

Representative Susan Pulsipher proposes the following substitute bill:

CHILDREN'S DEVICE PROTECTION ACT

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd D. Weiler

House Sponsor: Susan Pulsipher

LONG TITLE

General Description:

This bill enacts the Children's Device Protection Act.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires a tablet or a smartphone (a device) manufactured on or after January 1, 2025, to automatically enable a filter upon device activation by a minor;
- ▶ requires the filter enabled for minors at activation to:
 - prevent a minor user of the device from accessing material that is obscene through Internet browsers or search engines; and
 - provide non-minor users the option to deactivate and re-activate the filter with a password;
- ▶ permits the attorney general to bring civil actions against manufacturers of devices that do not comply with this bill;
- ▶ permits private civil actions by parents and guardians of minors against manufacturers and others who violate provisions of this bill; and
- ▶ makes it a criminal offense for any person, with the exception of a parent or legal guardian, to enable the removal of the filter on a device in the possession of a



26 minor.

27 **Money Appropriated in this Bill:**

28 None

29 **Other Special Clauses:**

30 This bill provides a special effective date.

31 **Utah Code Sections Affected:**

32 AMENDS:

33 **63I-2-278**, as last amended by Laws of Utah 2023, Chapters 33, 250

34 ENACTS:

35 **76-10-1238**, Utah Code Annotated 1953

36 **78B-6-2601**, Utah Code Annotated 1953

37 **78B-6-2602**, Utah Code Annotated 1953

38 **78B-6-2603**, Utah Code Annotated 1953

39 **78B-6-2604**, Utah Code Annotated 1953

40 **78B-6-2605**, Utah Code Annotated 1953

41 **78B-6-2606**, Utah Code Annotated 1953

42 REPEALS:

43 **78B-6-2202 (Contingently Effective)**, as enacted by Laws of Utah 2021, Chapter 416
44 and further amended by Revisor Instructions, Laws of Utah 2021, Chapter 416

45 **78B-6-2203 (Contingently Effective)**, as enacted by Laws of Utah 2021, Chapter 416
46 and further amended by Revisor Instructions, Laws of Utah 2021, Chapter 416

47 **78B-6-2204 (Contingently Effective)**, as enacted by Laws of Utah 2021, Chapter 416
48 and further amended by Revisor Instructions, Laws of Utah 2021, Chapter 416

49 **78B-6-2205 (Contingently Effective)**, as enacted by Laws of Utah 2021, Chapter 416
50 and further amended by Revisor Instructions, Laws of Utah 2021, Chapter 416

51 **78B-6-2206 (Contingently Effective)**, as enacted by Laws of Utah 2021, Chapter 416
52 and further amended by Revisor Instructions, Laws of Utah 2021, Chapter 416



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

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

56 **63I-2-278. Repeal dates: Title 78A and Title 78B.**

57 (1) Section [78A-2-804](#) is repealed on July 1, 2024.

58 (2) Title 78A, Chapter 10, Judicial Selection Act, is repealed on July 1, 2023.

59 ~~[(3) If Title 78B, Chapter 6, Part 22, Cause of Action to Protect Minors from~~
60 ~~Unfiltered Devices, is not in effect before January 1, 2031, Title 78B, Chapter 6, Part 22, Cause~~
61 ~~of Action to Protect Minors from Unfiltered Devices, is repealed January 1, 2031.]~~

62 ~~[(4)]~~ (3) Sections [78B-12-301](#) and [78B-12-302](#) are repealed on January 1, 2025.

63 Section 2. Section **76-10-1238** is enacted to read:

64 **76-10-1238. Deactivation of a device filter.**

65 (1) (a) An adult individual, other than the parent or legal guardian of the minor in
66 possession of a device, who intentionally disables the filter required under Section [78B-6-2602](#)
67 on a device in possession of a minor for the purpose of disseminating pornography to the
68 minor, commits a class A misdemeanor.

69 (b) For each offense of Subsection (1)(a), the violator is subject to a fine in an amount
70 not to exceed \$2,500.

71 (2) A person who has a prior conviction under this section, who commits a subsequent
72 violation of Subsection (1)(a), is guilty of a third degree felony and shall, for each separate
73 offense, be fined in an amount not to exceed \$5,000 and may be imprisoned for zero to five
74 years.

