

Representative Susan Pulsipher proposes the following substitute bill:

DEVICE FILTER AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Susan Pulsipher

Senate Sponsor: Wayne A. Harper

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 of the year following the year this bill takes effect.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires a tablet or a smart phone (a device) sold in the state and manufactured on or after January 1 of the year following the year this bill takes effect 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



26 action against a manufacturer that manufactures a device on or after January 1 of the year
27 following the year this bill takes effect if:

- 28 • the device does not contain an enabled filter upon activation in the state; and
- 29 • a minor accessed material that is harmful to minors on the device;
- 30 ▶ allows for a civil penalty of up to \$10 for each violation;
- 31 ▶ requires that a portion of any civil penalty recovery be provided to the Crime
32 Victims Reparations Fund;
- 33 ▶ provides a process for curing the violation and paying a reduced penalty;
- 34 ▶ requires the Judicial Council to adjust the penalty every five years; and
- 35 ▶ provides a sunset date.

36 **Money Appropriated in this Bill:**

37 None

38 **Other Special Clauses:**

39 This bill provides a contingent effective date.

40 This bill provides revisor instructions.

41 **Utah Code Sections Affected:**

42 AMENDS:

43 **63I-2-278**, as last amended by Laws of Utah 2018, Chapters 38 and 281

44 ENACTS:

45 **78B-6-2201**, Utah Code Annotated 1953

46 **78B-6-2202**, Utah Code Annotated 1953

47 **78B-6-2203**, Utah Code Annotated 1953

48 **78B-6-2204**, Utah Code Annotated 1953

49 **78B-6-2205**, Utah Code Annotated 1953

50 **78B-6-2206**, Utah Code Annotated 1953

51 **Utah Code Sections Affected by Revisor Instructions:**

52 **78B-6-2202**, Utah Code Annotated 1953

53 **78B-6-2203**, Utah Code Annotated 1953

54 **78B-6-2204**, Utah Code Annotated 1953

55 **78B-6-2206**, Utah Code Annotated 1953

56

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

58 Section 1. Section **63I-2-278** is amended to read:

59 **63I-2-278. Repeal dates -- Title 78A and Title 78B.**

60 [~~Subsection **78B-6-144**(5) is repealed January 1, 2019.~~]

61 If Title 78B, Chapter 6, Part 22, Cause of Action to Protect Minors from Unfiltered
62 Devices, is not in effect before January 1, 2031, Title 78B, Chapter 6, Part 22, Cause of Action
63 to Protect Minors from Unfiltered Devices, is repealed January 1, 2031.

64 Section 2. Section **78B-6-2201** is enacted to read:

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

66 **78B-6-2201. Title.**

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

68 Section 3. Section **78B-6-2202** is enacted to read:

69 **78B-6-2202. Definitions.**

70 As used in this part:

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

73 (2) "Device" means a tablet or a smart phone sold in Utah and manufactured on or after
74 January 1 of the year following the year this bill takes effect.

75 (3) "Filter" means software installed on a device that is capable of preventing the
76 device from accessing or displaying material that is harmful to minors through the Internet or
77 any applications owned and controlled by the manufacturer and installed on the device.

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

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

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

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

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

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

84 (7) "Minor" means an individual under the age of 18 who is not emancipated, married,
85 or a member of the armed forces of the United States.

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

87 (9) "Tablet" means a mobile device that:

88 (a) is equipped with a mobile operating system, touchscreen display, and rechargeable
89 battery; and

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

91 Section 4. Section **78B-6-2203** is enacted to read:

92 **78B-6-2203. Filter required.**

93 Beginning on January 1 of the year following the year this bill takes effect, a
94 manufacturer shall manufacture a device that, when activated in the state, automatically enables
95 a filter that:

96 (1) when enabled, prevents the user from accessing or downloading material that is
97 harmful to minors on:

98 (a) mobile data networks;

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

100 (c) wired Internet networks; and

101 (d) wireless Internet networks;

102 (2) notifies the user of the device when the filter blocks the device from downloading
103 an application or accessing a website;

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

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

108 Section 5. Section **78B-6-2204** is enacted to read:

109 **78B-6-2204. Liability.**

110 (1) Beginning January 1 of the year following the year this bill takes effect, a
111 manufacturer of a device is liable to a minor in the state if:

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

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

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

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

118 (3) Notwithstanding Subsection (1), this section does not apply to a manufacturer that

119 makes a good faith effort to provide a device that, upon activation of the device in the state,
120 automatically enables a generally accepted and commercially reasonable method of filtration in
121 accordance with this part and industry standards.

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

123 **78B-6-2205. Damages -- Class action.**

124 (1) If a court finds that a manufacturer is liable under Section [78B-6-2204](#), the court
125 may award the plaintiff actual damages.

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

128 Section 7. Section **78B-6-2206** is enacted to read:

129 **78B-6-2206. Civil action for enforcement -- Penalties.**

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

131 (i) liable for civil penalties not to exceed \$10 per violation, plus filing fees and attorney
132 fees, in addition to any other penalty established by law; and

133 (ii) enjoined from further violations.

134 (b) The civil penalty may be assessed and recovered in a civil action brought in any
135 court of competent jurisdiction.

136 (c) For purposes of assessing a penalty under Subsection (1), a manufacturer is
137 considered to have committed a separate violation for each device manufactured on or after
138 January 1 of the year following the year this bill takes effect, and activated in the state on
139 which:

140 (i) a filter is not automatically enabled; and

141 (ii) a minor encounters material harmful to minors.

