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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 minor.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

28 **63I-2-278 (Effective 05/01/24)**, as last amended by Laws of Utah 2023, Chapters 33, 250

29 ENACTS:

30 **76-10-1238 (Effective 01/01/25)**, Utah Code Annotated 1953

31 **78B-6-2601 (Effective 01/01/25)**, Utah Code Annotated 1953

32 **78B-6-2602 (Effective 01/01/25)**, Utah Code Annotated 1953

33 **78B-6-2603 (Effective 01/01/25)**, Utah Code Annotated 1953

34 **78B-6-2604 (Effective 01/01/25)**, Utah Code Annotated 1953

35 **78B-6-2605 (Effective 01/01/25)**, Utah Code Annotated 1953

36 **78B-6-2606 (Effective 01/01/25)**, Utah Code Annotated 1953

37 REPEALS:

38 **78B-6-2202 (Contingently Effective)**, as enacted by Laws of Utah 2021, Chapter 416
39 and further amended by Revisor Instructions, Laws of Utah 2021, Chapter 416

40 **78B-6-2203 (Contingently Effective)**, as enacted by Laws of Utah 2021, Chapter 416
41 and further amended by Revisor Instructions, Laws of Utah 2021, Chapter 416

42 **78B-6-2204 (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-6-2205 (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-6-2206 (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

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

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

51 **63I-2-278 (Effective 05/01/24). Repeal dates: Title 78A and Title 78B.**

52 (1) Section 78A-2-804 is repealed on July 1, 2024.

53 (2) Title 78A, Chapter 10, Judicial Selection Act, is repealed on July 1, 2023.

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56 ~~Action to Protect Minors from Unfiltered Devices, is repealed January 1, 2031.~~]

57 [(4)] (3) Sections 78B-12-301 and 78B-12-302 are repealed on January 1, 2025.

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

59 **76-10-1238 (Effective 01/01/25). Deactivation of a device filter.**

60 (1) (a) An adult individual, other than the parent or legal guardian of the minor in
61 possession of a device, who intentionally disables the filter required under Section

62 78B-6-2602 on a device in possession of a minor for the purpose of disseminating
63 pornography to the minor, commits a class A misdemeanor.

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

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

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

71

Part 26. Children's Device Protection Act

72 **78B-6-2601 (Effective 01/01/25). Definitions.**

73 As used in this part:

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

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

77 (3) "Filter" means generally accepted and commercially reasonable software used on a
78 device that is capable of preventing the device from accessing or displaying obscene
79 material through Internet browsers or search engines owned or controlled by the
80 manufacturer in accordance with prevailing industry standards including blocking
81 known websites linked to obscene content via mobile data networks, wired Internet
82 networks, and wireless Internet networks.

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

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

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

86 (ii) holds the patents for the device the person manufactures; or

87 (iii) holds the patents for the operating system on a device; and

88 (b) has a commercial registered agent as that term is defined in Section 16-17-102.

89 (6) "Minor" means an individual under the age of 18 who is not emancipated, married, or a
90 member of the armed forces of the United States.

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

92 (8) "Operating system" means software that manages all of the other application
93 programs on a device.

94 (9) "Password" means a string of characters or other secure method used to enable,

95 deactivate, modify, or uninstall a filter on a device.

96 (10) (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 (11) "Smart phone" means the same as that term is defined in Section 63A-2-101.5.

101 (12) "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 (13) "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
107 include a smartphone or tablet.

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

109 **78B-6-2602 (Effective 01/01/25). Filter required.**

110 All devices activated in the state shall:

111 (1) contain a filter;

112 (2) ask the user to provide the user's age during activation and account set-up;

113 (3) automatically enable the filter when the user is a minor based on the age provided by the
114 user as described 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 website;
117 and

118 (6) allow a non-minor user who has a password the option to deactivate and re-activate the
119 filter.

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

121 **78B-6-2603 (Effective 01/01/25). 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 the
125 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

129 state, automatically enables a filter in accordance with Section 78B-6-2602.

130 (3) Nothing in this part:

131 (a) applies to a device manufactured before January 1, 2025;

132 (b) applies to a video game console; or

133 (c) creates a cause of action against a retailer of a device.

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

135 **78B-6-2604 (Effective 01/01/25). Individual liability.**

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

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

141 **78B-6-2605 (Effective 01/01/25). Proceedings by the attorney general.**

142 (1) The attorney general may bring an action in court against a person for a violation of this
143 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
153 have violated provisions of this part, the manufacturer demonstrates a repeated pattern
154 of violations of the provisions of this part.

155 (3) For purposes of assessing a penalty under this section, a manufacturer is considered to
156 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 (Effective 01/01/25). 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
162 private 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 the manufacturer's conduct in violation of Section 78B-6-2602 is
 174 knowing and willful.
 175 (4) A parent or legal guardian of a minor may bring an action against any person who is not
 176 the parent or legal guardian of the child and who disables the filter from a device in the
 177 possession of the child which results in the minor's exposure to obscene content.
 178 (5) A person bringing an action under Subsection (4) may recover:
 179 (a) (i) actual damages; or
 180 (ii) where actual damages are difficult to ascertain due to the nature of the injury,
 181 \$1,000 for each violation; and
 182 (b) such other relief as the court deems appropriate.

183 Section 9. **Repealer.**

184 This bill repeals:

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

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

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

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

189 Section **78B-6-2206, (Contingently Effective)Civil action for enforcement -- 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, 2024.