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H.B. 72

DEVICE FILTER AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Susan Pulsipher

Senate Sponsor: Wayne A. Harper

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10

11 **LONG TITLE**

12 **General Description:**

13 This bill establishes filter requirements and enforcement mechanisms for tablets and
14 smart phones activated in the state on or after January 1 of the year following the year
15 this bill takes effect.

16 **Highlighted Provisions:**

17 This bill:

18 ▶ defines terms;

19 ▶ requires a tablet or a smart phone (a device) sold in the state and manufactured on or
20 after January 1 of the year following the year this bill takes effect to, when activated
21 in the state, automatically enable a filter capable of blocking material that is harmful
22 to minors;

23 ▶ requires the filter enabled at activation to:

24 • prevent the user of the device from accessing material that is harmful to minors
25 on the device;

26 • enable certain users to deactivate the filter for the device or for specific content;

27 and

- 28 • notify the user when content is filtered;
- 29 ▶ provides a process for the attorney general or a member of the public to bring a civil
- 30 action against a manufacturer that manufactures a device on or after January 1 of the
- 31 year following the year this bill takes effect if:
 - 32 • the device does not contain an enabled filter upon activation in the state; and
 - 33 • a minor accessed material that is harmful to minors on the device;
 - 34 ▶ allows for a civil penalty of up to \$10 for each violation;
 - 35 ▶ requires that a portion of any civil penalty recovery be provided to the Crime
 - 36 Victims Reparations Fund;
 - 37 ▶ provides a process for curing the violation and paying a reduced penalty;
 - 38 ▶ requires the Judicial Council to adjust the penalty every five years; and
 - 39 ▶ provides a sunset date.

40 **Money Appropriated in this Bill:**

41 None

42 **Other Special Clauses:**

43 This bill provides a contingent effective date.

44 This bill provides revisor instructions.

45 **Utah Code Sections Affected:**

46 AMENDS:

47 63I-2-278, as last amended by Laws of Utah 2018, Chapters 38 and 281

48 ENACTS:

49 78B-6-2201, Utah Code Annotated 1953

50 78B-6-2202, Utah Code Annotated 1953

51 78B-6-2203, Utah Code Annotated 1953

52 78B-6-2204, Utah Code Annotated 1953

53 78B-6-2205, Utah Code Annotated 1953

54 78B-6-2206, Utah Code Annotated 1953

55 **Utah Code Sections Affected by Revisor Instructions:**

56 78B-6-2202, Utah Code Annotated 1953

57 78B-6-2203, Utah Code Annotated 1953

58 78B-6-2204, Utah Code Annotated 1953

59 78B-6-2206, Utah Code Annotated 1953



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

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

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

64 [~~Subsection 78B-6-144(5) is repealed January 1, 2019.~~]

65 If Title 78B, Chapter 6, Part 22, Cause of Action to Protect Minors from Unfiltered
66 Devices, is not in effect before January 1, 2031, Title 78B, Chapter 6, Part 22, Cause of Action
67 to Protect Minors from Unfiltered Devices, is repealed January 1, 2031.

68 Section 2. Section **78B-6-2201** is enacted to read:

69 **Part 22. Cause of Action to Protect Minors from Unfiltered Devices**

70 **78B-6-2201. Title.**

71 This part is known as "Cause of Action to Protect Minors from Unfiltered Devices."

72 Section 3. Section **78B-6-2202** is enacted to read:

73 **78B-6-2202. Definitions.**

74 As used in this part:

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

77 (2) "Device" means a tablet or a smart phone sold in Utah and manufactured on or after
78 January 1 of the year following the year this bill takes effect.

79 (3) "Filter" means software installed on a device that is capable of preventing the
80 device from accessing or displaying material that is harmful to minors through the Internet or

81 any applications owned and controlled by the manufacturer and installed on the device.

82 (4) "Harmful to minors" means the same as that term is defined in Section 76-10-1201.

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

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

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

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

87 (b) "Manufacturer" includes a registrant as that term is defined in Section 70-3a-103.

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

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

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

91 (9) "Tablet" means a mobile device that:

92 (a) is equipped with a mobile operating system, touchscreen display, and rechargeable

93 battery; and

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

95 Section 4. Section **78B-6-2203** is enacted to read:

96 **78B-6-2203. Filter required.**

97 Beginning on January 1 of the year following the year this bill takes effect, a

98 manufacturer shall manufacture a device that, when activated in the state, automatically enables

99 a filter that:

100 (1) when enabled, prevents the user from accessing or downloading material that is

101 harmful to minors on:

102 (a) mobile data networks;

103 (b) applications owned and controlled by the manufacturer;

104 (c) wired Internet networks; and

105 (d) wireless Internet networks;

106 (2) notifies the user of the device when the filter blocks the device from downloading

107 an application or accessing a website;

108 (3) gives a user with a passcode the opportunity to unblock a filtered application or
109 website; and

110 (4) reasonably precludes a user other than a user with a passcode the opportunity to
111 deactivate, modify, or uninstall the filter.

