

1 INTIMATE IMAGE DISTRIBUTION PROHIBITION

2 AMENDMENTS

3 2021 GENERAL SESSION

4 STATE OF UTAH

5 Chief Sponsor: Karen Kwan

6 Senate Sponsor: Todd D. Weiler

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8 LONG TITLE

9 General Description:

10 This bill addresses the distribution of an intimate image or a counterfeit intimate image.

11 Highlighted Provisions:

12 This bill:

- 13 ▶ defines terms;
- 14 ▶ prohibits the distribution of a counterfeit intimate image;
- 15 ▶ modifies the responsibility of a hosting company with regard to the removal of a
- 16 counterfeit intimate image or an intimate image;
- 17 ▶ modifies levels of offenses; and
- 18 ▶ makes technical and conforming changes.

19 Money Appropriated in this Bill:

20 None

21 Other Special Clauses:

22 None

23 Utah Code Sections Affected:

24 AMENDS:

25 76-5b-203, as last amended by Laws of Utah 2019, Chapter 378

26 76-5b-204, as enacted by Laws of Utah 2017, Chapter 434

27 77-36-1, as last amended by Laws of Utah 2020, Chapter 142



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

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

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

(1) As used in this section:

(a) "Counterfeit intimate image" means any visual depiction, photograph, film, video, recording, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, that has been edited, manipulated, or altered to depict the likeness of an identifiable individual and purports to, or is made to appear to, depict that individual's:

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

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

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

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

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

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

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

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

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

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

- 59 (ii) masturbation;
- 60 (iii) bestiality;
- 61 (iv) sadistic or masochistic activities;
- 62 (v) exhibition of the genitals, pubic region, buttocks, or female breast of any
- 63 individual;
- 64 (vi) visual depiction of nudity or partial nudity;
- 65 (vii) fondling or touching of the genitals, pubic region, buttocks, or female breast; or
- 66 (viii) explicit representation of the defecation or urination functions.

67 ~~[(d)]~~ (e) "Simulated sexually explicit conduct" means a feigned or pretended act of

68 sexually explicit conduct that duplicates, within the perception of an average person, the

69 appearance of an actual act of sexually explicit conduct.

70 (2) An actor commits the offense of distribution of ~~[intimate images]~~ an intimate image

71 if the actor knowingly ~~[or]~~, intentionally, or recklessly distributes to any third party any

72 intimate image of an individual who is 18 years ~~[of age]~~ old or older and knows or should

73 know that the distribution would cause a reasonable person to suffer emotional distress or

74 harm, if:

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

76 distribute the intimate image;

77 (b) the intimate image was created by or provided to the actor under circumstances in

78 which the individual has a reasonable expectation of privacy; and

79 (c) actual emotional distress or harm is caused to the person as a result of the

80 distribution under this section.

81 (3) An actor commits the offense of distribution of a counterfeit intimate image if the

82 actor knowingly, intentionally, or recklessly distributes to any third party any counterfeit

83 intimate image that purports to depict an individual who is 18 years old or older and knows or

84 should know that the distribution would cause a reasonable person to suffer emotional or

85 physical distress or harm, if:

86 (a) the actor knows that the individual has not given consent to the actor to distribute

87 the counterfeit intimate image;

88 (b) the counterfeit intimate image was created or provided to the actor without the

89 knowledge or consent of the individual; and

90 (c) actual emotional or physical distress or harm is caused to the individual as a result  
91 of the creation or distribution under this section.

92 [~~3~~] (4) This section does not apply to:

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

94 (ii) prosecutorial agency functions;

95 (iii) the reporting of a criminal offense;

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

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

98 (b) an intimate image or a counterfeit intimate image if the individual portrayed in the  
99 image voluntarily allows public exposure of the image;

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

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

104 [~~4~~] (5) (a) This section does not apply to an Internet service provider or interactive  
105 computer service, as defined in 47 U.S.C. Sec. 230(f)(2), a provider of an electronic  
106 communications service as defined in 18 U.S.C. Sec. 2510, a telecommunications service,  
107 information service, or mobile service as defined in 47 U.S.C. Sec. 153, including a  
108 commercial mobile service as defined in 47 U.S.C. Sec. 332(d), or a cable operator as defined  
109 in 47 U.S.C. Sec. 522, if:

110 (i) the distribution of an intimate image or a counterfeit intimate image by the Internet  
111 service provider occurs only incidentally through the provider's function of:

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

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

114 (ii) the provider does not intentionally aid or abet in the distribution of the intimate  
115 image or counterfeit intimate image; and

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

120 (b) This section does not apply to a hosting company, as defined in Section

121 76-10-1230, if:

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

125 (ii) the hosting company does not intentionally engage, aid, or abet in the distribution  
126 of the intimate image~~;~~ or counterfeit intimate image;

127 (iii) the hosting company does not knowingly receive from or through a person who  
128 distributes the intimate image or counterfeit intimate image a fee greater than the fee generally  
129 charged by the provider, as a specific condition for permitting the person to distribute, store, or  
130 cache the intimate image~~;~~ or counterfeit intimate image; and

131 (iv) the hosting company immediately removes the intimate image or counterfeit  
132 intimate image upon notice from a law enforcement agency, prosecutorial agency, or the  
133 individual purportedly depicted in the intimate image or counterfeit intimate image.

