this section and after satisfying the requirements of

152 Subsections (7), (8), and (9), if:

153 (a) the individual has served on the alleged violator and the attorney general's office a
154 notice of an alleged violation of Subsection [78B-6-2203\(3\)](#);

155 (b) the attorney general's office has not provided a letter to the noticing party within 45
156 days after the day on which the attorney general's office receives the notice of an alleged
157 violation indicating that:

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

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

161 (c) the alleged violator has not responded to the notice of alleged violation or returned
162 the proof of compliance form provided in Subsection (11).

163 (7) (a) The attorney for the noticing party, or the noticing party if the noticing party is
164 not represented by an attorney, shall execute the notice of an alleged violation.

165 (b) The notice of an alleged violation shall:

166 (i) state that the individual executing the notice believes that there is a violation; and

167 (ii) provide factual information sufficient to establish the basis for the alleged
168 violation.

169 (8) (a) The attorney general shall review the notice of an alleged violation and may
170 confer with the noticing party.

171 (b) The attorney general shall provide, within 45 days after the day on which the
172 attorney general received the notice of an alleged violation, a letter to the noticing party and the
173 alleged violator that states whether or not the attorney general finds merit in the action.

174 (9) (a) An individual who serves a notice of an alleged violation described in
175 Subsection (7) shall complete and provide to the alleged violator at the time the notice of the
176 alleged violation is served, a notice of special compliance procedure and proof of compliance
177 form pursuant to Subsection (11).

178 (b) The individual may file an action against the alleged violator, or recover from the
179 alleged violator, if:

180 (i) the notice of alleged violation alleges that the alleged violator failed to manufacture
181 a device that, when activated in the state, automatically enabled a filter as required under
182 Section [78B-6-2203](#);

183 (ii) a minor encountered material harmful to minors on the device without the option to
184 enable a filter; and

185 (iii) within 60 days after the day on which the alleged violator receives the notice of the
186 alleged violation, the alleged violator has not:

187 (A) corrected the alleged violation and all similar violations known to the alleged
188 violator;

189 (B) agreed to pay a penalty for the alleged violation in the amount of \$500 per
190 violation; and

191 (C) notified, in writing, the noticing party and the attorney general's office that the
192 violation has been corrected.

193 (10) (a) The written notice required in Subsection (9)(b)(iii)(C) shall be the notice of
194 special compliance procedure and proof of compliance form specified in Subsection (11).

195 (b) The alleged violator shall deliver the civil penalty to the noticing party within 60
196 days after the day on which the alleged violator received the notice of the alleged violation.

197 (11) The notice required to be provided to an alleged violator pursuant to Subsection
198 (9) shall be presented as follows:

199 "Date:

200 Name of Noticing Party or Attorney for Noticing Party:

201 Address:

202 Phone Number:

203 SPECIAL COMPLIANCE PROCEDURE

204 PROOF OF COMPLIANCE

205 You are receiving this form because the Noticing Party listed above has alleged that you
206 are in violation of Utah Code Section [78B-6-2202](#).

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

209 (1) you have not actually taken the corrective steps that you have certified in this form;

210 (2) the Noticing Party has not received this form at the address shown above,
211 accurately completed by you, postmarked within 50 days after you receive this notice; and

212 (3) the Noticing Party does not receive the required \$500 penalty payment for each
213 violation alleged from you at the address shown above postmarked within 60 days of your

214 receiving this notice.

215 PART 1: TO BE COMPLETED BY THE NOTICING PARTY OR ATTORNEY FOR
216 THE NOTICING PARTY

217 This notice of alleged violation is for failure to provide an activated filter to protect
218 minors against exposure to materials considered harmful to minors. [provide complete
219 description of violation(s), including when and where observed and the serial number(s) of the
220 device(s) involved]

221 Date:

222 Name of Noticing Party or Attorney for Noticing Party:

223 Address:

224 Phone Number:

225 PART 2: TO BE COMPLETED BY THE ALLEGED VIOLATOR OR AUTHORIZED
226 REPRESENTATIVE

227 Certification of Compliance

228 Accurate completion of this form will demonstrate you are now in compliance with
229 Utah Code Section 78B-6-2203, for the alleged violation listed above. You must complete and
230 submit the form below to the Noticing Party at the address shown above, with a copy to the
231 Utah Attorney General's Office, postmarked within 50 days of you receiving this notice.