112 Section 5. Section **78B-6-2204** is enacted to read:

113 **78B-6-2204. Liability.**

114 (1) Beginning January 1 of the year following the year this bill takes effect, a
115 manufacturer of a device is liable to a minor in the state if:

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

117 (b) the device does not, upon activation in the state, enable a filter that complies with
118 the requirements described in Section 78B-6-2203; and

119 (c) the minor accesses material that is harmful to minors on the device.

120 (2) Nothing in this part affects any private right of action existing under other law,
121 including contract.

122 (3) 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 method of filtration in
125 accordance with this part and industry standards.

126 Section 6. Section **78B-6-2205** is enacted to read:

127 **78B-6-2205. Damages -- Class action.**

128 (1) If a court finds that a manufacturer is liable under Section 78B-6-2204, the court
129 may award the plaintiff actual damages.

130 (2) A class action may be brought under this part in accordance with Utah Rules of
131 Civil Procedure, Rule 23.

132 Section 7. Section **78B-6-2206** is enacted to read:

133 **78B-6-2206. Civil action for enforcement -- Penalties.**

134 (1) (a) A manufacturer that is found liable under Section 78B-6-2204 shall be:

135 (i) liable for civil penalties not to exceed \$10 per violation, plus filing fees and attorney
136 fees, in addition to any other penalty established by law; and

137 (ii) enjoined from further violations.

138 (b) The civil penalty may be assessed and recovered in a civil action brought in any
139 court of competent jurisdiction.

140 (c) For purposes of assessing a penalty under Subsection (1), a manufacturer is
141 considered to have committed a separate violation for each device manufactured on or after
142 January 1 of the year following the year this bill takes effect, and activated in the state on
143 which:

144 (i) a filter is not automatically enabled; and

145 (ii) a minor encounters material harmful to minors.

146 (d) The total civil penalty assessed in a civil action brought under this section may not
147 exceed \$500, regardless of how many separate violations the plaintiff establishes.

148 (2) (a) A plaintiff shall prove and a court shall find, by clear and convincing evidence,
149 that a manufacturer manufactured a device on or after January 1 of the year following the year
150 this bill takes effect, that was activated in the state in violation of Section 78B-6-2203.

151 (b) The plaintiff shall prove all other elements by a preponderance of the evidence.

152 (3) The court shall specify the amount of each of the following for each violation:

153 (a) the civil penalty;

154 (b) filing fees; and

155 (c) attorney fees.

156 (4) In assessing the amount of a civil penalty for a violation of this chapter, the court
157 shall consider the following:

158 (a) the nature and extent of the violation;

159 (b) the number and severity of the violations;

160 (c) the economic effect of the penalty on the violator;

161 (d) the good faith measures the violator took to comply with this part;

- 162 (e) the timing of the measures the violator took to comply with this part;
163 (f) the willfulness of the violator's misconduct;
164 (g) the deterrent effect that the imposition of the penalty would have on both the
165 violator and the regulated community as a whole; and
166 (h) any other factor that the court determines justice requires.
167 (5) Actions pursuant to this part may be brought by the attorney general's office in the
168 name of the people of the state or by a private individual in accordance with Subsection (6).
169 (6) A private individual may bring an action in the public interest to establish liability
170 under Section 78B-6-2204 pursuant to this section and after satisfying the requirements of
171 Subsections (7), (8), and (9), if:
172 (a) the individual has served on the alleged violator and the attorney general's office a
173 notice of an alleged violation of Subsection 78B-6-2203(3);
174 (b) the attorney general's office has not provided a letter to the noticing party within 45
175 days after the day on which the attorney general's office receives the notice of an alleged
176 violation indicating that:
177 (i) an action is currently being pursued or will be pursued by the attorney general's
178 office regarding the violation; or
179 (ii) the attorney general believes that there is no merit to the action; and
180 (c) the alleged violator has not responded to the notice of alleged violation or returned
181 the proof of compliance form provided in Subsection (11).
182 (7) (a) The attorney for the noticing party, or the noticing party if the noticing party is
183 not represented by an attorney, shall execute the notice of an alleged violation.
184 (b) The notice of an alleged violation shall:
185 (i) state that the individual executing the notice believes that there is a violation; and
186 (ii) provide factual information sufficient to establish the basis for the alleged
187 violation.
188 (8) (a) The attorney general shall review the notice of an alleged violation and may

189 confer with the noticing party.

