

WARNING LABEL AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brady Brammer

Senate Sponsor: Todd D. Weiler

LONG TITLE

General Description:

This bill modifies provisions that create a cause of action for injury of a minor by pornographic material.

Highlighted Provisions:

This bill:

- ▶ modifies certain exemptions for liability for entities for a cause of action for injury of a minor by pornographic material;
- ▶ changes provisions of the safe harbor protections for liability for a cause of action for injury of a minor by pornographic material;
- ▶ clarifies who must give a warning of the harmful impact of exposing pornographic material to a minor; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78B-6-2102, as enacted by Laws of Utah 2017, Chapter 464

78B-6-2103, as last amended by Laws of Utah 2020, Chapter 442



28 **78B-6-2105**, as enacted by Laws of Utah 2020, Chapter 442

29

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

31 Section 1. Section **78B-6-2102** is amended to read:

32 **78B-6-2102. Exemptions.**

33 (1) If the conditions of Subsection (2) are met, this part does not apply to:

34 (a) the following, as defined in the Communications Act of 1934, as amended:

35 (i) an interactive computer service;

36 (ii) a telecommunications service, information service, or mobile service, including a
37 commercial mobile service; or

38 (iii) a multichannel video programming distributor;

39 (b) an Internet service provider;

40 (c) a provider of an electronic communications service;

41 (d) a distributor of Internet-based video services;

42 (e) a host company as defined in Section **76-10-1230**; or

43 (f) a distributor of electronic or computerized game software that users manipulate
44 through interactive devices.

45 (2) This part does not apply to an entity described in Subsection (1) if:

46 (a) the distribution of pornographic material by the entity occurs only incidentally
47 through the entity's function of:

48 (i) transmitting or routing data from one person to another person;

49 (ii) providing a connection between one person and another person; or

50 (iii) providing data storage space or data caching to a person; and

51 (b) the entity does not intentionally aid or abet in the distribution of the pornographic
52 material[~~and~~].

53 [~~(c) the entity does not knowingly receive from or through a person who distributes the~~
54 ~~pornographic material a fee greater than the fee generally charged by the entity, as a specific~~
55 ~~condition for permitting the person to distribute the pornographic material.]~~

56 Section 2. Section **78B-6-2103** is amended to read:

57 **78B-6-2103. Liability -- Safe harbor.**

58 (1) A person who is not exempt under Section **78B-6-2102**, and who [~~predominately~~]

59 distributes or otherwise [~~predominately~~] provides pornographic material to consumers is liable
60 to a person if:

61 (a) at the time the pornographic material is viewed by the person, the person is a minor;
62 and

63 (b) the pornographic material is the proximate cause for the person being harmed
64 physically or psychologically, or by emotional or medical illnesses as a result of that
65 pornographic material.

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

68 (3) Notwithstanding Subsection (1), a person who distributes or otherwise provides
69 pornographic material is not liable under this section if the person who distributes or otherwise
70 provides pornographic material:

71 (a) provides a warning that:

72 (i) is conspicuous;

73 (ii) appears before the pornographic material can be accessed; and

74 (iii) consists of a good faith effort to warn persons accessing the pornographic material
75 that the pornographic material may be harmful to minors; and

76 (b) makes a good faith effort to verify the age of a person accessing the pornographic
77 material.

78 (4) Subsection (3) may not be interpreted as exempting a person from complying with
79 Title 13, Chapter 39, Child Protection Registry.

80 (5) (a) Notwithstanding Section 78B-6-2105, a person who is not exempt under
81 Section 78B-6-2102, and who [~~predominately~~] distributes or otherwise [~~predominately~~]
82 provides obscene material to consumers without a warning label or without the metadata
83 described in Subsection 78B-6-2105(3)(b) is not liable if the person demonstrates reasonable
84 efforts to determine the location of recipients of obscene material within the state and the
85 placement of warning labels on material that enters the state. Reasonable efforts shall result in
86 a compliance rate that exceeds 75% of the content believed to enter the state within the shorter
87 of six months prior to any claim, or from May 12, 2020, to the time of the claim. Proof of
88 reasonable efforts shall remove liability only for the type of compliance for which reasonable
89 efforts have been proven.

90 (b) The use of virtual private networks or similar technology by the consumer to hide
91 the consumer's location may not be included in a compliance rate calculation.

92 (6) Notwithstanding Section 78B-6-2105, a video game without a warning label is not
93 liable if it has a rating of the Entertainment Software Rating Board or equivalent, as long as it
94 also explicitly provides notice of the content as part of the rating.

95 Section 3. Section 78B-6-2105 is amended to read:

96 **78B-6-2105. Civil action for enforcement -- Penalties.**

97 (1) A person who [~~predominately~~] distributes or otherwise [~~predominately~~] provides
98 pornographic material to consumers [~~with the intent to earn revenue or profit directly or~~
99 ~~indirectly from the distribution~~] may not distribute any obscene material or performance as
100 defined in Section 76-10-1203 without first giving a clear and reasonable warning of the
101 harmful impact of exposing minors to the material or performance.