232 I hereby agree to pay, within 60 days of receipt of this notice, a penalty of \$500 for each
233 violation alleged to the Noticing Party only and certify that I have complied by (check only one
234 of the following):

235 [] Providing the party at the address shown above with information about how to
236 enable a filter.

237 [] Providing the party at the address shown above with information about how to
238 exchange a device that did not have a filter automatically enable upon activation for a
239 replacement device of the same model that will automatically enable the filter upon activation
240 in the state.

241 CERTIFICATION

242 My statements on this form, and on any attachments to it, are true, complete, and
243 correct to the best of my knowledge and belief and are made in good faith. I have carefully read
244 the instructions to complete this form.

245 Signature of alleged violator or authorized representative:

246 Date:

247 Name and title of signatory:".

248 (12) If a lawsuit is commenced, the plaintiff may include additional violations in the
249 claim that are discovered through the discovery process.

250 (13) An alleged violator shall satisfy the conditions set forth in Subsection (11) only
251 one time per device.

252 (14) (a) Notwithstanding an alleged violator's compliance with Subsection (10), the
253 attorney general may file an action pursuant to Subsection (5) against the alleged violator.

254 (b) In any action, a court shall reduce the amount of any civil penalty for a violation to
255 reflect any payment made by the alleged violator to a private individual in accordance with
256 Subsection (10) for the same alleged violation.

257 (15) Payments shall be made as follows:

258 (a) a civil penalty ordered by the court shall be paid to the plaintiff as directed by the
259 court; and

260 (b) a penalty paid in accordance with the special compliance procedure in Subsection
261 (11) shall be made directly to the noticing party.

262 (16) (a) The Utah Office for Victims of Crimes shall receive 50% of any penalty paid
263 in accordance with this section.

264 (b) Funds received shall be deposited into the Crime Victim Reparations Fund created
265 in Section [63M-7-526](#).

266 (c) The penalty amount upon which the 50% is calculated may not include attorney
267 fees or costs awarded by the court.

268 (d) If the penalty is paid to a noticing party in accordance with Subsection (11), the
269 noticing party shall remit the amount required by this Subsection (16) along with a copy of the
270 Special Compliance Procedure document.

271 (e) If a civil penalty is ordered by the court, the plaintiff shall remit the amount
272 required by this Subsection (16) along with a copy of the court order.

273 (17) The attorney general's office shall provide to the Utah Office for Victims of Crime
274 a copy of all notices of alleged violations to which the attorney general's office did not respond
275 with a letter of merit in accordance with Subsection (8).

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

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

279 (a) maintain a record of documents and payments submitted pursuant to Subsections
280 (16), (17), and (18); and

281 (b) create and provide to the Legislature in odd-numbered years beginning in
282 November 2023 a report containing the following for the previous two years:

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

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

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

287 (20) This section does not apply to a manufacturer who makes a good faith effort to
288 install and enable upon activation in the state a generally accepted and commercially
289 reasonable method of filtration in accordance with this part and industry standards.

290 (21) (a) Beginning May 1, 2025, and at each five-year interval, the Judicial Council
291 shall adjust the dollar amount of the civil penalty provided in Subsection (1) based on the
292 change in the annual Consumer Price Index for the most recent five-year period ending on
293 December 31 of the previous year and rounded to the nearest five dollars.

294 (b) The attorney general shall publish the dollar amount of the civil penalty together
295 with the date of the next scheduled adjustment.