

ARTIFICIAL PORNOGRAPHIC IMAGES AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephanie Gricius

Senate Sponsor: _____

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



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, or video, 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 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]~~, with or without consideration, to sell, exhibit, display, provide, give, grant admission to, provide access to, or otherwise transfer.

(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

(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 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;

(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-203** is amended to read:

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

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

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

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

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

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

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

~~[(iii)]~~ (ii) "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;

- 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

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

(iv) the victim is incapacitated or deceased.

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

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

(4) This section does not apply to:

(a) except as provided in Section 76-5b-203.5:

(i) lawful practices of law enforcement agencies;

(ii) prosecutorial agency functions;

(iii) the reporting of a criminal offense;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) If the actor is a child:

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

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

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

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

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

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

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

Section 4. 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, or video, whether made or produced by electronic, mechanical, or other means, that has been edited, manipulated, 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 opaque covering;

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

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

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

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

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

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

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

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

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

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

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

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

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

(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

intimate image; and

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

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

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

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

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

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

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

Section 5. Effective date.

This bill takes effect on May 1, 2024.