102 (2) The warning of the harm shall be prominently displayed in the following form:

103 STATE OF UTAH WARNING

104 Exposing minors to obscene material may damage or negatively impact minors.

105 [~~(2)~~] (3) (a) For print publications created after May 12, 2020, the warning in
106 Subsection [~~(1)~~] (2) shall be placed in clear, readable type on the cover of each publication
107 which includes material as defined in Section 76-10-1201.

108 (b) For digital publications:

109 (i) the warning in Subsection [~~(1)~~] (2) shall be displayed in searchable text format and
110 for at least five seconds prior to the display of any video or each image which includes material
111 as defined in Section 76-10-1201; or

112 (ii) if the website complies with Subsection 78B-6-2103(3), it is not required to display
113 the warning in Subsection [~~(1)~~] (2) prior to each video or image contained on the website.

114 [~~(3)~~] (4) A person who violates this section shall be liable for a civil penalty not to
115 exceed \$2,500 per violation, plus filing fees and attorney fees, in addition to any other penalty
116 established by law, and enjoined from further violations.

117 (5) The civil penalty may be assessed and recovered in a civil action brought in any
118 court of competent jurisdiction.

119 (6) Each of the following violations shall create a separate liability per violation:

120 (a) the sale or display of potentially harmful content without the warning required in

121 Subsection ~~[(1)]~~ (2), in accordance with Subsection ~~[(2)]~~ (3); or

122 (b) the absence of the following searchable text within the website's metadata -
123 utahobscenitywarning.

124 ~~[(4)]~~ (7) The determination by a court as to whether a person is distributing material
125 the state considers to be obscene material or performance as defined in Section 78B-6-1203
126 shall be proven by clear and convincing evidence. All other elements of proof shall be proven
127 by a preponderance of the evidence.

128 ~~[(5)]~~ (8) The court, in ordering payment, shall specify each amount for the civil
129 penalty, filing fees, and attorney fees.

130 ~~[(6)]~~ (9) In assessing the amount of a civil penalty for a violation of this chapter, the
131 court shall consider all of the following:

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

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

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

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

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

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

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

141 ~~[(7)]~~ (10) Actions pursuant to this section may be brought by the attorney general's
142 office in the name of the people of the state or by a private person in accordance with
143 Subsection ~~[(8)]~~ (11).

144 ~~[(8)]~~ (11) A private person may bring an action in the public interest pursuant to this
145 section if:

146 (a) the person has served notice of an alleged violation of Section 78B-6-2103 on the
147 alleged violator and the attorney general's office;

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

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

152 (ii) the attorney general believes that there is no merit to the action; and
153 (c) the alleged violator has not responded to the notice of alleged violation or returned
154 the proof of compliance form provided in Subsection ~~[(14)]~~ (17).

155 ~~[(9)]~~ (12) If a lawsuit is commenced, the plaintiff may include additional violations in
156 the claim that are discovered through the discovery process.

157 ~~[(10)]~~ (13) Notice of the alleged violation shall be executed by the attorney for the
158 noticing party, or by the noticing party, if the noticing party is not represented by an attorney,
159 and include a notice of alleged violation. The notice of alleged violation shall:

- 160 (a) state that the person executing the notice believes that there is a violation; and
- 161 (b) provide factual information sufficient to establish the basis for the alleged violation.

162 ~~[(11)]~~ (14) A person who serves a notice of alleged violation identified in Subsection
163 ~~[(10)]~~ (13) shall complete and provide to the alleged violator at the time the notice of alleged
164 violation is served, a notice of special compliance procedure and proof of compliance form
165 pursuant to Subsection ~~[(14)]~~ (17). The person may file an action against the alleged violator,
166 or recover from the alleged violator if:

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

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

- 171 (i) corrected the alleged violation and all similar violations known to the alleged
172 violator;
- 173 (ii) agreed to pay a penalty for the alleged violation in the amount of \$500 per
174 violation; and
- 175 (iii) notified, in writing, the noticing party that the violation has been corrected.

176 ~~[(12)]~~ (15) The written notice required in Subsection ~~[(11)(b)(iii)]~~ (14)(b)(iii) shall be
177 the notice of special compliance procedure and proof of compliance form specified in
178 Subsection ~~[(14)]~~ (17). The alleged violator shall deliver the civil penalty to the noticing party
179 within 30 days of receipt of the notice of alleged violation.

180 ~~[(13)]~~ (16) The attorney general shall review the notice of alleged violation and may
181 confer with the noticing party. If the attorney general believes there is no merit to the action,
182 the attorney general shall, within 45 days of receipt of the notice of alleged violation, provide a

183 letter to the noticing party and the alleged violator stating that the attorney general believes
184 there is no merit to the action.

