Chapter 5b
Sexual Exploitation Act

Part 1
General Provisions

76-5b-101 Title.
This chapter is known as the "Sexual Exploitation Act."

Enacted by Chapter 320, 2011 General Session

76-5b-102 Legislative determinations -- Purpose of chapter.
(1) The Legislature of Utah determines that:
(a) the sexual exploitation of a minor is excessively harmful to the minor's physiological, emotional, social, and mental development;
(b) the sexual exploitation of a vulnerable adult who lacks the capacity to consent to sexual exploitation can result in excessive harm to the vulnerable adult's physiological, emotional, and social well-being;
(c) a minor cannot intelligently and knowingly consent to sexual exploitation;
(d) regardless of whether it is classified as legally obscene, material that sexually exploits a minor, or a vulnerable adult who does not have the capacity to consent to sexual exploitation, is not protected by the First Amendment of the United States Constitution or by the First or Fifteenth sections of Article I of the Utah Constitution and may be prohibited; and
(e) prohibition of and punishment for the distribution, possession, possession with intent to distribute, and production of materials that sexually exploit a minor, or a vulnerable adult who lacks the capacity to consent to sexual exploitation, is necessary and justified to eliminate the market for those materials and to reduce the harm to the minor or vulnerable adult inherent in the perpetuation of the record of the minor's or vulnerable adult's sexually exploitive activities.
(2) It is the purpose of this chapter to prohibit the production, possession, possession with intent to distribute, and distribution of materials that sexually exploit a minor, or a vulnerable adult who lacks capacity to consent to sexual exploitation, regardless of whether the materials are classified as legally obscene.

Renumbered and Amended by Chapter 320, 2011 General Session

76-5b-103 Definitions.
As used in this chapter:
(1) "Child sexual abuse material" means any visual depiction, including any live performance, photograph, film, video, picture, or computer or computer-generated image, picture, or video, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct, where:
(a) the production of the visual depiction involves the use of a minor engaging in sexually explicit conduct;
(b) the visual depiction is:
(i) of a minor engaging in sexually explicit conduct; or
(ii) artificially generated and depicts an individual with substantial characteristics of a minor engaging in sexually explicit conduct; or

(c) the visual depiction has been created, adapted, or modified to appear that an identifiable minor is engaging in sexually explicit conduct.

(2) "Distribute" means, with or without consideration, to sell, exhibit, display, provide, give, grant admission to, provide access to, or otherwise transfer.

(3) "Identifiable minor" means an individual:

(a)

(i) who was a minor at the time the visual depiction was created, adapted, or modified; or

(ii) whose image as a minor was used in creating, adapting, or modifying the visual depiction; and

(b) who is recognizable as an actual individual by the individual's face, likeness, or other distinguishing characteristic, such as a birthmark, or other recognizable feature.

(4) "Identifiable vulnerable adult" means an individual:

(a)

(i) who was a vulnerable adult at the time the visual depiction was created, adapted, or modified; or

(ii) whose image as a vulnerable adult was used in creating, adapting, or modifying the visual depiction; and

(b) who is recognizable as an actual individual by the individual's face, likeness, or other distinguishing characteristic, such as a birthmark, or other recognizable feature.

(5) "Lacks capacity to consent" means the same as that term is defined in Section 76-5-111.4.

(6) "Live performance" means any act, play, dance, pantomime, song, or other activity performed by live actors in person.

(7) "Minor" means an individual who is younger than 18 years old.

(8) "Nudity or partial nudity" means any state of dress or undress in which the human genitals, pubic region, buttocks, or the female breast, at a point below the top of the areola, is less than completely and opaquely covered.

(9) "Produce" means:

(a) the photographing, filming, taping, directing, producing, creating, designing, or composing of child sexual abuse material or vulnerable adult sexual abuse material; or

(b) the securing or hiring of individuals to engage in the photographing, filming, taping, directing, producing, creating, designing, or composing of child sexual abuse material or vulnerable adult sexual abuse material.