190 (b) The attorney general shall provide, within 45 days after the day on which the
191 attorney general received the notice of an alleged violation, a letter to the noticing party and the
192 alleged violator that states whether or not the attorney general finds merit in the action.

193 (9) (a) An individual who serves a notice of an alleged violation described in
194 Subsection (7) shall complete and provide to the alleged violator at the time the notice of the
195 alleged violation is served, a notice of special compliance procedure and proof of compliance
196 form pursuant to Subsection (11).

197 (b) The individual may file an action against the alleged violator, or recover from the
198 alleged violator, if:

199 (i) the notice of alleged violation alleges that the alleged violator failed to manufacture
200 a device that, when activated in the state, automatically enabled a filter as required under
201 Section 78B-6-2203;

202 (ii) a minor encountered material harmful to minors on the device without the option to
203 enable a filter; and

204 (iii) within 60 days after the day on which the alleged violator receives the notice of the
205 alleged violation, the alleged violator has not:

206 (A) corrected the alleged violation and all similar violations known to the alleged
207 violator;

208 (B) agreed to pay a penalty for the alleged violation in the amount of \$10 per violation,
209 up to \$500, regardless of the number of separate violations alleged in the notice; and

210 (C) notified, in writing, the noticing party and the attorney general's office that the
211 violation has been corrected.

212 (10) (a) The written notice required in Subsection (9)(b)(iii)(C) shall be the notice of
213 special compliance procedure and proof of compliance form specified in Subsection (11).

214 (b) The alleged violator shall deliver the civil penalty to the noticing party within 60
215 days after the day on which the alleged violator received the notice of the alleged violation.

216 (11) The notice required to be provided to an alleged violator pursuant to Subsection
217 (9) shall be presented as follows:

218 "Date:

219 Name of Noticing Party or Attorney for Noticing Party:

220 Address:

221 Phone Number:

222 SPECIAL COMPLIANCE PROCEDURE

223 PROOF OF COMPLIANCE

224 You are receiving this form because the Noticing Party listed above has alleged that you
225 are in violation of Utah Code Section 78B-6-2202.

226 The Noticing Party may bring legal proceedings against you for the alleged violation
227 checked below if:

228 (1) you have not actually taken the corrective steps that you have certified in this form;

229 (2) the Noticing Party has not received this form at the address shown above,
230 accurately completed by you, postmarked within 50 days after you receive this notice; and

231 (3) the Noticing Party does not receive the required \$10 penalty payment for each
232 violation alleged, with a total payment not to exceed \$500 regardless of the number of separate
233 violations alleged in the notice, from you at the address shown above postmarked within 60
234 days of your receiving this notice.

235 PART 1: TO BE COMPLETED BY THE NOTICING PARTY OR ATTORNEY FOR
236 THE NOTICING PARTY

237 This notice of alleged violation is for failure to provide an activated filter to protect
238 minors against exposure to materials considered harmful to minors. [provide complete
239 description of violation(s), including when and where observed and the serial number(s) of the
240 device(s) involved]

241 Date:

242 Name of Noticing Party or Attorney for Noticing Party:

243 Address:

244 Phone Number:

245 PART 2: TO BE COMPLETED BY THE ALLEGED VIOLATOR OR AUTHORIZED

246 REPRESENTATIVE

247 Certification of Compliance

248 Accurate completion of this form will demonstrate you are now in compliance with
249 Utah Code Section 78B-6-2203, for the alleged violation listed above. You must complete and
250 submit the form below to the Noticing Party at the address shown above, with a copy to the
251 Utah Attorney General's Office, postmarked within 50 days of you receiving this notice.

252 I hereby agree to pay, within 60 days of receipt of this notice, a penalty of \$10 for each
253 violation alleged to the Noticing Party only and certify that I have complied by (check only one
254 of the following):

255 [] Providing the party at the address shown above with information about how to
256 enable a filter.

257 [] Providing the party at the address shown above with information about how to
258 exchange a device that did not have a filter automatically enable upon activation for a
259 replacement device of the same model that will automatically enable the filter upon activation
260 in the state.

