

**Senator Todd Weiler** proposes the following substitute bill:

**MATERIALS HARMFUL TO MINORS AMENDMENTS**

2018 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Todd Weiler**

House Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill amends the Utah Criminal Code regarding an Internet service provider's responsibility to offer content filtering methods for material harmful to minors.

**Highlighted Provisions:**

This bill:

- ▶ amends the definition of Internet service provider;
- ▶ requires an Internet service provider to notify consumers and the Division of Consumer Protection of the ability to block material harmful to minors;
- ▶ provides a civil fine for failure to comply with the preceding paragraph;
- ▶ allows Internet service providers to engage a third party to assist with filtering methods;
- ▶ increases the cap on the civil fine that may be imposed on an Internet service provider that knowingly fails to filter material harmful to minors;
- ▶ removes provisions requiring the Division of Consumer Protection to test an Internet service provider's filtering methods; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None



26 **Other Special Clauses:**

27 None

28 **Utah Code Sections Affected:**

29 AMENDS:

30 **76-10-1230**, as last amended by Laws of Utah 2008, Chapter 297

31 **76-10-1231**, as last amended by Laws of Utah 2008, Chapters 297 and 382



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

34 Section 1. Section **76-10-1230** is amended to read:

35 **76-10-1230. Definitions.**

36 As used in Sections **76-10-1231** and **76-10-1233**:

37 (1) "Consumer" means ~~[a natural person]~~ an individual residing in this state who  
38 subscribes to a service provided by a service provider for personal or residential use.

39 (2) "Content provider" means a person domiciled in Utah or that generates or hosts  
40 content in Utah, and that creates, collects, acquires, or organizes electronic data for electronic  
41 delivery to a consumer with the intent of making a profit.

42 (3) (a) "Hosting company" means a person that provides services or facilities for  
43 storing or distributing content over the Internet without editorial or creative alteration of the  
44 content.

45 (b) A hosting company may have policies concerning acceptable use without becoming  
46 a content provider under Subsection (2).

47 (4) (a) "Internet service provider" means a person engaged in the business of providing  
48 ~~[a computer communications facility in Utah]~~ Internet access, with the intent of making a  
49 profit, ~~[through which a consumer may obtain access to the Internet]~~ to consumers in Utah.

50 (b) "Internet service provider" does not include ~~[a common carrier if it provides only~~  
51 ~~telecommunications service]~~ a business providing Internet access to a customer or business  
52 invitee.

53 (5) "Properly rated" means content using a labeling system to label material harmful to  
54 minors provided by the content provider in a way that:

55 (a) accurately appraises a consumer of the presence of material harmful to minors; and

56 (b) allows the consumer the ability to control access to material harmful to minors

57 based on the material's rating by use of reasonably priced commercially available software,  
58 including software in the public domain.

59 (6) "Restrict" means to limit access to material harmful to minors by:

60 (a) properly rating content; or

61 (b) any other reasonable measures feasible under available technology.

62 (7) (a) Except as provided in Subsection (7)(b), "service provider" means an Internet  
63 service provider.

64 (b) "Service provider" does not include a person who does not terminate a service in  
65 this state, but merely transmits data through:

66 (i) a wire;

67 (ii) a cable; or

68 (iii) an antenna.

69 (c) "Service provider," notwithstanding Subsection (7)(b), includes a person who meets  
70 the requirements of Subsection (7)(a) and leases or rents a wire or cable for the transmission of  
71 data.

72 Section 2. Section **76-10-1231** is amended to read:

73 **76-10-1231. Data service providers -- Internet content harmful to minors.**

74 (1) (a) Upon request by a consumer, a service provider shall filter content to prevent  
75 the transmission of material harmful to minors to the consumer.

76 (b) A service provider complies with Subsection (1)(a) if ~~[it uses a]~~ the service  
77 provider makes a good faith effort to apply a generally accepted and commercially reasonable  
78 method of filtering.

