

Senator Todd D. Weiler proposes the following substitute bill:

REVENGE PORN AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Craig Hall

Senate Sponsor: Todd D. Weiler

LONG TITLE

General Description:

This bill modifies the requirement of proving actual emotional distress or harm for the offense of distribution of intimate images.

Highlighted Provisions:

This bill:

- ▶ provides that actual emotional distress or harm to the subject of a distributed intimate image is not an element of the offense in certain circumstances; 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:

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



26 **76-5b-203. Distribution of an intimate image -- Penalty.**

27 (1) As used in this section:

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

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

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

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

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

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

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

42 (ii) masturbation;

43 (iii) bestiality;

44 (iv) sadistic or masochistic activities;

45 (v) exhibition of the genitals, pubic region, buttocks, or female breast of any
46 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
52 an actual act of sexually explicit conduct.

53 (2) (a) An actor commits the offense of distribution of an intimate ~~[images]~~ image if:

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

57 harm~~[, if:]~~;

58 ~~[(a)]~~ (ii) the actor knows that the ~~[depicted]~~ individual depicted in the image has not
59 given consent to the actor to distribute the intimate image;

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

63 ~~[(c)]~~ (iv) except as provided in Subsection (2)(b), actual emotional distress or harm is
64 caused to the ~~[person]~~ individual depicted in the image as a result of the distribution ~~[under this~~
65 ~~section]~~.

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

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

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

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

75 (iv) the victim is incapacitated or deceased.

76 (3) This section does not apply to:

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

78 (ii) prosecutorial agency functions;

79 (iii) the reporting of a criminal offense;

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

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

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

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

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

86 (4) (a) This section does not apply to an Internet service provider or interactive
87 computer service, as defined in 47 U.S.C. Sec. 230(f)(2), a provider of an electronic

88 communications service as defined in 18 U.S.C. Sec. 2510, a telecommunications service,
89 information service, or mobile service as defined in 47 U.S.C. Sec. 153, including a
90 commercial mobile service as defined in 47 U.S.C. Sec. 332(d), or a cable operator as defined
91 in 47 U.S.C. Sec. 522, if:

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

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

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

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

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

101 (b) This section does not apply to a hosting company, as defined in Section
102 [76-10-1230](#), if:

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

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

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

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

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

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