

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

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) "Pornographic material" means material that:

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

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

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

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

78B-6-2102. Exemptions.

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

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

(i) an interactive computer service;

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

(iii) a multichannel video programming distributor;

(b) an Internet service provider;

(c) a provider of an electronic communications service;

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

(e) a host company as defined in Section [76-10-1230](#); or

(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 consumers is liable to a 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;

(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.

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