261 CERTIFICATION

262 My statements on this form, and on any attachments to it, are true, complete, and
263 correct to the best of my knowledge and belief and are made in good faith. I have carefully read
264 the instructions to complete this form.

265 Signature of alleged violator or authorized representative:

266 Date:

267 Name and title of signatory:".

268 (12) If a lawsuit is commenced, the plaintiff may include additional violations in the
269 claim that are discovered through the discovery process.

270 (13) An alleged violator shall satisfy the conditions set forth in Subsection (11) only
271 one time per device.

272 (14) (a) Notwithstanding an alleged violator's compliance with Subsection (10), the
273 attorney general may file an action pursuant to Subsection (5) against the alleged violator.

274 (b) In any action, a court shall reduce the amount of any civil penalty for a violation to
275 reflect any payment made by the alleged violator to a private individual in accordance with
276 Subsection (10) for the same alleged violation.

277 (15) Payments shall be made as follows:

278 (a) a civil penalty ordered by the court shall be paid to the plaintiff as directed by the
279 court; and

280 (b) a penalty paid in accordance with the special compliance procedure in Subsection
281 (11) shall be made directly to the noticing party.

282 (16) (a) The Utah Office for Victims of Crimes shall receive 50% of any penalty paid
283 in accordance with this section.

284 (b) Funds received shall be deposited into the Crime Victim Reparations Fund created
285 in Section 63M-7-526.

286 (c) The penalty amount upon which the 50% is calculated may not include attorney
287 fees or costs awarded by the court.

288 (d) If the penalty is paid to a noticing party in accordance with Subsection (11), the
289 noticing party shall remit the amount required by this Subsection (16) along with a copy of the
290 Special Compliance Procedure document.

291 (e) If a civil penalty is ordered by the court, the plaintiff shall remit the amount
292 required by this Subsection (16) along with a copy of the court order.

293 (17) The attorney general's office shall provide to the Utah Office for Victims of Crime
294 a copy of all notices of alleged violations to which the attorney general's office did not respond
295 with a letter of merit in accordance with Subsection (8).

296 (18) The court shall provide to the Utah Office for Victims of Crime a copy of the

297 court's order for payment.

298 (19) The Utah Office for Victims of Crime shall:

299 (a) maintain a record of documents and payments submitted pursuant to Subsections
300 (16), (17), and (18); and

301 (b) create and provide to the Legislature in odd-numbered years beginning after
302 November of the year following the year this bill takes effect a report containing the following
303 for the previous two years:

304 (i) the number of notices of alleged violations received from the attorney general's
305 office;

306 (ii) the number of court orders received; and

307 (iii) the total amount received and deposited into the Crime Victim Reparations Fund.

308 (20) This section does not apply to a manufacturer who makes a good faith effort to
309 install and enable upon activation in the state a generally accepted and commercially
310 reasonable method of filtration in accordance with this part and industry standards.

311 (21) (a) Beginning May 1 of the year following the year this bill takes effect, and at
312 each five-year interval, the Judicial Council shall adjust the dollar amount of the civil penalty
313 provided in Subsection (1) based on the change in the annual Consumer Price Index for the
314 most recent five-year period ending on December 31 of the previous year and rounded to the
315 nearest five dollars.

316 (b) The attorney general shall publish the dollar amount of the civil penalty together
317 with the date of the next scheduled adjustment.

318 **Section 8. Contingent effective date.**

319 (1) Title 78B, Chapter 6, Part 22, Cause of Action to Protect Minors from Unfiltered
320 Devices, takes effect on the first day of January following the day on which at least five states,
321 other than Utah, pass legislation in substantially the same form as Subsection 78B-6-2203(1)
322 and the enactments by the states have taken effect in each state.

323 (2) The lieutenant governor shall inform the legislative general counsel, in writing, of

324 the date Title 78B, Chapter 6, Part 22, Cause of Action to Protect Minors from Unfiltered
325 Devices, takes effect in accordance with this section.

326 Section 9. **Revisor instructions.**

327 For purposes of Sections 78B-6-2202, 78B-6-2203, 78B-6-2204, and 78B-6-2206, the
328 Legislature intends that the Office of Legislative Research and General Counsel, in preparing
329 the Utah Code database for publication, on the date this bill takes effect, replace the phrase "of
330 the year following the year this bill takes effect" with the year after the year the bill takes effect.
331 For example, if the lieutenant governor informs the legislative general counsel that this bill
332 takes effect in 2022, the Legislature intends that the Office of Legislative Research and General
333 Counsel replace the phrase "of the year following the year this bill takes effect" with the date
334 "2023".