

ARTIFICIAL PORNOGRAPHIC IMAGES AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ariel Defay

Senate Sponsor: Chris H. Wilson

LONG TITLE

General Description:

This bill amends provisions in Title 76, Chapter 5b, Sexual Exploitation Act.

Highlighted Provisions:

This bill:

- ▶ clarifies that certain prohibited materials in Title 76, Chapter 5b, Sexual Exploitation Act, includes computer-generated videos; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

76-5b-103, as last amended by Laws of Utah 2023, Chapter 231

76-5b-203, as last amended by Laws of Utah 2022, Chapter 181

76-5b-204, as last amended by Laws of Utah 2022, Chapters 181, 184 and last amended by Coordination Clause, Laws of Utah 2022, Chapter 184

76-5b-205, as last amended by Laws of Utah 2022, Chapters 112, 181 and 185 and last amended by Coordination Clause, Laws of Utah 2022, Chapter 185



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

29 Section 1. Section **76-5b-103** is amended to read:

30 **76-5b-103. Definitions.**

31 As used in this chapter:

32 (1) "Child sexual abuse material" means any visual depiction, including any live
33 performance, photograph, film, video, picture, or computer or computer-generated image [~~or~~],
34 picture, or video, whether made or produced by electronic, mechanical, or other means, of
35 sexually explicit conduct, where:

36 (a) the production of the visual depiction involves the use of a minor engaging in
37 sexually explicit conduct;

38 (b) the visual depiction is of a minor engaging in sexually explicit conduct; or

39 (c) the visual depiction has been created, adapted, or modified to appear that an
40 identifiable minor is engaging in sexually explicit conduct.

41 (2) "Distribute" means [~~the selling, exhibiting, displaying, wholesaling, retailing,~~
42 ~~providing, giving, granting admission to, or otherwise transferring or presenting child sexual~~
43 ~~abuse material or vulnerable adult sexual abuse material with or without consideration~~], with or
44 without consideration, to sell, exhibit, display, provide, give, grant admission to, provide
45 access to, or otherwise transfer.

46 (3) "Identifiable minor" means [~~a person~~] an individual:

47 (a) (i) who was a minor at the time the visual depiction was created, adapted, or
48 modified; or

49 (ii) whose image as a minor was used in creating, adapting, or modifying the visual
50 depiction; and

51 (b) who is recognizable as an actual [~~person~~] individual by the [~~person's~~] individual's
52 face, likeness, or other distinguishing characteristic, such as a birthmark, or other recognizable
53 feature.

54 (4) "Identifiable vulnerable adult" means [~~a person~~] an individual:

55 (a) (i) who was a vulnerable adult at the time the visual depiction was created, adapted,
56 or modified; or

57 (ii) whose image as a vulnerable adult was used in creating, adapting, or modifying the
58 visual depiction; and

59 (b) who is recognizable as an actual [person] individual by the [person's] individual's
60 face, likeness, or other distinguishing characteristic, such as a birthmark, or other recognizable
61 feature.

62 (5) "Lacks capacity to consent" ~~[is as]~~ means the same as that term is defined in
63 Section 76-5-111.4.

64 (6) "Live performance" means any act, play, dance, pantomime, song, or other activity
65 performed by live actors in person.

66 (7) "Minor" means ~~[a person]~~ an individual younger than 18 years old.

67 (8) "Nudity or partial nudity" means any state of dress or undress in which the human
68 genitals, pubic region, buttocks, or the female breast, at a point below the top of the areola, is
69 less than completely and opaquely covered.

70 (9) "Produce" means:

71 (a) the photographing, filming, taping, directing, producing, creating, designing, or
72 composing of child sexual abuse material or vulnerable adult sexual abuse material; or

73 (b) the securing or hiring of [persons] individuals to engage in the photographing,
74 filming, taping, directing, producing, creating, designing, or composing of child sexual abuse
75 material or vulnerable adult sexual abuse material.

76 (10) "Sexually explicit conduct" means actual or simulated:

77 (a) sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal,
78 whether between [persons] individuals of the same or opposite sex;

79 (b) masturbation;

80 (c) bestiality;

81 (d) sadistic or masochistic activities;

82 (e) lascivious exhibition of the genitals, pubic region, buttocks, or female breast of any
83 [person] individual;

84 (f) the visual depiction of nudity or partial nudity for the purpose of causing sexual
85 arousal of any [person] individual;

86 (g) the fondling or touching of the genitals, pubic region, buttocks, or female breast; or

87 (h) the explicit representation of the defecation or urination functions.

