

**DISTRIBUTION OF INTIMATE IMAGES**

2014 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Marie H. Poulson**

Senate Sponsor: Todd Weiler

Cosponsor: Craig Hall

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**LONG TITLE**

**General Description:**

This bill modifies Title 76, Utah Criminal Code, regarding distributing intimate images of a person without that person's permission.

**Highlighted Provisions:**

This bill:

- ▶ provides a definition of "intimate image";
- ▶ provides exceptions for lawful use of images;
- ▶ provides an exception for lawful practices and functions, including law enforcement functions and medical procedures;
- ▶ provides an exemption for defined services, including Internet service providers and interactive computer services; and
- ▶ provides that distribution of an intimate image of an individual, as defined and without that individual's permission, is a class A misdemeanor and any subsequent convictions are a third degree felony.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

ENACTS:

29 **76-5b-203**, Utah Code Annotated 1953



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

32 Section 1. Section **76-5b-203** is enacted to read:

33 **76-5b-203. Distribution of an intimate image -- Penalty.**

34 (1) As used in this section:

35 (a) "Distribute" means selling, exhibiting, displaying, wholesaling, retailing, providing,  
36 giving, granting admission to, providing access to, or otherwise transferring or presenting an  
37 image to another individual, with or without consideration.

38 (b) "Intimate image" means any visual depiction, photograph, film, video, recording,  
39 picture, or computer or computer-generated image or picture, whether made or produced by  
40 electronic, mechanical, or other means, that depicts:

41 (i) exposed human male or female genitals or pubic area, with less than an opaque  
42 covering;

43 (ii) a female breast with less than an opaque covering, or any portion of the female  
44 breast below the top of the areola; or

45 (iii) the individual engaged in any sexually explicit conduct.

46 (c) "Sexually explicit conduct" means actual or simulated:

47 (i) sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal,  
48 whether between persons of the same or opposite sex;

49 (ii) masturbation;

50 (iii) bestiality;

51 (iv) sadistic or masochistic activities;

52 (v) exhibition of the genitals, pubic region, buttocks, or female breast of any  
53 individual;

54 (vi) visual depiction of nudity or partial nudity;

55 (vii) fondling or touching of the genitals, pubic region, buttocks, or female breast; or

56 (viii) explicit representation of the defecation or urination functions.

57 (d) "Simulated sexually explicit conduct" means a feigned or pretended act of sexually  
58 explicit conduct that duplicates, within the perception of an average person, the appearance of  
59 an actual act of sexually explicit conduct.

60 (2) An actor commits the offense of distribution of intimate images if the actor, with  
61 the intent to cause emotional distress or harm, knowingly or intentionally distributes to any  
62 third party any intimate image of an individual who is 18 years of age or older, if:

63 (a) the actor knows that the depicted individual has not given consent to the actor to  
64 distribute the intimate image;

65 (b) the intimate image was created by or provided to the actor under circumstances in  
66 which the individual has a reasonable expectation of privacy; and

67 (c) actual emotional distress or harm is caused to the person as a result of the  
68 distribution under this section.

69 (3) This section does not apply to:

70 (a) (i) lawful practices of law enforcement agencies;

71 (ii) prosecutorial agency functions;

72 (iii) the reporting of a criminal offense;

73 (iv) court proceedings or any other judicial proceeding; or

74 (v) lawful and generally accepted medical practices and procedures;

75 (b) an intimate image if the individual portrayed in the image voluntarily allows public  
76 exposure of the image; or

77 (c) an intimate image that is portrayed in a lawful commercial setting.

78 (4) (a) This section does not apply to an Internet service provider or interactive  
79 computer service, as defined in 47 U.S.C. Sec. 230(f)(2), a provider of an electronic  
80 communications service as defined in 18 U.S.C. Sec. 2510, a telecommunications service,  
81 information service, or mobile service as defined in 47 U.S.C. Sec. 153, including a  
82 commercial mobile service as defined in 47 U.S.C. Sec. 332(d), or a cable operator as defined  
83 in 47 U.S.C. Sec. 522, if:

84 (i) the distribution of an intimate image by the Internet service provider occurs only

85 incidentally through the provider's function of:

86 (A) transmitting or routing data from one person to another person; or

87 (B) providing a connection between one person and another person;

88 (ii) the provider does not intentionally aid or abet in the distribution of the intimate  
89 image; and

90 (iii) the provider does not knowingly receive from or through a person who distributes  
91 the intimate image a fee greater than the fee generally charged by the provider, as a specific  
92 condition for permitting the person to distribute the intimate image.

93 (b) This section does not apply to a hosting company, as defined in Section  
94 76-10-1230, if:

95 (i) the distribution of an intimate image by the hosting company occurs only  
96 incidentally through the hosting company's function of providing data storage space or data  
97 caching to a person;

98 (ii) the hosting company does not intentionally engage, aid, or abet in the distribution  
99 of the intimate image; and

100 (iii) the hosting company does not knowingly receive from or through a person who  
101 distributes the intimate image a fee greater than the fee generally charged by the provider, as a  
102 specific condition for permitting the person to distribute, store, or cache the intimate image.

103 (c) A service provider, as defined in Section 76-10-1230, is not negligent under this  
104 section if it complies with Section 76-10-1231.

105 (5) (a) Distribution of an intimate image is a class A misdemeanor except under  
106 Subsection (5)(b).

107 (b) Distribution of an intimate image is a third degree felony on a second or subsequent  
108 conviction for an offense under this section that arises from a separate criminal episode as  
109 defined in Section 76-1-401.