

**CAUSE OF ACTION FOR MINORS INJURED BY
PORNOGRAPHY**

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd Weiler

House Sponsor: _____

LONG TITLE

General Description:

This bill amends the Judicial Code to provide for a cause of action for minors injured by pornography.

Highlighted Provisions:

This bill:

- ▶ enacts definitions;
- ▶ provides exemptions;
- ▶ establishes liability;
- ▶ provides a safe harbor; and
- ▶ addresses damages and class actions.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

78B-6-2100, Utah Code Annotated 1953

78B-6-2101, Utah Code Annotated 1953

78B-6-2102, Utah Code Annotated 1953



78B-6-2103, Utah Code Annotated 1953

78B-6-2104, Utah Code Annotated 1953

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

Section 1. Section 78B-6-2100 is enacted to read:

Part 21. Cause of Action for Minors Injured by Pornographic Material

78B-6-2100. Title.

This part is known as "Cause of Action for Minors Injured by Pornographic Material."

Section 2. Section 78B-6-2101 is enacted to read:

78B-6-2101. Definitions.

As used in this part:

(1) "Minor" means an individual less than 18 years of age.

(2) (a) "Pornographic material" means material with the quality of a description or representation, in whatsoever form, of nudity, sexual conduct, sexual excitement, or sadomasochistic abuse when the material:

(i) taken as a whole, appeals to the prurient interest in sex of minors;

(ii) is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and

(iii) taken as a whole, does not have serious value for minors.

(b) Serious value includes only serious literary, artistic, political, or scientific value for minors.

Section 3. Section 78B-6-2102 is enacted to read:

78B-6-2102. Exemptions.

(1) This part does not apply to an Internet service provider or interactive computer service, as defined in 47 U.S.C. Sec. 230(f)(2), a provider of an electronic communications service as defined in 18 U.S.C. Sec. 2510, a telecommunications service, information service, or mobile service as defined in 47 U.S.C. Sec. 153, including a commercial mobile service as defined in 47 U.S.C. Sec. 332(d), or a cable operator as defined in 47 U.S.C. Sec. 522, if:

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

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

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

(b) the provider does not intentionally aid or abet in the distribution of the
pornographic material; and

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

(2) This part does not apply to a hosting company, as defined in Section [76-10-1230](#),
if:

(a) the distribution of pornographic material by the hosting company occurs only
incidentally through the hosting company's function of providing data storage space or data
caching to a person;

(b) the hosting company does not intentionally engage, aid, or abet in the distribution
of the pornographic material; and

(c) the hosting company does not knowingly receive from or through a person who
distributes the pornographic material a fee greater than the fee generally charged by the
provider, as a specific condition for permitting the person to distribute, store, or cache the
pornographic material.

Section 4. Section **78B-6-2103** is enacted to read:

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

(1) A person who produces pornographic material, distributes pornographic material,
or otherwise provides pornographic material to another person is liable to the person if:

(a) at the time the pornographic material is produced, distributed, or otherwise
provided, the person is a minor; and

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

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

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

90 (a) provides a warning that:
91 (i) is conspicuous;
92 (ii) appears before the pornographic material can be accessed; and
93 (iii) is similar to one of the following:
94 (A) "Using pornography may impair sexual function with partners.";
95 (B) "Using pornography can cause escalating sexual preferences to more extreme
96 content.";
97 (C) "Using pornography has been shown to reduce sexual and relationship
98 satisfaction.";
99 (D) "Using pornography may become compulsive."; or
100 (E) "Some jurisdictions recognize pornography as a public health hazard."; and
101 (b) makes good faith efforts to prevent minors from accessing the pornographic
102 material.
103 Section 5. Section **78B-6-2104** is enacted to read:
104 **78B-6-2104. Damages -- Class action.**
105 (1) If a court finds that a person violates Section [78B-6-2103](#), the court may award the
106 plaintiff:
107 (a) actual damages;
108 (b) punitive damages, if it is proven that the person targeted minors; and
109 (c) attorney fees and costs.
110 (2) A class action may be brought under this part in accordance with Utah Rules of
111 Civil Procedure, Rule 23.

Legislative Review Note
Office of Legislative Research and General Counsel