

Senator Todd D. Weiler 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; and
 - allow adult users and parents or legal guardians 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 minor.



26 **Money Appropriated in this Bill:**

27 None

28 **Other Special Clauses:**

29 This bill provides a special effective date.

30 **Utah Code Sections Affected:**

31 AMENDS:

32 **63I-2-278**, as last amended by Laws of Utah 2023, Chapters 33, 250

33 ENACTS:

34 **76-10-1238**, Utah Code Annotated 1953

35 **78B-6-2601**, Utah Code Annotated 1953

36 **78B-6-2602**, Utah Code Annotated 1953

37 **78B-6-2603**, Utah Code Annotated 1953

38 **78B-6-2604**, Utah Code Annotated 1953

39 **78B-6-2605**, Utah Code Annotated 1953

40 **78B-6-2606**, Utah Code Annotated 1953

41 REPEALS:

42 **78B-6-2202 (Contingently Effective)**, as enacted by Laws of Utah 2021, Chapter 416
43 and further amended by Revisor Instructions, Laws of Utah 2021, Chapter 416

44 **78B-6-2203 (Contingently Effective)**, as enacted by Laws of Utah 2021, Chapter 416
45 and further amended by Revisor Instructions, Laws of Utah 2021, Chapter 416

46 **78B-6-2204 (Contingently Effective)**, as enacted by Laws of Utah 2021, Chapter 416
47 and further amended by Revisor Instructions, Laws of Utah 2021, Chapter 416

48 **78B-6-2205 (Contingently Effective)**, as enacted by Laws of Utah 2021, Chapter 416
49 and further amended by Revisor Instructions, Laws of Utah 2021, Chapter 416

50 **78B-6-2206 (Contingently Effective)**, as enacted by Laws of Utah 2021, Chapter 416
51 and further amended by Revisor Instructions, Laws of Utah 2021, Chapter 416

52

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

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

55 **63I-2-278. Repeal dates: Title 78A and Title 78B.**

56 (1) Section **78A-2-804** is repealed on July 1, 2024.

57 (2) Title 78A, Chapter 10, Judicial Selection Act, is repealed on July 1, 2023.

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60 ~~of Action to Protect Minors from Unfiltered Devices, is repealed January 1, 2031.~~]

61 [~~(4)~~] (3) Sections [78B-12-301](#) and [78B-12-302](#) are repealed on January 1, 2025.

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

63 **76-10-1238. Deactivation of a device filter.**

64 (1) (a) An ~~§~~→ **adult** ~~←§~~ individual, other than the parent or legal guardian of the minor in
64a possession
65 of a device, who disables the filter required under Section [78B-6-2602](#) on a device in
66 possession of a minor ~~§~~→ **for the purpose of disseminating pornography to the minor,** ~~←§~~
66a commits a class A misdemeanor.

67 (b) For each offense, the violator is subject to fines up to \$5,000.

68 (2) Any person who has a prior conviction under this section, is guilty of a felony of
69 the third degree and shall, for each separate offense, be fined ~~§~~→ **[~~up to~~] an amount not to exceed**
69a ~~←§~~ \$50,000 and may be
70 imprisoned for ~~§~~→ **[~~up to one year~~] zero to five years** ~~←§~~ .

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

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

73 **78B-6-2601. Definitions.**

74 As used in this part:

75 (1) "Activate" means the process of powering on a device and associating the device
76 with a new user account.

77 (2) "Device" means a tablet or a smart phone sold in Utah and manufactured on or after
78 January 1, 2025.

79 (3) "Filter" means software installed on a device that is capable of preventing the
80 device from accessing or displaying obscene material through Internet browsers or search
81 engines via mobile data networks, wired Internet networks, and wireless Internet networks.

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

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

84 (a) is engaged in the business of manufacturing a device;

85 (b) holds the patents for the device the person manufactures; and

86 (c) has a commercial registered agent as that term is defined in Section [16-17-102](#).

87 (6) "Minor" means an individual under the age of 18 who is not emancipated, married,

88 or a member of the armed forces of the United States.

89 (7) "Obscenity" means the same as that term is defined in Section [32B-1-504](#).

90 (8) "Password" means a string of characters or other secure method used to enable,
 91 deactivate, modify, or uninstall a filter on a device.

91a **Œ→ (9) (a) "Retailer" means a person, that is not a manufacturer, that sells a device directly to**
 91b **consumers.**

91c **(b) "Retailer" includes an employee of a retailer acting in the course and scope of the**
 91d **employee's employment. ←Œ**

92 **Œ→ [~~9~~] (10) ←Œ "Smart phone" means the same as that term is defined in Section**
 92a **[63A-2-101.5](#).**

93 **Œ→ [~~10~~] (11) ←Œ "Tablet" means a mobile device that:**

94 **(a) is equipped with a mobile operating system, touchscreen display, and rechargeable**
 95 **battery; and**

96 **(b) has the ability to support access to a cellular network.**

97 Section 4. Section **78B-6-2602** is enacted to read:

98 **78B-6-2602. Filter required.**

99 **All devices activated in the state shall:**

100 **(1) contain a filter;**

101 **(2) determine the age of a user during activation and account set-up;**

102 **(3) automatically activate the filter when the user is a minor based on the determination**
 103 **in Subsection (2);**

104 **(4) notify the user of the device when the filter blocks the device from accessing a**
 105 **website; and**

106 **(5) allow a non-minor user that has a password the option to deactivate and re-activate**
 107 **the filter.**

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

109 **78B-6-2603. Manufacturer liability.**

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

111 **(a) a device is activated in the state;**

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

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

115 **(2) Notwithstanding Subsection (1), this section does not apply to a manufacturer that**
 116 **makes a good faith effort to provide a device that, upon activation of the device in the state,**
 117 **automatically enables a generally accepted and commercially reasonable filter that blocks**
 118 **obscene content on all Internet browsers or search engines accessed on the device in**

119 accordance with this section.

119a **Ŝ→ (3) Nothing in this part creates a cause of action against a retailer of a device. ←Ŝ**

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

121 **78B-6-2604. Individual liability.**

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

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

126 **78B-6-2605. Proceedings by the attorney general.**

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

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

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

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

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

136 (2) The attorney general may seek the revocation of any license or certificate
137 authorizing a manufacturer to engage in business in this state.

138 (3) For purposes of assessing a penalty under this section, a manufacturer is considered
139 to have committed a separate violation for each device manufactured on or after January 1,
140 2025, that violates the provisions of Section [78B-6-2602](#).

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

142 **78B-6-2606. Civil action by parent or legal guardian.**

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

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

147 (a) (i) actual damages; or

148 (ii) where actual damages are difficult to ascertain due to the nature of the injury,

149 \$50,000 for each violation;

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

152 (c) nominal damages;

153 (d) attorney fees; and

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

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

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

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

161 (a) (i) actual damages; or

162 (ii) where actual damages are difficult to ascertain due to the nature of the injury,

163 \$1,000 for each violation; and

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

165 **Section 9. Repealer.**

166 This bill repeals:

167 Section [78B-6-2202](#) (Contingently Effective), Definitions.

168 Section [78B-6-2203](#) (Contingently Effective), Filter required.

169 Section [78B-6-2204](#) (Contingently Effective), Liability.

170 Section [78B-6-2205](#) (Contingently Effective), Damages -- Class action.

171 Section [78B-6-2206](#) (Contingently Effective), Civil action for enforcement --

172 **Penalties.**

173 **Section 10. Effective date.**

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

175 (2) The actions affecting Section [63I-2-278](#) (effective 05/01/24) take effect on May 1,

176 2024.