(10) "Sexually explicit conduct" means actual or simulated:

(a) sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between individuals of the same or opposite sex;

(b) masturbation;

(c) bestiality;

(d) sadistic or masochistic activities;

(e) lascivious exhibition of the genitals, pubic region, buttocks, or female breast of any individual;

(f) the visual depiction of nudity or partial nudity for the purpose of causing sexual arousal of any individual;

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

(h) the explicit representation of the defecation or urination functions.

(11) "Simulated sexually explicit conduct" means a feigned or pretended act of sexually explicit conduct which duplicates, within the perception of an average person, the appearance of an actual act of sexually explicit conduct.

(12) "Vulnerable adult" means the same as that term is defined in Subsection 76-5-111(1).

(13) "Vulnerable adult sexual abuse material" means any visual depiction, including any live performance, photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct, where:
(a) the production of the visual depiction involves the use of a vulnerable adult engaging in sexually explicit conduct;
(b) the visual depiction is of a vulnerable adult engaging in sexually explicit conduct; or
(c) the visual depiction has been created, adapted, or modified to appear that an identifiable vulnerable adult is engaging in sexually explicit conduct.

Amended by Chapter 127, 2024 General Session
Amended by Chapter 142, 2024 General Session

Part 2
Sexual Exploitation

76-5b-201 Sexual exploitation of a minor -- Offenses.
(1) Terms defined in Section 76-1-101.5 apply to this section.
(2) An actor commits sexual exploitation of a minor when the actor knowingly possesses or intentionally views child sexual abuse material.
(3)
(a) A violation of Subsection (2) is a second degree felony.
(b) It is a separate offense under this section:
(i) for each minor depicted in the child sexual abuse material; and
(ii) for each time the same minor is depicted in different child sexual abuse material.
(4) For a charge of violating this section, it is an affirmative defense that:
(a) the defendant:
(i) did not solicit the child sexual abuse material from the minor depicted in the child sexual abuse material;
(ii) is not more than two years older than the minor depicted in the child sexual abuse material; and
(iii) upon request of a law enforcement agent or the minor depicted in the child sexual abuse material, removes from an electronic device or destroys the child sexual abuse material and all copies of the child sexual abuse material in the defendant's possession; and
(b) the child sexual abuse material does not depict an offense under Chapter 5, Part 4, Sexual Offenses.
(5) In proving a violation of this section in relation to an identifiable minor, proof of the actual identity of the identifiable minor is not required.
(6) The following are not criminally or civilly liable under this section when acting in good faith compliance with Section 77-4-201:
(a) an entity or an employee, director, officer, or agent of an entity when acting within the scope of employment, for the good faith performance of:
(i) reporting or data preservation duties required under federal or state law; or
(ii) implementing a policy of attempting to prevent the presence of child sexual abuse material on tangible or intangible property, or of detecting and reporting the presence of child sexual abuse material on the property;

(b) a law enforcement officer acting within the scope of a criminal investigation;
(c) an employee of a court who may be required to view child sexual abuse material during the course of and within the scope of the employee's employment;
(d) a juror who may be required to view child sexual abuse material during the course of the individual's service as a juror;
(e) an attorney or employee of an attorney who is required to view child sexual abuse material during the course of a judicial process and while acting within the scope of employment;
(f) an employee of the Department of Health and Human Services who is required to view child sexual abuse material within the scope of the employee's employment; or
(g) an attorney who is required to view child sexual abuse material within the scope of the attorney's responsibility to represent the Department of Health and Human Services, including the divisions and offices within the Department of Health and Human Services.