134 (c) A service provider, as defined in Section 76-10-1230, is not negligent under this  
135 section if it complies with Section 76-10-1231.

136 (6) (a) Reckless distribution of an intimate image or a counterfeit intimate image is a  
137 class B misdemeanor.

138 ~~[(5)(a)] (b) [Distribution]~~ Except as provided in Subsection (6)(c), knowing or  
139 intentional distribution of an intimate image or a counterfeit intimate image is a class A  
140 misdemeanor [except under Subsection (5)(b)].

141 ~~[(b)] (c) [Distribution]~~ Knowing or intentional distribution of an intimate image or a  
142 counterfeit intimate image is a third degree felony on a second or subsequent conviction for an  
143 offense under this section that arises from a separate criminal episode as defined in Section  
144 76-1-401.

145 Section 2. Section 76-5b-204 is amended to read:

146 **76-5b-204. Sexual extortion -- Penalties.**

147 (1) As used in this section:

148 (a) "Adult" means an individual 18 years ~~[of age]~~ old or older.

149 (b) "Child" means any individual under the age of 18.

150 (c) "Distribute" means the same as that term is defined in Section 76-5b-203.

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

152 (e) "Position of special trust" means the same as that term is defined in Section  
153 ~~[76-5-401.1]~~ 76-5-404.1.

154 (f) "Sexually explicit conduct" means the same as that term is defined in ~~[Subsection~~  
155 ~~76-5b-203(1)(c)]~~ Section 76-5b-203.

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

158 (h) "Vulnerable adult" means the same as that term is defined in Section 76-5-111.

159 (2) An individual who is 18 years old or older commits the offense of sexual extortion  
160 if the individual:

161 (a) with an intent to coerce a victim to engage in sexual contact, in sexually explicit  
162 conduct, or in simulated sexually explicit conduct, or to produce, provide, or distribute an  
163 image, video, or other recording of any individual naked or engaged in sexually explicit  
164 conduct, communicates in person or by electronic means a threat:

- 165 (i) to the victim's person, property, or reputation; or
- 166 (ii) to distribute an intimate image or video of the victim; or

167 (b) knowingly causes a victim to engage in sexual contact, in sexually explicit conduct,  
168 or in simulated sexually explicit conduct, or to produce, provide, or distribute any image,  
169 video, or other recording of any individual naked or engaged in sexually explicit conduct by  
170 means of a threat:

- 171 (i) to the victim's person, property, or reputation; or
- 172 (ii) to distribute an intimate image or video of the victim.

173 (3) (a) Sexual extortion is a third degree felony.

174 (b) Aggravated sexual extortion of an adult is a second degree felony.

175 (c) Aggravated sexual extortion of a child or a vulnerable adult is a first degree felony.

176 (4) An individual commits aggravated sexual extortion when, in conjunction with the  
177 offense described in Subsection (2), any of the following circumstances have been charged and  
178 admitted or found true in the action for the offense:

- 179 (a) the victim is a child or vulnerable adult;
- 180 (b) the offense was committed by the use of a dangerous weapon, as defined in Section  
181 76-1-601, or by violence, intimidation, menace, fraud, or threat of physical harm, or was  
182 committed during the course of a kidnapping;

183 (c) the individual caused bodily injury or severe psychological injury to the victim  
184 during or as a result of the offense;

185 (d) the individual was a stranger to the victim or became a friend of the victim for the  
186 purpose of committing the offense;

187 (e) the individual, before sentencing for the offense, was previously convicted of any  
188 sexual offense;

189 (f) the individual occupied a position of special trust in relation to the victim;

190 (g) the individual encouraged, aided, allowed, or benefitted from acts of prostitution or  
191 sexual acts by the victim with any other individual, or sexual performance by the victim before  
192 any other individual, human trafficking, or human smuggling; or

193 (h) the individual caused the penetration, however slight, of the genital or anal opening  
194 of the victim by any part or parts of the human body, or by any other object.

195 (5) An individual commits a separate offense under this section:

196 (a) for each victim the individual subjects to the offense outlined in Subsection (2); and

197 (b) for each separate time the individual subjects a victim to the offense outlined  
198 Subsection (2).

199 (6) This section does not preclude an individual from being charged and convicted of a  
200 separate criminal act if the individual commits the separate criminal act while the individual  
201 violates or attempts to violate this section.

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

205 Section 3. Section **77-36-1** is amended to read:

206 **77-36-1. Definitions.**

207 As used in this chapter:

208 (1) "Cohabitant" means the same as that term is defined in Section [78B-7-102](#).

209 (2) "Department" means the Department of Public Safety.

