

Effective 5/13/2014

Superseded 5/14/2019

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

(1) As used in this section:

- (a) "Distribute" means selling, exhibiting, displaying, wholesaling, retailing, providing, giving, granting admission to, providing access to, or otherwise transferring or presenting an image to another individual, with or without consideration.
- (b) "Intimate image" means any visual depiction, photograph, film, video, recording, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, that depicts:
 - (i) exposed human male or female genitals or pubic area, with less than an opaque covering;
 - (ii) a female breast with less than an opaque covering, or any portion of the female breast below the top of the areola; or
 - (iii) the individual engaged in any sexually explicit conduct.
- (c) "Sexually explicit conduct" means actual or simulated:
 - (i) sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;
 - (ii) masturbation;
 - (iii) bestiality;
 - (iv) sadistic or masochistic activities;
 - (v) exhibition of the genitals, pubic region, buttocks, or female breast of any individual;
 - (vi) visual depiction of nudity or partial nudity;
 - (vii) fondling or touching of the genitals, pubic region, buttocks, or female breast; or
 - (viii) explicit representation of the defecation or urination functions.
- (d) "Simulated sexually explicit conduct" means a feigned or pretended act of sexually explicit conduct that duplicates, within the perception of an average person, the appearance of an actual act of sexually explicit conduct.

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

- (a) the actor knows that the depicted individual has not given consent to the actor to distribute the intimate image;
- (b) the intimate image was created by or provided to the actor under circumstances in which the individual has a reasonable expectation of privacy; and
- (c) actual emotional distress or harm is caused to the person as a result of the distribution under this section.

(3) This section does not apply to:

- (a)
 - (i) lawful practices of law enforcement agencies;
 - (ii) prosecutorial agency functions;
 - (iii) the reporting of a criminal offense;
 - (iv) court proceedings or any other judicial proceeding; or
 - (v) lawful and generally accepted medical practices and procedures;
- (b) an intimate image if the individual portrayed in the image voluntarily allows public exposure of the image; or
- (c) an intimate image that is portrayed in a lawful commercial setting.

(4)

- (a) This section does not apply to an Internet service provider or interactive computer service, as defined in 47 U.S.C. Sec. 230(f)(2), a provider of an electronic communications service as defined in 18 U.S.C. Sec. 2510, a telecommunications service, information service, or mobile service as defined in 47 U.S.C. Sec. 153, including a commercial mobile service as defined in 47 U.S.C. Sec. 332(d), or a cable operator as defined in 47 U.S.C. Sec. 522, if:
 - (i) the distribution of an intimate image by the Internet service provider occurs only incidentally through the provider's function of:
 - (A) transmitting or routing data from one person to another person; or
 - (B) providing a connection between one person and another person;
 - (ii) the provider does not intentionally aid or abet in the distribution of the intimate image; and
 - (iii) the provider does not knowingly receive from or through a person who distributes the intimate image a fee greater than the fee generally charged by the provider, as a specific condition for permitting the person to distribute the intimate image.
 - (b) This section does not apply to a hosting company, as defined in Section 76-10-1230, if:
 - (i) the distribution of an intimate image by the hosting company occurs only incidentally through the hosting company's function of providing data storage space or data caching to a person;
 - (ii) the hosting company does not intentionally engage, aid, or abet in the distribution of the intimate image; and
 - (iii) the hosting company does not knowingly receive from or through a person who distributes the intimate image a fee greater than the fee generally charged by the provider, as a specific condition for permitting the person to distribute, store, or cache the intimate image.
 - (c) A service provider, as defined in Section 76-10-1230, is not negligent under this section if it complies with Section 76-10-1231.
- (5)
- (a) Distribution of an intimate image is a class A misdemeanor except under Subsection (5)(b).
 - (b) Distribution of an intimate image is a third degree felony on a second or subsequent conviction for an offense under this section that arises from a separate criminal episode as defined in Section 76-1-401.