

HB0238S01 compared with HB0238

~~text~~ shows text that was in HB0238 but was deleted in HB0238S01.

inserted text shows text that was not in HB0238 but was inserted into HB0238S01.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

Representative Brady Brammer proposes the following substitute bill:

SEXUAL EXPLOITATION OF A MINOR AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: {} Brady Brammer

Senate Sponsor: {} _____

LONG TITLE

General Description:

This bill criminalizes certain conduct relating to child sexual abuse material.

Highlighted Provisions:

This bill:

- ▶ amends the definition of child sexual abuse material;
- ▶ provides a severability clause; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

HB0238S01 compared with HB0238

AMENDS:

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

76-5b-201, as last amended by Laws of Utah 2023, Chapters 231, 330

76-5b-201.1, as last amended by Laws of Utah 2023, Chapter 231

ENACTS:

76-5b-303, Utah Code Annotated 1953

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

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

76-5b-103. Definitions.

As used in this chapter:

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

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

(b) the visual depiction is:

(i) of a minor engaging in sexually explicit conduct; ~~{f}~~ or ~~{j}~~

~~(fi) a depiction that would lead a reasonable person to conclude that a minor is engaging in sexually explicit conduct; or~~

~~—————(fi)ii) artificially generated and depicts an individual with substantial characteristics of a minor engaging in sexually explicit conduct; or~~

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

(2) "Distribute" means the selling, exhibiting, displaying, wholesaling, retailing, providing, giving, granting admission to, or otherwise transferring or presenting child sexual abuse material or vulnerable adult sexual abuse material with or without consideration.

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

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

HB0238S01 compared with HB0238

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

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

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

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

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

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

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

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

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

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

(9) "Produce" means:

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

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

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

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

(b) masturbation;

HB0238S01 compared with HB0238

- (c) bestiality;
- (d) sadistic or masochistic activities;
- (e) lascivious exhibition of the genitals, pubic region, buttocks, or female breast of any [person] individual;
- (f) the visual depiction of nudity or partial nudity for the purpose of causing sexual arousal of any [person] individual;
- (g) the fondling or touching of the genitals, pubic region, buttocks, or female breast; or
- (h) the explicit representation of the defecation or urination functions.

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

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

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

- (a) the production of the visual depiction involves the use of a vulnerable adult engaging in sexually explicit conduct;
 - (b) the visual depiction is of a vulnerable adult engaging in sexually explicit conduct;
- or
- (c) the visual depiction has been created, adapted, or modified to appear that an identifiable vulnerable adult is engaging in sexually explicit conduct.

Section 2. Section **76-5b-201** is amended to read:

76-5b-201. Sexual exploitation of a minor -- Offenses.

- (1) Terms defined in Section 76-1-101.5 apply to this section.
- (2) An actor commits sexual exploitation of a minor when the actor knowingly possesses or intentionally views child sexual abuse material.
- (3) (a) A violation of Subsection (2) is a second degree felony.
- (b) It is a separate offense under this section:
 - (i) for each minor depicted in the child sexual abuse material; and

HB0238S01 compared with HB0238

(ii) for each time the same minor is depicted in different child sexual abuse material.

~~[(4) (a) It is an affirmative defense to a charge of violating this section that no minor was actually depicted in the visual depiction or used in producing or advertising the visual depiction. (b)]~~

~~[(b)]~~ (4) For a charge of violating this section, it is an affirmative defense that:

~~[(i)]~~ (a) the defendant:

~~[(A)]~~ (i) did not solicit the child sexual abuse material from the minor depicted in the child sexual abuse material;

~~[(B)]~~ (ii) is not more than two years older than the minor depicted in the child sexual abuse material; and

~~[(C)]~~ (iii) upon request of a law enforcement agent or the minor depicted in the child sexual abuse material, removes from an electronic device or destroys the child sexual abuse material and all copies of the child sexual abuse material in the defendant's possession; and

~~[(ii)]~~ (b) the child sexual abuse material does not depict an offense under Chapter 5, Part 4, Sexual Offenses.

(5) In proving a violation of this section in relation to an identifiable minor, proof of the actual identity of the identifiable minor is not required.

