

Representative Karianne Lisonbee proposes the following substitute bill:

REVENGE PORN AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Craig Hall

Senate Sponsor: _____

LONG TITLE

General Description:

This bill eliminates the requirement of actual emotional distress or harm from the offense of distribution of intimate images.

Highlighted Provisions:

This bill:

- ▶ removes the requirement of demonstrating actual emotional distress or harm to the subject of the distributed intimate images from the offense of distribution of intimate images; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

76-5b-203, as last amended by Laws of Utah 2019, Chapter 378

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



26 Section 1. Section **76-5b-203** is amended to read:

27 **76-5b-203. Distribution of an intimate image -- Penalty.**

28 (1) As used in this section:

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

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

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

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

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

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

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

43 (ii) masturbation;

44 (iii) bestiality;

45 (iv) sadistic or masochistic activities;

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

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

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

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

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

53 (2) An actor commits the offense of distribution of intimate images if the actor
54 knowingly or intentionally distributes to any third party any intimate image of an individual who
55 is 18 years ~~[of age]~~ old or older and knows or should know that the distribution would cause a
56 reasonable person to suffer emotional distress or harm, if:

57 (a) the actor knows that the depicted individual has not given consent to the actor to

58 distribute the intimate image; and

59 (b) the intimate image was created by or provided to the actor under circumstances in
60 which the individual has a reasonable expectation of privacy[~~;~~ ~~and~~].

61 [~~(c) actual emotional distress or harm is caused to the person as a result of the~~
62 ~~distribution under this section.~~]

63 (3) This section does not apply to:

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

65 (ii) prosecutorial agency functions;

66 (iii) the reporting of a criminal offense;

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

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

69 (b) an intimate image if the individual portrayed in the image voluntarily allows public
70 exposure of the image;

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

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

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

79 (i) the distribution of an intimate image by the Internet service provider occurs only
80 incidentally through the provider's function of:

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

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

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

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

88 (b) This section does not apply to a hosting company, as defined in Section [76-10-1230](#),
89 if:

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

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

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

98 (c) A service provider, as defined in Section [76-10-1230](#), is not negligent under this
99 section if it complies with Section [76-10-1231](#).

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

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