

1 **INTIMATE IMAGE DISTRIBUTION AMENDMENTS**

2 2022 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Clare Collard**

5 Senate Sponsor: Keith Grover

6 Cosponsor:

7 Karen Kwan

8

9 **LONG TITLE**

10 **General Description:**

11 This bill amends the offense of aggravated unlawful distribution of a counterfeit
12 intimate image.

13 **Highlighted Provisions:**

14 This bill:

- 15 ▶ restricts the offense of aggravated unlawful distribution of a counterfeit intimate
- 16 image to individuals 18 years old and older; and
- 17 ▶ makes technical revisions.

18 **Money Appropriated in this Bill:**

19 None

20 **Other Special Clauses:**

21 None

22 **Utah Code Sections Affected:**

23 AMENDS:

24 **76-5b-205**, as enacted by Laws of Utah 2021, Chapter 134

25

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

27 Section 1. Section **76-5b-205** is amended to read:

28 **76-5b-205. Unlawful distribution of a counterfeit intimate image -- Penalty.**

29 (1) As used in this section:

30 (a) "Child" means an individual under [~~the age of~~] 18 years old.

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

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

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

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

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

43 (d) "Sexually explicit conduct" means the same as that term is defined in Section
44 [76-5b-203](#).

45 (e) "Simulated sexually explicit conduct" means the same as that term is defined in
46 Section [76-5b-203](#).

47 (2) An actor commits the offense of unlawful distribution of a counterfeit intimate
48 image if the actor knowingly or intentionally distributes a counterfeit intimate image that the
49 actor knows or should reasonably know would cause a reasonable person to suffer emotional or
50 physical distress or harm, if:

51 (a) the actor has not received consent from the depicted individual to distribute the
52 counterfeit intimate image; and

53 (b) the counterfeit intimate image was created or provided by the actor without the
54 knowledge and consent of the depicted individual.

55 (3) An [~~individual~~] actor who is 18 years old or older commits aggravated unlawful
56 distribution of a counterfeit intimate image if, in committing the offense described in

57 Subsection (2), the individual depicted in the counterfeit intimate image is a child.

58 (4) This section does not apply to:

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

60 (ii) prosecutorial agency functions;

61 (iii) the reporting of a criminal offense;

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

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

64 (b) a counterfeit intimate image if the individual [~~portrayed~~] depicted in the image

65 voluntarily allows public exposure of the image;

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

67 (d) a counterfeit intimate image that is related to a matter of public concern or interest

68 or protected by the First Amendment to the United States Constitution or Article I, Sections 1

69 and 15 of the Utah Constitution.

70 (5) (a) This section does not apply to an Internet service provider or interactive

71 computer service, as defined in 47 U.S.C. Sec. 230(f)(2), a provider of an electronic

72 communications service as defined in 18 U.S.C. Sec. 2510, a telecommunications service,

73 information service, or mobile service as defined in 47 U.S.C. Sec. 153, including a

74 commercial mobile service as defined in 47 U.S.C. Sec. 332(d), or a cable operator as defined

75 in 47 U.S.C. Sec. 522, if:

76 (i) the distribution of a counterfeit intimate image by the Internet service provider

77 occurs only incidentally through the provider's function of:

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

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

80 (ii) the provider does not intentionally aid or abet in the distribution of the counterfeit

81 intimate image; and

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

83 the counterfeit intimate image a fee greater than the fee generally charged by the provider, as a

84 specific condition for permitting the person to distribute the counterfeit intimate image.

85 (b) This section does not apply to a hosting company, as defined in Section
86 76-10-1230, if:

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

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

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

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

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

101 (6) This section does not apply to an actor who engages in conduct that constitutes a
102 violation of this section to the extent that the actor is chargeable, for the same conduct, under
103 Section 76-5b-201, sexual exploitation of a minor.

104 (7) (a) Except as provided in Subsection (7)(b), knowing or intentional unlawful
105 distribution of a counterfeit intimate image is a class A misdemeanor.

106 (b) Knowing or intentional unlawful distribution of a counterfeit intimate image is a
107 third degree felony on a second or subsequent conviction for an offense under this section that
108 arises from a separate criminal episode as defined in Section 76-1-401.

109 (c) Except as provided in Subsection (7)(d), knowing or intentional aggravated
110 unlawful distribution of a counterfeit intimate image is a third degree felony.

111 (d) Knowing or intentional aggravated unlawful distribution of a counterfeit intimate
112 image is a second degree felony on a second or subsequent conviction for an offense under this

113 section that arises from a separate criminal episode as defined in Section [76-1-401](#).