

Representative Susan Pulsipher proposes the following substitute bill:

CHILDREN'S DEVICE PROTECTION ACT

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd D. Weiler

House Sponsor: Susan Pulsipher

LONG TITLE

General Description:

This bill enacts the Children's Device Protection Act.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires a tablet or a smartphone (a device) manufactured on or after January 1, 2025, to automatically enable a filter upon device activation by a minor;
- ▶ requires the filter enabled for minors at activation to:
 - prevent a minor user of the device from accessing material that is obscene through Internet browsers or search engines; and
 - provide non-minor users the option to deactivate and re-activate the filter with a password;
- ▶ permits the attorney general to bring civil actions against manufacturers of devices that do not comply with this bill;
- ▶ permits private civil actions by parents and guardians of minors against manufacturers and others who violate provisions of this bill; and
- ▶ makes it a criminal offense for any person, with the exception of a parent or legal guardian, to enable the removal of the filter on a device in the possession of a



26 minor.

27 **Money Appropriated in this Bill:**

28 None

29 **Other Special Clauses:**

30 This bill provides a special effective date.

31 **Utah Code Sections Affected:**

32 AMENDS:

33 **63I-2-278**, as last amended by Laws of Utah 2023, Chapters 33, 250

34 ENACTS:

35 **76-10-1238**, Utah Code Annotated 1953

36 **78B-6-2601**, Utah Code Annotated 1953

37 **78B-6-2602**, Utah Code Annotated 1953

38 **78B-6-2603**, Utah Code Annotated 1953

39 **78B-6-2604**, Utah Code Annotated 1953

40 **78B-6-2605**, Utah Code Annotated 1953

41 **78B-6-2606**, Utah Code Annotated 1953

42 REPEALS:

43 **78B-6-2202 (Contingently Effective)**, as enacted by Laws of Utah 2021, Chapter 416
44 and further amended by Revisor Instructions, Laws of Utah 2021, Chapter 416

45 **78B-6-2203 (Contingently Effective)**, as enacted by Laws of Utah 2021, Chapter 416
46 and further amended by Revisor Instructions, Laws of Utah 2021, Chapter 416

47 **78B-6-2204 (Contingently Effective)**, as enacted by Laws of Utah 2021, Chapter 416
48 and further amended by Revisor Instructions, Laws of Utah 2021, Chapter 416

49 **78B-6-2205 (Contingently Effective)**, as enacted by Laws of Utah 2021, Chapter 416
50 and further amended by Revisor Instructions, Laws of Utah 2021, Chapter 416

51 **78B-6-2206 (Contingently Effective)**, as enacted by Laws of Utah 2021, Chapter 416
52 and further amended by Revisor Instructions, Laws of Utah 2021, Chapter 416



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

55 Section 1. Section **63I-2-278** is amended to read:

56 **63I-2-278. Repeal dates: Title 78A and Title 78B.**

57 (1) Section [78A-2-804](#) is repealed on July 1, 2024.

58 (2) Title 78A, Chapter 10, Judicial Selection Act, is repealed on July 1, 2023.

59 ~~[(3) If Title 78B, Chapter 6, Part 22, Cause of Action to Protect Minors from~~
60 ~~Unfiltered Devices, is not in effect before January 1, 2031, Title 78B, Chapter 6, Part 22, Cause~~
61 ~~of Action to Protect Minors from Unfiltered Devices, is repealed January 1, 2031.]~~

62 ~~[(4)]~~ (3) Sections [78B-12-301](#) and [78B-12-302](#) are repealed on January 1, 2025.

63 Section 2. Section **76-10-1238** is enacted to read:

64 **76-10-1238. Deactivation of a device filter.**

65 (1) (a) An adult individual, other than the parent or legal guardian of the minor in
66 possession of a device, who intentionally disables the filter required under Section [78B-6-2602](#)
67 on a device in possession of a minor for the purpose of disseminating pornography to the
68 minor, commits a class A misdemeanor.

69 (b) For each offense of Subsection (1)(a), the violator is subject to a fine in an amount
70 not to exceed \$2,500.

71 (2) A person who has a prior conviction under this section, who commits a subsequent
72 violation of Subsection (1)(a), is guilty of a third degree felony and shall, for each separate
73 offense, be fined in an amount not to exceed \$5,000 and may be imprisoned for zero to five
74 years.

75 Section 3. Section **78B-6-2601** is enacted to read:

76 **Part 26. Children's Device Protection Act**

77 **78B-6-2601. Definitions.**

78 As used in this part:

79 (1) "Activate" means the process of powering on a device and associating the device
80 with a user account.

81 (2) "Device" means a tablet or a smart phone manufactured on or after January 1, 2025.

82 (3) "Filter" means software used on a device that is reasonably capable of preventing
83 the device from accessing or displaying obscene material through Internet browsers or search
84 engines in accordance with prevailing industry standards via mobile data networks, wired
85 Internet networks, and wireless Internet networks.

86 (4) "Internet" means the same as that term is defined in Section [13-40-102](#).

