

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

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

29

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

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

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

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

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

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

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

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

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

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

71 **78B-6-2103. Liability -- Safe harbor.**

72 (1) A person who predominately distributes or otherwise predominately provides
73 pornographic material to another person is liable to the person if:

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

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

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

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

84 (a) provides a warning that:

85 (i) is conspicuous;

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

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

88 that the pornographic material may be harmful to minors; and

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

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

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

94 **78B-6-2104. Damages -- Class action.**

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

97 (a) actual damages; and

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

99 (2) In an action brought under this part, the court may award the prevailing party
100 attorney fees and costs.

101 (3) A class action may be brought under this part in accordance with Utah Rules of
102 Civil Procedure, Rule 23.