Amended by Chapter 142, 2024 General Session

76-5b-201.1 Aggravated sexual exploitation of a minor.
(1) As used in this section:
(a) "Physical abuse" or "physically abused" means the same as the term "physical abuse" is defined in Section 80-1-102.
(b) The terms defined in Section 76-1-101.5 apply to this section.
(2) An actor commits aggravated sexual exploitation of a minor if the actor:
(a) intentionally distributes child sexual abuse material;
(b) knowingly produces child sexual abuse material; or
(c) is the minor's parent or legal guardian and knowingly consents to or permits the minor to be sexually exploited as described in Subsection (2)(a) or (b) or Section 76-5b-201.
(3)
(a) Except as provided in Subsection (3)(b) or (c), a violation of Subsection (2) is a first degree felony.
(b) If an actor is under 18 years old at the time of the offense, a violation of Subsection (2) is a second degree felony.
(c) A violation of Subsection (2)(a) is a second degree felony if the child sexual abuse material depicts an individual who is:
(i) 14 years old or older; or
(ii) pubescent.
(4) It is a separate offense under this section:
(a) for each minor depicted in the child sexual abuse material; and
(b) for each time the same minor is depicted in different child sexual abuse material.
(5) In proving a violation of this section in relation to an identifiable minor, proof of the actual identity of the identifiable minor is not required.
(6) The following are not criminally or civilly liable under this section when acting in good faith compliance with Section 77-4-201:
(a) an entity or an employee, director, officer, or agent of an entity when acting within the scope of employment, for the good faith performance of:
(i) reporting or data preservation duties required under federal or state law; or
(ii) implementing a policy of attempting to prevent the presence of child sexual abuse material on tangible or intangible property, or of detecting and reporting the presence of child sexual abuse material on the property;
(b) a law enforcement officer acting within the scope of a criminal investigation;

(c) an employee of a court who may be required to view child sexual abuse material during the course of and within the scope of the employee's employment;
(d) a juror who may be required to view child sexual abuse material during the course of the individual's service as a juror;
(e) an attorney or employee of an attorney who is required to view child sexual abuse material during the course of a judicial process and while acting within the scope of employment;
(f) an employee of the Department of Health and Human Services who is required to view child sexual abuse material within the scope of the employee's employment; or
(g) an attorney who is required to view child sexual abuse material within the scope of the attorney's responsibility to represent the Department of Health and Human Services, including the divisions and offices within the Department of Health and Human Services.

Amended by Chapter 142, 2024 General Session

76-5b-202 Sexual exploitation of a vulnerable adult -- Offenses.
(1) Terms defined in Section 76-1-101.5 apply to this section.
(2) An actor commits sexual exploitation of a vulnerable adult if the actor:
(a)
(i)
(A) knowingly produces, possesses, or possesses with intent to distribute material that the actor knows is vulnerable adult sexual abuse material; or
(B) intentionally distributes or views material that the actor knows is vulnerable adult sexual abuse material; and
(ii) the vulnerable adult who appears in, or is depicted in, the vulnerable adult sexual abuse material lacks capacity to consent to the conduct described in Subsection (2)(a); or
(b) is a vulnerable adult's legal guardian and knowingly consents to, or permits the vulnerable adult to be, sexually exploited as described in Subsection (2)(a).
(3)
(a) A violation of Subsection (2) is a third degree felony.
(b) It is a separate offense under this section:
(i) for each vulnerable adult depicted in the vulnerable adult sexual abuse material; and
(ii) for each time the same vulnerable adult is depicted in different vulnerable adult sexual abuse material.
(4) It is an affirmative defense to a charge of violating this section that no vulnerable adult was actually depicted in the visual depiction or used in producing or advertising the visual depiction.
(5) In proving a violation of this section in relation to an identifiable vulnerable adult, proof of the actual identity of the identifiable vulnerable adult is not required.
(6) This section may not be construed to impose criminal or civil liability on:
(a) any entity or an employee, director, officer, or agent of an entity, when acting within the scope of employment, for the good faith performance of:
(i) reporting or data preservation duties required under any federal or state law; or
(ii) implementing a policy of attempting to prevent the presence of vulnerable adult sexual abuse material on any tangible or intangible property, or of detecting and reporting the presence of vulnerable adult sexual abuse material on the property; or
(b) any law enforcement officer acting within the scope of a criminal investigation.

Amended by Chapter 231, 2023 General Session

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

(1)

(a) As used in this section:

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

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

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

(C) the individual engaged in any sexually explicit conduct.