(6) The following are not criminally or civilly liable under this section when acting in good faith compliance with Section 77-4-201:

(a) an entity or an employee, director, officer, or agent of an entity when acting within the scope of employment, for the good faith performance of:

(i) reporting or data preservation duties required under federal or state law; or

(ii) implementing a policy of attempting to prevent the presence of child sexual abuse material on tangible or intangible property, or of detecting and reporting the presence of child sexual abuse material on the property;

(b) a law enforcement officer acting within the scope of a criminal investigation;

(c) an employee of a court who may be required to view child sexual abuse material during the course of and within the scope of the employee's employment;

(d) a juror who may be required to view child sexual abuse material during the course of the individual's service as a juror;

(e) an attorney or employee of an attorney who is required to view child sexual abuse

HB0238S01 compared with HB0238

material during the course of a judicial process and while acting within the scope of employment;

(f) an employee of the Department of Health and Human Services who is required to view child sexual abuse material within the scope of the employee's employment; or

(g) an attorney who is required to view child sexual abuse material within the scope of the attorney's responsibility to represent the Department of Health and Human Services, including the divisions and offices within the Department of Health and Human Services.

Section 3. Section **76-5b-201.1** is amended to read:

76-5b-201.1. Aggravated sexual exploitation of a minor.

(1) As used in this section:

(a) "Physical abuse" or "physically abused" means the same as the term "physical abuse" is defined in Section 80-1-102.

(b) The terms defined in Section 76-1-101.5 apply to this section.

(2) An actor commits aggravated sexual exploitation of a minor if the actor:

(a) intentionally distributes child sexual abuse material;

(b) knowingly produces child sexual abuse material; or

(c) is the minor's parent or legal guardian and knowingly consents to or permits the minor to be sexually exploited as described in Subsection (2)(a) or (b) or Section 76-5b-201.

(3) (a) Except as provided in Subsection (3)(b) or (c), a violation of Subsection (2) is a first degree felony.

(b) If an actor is under 18 years old at the time of the offense, a violation of Subsection (2) is a second degree felony.

(c) A violation of Subsection (2)(a) is a second degree felony if the child sexual abuse material depicts an individual who is:

(i) 14 years old or older; or

(ii) pubescent.

(4) It is a separate offense under this section:

(a) for each minor depicted in the child sexual abuse material; and

(b) for each time the same minor is depicted in different child sexual abuse material.

~~[(5) (a) It is an affirmative defense to a charge of violating this section that no minor was actually depicted in the visual depiction or used in producing or advertising the visual~~

HB0238S01 compared with HB0238

depiction. ~~(b)~~]

~~[(b)]~~(5) In proving a violation of this section in relation to an identifiable minor, proof of the actual identity of the identifiable minor is not required.

(6) The following are not criminally or civilly liable under this section when acting in good faith compliance with Section 77-4-201:

(a) an entity or an employee, director, officer, or agent of an entity when acting within the scope of employment, for the good faith performance of:

(i) reporting or data preservation duties required under federal or state law; or

(ii) implementing a policy of attempting to prevent the presence of child sexual abuse material on tangible or intangible property, or of detecting and reporting the presence of child sexual abuse material on the property;

(b) a law enforcement officer acting within the scope of a criminal investigation;

(c) an employee of a court who may be required to view child sexual abuse material during the course of and within the scope of the employee's employment;

(d) a juror who may be required to view child sexual abuse material during the course of the individual's service as a juror;

(e) an attorney or employee of an attorney who is required to view child sexual abuse material during the course of a judicial process and while acting within the scope of employment;

(f) an employee of the Department of Health and Human Services who is required to view child sexual abuse material within the scope of the employee's employment; or

(g) an attorney who is required to view child sexual abuse material within the scope of the attorney's responsibility to represent the Department of Health and Human Services, including the divisions and offices within the Department of Health and Human Services.

Section 4. Section **76-5b-303** is enacted to read:

76-5b-303. Severability.

(1) If any provision of this chapter or the application of any provision to any person or circumstance is held invalid by a final decision of a court, the remainder of this chapter shall be given effect without the invalid provision or application.

(2) The provisions of this chapter are severable.

Section 5. **Effective date.**

HB0238S01 compared with HB0238

This bill takes effect on May 1, 2024.