

**Senator Todd Weiler** proposes the following substitute bill:

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

2017 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Todd Weiler**

House Sponsor: Keven J. Stratton

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**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



26 **78B-6-2102**, Utah Code Annotated 1953

27 **78B-6-2103**, Utah Code Annotated 1953

28 **78B-6-2104**, Utah Code Annotated 1953

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

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

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

33 **78B-6-2100. Title.**

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

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

36 **78B-6-2101. Definitions.**

37 As used in this part:

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

39 (2) "Pornographic material" means material that:

40 (a) the average person, applying contemporary community standards, finds that, taken  
41 as a whole, appeals to prurient interest in sex;

42 (b) is patently offensive in the description or depiction of nudity, sexual conduct,  
43 sexual excitement, sadomasochistic abuse, or excretion; and

44 (c) taken as a whole does not have serious literary, artistic, political, or scientific value.

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

46 **78B-6-2102. Exemptions.**

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

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

49 (i) an interactive computer service;

50 (ii) a telecommunications service, information service, or mobile service, including a  
51 commercial mobile service; or

52 (iii) a multichannel video programming distributor;

53 (b) an Internet service provider;

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) A person who predominately distributes or otherwise predominately provides pornographic material to ~~H~~→ [another person] consumers ←~~H~~ is liable to

~~H~~→ [the] a ←~~H~~ person if:

(a) at the time the pornographic material is viewed by the person, 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 distributes or otherwise provides pornographic material is not liable under this section if the person who distributes or otherwise provides pornographic material:

(a) provides a warning that:

(i) is conspicuous;

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

(iii) consists of a good faith effort to warn persons accessing the pornographic material

that the pornographic material may be harmful to minors; and

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

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

Section 5. Section **78B-6-2104** is enacted to read:

**78B-6-2104. Damages -- Class action.**

(1) If a court finds that a person violates Section 78B-6-2103, the court may award the plaintiff:

(a) actual damages; and

(b) punitive damages, if it is proven that the person targeted minors.

~~Ĥ→ [(2) In an action brought under this part, the court may award the prevailing party attorney fees and costs.~~

~~(3)]~~ (2) ←Ĥ A class action may be brought under this part in accordance with Utah Rules of Civil Procedure, Rule 23.