(ii) "Sexually explicit conduct" means actual or simulated:

(A) sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between individuals of the same or opposite sex;

(B) masturbation;

(C) bestiality;

(D) sadistic or masochistic activities;

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

(F) visual depiction of nudity or partial nudity;

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

(H) explicit representation of the defecation or urination functions.

(iii) "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.

(iv) "Single criminal episode" means the same as that term is defined in Section 76-1-401.

(b) Terms defined in Section 76-1-101.5 apply to this section.

(2)

(a) An actor commits the offense of distribution of an intimate image if:

(i) the actor knowingly or intentionally distributes to a third party, or knowingly duplicates or copies an intimate image of an individual who is 18 years old or older and knows or should know that the distribution, duplication or copying would cause a reasonable person to suffer emotional distress or harm;

(ii) the actor has not received consent from the individual depicted in the image to distribute the intimate image;

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

(iv) except as provided in Subsection (2)(b), actual emotional distress or harm is caused to the individual depicted in the image as a result of the distribution.

(b) Subsection (2)(a)(iv) is not an element of the offense described in Subsection (2)(a) if:

(i) the individual depicted in the intimate image was the victim of a crime;

(ii) the intimate image was provided to law enforcement as part of an investigation or prosecution of a crime committed against the victim;

(iii) the intimate image was distributed without a legitimate law enforcement or investigative purpose by an individual who had access to the intimate image due to the individual's association with the investigation or prosecution described in Subsection (2)(b)(ii); and

(iv) the victim is incapacitated or deceased.

(3)

(a) A violation of Subsection (2) is a class A misdemeanor.

(b) Notwithstanding Subsection (3)(a), a violation of Subsection (2) is a third degree felony on a second or subsequent conviction for an offense under this section that does not arise from a single criminal episode.

(4) This section does not apply to:

(a) except as provided in Section 76-5b-203.5:

(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;

(c) an intimate image that is portrayed in a lawful commercial setting; or

(d) an intimate image that is related to a matter of public concern or interest.

(5)

(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.

Amended by Chapter 127, 2024 General Session

76-5b-203.5 Misuse of intimate image during a criminal action.

(1)

(a) As used in this section:

(i) "Criminal action" means the same as that term is defined in Section 77-1-3.

(ii) "Intimate image" means the same as that term is defined in Section 76-5b-203.

(b) Terms defined in Section 76-1-101.5 apply to this section.

(2) An actor commits misuse of an intimate image during a criminal action if the actor:

(a) obtains access to an intimate image in the course of a criminal action; and
(b) intentionally displays, duplicates, copies, or shares the intimate image, unless:
(i) displaying, duplicating, copying, or sharing the intimate image is done solely for the purpose of the adjudication, defense, prosecution or investigation of a criminal matter involving the intimate image;
(ii) each individual who is the subject of the intimate image gives written permission to display, duplicate, copy, or share the intimate image; or
(iii) the intimate image was not created by or provided to the actor under circumstances in which the depicted individual has a reasonable expectation of privacy.
(3) A violation of Subsection (2) is:
(a) a class A misdemeanor for a first offense; or
(b) a third degree felony for each subsequent offense.
(4) Nothing in this section precludes an agency that employs an individual who is involved in a criminal action from establishing internal policies for an individual's violation of this section.

