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WARNING LABEL AMENDMENTS
2024 GENERAL SESSION
STATE OF UTAH
Chief Sponsor: Brady Brammer
Senate Sponsor: Todd D. Weiler

LONG TITLE

General Description:

This bill modifies provisions that create a cause of action for injury of a minor by pornographic material.

Highlighted Provisions:

This bill:

- modifies certain exemptions for liability for entities for a cause of action for injury of a minor by pornographic material;
- changes provisions of the safe harbor protections for liability for a cause of action for injury of a minor by pornographic material;
- clarifies who must give a warning of the harmful impact of exposing pornographic material to a minor; and
- makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

- 78B-6-2102**, as enacted by Laws of Utah 2017, Chapter 464
- 78B-6-2103**, as last amended by Laws of Utah 2020, Chapter 442
- 78B-6-2105**, as enacted by Laws of Utah 2020, Chapter 442

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

Section 1. Section **78B-6-2102** is amended to read:

28 **78B-6-2102 . Exemptions.**

- 29 (1) If the conditions of Subsection (2) are met, this part does not apply to:
- 30 (a) the following, as defined in the Communications Act of 1934, as amended:
- 31 (i) an interactive computer service;
- 32 (ii) a telecommunications service, information service, or mobile service, including a
- 33 commercial mobile service; or
- 34 (iii) a multichannel video programming distributor;
- 35 (b) an Internet service provider;
- 36 (c) a provider of an electronic communications service;
- 37 (d) a distributor of Internet-based video services;
- 38 (e) a host company as defined in Section 76-10-1230; or
- 39 (f) a distributor of electronic or computerized game software that users manipulate
- 40 through interactive devices.

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

- 42 (a) the distribution of pornographic material by the entity occurs only incidentally
- 43 through the entity's function of:
- 44 (i) transmitting or routing data from one person to another person;
- 45 (ii) providing a connection between one person and another person; or
- 46 (iii) providing data storage space or data caching to a person; and
- 47 (b) the entity does not intentionally aid or abet in the distribution of the pornographic
- 48 material[; and] .
- 49 ~~[(e) the entity does not knowingly receive from or through a person who distributes the~~
- 50 ~~pornographic material a fee greater than the fee generally charged by the entity, as a~~
- 51 ~~specific condition for permitting the person to distribute the pornographic material.]~~

52 Section 2. Section **78B-6-2103** is amended to read:

53 **78B-6-2103 . Liability -- Safe harbor.**

- 54 (1) A person who is not exempt under Section 78B-6-2102, and who [~~predominately~~]
- 55 distributes or otherwise [~~predominately~~] provides pornographic material to consumers is
- 56 liable to a person if:
- 57 (a) at the time the pornographic material is viewed by the person, the person is a minor;
- 58 and
- 59 (b) the pornographic material is the proximate cause for the person being harmed
- 60 physically or psychologically, or by emotional or medical illnesses as a result of that
- 61 pornographic material.

- 62 (2) Nothing in this part affects any private right of action existing under other law,
63 including contract.
- 64 (3) Notwithstanding Subsection (1), a person who distributes or otherwise provides
65 pornographic material is not liable under this section if the person who distributes or
66 otherwise provides pornographic material:
- 67 (a) provides a warning that:
- 68 (i) is conspicuous;
- 69 (ii) appears before the pornographic material can be accessed; and
- 70 (iii) consists of a good faith effort to warn persons accessing the pornographic
71 material that the pornographic material may be harmful to minors; and
- 72 (b) makes a good faith effort to verify the age of a person accessing the pornographic
73 material.
- 74 (4) Subsection (3) may not be interpreted as exempting a person from complying with Title
75 13, Chapter 39, Child Protection Registry.
- 76 (5) (a) Notwithstanding Section 78B-6-2105, a person who is not exempt under Section
77 78B-6-2102, and who [~~predominately~~]distributes or otherwise [~~predominately~~]
78 provides obscene material to consumers without a warning label or without the
79 metadata described in Subsection 78B-6-2105(3)(b) is not liable if the person
80 demonstrates reasonable efforts to determine the location of recipients of obscene
81 material within the state and the placement of warning labels on material that enters
82 the state. Reasonable efforts shall result in a compliance rate that exceeds 75% of the
83 content believed to enter the state within the shorter of six months prior to any claim,
84 or from May 12, 2020, to the time of the claim. Proof of reasonable efforts shall
85 remove liability only for the type of compliance for which reasonable efforts have
86 been proven.
- 87 (b) The use of virtual private networks or similar technology by the consumer to hide the
88 consumer's location may not be included in a compliance rate calculation.
- 89 (6) Notwithstanding Section 78B-6-2105, a video game without a warning label is not
90 liable if it has a rating of the Entertainment Software Rating Board or equivalent, as long
91 as it also explicitly provides notice of the content as part of the rating.
- 92 Section 3. Section **78B-6-2105** is amended to read:
- 93 **78B-6-2105 . Civil action for enforcement -- Penalties.**
- 94 (1) A person who [~~predominately~~]distributes or otherwise [~~predominately~~]provides
95 pornographic material to consumers [~~with the intent to earn revenue or profit directly or~~

