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**CRIMINAL OFFENSE AMENDMENTS**  
2024 GENERAL SESSION  
STATE OF UTAH  
**Chief Sponsor: Karen Kwan**  
House Sponsor: Stephanie Gricius

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**LONG TITLE**

**General Description:**

This bill amends the definition of counterfeit intimate image.

**Highlighted Provisions:**

This bill:

- amends the definition of counterfeit intimate image.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**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

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

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

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

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

- (i) "Child" means an individual under 18 years old.
- (ii) "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, generated, or altered to depict the likeness of an identifiable individual and purports to, or is made to appear to, depict that individual's:
  - (A) exposed human male or female genitals or pubic area, with less than an

- 29                   opaque covering;
- 30                   (B) a female breast with less than an opaque covering, or any portion of the
- 31                   female breast below the top of the areola; or
- 32                   (C) the individual engaged in any sexually explicit conduct or simulated sexually
- 33                   explicit conduct.
- 34                   (iii) "Distribute" means the same as that term is defined in Section 76-5b-203.
- 35                   (iv) "Sexually explicit conduct" means the same as that term is defined in Section
- 36                   76-5b-203.
- 37                   (v) "Simulated sexually explicit conduct" means the same as that term is defined in
- 38                   Section 76-5b-203.
- 39                   (vi) "Single criminal episode" means the same as that term is defined in Section
- 40                   76-1-401.
- 41                   (b) Terms defined in Section 76-1-101.5 apply to this section.
- 42                   (2) (a) An actor commits the offense of unlawful distribution of a counterfeit intimate
- 43                   image if the actor knowingly or intentionally distributes a counterfeit intimate image
- 44                   that the actor knows or should reasonably know would cause a reasonable person to
- 45                   suffer emotional or physical distress or harm, if:
- 46                   (i) the actor has not received consent from the depicted individual to distribute the
- 47                   counterfeit intimate image; and
- 48                   (ii) the counterfeit intimate image was created or provided by the actor without the
- 49                   knowledge and consent of the depicted individual.
- 50                   (b) An actor who is 18 years old or older commits aggravated unlawful distribution of a
- 51                   counterfeit intimate image if, in committing the offense described in Subsection
- 52                   (2)(a), the individual depicted in the counterfeit intimate image is a child.
- 53                   (3) (a) (i) A violation of Subsection (2)(a) that is knowing or intentional is a class A
- 54                   misdemeanor.
- 55                   (ii) Notwithstanding Subsection (3)(a)(i), a violation of Subsection (2)(a) that is
- 56                   knowing or intentional is a third degree felony on a second or subsequent
- 57                   conviction for an offense under this section that does not arise from a single
- 58                   criminal episode.
- 59                   (b) (i) A violation of Subsection (2)(b) that is knowing or intentional is a third degree
- 60                   felony.
- 61                   (ii) Notwithstanding Subsection (3)(b)(i), a violation of Subsection (2)(b) that is
- 62                   knowing or intentional is a second degree felony on a second or subsequent

63 conviction for an offense under this section that does not arise from a single  
64 criminal episode.

65 (c) This section does not apply to an actor who engages in conduct that constitutes a  
66 violation of this section to the extent that the actor is chargeable, for the same  
67 conduct, under Section 76-5b-201, sexual exploitation of a minor, or Section  
68 76-5b-201.1, aggravated sexual exploitation of a minor.

69 (4) This section does not apply to:

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

71 (ii) prosecutorial agency functions;

72 (iii) the reporting of a criminal offense;

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

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

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

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

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

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

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

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

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

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

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

- 97 (b) This section does not apply to a hosting company, as defined in Section 76-10-1230,  
98 if:
- 99 (i) the distribution of a counterfeit intimate image by the hosting company occurs  
100 only incidentally through the hosting company's function of providing data storage  
101 space or data caching to a person;
  - 102 (ii) the hosting company does not intentionally engage, aid, or abet in the distribution  
103 of the counterfeit intimate image;
  - 104 (iii) the hosting company does not knowingly receive from or through a person who  
105 distributes the counterfeit intimate image a fee greater than the fee generally  
106 charged by the provider, as a specific condition for permitting the person to  
107 distribute, store, or cache the counterfeit intimate image; and
  - 108 (iv) the hosting company immediately removes the counterfeit intimate image upon  
109 notice from a law enforcement agency, prosecutorial agency, or the individual  
110 purportedly depicted in the counterfeit intimate image.
- 111 (c) A service provider, as defined in Section 76-10-1230, is not negligent under this  
112 section if it complies with Section 76-10-1231.

113 Section 2. **Effective date.**

114 This bill takes effect on May 1, 2024.