

Representative Marie H. Poulson proposes the following substitute bill:

DISTRIBUTION OF INTIMATE IMAGES

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Marie H. Poulson

Senate Sponsor: Todd Weiler

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 ~~H~~ ~~telecommunication services~~ ~~S~~ services,

including ~~S~~ Internet service

providers and ~~S~~ [hosting companies] interactive computer services ~~S~~ ~~H~~ ; and

- ▶ provides that distribution of an intimate image of an individual, as defined and without that individual's permission, is ~~H~~ a class A misdemeanor and any subsequent convictions are ~~H~~ a third degree felony.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:



57 (2) An actor commits the offense of distribution of intimate images if the actor, with
 58 the intent to cause ~~H→~~ [severe] ~~←H~~ emotional distress or harm, knowingly or intentionally
 58a distributes to
 59 any third party any intimate image of an individual who is 18 years of age or older, if:
 60 (a) the actor knows that the depicted individual has not given consent to the actor to
 61 distribute the intimate image;
 62 (b) the intimate image was created by or provided to the actor under circumstances in
 63 which the individual has a reasonable expectation of privacy; and
 64 (c) actual ~~H→~~ emotional distress or ~~←H~~ harm is caused to the person ~~H→~~ [and the harm is]
 64a as ~~←H~~ a result of the distribution under
 65 this section.

66 (3) This section does not apply to:
 67 (a) (i) lawful practices of law enforcement agencies;
 68 (ii) prosecutorial agency functions;
 69 (iii) the reporting of a criminal offense;
 70 (iv) court proceedings or any other judicial proceeding; or
 71 (v) lawful and generally accepted medical practices and procedures;
 72 (b) an intimate image if the individual portrayed in the image voluntarily allows public
 73 exposure of the image; or
 74 (c) an intimate image that is portrayed in a lawful commercial setting.

75 ~~**H→ [(4) This section does not impose liability on an interactive computer service, as defined**~~
 76 ~~**in 47 U.S.C. Sec. 230(f)(2), an information service, as defined in 47 U.S.C. Sec. 153, or a**~~
 77 ~~**telecommunication service, as defined by Section 76-6-409.5, for content that any of these**~~
 78 ~~**entities provide to another person.]**~~

78a ~~**S→ [(4) (a) This section does not apply to an Internet service provider, as defined in Section**~~
 78b ~~**76-10-1230, if:**~~

78c ~~**—— (i) the distribution of an intimate image by the Internet service provider occurs only**~~
 78d ~~**incidentally through the Internet service provider's function of:**~~
 78e ~~**—— (A) transmitting or routing data from one person to another person; or**~~
 78f ~~**—— (B) providing a connection between one person and another person;**~~
 78g ~~**—— (ii) the Internet service provider does not intentionally aid or abet in the distribution of**~~
 78h ~~**an intimate image; and**~~
 78i ~~**—— (iii) the Internet service provider does not knowingly receive funds from or through a**~~
 78j ~~**person who distributes an intimate image in exchange for permitting the person to ~~←S~~**~~

78k ~~§→distribute an intimate image:~~

78l ~~—— (b) This section does not apply to a hosting company, as defined in~~

78m ~~Section 76-10-1230, if:~~

78n ~~—— (i) the distribution of an intimate image by the hosting company occurs only~~

78o ~~incidentally through the hosting company's function of providing data storage space or data~~

78p ~~caching to a person;~~

78q ~~—— (ii) the hosting company does not intentionally engage, aid, or abet in the distribution~~

78r ~~of an intimate image; and~~

78s ~~—— (iii) the hosting company does not knowingly receive funds from or through a person~~

78t ~~who distributes an intimate image in exchange for permitting the person to distribute, store, or~~

78u ~~cache an intimate image. ←H] ←S~~

79 ~~S→~~ (4) (a) This section does not apply to an Internet service provider ~~S→~~ or

79a1 ~~interactive computer service ←S~~ , as defined in 47

79a ~~U.S.C. Sec 230(f)(2) , a provider of an electronic communications service as defined in 18~~

79b ~~U.S.C. Sec. 2510, a telecommunications service, information service, or mobile service as~~

79c ~~defined in 47 U.S.C. Sec. 153, including a commercial mobile service as defined in 47 U.S.C.~~

79d ~~Sec. 332(d), or a cable operator as defined in 47 U.S.C. Sec. 522, if:~~

79e ~~(i) the distribution of an intimate image by the Internet service provider occurs only~~

79f ~~incidentally through the provider's function of:~~

79g ~~(A) transmitting or routing data from one person to another person; or~~

79h ~~(B) providing a connection between one person and another person;~~

79i ~~(ii) the provider does not intentionally aid or abet in the distribution of the intimate~~

79j ~~image; and~~

79k ~~(iii) the provider does not knowingly receive from or through a person who distributes~~

79l ~~the intimate image a fee greater than the fee generally charged by the provider, as a specific~~

79m ~~condition for permitting the person to distribute the intimate image.~~

79n ~~(b) This section does not apply to a hosting company, as defined in Section 76-10-1230,~~

79o ~~if:~~

79p ~~(i) the distribution of an intimate image by the hosting company occurs only~~

79q ~~incidentally through the hosting company's function of providing data storage space or data~~

79r ~~caching to a person;~~

79s ~~(ii) the hosting company does not intentionally engage, aid, or abet in the distribution~~

79t ~~of the intimate image; and~~

79u ~~(iii) the hosting company does not knowingly receive from or through a person who~~

79v ~~distributes the intimate image a fee greater than the fee generally charged by the provider, as~~

79w ~~a specific condition for permitting the person to distribute, store, or cache the intimate image.~~

79x (c) A service provider, as defined in Section 76-10-1230, is not negligent under this
 79y section if it complies with Section 76-10-1231. ←Ŝ
 79z (5) ~~Ŝ~~→ (a) ←Ŝ Distribution of an intimate image is ~~H~~→ a class A misdemeanor
 79a ~~Ŝ~~→ ~~[and]~~ except under Subsection (5)(b)
 79b (b) Distribution of an intimate image is a third degree felony on ←Ŝ ~~Ŝ~~→ ~~[upon]~~ ←Ŝ a second
 79a ~~Ŝ~~→ ~~[separate incident]~~ ←Ŝ or subsequent conviction ~~Ŝ~~→ ~~[is]~~ ←Ŝ ~~←H~~ ~~Ŝ~~→ for an offense under
 79b this section that arises from a separate criminal episode as defined in Section 76-1-401 ~~[a third~~
 79c degree felony] ←Ŝ .