210 (3) "Divorced" means an individual who has obtained a divorce under Title 30, Chapter  
211 3, Divorce.

212 (4) "Domestic violence" or "domestic violence offense" means any criminal offense  
213 involving violence or physical harm or threat of violence or physical harm, or any attempt,

214 conspiracy, or solicitation to commit a criminal offense involving violence or physical harm,  
215 when committed by one cohabitant against another. "Domestic violence" or "domestic  
216 violence offense" includes commission or attempt to commit, any of the following offenses by  
217 one cohabitant against another:

- 218 (a) aggravated assault, as described in Section 76-5-103;
- 219 (b) aggravated cruelty to an animal, as described in Subsection 76-9-301(4), with the  
220 intent to harass or threaten the other cohabitant;
- 221 (c) assault, as described in Section 76-5-102;
- 222 (d) criminal homicide, as described in Section 76-5-201;
- 223 (e) harassment, as described in Section 76-5-106;
- 224 (f) electronic communication harassment, as described in Section 76-9-201;
- 225 (g) kidnapping, child kidnapping, or aggravated kidnapping, as described in Sections  
226 76-5-301, 76-5-301.1, and 76-5-302;
- 227 (h) mayhem, as described in Section 76-5-105;
- 228 (i) sexual offenses, as described in Title 76, Chapter 5, Part 4, Sexual Offenses, and  
229 Section 76-5b-201, Sexual exploitation of a minor -- Offenses;
- 230 (j) stalking, as described in Section 76-5-106.5;
- 231 (k) unlawful detention or unlawful detention of a minor, as described in Section  
232 76-5-304;
- 233 (l) violation of a protective order or ex parte protective order, as described in Section  
234 76-5-108;
- 235 (m) any offense against property described in Title 76, Chapter 6, Part 1, Property  
236 Destruction, Title 76, Chapter 6, Part 2, Burglary and Criminal Trespass, or Title 76, Chapter 6,  
237 Part 3, Robbery;
- 238 (n) possession of a deadly weapon with criminal intent, as described in Section  
239 76-10-507;
- 240 (o) discharge of a firearm from a vehicle, near a highway, or in the direction of any  
241 person, building, or vehicle, as described in Section 76-10-508;
- 242 (p) disorderly conduct, as defined in Section 76-9-102, if a conviction of disorderly  
243 conduct is the result of a plea agreement in which the defendant was originally charged with a  
244 domestic violence offense otherwise described in this Subsection (4), except that a conviction



245 of disorderly conduct as a domestic violence offense, in the manner described in this  
246 Subsection (4)(p), does not constitute a misdemeanor crime of domestic violence under 18  
247 U.S.C. Sec. 921, and is exempt from the federal Firearms Act, 18 U.S.C. Sec. 921 et seq.;

- 248 (q) child abuse, as described in Section 76-5-109.1;
- 249 (r) threatening use of a dangerous weapon, as described in Section 76-10-506;
- 250 (s) threatening violence, as described in Section 76-5-107;
- 251 (t) tampering with a witness, as described in Section 76-8-508;
- 252 (u) retaliation against a witness or victim, as described in Section 76-8-508.3;
- 253 (v) unlawful distribution of an intimate image or counterfeit intimate image, as  
254 described in Section 76-5b-203;
- 255 (w) sexual battery, as described in Section 76-9-702.1;
- 256 (x) voyeurism, as described in Section 76-9-702.7;
- 257 (y) damage to or interruption of a communication device, as described in Section  
258 76-6-108; or
- 259 (z) an offense described in Subsection 78B-7-806(1).

260 (5) "Jail release agreement" means the same as that term is defined in Section  
261 78B-7-801.

262 (6) "Jail release court order" means the same as that term is defined in Section  
263 78B-7-801.

264 (7) "Marital status" means married and living together, divorced, separated, or not  
265 married.

266 (8) "Married and living together" means a couple whose marriage was solemnized  
267 under Section 30-1-4 or 30-1-6 and who are living in the same residence.

268 (9) "Not married" means any living arrangement other than married and living together,  
269 divorced, or separated.

270 (10) "Protective order" includes an order issued under Subsection 78B-7-804(3).

271 (11) "Pretrial protective order" means a written order:

272 (a) specifying and limiting the contact a person who has been charged with a domestic  
273 violence offense may have with an alleged victim or other specified individuals; and

274 (b) specifying other conditions of release under Sections 78B-7-802 or 78B-7-803,  
275 pending trial in the criminal case.

276           (12) "Sentencing protective order" means a written order of the court as part of  
277 sentencing in a domestic violence case that limits the contact a person who has been convicted  
278 of a domestic violence offense may have with a victim or other specified individuals under  
279 Section [78B-7-804](#).

280           (13) "Separated" means a couple who have had their marriage solemnized under  
281 Section [30-1-4](#) or [30-1-6](#) and who are not living in the same residence.

282           (14) "Victim" means a cohabitant who has been subjected to domestic violence.