

SB0104S05 compared with SB0104S04

~~text~~ shows text that was in SB0104S04 but was deleted in SB0104S05.

text shows text that was not in SB0104S04 but was inserted into SB0104S05.

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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;

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- ▶ permits a parent or guardian of a minor or 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;~~ an action 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 minor.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

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

ENACTS:

76-10-1238, Utah Code Annotated 1953

78B-6-2601, Utah Code Annotated 1953

78B-6-2602, Utah Code Annotated 1953

78B-6-2603, Utah Code Annotated 1953

78B-6-2604, Utah Code Annotated 1953

78B-6-2605, Utah Code Annotated 1953

~~{ **78B-6-2606**, Utah Code Annotated 1953~~

REPEALS:

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

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

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

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

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

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

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

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

(1) Section 78A-2-804 is repealed on July 1, 2024.

(2) Title 78A, Chapter 10, Judicial Selection Act, is repealed on July 1, 2023.

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before January 1, 2031, Title 78B, Chapter 6, Part 22, Cause of Action to Protect Minors from Unfiltered Devices, is repealed January 1, 2031.]~~

~~[(4) (3) Sections 78B-12-301 and 78B-12-302 are repealed on January 1, 2025.~~

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

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

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

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

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

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

Part 26. Children's Device Protection Act

78B-6-2601. Definitions.

As used in this part:

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

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

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(3) "Filter" means generally accepted and commercially reasonable software used on a device that is ~~reasonably~~ capable of preventing the device from accessing or displaying obscene material through Internet browsers or search engines owned or controlled by the manufacturer in accordance with prevailing industry standards, including blocking known websites linked to obscene content via mobile data networks, wired Internet networks, and wireless Internet networks.

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

(5) "Manufacturer" means a person that:

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

~~(b)~~ (ii) holds the patents for the device the person manufactures; or

(iii) holds the patents for the operating system on a device; and

~~(c)~~ (b) has a commercial registered agent as that term is defined in Section 16-17-102.

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

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

(8) "Operating system" means software that manages all of the other application programs on a device.

~~(8)~~ (9) "Password" means a string of characters or other secure method used to enable, deactivate, modify, or uninstall a filter on a device.

~~(9)~~ (10) (a) "Retailer" means a person, that is not a manufacturer, that sells a device directly to consumers.

(b) "Retailer" includes an employee of a retailer acting in the course and scope of the employee's employment.

~~(10)~~ (11) "Smart phone" means the same as that term is defined in Section 63A-2-101.5.

~~(11)~~ (12) "Tablet" means a mobile device that:

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

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

~~(12)~~ (13) "Video game console" means a discrete computing system, including the system's components and peripherals, primarily used for playing video games, but does not

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include a smartphone or tablet.

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

78B-6-2602. Filter required.

All devices activated in the state shall:

(1) contain a filter;

(2) ~~{determine}~~ask the user to provide the ~~{age of a user}~~user's age during activation

and account set-up:

(3) automatically enable the filter when the user is a minor based on the

~~{determination}~~age provided by the user as described in Subsection (2);

(4) allow a password to be established for the filter;

(5) notify the user of the device when the filter blocks the device from accessing a

website; and

(6) allow a non-minor user that has a password the option to deactivate and re-activate

the filter.

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

78B-6-2603. Manufacturer liability.

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

(a) a device is activated in the state;

(b) the device does not, upon activation in the state, enable a filter that complies with

the requirements described in Section 78B-6-2602; and

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

(2) Notwithstanding Subsection (1), this section does not apply to a manufacturer that makes a good faith effort to provide a device that, upon activation of the device in the state and using the age provided by the user, automatically enables a ~~{generally accepted and commercially reasonable filter that blocks obscene content on all Internet browsers or search engines accessed on the device}~~filter in accordance with ~~{this section}~~Section 78B-6-2602.

(3) Nothing in this part:

(a) applies to a device manufactured prior to January 1, 2025;

(~~{a}~~b) applies to a video game console; or

(~~{b}~~c) creates a cause of action against a retailer of a device.

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

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78B-6-2604. Individual liability.

With the exception of a minor's parent or legal guardian, a person may be liable in a civil and criminal action for intentionally enabling the password to remove the filter on a device in the possession of a minor if the minor accesses content that is obscene on the device.

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

78B-6-2605. ~~Proceedings by the attorney general.~~

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

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

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

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

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

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

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

~~— Section 8. Section 78B-6-2606 is enacted to read:~~

~~— 78B-6-2606. ~~Civil action~~{ by parent or legal guardian}.~~

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

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

~~(a) (i) actual damages; or~~

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

~~\$50,000 for each violation;~~

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

(c) nominal damages;

(d) attorney fees; and

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

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

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

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

(a) (i) actual damages; or

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

\$1,000 for each violation; and

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

(6) The attorney general may bring an action under this section to the same extent as a parent or legal guardian of a minor.

Section ~~{9}~~8. **Repealer.**

This bill repeals:

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

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

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

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

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

Penalties.

Section ~~{10}~~9. **Effective date.**

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

(2) The actions affecting Section 63I-2-278 ~~{(effective 05/01/24)}~~ take effect on May 1, 2024.