Amended by Chapter 181, 2022 General Session

76-5b-204 Sexual extortion -- Penalties.
(1)
(a) As used in this section:
(i) "Adult" means an individual 18 years old or older.
(ii) "Child" means any individual under the age of 18.
(iii) "Intimate image" means the same as that term is defined in Section 76-5b-203.
(iv) "Position of special trust" means the same as that term is defined in Section 76-5-404.1.
(v) "Sexually explicit conduct" means the same as that term is defined in Section 76-5b-203.
(vi) "Simulated sexually explicit conduct" means the same as that term is defined in Section 76-5b-203.
(b) Terms defined in Section 76-1-101.5 apply to this section.
(2)
(a) An actor commits the offense of sexual extortion if the actor:
(i) with an intent to coerce a victim to engage in sexual contact, in sexually explicit conduct, or in simulated sexually explicit conduct, or to produce, provide, or distribute an image, video, or other recording of any individual naked or engaged in sexually explicit conduct, communicates by any means a threat:
(A) to the victim's person, property, or reputation; or
(B) to distribute an intimate image or video of the victim;
(ii) knowingly causes a victim to engage in sexual contact, in sexually explicit conduct, or in simulated sexually explicit conduct, or to produce, provide, or distribute any image, video, or other recording of any individual naked or engaged in sexually explicit conduct by means of a threat:
(A) to the victim's person, property, or reputation; or
(B) to distribute an intimate image or video of the victim; or
(iii) with intent to obtain a thing of value from a victim communicates, by any means, a threat to distribute an intimate image or video of the victim.
(b) An actor commits aggravated sexual extortion when, in conjunction with the offense described in Subsection (2)(a), any of the following circumstances have been charged and admitted or found true in the action for the offense:
(i) the victim is a child or vulnerable adult;

(ii) the offense was committed by the use of a dangerous weapon or by violence, intimidation, menace, fraud, or threat of physical harm, or was committed during the course of a kidnapping;
(iii) the actor caused bodily injury or severe psychological injury to the victim during or as a result of the offense;
(iv) the actor was a stranger to the victim or became a friend of the victim for the purpose of committing the offense;
(v) the actor, before sentencing for the offense, was previously convicted of any sexual offense;
(vi) the actor occupied a position of special trust in relation to the victim;
(vii) the actor encouraged, aided, allowed, or benefitted from acts of prostitution or sexual acts by the victim with any other individual, or sexual performance by the victim before any other individual, human trafficking, or human smuggling; or
(viii) the actor caused the penetration, however slight, of the genital or anal opening of the victim by any part or parts of the human body, or by any other object.

(3)
(a) If the actor is an adult:
(i) A violation of Subsection (2)(a) is a third degree felony.
(ii) A violation of Subsection (2)(b) in which the victim is an adult is a second degree felony.
(iii) A violation of Subsection (2)(b) in which the victim is a child or a vulnerable adult is a first degree felony.
(b) If the actor is a child:
(i) A violation of Subsection (2)(a) is a class A misdemeanor.
(ii) A violation of Subsection (2)(b) is a third degree felony if there is more than a two-year age gap between the actor and the victim.
(c) An actor commits a separate offense under this section:
(i) for each victim the actor subjects to the offense outlined in Subsection (2)(a); and
(ii) for each separate time the actor subjects a victim to the offense outlined Subsection (2)(a).
(d) This section does not preclude an actor from being charged and convicted of a separate criminal act if the actor commits the separate criminal act while the individual violates or attempts to violate this section.

(4) An interactive computer service, as defined in 47 U.S.C. Sec. 230, is not subject to liability under this section related to content provided by a user of the interactive computer service.

Amended by Chapter 127, 2024 General Session

76-5b-205 Unlawful distribution of a counterfeit intimate image -- Penalty.

(1)
(a) As used in this section:
(i) "Child" means an individual under 18 years old.
(ii) "Counterfeit intimate image" means any visual depiction, photograph, film, video, recording, picture, or computer or computer-generated image , picture, or video, whether made or produced by electronic, mechanical, or other means, that has been edited, manipulated, generated, or altered to depict the likeness of an identifiable individual and purports to, or is made to appear to, depict that individual's:
(A) exposed human male or female genitals or pubic area, with less than an opaque covering;
(B) a female breast with less than an opaque covering, or any portion of the female breast below the top of the areola; or

(C) the individual engaged in any sexually explicit conduct or simulated sexually explicit conduct.

(iii) "Sexually explicit conduct" means the same as that term is defined in Section 76-5b-203.

(iv) "Simulated sexually explicit conduct" means the same as that term is defined in Section 76-5b-203.