96 ~~indirectly from the distribution]~~ may not distribute any obscene material or performance
97 as defined in Section 76-10-1203 without first giving a clear and reasonable warning of
98 the harmful impact of exposing minors to the material or performance.

99 (2) The warning of the harm shall be prominently displayed in the following form:

100 STATE OF UTAH WARNING

101 Exposing minors to obscene material may damage or negatively impact minors.

102 ~~[(2)]~~ (3) (a) For print publications created after May 12, 2020, the warning in Subsection [
103 ~~(1)~~] (2) shall be placed in clear, readable type on the cover of each publication which
104 includes material as defined in Section 76-10-1201.

105 (b) For digital publications:

106 (i) the warning in Subsection [~~(1)~~] (2) shall be displayed in searchable text format and
107 for at least five seconds prior to the display of any video or each image which
108 includes material as defined in Section 76-10-1201; or

109 (ii) if the website complies with Subsection 78B-6-2103(3), it is not required to
110 display the warning in Subsection [~~(1)~~] (2) prior to each video or image contained
111 on the website.

112 ~~[(3)]~~ (4) A person who violates this section shall be liable for a civil penalty not to exceed
113 \$2,500 per violation, plus filing fees and attorney fees, in addition to any other penalty
114 established by law, and enjoined from further violations.

115 (5) The civil penalty may be assessed and recovered in a civil action brought in any court of
116 competent jurisdiction.

117 (6) Each of the following violations shall create a separate liability per violation:

118 (a) the sale or display of potentially harmful content without the warning required in
119 Subsection [~~(1)~~], (2), in accordance with Subsection [~~(2)~~] (3); or

120 (b) the absence of the following searchable text within the website's metadata -
121 utahobscenitywarning.

122 ~~[(4)]~~ (7) The determination by a court as to whether a person is distributing material the
123 state considers to be obscene material or performance as defined in Section 78B-6-1203
124 shall be proven by clear and convincing evidence. All other elements of proof shall be
125 proven by a preponderance of the evidence.

126 ~~[(5)]~~ (8) The court, in ordering payment, shall specify each amount for the civil penalty,
127 filing fees, and attorney fees.

128 ~~[(6)]~~ (9) In assessing the amount of a civil penalty for a violation of this chapter, the court
129 shall consider all of the following:

- 130 (a) the nature and extent of the violation;
- 131 (b) the number and severity of the violations;
- 132 (c) the economic effect of the penalty on the violator;
- 133 (d) whether the violator took good faith measures to comply with this chapter and when
- 134 those measures were taken;
- 135 (e) the willfulness of the violator's misconduct;
- 136 (f) the deterrent effect that the imposition of the penalty would have on both the violator
- 137 and the regulated community as a whole; and
- 138 (g) any other factor that the court determines justice requires.
- 139 ~~[(7)]~~ (10) Actions pursuant to this section may be brought by the attorney general's office in
- 140 the name of the people of the state or by a private person in accordance with Subsection [
- 141 ~~(8)]~~ (11).
- 142 ~~[(8)]~~ (11) A private person may bring an action in the public interest pursuant to this section
- 143 if:
- 144 (a) the person has served notice of an alleged violation of Section 78B-6-2103 on the
- 145 alleged violator and the attorney general's office;
- 146 (b) the attorney general's office has not provided a letter to the noticing party within 60
- 147 days of receipt of the notice of an alleged violation indicating that:
- 148 (i) an action is currently being pursued or will be pursued by the attorney general's
- 149 office regarding the violation; or
- 150 (ii) the attorney general believes that there is no merit to the action; and
- 151 (c) the alleged violator has not responded to the notice of alleged violation or returned
- 152 the proof of compliance form provided in Subsection ~~[(14)]~~ (17).
- 153 ~~[(9)]~~ (12) If a lawsuit is commenced, the plaintiff may include additional violations in the
- 154 claim that are discovered through the discovery process.
- 155 ~~[(10)]~~ (13) Notice of the alleged violation shall be executed by the attorney for the noticing
- 156 party, or by the noticing party, if the noticing party is not represented by an attorney, and
- 157 include a notice of alleged violation. The notice of alleged violation shall:
- 158 (a) state that the person executing the notice believes that there is a violation; and
- 159 (b) provide factual information sufficient to establish the basis for the alleged violation.
- 160 ~~[(11)]~~ (14) A person who serves a notice of alleged violation identified in Subsection ~~[(10)]~~
- 161 (13) shall complete and provide to the alleged violator at the time the notice of alleged
- 162 violation is served, a notice of special compliance procedure and proof of compliance
- 163 form pursuant to Subsection ~~[(14)]~~ (17). The person may file an action against the

164 alleged violator, or recover from the alleged violator if:

- 165 (a) the notice of alleged violation alleges that the alleged violator failed to provide a
 166 clear and reasonable warning as required under Subsection (1); and
 167 (b) within 14 days after receipt of the notice of alleged violation, the alleged violator has
 168 not:
- 169 (i) corrected the alleged violation and all similar violations known to the alleged
 170 violator;
 - 171 (ii) agreed to pay a penalty for the alleged violation in the amount of \$500 per
 172 violation; and
 - 173 (iii) notified, in writing, the noticing party that the violation has been corrected.

174 ~~[(12)]~~ (15) The written notice required in Subsection ~~[(11)(b)(iii)]~~ (14)(b)(iii) shall be the
 175 notice of special compliance procedure and proof of compliance form specified in
 176 Subsection ~~[(14)]~~ (17). The alleged violator shall deliver the civil penalty to the noticing
 177 party within 30 days of receipt of the notice of alleged violation.

178 ~~[(13)]~~ (16) The attorney general shall review the notice of alleged violation and may confer
 179 with the noticing party. If the attorney general believes there is no merit to the action,
 180 the attorney general shall, within 45 days of receipt of the notice of alleged violation,
 181 provide a letter to the noticing party and the alleged violator stating that the attorney
 182 general believes there is no merit to the action.

183 ~~[(14)]~~ (17) The notice required to be provided to an alleged violator pursuant to Subsection [
 184 ~~(11)]~~ (14) shall be presented as follows:

185 Date:

186 Name of Noticing Party or attorney for Noticing Party:

187 Address:

188 Phone number:

189 SPECIAL COMPLIANCE PROCEDURE

190 PROOF OF COMPLIANCE

191 You are receiving this form because the Noticing Party listed above has alleged that you are
 192 in violation of Utah Code Section 78B-6-2103.

193 The Noticing Party may bring legal proceedings against you for the alleged violation
 194 checked below if:

- 195 (1) you have not actually taken the corrective steps that you have certified in this form;
- 196 (2) the Noticing Party has not received this form at the address shown above, accurately
 197 completed by you, postmarked within 14 days of your receiving this notice; and

198 (3) the Noticing Party does not receive the required \$500 penalty payment for each
199 violation alleged from you at the address shown above postmarked within 30 days of your
200 receiving this notice.

201 PART 1: TO BE COMPLETED BY THE NOTICING PARTY OR ATTORNEY FOR
202 THE NOTICING PARTY

203 This notice of alleged violation is for failure to warn against an exposure to minors of
204 materials considered harmful to minors. (provide complete description of violation, including
205 when and where observed)

206 Date:

207 Name of Noticing Party or attorney for Noticing Party:

208 Address:

209 Phone number:

210 PART 2: TO BE COMPLETED BY THE ALLEGED VIOLATOR OR AUTHORIZED
211 REPRESENTATIVE

212 Certification of Compliance

213 Accurate completion of this form will demonstrate that you are now in compliance with
214 Utah Code Section 78B-6-2103, for the alleged violation listed above. You must complete and
215 submit the form below to the Noticing Party at the address shown above, postmarked within 14
216 days of you receiving this notice.