142 (d) The total civil penalty assessed in a civil action brought under this section may not
143 exceed \$500, regardless of how many separate violations the plaintiff establishes.

144 (2) (a) A plaintiff shall prove and a court shall find, by clear and convincing evidence,
145 that a manufacturer manufactured a device on or after January 1 of the year following the year
146 this bill takes effect, that was activated in the state in violation of Section [78B-6-2203](#).

147 (b) The plaintiff shall prove all other elements by a preponderance of the evidence.

148 (3) The court shall specify the amount of each of the following for each violation:

149 (a) the civil penalty;

150 (b) filing fees; and

151 (c) attorney fees.

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

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

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

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

157 (d) the good faith measures the violator took to comply with this part;

158 (e) the timing of the measures the violator took to comply with this part;

159 (f) the willfulness of the violator's misconduct;

160 (g) the deterrent effect that the imposition of the penalty would have on both the
161 violator and the regulated community as a whole; and

162 (h) any other factor that the court determines justice requires.

163 (5) Actions pursuant to this part may be brought by the attorney general's office in the
164 name of the people of the state or by a private individual in accordance with Subsection (6).

165 (6) A private individual may bring an action in the public interest to establish liability
166 under Section [78B-6-2204](#) pursuant to this section and after satisfying the requirements of
167 Subsections (7), (8), and (9), if:

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

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

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

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

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

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

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

181 (i) state that the individual executing the notice believes that there is a violation; and
182 (ii) provide factual information sufficient to establish the basis for the alleged
183 violation.

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

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

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

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

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

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

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

202 (A) corrected the alleged violation and all similar violations known to the alleged
203 violator;

204 (B) agreed to pay a penalty for the alleged violation in the amount of \$10 per violation,
205 up to \$500, regardless of the number of separate violations alleged in the notice; and

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

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

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

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

214 "Date:

215 Name of Noticing Party or Attorney for Noticing Party:

216 Address:

217 Phone Number:

218 SPECIAL COMPLIANCE PROCEDURE

219 PROOF OF COMPLIANCE

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

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

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

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

227 (3) the Noticing Party does not receive the required \$10 penalty payment for each
228 violation alleged, with a total payment not to exceed \$500 regardless of the number of separate
229 violations alleged in the notice, from you at the address shown above postmarked within 60
230 days of your receiving this notice.

231 PART 1: TO BE COMPLETED BY THE NOTICING PARTY OR ATTORNEY FOR
232 THE NOTICING PARTY

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

237 Date:

238 Name of Noticing Party or Attorney for Noticing Party:

239 Address:

240 Phone Number:

241 PART 2: TO BE COMPLETED BY THE ALLEGED VIOLATOR OR AUTHORIZED
242 REPRESENTATIVE

243 Certification of Compliance

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

248 I hereby agree to pay, within 60 days of receipt of this notice, a penalty of \$10 for each
249 violation alleged to the Noticing Party only and certify that I have complied by (check only one
250 of the following):

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

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

257 CERTIFICATION

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

261 Signature of alleged violator or authorized representative:

262 Date:

263 Name and title of signatory:".

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

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

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

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

273 (15) Payments shall be made as follows:

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

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

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

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

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

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

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

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

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

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

295 (a) maintain a record of documents and payments submitted pursuant to Subsections
296 (16), (17), and (18); and

297 (b) create and provide to the Legislature in odd-numbered years beginning after
298 November of the year following the year this bill takes effect a report containing the following
299 for the previous two years:

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

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

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

304 (20) This section does not apply to a manufacturer who makes a good faith effort to

305 install and enable upon activation in the state a generally accepted and commercially
306 reasonable method of filtration in accordance with this part and industry standards.

307 (21) (a) Beginning May 1 of the year following the year this bill takes effect, and at
308 each five-year interval, the Judicial Council shall adjust the dollar amount of the civil penalty
309 provided in Subsection (1) based on the change in the annual Consumer Price Index for the
310 most recent five-year period ending on December 31 of the previous year and rounded to the
311 nearest five dollars.

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

314 **Section 8. Contingent effective date.**

315 (1) Title 78B, Chapter 6, Part 22, Cause of Action to Protect Minors from Unfiltered
316 Devices, takes effect on the first day of January following the day on which at least five states,
317 other than Utah, pass legislation in substantially the same form as Subsection [78B-6-2203\(1\)](#)
318 and the enactments by the states have taken effect in each state.

319 (2) The lieutenant governor shall inform the legislative general counsel, in writing, of
320 the date Title 78B, Chapter 6, Part 22, Cause of Action to Protect Minors from Unfiltered
321 Devices, takes effect in accordance with this section.

322 **Section 9. Revisor instructions.**

323 For purposes of Sections [78B-6-2202](#), [78B-6-2203](#), [78B-6-2204](#), and [78B-6-2206](#), the
324 Legislature intends that the Office of Legislative Research and General Counsel, in preparing
325 the Utah Code database for publication, on the date this bill takes effect, replace the phrase "of
326 the year following the year this bill takes effect" with the year after the year the bill takes effect.
327 For example, if the lieutenant governor informs the legislative general counsel that this bill
328 takes effect in 2022, the Legislature intends that the Office of Legislative Research and General
329 Counsel replace the phrase "of the year following the year this bill takes effect" with the date
330 "2023".