(v) "Single criminal episode" means the same as that term is defined in Section 76-1-401.

(b) Terms defined in Section 76-1-101.5 apply to this section.

(2)

(a) An actor commits the offense of unlawful distribution of a counterfeit intimate image if the actor knowingly or intentionally distributes a counterfeit intimate image that the actor knows or should reasonably know would cause a reasonable person to suffer emotional or physical distress or harm, if:

(i) the actor has not received consent from the depicted individual to distribute the counterfeit intimate image; and

(ii) the counterfeit intimate image was created or provided by the actor without the knowledge and consent of the depicted individual.

(b) An actor who is 18 years old or older commits aggravated unlawful distribution of a counterfeit intimate image if, in committing the offense described in Subsection (2)(a), the individual depicted in the counterfeit intimate image is a child.

(3)

(a)

(i) A violation of Subsection (2)(a) that is knowing or intentional is a class A misdemeanor.

(ii) Notwithstanding Subsection (3)(a)(i), a violation of Subsection (2)(a) that is knowing or intentional is a third degree felony on a second or subsequent conviction for an offense under this section that does not arise from a single criminal episode.

(b)

(i) A violation of Subsection (2)(b) that is knowing or intentional is a third degree felony.

(ii) Notwithstanding Subsection (3)(b)(i), a violation of Subsection (2)(b) that is knowing or intentional is a second degree felony on a second or subsequent conviction for an offense under this section that does not arise from a single criminal episode.

(c) This section does not apply to an actor who engages in conduct that constitutes a violation of this section to the extent that the actor is chargeable, for the same conduct, under Section 76-5b-201, sexual exploitation of a minor, or Section 76-5b-201.1, aggravated sexual exploitation of a minor.

(4) 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) a counterfeit intimate image if the individual depicted in the image voluntarily allows public exposure of the image;

(c) a counterfeit intimate image that is portrayed in a lawful commercial setting; or

(d) a counterfeit intimate image that is related to a matter of public concern or interest or protected by the First Amendment to the United States Constitution or Article I, Sections 1 and 15 of the Utah Constitution.

(5)

(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 a counterfeit 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 counterfeit intimate image; and
(iii) the provider does not knowingly receive from or through a person who distributes the counterfeit intimate image a fee greater than the fee generally charged by the provider, as a specific condition for permitting the person to distribute the counterfeit intimate image.
(b) This section does not apply to a hosting company, as defined in Section 76-10-1230, if:
(i) the distribution of a counterfeit 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 counterfeit intimate image;
(iii) the hosting company does not knowingly receive from or through a person who distributes the counterfeit 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 counterfeit intimate image; and
(iv) the hosting company immediately removes the counterfeit intimate image upon notice from a law enforcement agency, prosecutorial agency, or the individual purportedly depicted in the counterfeit 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.

Amended by Chapter 127, 2024 General Session
Amended by Chapter 146, 2024 General Session

Part 3
Miscellaneous

76-5b-301 Determination whether material violates chapter.
(1) In determining whether material is in violation of this chapter, the material need not be considered as a whole, but may be examined by the trier of fact in part only.
(2) It is not an element of the offense of sexual exploitation of a minor that the material appeal to the prurient interest in sex of the average person nor that prohibited conduct need be portrayed in a patently offensive manner.
(3) It is not an element of the offense of sexual exploitation of a vulnerable adult that the material appeal to the prurient interest in sex of the average person nor that prohibited conduct need be portrayed in a patently offensive manner.

Renumbered and Amended by Chapter 320, 2011 General Session

76-5b-302 Lack of knowledge of age not a defense.

It is not a defense to an offense described in this chapter that the accused did not know the age of the victim.

Enacted by Chapter 320, 2011 General Session

76-5b-303 Severability.

(1) If any provision of this chapter or the application of any provision to any person or circumstance is held invalid by a final decision of a court, the remainder of this chapter shall be given effect without the invalid provision or application.
(2) The provisions of this chapter are severable.

Enacted by Chapter 142, 2024 General Session