88 (11) "Simulated sexually explicit conduct" means a feigned or pretended act of
89 sexually explicit conduct which duplicates, within the perception of an average person, the

90 appearance of an actual act of sexually explicit conduct.

91 (12) "Vulnerable adult" [~~is as~~] means the same as that term is defined in Subsection
92 76-5-111(1).

93 (13) "Vulnerable adult sexual abuse material" means any visual depiction, including
94 any live performance, photograph, film, video, picture, or computer or computer-generated
95 image or picture, whether made or produced by electronic, mechanical, or other means, of
96 sexually explicit conduct, where:

97 (a) the production of the visual depiction involves the use of a vulnerable adult
98 engaging in sexually explicit conduct;

99 (b) the visual depiction is of a vulnerable adult engaging in sexually explicit conduct;

100 or

101 (c) the visual depiction has been created, adapted, or modified to appear that an
102 identifiable vulnerable adult is engaging in sexually explicit conduct.

103 Section 2. Section **76-5b-203** is amended to read:

104 **76-5b-203. Distribution of an intimate image -- Penalty.**

105 (1) (a) As used in this section:

106 [~~(i) "Distribute" means selling, exhibiting, displaying, wholesaling, retailing,~~
107 ~~providing, giving, granting admission to, providing access to, or otherwise transferring or~~
108 ~~presenting an image to another individual, with or without consideration.]~~

109 [(~~iii~~)] (i) "Intimate image" means any visual depiction, photograph, film, video,
110 recording, picture, or computer or computer-generated image [~~or~~], picture, or video, whether
111 made or produced by electronic, mechanical, or other means, that depicts:

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

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

116 (C) the individual engaged in any sexually explicit conduct.

117 [(~~iii~~)] (ii) "Sexually explicit conduct" means actual or simulated:

118 (A) sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal,
119 whether between [~~persons~~] individuals of the same or opposite sex;

120 (B) masturbation;

- 121 (C) bestiality;
- 122 (D) sadistic or masochistic activities;
- 123 (E) exhibition of the genitals, pubic region, buttocks, or female breast of any
- 124 individual;
- 125 (F) visual depiction of nudity or partial nudity;
- 126 (G) fondling or touching of the genitals, pubic region, buttocks, or female breast; or
- 127 (H) explicit representation of the defecation or urination functions.
- 128 ~~[(iv)]~~ (iii) "Simulated sexually explicit conduct" means a feigned or pretended act of
- 129 sexually explicit conduct that duplicates, within the perception of an average person, the
- 130 appearance of an actual act of sexually explicit conduct.
- 131 ~~[(v)]~~ (iv) "Single criminal episode" means the same as that term is defined in Section
- 132 76-1-401.
- 133 (b) Terms defined in Section 76-1-101.5 apply to this section.
- 134 (2) (a) An actor commits the offense of distribution of an intimate image if:
- 135 (i) the actor knowingly or intentionally distributes to a third party, or knowingly
- 136 duplicates or copies an intimate image of an individual who is 18 years old or older and knows
- 137 or should know that the distribution, duplication or copying would cause a reasonable person to
- 138 suffer emotional distress or harm;
- 139 (ii) the actor has not received consent from the individual depicted in the image to
- 140 distribute the intimate image;
- 141 (iii) the intimate image was created by or provided to the actor under circumstances in
- 142 which the individual depicted in the image has a reasonable expectation of privacy; and
- 143 (iv) except as provided in Subsection (2)(b), actual emotional distress or harm is
- 144 caused to the individual depicted in the image as a result of the distribution.
- 145 (b) Subsection (2)(a)(iv) is not an element of the offense described in Subsection (2)(a)
- 146 if:
- 147 (i) the individual depicted in the intimate image was the victim of a crime;
- 148 (ii) the intimate image was provided to law enforcement as part of an investigation or
- 149 prosecution of a crime committed against the victim;
- 150 (iii) the intimate image was distributed without a legitimate law enforcement or
- 151 investigative purpose by an individual who had access to the intimate image due to the

152 individual's association with the investigation or prosecution described in Subsection (2)(b)(ii);
153 and

154 (iv) the victim is incapacitated or deceased.

155 (3) (a) A violation of Subsection (2) is a class A misdemeanor.

156 (b) Notwithstanding Subsection (3)(a), a violation of Subsection (2) is a third degree
157 felony on a second or subsequent conviction for an offense under this section that does not
158 arise from a single criminal episode.

