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1	CRIMINAL OFFENSE AMENDMENTS
2	2024 GENERAL SESSION
3	STATE OF UTAH
4	Chief Sponsor: Karen Kwan
5	House Sponsor: Stephanie Gricius
6	
7	LONG TITLE
8	General Description:
9	This bill amends the definition of counterfeit intimate image.
10	Highlighted Provisions:
11	This bill:
12	 amends the definition of counterfeit intimate image.
13	Money Appropriated in this Bill:
14	None
15	Other Special Clauses:
16	None
17	Utah Code Sections Affected:
18	AMENDS:
19	76-5b-205, as last amended by Laws of Utah 2022, Chapters 112, 181 and 185 and last
20	amended by Coordination Clause, Laws of Utah 2022, Chapter 185
21	
22	Be it enacted by the Legislature of the state of Utah:
23	Section 1. Section 76-5b-205 is amended to read:
24	76-5b-205. Unlawful distribution of a counterfeit intimate image Penalty.
25	(1) (a) As used in this section:
26	(i) "Child" means an individual under 18 years old.
27	(ii) "Counterfeit intimate image" means any visual depiction, photograph, film, video,



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28 recording, picture, or computer or computer-generated image or picture, whether made or 29 produced by electronic, mechanical, or other means, that has been edited, manipulated, 30 generated, or altered to depict the likeness of an identifiable individual and purports to, or is 31 made to appear to, depict that individual's: 32 (A) exposed human male or female genitals or pubic area, with less than an opaque 33 covering; 34 (B) a female breast with less than an opaque covering, or any portion of the female 35 breast below the top of the areola; or 36 (C) the individual engaged in any sexually explicit conduct or simulated sexually 37 explicit conduct. 38 (iii) "Distribute" means the same as that term is defined in Section 76-5b-203. 39 (iv) "Sexually explicit conduct" means the same as that term is defined in Section 40 76-5b-203. 41 (v) "Simulated sexually explicit conduct" means the same as that term is defined in Section 76-5b-203. 42 43 (vi) "Single criminal episode" means the same as that term is defined in Section 44 76-1-401. 45 (b) Terms defined in Section 76-1-101.5 apply to this section. 46 (2) (a) An actor commits the offense of unlawful distribution of a counterfeit intimate 47 image if the actor knowingly or intentionally distributes a counterfeit intimate image that the 48 actor knows or should reasonably know would cause a reasonable person to suffer emotional or 49 physical distress or harm, if: 50 (i) the actor has not received consent from the depicted individual to distribute the 51 counterfeit intimate image; and 52 (ii) the counterfeit intimate image was created or provided by the actor without the 53 knowledge and consent of the depicted individual. 54 (b) An actor who is 18 years old or older commits aggravated unlawful distribution of 55 a counterfeit intimate image if, in committing the offense described in Subsection (2)(a), the 56 individual depicted in the counterfeit intimate image is a child. 57 (3) (a) (i) A violation of Subsection (2)(a) that is knowing or intentional is a class A 58 misdemeanor.

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59	(ii) Notwithstanding Subsection (3)(a)(i), a violation of Subsection (2)(a) that is
60	knowing or intentional is a third degree felony on a second or subsequent conviction for an
61	offense under this section that does not arise from a single criminal episode.
62	(b) (i) A violation of Subsection (2)(b) that is knowing or intentional is a third degree
63	felony.
64	(ii) Notwithstanding Subsection (3)(b)(i), a violation of Subsection (2)(b) that is
65	knowing or intentional is a second degree felony on a second or subsequent conviction for an
66	offense under this section that does not arise from a single criminal episode.
67	(c) This section does not apply to an actor who engages in conduct that constitutes a
68	violation of this section to the extent that the actor is chargeable, for the same conduct, under
69	Section 76-5b-201, sexual exploitation of a minor, or Section 76-5b-201.1, aggravated sexual
70	exploitation of a minor.
71	(4) This section does not apply to:
72	(a) (i) lawful practices of law enforcement agencies;
73	(ii) prosecutorial agency functions;
74	(iii) the reporting of a criminal offense;
75	(iv) court proceedings or any other judicial proceeding; or
76	(v) lawful and generally accepted medical practices and procedures;
77	(b) a counterfeit intimate image if the individual depicted in the image voluntarily
78	allows public exposure of the image;
79	(c) a counterfeit intimate image that is portrayed in a lawful commercial setting; or
80	(d) a counterfeit intimate image that is related to a matter of public concern or interest
81	or protected by the First Amendment to the United States Constitution or Article I, Sections 1
82	and 15 of the Utah Constitution.
83	(5) (a) This section does not apply to an Internet service provider or interactive
84	computer service, as defined in 47 U.S.C. Sec. 230(f)(2), a provider of an electronic
85	communications service as defined in 18 U.S.C. Sec. 2510, a telecommunications service,
86	information service, or mobile service as defined in 47 U.S.C. Sec. 153, including a
87	commercial mobile service as defined in 47 U.S.C. Sec. 332(d), or a cable operator as defined
88	in 47 U.S.C. Sec. 522, if:
89	(i) the distribution of a counterfeit intimate image by the Internet service provider

90 occurs only incidentally through the provider's function of: 91 (A) transmitting or routing data from one person to another person; or 92 (B) providing a connection between one person and another person; 93 (ii) the provider does not intentionally aid or abet in the distribution of the counterfeit 94 intimate image; and 95 (iii) the provider does not knowingly receive from or through a person who distributes 96 the counterfeit intimate image a fee greater than the fee generally charged by the provider, as a 97 specific condition for permitting the person to distribute the counterfeit intimate image. 98 (b) This section does not apply to a hosting company, as defined in Section 99 76-10-1230, if: 100 (i) the distribution of a counterfeit intimate image by the hosting company occurs only 101 incidentally through the hosting company's function of providing data storage space or data 102 caching to a person; 103 (ii) the hosting company does not intentionally engage, aid, or abet in the distribution 104 of the counterfeit intimate image; 105 (iii) the hosting company does not knowingly receive from or through a person who 106 distributes the counterfeit intimate image a fee greater than the fee generally charged by the 107 provider, as a specific condition for permitting the person to distribute, store, or cache the 108 counterfeit intimate image; and 109 (iv) the hosting company immediately removes the counterfeit intimate image upon 110 notice from a law enforcement agency, prosecutorial agency, or the individual purportedly 111 depicted in the counterfeit intimate image. 112 (c) A service provider, as defined in Section 76-10-1230, is not negligent under this 113 section if it complies with Section 76-10-1231. 114 Section 2. Effective date. 115 This bill takes effect on May 1, 2024.