

CRIMINAL OFFENSE AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Karen Kwan

House Sponsor: _____

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

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,



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
42 Section [76-5b-203](#).

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.

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.