159 (4) This section does not apply to:

160 (a) except as provided in Section [76-5b-203.5](#):

161 (i) lawful practices of law enforcement agencies;

162 (ii) prosecutorial agency functions;

163 (iii) the reporting of a criminal offense;

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

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

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

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

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

170 (5) (a) This section does not apply to an Internet service provider or interactive
171 computer service, as defined in 47 U.S.C. Sec. 230(f)(2), a provider of an electronic
172 communications service as defined in 18 U.S.C. Sec. 2510, a telecommunications service,
173 information service, or mobile service as defined in 47 U.S.C. Sec. 153, including a
174 commercial mobile service as defined in 47 U.S.C. Sec. 332(d), or a cable operator as defined
175 in 47 U.S.C. Sec. 522, if:

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

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

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

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

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

183 the intimate image a fee greater than the fee generally charged by the provider, as a specific
 184 condition for permitting the person to distribute the intimate image.

185 (b) This section does not apply to a hosting company, as defined in Section
 186 76-10-1230, if:

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

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

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

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

197 Section 3. Section 76-5b-204 is amended to read:

198 **76-5b-204. Sexual extortion -- Penalties.**

199 (1) (a) As used in this section:

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

201 (ii) "Child" means any individual under the age of 18.

202 [~~(iii) "Distribute" means the same as that term is defined in Section 76-5b-203.;~~]

203 [~~(iv)~~] (iii) "Intimate image" means the same as that term is defined in Section
 204 76-5b-203.

205 [~~(v)~~] (iv) "Position of special trust" means the same as that term is defined in Section
 206 76-5-404.1.

207 [~~(vi)~~] (v) "Sexually explicit conduct" means the same as that term is defined in Section
 208 76-5b-203.

209 [~~(vii)~~] (vi) "Simulated sexually explicit conduct" means the same as that term is
 210 defined in Section 76-5b-203.

211 [~~(viii) "Vulnerable adult" means the same as that term is defined in Section 76-5-111.;~~]

212 (b) Terms defined in Section 76-1-101.5 apply to this section.

213 (2) (a) An actor commits the offense of sexual extortion if the actor:

214 (i) with an intent to coerce a victim to engage in sexual contact, in sexually explicit
215 conduct, or in simulated sexually explicit conduct, or to produce, provide, or distribute an
216 image, video, or other recording of any individual naked or engaged in sexually explicit
217 conduct, communicates by any means a threat:

218 (A) to the victim's person, property, or reputation; or

219 (B) to distribute an intimate image or video of the victim;

220 (ii) knowingly causes a victim to engage in sexual contact, in sexually explicit conduct,
221 or in simulated sexually explicit conduct, or to produce, provide, or distribute any image,
222 video, or other recording of any individual naked or engaged in sexually explicit conduct by
223 means of a threat:

224 (A) to the victim's person, property, or reputation; or

225 (B) to distribute an intimate image or video of the victim; or

226 (iii) with intent to obtain a thing of value from a victim communicates, by any means, a
227 threat to distribute an intimate image or video of the victim.

228 (b) An actor commits aggravated sexual extortion when, in conjunction with the
229 offense described in Subsection (2)(a), any of the following circumstances have been charged
230 and admitted or found true in the action for the offense:

231 (i) the victim is a child or vulnerable adult;

232 (ii) the offense was committed by the use of a dangerous weapon or by violence,
233 intimidation, menace, fraud, or threat of physical harm, or was committed during the course of
234 a kidnapping;

235 (iii) the actor caused bodily injury or severe psychological injury to the victim during
236 or as a result of the offense;

237 (iv) the actor was a stranger to the victim or became a friend of the victim for the
238 purpose of committing the offense;

239 (v) the actor, before sentencing for the offense, was previously convicted of any sexual
240 offense;

241 (vi) the actor occupied a position of special trust in relation to the victim;

242 (vii) the actor encouraged, aided, allowed, or benefitted from acts of prostitution or
243 sexual acts by the victim with any other individual, or sexual performance by the victim before
244 any other individual, human trafficking, or human smuggling; or

245 (viii) the actor caused the penetration, however slight, of the genital or anal opening of
246 the victim by any part or parts of the human body, or by any other object.

247 (3) (a) If the actor is an adult:

248 (i) A violation of Subsection (2)(a) is a third degree felony.

249 (ii) A violation of Subsection (2)(b) in which the victim is an adult is a second degree
250 felony.

