

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 ~~Internet~~ telecommunication services ~~services~~ services,

including Internet service

providers and hosting companies 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~~ 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:



26 [76-5b-203](#), Utah Code Annotated 1953

27

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

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

30 **76-5b-203. Distribution of an intimate image -- Penalty.**

31 (1) As used in this section:

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

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

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

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

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

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

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

46 (ii) masturbation;

47 (iii) bestiality;

48 (iv) sadistic or masochistic activities;

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

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

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

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

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

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 ~~§→~~ (4) (a) ~~This section does not apply to an Internet service provider~~ ~~§→~~ 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 Ĥ→ 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 ←Ĥ 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 .