87 (5) "Manufacturer" means a person that:

- 88 (a) is engaged in the business of manufacturing a device;
89 (b) holds the patents for the device the person manufactures; and
90 (c) has a commercial registered agent as that term is defined in Section [16-17-102](#).
91 (6) "Minor" means an individual under the age of 18 who is not emancipated, married,
92 or a member of the armed forces of the United States.
93 (7) "Obscenity" means the same as that term is defined in Section [32B-1-504](#).
94 (8) "Password" means a string of characters or other secure method used to enable,
95 deactivate, modify, or uninstall a filter on a device.
96 (9) (a) "Retailer" means a person, that is not a manufacturer, that sells a device directly
97 to consumers.
98 (b) "Retailer" includes an employee of a retailer acting in the course and scope of the
99 employee's employment.
100 (10) "Smart phone" means the same as that term is defined in Section [63A-2-101.5](#).
101 (11) "Tablet" means a mobile device that:
102 (a) is equipped with a mobile operating system, touchscreen display, and rechargeable
103 battery; and
104 (b) has the ability to support access to a cellular network.
105 (12) "Video game console" means a discrete computing system, including the system's
106 components and peripherals, primarily used for playing video games, but does not include a
107 smartphone or tablet.
108 Section 4. Section **78B-6-2602** is enacted to read:
109 **78B-6-2602. Filter required.**
110 All devices activated in the state shall:
111 (1) contain a filter;
112 (2) determine the age of a user during activation and account set-up;
113 (3) automatically enable the filter when the user is a minor based on the determination
114 in Subsection (2);
115 (4) allow a password to be established for the filter;
116 (5) notify the user of the device when the filter blocks the device from accessing a
117 website; and
118 (6) allow a non-minor user that has a password the option to deactivate and re-activate

119 the filter.

120 Section 5. Section **78B-6-2603** is enacted to read:

121 **78B-6-2603. Manufacturer liability.**

122 (1) A manufacturer of a device is subject to civil liability if:

123 (a) a device is activated in the state;

124 (b) the device does not, upon activation in the state, enable a filter that complies with
125 the requirements described in Section [78B-6-2602](#); and

126 (c) the minor accesses material that is obscene on the device.

127 (2) Notwithstanding Subsection (1), this section does not apply to a manufacturer that
128 makes a good faith effort to provide a device that, upon activation of the device in the state and
129 using the age provided by the user, automatically enables a generally accepted and
130 commercially reasonable filter that blocks obscene content on all Internet browsers or search
131 engines accessed on the device in accordance with this section.

132 (3) Nothing in this part:

133 (a) applies to a video game console; or

134 (b) creates a cause of action against a retailer of a device.

135 Section 6. Section **78B-6-2604** is enacted to read:

136 **78B-6-2604. Individual liability.**

137 With the exception of a minor's parent or legal guardian, a person may be liable in a
138 civil and criminal action for intentionally enabling the password to remove the filter on a
139 device in the possession of a minor if the minor accesses content that is obscene on the device.

140 Section 7. Section **78B-6-2605** is enacted to read:

141 **78B-6-2605. Proceedings by the attorney general.**

142 (1) The attorney general may bring an action in court against a person for a violation of
143 this chapter:

144 (a) to enjoin any action that constitutes a violation of this chapter by the issuance of a
145 temporary restraining order or preliminary or permanent injunction;

146 (b) to recover from a violator a civil penalty not to exceed \$5,000 per violation, and not
147 to exceed a total of \$50,000 in aggregate, as determined by the court;

148 (c) to recover from a violator the attorney general's reasonable expenses, investigative
149 costs, and attorney fees; and

150 (d) to obtain other appropriate relief as provided for under this chapter.

151 (2) The attorney general may seek revocation of any license or certificate authorizing a
152 manufacturer to engage in business in this state if, after the manufacturer is found to have
153 violated provisions of this part, the manufacturer demonstrates a repeated pattern of violations
154 of the provisions of this part.

155 (3) For purposes of assessing a penalty under this section, a manufacturer is considered
156 to have committed a separate violation for each device manufactured on or after January 1,
157 2025, that violates the provisions of Section [78B-6-2602](#).

158 Section 8. Section **78B-6-2606** is enacted to read:

159 **78B-6-2606. Civil action by parent or legal guardian.**

160 (1) A parent or legal guardian of a minor that accesses obscene content on a device as a
161 result of a manufacturer's failure to comply with of Section [78B-6-2602](#) may bring a private
162 cause of action in court against the manufacturer.

163 (2) A person bringing an action under Subsection (1) may recover:

164 (a) (i) actual damages; or

165 (ii) where actual damages are difficult to ascertain due to the nature of the injury,
166 \$50,000 for each violation;

167 (b) if a violation is found to be knowing and willful, punitive damages in an amount
168 determined by the court;

169 (c) nominal damages;

170 (d) attorney fees; and

171 (e) such other relief as the court deems appropriate, including court costs and expenses.

172 (3) Nothing herein shall preclude the bringing of a class action lawsuit against a
173 manufacturer where its conduct in violation of Section [78B-6-2602](#) is knowing and willful.

174 (4) A parent or legal guardian of a minor may bring an action in against any person
175 who is not the parent or legal guardian of the child and who disables the filter from a device in
176 the possession of the child which results in the minor's exposure to obscene content.

177 (5) A person bringing an action under Subsection (4) may recover:

178 (a) (i) actual damages; or

179 (ii) where actual damages are difficult to ascertain due to the nature of the injury,
180 \$1,000 for each violation; and

181 (b) such other relief as the court deems appropriate.

182 Section 9. **Repealer.**

183 This bill repeals:

184 Section **78B-6-2202 (Contingently Effective), Definitions.**

185 Section **78B-6-2203 (Contingently Effective), Filter required.**

186 Section **78B-6-2204 (Contingently Effective), Liability.**

187 Section **78B-6-2205 (Contingently Effective), Damages -- Class action.**

188 Section **78B-6-2206 (Contingently Effective), Civil action for enforcement --**

189 **Penalties.**

190 Section 10. **Effective date.**

191 (1) Except as provided in Subsection (2), this bill takes effect on January 1, 2025.

192 (2) The actions affecting Section **63I-2-278** (effective 05/01/24) take effect on May 1,

193 2024.