185 [~~(14)~~] (17) The notice required to be provided to an alleged violator pursuant to
186 Subsection [~~(14)~~] (14) shall be presented as follows:

187 Date:

188 Name of Noticing Party or attorney for Noticing Party:

189 Address:

190 Phone number:

191 SPECIAL COMPLIANCE PROCEDURE

192 PROOF OF COMPLIANCE

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

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

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

198 (2) the Noticing Party has not received this form at the address shown above,
199 accurately completed by you, postmarked within 14 days of your receiving this notice; and

200 (3) the Noticing Party does not receive the required \$500 penalty payment for each
201 violation alleged from you at the address shown above postmarked within 30 days of your
202 receiving this notice.

203 PART 1: TO BE COMPLETED BY THE NOTICING PARTY OR ATTORNEY FOR
204 THE NOTICING PARTY

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

208 Date:

209 Name of Noticing Party or attorney for Noticing Party:

210 Address:

211 Phone number:

212 PART 2: TO BE COMPLETED BY THE ALLEGED VIOLATOR OR AUTHORIZED
213 REPRESENTATIVE

214 Certification of Compliance

215 Accurate completion of this form will demonstrate that you are now in compliance with
216 Utah Code Section 78B-6-2103, for the alleged violation listed above. You must complete and
217 submit the form below to the Noticing Party at the address shown above, postmarked within 14
218 days of you receiving this notice.

219 I hereby agree to pay, within 30 days of receipt of this notice, a penalty of \$500 for each
220 violation alleged to the Noticing Party only and certify that I have complied with by (check
221 only one of the following):

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

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

226 CERTIFICATION

227 My statements on this form, and on any attachments to it, are true, complete, and
228 correct to the best of my knowledge and belief and are made in good faith. I have carefully read
229 the instructions to complete this form. I understand that if I make a false statement on this
230 form, I may be subject to additional penalties under Utah Code Section 76-10-1206.

231 Signature of alleged violator or authorized representative:

232 Date:

233 Name and title of signatory:

234 [~~15~~] (18) An alleged violator may satisfy the conditions set forth in Subsection [~~14~~]
235 (17) only one time for a specific violation.

236 [~~16~~] (19) Notwithstanding Subsection [~~14~~] (17), the attorney general may file an
237 action pursuant to Subsection [~~7~~] (10) against an alleged violator. In any action, the amount
238 of any civil penalty for a violation shall be reduced to reflect any payment made by the alleged
239 violator to a private person in accordance with Subsection [~~14~~] (17) for the same alleged
240 violation.

241 [~~17~~] (20) Payments shall be made in accordance with this section.

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

244 (b) A penalty paid in accordance with the special compliance procedure in Subsection

245 [~~(14)~~] (17) shall be made directly to the noticing party.

246 [~~(18)~~] (21) The Utah Office for Victims of Crime shall receive 50% of any penalty paid
247 in accordance with this section. Funds received shall be deposited [~~in~~] into the Crime Victim
248 Reparations Fund created in Section 63M-7-526. The penalty amount upon which the 50% is
249 calculated may not include attorney fees or costs awarded by the court.

250 (a) If the penalty is paid to a noticing party in accordance with Subsection [~~(14)~~] (17),
251 the noticing party shall remit the required amount along with a copy of the Special Compliance
252 Procedure document.

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

255 [~~(19)~~] (22) The attorney general's office shall provide to the Utah Office for Victims of
256 Crime a copy of all notices of alleged violations to which the attorney general's office did not
257 respond with a letter of no merit in accordance with Subsection [~~(13)~~] (16).

258 [~~(20)~~] (23) The court shall provide to the Utah Office for Victims of Crime a copy of
259 the court's order for payment.

260 [~~(21)~~] (24) The Utah Office for Victims of Crime shall:

261 (a) maintain a record of documents and payments submitted pursuant to Subsections
262 [~~(18), (19), and (20)~~] (21), (22), and (23);

263 (b) create and provide to the Legislature in odd-numbered years beginning November
264 2021, a report containing the following for the previous two years:

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

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

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

269 [~~(22)~~] (25) This section does not apply to:

270 (a) a person portrayed in obscene or pornographic material that is created, duplicated,
271 or distributed without the person's knowledge or consent; or

272 (b) a person who is coerced or blackmailed into distributing obscene or pornographic
273 material.

274 [~~(23)~~] (26) Beginning May 1, 2025, and at each five-year interval, the dollar amount of
275 the civil penalty provided in Subsection [~~(3)~~] (4) shall be adjusted by the Judicial Council

276 based on the change in the annual Consumer Price Index for the most recent five-year period
277 ending on December 31 of the previous year, and rounded to the nearest five dollars. The
278 attorney general shall publish the dollar amount of the civil penalty together with the date of
279 the next scheduled adjustment.

280 Section 4. **Effective date.**

281 This bill takes effect on May 1, 2024.