

ONLINE PORNOGRAPHY VIEWING AGE REQUIREMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd D. Weiler

House Sponsor: Susan Pulsipher

LONG TITLE

General Description:

This bill creates obligations and liabilities for a commercial entity that provides pornography or other materials harmful to minors.

Highlighted Provisions:

This bill:

- ▶ provides definitions;
- ▶ requires a commercial entity that provides pornography and other materials defined as being harmful to minors as a substantial portion of the entity's content to verify the age of individuals accessing the material;
- ▶ establishes requirements and liability for retention of data;
- ▶ imposes liability for publishers and distributors of material harmful to minors who fail to comply with verification requirements; and
- ▶ provides that an Internet service provider or hosting entity is not liable for hosting or transmitting material harmful to minors to the extent that it is not the creator of the material.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:



28 ENACTS:

29 **78B-3-1001**, Utah Code Annotated 1953

30 **78B-3-1002**, Utah Code Annotated 1953

31

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

33 Section 1. Section **78B-3-1001** is enacted to read:

34 **Part 10. Liability for Publishers and Distributors of Material Harmful to Minors**

35 **78B-3-1001. Definitions.**

36 As used in this chapter:

37 (1) "Commercial entity" includes corporations, limited liability companies,
38 partnerships, limited partnerships, sole proprietorships, or other legally recognized entities.

39 (2) "Digitized identification card" means a data file available on any mobile device
40 which has connectivity to the Internet through a state-approved application that allows the
41 mobile device to download the data file from a state agency or an authorized agent of a state
42 agency that contains all of the data elements visible on the face and back of a license or
43 identification card and displays the current status of the license or identification card.

44 (3) "Distribute" means to issue, sell, give, provide, deliver, transfer, transmute,
45 circulate, or disseminate by any means.

46 (4) "Internet" means the international computer network of both federal and
47 non-federal interoperable packet switched data networks.

48 (5) "Material harmful to minors" is defined as all of the following:

49 (a) any material that the average person, applying contemporary community standards,
50 would find, taking the material as a whole and with respect to minors, is designed to appeal to,
51 or is designed to pander to, the prurient interest;

52 (b) material that exploits, is devoted to, or principally consists of descriptions of actual,
53 simulated, or animated display or depiction of any of the following, in a manner patently
54 offensive with respect to minors:

55 (i) pubic hair, anus, vulva, genitals, or nipple of the female breast;

56 (ii) touching, caressing, or fondling of nipples, breasts, buttocks, anuses, or genitals; or

57 (iii) sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation,
58 excretory functions, exhibitions, or any other sexual act; and

59 (c) the material taken as a whole lacks serious literary, artistic, political, or scientific
60 value for minors.

61 (6) "Minor" means any person under 18 years old.

62 (7) "News-gathering organization" means any of the following:

63 (a) an employee of a newspaper, news publication, or news source, printed or on an
64 online or mobile platform, of current news and public interest, while operating as an employee
65 as provided in this subsection, who can provide documentation of such employment with the
66 newspaper, news publication, or news source; or

67 (b) an employee of a radio broadcast station, television broadcast station, cable
68 television operator, or wire service while operating as an employee as provided in this
69 subsection, who can provide documentation of such employment.

70 (8) "Publish" means to communicate or make information available to another person
71 or entity on a publicly available Internet website.

72 (9) "Reasonable age verification methods" means verifying that the person seeking to
73 access the material is 18 years old or older by using any of the following methods:

74 (a) use of a digitized information card as defined in this section;

75 (b) verification through an independent, third-party age verification service that
76 compares the personal information entered by the individual who is seeking access to the
77 material that is available from a commercially available database, or aggregate of databases,
78 that is regularly used by government agencies and businesses for the purpose of age and
79 identity verification; or

80 (c) any commercially reasonable method that relies on public or private transactional
81 data to verify the age of the person attempting to access the material.

82 (10) "Substantial portion" means more than 33-1/3% of total material on a website,
83 which meets the definition of "material harmful to minors" as defined in this section.

84 (11) (a) "Transactional data" means a sequence of information that documents an
85 exchange, agreement, or transfer between an individual, commercial entity, or third party used
86 for the purpose of satisfying a request or event.

87 (b) "Transactional data" includes records from mortgage, education, and employment
88 entities.

89 Section 2. Section **78B-3-1002** is enacted to read:

90 78B-3-1002. Liability for publishers and distributors -- Age verification --
91 **Retention of data -- Exceptions.**

92 (1) A commercial entity that knowingly and intentionally publishes or distributes
93 material harmful to minors on the Internet from a website that contains a substantial portion of
94 such material shall be held liable if the entity fails to perform reasonable age verification
95 methods to verify the age of an individual attempting to access the material.

96 (2) A commercial entity or third party that performs the required age verification shall
97 not retain any identifying information of the individual after access has been granted to the
98 material.

99 (3) A commercial entity that is found to have violated this section shall be liable to an
100 individual for damages resulting from a minor's accessing the material, including court costs
101 and reasonable attorney fees as ordered by the court.

102 (4) A commercial entity that is found to have knowingly retained identifying
103 information of the individual after access has been granted to the individual shall be liable to
104 the individual for damages resulting from retaining the identifying information, including court
105 costs and reasonable attorney fees as ordered by the court.

106 (5) This section shall not apply to any bona fide news or public interest broadcast,
107 website video, report, or event and shall not be construed to affect the rights of a
108 news-gathering organization.

109 (6) No Internet service provider, affiliate or subsidiary of an Internet service provider,
110 search engine, or cloud service provider shall be held to have violated the provisions of this
111 section solely for providing access or connection to or from a website or other information or
112 content on the Internet, or a facility, system, or network not under that provider's control,
113 including transmission, downloading, storing, or providing access, to the extent that such
114 provider is not responsible for the creation of the content of the communication that constitutes
115 material harmful to minors.