217 I hereby agree to pay, within 30 days of receipt of this notice, a penalty of \$500 for each
218 violation alleged to the Noticing Party only and certify that I have complied with by (check
219 only one of the following):

220 [] Posting a warning or warnings, and attaching a copy of that warning and a photograph
221 accurately showing its placement on the print or digital publication.

222 [] Eliminating the alleged exposure, and attaching a statement accurately describing how
223 the alleged exposure has been eliminated.

224 CERTIFICATION

225 My statements on this form, and on any attachments to it, are true, complete, and correct to
226 the best of my knowledge and belief and are made in good faith. I have carefully read the
227 instructions to complete this form. I understand that if I make a false statement on this form, I
228 may be subject to additional penalties under Utah Code Section 76-10-1206.

229 Signature of alleged violator or authorized representative:

230 Date:

231 Name and title of signatory:

232 ~~[(15)]~~ (18) An alleged violator may satisfy the conditions set forth in Subsection ~~[(14)]~~ (17)
233 only one time for a specific violation.

234 ~~[(16)]~~ (19) Notwithstanding Subsection ~~[(14)]~~ (17), the attorney general may file an action
235 pursuant to Subsection ~~[(7)]~~ (10) against an alleged violator. In any action, the amount
236 of any civil penalty for a violation shall be reduced to reflect any payment made by the
237 alleged violator to a private person in accordance with Subsection ~~[(14)]~~ (17) for the
238 same alleged violation.

239 ~~[(17)]~~ (20) Payments shall be made in accordance with this section.

240 (a) A civil penalty ordered by the court shall be paid to the plaintiff as directed by the
241 court.

242 (b) A penalty paid in accordance with the special compliance procedure in Subsection [
243 ~~(14)]~~ (17) shall be made directly to the noticing party.

244 ~~[(18)]~~ (21) The Utah Office for Victims of Crime shall receive 50% of any penalty paid in
245 accordance with this section. Funds received shall be deposited ~~[in]~~ into the Crime
246 Victim Reparations Fund created in Section 63M-7-526. The penalty amount upon
247 which the 50% is calculated may not include attorney fees or costs awarded by the court.

248 (a) If the penalty is paid to a noticing party in accordance with Subsection ~~[(14)]~~ (17),
249 the noticing party shall remit the required amount along with a copy of the Special
250 Compliance Procedure document.

251 (b) If a civil penalty is ordered by the court, the plaintiff shall remit the required amount
252 along with a copy of the court order.

253 ~~[(19)]~~ (22) The attorney general's office shall provide to the Utah Office for Victims of
254 Crime a copy of all notices of alleged violations to which the attorney general's office
255 did not respond with a letter of no merit in accordance with Subsection ~~[(13)]~~ (16).

256 ~~[(20)]~~ (23) The court shall provide to the Utah Office for Victims of Crime a copy of the
257 court's order for payment.

258 ~~[(21)]~~ (24) The Utah Office for Victims of Crime shall:

259 (a) maintain a record of documents and payments submitted pursuant to Subsections [
260 ~~(18), (19), and (20)]~~ (21), (22), and (23);

261 (b) create and provide to the Legislature in odd-numbered years beginning November
262 2021, a report containing the following for the previous two years:

263 (i) the number of notices of alleged violations received from the attorney general's
264 office;

265 (ii) the number of court orders received; and

266 (iii) the total amount received and deposited into the Crime Victim Reparations Fund.

267 [~~(22)~~] (25) This section does not apply to:

268 (a) a person portrayed in obscene or pornographic material that is created, duplicated, or
269 distributed without the person's knowledge or consent; or

270 (b) a person who is coerced or blackmailed into distributing obscene or pornographic
271 material.

272 [~~(23)~~] (26) Beginning May 1, 2025, and at each five-year interval, the dollar amount of the
273 civil penalty provided in Subsection [~~(3)~~] (4) shall be adjusted by the Judicial Council
274 based on the change in the annual Consumer Price Index for the most recent five-year
275 period ending on December 31 of the previous year, and rounded to the nearest five
276 dollars. The attorney general shall publish the dollar amount of the civil penalty together
277 with the date of the next scheduled adjustment.

278 Section 4. **Effective date.**

279 This bill takes effect on May 1, 2024.