75 Section 3. Section **78B-6-2601** is enacted to read:

76 **Part 26. Children's Device Protection Act**

77 **78B-6-2601. Definitions.**

78 As used in this part:

79 (1) "Activate" means the process of powering on a device and associating the device
80 with a user account.

81 (2) "Device" means a tablet or a smart phone manufactured on or after January 1, 2025.

82 (3) "Filter" means $\hat{H} \rightarrow$ **generally accepted and commercially reasonable** $\leftarrow \hat{H}$ software
82a used on a device that is $\hat{H} \rightarrow$ **reasonably** $\leftarrow \hat{H}$ capable of preventing
83 the device from accessing or displaying obscene material through Internet browsers or search
84 engines $\hat{H} \rightarrow$ **owned or controlled by the manufacturer** $\leftarrow \hat{H}$ in accordance with prevailing
84a industry standards $\hat{H} \rightarrow$ **including blocking known**
84b **websites linked to obscene content** $\leftarrow \hat{H}$ via mobile data networks, wired
85 Internet networks, and wireless Internet networks.

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

87 (5) "Manufacturer" means a person that:

88 (a) ~~Ĥ→ (i) ←Ĥ~~ is engaged in the business of manufacturing a device;

89 ~~Ĥ→ [(b)] (ii) ←Ĥ~~ holds the patents for the device the person manufactures; ~~Ĥ→ [and] or~~

89a ~~(iii) holds the patents for the operating system on a device; and ←Ĥ~~

90 ~~Ĥ→ [(c)] (b) ←Ĥ~~ has a commercial registered agent as that term is defined in Section

90a [16-17-102](#).

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

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

93 (7) "Obscenity" means the same as that term is defined in Section [32B-1-504](#).

93a ~~Ĥ→ (8) "Operating system" means software that manages all of the other application~~

93b ~~programs on a device. ←Ĥ~~

94 ~~Ĥ→ [(8)] (9) ←Ĥ~~ "Password" means a string of characters or other secure method used to

94a enable,

95 deactivate, modify, or uninstall a filter on a device.

96 ~~Ĥ→ [(9)] (10) ←Ĥ~~ (a) "Retailer" means a person, that is not a manufacturer, that sells a

96a device directly

97 to consumers.

98 (b) "Retailer" includes an employee of a retailer acting in the course and scope of the

99 employee's employment.

100 ~~Ĥ→ [(10)] (11) ←Ĥ~~ "Smart phone" means the same as that term is defined in Section

100a [63A-2-101.5](#).

101 ~~Ĥ→ [(11)] (12) ←Ĥ~~ "Tablet" means a mobile device that:

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

103 battery; and

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

105 ~~Ĥ→ [(12)] (13) ←Ĥ~~ "Video game console" means a discrete computing system, including

105a the system's

106 components and peripherals, primarily used for playing video games, but does not include a

107 smartphone or tablet.

108 Section 4. Section **78B-6-2602** is enacted to read:

109 **78B-6-2602. Filter required.**

110 All devices activated in the state shall:

111 (1) contain a filter;

112 (2) ~~Ĥ→ [determine the age of a user]~~ ask the user to provide the user's age ←Ĥ during

112a activation and account set-up;☹

- 113 ⊕(3) automatically enable the filter when the user is a minor based on the \hat{H} →
113a [~~determination~~] age provided by the user as described ← \hat{H}
114 in Subsection (2);
115 (4) allow a password to be established for the filter;
116 (5) notify the user of the device when the filter blocks the device from accessing a
117 website; and
118 (6) allow a non-minor user that has a password the option to deactivate and re-activate

119 the filter.

120 Section 5. Section **78B-6-2603** is enacted to read:

121 **78B-6-2603. Manufacturer liability.**

122 (1) A manufacturer of a device is subject to civil liability if:

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

124 (b) the device does not, upon activation in the state, enable a filter that complies with
125 the requirements described in Section [78B-6-2602](#); and

126 (c) the minor accesses material that is obscene on the device.

127 (2) Notwithstanding Subsection (1), this section does not apply to a manufacturer that

128 makes a good faith effort to provide a device that, upon activation of the device in the state ~~Ĥ→~~ [

128a ~~**and**~~

129 ~~**using the age provided by the user, automatically enables a generally accepted and**~~

130 ~~**commercially reasonable filter that blocks obscene content on all Internet browsers or search**~~

131 ~~**engines accessed on the device in accordance with this section**~~ , ~~automatically enables a filter in~~

131a ~~**accordance with Section [78B-6-2602](#)**~~ ~~←Ĥ~~ .

