

**INTIMATE IMAGE DISTRIBUTION AMENDMENTS**

2022 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Clare Collard**

Senate Sponsor: Keith Grover

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**LONG TITLE**

**Committee Note:**

The Law Enforcement and Criminal Justice Interim Committee recommended this bill.

Legislative Vote: 12 voting for 0 voting against 4 absent

**General Description:**

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

**Highlighted Provisions:**

This bill:

▸ restricts the offense of aggravated unlawful distribution of a counterfeit intimate image to individuals 18 years old and older; and

▸ makes technical revisions.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

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

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



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

29 **76-5b-205. Unlawful distribution of a counterfeit intimate image -- Penalty.**

30 (1) As used in this section:

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

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

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

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

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

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

44 (d) "Sexually explicit conduct" means the same as that term is defined in Section  
45 [76-5b-203](#).

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

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

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

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

56 (3) An [~~individual~~] actor who is 18 years old or older commits aggravated unlawful  
57 distribution of a counterfeit intimate image if, in committing the offense described in  
58 Subsection (2), the individual depicted in the counterfeit intimate image is a child.

- 59 (4) This section does not apply to:
- 60 (a) (i) lawful practices of law enforcement agencies;
- 61 (ii) prosecutorial agency functions;
- 62 (iii) the reporting of a criminal offense;
- 63 (iv) court proceedings or any other judicial proceeding; or
- 64 (v) lawful and generally accepted medical practices and procedures;
- 65 (b) a counterfeit intimate image if the individual [~~portrayed~~] depicted in the image
- 66 voluntarily allows public exposure of the image;
- 67 (c) a counterfeit intimate image that is portrayed in a lawful commercial setting; or
- 68 (d) a counterfeit intimate image that is related to a matter of public concern or interest
- 69 or protected by the First Amendment to the United States Constitution or Article I, Sections 1
- 70 and 15 of the Utah Constitution.
- 71 (5) (a) This section does not apply to an Internet service provider or interactive
- 72 computer service, as defined in 47 U.S.C. Sec. 230(f)(2), a provider of an electronic
- 73 communications service as defined in 18 U.S.C. Sec. 2510, a telecommunications service,
- 74 information service, or mobile service as defined in 47 U.S.C. Sec. 153, including a
- 75 commercial mobile service as defined in 47 U.S.C. Sec. 332(d), or a cable operator as defined
- 76 in 47 U.S.C. Sec. 522, if:
- 77 (i) the distribution of a counterfeit intimate image by the Internet service provider
- 78 occurs only incidentally through the provider's function of:
- 79 (A) transmitting or routing data from one person to another person; or
- 80 (B) providing a connection between one person and another person;
- 81 (ii) the provider does not intentionally aid or abet in the distribution of the counterfeit
- 82 intimate image; and
- 83 (iii) the provider does not knowingly receive from or through a person who distributes
- 84 the counterfeit intimate image a fee greater than the fee generally charged by the provider, as a
- 85 specific condition for permitting the person to distribute the counterfeit intimate image.
- 86 (b) This section does not apply to a hosting company, as defined in Section
- 87 [76-10-1230](#), if:
- 88 (i) the distribution of a counterfeit intimate image by the hosting company occurs only
- 89 incidentally through the hosting company's function of providing data storage space or data

90 caching to a person;

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

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

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

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

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

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

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

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

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