

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
 65 possession of a device, who disables the filter required under Section [78B-6-2602](#) on a device
 66 in possession of a minor for the purpose of disseminating pornography to the minor, commits a
 67 class A misdemeanor.

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

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

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

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

76 **78B-6-2601. Definitions.**

77 As used in this part:

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

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

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

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

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

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

88 (b) holds the patents for the device the person manufactures; and
89 (c) has a commercial registered agent as that term is defined in Section [16-17-102](#).
90 (6) "Minor" means an individual under the age of 18 who is not emancipated, married,
91 or a member of the armed forces of the United States.

92 (7) "Obscenity" means the same as that term is defined in Section [32B-1-504](#).
93 (8) "Password" means a string of characters or other secure method used to enable,
94 deactivate, modify, or uninstall a filter on a device.

95 (9) (a) "Retailer" means a person, that is not a manufacturer, that sells a device directly
96 to consumers.

97 (b) "Retailer" includes an employee of a retailer acting in the course and scope of the
98 employee's employment.

99 (10) "Smart phone" means the same as that term is defined in Section [63A-2-101.5](#).

100 (11) "Tablet" means a mobile device that:

101 (a) is equipped with a mobile operating system, touchscreen display, and rechargeable
102 battery; and

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

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

105 **78B-6-2602. Filter required.**

106 All devices activated in the state shall:

107 (1) contain a filter;

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

109 (3) automatically activate the filter when the user is a minor based on the determination
110 in Subsection (2);

111 (4) notify the user of the device when the filter blocks the device from accessing a
112 website; and

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

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

116 **78B-6-2603. Manufacturer liability.**

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

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

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

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

122 (2) Notwithstanding Subsection (1), this section does not apply to a manufacturer that
123 makes a good faith effort to provide a device that, upon activation of the device in the state,
124 automatically enables a generally accepted and commercially reasonable filter that blocks
125 obscene content on all Internet browsers or search engines accessed on the device in
126 accordance with this section.

127 (3) Nothing in this part creates a cause of action against a retailer of a device.

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

129 **78B-6-2604. Individual liability.**

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

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

134 **78B-6-2605. Proceedings by the attorney general.**

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

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

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

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

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

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

146 (3) For purposes of assessing a penalty under this section, a manufacturer is considered
147 to have committed a separate violation for each device manufactured on or after January 1,
148 2025, that violates the provisions of Section 78B-6-2602.

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

150 **78B-6-2606. Civil action by parent or legal guardian.**

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

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

155 (a) (i) actual damages; or

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

157 \$50,000 for each violation;

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

160 (c) nominal damages;

161 (d) attorney fees; and

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

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

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

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

169 (a) (i) actual damages; or

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

171 \$1,000 for each violation; and

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

173 **Section 9. Repealer.**

174 This bill repeals:

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

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

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

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

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

180 **Penalties.**

181 Section 10. **Effective date.**

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

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

184 2024.