132 (3) Nothing in this part:

132a ~~Ĥ→~~ (a) applies to a device manufactured before January 1, 2025; ~~←Ĥ~~

133 ~~Ĥ→~~ ~~[(a)]~~ (b) ←Ĥ applies to a video game console; or

134 ~~Ĥ→~~ ~~[(b)]~~ (c) ←Ĥ creates a cause of action against a retailer of a device.

135 Section 6. Section **78B-6-2604** is enacted to read:

136 **78B-6-2604. Individual liability.**

137 With the exception of a minor's parent or legal guardian, a person may be liable in a

138 civil and criminal action for intentionally enabling the password to remove the filter on a

139 device in the possession of a minor if the minor accesses content that is obscene on the device.

140 Section 7. Section **78B-6-2605** is enacted to read:

141 **78B-6-2605. Proceedings by the attorney general.**

142 (1) The attorney general may bring an action in court against a person for a violation of
143 this chapter:

144 (a) to enjoin any action that constitutes a violation of this chapter by the issuance of a
145 temporary restraining order or preliminary or permanent injunction;

146 (b) to recover from a violator a civil penalty not to exceed \$5,000 per violation, and not
147 to exceed a total of \$50,000 in aggregate, as determined by the court;

148 (c) to recover from a violator the attorney general's reasonable expenses, investigative
149 costs, and attorney fees; and

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150 (d) to obtain other appropriate relief as provided for under this chapter.

151 (2) The attorney general may seek revocation of any license or certificate authorizing a
152 manufacturer to engage in business in this state if, after the manufacturer is found to have
153 violated provisions of this part, the manufacturer demonstrates a repeated pattern of violations
154 of the provisions of this part.

155 (3) For purposes of assessing a penalty under this section, a manufacturer is considered
156 to have committed a separate violation for each device manufactured on or after January 1,
157 2025, that violates the provisions of Section [78B-6-2602](#).

158 Section 8. Section **78B-6-2606** is enacted to read:

159 **78B-6-2606. Civil action by parent or legal guardian.**

160 (1) A parent or legal guardian of a minor that accesses obscene content on a device as a
161 result of a manufacturer's failure to comply with of Section [78B-6-2602](#) may bring a private
162 cause of action in court against the manufacturer.

163 (2) A person bringing an action under Subsection (1) may recover:

164 (a) (i) actual damages; or

165 (ii) where actual damages are difficult to ascertain due to the nature of the injury,

166 \$50,000 for each violation;

167 (b) if a violation is found to be knowing and willful, punitive damages in an amount
168 determined by the court;

169 (c) nominal damages;

170 (d) attorney fees; and

171 (e) such other relief as the court deems appropriate, including court costs and expenses.

172 (3) Nothing herein shall preclude the bringing of a class action lawsuit against a
173 manufacturer where its conduct in violation of Section [78B-6-2602](#) is knowing and willful.

174 (4) A parent or legal guardian of a minor may bring an action in against any person
175 who is not the parent or legal guardian of the child and who disables the filter from a device in
176 the possession of the child which results in the minor's exposure to obscene content.

177 (5) A person bringing an action under Subsection (4) may recover:

178 (a) (i) actual damages; or

179 (ii) where actual damages are difficult to ascertain due to the nature of the injury,

180 \$1,000 for each violation; and

181 (b) such other relief as the court deems appropriate.

182 Section 9. **Repealer.**

183 This bill repeals:

184 Section **78B-6-2202 (Contingently Effective), Definitions.**

185 Section **78B-6-2203 (Contingently Effective), Filter required.**

186 Section **78B-6-2204 (Contingently Effective), Liability.**

187 Section **78B-6-2205 (Contingently Effective), Damages -- Class action.**

188 Section **78B-6-2206 (Contingently Effective), Civil action for enforcement --**

189 **Penalties.**

190 Section 10. **Effective date.**

191 (1) Except as provided in Subsection (2), this bill takes effect on January 1, 2025.

192 (2) The actions affecting Section **63I-2-278** (effective 05/01/24) take effect on May 1,

193 2024.