251 (iii) A violation of Subsection (2)(b) in which the victim is a child or a vulnerable adult
252 is a first degree felony.

253 (b) If the actor is a child:

254 (i) A violation of Subsection (2)(a) is a class A misdemeanor.

255 (ii) A violation of Subsection (2)(b) is a third degree felony if there is more than a
256 two-year age gap between the actor and the victim.

257 (c) An actor commits a separate offense under this section:

258 (i) for each victim the actor subjects to the offense outlined in Subsection (2)(a); and

259 (ii) for each separate time the actor subjects a victim to the offense outlined Subsection
260 (2)(a).

261 (d) This section does not preclude an actor from being charged and convicted of a
262 separate criminal act if the actor commits the separate criminal act while the individual violates
263 or attempts to violate this section.

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

267 Section 4. Section **76-5b-205** is amended to read:

268 **76-5b-205. Unlawful distribution of a counterfeit intimate image -- Penalty.**

269 (1) (a) As used in this section:

270 (i) "Child" means an individual under 18 years old.

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

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

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

280 (C) the individual engaged in any sexually explicit conduct or simulated sexually
281 explicit conduct.

282 [~~(iii)~~] "~~Distribute~~" means the same as that term is defined in Section ~~76-5b-203~~;

283 [~~(iv)~~] (iii) "Sexually explicit conduct" means the same as that term is defined in
284 Section 76-5b-203.

285 [~~(v)~~] (iv) "Simulated sexually explicit conduct" means the same as that term is defined
286 in Section 76-5b-203.

287 [~~(vi)~~] (v) "Single criminal episode" means the same as that term is defined in Section
288 76-1-401.

289 (b) Terms defined in Section 76-1-101.5 apply to this section.

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

294 (i) the actor has not received consent from the depicted individual to distribute the
295 counterfeit intimate image; and

296 (ii) the counterfeit intimate image was created or provided by the actor without the
297 knowledge and consent of the depicted individual.

298 (b) An actor who is 18 years old or older commits aggravated unlawful distribution of
299 a counterfeit intimate image if, in committing the offense described in Subsection (2)(a), the
300 individual depicted in the counterfeit intimate image is a child.

301 (3) (a) (i) A violation of Subsection (2)(a) that is knowing or intentional is a class A
302 misdemeanor.

303 (ii) Notwithstanding Subsection (3)(a)(i), a violation of Subsection (2)(a) that is
304 knowing or intentional is a third degree felony on a second or subsequent conviction for an
305 offense under this section that does not arise from a single criminal episode.

306 (b) (i) A violation of Subsection (2)(b) that is knowing or intentional is a third degree

307 felony.

308 (ii) Notwithstanding Subsection (3)(b)(i), a violation of Subsection (2)(b) that is
309 knowing or intentional is a second degree felony on a second or subsequent conviction for an
310 offense under this section that does not arise from a single criminal episode.

311 (c) This section does not apply to an actor who engages in conduct that constitutes a
312 violation of this section to the extent that the actor is chargeable, for the same conduct, under
313 Section 76-5b-201, sexual exploitation of a minor, or Section 76-5b-201.1, aggravated sexual
314 exploitation of a minor.

315 (4) This section does not apply to:

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

317 (ii) prosecutorial agency functions;

318 (iii) the reporting of a criminal offense;

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

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

321 (b) a counterfeit intimate image if the individual depicted in the image voluntarily
322 allows public exposure of the image;

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

324 (d) a counterfeit intimate image that is related to a matter of public concern or interest
325 or protected by the First Amendment to the United States Constitution or Article I, Sections 1
326 and 15 of the Utah Constitution.

327 (5) (a) This section does not apply to an Internet service provider or interactive
328 computer service, as defined in 47 U.S.C. Sec. 230(f)(2), a provider of an electronic
329 communications service as defined in 18 U.S.C. Sec. 2510, a telecommunications service,
330 information service, or mobile service as defined in 47 U.S.C. Sec. 153, including a
331 commercial mobile service as defined in 47 U.S.C. Sec. 332(d), or a cable operator as defined
332 in 47 U.S.C. Sec. 522, if:

333 (i) the distribution of a counterfeit intimate image by the Internet service provider
334 occurs only incidentally through the provider's function of:

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

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

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

338 intimate image; and

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

342 (b) This section does not apply to a hosting company, as defined in Section
343 [76-10-1230](#), if:

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

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

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

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

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

358 Section 5. **Effective date.**

359 This bill takes effect on May 1, 2024.