79 (2) (a) At the time of a consumer's subscription to a service provider's service, ~~[or at~~  
80 ~~the time this section takes effect if the consumer subscribes to the service provider's service at~~  
81 ~~the time this section takes effect,]~~ the service provider shall notify the consumer in a  
82 conspicuous manner that the consumer may request to have material harmful to minors blocked  
83 under Subsection (1)(a).

84 (b) (i) A service provider shall, before December 30, 2018, notify all of the service  
85 provider's consumers in a conspicuous manner that the consumer may request material harmful  
86 to minors be blocked under Subsection (1)(a).

87 (ii) A service provider may provide the notice described in Subsection (2)(b)(i):

88 (A) by electronic communication;

89 (B) with a consumer's bill; or

90 (C) in another conspicuous manner.

91 (c) Before December 31, 2018, a service provider shall:

92 (i) notify the Division of Consumer Protection within the Department of Commerce  
93 that notice was sent under Subsection (2)(b); and

94 (ii) provide the Division of Consumer Protection within the Department of Commerce  
95 a copy of the notice that was sent under Subsection (2)(b).

96 (d) The Division of Consumer Protection within the Department of Commerce shall  
97 report all violations of Subsections (2)(b) and (c) to the attorney general.

98 (3) (a) A service provider may comply with Subsection (1)(a) by~~[-(i)]~~ providing  
99 in-network filtering to prevent receipt of material harmful to minors, provided that the filtering  
100 does not affect or interfere with access to Internet content for consumers who do not request  
101 filtering under Subsection (1)~~[-or]~~(a).

102 ~~[(ii) providing software,]~~

103 (b) A service provider may comply with Subsection (1)(a) by engaging a third party to  
104 provide [software, or referring users to a third party that provides filtering software, by  
105 providing a clear and conspicuous hyperlink or written statement, for installation on the  
106 consumer's computer that blocks, in an easy-to-enable and commercially reasonable manner,] ~~Ŝ~~ → ,  
106a **or referring a consumer to a third party that provides,** ←Ŝ a

107 commercially reasonable method of filtering to block the receipt of material harmful to minors.

108 ~~[(b)]~~ (c) A service provider may charge a consumer a commercially reasonable fee for  
109 providing filtering under this Subsection (3)~~[(a)]~~.

110 (4) If the attorney general determines that a service provider violates Subsection (1) or  
111 (2), the attorney general shall:

112 (a) notify the service provider that the service provider is in violation of Subsection (1)  
113 or (2); and

114 (b) notify the service provider that the service provider has ~~[30]~~ 90 days to comply with  
115 the provision being violated or be subject to Subsection (5).

116 (5) (a) A service provider that intentionally or knowingly violates Subsection (1)~~or~~  
117 ~~(2)]~~(a) is subject to a civil fine of \$2,500 for each separate violation of Subsection (1)~~or~~  
118 ~~(2)]~~(a), up to ~~[\$10,000]~~ \$15,000 per day.

119            (b) A service provider that intentionally or knowingly violates Subsection (2) is subject  
120 to a civil fine up to \$10,000.

121            (6) A proceeding to impose a civil fine under Subsection (5) may only be brought by  
122 the attorney general in a court of competent jurisdiction.

123            [~~(7)(a) The Division of Consumer Protection within the Department of Commerce~~  
124 ~~shall, in consultation with other entities as the Division of Consumer Protection considers~~  
125 ~~appropriate, test the effectiveness of a service provider's system for blocking material harmful~~  
126 ~~to minors under Subsection (1) at least annually.]~~

127            [~~(b) The results of testing by the Division of Consumer Protection under Subsection~~  
128 ~~(7)(a) shall be made available to:]~~

129            [~~(i) the service provider that is the subject of the test; and]~~

130            [~~(ii) the public.]~~

131            [~~(c) The Division of Consumer Protection shall make rules in accordance with Title~~  
132 ~~63G, Chapter 3, Utah Administrative Rulemaking Act, to fulfil its duties under this section.]~~